



## Measures on access to justice in environmental matters (Article 9(3))

Country report for Denmark

This Report has been prepared by Milieu Ltd., under contract to the European Commission, DG Environment (Study Contract N° 07-010401/2006/450607/MAR/A1). Marianne Christensen COWI A/S undertook the work on this Task and drafted this report. **The views expressed herein are those of the consultants alone and do not represent the official views of the European Commission.** The report is based on literature research.

**Milieu Ltd** (Belgium), 29 rue des Pierres, B-1000 Brussels, tel: 32 2 514 3601; fax 32 2 514 3603; e-mail: [e.pozo@milieu.be](mailto:e.pozo@milieu.be)

## Table of contents

<b>Executive summary</b> .....	<b>5</b>
<b>1. Introduction</b> .....	<b>7</b>
1.1. Overview of the administrative and judicial structures in Denmark.....	7
1.2. Environmental protection within that context .....	7
<b>2. Access to justice in environmental matters</b> .....	<b>9</b>
2.1. Administrative procedure.....	9
2.1.1. General aspects.....	9
2.1.2. Legal standing and participatory status .....	10
2.1.3. Possibilities for appeal.....	14
2.1.4. Costs and length of procedure.....	14
2.1.5. Other issues .....	16
2.2. Judicial procedure .....	16
2.2.1. General aspects.....	16
2.2.2. Legal standing and participatory status .....	17
2.2.3. Possibilities for appeal.....	18
2.2.4. Costs and length of the procedure .....	18
2.2.5. Other issues .....	19
<b>3. Assessment of the legal measures for implementing Article 9(3) requirements on access to justice</b> .....	<b>20</b>
<b>4. Conclusions</b> .....	<b>21</b>

## Bibliography

**Annex: List of compiled national measures implementing the requirements of Article 9(3) of the Aarhus Convention**



## Executive summary

The access to Justice covers both administrative appeal and appeal to the court system. The system is that the municipalities have the competence in environmental matters in first instance. As a result of a structural reform a state administration (Environment Centres) has the competence in certain issues of more national importance. It is possible to appeal one time to one of two appeal boards, Environment Appeal Board and Nature Appeal Board. The Boards are independent with participation of legal and technical expertise. Most cases are decided by the boards and only a few are laid before the courts. There is an extensive access to appeal. Typically an appeal against a decision or an omission is admitted from:

- Any party or individual with a significant interest in the outcome of the case
- Local organisations whose main objective is to protect nature and environment
- Local organisations whose main objective is to safeguard essential recreational interests
- National organisations whose main objective is to protect natural resources and the environment and/or whose objective is to safeguard essential recreational interests
- Certain specified organisations have the right to appeal within their specific sphere of interest.

In some cases there are required documentation for the organisations objectives by producing bylaws or in other cases a request of notification from the competent authority as a condition of right to appeal.

Besides the provisions on legal standing there are no provisions on other conditions for appeal (except of course the provisions on which decision that may be appealed.). There are no limitations in what remedies can be used.

Typically there is injunctive effect of appeal, though phrased in various ways. There is no updated information of the length of procedures before the appeal boards, but the estimation is that 6 - 8 months is plausible. Appeals to the Environment Appeal Board are estimated to require longer time since the structural reform implies that many new cases are estimated. Appeal to the Nature Appeal Board requires payment of a small fee which is reimbursed if the appeal is won, wholly or partly.

For person with a legal interest there is access to the Court system. In recent years the courts are beginning to accept NGOs as plaintiffs. The length of a procedure is less than one year. There is possibility for free legal aid, also for NGOs.

The assessment is that that the systems are in general sufficient. It has been found that there are no sufficient legal provisions for acceptance of authorities and NGOs from other countries as having legal standing in the administrative appeal system.



## 1. Introduction

### 1.1. Overview of the administrative and judicial structures in Denmark

#### *Administrative structure*

Denmark is divided into five administrative regions and 98 municipalities. The local municipalities have certain autonomy; their highest organ of power is an elected Council. The regions are also headed by an elected Council. The municipalities are the main vehicle in administration and the regions have only minor competences, except in the health sector where the regions are the major actor.

Supervisory control is dealt with by either Governmental bodies or by five local State administrations. The higher levels of administration within the central government can normally review decisions taken by lower levels through a challenge procedure. In cases where municipal decisions cannot be appealed the supervisory body is the local state administration. Only legal questions can be considered.

Everyone can ask for supervisory control of whether a municipality has complied to legislative requirements. Such a proceeding can only be initiated where there is no other administrative appeal. The competent authority is state administration, a local branch of the Ministry of Interior and Health, holds discretion to decide whether a proceeding shall be initiated. The person who successfully initiates such a proceeding has participatory rights. The local state authority is responsible for deciding on the legality of administrative acts of local municipalities and regions within their competence. He can annul municipal decisions that have been made contrary to legislation. Under circumstances stated in the legislation the state administration can impose default fines, institute damages and declaratory actions, as well as enter into agreements on penalties under the law of tort.

#### *Judicial structure*

The Court system consists of three layers of courts. (City Courts, High Courts and Supreme Court) The relevant courts in respect of access to Justice are the two High Courts (East and West) and the Supreme Court. Litigation against public authorities starts in the High Courts and can thus be appealed to the Supreme Court. Under the Constitution art. 63 the Courts have competence to assess and decide upon the limits of the exercise of administration's powers. A court procedure can be initiated by individuals having a legal interest in the outcome of the proceedings.

### 1.2. Environmental protection within that context

The competence in first instance to decide in environmental matters and matters concerning nature protection lies with the municipal authorities. After a major restructuring of counties and municipalities only a few competences in decision making, especially concerning EIA and particularly significant polluting enterprises (IPPC installations), is placed at the Ministry of Environment and in practice they lie at a state administration body. (Three local so-called environment centres)

The basic principles are that environmental municipal decisions and decisions from the state administrations (Environment Centres) can be appealed to the ***Environment Appeal Board*** by certain individuals and NGOs. The focus in the activity is detailed and highly technical. The ***Nature Appeal Board*** is appeal instance for certain planning decisions, decisions concerning

nature conservation issues and decisions concerning exploitation of raw materials. Other cases of decisions of minor importance are also included. The Nature Appeal Board handles matters related to the general access to exploit nature and environment in general, such as whether it is sufficiently justified to allow a specific development and most of all related to the observance of the right procedures in granting development permits.

The appeal boards are independent in relation to the procedure and the decision of the Danish Ministry of Environment, but are funded by the Ministry's budget.

The courts may be called to review decisions taken by the Appeal Boards. Court cases against public authorities starts in the High Courts and can be appealed to the Supreme Court. Few cases are reported. It is possible to initiate court procedures without exhausting the administrative appeal system.

Access to courts is granted individuals with legal interest in the outcome of the proceedings. There are a few examples of acceptance of access to courts for NGOs

As mentioned, administrative decisions may be appealed to two appeal boards. These are independent and can be said to be similar to the court system. However, the boards operate under the *ex officio* principle, the principle of the boards being responsible for collection of information, arguments and legal bases for deciding on the complaint in question while the Courts rely on the parties' presentation of the case. Some of the basic characteristics are

- Appeals need only to be fairly roughly described and reasoned
- Appeal boards have a duty to investigate the matter *ex officio*
- Administrative procedures act as well as under respect of basic administrative procedures
- The possible outcome of the appeal boards investigations are submitted for comments between the parties of the case before decision
- There is a large degree of familiarity with case matters since the boards handle many cases per year.

The appeal boards decide on decisions and omissions of the environmental authorities, the courts likewise.

The appeal boards are the only appeal instances in the administrative system.

The main sources of law in relation to the Environment Appeal Board are:

- Environmental Protection Act
- Act on Water Supply
- Act on Soil Pollution,
- Act on Access to Environmental Information
- Act on CO<sub>2</sub> -allowances,
- Act on the Marine Environment
- Act on Environment and Genetic Engineering
- Act on Chemical Substances and Products

The main sources of law in relation to the Nature Appeal Board are

- Planning Act
- Nature Protection Act
- Raw Material Act,
- Forestry Act
- Summer House Act



The procedure is governed by the Act on Administrative Procedures and general administrative principles like the demand for proportionality and equality, The Act on administrative procedures regulates the rights of a party to the procedure. The former competence of the Danish Environment Protection Agency as appeal instance for County and municipal decisions have been abolished and now there is only possibility to appeal one time.

## 2. Access to justice in environmental matters

### 2.1. Administrative procedure

There is a possibility to appeal through the administrative and the court system. There is no obligation to exhaust the administrative review procedure before bringing the case before a court.

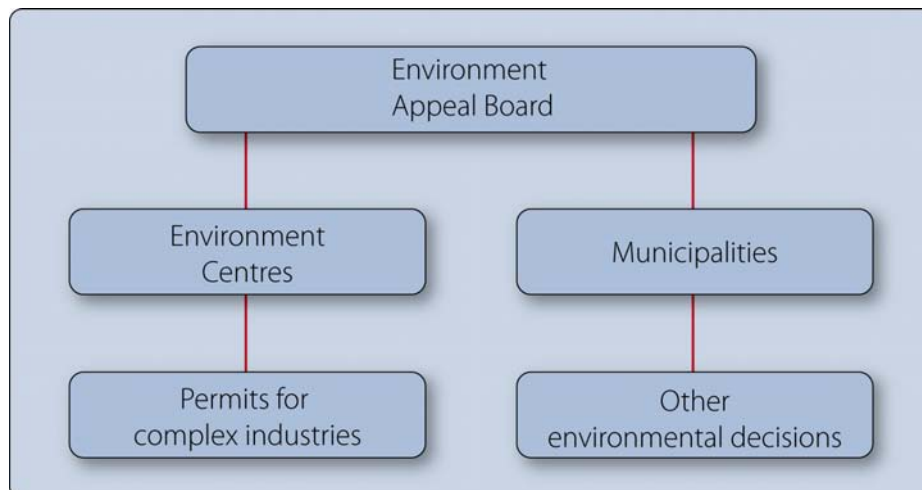
#### 2.1.1. General aspects

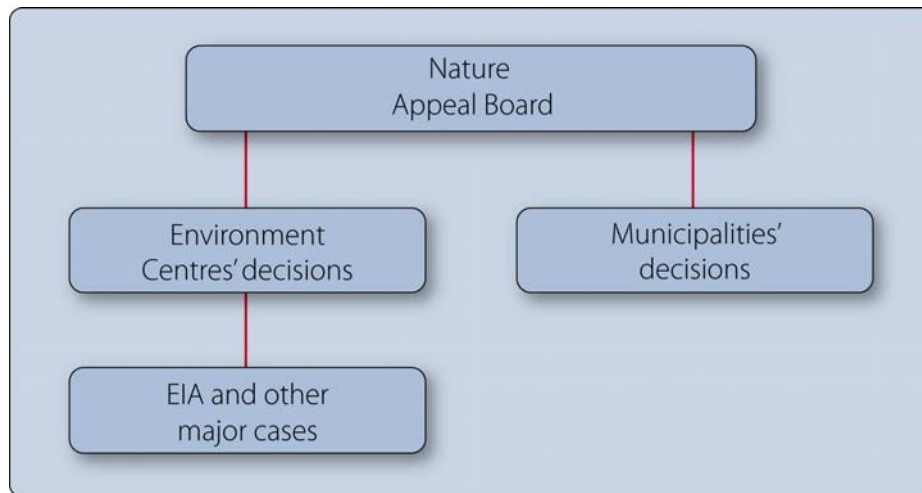
It is always possible to try to contest a decision before a hierarchal superior within the authority and in respect of municipal decisions from the administration for the Municipal Council or sub committees. It is estimated that there is a willingness to accept such requests, but the complainant has no right thereto. It is the individual or the NGO who decides whether this avenue should be explored or whether the direct way to the appeal boards should be chosen. It should be mentioned that there is a time limit (four weeks) for bringing first instance decisions before the appeal boards.

Environmental protection and nature protection legislation in Denmark is considered an integral part of public law and thus builds upon the basic figures of public administrative law. These consist of general administrative principles and the Administrative Procedures Act. The environmental legislation contains provisions on legal standing and deadlines for submitting the complaint.

An extensive administrative review procedure has been built upon the basis of formal independent appeal boards. The appeal boards are the ultimate interpreters of the legislation within their competencies and within the administrative system (as opposed to the judicial system organised in courts). The legal structure for the environmental authorities and the appeal boards are as follows:

**Figure 1** Main distribution of competences of the environmental authorities



**Figure 2** Main distribution of competences in the area of nature protection

The normal time limit for bringing an appeal is four weeks

There are no other specific conditions. There are however provisions in the legislation on which decisions it is possible to appeal against. The normal principle is that there is always a possibility to appeal one time. There are exceptions, for example may planning decisions only be assessed by the Nature Appeal Board in respect of legal issues. Questions whether a district plan is a good solution cannot be appealed. Other cases of minor importance cannot be appealed according to the legislation. An example is situations where a municipality decides not to look into in cases where the relevant issue is of minor importance for the environmental protection. The Appeal Boards decide upon the issue.

The two Appeal Boards are formally independent from the Ministry of Environment. However the boards are funded via the Ministry's budget. It is possible for the Ministry and the appeal boards' secretariats staff to circulate between the institutions of the Ministry at large.

### 2.1.2. Legal standing and participatory status

There is no difference in legal standing for appeals concerning violation of environmental law by acts or omissions of a public authority. It is possible for certain individuals and certain NGOs to institute an administrative procedure alleging violation of environmental law by an act or omission of a public authority (see below).

Anybody may contact the public authority in first instance that has taken the decision or has omitted to take action. There is only an obligation to involve complainants in the following procedure if the complainant has an individual significant interest, thus having status as a party to the case. There are no conditions for initiating an administrative procedure for the competent authority in first instance.

Complaints to an appeal body require legal standing. An appeal implies that there is an obligation to consult the complainant during the administrative procedure on new information that is not known to the complainant. It is furthermore possible that the appeal boards ex officio request further information or points of view during procedure if this may benefit the case.

All decisions and omissions may be subject to appeal. The only limitation is the demand for legal standing.

The specific acts contain provisions on who is entitled to appeal. The right to appeal was extended as a consequence of the ratification of the Aarhus Convention. The environmental legislation<sup>1</sup> now provides the opportunity for national organisations with a defined objective in nature protection and environment including recreational interests with the right to appeal. Typically, an appeal against a decision or an omission is admitted from:

- Any party or individual with a significant interest in the outcome of the case
- Local organisations whose main objective is to protect nature and environment
- Local organisations whose main objective is to safeguard essential recreational interests
- National organisations whose main objective is to protect natural resources and the environment and/or whose objective is to safeguard essential recreational interests For the latter organisations it is a condition that the decision relates to such interests.
- Certain specified organisations have the right to appeal within their specific sphere of interest

The Danish legislation does not require legal personality as a condition for right to appeal.

The more specific rules on standing are the following:

**Table 1 Overview of provisions of legal standing before the appeal boards**

Legislation	Persons with significant individual interest	Local organisations whose main objective is to safeguard nature and environment	Local organisations whose main objective is to safeguard essential recreational interests	National organisations whose main objective is to protect national resources and the environment and/or whose objective is to safeguard essential recreational interests	Certain specified organisations
Environmental Protection Act	yes	Yes provided they have asked for notification of the decisions	Yes	Yes	Health Agency Danish Anglers Association in certain cases Danish Fishermen's Association in certain cases Danish Fishermen's Association (in respect of fresh water) Economic Council of the Labour Movement in certain cases Consumers' Council in certain cases
Water Supply Act	yes	No	No	No	Health Agency Danish Nature Protection Association Danish Anglers'

<sup>1</sup> See content of the provision in the bullets and in the heading of the table

Legislation	Persons with significant individual interest	Local organisations whose main objective is to safeguard nature and environment	Local organisations whose main objective is to safeguard essential recreational interests	National organisations whose main objective is to protect national resources and the environment and/or whose objective is to safeguard essential recreational interests	Certain specified organisations
					Association Consumers' Council, all in certain cases
Act on Soil Pollution	Yes	No	No	The Minister may issue regulation on access to compliant for certain authorities in other countries Not used.	Health Agency The Regional Council and the municipalities for each others decisions The region council and the municipalities may complaint over the Minister's decisions
Act on Access to Environmental Information	The addressee	No	No	No	No
Act on CO <sub>2</sub> allowances	No legislation	No legislation	No legislation	No legislation	No legislation
Act on Marine Environment	Yes	Yes in so far they have requested notification of the relevant decisions	Yes in so far they have requested notification of the relevant decisions in certain cases	Yes. For recreational interests only in certain cases	The municipality in certain cases, The Health Agency, Consumers' Council, Fishermen's Association Association of pebble and sand pumpers Danish Shipping Companies Association Danish Shipping Companies (car ferries) Association Economic Council of the Labour Movement
Act on Environment and Genetic Engineering	Yes				Municipalities Health Agency Danish Nature Protection Association Danish Anglers' Association , Danish Fishermen's association (Marine area ) Danish Fishermen's Association for certain cases Consumers' Council and Economic Council of the Labour

Legislation	Persons with significant individual interest	Local organisations whose main objective is to safeguard nature and environment	Local organisations whose main objective is to safeguard essential recreational interests	National organisations whose main objective is to protect national resources and the environment and/or whose objective is to safeguard essential recreational interests	Certain specified organisations
					Movement for certain cases.
Act on Chemical Substances and Products	Yes	The Minister may issue regulations on access to appeal for persons, organisations and authorities in certain cases. No such regulation has been issued	The Minister may issue regulations on access to appeal for persons, organisations and authorities in certain cases. No such regulation has been issued	The Minister may issue regulations on access to appeal for persons, organisations and authorities in certain cases. No such regulation has been issued.	The Minister may issue regulations on access to appeal for persons, organisations and authorities in certain cases. No such regulation has been issued.
Planning Act	Anybody with a legal interest in the outcome of the case			Yes. Also if the organisation has as main objective to safeguard significant user interest in relation to use of the area, provided that the organisation has bylaws that documents its objectives and that the organisation represents at least 100 members.	Minister of Environment
Nature Protection Act	The addressee and the owner of the property the decision relates to.	Yes Organisations which have a significant interest in the decision		Yes. Bylaws that document the objective may be requested. Recreational interest under certain conditions	Public authorities
Raw Material Act	yes	yes The Nature Appeal Board may request documentation for the	yes	yes Recreational interest under certain conditions.	Public authorities The Association Pebble and Sand Pumping Danish Fishermen's Association,

Legislation	Persons with significant individual interest	Local organisations whose main objective is to safeguard nature and environment	Local organisations whose main objective is to safeguard essential recreational interests	National organisations whose main objective is to protect national resources and the environment and/or whose objective is to safeguard essential recreational interests	Certain specified organisations
		objectives.			
Forestry Act	Yes.	Local organisations with a significant interest in the decision. Documentation for the objectives can be requested.	Local organisations with a significant interest in the decision.	Yes for certain decisions. For recreational interests under certain condition	
Summer House Act	Yes.	No legislation	No legislation	No legislation	Public authorities
Strategic environmental Assessment Act	The same as for the relevant plans and programmes	The same as for the relevant plans and programmes	The same as for the relevant plans and programmes	The same as for the relevant plans and programmes	The same as for the relevant plans and programmes

Nature and environmental protection organisations in neighbouring countries should be covered by the term "*national organisations and associations*" in order to meet the requirements in Section 3, Subsection 9, of the Convention.

### 2.1.3. Possibilities for appeal

All decisions taken by the Appeal Boards may be challenged before a High Court. The Courts decides upon the legality of the authorities' decisions and interprets the environmental legislation. It is possible to go directly to Court without exhausting the administrative appeal procedures.

### 2.1.4. Costs and length of procedure

#### *Costs*

In 2004 a fee was introduced for complaints to the Nature Appeal Board. The fee amounts to approx. 65 EUR and must be paid within a specified delay from the date of submission of the

complaint. If the fee is not paid within the deadline, the case will be dismissed. The fee will later be reimbursed if the complainant is successful in whole or part in the case matter.

The provisions are included in the Statutory Order on a fee for bringing a case before the Nature Appeal Board. (S.O nr 950 of 16/09/2004). The relevant text of the order is as follows:

*"§ 1 For appeals brought before the Nature Appeal Board, including requests for judgment revision, a fee of 500 DKK is paid provided the appeal concerns decisions in connection with the following laws or regulations issued under the provision of these laws:*

- 1) The nature protection act.*
- 2) Law on raw materials.*
- 3) Law on spatial planning*
- 4) Law on allotments.*
- 5) Law on the protection of marsh area in Tønder marsh.*
- 6) The forestry act*

*Para. 2. If several appeals are made about the same decisions, a fee of 500 DKK is charged for each individual appeal.*

*Para. Stk. 3. Irrespective of Para. 1 no fee is charged for appeals concerning conservation decisions made under the Nature Protection Act's § 40, nor for appeals concerning decisions on expropriation in accordance with the Nature Protection Act's § 60 or the Forestry Act's § 23, or regulations in pursuance of the Nature Protection Act's § 60a, the law on raw material's § 27, the Law on Spatial Planning's § 47 of the Law on Tønder marsh's § 33.*

*Para. 4. Irrespective of para. 1 no fee is charged for appeals concerning decisions made under the Nature Protection Act's §§ 19d – f.*

*Stk. 5. Irrespective of para. 1 no fee is charged for appeals concerning decisions made under the Forestry Act's §§ 19 – 21.*

*§ 2. The fee mentioned in § 1 is to be paid to the Nature Appeal Board*

*Stk. 2. In so far as the Nature Appeal Board has not received payment for handling an appeal, the Nature Appeal Board will set a time limit for payment of the amount. If the fee is not paid within this time limit the appeal is dropped.*

*§ 3. A fee is refunded if*

- 1) the plaintiff's appeal is entirely or partially upheld, or*
- 2) the appeal is dismissed due to an expired time limit, lack of legal standing or because the appeal is not within the Nature Appeal Board's jurisdiction.*

*Para. 2. Decisions regarding payment and refunding of fees are made by the Nature Appeal Board. Decisions made by the Nature Appeal Board can not be referred to other administrative bodies."*

The fee is approx. 67 Euros.

### **Length**

The length of an administrative procedure is not reported for recent years. In a yearly report on activities in 2005 it is stated that the length of a procedure is 6,4 months in procedures before the Nature Appeal Board. In the same yearly report the following table is included in respect of the length of procedures before the Environment Appeal Board:

	Less than three months	3-6 months	6-12 months	More than 12 months
2003	49%	10%	14%	27%

There is no updated information from the Appeal Boards since new cases were added as a result of the structural reform per 1.1.2007 where decisions in appeal cases formerly decided by the Danish Environmental Protection Agency and the Agency for Forestry and Nature have been transferred to the Appeal Boards. In short term a lengthier procedure must be expected.

Under the Environmental Protection Act it is stipulated that a complaint concerning a permit or exemption has not injunctive effect, unless the Environmental Appeal Board decides otherwise. An overview of administrative practice in the Environmental Appeal Board is not reported. The Minister may issue orders to the effect that certain permits may not be utilised within the deadline for complaints and that a complaint shall have injunctive effect. The main Statutory Orders concerning permits have been checked for such regulations. No provisions were found. According to the environmental legislation a complaint has injunctive effect for an enforcement order, unless the Environmental Appeal Board decides otherwise. It may be decided that appeals of enforcement decisions, where it is stated that they shall be complied with immediately, does not have injunctive effect.

Under the Nature Protection Act it is stipulated that permits may not be utilised within the deadline set for complaints (four weeks). Complaints within the time stated have injunctive effect. Under the Raw Materials Act, it is stipulated that a permit may not be utilised until after the deadline for complaints has expired. Timely complaints have injunctive effect, unless the Nature Appeal Board decides otherwise.

Under the Planning Act, a timely complaint implies that the Nature Appeal Board may decide that a permit may not be utilised and that an enforcement order may not be complied with. If a building project already implemented the board can order it stopped. For permits to conduct activities in rural zones a timely complaint has injunctive effect unless the Nature Appeal Board decides otherwise.

Under the Act on Water Supply a complaint have injunctive effect unless the Environment Appeal Board decides otherwise.

Under the Act on Contaminated Soil it is stipulated that a complaint of orders to remedy soil contamination have injunctive effect unless the Environment Appeal Board decides otherwise.

The principle is that *appeals may have a suspensive effect*.

#### 2.1.5. Other issues

All remedies are available. Regarding transparency important decisions are being published in the appeal boards' home pages. The procedure before the boards is written. There is an obligation to include a justification in the final decision. The procedure is carried out under the principles of public law and administrative principles and the Administrative Procedures Act apply.

## 2.2. Judicial procedure

### 2.2.1. General aspects



Under the Danish Constitution section 63 there is access to appeal public authorities' decisions to the judicial system. The same goes for omissions.

There are three levels of courts, City Courts, two High Courts (East and West) and the Supreme Court. Cases against public authorities start in the High Courts. Whether individuals or NGOs have access to courts is not regulated by the act on judicial procedures. It is up to the courts to carry out a concrete evaluation and base the decision on judicial practice. It is possible to go directly to court without exhausting the administrative appeal procedure.

It is not possible for an individual or NGO to initiate a court procedure on criminal offences since the public prosecutor has monopoly in starting such cases.

The Courts' assessment is based on administrative law and environmental law.

### **2.2.2. Legal standing and participatory status**

Individuals and - according to recent practice from the Courts also certain NGOs- have access to the courts. There are no examples of the courts' acceptance of legal standing of citizens or NGOs from other states.

In general, citizens with a legal interest in the outcome of the procedure have legal standing. Any person who is significantly affected by the decision compared to other citizens is normally admitted in courts. For example, neighbours to an environmentally unfriendly activity have the right to go to court as well as organisations representing individually affected persons. There is not much jurisprudence concerning legal standing for individuals. Almost all cases are solved via the two appeal boards. As guiding criteria for the courts' decisions in cases of doubt is estimated to be the vicinity of the litigant to the polluter or the general connection of the individual to the area in question. Also questions whether the litigant has an economic interest in the outcome of the proceedings are relevant.

The protection of legal interest in courts relies on two principal elements: The nature of the litigant's interest in the case matter, and the litigant's capacity to be part in a court case. The latter element has proven to be an obstacle to environmental groupings and some organisations that are based on "loose structures". The courts will normally scrutinise the bylaws of any litigating organisation in order to determine that there is a formal framework governing the organisation relevant to undertake the commitments that a court case constitutes.

Furthermore, the courts will also review the relevant organisation's commitment in terms of its capacity to incur costs in a court case, since the principle on "loser pays" applies.

The jurisprudence in legal standing is insubstantial. There have in recent years been a few examples of acceptance of legal standing for NGOs. This question falls partly under art 9, para 2, of the Aarhus Convention but has a bearing on art. 9, para 3. The gist is that the courts are more open to acceptance of NGOs as having legal standing.

The Danish Anglers Association was granted legal standing by the High Court in a case concerning the Danish Forestry and Nature Agency's decision on the introduction of beavers in the Danish nature. The court found that the Association had a concrete, significant and individual interest in the case and decided to further the case. This decision cannot be seen as a general position statement since it according to principles for court procedures can only be seen in the light of the specific case where the association actually had put out fish in the creek in question, thus having an economic and individual interest in the outcome of the case. It will be possible that the courts in another case will accept ideal interests as basis for legal standing.

Ideal interests have been accepted in two cases. Greenpeace was granted legal standing in a case concerning lack of proper EIA in connection with a project on building of the Øresund Bridge between Denmark and Sweden. The High Court has accepted that Danish Cyclist Federation could institute legal proceedings in a case involving the procedure for a local planning decision that should have involved the initiation of an EIA-procedure. The question on standing was not raised, though, and thus the decision's value as jurisprudence is limited.

The two court cases on EIA imply that the courts are more open to accept ideal interests as basis for legal standing, probably also relevant for the "public".

The court case is initiated with a writ.

Individuals and NGOs can *participate* in court cases supporting one of its parties on the condition that they have legal interest. This provision on the necessary legal interest is included in the Act on Judicial Procedures. The Act only states that the condition is a legal interest but does not define it. Again the interpretation relies on jurisprudence. As a rule of thumb persons which are individually affected and can significantly influence the legal positions will have legal interest.

The participation can have two forms - either the intervention has form of a support to one of the parties claim or with an independent claim and have thus the status of a party to the proceedings. In the first case the individual or NGO can contribute to the proceedings, but may not appeal because the outcome of the proceedings has no consequence on him. In case where the intervener puts forward an independent claim, he may contribute to the proceedings and also appeal the court's decision.

### 2.2.3.Possibilities for appeal

The right of appeal to a higher instance is granted the parties to the procedure. This right is included in the Act on Judicial Procedures. The time limit for appeal is four weeks from the decision.

### 2.2.4.Costs and length of the procedure

#### *Costs*

There is not reported information on costs (average costs) for a court proceeding. It can be mentioned as examples (not representative) that the costs in the case concerning Greenpeace and the Øresund Bridge were 500.000 DKK (approx. 67.100 EUR) and for the case on Danish Cyclist Federation 300.000 DKK (approx 40.300 EUR). The NGOs was awarded free legal aid. Thus the costs were borne by the other party.

The Act on Judicial Procedures contains provisions on *legal aid*. There are two basic conditions for granting of legal aid:

- Economic criteria
- Reasonable grounds for initiating a procedure

In respect of economic criteria there is stipulated the following limits as per 1.1.2007 Statutory order nr. 1295 of 8/12/2006 on free legal aid:

- Single applicants 248.000 DKK.( Approx. 33.300 EUR)
- Married applicants 315.000 DKK.( Approx. 42.300 EUR )
- Rise for each child 43.000 DKK.(Approx. 5.800 EUR)

Free legal aid cannot be granted if the costs are insignificant in comparison with the applicant's income.

For legal persons it is, based on practice, a condition for free legal aid that the legal person cannot pay the costs with suffering significant losses. The criteria are related to the association itself and to the persons who has a direct interest in the association.

The Act on Judicial Procedures stipulates that beside the economic criteria there shall be *reasonable ground* for initiating a procedure. As relevant criteria is mentioned:

- The importance for the applicant
- Reasonable prospects for winning the case
- The size of the costs
- Free legal aid will not be granted if the applicant has not exhausted administrative appeal, unless the case is not suited for such an appeal board

However if the above conditions are not complied with the authority can grant free legal aid in cases of matter of principle or of public interest. The gist of the exception is that significant questions of interpretation, not previously decided, can also be grounds for granting free legal aid.

Free legal aid is granted by an agency in the Ministry of Justice.

There is also instituted a system for legal assistance for individuals where the state pays (part of) the costs to the advisory attorney. Cases against public authorities are not covered by the aid.

Some insurance include coverage of certain costs in relation to a judicial procedure.

The principle is that the loser pays the costs related to the judicial procedure. The costs include

- Fee for initiating a court procedure (max 2.000 DKK) (approx. 270 EUR)
- Costs for lawyers
- Costs for witnesses
- Costs for expert opinion

The court decides how much the losing party shall pay the winning party. The court relies on rates for lawyer fees. This means that full cost coverage cannot always be expected.

If a case is partially won only partial coverage of the costs is granted.

There is no available statistics on costs. The costs vary greatly just as the cases vary.

### ***Length***

In the yearly report for Danish Courts 2006 it is stated that the length of a judicial procedure in the High Courts must not exceed one year. This goal has been achieved.

#### **2.2.5. Other issues**

The courts will assess the case concerning legal questions. The questions concerning the authorities' discretion, except the administrative principles on proportionality, misuse of powers and the like, will not be part of the judgement.

All kinds of evidence are accepted. It is the parties who have the obligation to present the case in respect of applicable law, evidence, arguments and possible outcome. It is the plaintiff who has the burden of proof.

The referral to court has no injunctive effect, cf. Art. 63 in the Constitution. The article is understood in such a way that the legislature may introduce provisions on injunctive effect. The Courts' practice appears to be a balance between the public authorities' interest in enforcement of the decision and the individual's interest in injunctive effect and is based on a case by case evaluation

### **3. Assessment of the legal measures for implementing Article 9(3) requirements on access to justice**

The environmental legislation consist of 46 main Acts and significantly more Statutory Orders and is very complex Thus the task concerning assessment of Access to Justice ideally requires an assessment of all these pieces of legislation. Some times the assessment requires a study of practice of the two appeal boards. There are thousands of decisions from the Nature Appeal Board yearly and about 60 reported for 2005 from the Environmental Appeal Board. Thus a picture of the administration and practice is general.

The assessment is that the Danish legislation in general is sufficient. It appears that there is an extensive access to appeal within the Danish administrative system. The possibilities for appeal are given to individuals with significant interest and certain local and national organisations. The appeal possibility is widely used and this implies that there is perceived seldom use for appeal to the courts. The system is two tiered and give access both under the administrative and the judicial system. The lengths and costs of the procedure are assessed as sufficient.

It is possible to challenge omissions. The municipalities' duty to enforce may be challenged, if the referral to *e.g.*, criminal proceedings has not taken place. However, it should be noted that the public prosecutor has monopoly to initiate criminal proceedings before the courts. It is possible for the public to report private parties to both the municipality and the police/public prosecutor. It is up to the authorities' discretion whether a procedure should be initiated or furthered. Thus it can be said that the public does not have access on its own initiative, as implied by the convention. However an administrative procedure may be initiated. Since convention gives a choice between administrative and judicial appeal this is regarded as sufficient.

Recent court practice has given access for NGOs having an ideal interest in the outcome of a proceeding. It is expected that this practice will continue. Another example can be read as giving limited access but the decision was based on specific circumstances which lead to a more narrow understanding of legal standing. Based on the assessment that the courts will accept ideal interests as basis for legal standing it is assessed that the practice will be acceptable.

It shall be mentioned that there is no experience as to acceptance of other states' authorities and NGOs. The assessment is that the Danish legislation concerning the provisions on legal standing for "national organisations" is not sufficient. Other details might be found under a more thorough detailed scrutiny, especially whether all relevant decisions in all the environmental legislation is covered by access to appeal.

#### **4. Conclusions**

Access to Justice covers both administrative appeal and appeal to the court system. There is an extensive access to appeal in administrative cases. Always there is access for significantly affected persons, including the addressee. Mostly, the local and national organisation with an interest in environment and nature issues may appeal. Typically there is injunctive effect of appeal, though phrased in various ways. There is no updated information of the length of procedures before the appeal boards, but the estimation is that 6 months is plausible.

For persons with a legal interest there is access to the Court system. In recent years the courts are beginning to accept NGOs as plaintiffs. The length of a procedure is less than one year. There is possibility for free legal aid, also for NGOs.

The assessment is that the systems are in general sufficient; there is no experience as to acceptance of other states' authorities and NGOs as complainants. The assessment is that the Danish legislation concerning the provisions on legal standing in administrative matters for "national organisations" is not sufficient.



## BIBLIOGRAPHY

Access to Justice in Environmental Matters and the Role of NGOs (Empirical Findings and Legal Appraisal) Europa Law Publishing 2005.

[www.mst.dk](http://www.mst.dk)

[www.mkn.dk](http://www.mkn.dk)

[www.nkn.dk](http://www.nkn.dk)

[www.retssal.dk](http://www.retssal.dk)

[www.retsinfo.dk](http://www.retsinfo.dk)

[www.erstatningsnaevnet.dk](http://www.erstatningsnaevnet.dk)

[www.domstol.dk/Pages/default.aspx](http://www.domstol.dk/Pages/default.aspx)

[www.unece.org/env/pp/compliance/C2005-11/DatasheetC-2005-11v01.07.06.doc](http://www.unece.org/env/pp/compliance/C2005-11/DatasheetC-2005-11v01.07.06.doc)





**Annex: List of compiled national measures implementing the requirements of Article. 9(3) of the Aarhus Convention**

Bekendtgørelse af lov om miljøbeskyttelse (Miljøbeskyttelsesloven) LBK nr 1757 of 22/12/2006 (Environmental Protection Act)  
[http://147.29.40.90/\\_SHOWF\\_A230355060/1663&A20060175729REGL&0001&000001](http://147.29.40.90/_SHOWF_A230355060/1663&A20060175729REGL&0001&000001)

Bekendtgørelse af lov om vandforsyning m.v. LBK nr 71 of 17/01/2007 (Act on Water Supply)  
[http://147.29.40.90/\\_SHOWF\\_A235385130/1970&A20070007129REGL&0001&000001](http://147.29.40.90/_SHOWF_A235385130/1970&A20070007129REGL&0001&000001)

Bekendtgørelse af lov om forurennet jord LBK nr 282 of 22/03/2007 (Act on Contaminated Soil)  
[http://147.29.40.90/\\_SHOWF\\_A235385130/1970&A20070028229REGL&0002&000001](http://147.29.40.90/_SHOWF_A235385130/1970&A20070028229REGL&0002&000001)

Bekendtgørelse af Lov om aktindsigt i miljøoplysninger LBK nr 660 of 14/06/2006 as amended (Act on Access to Environmental Information)  
[http://147.29.40.90/\\_SHOWF\\_A235385130/1970&A20060066029REGL&0003&000001](http://147.29.40.90/_SHOWF_A235385130/1970&A20060066029REGL&0003&000001)

Lov om CO<sub>2</sub>-kvoter LOV nr 493 of 09/06/2004 as amended (Act on CO<sub>2</sub> quotas)  
[http://147.29.40.90/\\_SHOWF\\_A235385130/1970&A20040049330REGL&0004&000001](http://147.29.40.90/_SHOWF_A235385130/1970&A20040049330REGL&0004&000001)

Bekendtgørelse af lov om beskyttelse af havmiljøet LBK nr 925 af 28/09/2005 as amended (Act on Protection of the Sea)  
[http://147.29.40.90/\\_SHOWF\\_A235385130/1970&A20050092529REGL&0005&000001](http://147.29.40.90/_SHOWF_A235385130/1970&A20050092529REGL&0005&000001)

Lov om ændring af lov om naturbeskyttelse, lov om miljøbeskyttelse og forskellige andre love (Ændring af klagenævn og klagebestemmelser i en række love på miljøområdet) LOV nr 571 af 09/06/2006 (Amendments to Act on Environmental Protection a.o. on Appeal Boards and legal standing)  
[http://147.29.40.90/\\_SHOWF\\_A245005383/235&A20060057130REGL&0001&000001](http://147.29.40.90/_SHOWF_A245005383/235&A20060057130REGL&0001&000001)

Bekendtgørelse af lov om miljø og genteknologi LBK nr 981 af 03/12/2002 as amended (Act on Environment and Genetic Engineering)  
[http://147.29.40.90/\\_SHOWF\\_A245005383/235&A20020098129REGL&0002&000001](http://147.29.40.90/_SHOWF_A245005383/235&A20020098129REGL&0002&000001)

Bekendtgørelse af lov om kemiske stoffer og produkter LBK nr 1755 af 22/12/2006 (Act on Chemical Substances and Products)  
[http://147.29.40.91/\\_SHOWF\\_A255337283/653&A20060175529REGL&0001&000001](http://147.29.40.91/_SHOWF_A255337283/653&A20060175529REGL&0001&000001)

Bekendtgørelse af lov om planlægning LBK nr 883 af 18/08/2004 as amended (Planning Act)  
[http://147.29.40.91/\\_SHOWF\\_A255337283/653&A20040088329REGL&0002&000001](http://147.29.40.91/_SHOWF_A255337283/653&A20040088329REGL&0002&000001)

Bekendtgørelse af lov om naturbeskyttelse LBK nr 749 af 21/06/2007 (Nature Protection Act)  
[http://147.29.40.91/\\_SHOWF\\_A258697370/218&A20070074929REGL&0001&000001](http://147.29.40.91/_SHOWF_A258697370/218&A20070074929REGL&0001&000001)  
1

Bekendtgørelse af lov om råstoffer LBK nr 784 af 21/06/2007 (Act on Raw Materials)  
[http://147.29.40.91/\\_SHOWF\\_A261987546/1237&A20070078429REGL&0001&000001](http://147.29.40.91/_SHOWF_A261987546/1237&A20070078429REGL&0001&000001)

Lov om skove LOV nr 453 af 09/06/2004 as amended (Act on Forests)  
[http://147.29.40.91/\\_SHOWF\\_A261987546/1237&A20070079329REGL&0003&000001](http://147.29.40.91/_SHOWF_A261987546/1237&A20070079329REGL&0003&000001)

Bekendtgørelse af lov om sommerhuse og camping m.v. (Sommerhusloven) LBK nr 785 af 21/06/2007 (Summer House Act)  
[http://147.29.40.91/\\_LINK\\_A261987546/1237&ACCN/A20070078529](http://147.29.40.91/_LINK_A261987546/1237&ACCN/A20070078529)

Bekendtgørelse om gebyr for indbringelse af klager for Naturklagenævnet BEK nr 950 af 16/09/2004 (Statutory Order on fee for appeal to Nature Appeal Board)  
[http://147.29.40.91/\\_SHOWF\\_A261987546/1237&B20040095005REGL&0006&000001](http://147.29.40.91/_SHOWF_A261987546/1237&B20040095005REGL&0006&000001)

Bekendtgørelse af lov om rettens pleje LBK nr 1001 af 05/10/2006 as amended (Act on Judicial Procedures)  
[http://147.29.40.91/\\_SHOWF\\_A261987546/1237&A20060100129REGL&0007&000001](http://147.29.40.91/_SHOWF_A261987546/1237&A20060100129REGL&0007&000001)

Bekendtgørelse om fri proces BEK nr 1295 af 08/12/2006 (Statutory Order on Free Legal Aid)  
[http://147.29.40.91/\\_SHOWF\\_A261987546/1237&B20060129505REGL&0008&000001](http://147.29.40.91/_SHOWF_A261987546/1237&B20060129505REGL&0008&000001)