

# DENMARK

## Child-friendly justice

<b>1. The child's legal capacity .....</b>	<b>2</b>
<b>2. Access to adapted proceedings.....</b>	<b>2</b>
<b>3. Multidisciplinary aspects.....</b>	<b>7</b>
<b>4. Training of professionals.....</b>	<b>8</b>
<b>5. Best interests of the child.....</b>	<b>10</b>
<b>6. Monitoring and enforcement of decisions in proceedings involving children.....</b>	<b>12</b>
<b>7. Access to remedies.....</b>	<b>14</b>
<b>8. Family life .....</b>	<b>16</b>

## **1. The child's legal capacity**

### **1.1 Minimum age at which a plaintiff can bring a case to court in their own right**

In Denmark the minimum age at which a plaintiff can bring a case to court in their own right is 18.

## **2. Access to adapted proceedings**

### **2.1. Specialised institutions and competent authorities**

#### **2.1.1 Criminal justice**

In criminal law cases, specialist institutions are not in place to deal with child victims and child witnesses. The normal police, prosecution and court services deal with such children. However, guidance is provided with regard to, for example, questioning of child victims and witnesses and the right to assistance from a representative from the social services of the local municipality. The police must also provide guidance to victims on the rules governing appointment of special legal representation.

With regard to child offenders, they are also dealt with within the normal services of police, prosecution and court. A number of special provisions do, however, provide for an improved child-friendly environment of child offenders in the traditional systems. This includes the participation of a representative from the social services of the local municipality in the interviewing of the child suspect. Furthermore, the Director of Public Prosecution has prescribed specific rules on how the prosecution service must process cases against child offenders between 15 and 18 years of age, including an obligation to notify the holder of parental custody. This instruction also governs notification of the social authorities and the holder of parental custody when the police detain and question children under the age of 15 i.e., under the age of criminal liability as well as the specific approach to follow in these cases, including the appointment of a legal representative.

The Director of Public Prosecution has also published folders with information which is relevant for children who have been the victim of a sexual crime and a folder with information which is relevant for the parents in such cases.

#### **2.1.2 Civil justice**

##### **2.1.2.1 Legislative Framework**

The Administration of Justice Act (*Retsplejeloven*) governs procedures that relate to civil, criminal, commercial, family law and labour matters.

Besides the above-mentioned Act, special laws regulate substantive law issues that determine the treatment of children in civil judicial proceedings (e.g. capacity to act). The most relevant laws are: the Act on Parental Responsibility (*Forældreansvarsloven*), the Act on Guardianship (*Værgemålsloven*), the Act on Liability for the Damages of Children (*Lov om hæftelse for børns erstatningsansvar*), the Act on Social Services (*Service-loven*), the Act on Legal Protection and Administration in Social Matters (*Retssikkerhedsloven*), the Act on Court Fees (*Retsafgiftsloven*), the Act on Administrations of Estates (*Arveloven*), the Act on Limitation (*Forældelsesloven*) and the Act on Administrative Procedure (*Forvaltningsloven*).

Denmark ratified the United Nations Convention on the Rights of the Child in 1991.

##### **2.1.2.2 Institutional framework**

There are no specialized institutions dealing with children in civil judicial proceedings in Denmark. In the following the ordinary courts in Denmark will be described.

As a main rule, the Danish legal system is based on the presumption that judges and bailiffs are “generalists”. Thus, no specialized judges or bailiffs are involved in proceedings that concern children. However, there is close cooperation between the courts and various authorities and social services in cases involving children. The intention is to help the child and his/her family. For example, the State Administration will contact the local municipality and vice-versa to obtain information on a child who has special needs. As a concrete example of cooperation, it is required by law that child experts must participate in court cases on compulsory removal of a child and in cases of placement of a child outside the child's home.<sup>1</sup>

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<sup>1</sup> Section 170(1) of the Act on Social Services (*Service-loven*)

Ordinary civil courts are organized into a hierarchical order and the courts that adjudicate at the lowest level are the district courts. A civil case can be filed in a district court to settle a dispute with another party. Civil cases between two private parties may inter alia relate to real estate property, employment, insurance, divorce or custody of children. Civil cases may also be filed by a private individual against a public authority. Parties to a civil proceeding may be private individuals or businesses. In accordance with the Administration of Justice Act, cases that involve children are also heard by ordinary civil courts.

The Danish judiciary follows a two-tier system, which means that rulings of lower instance courts can be appealed to higher instance courts. Such higher instance courts may either confirm (uphold) or annul the ruling of lower instance courts. In most cases with a value above 20.000 DKK<sup>2</sup>, district court rulings can be appealed against before one of the two higher courts of Denmark: the Western High Court in Viborg, which processes cases from Jutland, or the Eastern High Court in Copenhagen which adjudicates cases from the rest of the country.

If a case has been heard initially at district court level, it may in special cases be brought before a third instance court, the Supreme Court.

As a main rule, all cases in Denmark start before one of the 24 district courts. Under certain circumstances, the district court may refer a civil case to a higher court, which then may adjudicate at first instance. This is the situation if for example the case concerns principles of general interest.

The Supreme Court constitutes the highest court in Denmark. The Supreme Court is located in Copenhagen, and it hears appeal cases against decisions of the high courts. If a case has begun at one of the High Courts, it may be appealed directly to the Supreme Court. But if a case began before a district court, the Appeals Permission Board has to grant permission for the case to be appealed from one of the High Courts to the Supreme Court.

As the highest instance court, the Supreme Court, through its rulings, sets guidelines that district court and higher courts should respect while adjudicating in the future. Consequently, it can be concluded that the Supreme Court's ruling serve interpretive purpose and thus contribute to the development of the Danish Judicial System.

The Bailiff's courts are departments of the district courts. Bailiff's courts help to enforce claims such as a claim for payment according to a ruling or an instrument of debt. Bailiff's courts are also in charge of convening compulsory sale of real estate and the enforcement of judgements on parental custody and residence of child.

### **2.1.2.3 Deciding on the care of the child**

Conflicts between parents, with regard to contact between a child and the parent with whom the child does not live, are decided upon by regional state administration and lead to administrative decisions. The decisions can be appealed to The National Appeals Board (*Ankestyrelsen*), and can be brought before civil courts.<sup>3</sup>

### **2.1.2.4 The Danish Parliamentary Ombudsman**

A Children's Office at the Danish Parliamentary Ombudsman was established in November 2012, in charge of dealing with administrative complaints against public institutions for reasons of non-compliance with rules and legislation. The Children's Office at the Danish Parliamentary Ombudsman does not participate in civil judicial proceedings. Children may initiate proceedings before the Children's Office at the Danish Parliamentary Ombudsman in their own right, regardless of age.

## **2.2 Legal and policy measures in place to avoid undue delay in the handling of cases involving children**

### **2.2.1 Criminal justice**

Pursuant to the Danish Administration of Justice Act prosecutors are under a general obligation to pursue any case with the necessary speed in regard to the nature of the case, and the Director of Public Prosecution has issued guidelines for the handling of cases involving children regarding, inter alia, special time limits for the handling of specific types of cases.

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<sup>2</sup> Section 368 of the Administration of Justice Act (*Retsplejeloven*)

<sup>3</sup> Section 40-41 of the Act on Parental Responsibility (*Forældreansvarsloven*)

## **2.2.2 Civil justice**

The courts are under a general obligation to pursue any case with the necessary speed.

## **2.2.3 Administrative proceedings concerning child welfare**

### **2.2.3.1 Obligation to handle all notifications within 24 hours**

In 2013 the Danish Government decided to strengthen the protection of children and young people from abuse. This meant i.a. a change in legislation to underline the importance of timely and correct action from the social authorities when they receive notifications about a child who is presumed to have been exposed to abuse. Thus, the social authorities are obliged to handle every notification within 24 hours, in order to decide if immediate action is needed.

### **2.2.3.2 Completion of the child protection examination within four months**

Where it must be assumed that a child or a young person is in need of special support, e.g. due to impaired physical or mental function, the municipal council shall ensure that the conditions of the child or the young person are examined. The examination, known as a child protection examination, shall to the widest possible extent be conducted in cooperation with the holder of custody and the young person aged 15 or over. The examination shall be conducted as gently as possible in the given situation and shall not be any more comprehensive than required by its purpose. The examination must be completed within four months after the municipal council has become aware that a child or young person may be in need of special support. In this regard a reasonable balance must be found between on the one side obtaining the necessary information to enlighten the case sufficiently and on the other side avoiding undue delay for the sake of the child involved.

### **2.2.3.3 Provisional or immediate support**

The child protection examination must lead to a reasoned decision as to whether there are grounds for implementing measures and, if so, the nature of such measures. If warranted by special circumstances, however, provisional or immediate support may be implemented in parallel with the examination.

### **2.2.3.4 Provisional decisions**

Decisions which, because of the immediate needs of the child or young person, e.g. because of acute illness or death, cannot be deferred pending consideration by the municipal committee on children and young persons, may be made on a provisional basis by the chairman of the committee or, in his/her absence, by the deputy chairman. A provisional decision shall be submitted to the committee on children and young persons for approval as soon as possible and no later than seven days from the implementation of the decision, regardless of whether the measure has been discontinued. A provisional decision is effective for one month.

## **2.2.4 Administrative proceedings concerning parental responsibility**

The Regional State Administration deals with cases on parental responsibility as fast as possible.

The Regional State Administration may make provisional decisions on parental responsibility during the processing of the case. In urgent cases with serious questions on the welfare and best interests of the child the decision may be taken immediately.

In international child abduction situations a provisional decision on custody may also be made by the Ministry of Social Affairs and the Interior. The Ministry acts as Central Authority on international child abductions and runs a 24/7 phone service for urgent child abduction cases.

## **2.3 Child-specific support mechanisms and procedures and ways of ensuring the voice of the child is heard**

### **2.3.1 Criminal justice:**

As described here in criminal law cases, specialist institutions are not in place to deal with child victims and child witnesses. A number of special provisions do, however, provide for an improved child-friendly environment of children during criminal proceedings.

As regards to victims it follows from the Danish Administration of Justice Act when and under what circumstances a victim has the right to be provided with legal representation by an attorney. The attorney is given access to and provides support for the victim when the victim is interviewed by the police or in court. Furthermore, the municipality is obligated to send a representative when a person under the age of 15 is being

interviewed by the police as a witness. The representative from the municipality provides support for the child. Pursuant to the Danish Administration of Justice Act the court may also call in such a representative to assist during examination in court of a person under the age of 15 years. It also follows that the court decides how and by whom an examination of a person under the age of 15 years shall be carried out.

Pursuant to the Danish Administration of Justice Act the police shall notify the court where special measures are required in connection with the attendance of a witness in criminal proceedings. The court will then assist the witness to the extent necessary.

Under specific circumstances the court can also decide that the examination of a witness during criminal proceedings shall be carried out during a private hearing. In some specific cases, inter alia, cases regarding sexual abuse, the examination must be carried out during a private hearing if the witness, or his or her legal representative, requests it. Furthermore, the court can decide that the alleged offender must leave the courtroom during the examination of a witness if specific reasons stress that an unreserved statement from the witness cannot otherwise be achieved.

Finally, interviews with children in connection with criminal cases can be recorded on video in some specific cases, inter alia, cases concerning sexual offences towards persons less than 15 years of age and all criminal cases when the person is under the age of 13.

In 2016 a new provision in the Danish Administration of Justice Act was introduced. Pursuant to this provision a child who has been video interviewed in connection with a criminal case is not obliged to give a statement again in the following criminal proceedings unless the court under most exceptional circumstances decides otherwise. The provision also extended the scope of application of the provision to also applying in specific cases where a child over the age of 13 is being interviewed.

As regards to offenders under the age of 18 references are made to section B, question 1.a).

### **2.3.2 Administrative proceedings**

#### **2.3.2.1 Special support to children must focus on the best interests of the child**

The Act on Social Services provides regulation on special support for children. According to Danish legislation the municipality is obliged to provide the necessary support a child needs in accordance with the best interests of the child. For that reason, support must be adapted to the specific situation and needs of the child, provided at an early stage and on a continuous basis so that any problems as far as possible may be remedied in the home of the child. Furthermore, the support must be based on the child's own resources.

#### **2.3.2.2 Consultation with the child**

When a child or young person is in need of special support, the views of the child shall always be taken into account. Proper importance must be attributed to the views of the child in accordance with the age and maturity of the child. The child protection examination, which must be performed prior to instituting special support, must encompass a consultation with the child, unless the maturity of the child or the nature of the case strongly suggests that the decision should be made without prior consultation.

If a child is placed in care, the municipality must conduct at least two annual supervision visits to the placement facility /foster family during which the municipality shall consult the child. The consultation shall to the widest possible extent be conducted without the presence of the foster parents/facility staff, in order to enable the child to speak freely about his or her situation.

#### **2.3.2.3 Advisor to children and young people**

In regard to administrative proceedings at local level a child is entitled to assistance and support of a third party chosen by the child during the consideration of a case. The purpose of the advisor is to support the child and to ensure that involvement of the child in the proceedings is handled as being done as carefully as possible. The Ministry of Social Affairs and the Interior offers all children and young people who do not have a person in their family or close network that can function as an advisor, a professional advisor.

In regard to the police's questioning of a person under the age of 18, the municipal social service is obliged to

send an advisor for the child. This applies as well to situations in which the municipality is informed that a person under the age of 15 is to be heard as a witness by the police or in court in a criminal case.

#### **2.3.2.4 Avenues of complaints**

The holder of custody and the young person aged 12 or above are entitled to bring decisions made by local authorities before the National Social Appeals Board, and are in this regard entitled to receive free legal aid pursuant to section 72 of the Act on Social Services. If the National Social Appeals Board affirms the decision made by the municipal committee on children and young persons, the holder of custody and the young person aged 12 or above are entitled to demand that the decision be brought before the courts.

The holder of custody and the young person aged 12 or above is entitled to appeal a placement facility's use of force or other interference with the child's or young person's right to self-determination.

#### **2.3.2.5 Administrative proceedings concerning parental responsibility**

Pursuant to the Danish Act on Parental Responsibility the best interests of the child are the primary consideration in all cases on parental responsibility. Thus, the Regional State Administration has an obligation to ensure that the perspective and views of the child form the basis for decisions on parental responsibility and to ensure that the decision is in the best interests of the child.

Information on the perspective and views of the child may be gathered by hearing the child, by collecting information on the child and the parents from other authorities and through a report from a child expert.

The Regional State Administration offers the child and its parents child welfare counselling. Furthermore, the parents are offered the possibility to solve their conflict through mediation processes. The objective of both child welfare counselling and mediation is to assist the parents in solving their conflict or to reduce the conflict level between them.

### **2.3.3 Assistance to vulnerable children**

#### **2.3.3.1 Measures which provide specific protection and assistance to unaccompanied children**

Denmark considers unaccompanied minors as a particularly vulnerable group and guidelines for the processing of these applications have been drawn up. Asylum applications of unaccompanied minors must be processed quickly, and the minors must be accommodated in special centers with staff who have received appropriate training.

#### **2.3.3.2 Assistance to unaccompanied minors**

Every unaccompanied minor is assigned a personal representative whose task it is to look after the minor's interests. Accordingly, unaccompanied minors who have applied for asylum will have a personal representative to assist and guide them during the asylum proceedings. The immigration authorities will take into account the special situation of unaccompanied minors in the asylum proceedings.

#### **2.3.3.3 Disappearance of unaccompanied minors**

Accommodation is provided for all unaccompanied minors at a special children's center run by the Danish Red Cross. The center is staffed 24 hours a day by professional personnel. The center is responsible for knowing the whereabouts of the minor and carries out inspections three times a day for this purpose. If necessary, staff can implement stricter security measures, such as checking the presence more frequently or by providing accommodation at another location.

If an unaccompanied minor is discovered to be missing, the police issue a nationwide warrant and the local authority and the child's personal representative is informed. To avoid cases of disappearances, the Danish Immigration Service maintains a close ongoing dialogue and exchange of experience with the operators of the asylum centers, including the Danish Red Cross and other relevant players such as the police and the local authorities regarding the handling of unaccompanied minors and their specific challenges, including where disappearances occur.

#### **2.3.3.4 Residence permit**

Depending on the unaccompanied minor's personal circumstances, a residence permit may be issued without the minor having to undergo the asylum proceedings, if there is reason to assume that the minor will be without any family network or without any possibility of staying at a reception and care center and will in fact be placed in an emergency situation upon a return to the minors country of origin or former country of residence.

Furthermore, a residence permit may be issued to an unaccompanied minor whose application for asylum has been rejected if there is reason to assume that the person will be without family network or without any possibility of staying at a reception and care center and will in fact be placed in an emergency situation upon return to his or her country of origin or former country of residence.

The provisions on residence permits to unaccompanied minors are applied in accordance with Denmark's international obligations, i.e. the UN Convention on the Rights of Child.

## **2.3.4 Civil justice**

### **2.3.4.1 Right to legal counsel, legal assistance and representation**

#### **2.3.4.1.1 The child as a plaintiff or a defendant**

Child plaintiffs are represented by their parents or guardians during the civil judicial proceedings as they do not have procedural legal capacity to act. Please see here (include link to 1) and here (include link to 3.1)

The child's parents or guardians may mandate a lawyer to represent the child before the court. Mandated lawyers can provide assistance to the plaintiff while filing the lawsuit and during the court procedure.

The child cannot waive the parents' or guardians' right to mandate a lawyer. Instead of the child, it is his/her parents or guardians who instruct the lawyer and who terminate his/her mandate.

A child plaintiff can benefit from free legal aid if he/she does not have sufficient property or income.<sup>4</sup> The child's parents or guardians can file a request of legal aid. Both the child's and the parents' property and income are taken into account while deciding on the granting of free legal aid.<sup>5</sup>

The rules applicable to child plaintiffs also apply to child defendants.

#### **2.3.4.1.2 The child as a witness**

Children being called as witnesses in ordinary civil courts do not have the right to request a lawyer free of charge. In general, witnesses, both adults and children can always seek addition legal counsel at their own expense. Similarly to child plaintiffs, child witnesses would not be able to mandate or withdraw the mandate of a lawyer or instruct him/her in their own right. These rights would be exercised by the child's legal representative or guardian.

If a family court case on custody or residence of the child is especially conflictual between the parents and therefore there is a risk of causing harm to the child, the court may appoint a person for the assistance of the child during the proceedings.<sup>6</sup> The assisting person can access the files of the case and be present during meetings and the actual court proceedings. The person's job is to assist the child and to defend his/her interests during the proceedings.

## **3. Multidisciplinary aspects**

### **3.1 Coordination of their activities by relevant organisations**

#### **3.1.1 Administrative proceedings concerning child welfare**

*"Children's Houses"*

In 2013 the Danish Government allocated funding to initiatives strengthening the protection of children and young people from abuse. One of the initiatives was the establishment of 5 special "Children's Houses" covering all municipalities in Denmark. In these special houses social services, police, therapeutic services and

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<sup>4</sup> Chapter 31 of the Administration of Justice Act (*Retsplejeloven*)

<sup>5</sup> Section 3 of the Executive Order on Free legal Aid (*Bekendtgørelse om fri process*)

<sup>6</sup> Section 450d of the Administration of Justice Act (*Retsplejeloven*)

health services cooperate to ensure that children who are victims of abuse get coordinated and professional help in a child friendly environment.

### **3.1.2 Administrative proceedings concerning parental responsibility**

#### *Cooperation between the Regional State Administration and the municipalities*

A cooperation mechanism to enhance cooperation in high conflict cases between the Regional State Administration and the municipalities has been set up. The reasoning behind the mechanism is that the parents and/or the child in some cases on parental responsibility have serious social problems closely linked to the conflict on parental responsibility.

The authorities may through the cooperation mechanism jointly gather and share information on the child and the parents, thus avoiding parallel case handling. The cooperation may result in a common solution to both the parental responsibility and the social aspects of the case with the aim to protect the best interests of the child.

### **3.1.3 Relationship between civil/administrative and civil/criminal proceedings**

In social law cases the relationship between civil proceedings and administrative decisions is close and is regulated in detail. It is an administrative authority, i.e. The Children and Young person's Committee that makes decisions on, among other things, forced removal of a child, interruption of connection between a child and its family and placement of a child in a partly locked residential ward or institution.<sup>7</sup> The Children and Young Persons Committee consists of a judge, two educational/psychology experts and two members of the municipal council.<sup>8</sup> Parents and children above 12 years of age can complain about such decisions to the National Socials Appeal Board.<sup>9</sup> A decision from this Social Appeals Board can be brought before the civil courts.<sup>10</sup> In these special cases on, for example forced removal of a child, a child aged 12 or older is considered as a party to the case and therefore has procedural legal capacity to act just like his/her parents.<sup>11</sup> The child has the right to free legal assistance<sup>12</sup> and the right to be assisted by an advisor.<sup>13</sup>

With respect to the potential conflicts of responsibilities between various courts, the competences are distributed in a way that enables victims of crime to make a civil claim compensation for damages during the criminal trial.<sup>14</sup>

## **4. Training of professionals**

### **4.1 Training requirements for professionals who are in contact with the child during the proceedings**

#### **4.1.1 Judges**

Deputy Judges participate in a series of obligatory basic training courses. These courses include training in handling custody cases.

With regard to judges this subject in general is incorporated in training courses and seminars where relevant.

#### **4.1.2 Attorneys-at-law**

There is no mandatory training of attorneys-at-law that represent children in civil cases, criminal cases or cases within the administrative system. All attorneys-at-law are obliged to follow continuing mandatory training (approximately three days every year) that are relevant, but otherwise of their own choice.

Attorneys working with children can participate in courses concerning for example the Role of the Lawyer to the Victim, the Use of Video interview of Children or Children's and Young People's Social Rights and Welfare Rights.

#### **4.1.3 Prosecutors**

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<sup>7</sup> Section 74 of the Act on Social Services (*Serviceoven*)

<sup>8</sup> Section 19 of the Act on Legal Protection and Administration in Social Matters (*Retssikkerhedsloven*)

<sup>9</sup> Section 168 of the Act on Social Services (*Serviceoven*)

<sup>10</sup> Section 169 of the Act on Social Services (*Serviceoven*)

<sup>11</sup> Section 170(3) of the Act on Social Services (*Serviceoven*)

<sup>12</sup> Section 72 of the Act on Social Services (*Serviceoven*)

<sup>13</sup> Section 48a of the Act on Social Services (*Serviceoven*)

<sup>14</sup> Chapter 89 of the Administration of Justice Act (*Retsplejeloven*)



The Director of Public Prosecution offers a seminar as part of the supplementary training of prosecutors who are in contact with children during proceedings.

#### **4.1.4 Police**

Danish Police interviews will always reflect certain factors such as the age of the person being questioned and the type of crime the person has committed, endured or witnessed. Danish Police will therefore take into account during the interview whether the perpetrator/victim/witness is vulnerable or disadvantaged (ex. mentally ill, Danish not the primary language, minor child etc.). The interview should as much as possible be conducted by an officer trained in situations similar to the matter at hand such as prior experience, education, legal knowledge and potentially knowledge of certain specific environments. Interviews will be conducted in an accessible language and any cognitive or other challenges with language and understanding thereof will be taken into consideration. Furthermore the Police will provide the proper neutral surroundings with no disturbances and without the presence of persons, who can influence the statements of the interviewed party. The Police will notify the social authorities in situations, when the police wishes to interview a minor unless the interview is regarding a minor crime, and the minor will receive the necessary support during the interview.

The Danish National Police Commissioner is continuously focused on the training and education of police officers, who conduct investigations regarding sexual and other abuses on minors. The basic training of Danish Police officers addresses these commitments. The Police officers learn to assess and state any symptoms of neglect for potential contact with the social authorities. The Police students are taught crime prevention with special focus on minors and the relevant options in such situations. Rules and procedures for cooperation in cases involving minors are also a part of the basic training. The Danish National Police Commissioner provides two programs for after qualification training/education – investigation in abuse (psychological, physical and sexual) on minors and video interview of minors and persons with diminished mental capabilities, so that every police district in Denmark has a number of police officers, who have received training focused on investigation of abuse on minors. The training includes identifying victims or potential victims, methods of investigation, communication with victims, dealing with trauma or symptoms of posttraumatic stress etc.

The Danish National Police Commissioner also provide seminars for the police officers who are specifically trained in handling cases involving abuse on minors with a view to update the training/education in regards to the latest topics and areas of interest.

#### **4.1.5 Social workers**

The Danish Government continuously supports the municipalities in their work to provide the right service for vulnerable children, young persons and their families. Therefore annual funding has been allocated to the further education of municipal social workers. One of the main focus areas is on improving the social worker's conversation with a child with the aim of ensuring that the views of the child is included in the decision-making process. The effort includes a diploma and a master's degree in disadvantaged children and youth as well as individual courses on i.a. ways to improve conversations with a child and ensure the views of the children are taken in to account in legal proceedings, administrative proceedings as well as in the decision-making concerning support for a child.

### **4.2 Vetting of professionals with children**

#### **4.2.1 General rules**

A broad range of public authorities, NGO's, associations and private institutions are obliged under Danish Law to vet prospective employees/volunteers in regular contact with children.<sup>15</sup> Vetting (*Børneattest*) concerns criminal convictions of sexual abuse.

#### **4.2.2 Judges**

Deputy Judges participate in a series of obligatory basic training courses. These courses include training in handling custody cases.

#### **4.2.3 Attorneys-at-law**

According to section 121(1) of the Administration of Justice Act "Admission to practice law may be denied anyone who is convicted of a criminal offence if the offence gives grounds to believe that abuse of the right to

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<sup>15</sup> Act on Criminal Records Disclosures (*Børneattestloven*)

practice law is an obvious risk or makes the person concerned unworthy of the respect and trust that must be required to practice law”. Correspondently it follows from section 138 that “Under the rules of section 79 of the Penal Code, a lawyer may be disbarred during a criminal case if the offence gives grounds to believe that abuse of the position is an obvious risk or makes the person concerned unworthy of the respect and trust that must be required for practicing law”.

This means that any criminal activity will be considered and evaluated either at the time of appointment as attorney-at-law or by the prosecutor and judge under the criminal case against the lawyer.

#### **4.2.4 Prosecutors**

In connection with employment in the prosecution service a prosecutor is subjected to vetting e.g. checks of criminal records, etc.

#### **4.2.5 Police**

Danish Police officers are subjected to a standard security vetting (e.g. checks of criminal records, etc.) by The Danish Security and Intelligence Service before offered employment. The level of security clearance can and will differ dependant on the job description. In accordance with Circular paper no. 64 dated July 29 2005 a person employed by the government who is charged with a criminal offence will be reported to the attorney General, who will assess whether the actual employer is to be informed. When the person in question is employed by the police, the National Police Commissioner will be informed directly. The Danish Independent Police Complaints Authority handles investigation of criminal cases against police officers, if the criminal offence took place during service, and the Danish National Commissioner will initiate any disciplinary precautions.

### **4.3 Cooperation with other Member States on training**

#### **4.3.1 Judges**

A Nordic three day seminar focusing solely on the rights of children was attended by eight Danish judges in 2015. A specific seminar offered on custody cases also includes the issue of children's rights. In addition the Court Administration offers international training on the subject through international partners.

#### **4.3.2 Prosecutors**

The Director of Public Prosecutions does not cooperate with other MS specifically on training. The training modules provided by the Director of Public Prosecutions are generally not open to other MS. Further, note that the training provided by the Director of Public Prosecutions is in Danish and is aimed at Danish conditions.

#### **4.3.3 Police**

Danish National Police has no direct cooperation on training/education with other MS, when it comes to Danish police officers taking part in courses and the likes with other police authorities or foreign police officers taking part in our courses. But during the recent further development of the two above mentioned programs for after qualification, there was an extensive cooperation/sharing of knowledge/practices with primarily Norway and Sweden. We are furthermore engaged in a development program on training interviewing skills via roll playing with an “Avatar Figure” portraying an abused child.

Danish Police is continuously aware of courses, webinars etc. on subjects relating to the handling of cases involving abuse on minors and make sure that police officers handling such cases on a daily basis are made aware of these possibilities and given the opportunity to participate. The main source of these courses/webinars is CEPOL.

## **5. Best interests of the child**

### **5.1 Measures in place to ensure that the child’s best interests are a primary or paramount consideration**

#### **5.1.1 Administrative proceedings concerning child welfare**

*Special support to children must focus on the best interests of the child*

Pursuant to the Danish Act on Social Services the municipality is obliged to provide a child with the needed support in accordance with the best interests of the child. Support must hence be adapted to the specific situation and needs of the child, provided at an early stage and on a continuous basis so that any problems as far as possible may be remedied in the home of the child or in the child's immediate environment. Furthermore support must be based on the child’s own resources.

### **5.1.2 Administrative proceedings concerning parental responsibility**

*In cases on parental responsibility the best interests of the child are the primary consideration*

Pursuant to the Danish Act on Parental Responsibility the best interests of the child are the primary consideration in all cases on parental responsibility.

Thus, the Regional State Administration has an obligation to ensure that the perspective and views of the child form the basis for decisions on parental responsibility and to ensure that the decision is in the best interests of the child.

Information on the perspective and views of the child may be gathered by hearing the child, by collecting information on the child and the parents from other authorities and through a report from a child expert.

The Regional State Administration offers the child and its parents child welfare counselling. Furthermore, the parents are offered the possibility to solve their conflict through mediation processes. The objective of both child welfare counselling and mediation is to assist the parents in solving their conflict or to reduce the conflict level between them.

### **5.1.3 The best interest of the child in civil judicial proceedings**

With respect to the involvement of children in civil judicial proceedings, the general procedural rules do not contain specific principles or rules to safeguard the child's best interests, dignity and respect in civil judicial proceedings. However, the United Nations Convention on the Rights of the Child generally applies in all matters relating to children.

Furthermore the Act on Social Services contains substantive law provisions requiring support for children and young persons with special needs. The overall aim of this support is to safeguard the best interests of children and young persons in accordance with the United Nations Convention on the Rights of the Child.<sup>16</sup>

This entails providing children and young persons with special needs with the same opportunities for personal development, health and an independent adult life as other children and young persons. This aims to ensure that children and young persons with special needs have continuity in childhood and youth as well as a safe environment of care offering close and stable relations with adults (for example by supporting the child or young person's family relations and other networks). The support must be based on the child or young person's own resources, and the views of the child and young person must always be taken into account. Due importance must be attributed to such views in accordance with the age and maturity of the child or young person.

### **5.1.4 Protection of the child's private and family life**

With respect to the protection of the child's private and family life, Danish legislation does not contain child-specific requirements, which implies that the same rules apply to children as to adults.

During the civil judicial proceedings the courts hold the overall responsibility for the protection of the family and private lives of those involved in the procedure. To this end, the courts may order the holding of court proceedings in camera. It is noted that as a general rule, court proceedings are public in Denmark. The court may decide to hold the trial in camera if the open court proceeding could potentially harm somebody, including a child plaintiff, defendant or witnesses.<sup>17</sup> The parents or guardians of the child may ask through their lawyer for the holding of trials in camera and the court may also decide to do so independently. Disclosure of the content of court proceedings held in camera is prohibited, unless the decision to hold the proceedings in camera has only been made to ensure order in the court.<sup>18</sup> Court proceedings in cases concerning custody of the child are held in camera. Decisions taken in a camera trial could be made publicly available with the condition that the court may decide not to disclose the names, occupation or residence of the persons (including the child) mentioned in the judgement. Violation of these prohibitions is punishable by a fine or, under aggravating circumstances, by imprisonment of up to 6 months.<sup>19</sup>

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<sup>16</sup> Section 46 of the Act on Social Services (*ServiceLOVEN*)

<sup>17</sup> Section 29 of the Administration of Justice Act (*Retsplejeloven*)

<sup>18</sup> Section 29d of the Administration of Justice Act (*Retsplejeloven*)

<sup>19</sup> Section 453 of the Administration of Justice Act (*Retsplejeloven*)

## **6. Monitoring and enforcement of decisions in proceedings involving children**

### **6.1 Criminal justice**

#### **6.1.1 Provisions regarding information**

As regards to the victim, when an alleged offence is reported to the police, the police is under a general obligation to provide guidance and information to the victim regarding, inter alia, the right to legal assistance. If the person is a victim of a serious crime such as violence or a sexual offence, the police will explain the expected development of the case and under special circumstance designate a special contact person within the police or within the prosecutor's office to communicate with the child during the case. These obligations apply whether the victim of the alleged offence is a child or an adult.

In general, the prosecutor's office informs the victim about the time of the court hearings and if the victim has so requested, the prosecutor's office informs the victim if the judgment is appealed or if the case is to be resumed. In cases where an offender has been imprisoned for violence or sexual abuse, the victim must be informed about the time of the offender's release from prison.

As regards to a suspect, whether the suspect is a child or adult, the person is informed about court hearings in the case and about the possibility to appeal the judgment. The court is responsible for providing the information. Social services and parents of the child suspect are also informed about court hearings of the case.

Please also see here (include link to 2.1.1 and 2.2)

#### **6.1.2 Sentencing**

Every police district has established a youth consultation. Members of the youth consultation are, inter alia, the police and prosecution. The youth consultation will be consulted in individual cases involving criminals between 15 and 18 years of age and will have the following tasks:

- Provide options for the prosecutor's penalty claim and the court's penalty judgment in individual criminal cases involving child offenders under 18 years of age;
- Provide options for the most appropriate placement if a juvenile sanction or an unconditioned imprisonment is imposed on the child offender.

The Danish Criminal Code does not prescribe the use of specific sanctions for offenders under the age of 18 in connection with specific offences. However, it follows from the Code that an offender who had not attained the age of 18 years when the act was committed cannot be sentenced to imprisonment for life. Furthermore, special sanctions for offenders under the age of 18 exist and are used by the court when the conditions for using them are fulfilled.

According to the Danish Criminal Code it must normally be considered a mitigating circumstance when determining a sentence that the offender had not attained the age of 18 when the act was committed.

As regards the possible sanctions for an offender under the age of 18, as a general rule, fines for persons under the age of 18 must be reduced. Furthermore, a charge against a person who had not attained the age of 18 when the act was committed can be partly or totally withdrawn. Sometimes a decision to drop the indictment will be conditioned by the offender signing a contract (a youth contract). This type of sanction is directed at young offenders who have not yet displayed a more permanent crime pattern and who are guilty of minor economical crime, such as theft and property damage. These sanctions can only be imposed if the offender has admitted his or her guilt.

Additionally, it follows from the Danish Criminal Code that if the court finds that the enforcement of a prison sentence is not necessary, it must be stipulated in the judgment that the enforcement of the sentence will be postponed and lapse after a probation period. The court may determine that a sentence is to have conditions attached. The court may also award a sentence with a condition of community service if the accused is considered suited thereto.

Furthermore, if a person has committed a serious offence against the person or any other serious offence, but had not attained the age of 18 years at the time of committing the act, the court may decide that he or she must

submit to two years of structured, controlled socio-educational treatment if deemed expedient to prevent further offences (the youth sanction). This sanction is only used in connection with serious crime such as assault, robbery and rape, if the offence – if the offender had been 18 years or older – would have resulted in a sentence of between 30 days and 1 year of imprisonment. The youth sanction is only applied to offenders who commit crime of a particular violent nature and who have displayed violent behavior due to e.g. lack of ability to adapt and create normal social relations. The youth sanction lasts two years and the main content of the sanction is longterm social pedagogical treatment. During the first stage of the sanction the youth will be placed in a secured institution for a month or two in order to determine what kind of treatment is necessary. During the second stage of the sanction the youth will be placed in an open institution, where the youth e.g. can be treated for alcohol or drug abuse or receive other types of treatment or support. This stage of the sanction usually lasts about a year. During the third and last stage of the sanction the youth can stay at home, but is still supervised by the social services.

## **6.2 Civil justice**

### **6.2.1 The child as a plaintiff**

Civil judgments involving children as plaintiffs are enforced according to the normal enforcement rules by the Bailiff's courts. Child plaintiffs do not have procedural legal capacity to act, thus need to be represented by their parents or guardians who exercise the rights of the child plaintiff. All information from courts will be provided to the parents or guardians who must then inform the child.

Danish law does not allow for the immediate enforcement of cases in which children are involved. However, administrative interim measures may be issued in social law cases concerning special support for children and young persons if warranted by special circumstances or the immediate needs of the child/young person.<sup>20</sup> Detention cannot be imposed as a coercive measure against children.

### **6.2.2 The child as a defendant**

The rules applicable to child plaintiffs also determine the situation of child defendants in the enforcement phase of civil judicial proceedings.

Under Danish law children can be held liable for their damaging actions or omissions under the general conditions for liability for damages. However, when assessing whether the child has committed a culpable act, it is considered whether the child has acted differently than a reasonable child of the same age would have in a given situation. In principle, children of all ages can be held liable for damages that they have caused. Under certain circumstances, the liability of a child under the age of 15 years can be reduced e.g. because of mental deficiency of the child. Furthermore, if a child is liable for damages, the person(s) with parental custody of the child are liable for damages of up to kr. 7.500 DKK provided that the child is resident and under the age of 18 years.

### **6.2.3 The child in any other role**

In family law cases, enforcement of judgments on the custody and residence of the child takes place by the Bailiff's courts. Enforcement cannot take place if the child's mental and physical health is exposed to serious danger.<sup>21</sup>

There are no special training requirements for the court bailiffs who carry out enforcement of family cases. The court Bailiffs carry out many forms of enforcement including the enforcement of monetary claims.

A child who is the subject to the enforcement procedure is not informed about the decision of the court.

Danish law does not allow for the immediate enforcement of cases in which children are involved. However, as mentioned above, administrative interim measures may be issued in social law cases concerning special support for children and young persons.

The Bailiff's court may order a representative from the local municipality to protect the interests of the child during the enforcement phase.<sup>22</sup> This representative may not be affiliated with any of the parents. Furthermore,

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<sup>20</sup> Section 53(2) and section 75 of the Act on Social Services (*Servicebogen*).

<sup>21</sup> Section 536(6) of the Administration of Justice Act (*Retsplejeloven*).

if the child is of sufficient age and degree of maturity, he or she must be given the opportunity to express his or her views, unless it would harm the child to do so. The conversations are to be held with a child expert or a representative from the municipality. The rules in Article 450 c (1) apply, i.e. the conversation takes place without the parents being present, but as a general rule, the parties to the case must be informed about the principal contents of the conversation before the case is decided, unless compelling reasons militate against this. In the event that it is necessary to use force to enforce decisions of custody, residence or access, a child expert and a representative from the municipality must be present.<sup>23</sup>

The information in section 2.11 in the contextual overview for civil justice is up to date.

## **7. Access to remedies**

### **7.1 Criminal justice**

#### **7.1.1 Information of victims in case of decision not to prosecute**

If the police reject a report, if the investigation is ended, if prosecution is dropped or withdrawn, victims in general have to be informed. It follows from the Danish Administration of Justice Act that it is possible to appeal these decisions to the higher prosecution authority.

#### **7.1.2 Access to any complaint, legal appeal or judicial review mechanisms**

When an alleged offence is reported to the police, the police are under a general obligation to provide guidance and information to the victim regarding, inter alia, the right to legal assistance and information about complaints. If the person is a victim of a serious crime such as violence or a sexual offence, the police will explain the expected development of the case and under special circumstance designate a special contact person within the police or within the prosecutor's office to communicate with the child during the case. These obligations apply whether the victim of the alleged offence is a child or an adult. Under some circumstances the victim can be afforded legal representation during the proceedings. Reference is made to Section B, 2.

#### **7.1.3 Compensation**

Compensation claims can be dealt with during the criminal trial. Thus, the court can decide that the defendant must pay compensation to the victim. The police is under a general obligation to provide victims with information about, inter alia, the possibility to claim damages during the trial and under what circumstances the costs are covered by the state, which thereafter are recovered by the state from the perpetrator. If the child is afforded legal representation during the criminal proceedings by an attorney or is represented by another representative, the representative can claim damages on behalf of the child during criminal proceedings.

#### **7.1.4 Statute of limitations**

The Danish Criminal Code contains provisions regarding statute of limitations for the specific violation of the Code. In some specific cases, inter alia, in cases of sexual abuse committed against a person under 18 years of age, the limitation period is reckoned from the date when the victim attains the age of 21 years at the earliest.

## **7.2 Civil justice**

### **7.2.1 The child as a plaintiff**

In accordance with the general rules described here (include link to 6.2.1), a child may have the status of plaintiff, but do to his/her lack of procedural capacity to act, cannot independently bring a case before domestic courts in his/her own name.<sup>24</sup> Thus, the child has to be represented by parents or guardians during the proceedings and only the parents or guardians can dispose of the case. The only exception lies with the hearing of the child plaintiff, as he/she will give testimony in person. It is noted however that the testimony of the child is subject to prior consent of his/her parents or guardians.

### **7.2.2 The child as a defendant**

A child may have the status of defendant, but all procedural actions must be taken by the child's parents or guardian on his/her behalf.

### **7.2.3 The child as a witness**

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<sup>22</sup> Section 537 of the Administration of Justice Act (*Retsplejeloven*).

<sup>23</sup> Section 537(5) of the Administration of Justice Act (*Retsplejeloven*).

<sup>24</sup> Section 257 of the Administration of Justice Act (*Retsplejeloven*)

Everybody, including children, is obliged to testify in a court procedure if he/she is invited by the court to attend as witness.<sup>25</sup> An agreement of a parent/guardian is not necessary for the participation of the child in the proceedings as a witness.

Section 171(1) of the Administration of Justice Act states that a party's related persons do not have a duty to give evidence as witnesses. Similarly, the duty to give evidence as a witness does not apply where the giving of evidence is deemed likely to 1) expose the witness to the penalty of the law or harm to his/her safety or welfare, 2) expose the witness's related parties to the penalty of the law or 3) harm to their safety or welfare or otherwise inflict significant harm on the witness or his related parties.

However, the court may order the witness to give evidence where such evidence is deemed to be essential to the outcome of the case and the merits of the case and its importance to the party concerned or to society are found to justify the giving of such order.<sup>26</sup>

The civil courts decide on how witnesses under 15 years of age should be questioned and by whom.<sup>27</sup> The court may appoint a representative of the local municipality or another appropriate person to provide assistance during the questioning of a child below 15 years of age. For children who are at least 15 years old but are younger than 18 years old, no such special rules apply.

#### **7.2.4 The child in any other role**

Most of the cases regarding children that are dealt with in civil proceedings concern children in roles other than those of the plaintiffs, defendant and witnesses. In cases on custody and residence, both parents of the child will be parties to the case. The child is not an autonomous party to a family case and does not have the powers of a party.

A parent who asks the state administration to bring the case to court becomes the plaintiff in the proceedings. If both parents want to bring the case to court the state administration decides on the role of the parents in the proceedings. Children will be heard in cases on custody and residence but they have no active role in the actual court procedure. References are made to section G, question 3.

#### **7.2.5 Remedies or compensation for violation of rights and failure to act**

Children can have the status of plaintiffs and defendants in civil law proceedings. Children do not in general have procedural legal capacity to act and therefore their parents or guardians will exercise the rights of child plaintiffs and defendants, including the right to appeal.

The parent or the guardian must ask children above 15 years of age before making decisions in important matters and thus also before acting in important procedural matters in the individual court case, including the part of the proceeding that follow the court decision (e.g. appeal).<sup>28</sup>

Children are often represented by their lawyers in the proceedings. Please also see here (include link to **2.3.4.1**)

Only the parties to a case can appeal a court decision involving children.<sup>29</sup> This implies that child care authorities cannot appeal against court decisions that concern children.

The Act on Limitation does not include special rules on limitation periods for children who do not pursue their claims before they reach the age of majority. The general rules on suspension apply to everybody including children. This means in cases where a child does not know that it has a claim or against whom it may be raised, the termination of the running of the limitation period will be suspended until the day that the child learns about the claim or the person against whom it may be raised.<sup>30</sup>

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<sup>25</sup> Section 168 of the Administration of Justice Act (*Retsplejeloven*)

<sup>26</sup> Section 171(3) of the Administration of Justice Act (*Retsplejeloven*)

<sup>27</sup> Section 183(3) of the Administration of Justice Act (*Retsplejeloven*)

<sup>28</sup> Section 26 of the Act on Guardianship (*Værgemålsloven*)

<sup>29</sup> Chapter 36 of the Administration of Justice Act (*Retsplejeloven*)

<sup>30</sup> Section 3(2) of the Act on Limitation (*Forældelsesloven*)

A child cannot intervene in a court case in his/her own right. Thus, according to Danish law it is the responsibility of the parents to pursue any claims before the child reaches the age of majority.

Witnesses, including children, have no possibility to appeal against a court decision.

### **7.2.6 Legal costs**

Children cannot act as plaintiffs and defendants in civil judicial proceedings in their own right. Children lack procedural legal capacity to act, thus need to be represented during the proceedings. Nevertheless, just like adults, child plaintiffs and defendants can be requested to pay legal costs and/or to cover the court fee for filing an application, for example if they lose a case.<sup>31</sup>

Just like adults, a child who has been granted free legal aid will be exempted from the obligation of paying the court fee for filing an application.<sup>32</sup>

### **7.3 Administrative decisions**

In Danish legislation on social services and family law children are as a general rule represented by the holder of custody and children are not entitled to initiate administrative decisions in social services and family law cases, make submissions to the administrative authorities or appeal against administrative decisions. It is however, relevant to note that the best interests of the child are the primary consideration in all cases concerning child welfare and family law. The administrative authorities dealing with such cases are hence obliged to always consider which solution would be in the best interest of the child and they may initiate cases on this ground *ex officio*.

However, in certain situations a child may initiate administrative proceedings, make a submission or appeal against a decision. Children aged 12 or above are entitled to bring decisions made by the municipal authorities in child welfare cases before the National Social Appeals Board, and the children are entitled to free legal aid. If the National Social Appeals Board affirms a decision made by the municipal Children and Young Persons Committee, a child aged 12 or above may demand that the decision be brought before the courts.

Furthermore, children aged 12 or above are entitled to appeal a placement facility's use of force or other interference with the child's right to self-determination.

In other situation a decision may not be taken without the consent of the child. For instance an adoption of children aged 12 or above may generally not be carried out without the consent of the child.

There are as well situations in which the administrative authority shall or may appoint a legal representative for the child. This applies for instance in certain adoption cases, e.g. in regard to adoption without the consent of the holder of custody. The legal representative may bring submissions and appeal against a decision on behalf of the child without the child's consent.

## **8. Family life**

### **8.1 Procedure for adoption, including international adoption**

#### **8.1.1 Approval of prospective adoptive parents**

Before an approval as Prospective Adoptive Parents (PAP) is granted, the secretariat of the Joint Council (please here for explanation of relevant adoption authorities) performs a thorough investigation of the applicants. The outcomes of the investigation are presented to the Joint Council, who, based on the investigation, decides whether or not the applicants can be approved as PAPs.

The investigation is divided into three phases (and one final phase before and just after an adoption):

- The question whether the applicants fulfils a number of general conditions for approval as PAPs (age, living conditions, physical and psychical health conditions, economic conditions and criminal record)
- A pre-adoption counselling course, which is mandatory to all applicants who have not previously completed an adoption.

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<sup>31</sup> Chapter 30 of the Administration of Justice Act (*Retsplejeloven*)

<sup>32</sup> Section 13 of the Act on Court Fees/Stamp duty (*Retsafgiftsloven*)



- One or more interviews with the State Administration. The purpose is to investigate if the applicants can be said to possess the individual resources necessary to adopt a child.
- Finally a home study report about the applicants is put before the Joint Council and the final decision on approval is made.
- Leading up to an adoption the PAPs must receive a course of private counselling, which will focus on the specific adoption. The counselling continues in the time just after the adoption.

### **8.1.2 National adoption**

The procedure regarding national adoption is as follows:

- As regards the procedure for approval of adoptive parents, the conditions and procedure is the same for national and international adoption.
- A national child is declared adoptable and the child's papers are forwarded from the State Administration to the National Board of Adoption (6 children were declared adoptable in 2015).
- A paediatrician in the National Board of Adoption prepares a paediatric assessment on the child.
- The National Board of Adoption selects the applicants that the Board finds are best qualified to adopt the specific child (in view of all information on the child and its biological parent(s)).
- The National Board of Adoption informs the State Administration about its decision and the State Administration finalizes the adoption.

### **8.1.3 International adoption**

The procedure regarding international adoption is as follows (a typical adoption):

- A child is matched with the PAPs and the proposal presented to the Adoption Accredited Body (AAB) in Denmark by the state of origin. The AAB examines the case to identify if the AAB find that the proposal is in accordance with the approval of the PAPs. The AAB also obtain a paediatric report from a Danish paediatrician.
- The AAB presents the case to the National Social Appeals Board which conducts an inquiry regarding the information on the child and the matching. After consulting a paediatrician on the National Board of Adoption the National Social Appels Board assess if the adoption can continue (in view of the given information on the child, that the rules and regulations in the state of origin and the Hague Convention on Adoption are observed).
- The National Social Appeals Board conducts a declaration in accordance with the article 17c of the Hague Convention on Adoption, when the PAPs accept the matching proposal.
- In cases where the proposed child is not assessed within the approval of the PAPs, because of age or health issues, the State Administration is competent to decide, whether or not the adoption process can continue.

## **8.2 Different types of adoption**

The Danish Adoption Act of December 2015 only allows full adoption. At present time the Danish AAB only cooperates with states of origin whose legislation allows strong adoptions.

## **8.3 Measures in place to ensure that the child's best interests are taken as the paramount consideration**

In addition to the requirements of the state of origin, the central authority in Denmark has the following criteria concerning the adoptability of a child (according to the Danish Adoption Act):

- The consent and declarations from the child's parents, the legal guardian and the child is obtained before any adoption can be carried out or finalized.
- It is generally a condition that the legislation and practice in the country of origin does not fundamentally differ from the Danish legislation and practice.

In reference to Article 21 of the UN Convention on the Rights of the Child, Denmark takes the following measures in relation to international adoption:

- The Danish AAB is authorized only to co-operate with competent authorities or organizations in the state of origin which are accredited by the competent authority of that specific state. The Danish AAB is restricted to co-operate on adoptions when the Hague Convention on Adoption, the UN Convention on the Rights of the Child, the European Convention on the Adoption of Children, the adoption legislation in the country with which DIA cooperates, as well as the Danish legislation on Adoption are upheld, whether the specific state of origin has acceded to the Conventions or not.

- Along with the procedure regarding the 17c-declaration (in accordance with the Hague Convention on Adoption) the National Social Appeals Board examines whether the principle of subsidiarity can be said to be observed (on the basis of the given information on the specific adoption).
- Denmark only allows and recognizes full adoptions in Denmark. Adoptions completed outside of Denmark e.g. by Danish citizens living abroad, must be recognized by the Danish National Social Appeals Board, should the citizens wish to move back to Denmark. When and if the adoption is recognized in Denmark it will uphold the same legal effect as a full adoption.
- The Danish National Social Appeals Board supervises and monitors that the Danish AAB fulfill the terms and conditions given in the organization's accreditation with regards to its activities in Denmark and abroad and in relation to both professional activities and financial issues. The Danish AAB may only perform cooperation projects related to adoption assistance activities; the AAB is not allowed to perform development aid on a professional scale.
- Before initiating a cooperation project or giving a donation the AAB must apply for approval hereof by the National Social Appeals Board. Cooperation projects or donations of smaller scale only have to be reported to the National Social Appeals Board. Before any payment is made to the counterpart in the state of origin the AAB must consider whether the payment fully or partially can be characterized as a donation or as an "adoption assistance related cooperation project".

The AAB is required to provide the National Social Appeals Board with an annual financial report and with budgets for the following year. If the AAB wants to increase the adoption fee paid by the PAPs the AAB have to inform the National Social Appeals Board of the increase prior to the effect. According to the accreditation the AAB must not take any improper financial or other gain from its adoption assistance services. The AAB must not receive payment which is disproportional to the adoption assistance performed.

Furthermore, the AAB must make sure on an ongoing basis that the activities of its foreign cooperatives parties are determined by consideration for the child's best interest and carried out on an ethnically and professionally appropriate basis and not for the purpose of any undue financial or other gain.

#### **8.4 Measures in place to respect the child's right to be heard in adoption cases**

In relation to national adoptions the Danish Adoption Act states that all children over the age of 12 must consent to an adoption. Prior to this consent the State Administration must arrange an interview with the child to instruct the child about the adoption and about its legal consequences. During the interview the State Administration must make sure that the child understands the legal consequences of the adoption and is informed about for instance change of name or citizenship. The substance of the interview contributes to the final assessment of the adoption being in the best interest of the child.

In case the child is under the age of 12 the State Administration must, where the maturity of the child and nature of the case allows, provide information on the child's attitude towards the adoption. The rule of hearing is not absolute and is a matter of specific assessment, but the general expectation is that at least children over the age of 7 generally are mature enough to undergo an interview. Taking the child's age and maturity in consideration the State Administration must inform the child about the legal consequences of the adoption and offer the child guidance in relation to the adoption.

In relation to international adoptions it is given in the Danish Adoption Act that international adoptions must be conducted in conformity with the Danish Adoption Act, The Hague Convention and the UN Convention on the Rights of the Child. Therefore the same principles regarding hearing of children apply in international adoptions.

#### **8.5 Competent authorities for adoption (national/international)**

- **The Minister for Social Affairs and the Interior**

The Minister for Social Affairs and the Interior is responsible for the legislation concerning adoption. Also the minister authorizes the AABs and approves the AABs choice of country when establishing adoption co-operation abroad.

- **National Social Appeals Board**

The National Social Appeals Board, the Danish central authority on adoption according to the Hague Convention on Adoption, is responsible for guidelines interpreting the rules laid down by the Ministry of Social

Affairs and the Interior in respect of approval as PAPs and all other aspects of adoption in Denmark, including accreditation of AABs and the supervision of such.

The National Social Appeals Board oversees the AABs fulfilment of the conditions in the accreditations. The Board approves the AABs establishment of adoption co-operations abroad and reapproves existing co-operations every second year.

The National Social Appeals Board conducts a “Consent that the adoption may proceed” (in accordance with article 17c of the Hague Convention on Adoption).

The Board arranges the pre-adoption courses which are an obligatory part of the approval procedure prospective applicants go through. Finally, the Board administers the Post Adoption Service, which is mainly state financed and available until the child turns 18 years of age. A part of the Post Adoption Service also includes “children’s groups” for older adopted children, free education of professionals who are in contact with adopted children and a pilot scheme for counselling of adult adoptees.

- **The State Administration/the Joint Councils**

In the State Administration two Joint Councils are established. The Joint Council is the first instance to rule whether or not applicants can be finally approved as PAPs. The council have three members; a lawyer, a social worker and a physician.

The secretariat of the two Joint Councils performs the actual investigation, including the interviews with the applicant. Furthermore, the Joint Councils decide in particular cases whether or not a specific child can be adopted by applicants, who are already approved as a PAPs, but whose approval is exceeded by various aspects considering the specific child. The decisions made by the Joint Councils can be brought before the National Board of Adoption.

The State Administration issues “Consent that the adoption may proceed” (in accordance with article 17c of the Hague Convention on Adoption) in case the specific needs of the child is not compatible with the PAPs approval or the applicants wish to apply for an expanded approval to the child in question.

- **The Danish National Board of Adoption**

The National Board of Adoption has 10 members and is chaired by a judge. Other members are a social worker, an adult’s psychiatrist, a children’s psychiatrist, a psychologist, a paediatrician, a physician, a lawyer and 2 laymen. Rejection and approval of adoptive parents may be appealed to the Board.

As well as being the board of appeal, the duties of the Board are to supervise the work of the Joint Councils and their secretariat, to observe the national and international development in adoption matters, to gather information concerning adoption and to communicate this information.

- **The accredited body**

In Denmark one agency, Danish International Adoption (DIA), is currently accredited to function as adoption mediation body in accordance with the Hague Convention on Adoption. DIA is authorized to establish contact between PAPs in Denmark and children from other countries with a view to intercountry adoption.

DIA’s adoption assistance are governed by and must be in accordance with the Hague Convention on Adoption, the UN Convention on the Rights of the Child, the European Convention on the Adoption of Children, the adoption legislation in the country with which DIA cooperates, as well as the Danish legislation on Adoption, including specific accreditation terms.

## **8.6. Possibility for an adopted child to have access to information held by the competent authorities on his or her origins**

The AAB is responsible for preserving information about the child’s origins. This information will be preserved for undefinable time, first kept by the AAB and later in the national state archives.

The adoptee, the adoptive parents and the birth family are permitted access to information concerning the adoption. As regards the birth family in the state of origin the information available are follow up reports

according to the legislation in each state of origin. In Denmark the rules regarding the right to access documents are thoroughly regulated to secure the individual privacy but also to secure access for any party with a legitimate interest to the information in question.

Any decision passed on these matters is the result of an individual assessment. When assessing a request it must be considered whether there is information in the case which due to the biological parents' and the PAPs individual privacy must be excluded from access.

On request the National Social Appeals Board gives guidance to any adoptees, adopters or biological parents concerning the possibilities to obtain access to any information relating to an adoption. The AAB also give guidance on requests and provide assistance once information about the adoption is provided, including assistance to contact the counterpart in the state of origin who mediated the adoption at the time.