

# **ACCESS TO JUSTICE FOR CHILDREN: DENMARK**

*This report was produced by White and Case LLP [December 2013] but may have been subsequently edited by Child Rights International Network (CRIN). CRIN takes full responsibility for any errors or inaccuracies in the report.*

## **I. What is the legal status of the Convention on the Rights of the Child (CRC)?**

### **A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?**

The Kingdom of Denmark (Denmark) ratified the CRC in 1991, and has subsequently ratified a number of optional protocols to the CRC.<sup>1</sup> Denmark has also ratified the European Convention on Human Rights and the European Social Charter in 1953 and 1965, respectively.<sup>2</sup>

The Danish Constitution does not directly address the question of the status of international law vis-à-vis domestic law. Traditionally, Danish law has taken a dualistic approach towards international law. As such, ratified international instruments do not automatically have the force of law in Denmark; rather, international instruments, including the CRC, must be incorporated via ministerial regulation or parliamentary statutory legislation to be directly enforced in Denmark. See part I. C below for further detail.

### **B. Does the CRC take precedence over national law?**

The CRC does not take precedence over national law (see part I.C below for further detail), although Danish courts must consider all binding international conventions, including the CRC, where there is an apparent conflict with, or ambiguity in, relevant national law.

When reviewing such conflicts and ambiguities, two fundamental principles apply: (i) the “interpretation” rule: the courts will adopt the interpretation of national law that is most consistent with Denmark's international obligations; and (ii) the “assumption” rule: judicial authorities will act on the assumption that Parliament did not intend to legislate against Denmark's international obligations.<sup>3</sup>

### **C. Has the CRC been incorporated into national law?**

No, the CRC is not currently incorporated in Danish law.

In 2001, the Danish government elected not to directly incorporate the CRC into domestic law following a review of the matter. The inter-ministerial

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<sup>1</sup> Including the Optional Protocol to the CRC concerning the involvement of children in armed conflict – 2002; Optional Protocol to the CRC on the sale of children, child prostitution and child pornography – 2003.

<sup>2</sup> [http://wiki.crin.org/mediawiki/index.php?title=Europe\\_ratifications](http://wiki.crin.org/mediawiki/index.php?title=Europe_ratifications)

<sup>3</sup> <http://www.crin.org/resources/infoDetail.asp?ID=24662&flag=report>

committee conducting the review emphasised that implementation of the CRC into Danish law was not required because domestic Danish legislation has been found to be in harmony with the CRC.<sup>4</sup>

However, in 2012 the Government established a Committee of experts to examine whether the CRC and several other instruments need to be incorporated into national law. In their final report,<sup>5</sup> which was issued in 2014, a majority of the Committee's members recommended that the CRC be incorporated.<sup>6</sup>

#### **D. Can the CRC be directly enforced in the courts?**

The CRC cannot be directly enforced in Danish courts, as it is has not been directly incorporated into domestic legislation.

Danish courts, however, must consider all binding international conventions, including the CRC, where there is an apparent conflict with relevant national law (see section I. B above). Although the CRC is not incorporated into Danish legislation, the CRC is considered a relevant source of law, which may be invoked and applied by national courts and administrative authorities.<sup>7</sup>

#### **E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?**

There is no official body responsible for publicly reporting case law in Denmark and, as such, it is difficult to assess the application of the CRC or other relevant international instruments by Danish courts.

From the information available, it appears that the CRC is irregularly cited in domestic courts. For example, the Danish Institute for Human Rights reported only five published court cases during 2005-2010 in which the CRC was mentioned<sup>8</sup> and the Committee of experts charged with examining

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<sup>4</sup> Government of Denmark's 3<sup>rd</sup> Periodic Report on the Implementation of the Rights of the Child:  
[http://www.bayefsky.com/docs.php/area/reports/treaty/crc/opt/0/state/49/node/4/filename/denmark\\_crc\\_c\\_129\\_add\\_3\\_2003](http://www.bayefsky.com/docs.php/area/reports/treaty/crc/opt/0/state/49/node/4/filename/denmark_crc_c_129_add_3_2003)

<sup>5</sup> Available in Danish at:  
[http://justitsministeriet.dk/sites/default/files/media/Pressemeldelser/pdf/2014/Betaenkning\\_1546.pdf](http://justitsministeriet.dk/sites/default/files/media/Pressemeldelser/pdf/2014/Betaenkning_1546.pdf).

<sup>6</sup> Information provided by the National Council for Children, Denmark.

<sup>7</sup> National Council for Children's Report to the UN Committee on the Rights of the Child – Supplementary Report to Government of Denmark's 4<sup>th</sup> Periodic Report:  
<http://www.boernereraadet.dk/files/Brd.dk%20Filbibliotek/PDF%20FILER/EKSTERNE%20RAPPORTER/BRD%204.%20Suppl.%20Rapp.%20til%20FN%20-%202009%20-%20UKversion.pdf>; Parallel Report July 2010 to the UN Committee on the Rights of the Child on the Government of Denmark's 4<sup>th</sup> Periodic Report on the Implementation of the Rights of the Child:  
[http://www.humanrights.dk/files/pdf/Afgoerelser%20og%20rapporter/Official%20and%20supplementary%20reports/Supplementary%20reports%20submitted%20to%20the%20UN%20committee%20system/DIHR%20CRC%20PARALLEL%20REPORT%202010%20-%20PDF-FIL%20\(2\).PDF](http://www.humanrights.dk/files/pdf/Afgoerelser%20og%20rapporter/Official%20and%20supplementary%20reports/Supplementary%20reports%20submitted%20to%20the%20UN%20committee%20system/DIHR%20CRC%20PARALLEL%20REPORT%202010%20-%20PDF-FIL%20(2).PDF)

<sup>8</sup> Parallel Report July 2010 to the UN Committee on the Rights of the Child on the Government of Denmark's 4<sup>th</sup> Periodic Report to the UN Committee on the Rights of the Child on the Implementation of the Rights of the Child:  
[http://www.humanrights.dk/files/pdf/Afgoerelser%20og%20rapporter/Official%20and%20supplementary%20reports/Supplementary%20reports%20submitted%20to%20the%20UN%20committee%20system/DIHR%20CRC%20PARALLEL%20REPORT%202010%20-%20PDF-FIL%20\(2\).PDF](http://www.humanrights.dk/files/pdf/Afgoerelser%20og%20rapporter/Official%20and%20supplementary%20reports/Supplementary%20reports%20submitted%20to%20the%20UN%20committee%20system/DIHR%20CRC%20PARALLEL%20REPORT%202010%20-%20PDF-FIL%20(2).PDF)

whether Denmark should incorporate the Convention, identified 16 cases citing the CRC in the period 1st of January 2001 to 1st of January 2014.<sup>9</sup>

Some specific examples of Danish courts referencing the CRC exist in the context of (i) children giving evidence in a case in which their mother was accused of violence against another child;<sup>10</sup> (ii) custody matters.<sup>11</sup> The Parliamentary Ombudsman has also discussed the CRC in the context of cases concerning adoption.<sup>12</sup>

Note also that, as a member of the European Union, Denmark is subject to EU regulations (which are directly applicable in Denmark and have primacy over national law), EU decisions (to the extent stipulated as being directly applicable in Danish law), EU directives (to the extent incorporated into national law) and other standards pertaining to children's rights.<sup>13</sup>

Denmark is also a member of the Council of Europe and subject to the jurisdiction of the European Court of Human Rights, which issues decisions that are binding on all Council of Europe members.

## II. What is the legal status of the child?

### A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

Children or, where age requires, their legal representatives are entitled to bring civil cases in Danish courts to challenge violations of their rights.

The holders of 'parental authority' for a child (generally, his or her parents) are almost always the guardians of the child under Danish law. In matters concerning the child which are of a personal nature, the holders of parental authority are the legal representative. In matters concerning financial and legal issues, the guardians (who may also be the holders of personal authority) of the child are the legal representative.<sup>14</sup>

The National Council for Children is presently unable to receive individual complaints from children,<sup>15</sup> but complaints may be lodged with the Office of the Parliamentary Ombudsman, in which a child rights department was established in 2012.<sup>16</sup> Legislation passed in 2012 gave the child's office at the Parliamentary Ombudsman, the National Council for Children and the

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[HR%20CRC%20PARALLEL%20REPORT%202010%20-%20PDF-FIL%20\(2\).PDF](#)

<sup>9</sup> Final report, p. 62, available at:

[http://justitsministeriet.dk/sites/default/files/media/Pressemeddelelser/pdf/2014/Betaenkning\\_1546.pdf](http://justitsministeriet.dk/sites/default/files/media/Pressemeddelelser/pdf/2014/Betaenkning_1546.pdf).

<sup>10</sup> Human Rights in Denmark Status Report 2004:

<http://humanrights.dk/files/pdf/Publikationer>Status/eng/status2004eng.pdf>

<sup>11</sup> Human Rights in Denmark Status Report 2000:

<http://humanrights.dk/files/pdf/Publikationer>Status/eng/status2000eng.pdf>

<sup>12</sup> Human Rights in Denmark Status Report 2002:

<http://humanrights.dk/files/pdf/Publikationer>Status/eng/status2002eng.pdf>

<sup>13</sup> <http://www.nyulawglobal.org/Globalex/Denmark1.htm>

<sup>14</sup> <http://ceflonline.net/wp-content/uploads/Denmark-Parental-Responsibilities.pdf>

<sup>15</sup> <http://www.crin.org/resources/infoDetail.asp?ID=24663&flag=report>

<sup>16</sup> [www.ombudsmanden.dk](http://www.ombudsmanden.dk)

NGO Children's Welfare a combined mandate to be a form of Danish 'Child's Ombudsman'.

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The Parliamentary Ombudsman's jurisdiction extends to all parts of the public administration as well as the national church, but does not extend to the courts of justice. Any complaint must identify the complainant by name and shall be lodged no later than 12 months after the alleged event (subject to extension at the Parliamentary Ombudsman's discretion). A complaint concerning matters which may be appealed to another administrative authority cannot be lodged with the Parliamentary Ombudsman until that authority has made a decision on the matter. The Parliamentary Ombudsman may recommend that a complainant be granted free legal aid, and shall report its findings to the legal affairs committee of the Parliament as well as to the minister, regional or municipal council involved. The Parliamentary Ombudsman may also take up matters for investigation of its own initiative.

<sup>18</sup>

**B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?**

Article 5 of the Act on Parental Responsibility provides that consideration of the child's best interests and ensuring that a child's own views are heard on the relevant matter are fundamental principles Danish authorities must take into consideration. To this end, Denmark has introduced several legislative initiatives to integrate these principles into administrative and judicial decisions concerning children.

Examples include:

- positive requirements imposed on administrative bodies to interview children in custody, access and social support proceedings, and to obtain the child's consent to cancellation of adoption relationships;<sup>19</sup>
- children over the age of 10 may request the regional state administration to summon his or her parents to a meeting to discuss parental custody issues (although the state administration cannot oblige the parents to attend and the child does not formally become a party to the procedure and cannot appeal against a decision);<sup>20</sup>
- decisions on the choice or change of a care place may be appealed by a child over the age of 10 by complaint to the Social Welfare Board;<sup>21</sup>

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<sup>17</sup> Information provided by the National Council for Children, Denmark.

<sup>18</sup> <http://en.ombudsmanden.dk/loven/>

<sup>19</sup> Government of Denmark's 3<sup>rd</sup> Periodic Report on the Implementation of the Rights of the Child:

[http://www.bayefsky.com/docs.php/area/reports/treaty/crc/opt/0/state/49/node/4/filename/denmark\\_crc\\_c\\_129\\_add\\_3\\_2003](http://www.bayefsky.com/docs.php/area/reports/treaty/crc/opt/0/state/49/node/4/filename/denmark_crc_c_129_add_3_2003)

<sup>20</sup> <http://igitur-archive.library.uu.nl/dissertations/2008-0526-200535/jeppesendeboer.pdf>

<sup>21</sup> Government of Denmark's 4<sup>th</sup> Periodic Report on the Implementation of the Rights of the Child:

[http://www.bayefsky.com/docs.php/area/reports/treaty/crc/opt/0/state/49/node/4/filename/denmark\\_crc\\_c\\_dnk\\_4\\_2008](http://www.bayefsky.com/docs.php/area/reports/treaty/crc/opt/0/state/49/node/4/filename/denmark_crc_c_dnk_4_2008)

- complaints in connection with decisions concerning care, treatment, maintenance of relations, access and contact may be made by children over the age of 15;<sup>22</sup> and
- children over the age of 15 have a right to consent to medical treatment (and children under the age of 15 who are sufficiently mature are required to be informed and involved in discussions regarding any such treatment).<sup>23</sup>

In addition, a legal representative provided by the state is possible under certain circumstances. For example, legislative provisions require that a social service representative must attend the questioning or examination of children, in both criminal and civil contexts,<sup>24</sup> and a scheme has also been introduced for the appointment of a representative for unaccompanied minor asylum-seekers while their case is processed.<sup>25</sup> The Danish Administration of Justice Act (*Retsplejeloven*) also provides for access to legal representation for victims of crime.

Age and/or maturity are the relevant criteria determining a child's right to self-determination, the right to be heard and the right to legal representation. Criteria vary between different legislative acts and are not always consistent. Accordingly, a child's ability to represent itself or exercise autonomy of choice may differ depending on the particular context.

#### C. In the case of infants and young children, how would cases typically be brought?

Pursuant to the Act on Parental Responsibility, an informal conversation will normally take place with a child aged seven or older. Child experts will be used with younger children. In court, the judge may hear a child directly or may request that a child expert participates in the conversation.<sup>26</sup>

#### D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?

There are a number of instances in which free legal assistance may be available, including: (i) free legal aid provided by the state for court proceedings; (ii) public legal aid; and (iii) assistance in redressing disputes against public authorities.

##### (i) Free legal aid for court proceedings

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<sup>22</sup> Government of Denmark's 4<sup>th</sup> Periodic Report on the Implementation of the Rights of the Child:  
[http://www.bayefsky.com/docs.php/area/reports/treaty/crc/opt/0/state/49/node/4/filename/denmark\\_crc\\_c\\_dnk\\_4\\_2008](http://www.bayefsky.com/docs.php/area/reports/treaty/crc/opt/0/state/49/node/4/filename/denmark_crc_c_dnk_4_2008)

<sup>23</sup> Government of Denmark's Addendum Report (1998) on the Implementation of the Rights of the Child:  
[http://www.bayefsky.com/docs.php/area/reports/treaty/crc/opt/0/state/49/node/4/filename/denmark\\_crc\\_c\\_70\\_add.6\\_1998](http://www.bayefsky.com/docs.php/area/reports/treaty/crc/opt/0/state/49/node/4/filename/denmark_crc_c_70_add.6_1998)

<sup>24</sup> Government of Denmark's 4<sup>th</sup> Periodic Report on the Implementation of the Rights of the Child:  
[http://www.bayefsky.com/docs.php/area/reports/treaty/crc/opt/0/state/49/node/4/filename/denmark\\_crc\\_c\\_dnk\\_4\\_2008](http://www.bayefsky.com/docs.php/area/reports/treaty/crc/opt/0/state/49/node/4/filename/denmark_crc_c_dnk_4_2008)

<sup>25</sup> <http://drc.dk/about-drc/asylum-in-denmark/about-asylum-and-procedure/unaccompanied-minor-asylum-seekers/>

<sup>26</sup> <http://igitur-archive.library.uu.nl/dissertations/2008-0526-200535/jeppesendeboer.pdf>

An individual may be eligible for state-sponsored legal aid for court proceedings. For the party in question, such legal aid implies:

- exemption from court fees;
- assignment of a lawyer to conduct the case, with remuneration from the state treasury;
- compensation from the state treasury of costs which have been justly incurred in connection with the case; and
- exemption from compensating the counter party for the costs of the case.

As a general rule, it must be established that the applicant has a reasonable reason to carry on the lawsuit and a good chance of succeeding before legal aid is granted.<sup>27</sup> The applicant must also meet certain financial requirements and must not hold private legal costs insurance.<sup>28</sup>

This type of legal aid is available most often in matrimonial or custody cases, as well as in cases where the person seeking aid is a tenant, an employee or the injured party; it is only exceptionally granted for libel actions, in cases arising from a party's independent commercial enterprises, and in cases concerning the enforcement of undisputed claims.<sup>29</sup>

## (ii) Public legal aid

The Administration of Justice Act (*Retsplejeloven*) also establishes a three step regime in the provision of public legal aid.

Any party is entitled to a grant of free 'step 1' legal aid in the form of basic oral advice from a lawyer, generally provided via free legal advisory clinics, which are open to all persons and not subject to income tests.

'Step 2' and 'step 3' legal aid involves access to further advice and assistance from a lawyer, including assistance with basic written communications and advice in connection with settlement negotiations, which services are available at a nominal fee, subsidised by the state. Access to 'step 2' and 'step 3' legal aid requires certain financial requirements to be met, and will not generally be provided where the dispute involves matters arising out of a person's ongoing commercial enterprise, cases concerning the sale of real estate, or defendants in criminal cases. Notably, legal aid may be granted in connection with a complaint concerning a decision of an administrative body.<sup>30</sup>

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<http://www.domstol.dk/KobenhavnsByret/The%20City%20Court%20of%20Copenhagen/Pages/Freelegalaid.aspx>

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<http://www.probonoinst.org/wpps/wp-content/uploads/a-survey-of-pro-bono-practices-and-opportunities-in-71-jurisdiction-2012.pdf>

<sup>29</sup>

<http://www.probonoinst.org/wpps/wp-content/uploads/a-survey-of-pro-bono-practices-and-opportunities-in-71-jurisdiction-2012.pdf>

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<http://www.probonoinst.org/wpps/wp-content/uploads/a-survey-of-pro-bono-practices-and-opportunities-in-71-jurisdiction-2012.pdf>

Additionally, the Department of Civil Affairs has the discretion to grant legal aid in cases in which special reasons apply (for example, in cases which concern a fundamental principle or are of general public importance, or when a case is of significance to the applicant's social or occupational situation).<sup>31</sup>

(iii) Parliamentary Ombudsman

If redress is sought against the acts of public authorities, the applicant may seek legal support from the Parliamentary Ombudsman, who is empowered to initiate actions based on complaints about authorities' decisions and the treatment of citizens in specific cases. Review by the Parliamentary Ombudsman is free, and legal aid may be granted to an applicant as a result of such review.<sup>32</sup>

See also part IV.B below for further detail regarding legal aid and court costs, and part II.A above for further detail regarding the Parliamentary Ombudsman.

E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

Yes. Detailed provisions are set out in the Act on Parental Responsibility regarding the competence of parents in relation to a variety of possible decisions; for example, important decisions concerning the child's person and matters pertaining to guardianship will generally require agreement between the parents who hold joint parental authority.

It is also notable that parental authority cannot be delegated, and a person not holding parental authority cannot apply to a competent authority for delegation of such. It is possible in certain circumstances however for a guardian to provide another guardian with a power of attorney.<sup>33</sup>

**III. How can children's rights violations be challenged before national courts?**

A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

The Constitution of Denmark contains only one specific reference to the rights of the child as distinct from the rights of other citizens, which relates to educational matters,<sup>34</sup> and there is also no comprehensive children's act in Danish legislation. Rather, provisions relevant to children are found

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<sup>31</sup> [http://www.civilstyrelsen.dk/fri\\_proces/english.aspx](http://www.civilstyrelsen.dk/fri_proces/english.aspx)

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<http://www.probonoinst.org/wpps/wp-content/uploads/a-survey-of-pro-bono-practices-and-opportunities-in-71-jurisdiction-2012.pdf>

<sup>33</sup> <http://igitur-archive.library.uu.nl/dissertations/2008-0526-200535/jeppesendeboer.pdf>

<sup>34</sup> Section 76 of the Constitution states that: "All children of school age shall be entitled to free instruction in elementary schools. Where parents provide instruction equal to the elementary school standard, however, they shall not be obliged to have their children taught in such institutions."

throughout various legislative acts.<sup>35</sup>

In general, children or, where age requires, their legal representatives may initiate a lawsuit by filing a writ of summons with the court of competent jurisdiction in accordance with the rules set out by the Administration of Justice Act (*Retsplejeloven*).<sup>36</sup>

However, there are certain spheres in which competence is placed with a regional state administrative authority – for example, contact orders and guardianship matters – in which case there is generally only a right of appeal to another administrative authority (for example, the Family Agency), and no general access to court-base settlement of disputes. This reflects the fact that the use of administrative procedures, rather than court-based dispute settlement, is a distinctive feature of Danish family law.<sup>37</sup>

In such contexts, the scope of any judicial review would be limited to legal questions; this implies that the discretion of an administrative authority in granting a particular order could only be reviewed if the discretion can be legally qualified. The practical implication is that few cases are brought to court, and it is likely that a review would only result in setting aside the administrative decision if the decision was contrary to specific legislation or infringed fundamental administrative principles.<sup>38</sup>

A complaint may also be made to the Parliamentary Ombudsman. If the Ombudsman concludes that an administrative authority has made an error, he may criticize the relevant authority and possibly recommend that the authority reconsiders the case and makes a new decision. However, the Ombudsman cannot himself make a new decision (only the relevant authority can do so), and the Ombudsman also cannot sentence an authority or apply any kind of sanction. See parts II.A and II.D(iii) above for further detail regarding the Parliamentary Ombudsman and review of administrative decisions.

The European Court of Human Rights decides cases concerning alleged violations of any of the rights contained in the European Convention on Human Rights.<sup>39</sup> Any individual, group of individuals or an NGO who is a victim of a violation of one of these rights may submit a complaint to the Court,<sup>40</sup> but the complaint will be admissible only if all domestic remedies have been exhausted.<sup>41</sup> Anonymous complaints are not permitted.<sup>42</sup> The

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<sup>35</sup> <http://www.crin.org/resources/infoDetail.asp?ID=24662&flag=report>

<sup>36</sup> <http://www.theworldlawgroup.com/files/file/docs/Litigation%20process%20in%20Denmark.pdf>; an English translation of the Administration of Justice Act (*Retsplejeloven*) is not available and thus commentary on procedural issues is limited.

<sup>37</sup> <http://igitur-archive.library.uu.nl/dissertations/2008-0526-200535/jeppesendeboer.pdf>

<sup>38</sup> <http://igitur-archive.library.uu.nl/dissertations/2008-0526-200535/jeppesendeboer.pdf>

<sup>39</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms (“European Convention on Human Rights”), 1950, Articles 19 and 32, available at:

<https://www.crin.org/en/library/legal-database/european-convention-protection-human-rights-and-fundamental-freedoms>.

<sup>40</sup> Ibid., Article 34.

<sup>41</sup> Ibid., Article 35.

<sup>42</sup> Ibid.

procedural rules for the Court do not make any child-specific provisions. Persons may initially present an application themselves or through a representative, however, all applicants must be represented at hearings thereafter.<sup>43</sup> After examining the case, the Court renders a judgment which is binding on the State<sup>44</sup> and also has powers to award monetary compensation to the victims of human rights abuses.<sup>45</sup> It is also worth noting that the Court has an established practice of referring to other international human rights instruments, including the CRC, as guides to interpretation of the European Convention.

**B. What powers would courts have to review these violations, and what remedies could they offer?**

The court may at all times during the trial try to mediate a settlement. After having heard the case, the court may give its advisory opinion and on this basis, the parties may decide to settle the case. At a party's request, the court will give a judgment,<sup>46</sup> pursuant to which the Danish courts are empowered to award damages for loss suffered.<sup>47</sup>

See part III.A above regarding limitations of the courts' scope to review administrative decisions.

**C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?**

Danish law does not acknowledge the principle of *actio popularis*. In order to bring an action before the court, a plaintiff must have a material and individual interest in the matter.

Recent jurisprudence suggests that an interest group with certain permanent structure and defined objectives relevant for the action may have standing to bring such an action. This especially applies if the interest group can be said to defend an essential public and/or common interest.<sup>48</sup>

**D. Is any form of collective action or group litigation possible, with or without naming individual victims?**

Pursuant to the Administration of Justice Act (*Retsplejeloven*), class actions can be brought when (i) there is a common claim; (ii) there is a Danish venue for all of the claims; (iii) the court is the venue for one of the claims; (iv) the court possesses the requisite expertise to deal with the claims; (v) a class action is determined to be the best way to handle the claims; (vi) the members of the class can be identified and informed of the case in an appropriate manner; and (vii) a class representative can be appointed. The class representative will be appointed by the court and may be an individual

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<sup>43</sup> Rules of Court, July 2014, Rule 36, available at: [http://www.echr.coe.int/documents/rules\\_court\\_eng.pdf](http://www.echr.coe.int/documents/rules_court_eng.pdf).

<sup>44</sup> European Convention on Human Rights, Article 46.

<sup>45</sup> Ibid., Article 41.

<sup>46</sup> <http://www.theworldlawgroup.com/files/file/docs/Litigation%20process%20in%20Denmark.pdf>

<sup>47</sup> <http://apps.americanbar.org/buslaw/committees/CL150011pub/materials/articles/iclg-2009.pdf>

<sup>48</sup> <http://www.juradmin.eu/colloquia/2006/denmark.pdf>

class member, a public authority (for example, the Parliamentary Ombudsman) or a private association. Whether to apply an opt-in or opt-out procedure is subject to judicial discretion, however opt-out proceedings would generally only be appropriate if the claims are considered too small to be likely to be brought individually.<sup>49</sup>

**E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?**

As mentioned above, generally speaking a plaintiff must have a material and individual interest in a case. However, indirect actions by representative bodies may be accepted if the representative body demonstrates sufficient legal interest in the case.

See section III. C above for further detail.

**IV. Practical considerations.** Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

**A. Venue.** In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

The court system in Denmark has three basic levels: the District Courts, the High Courts and the Supreme Court (the court of last instance).

As a general rule, legal proceedings will be brought first in one of the country's 24 District Courts and then, if appealed, to one of the two regional High Courts. In most instances the Danish legal system provides for only a two-tiered justice system. In special instances, and if the Appeals Permission Board so decides, a case from the High Court may be appealed to the Supreme Court, thus providing a third tier of justice in limited instances.<sup>50</sup> See part IV.G below for further detail.

The writ instituting proceedings must include certain information including the identities of the parties and of the competent court, the details of the claim and a detailed statement of the facts, documents and legal arguments on which such claim is based.<sup>51</sup>

Unlike many other jurisdictions, there are only two specialized courts in Denmark, the Maritime and Commercial Court and the Land Registration Court;<sup>52</sup> beyond such, there is no general distinction between, for example, civil, criminal, family and administrative courts.

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<sup>49</sup> [http://lawprofessors.typepad.com/files/dc-162736-v1-global\\_litigation\\_trends\\_article\\_pdf2.pdf](http://lawprofessors.typepad.com/files/dc-162736-v1-global_litigation_trends_article_pdf2.pdf)

<sup>50</sup> [http://www.domstol.dk/om/otherlanguages/english/publications/Publications/Domstolsst\\_profilbrochure\\_UK.pdf](http://www.domstol.dk/om/otherlanguages/english/publications/Publications/Domstolsst_profilbrochure_UK.pdf)

<sup>51</sup> <http://www.theworldlawgroup.com/files/file/docs/Litigation%20process%20in%20Denmark.pdf>

<sup>52</sup> <http://www.probonoinst.org/wpps/wp-content/uploads/a-survey-of-pro-bono-practices-and-opportunities-in-71-jurisdiction-2012.pdf>

As there exist no specialized administrative courts in Denmark, the general competence to undertake judicial review rests with the ordinary courts and standard rules of civil procedure apply. Review by the Parliamentary Ombudsman may also be relevant in certain circumstances; see parts II.A and II.D(iii) above for further detail.

**B. Legal aid / Court costs.** Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

The costs connected with a lawsuit in Denmark are (i) court fees, (ii) costs connected with the litigation, including for example preserving evidence, expert opinions, witness fees and translations, and (iii) legal fees.

A party must pay all costs connected with a lawsuit, at least until the case has been closed. As part of the judgment, the court awards costs to the successful party. As a general rule, the unsuccessful party must reimburse the other party for all costs connected with the lawsuit.<sup>53</sup>

See part II.D above regarding the availability of legal aid.

**C. Pro bono / Financing.** If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practising lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

Pro bono legal services are available throughout Denmark and are most often obtained through the legal aid clinics mentioned above in part II.D

It is illegal for lawyers to calculate their fee as a part/percentage of the award for the case, however it is possible (although rare) to agree that the lawyer should only receive the regular fee if the case is successful.<sup>54</sup>

In addition, household insurance policies, held by the majority of people in Denmark, typically include coverage for certain legal expenses. Many people are therefore covered for legal expenses arising in the context of their private affairs (business-related disputes are not generally covered).<sup>55</sup>

**D. Timing.** How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

For civil proceedings, the time limit for bringing cases depends on the type

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<sup>53</sup> <http://www.theworldlawgroup.com/files/file/docs/Litigation%20process%20in%20Denmark.pdf>

<sup>54</sup> <http://apps.americanbar.org/buslaw/committees/CL150011pub/materials/articles/iclg-2009.pdf>

<sup>55</sup>

<http://www.probonoinst.org/wpps/wp-content/uploads/a-survey-of-pro-bono-practices-and-opportunities-in-71-jurisdiction-2012.pdf>

of claim brought, as set out in the Limitation Act. There are certain circumstances under which claims may be brought after the usual time constraints, including where the postponement or interruption rules apply.<sup>56</sup> The absolute limitation period is 10 years, from which no suspension or interruption is possible, except for claims relating to personal injury and environmental damage for which a 30 year absolute limitation period applies.<sup>57</sup>

In relation to sexual abuse of children, the limitation period does not begin running until the 21st birthday of the victim.<sup>58</sup>

Complaints to the Parliamentary Ombudsman should be lodged not later than 12 months after the alleged event (subject to extension at the Parliamentary Ombudsman's discretion).<sup>59</sup>

**E. Evidence.** What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

As a general rule, the burden of proof is on the party presenting a claim, typically the plaintiff. It is the parties' responsibility to present the necessary facts and evidence to the court. The court will not, on its own motion, procure information or evidence. Furthermore, discovery is not used in civil proceedings and there is no general obligation of disclosure. In limited circumstances the court can, upon request, order a party or a third-party to produce specific evidence, such as documents.<sup>60</sup>

In addition, depositions are not available as a matter of Danish law. A party intending to rely on a witness statement must therefore call the witness before the court.<sup>61</sup>

With respect to children giving evidence, see part II.C above.

**F. Resolution.** How long might it take to get a decision from the court as to whether there has been a violation?

The District Courts have two weeks to deliver their judgments. The High Courts and Supreme Court have two months to deliver their judgments.<sup>62</sup>

**G. Appeal.** What are the possibilities for appealing a decision to a higher court?

Judgments made by the District Courts may be appealed to the High Courts of Western Denmark and Eastern Denmark respectively. First instance High Court judgments may be appealed as of right to the Supreme Court.

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<sup>56</sup> <http://lexuniversal.com/en/news/4906>

<sup>57</sup> <http://apps.americanbar.org/buslaw/committees/CL150011pub/materials/articles/iclg-2009.pdf>

<sup>58</sup> Information provided by the National Council for Children, Denmark.

<sup>59</sup> <http://en.ombudsmanden.dk/loven/>

<sup>60</sup> <http://www.theworldlawgroup.com/files/file/docs/Litigation%20process%20in%20Denmark.pdf>

<sup>61</sup> <http://www.theworldlawgroup.com/files/file/docs/Litigation%20process%20in%20Denmark.pdf>

<sup>62</sup> <http://apps.americanbar.org/buslaw/committees/CL150011pub/materials/articles/iclg-2009.pdf>

As a general rule, a judgment may only be appealed once. If a judgment concerns questions of general public importance, the Danish Appeals Permission Board may grant leave to a second appeal to the Supreme Court. However, this happens only in very exceptional cases.

Judgments made by the District Courts must be appealed to the High Court within four weeks from delivery of the judgment.<sup>63</sup> First instance judgments from the High Courts being appealed to the Supreme Court must be appealed within eight weeks from delivery of the judgment.<sup>64</sup>

See part III.A above regarding the scope of the Parliamentary Ombudsman's powers which can not be appealed.

**H. Impact.** What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

Though considerable legal power is vested with the judiciary, court practice does not have the same authoritative role as in common law countries. As sources of law, precedents are used to test the legality of statutes and regulations, to interpret statutes, to provide guidance on discretionary statutory rules and to develop law in areas not regulated by written law.

In addition, there is no official reporting of courts' decisions in Denmark; rather, only selected cases, primarily from the higher courts, are regularly published. Accordingly, the impact of a negative decision may not carry the same weight of precedence as would be the case in a common law jurisdiction.<sup>65</sup>

**I. Follow up.** What other concerns or challenges might be anticipated in enforcing a positive decision?

Judgments are enforced by the bailiff, on request from a party and in accordance with the Administration of Justice Act (*Retsplejeloven*). The bailiff sets the time and place for the enforcement proceedings and enforcement can be executed provided that either the debtor or the asset to be seized is present.<sup>66</sup>

Whilst most enforcement involves demand for payment, other types of demand can also be enforced by the bailiff, for example demands to cease tenancy. In addition, decisions on custody, children's place of residence and access matters can also be enforced. Such generally involves the imposition of default fines and the direct use of force with police assistance.<sup>67</sup>

**V. Additional factors.** Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation

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<sup>63</sup> <http://www.theworldlawgroup.com/files/file/docs/Litigation%20process%20in%20Denmark.pdf>

<sup>64</sup> <http://apps.americanbar.org/buslaw/committees/CL150011pub/materials/articles/iclg-2009.pdf>

<sup>65</sup> [http://www.nyulawglobal.org/globalex/denmark.htm#\\_4.2\\_Precedents](http://www.nyulawglobal.org/globalex/denmark.htm#_4.2_Precedents)

<sup>66</sup> <http://apps.americanbar.org/buslaw/committees/CL150011pub/materials/articles/iclg-2009.pdf>

<sup>67</sup> [http://ec.europa.eu/civiljustice/enforce\\_judgement/enforce\\_judgement\\_den\\_en.htm](http://ec.europa.eu/civiljustice/enforce_judgement/enforce_judgement_den_en.htm)

of children's rights.

#### A. National Council for Children

Denmark's National Council for Children (*Børnerådet*)<sup>68</sup> was first established in 1994. It is a politically independent national institution which, for administrative purposes, is linked to the Danish Ministry of Social Affairs and Integration.

The National Council for Children is intended to work towards safeguarding children's rights, disseminating knowledge of the CRC and assessing the conditions under which children in Denmark live in light of the provisions and intentions set out in the CRC, as well as other international conventions in the field.<sup>69</sup>

In connection with legislative or other initiatives of significance to children, the National Council for Children is available for consultation and can request that public authorities account for decisions and administrative practice in the National Council for Children's focal areas. However, the National Council for Children does not deal with specific or individual complaints.

In addition, the National Council for Children closely monitors the state reporting process to the UN Committee on the Rights of the Child, and contributes to the Committee's assessment of Danish conditions by providing its own reporting, independent to that provided by the government.  
<sup>70</sup>

*This report is provided for educational and informational purposes only and should not be construed as legal advice.*

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<sup>68</sup> <http://www.boerneraadet.dk/>

<sup>69</sup> <http://www.crin.org/Law/instrument.asp?InstID=1146>

<sup>70</sup> <http://www.boerneraadet.dk/english>