

Study on children's involvement in judicial proceedings – contextual overview for civil justice – Denmark

October 2014

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Abbreviations

CA	Competent Authority
CoE	Council of Europe
EC	European Commission
EU	European Union

Introduction

Introduction and context

The promotion and protection of the rights of the child is one of the objectives of the EU on which the Treaty of Lisbon has put further emphasis. This report is part of a study 'to collect data on children's involvement in judicial proceedings in the EU' which supports the implementation of the Commission Communication of 15 February 2011 '**An EU Agenda for the rights of the child**', which identified the lack of reliable, comparable and official data on the situation of children in the Member States (MS). This deficiency is a serious obstacle to the development and implementation of evidence-based policies and is particularly evident in the context of child-friendly justice and the protection of children in vulnerable situations. Making the justice system more child-friendly in Europe is a key action of the EU Agenda. It is an area of high practical relevance where the EU has, under the Treaties, competences to turn the rights of the child into reality by means of EU legislation. Improved data is crucial to the framing of such legislation.

The objective of this study is:

- to establish statistics and collect data based on structural, process and outcome indicators on children involved in civil judicial proceedings for the years 2008-2010 (and 2011 if available) for all 28 EU Member States;
- to provide a narrative overview of children's involvement in civil judicial proceedings in the EU. The report describes the situation in each Member State as at 1 June 2012.
- This report examines the safeguards in place for children involved in **civil judicial proceedings**. The **Council of Europe Guidelines on child-friendly justice** serve as a basis for the analysis of the provisions affecting children in civil judicial proceedings in each Member State.

Structure and scope

This report describes the national **civil justice system** insofar as children's involvement is concerned. If, in addition to general rules in civil judicial proceedings, there are specific rules in the fields of **family and employment law**, the safeguards in place for children involved in judicial proceedings in those two specific sectors will also be described.

Chapter 2 of this report provides an overview of the Member State's approach to children's involvement in civil judicial proceedings. It includes a description of the competent authorities and services.

Chapter 3 of this report is divided in sections (3.1, 3.2, etc.) according to the different safeguards examined (e.g. the right to be heard, the right to information, etc.). Each of these sections is divided into subsections describing the different rules applying to children according to the different role they may have in a civil judicial proceeding (plaintiff; defendant; witness; other roles).

The table below summarises the type of judicial proceedings applicable to the fields of family and employment law and the competent courts. For the sake of completeness, the table also indicates which sectors are examined in the **overview for administrative justice**, i.e. asylum, migration, education, health, placement into care, administrative sanctions, and offences committed by children below the minimum age of criminal responsibility (MACR). In fact, in some countries, civil procedural rules also apply to judicial proceedings in some of these sectors, but in order to ensure a degree of consistency among the overviews on the 29 jurisdictions covered by this study, the breakdown set out in the table below has been applied for each and every country overview.

Type of judicial proceedings and court competence per sector[1]									
	Contextual overview for civil justice	**Contextual overview for civil justice**	**Contextual overview for administrative justice[2]**	**Contextual overview for administrative justice**	**Contextual overview for administrative justice**	**Contextual overview for administrative justice**	**Contextual overview for administrative justice**	**Contextual overview for administrative justice**	**Contextual overview for administrative justice**
Sectors:	**Family**	**Employment**	**Asylum**	**Migration**	**Education**	**Health**	**Placement in care**	**Administrative sanctions**	**Offences < MACR[3]**
Type of proceeding applying in the sector	Civil judicial proceedings	Civil judicial proceedings	Administrative judicial proceedings	Administrative judicial proceedings	Civil judicial proceedings	Civil judicial proceedings	Civil judicial proceedings	Administrative judicial proceedings	Civil judicial proceedings
Competent Court(s)	Juvenile Court	District Court	District Court is competent to review administrative authorities' decisions	District Court or the Administrative Jurisdiction Division of the Council of State are competent to review administrative authorities' decisions	District courts are competent to review administrative authorities' decisions	District Court	Juvenile Court	District Court is competent to review administrative authorities' decisions	Juvenile Court/ district Court

[1] This table provides an indicative summary of competent courts and relevant proceedings. However, please check Section 1 for a complete overview of the competent courts or sections/divisions within the competent courts.

[2] This study on Children's involvement in judicial proceedings is composed of three contextual overviews i.e. contextual overview for criminal justice, contextual overview for civil justice, contextual overview for administrative justice. The rules applying to judicial proceedings in the sectors of asylum, migration, education, health, placement into care, administrative sanction and offences committed by children below MACR are described in the contextual overview for administrative justice.

[3] (MACR) Minimum Age of Criminal Responsibility – see Table 3.1 of the EU Summary of contextual overviews on children's involvement in criminal judicial proceedings on MACR in EU28 as at 1 June 2012.

1 Overview of Member State's approach to children in civil judicial proceedings and specialised services dealing with such children

1.1 Brief description of judicial system and institutions

Legislative Framework

The **Administration of Justice Act** (*Retsplejeloven*) governs procedures[4] that relate to civil, commercial, family law and labour law matters. Except for certain specific provisions referred to in this report, when it comes to the involvement of children in civil judicial proceedings, the same rules apply to children as to adults.

Besides the above-mentioned Act, special laws regulate substantive law issues that determine the treatment of children in civil judicial proceedings (e.g. terms and legal concepts, such as the concept of capacity to act). The most relevant laws are: the **Act on Parental Responsibility** (*Forældreansvarsloven*), the **Act on Guardianship (*Værgemålslov*)**, the **Act on Liability for the Damages of Children (*Lov om hæftelse for børns erstatningsansvar*)**, the **Act on Social Services (*Serviceloven*)**, **The Act on Legal Protection and Administration in Social Matters**, the **Act on Court Fees (*Retsafgiftloven*)**, the **Act on Administration of Estates (*Arveloven*)**, the **Act on Limitation (*Forældelsesloven*)**, the **Act on Administrative Procedure (*Forvaltningsloven*)** and the **Act on Discrimination in the Labour Market (*Lov om forbud mod forskelsbehandling på arbejdsmarkedet*)**.

Denmark ratified the United Nations Convention on the Rights of the Child in 1991. The Convention is not directly transposed into Danish law but according to case-law, the Convention applies at the same level as Danish legislation.

Institutional framework

There are no specialised institutions dealing with children in civil judicial proceedings.

A Children's Office at the Danish Parliamentary Ombudsman was established in November 2012[5], 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.

As a main rule, the Danish legal system is based on the presumption that judges and bailiffs are 'generalists'. Thus, no specialised judges or bailiffs are involved in proceedings that concern children. This also implies that regardless of the type of case in Denmark, ordinary courts proceed. 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[6].

Ordinary civil courts are organised into a hierarchical order and the courts that adjudicate at the lowest level are the district courts. A civil case can be filed in 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

[4] Administration of Justice Act (***Retsplejeloven***), section 224 to 683.
[5] Children's Office at the Danish Parliamentary Ombudsman.
[6] Section 170(1) of the Act on Social Services (***Serviceloven***).

businesses. Associations, estates of deceased persons and bankruptcy estates as well as public authorities may also be parties to civil cases. 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, 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 in 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 yet 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 instance court in Denmark. The Supreme Court is located in Copenhagen, and it hears appeal cases against the decisions of higher courts. If a case has begun at a higher court, 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 brought before the Supreme Court.

As the highest instance court, the Supreme Court, through its rulings, sets guidelines that district courts and higher courts should respect while adjudicating in the future. Consequently, it can be concluded that the Supreme Court's rulings serve interpretive purposes 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 a child.

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[7] and lead to administrative decisions. The decisions can be appealed to The National Appeals Board, but cannot be brought before the civil courts.

Relationship between civil/administrative, and civil/criminal proceedings

In social law cases the relationship between civil and administrative proceedings is close and is regulated in detail. It is an administrative authority, i.e. the children and young persons committee that makes the 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[8]. The Children and Young Persons Committee consists of a judge, two educational/psychology experts and two members of the municipal council.[9] Parents and the child above 12 years of age can complain about such decisions to the administrative National Social Appeals Board[10]. A decision from this Social Appeals Board can finally be brought to the civil courts[11]. In these special cases on, for example, forced removal of a child, a child aged 12 or over is considered as a party to the case and therefore has procedural legal capacity to act just like his/her parents[12].The child has the right to free legal assistance[13] and the right to be assisted by an advisor [14].

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7 **Section 40 of the Act on Parental Responsibility (*Forældreansvarsloven*).**
8 **Section 74 of the Act on Social Services (*Serviceloven*).**
9 **Section 19 of the Act on Legal Protection and Administration in Social Matters (*Retssikkerhedsloven*).**
10 **Section 168 of the Act on Social Services (*Serviceloven*). National Social Appeals Board.**
11 **Section 169 of the Act on Social Services (*Serviceloven*).**
12 **Section 170(3) of the Act on Social Services (*Serviceloven*).**
13 **Section 72 of the Act on Social Services (*Serviceloven*).**
14 **Section 48 a of the Act on Social Service (*Serviceloven*).**

Except for the above, there are no other provisions relevant in the context of this study that regulate the relationship between administrative and civil judicial proceedings.

With respect to the potential conflicts of responsibilities between various courts, the competences are distributed in a way that victims of crime can make a civil claim for compensation for damages during the criminal trial. Such claims will be dealt with during the criminal case according to rules governing the criminal procedure[15]. In other words, Danish legislation does not allow for the running of criminal and civil procedures in parallel, as disputes are either dealt with within civil or criminal procedures.

Training and regular vetting of professionals dealing with children

Judges do not receive specialised training on how to treat children[16]. However, in social law cases concerning, for example, forced removal and placement of a child in care, the district court is assisted by two assessors who are experts in, respectively, child welfare and child or youth psychiatry or psychology.[17] Officials working for the Danish public administration may have specialised in working with children and young persons as part of their initial training. Furthermore, an extensive number of courses aimed at municipal council caseworkers, etc., are offered through The National Board of Social Service (*Socialstyrelsen*). These include courses at diploma and masters level. There are no special training requirements for lawyers dealing with children but they may have specialised in working with children and young persons through training and/or experience. There are no special training requirements for court bailiffs, who carry out the enforcement of family cases. Court bailiffs carry out many forms of enforcement including the enforcement of monetary claims but are not specially trained in handling cases on children.

Although all child conversations will be led by a child expert, judges and child experts have expressed a wish to get courses on communicating with children and on how children express themselves to increase their level of competence and to update their knowledge in the area[18].

A broad range of public authorities, NGOs, associations and private institutions are obliged under Danish law to vet prospective employees/volunteers in regular contact with children[19]. Vetting (*Børneattest*) concerns criminal convictions of sexual abuse.

1.2 General approach towards children under civil law: definition of child, principle of evolving capacities, best interests of the child, principle of non-discrimination

Definition of the term child

In Denmark, persons under the age of 18 are considered as children. Children do not have the right to vote and due to their lack of full legal capacity to act they are not entitled to decide on personal and property matters[20]. Parents having custody over their child are considered as the guardians of the child's interests until he/she reaches 18 years of age[21].

The principle of non-discrimination

Special anti-discrimination rules apply to labour law relations, which prohibit discrimination on the grounds of age. However, in accordance with the applicable rules, the fact that an employee is younger than 18 years old can give rise to, for example, differentiated working conditions, different

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15 Section 991 to 996 of the Administration of Justice Act.
16 Information collected through consultation with a city court judge.
17 Section 170 of the Act on Social Services (*Serviceloven*).
18 Research Department of the Ministry of Justice, Act on Parental Responsibility– the perspective of the child, in Department of Family Affairs, Evaluation of the Act on Parental Responsibility (2011), page 57(*Justitsministeriets forskningsenhed, Forældreansvarsloven – Belysning af barnets perspektiv, i Familiestyrelsen, Evaluering af forældreansvarsloven – Bilag (2011), side 57*).
19 Act on Criminal Records Disclosures (*Børneattestloven*).
20 Section 1 of the Act on Guardianship (*Værgemålsloven*).
21 Section 2 of the Act on Guardianship (*Værgemålsloven*).

salary and different hiring and dismissal conditions[22]. These rules imply that legislation does not prohibit all kinds of discrimination against children on the labour market.

Complaints against discrimination on the labour market on the grounds of age can be submitted to the administrative Board of Equal Treatment[23]. The Board of Equal Treatment has issued a number of decisions on cases where parents have complained on behalf of their children. The Board has only dealt with one case where the complainant was below 18 years of age. The case dealt with a 17 year old young man who complained about his salary. The Board has not assessed in this or other decisions the question of whether children can file complaints to the Board or not[24].

Under Danish law, children who are older than 15 years of age can control what they have acquired through their own work (salary, etc.). However, they can only enter into an employment contract validly if they have the consent of their parents or guardians[25].

In areas other than the ones regulated by labour law, there are no special rules protecting children from discrimination[26].

Within the public sector the general principle of equality applies. The general principle of equality in public law is an unwritten principle of law, as it is not defined in legislation, but it is understood to cover the general requirement of ensuring equal treatment in the public sector. The principle is relevant for employees working in the public sector and for people and users of public services. The principle of equality does not list a specific number of anti-discrimination grounds.

Children who experience unfair treatment including discrimination in the public sector in Denmark can submit a complaint to the Children's Office at the Danish Parliamentary Ombudsman. All children of all ages can submit a complaint by themselves to the above mentioned office. Complaints can be submitted via a complaint form on the website, in the form of ordinary mail, via telephone or in person. Furthermore, children above 15 years of age can submit a complaint via secure email[27].

Danish anti-discrimination legislation does not provide extra protection (by way of specific anti-discrimination rules) for the most vulnerable children.

The best interests of the child

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.

Exceptions are found in the Act on Social Services, which contains substantive law provisions requiring support for a number of different groups including 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 [28]. 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. The support aims to ensure 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.[29]

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[22] Act on Prohibition of Discrimination on the Labour Marked (*Lov om forbud mod forskelsbehandling på arbejdsmarkedet*) etc.
[23] Board of Equal Treatment.
[24] Information provided in an e-mail from the Secretariat of the Board August 29, 2013.
[25] Section 42 of the Act on Guardianship (*Værgemålsloven*).
[26] Act on Prohibition of Discrimination on the Labour Marked (*Lov om forbud mod forskelsbehandling på arbejdsmarkedet*) etc.
[27] Children's Office at the Danish Parliamentary Ombudsman.
[28] Section 46 of the Act on Social Services (*Serviceloven*). Danish Institute for Human Rights: Børn - Status 2012.
[29] Section 46 of the Act on Social Services.

Another exception under the general rules lies within family law legislation e.g. legislation on parental responsibility[30].

In 2007, the new **Act on Parental Responsibility** took effect. Since the adoption of the Act, many more resources have been allocated to the clarification of the child's perspective, including through the use of child experts in civil court proceedings[31]. The **Act on Parental Responsibility**[32] requires the involvement of children in the assessment of their best interests. This involvement can take place by interviewing the child with the help of a child expert, by conducting a child welfare investigation or in other ways through which the child's best interests could be defined. The interviewing of children in civil judicial proceedings on parental responsibility always takes place with the involvement of a child expert, who guides the interview. The child expert can also conduct the interview without the judge[33]. The aim of the child's interview is to clarify the situation of the child. A small report is prepared after the child is interviewed[34]. The parties must be aware of the main content of the interview, unless there are paramount considerations speaking against it[35]. If the interviewing of a child does not seem to be appropriate, a special child investigation can be initiated leading to a statement describing the situation of the child. This is often the case when the child is not old enough.

The **Act on Parental Responsibility**[36] introduced an important change in accordance with which parents could be forced to share the custody of their child, if no compelling grounds exist. Thus, parents can be compelled to share custody despite their disagreement. The latest amendment to the Act entered into force on 1 October 2012[37]. According to this amendment it is still possible to force the parents to share custody of their child, unless it is assumed that the parents cannot cooperate, and shared custody is not in the child's best interests[38].

In its introductory provisions, the **Act on Parental Responsibility** contains an explicit and general requirement that all decisions taken pursuant to the Act must be based on the child's best interests[39]. The Act on Parental Responsibility also requires that in all matters relating to the child, the child's own views must be taken into consideration, depending on the child's age and maturity[40]. The obligation to safeguard the best interests of the child is also embedded in other provisions of **The Act on Parental Responsibility**. The concept of 'the child's best interests' is not defined in the act as such. However, guidance on the interpretation of this concept is found in the act itself, in the preparatory works and in associated guidelines. It notably follows from the preparatory works that the concept of 'the child's best interests' reflects Article 3 of the United Nations Convention on the Rights of the Child on the Rights of the Child and is always to be understood as an obligation to seek the best conceivable solution for the individual child concerned. This implies that an individual assessment must be carried out taking into account all relevant factors and particular circumstances relating to the individual child, including the child's own views and opinions as well as any expert views. Based on this global assessment the best interests of the individual child must be established in each case[41]. It follows from the legislative history of the act that children as young as seven years old should be heard in cases that concern them. This is, however, not a statutory age limit, which implies that children younger than seven years old may also be heard by the court if they are considered to be mature enough.

With regard to the assessment of the best interests of more than one child, the Act on Social Services requires that in case of a compulsory removal of a child, the child should be placed in the same home as his/her siblings. The only exceptions are when the needs of the siblings or the child, or other essential circumstances, warrant otherwise. [42].

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30 Act on Parental Responsibility (*Forældreansvarsloven*).
31 Information collected through consultation with a High Court judge.
32 Section 34 of the The Act on Parental Responsibility (*Forældreansvarsloven*).
33 Section 450c of the Administration of Justice Act (*Retsplejeloven*).
34 Information collected through consultation with a High Court judge.
35 Section 450c of the Administration of Justice Act (*Retsplejeloven*).
36 Section 11 of Act on Parental Responsibility (*Forældreansvarsloven*).
37 Act on Parental Responsibility (*Forældreansvarsloven*).
38 Section 11 of the Act on Parental Responsibility (*Forældreansvarsloven*).
39 Section 4 of Act on Parental Responsibility (*Forældreansvarsloven*).
40 Section 5 of Act on Parental Responsibility (*Forældreansvarsloven*).
41 Pia Deleuran and Bente Holm Nielsen, *The Woman's Share in the Reproductive Chain*, Chapter 8, in Ruth Nielsen & Christina D. Tvarnø (eds.), Scandinavian Women's Law in the 21st Century (2012).
42 Section 68b(3) of the Act on Social Services (*Serviceloven*).

The child's evolving capacity

The **Act on Parental Responsibility**[43] states that in all cases, depending on the age and maturity of the child, his/her point of view must be taken into consideration. The child's views will be taken into account if he/she is found to be mature enough. Danish legislation does not link maturity with a specific age. It follows from the legislative history of the **Act on Parental Responsibility** that children as young as seven years old should be heard in cases that concern them. However, it is not a statutory threshold, which implies that children younger than seven years of age can be interviewed along with their older siblings. This, however, is considered an exceptional occurrence and it is unthinkable that a very young child (e.g. child of 5 years old) would be interviewed alone[44]. In accordance with the **Act on Parental Responsibility**, the evolving capacity of the child must be respected while deciding on the custody and residence of the child as well as on the interaction between the child and the parents.

Similar concerns are reflected in the regulation of support for children with special needs in the Act on Social Services. The act specifies that the child or young person must be consulted before the municipal council, the Children and Young Persons Committee or the National Social Appeals Board make a decision on, for example, placement of the child or young person in care.[45] Especially where children are concerned, the consultation should be conducted in a manner appropriate to the child's age, maturity and the nature of the case.[46] The consultation may be conducted without the consent and presence of the parent where this is in the best interests of the child or young person. The consultation may be dispensed with if factors such as the maturity of the child or the nature of the case strongly suggest that the decision should be made without prior consultation. In that case, other steps should be taken to establish the child's position on the proposed decision. [47]

Legislation applicable to disputes other than those listed above does not contain a legal requirement with respect to the assessment of the child's evolving capacity.

[43] Section 5 of the Act on Parental Responsibility (*Forældreansvarsloven*).
[44] Information collected through consultation with a High Court judge.
[45] Section 48 and 50(3) of the Act on Social Services (Serviceloven).
[46] Section 284 of the Guidance on Special Support for Children, Young Persons and the Families (*Vejledning om særlig støtte til børn og unge og deres familier*).
[47] Section 48 and 50(3) of the Act on Social Services (*Serviceloven*).

2 Child-friendly justice in civil judicial proceedings

2.1 The child as an actor in civil judicial proceedings

General rules applicable to the parties (plaintiff and defendant)

In Denmark, any person has the capacity to be the subject of legal claims. This is called material legal capacity. Any physical person has this capacity regardless of his/her age. For example, in an inheritance case, a foetus can be a party to the case[48].

The ability to perform procedural actions in legal proceedings is called procedural legal capacity to act. As a rule, only adults have this procedural ability in legal proceedings. Children have material legal capacity, but as a general rule lack procedural capacity to act and therefore cannot take procedural actions in their own right[49].

Persons under 18 years of age are subject to parental custody[50]. Married children constitute an exception to the general rule[51], as they are considered as adults and have full material legal capacity as well as procedural legal capacity to act and can participate in civil judicial proceedings in their own right.

A child may be a party in a civil law suit (as he/she has material legal capacity), but due to his/her lack of procedural capacity to act, his/her parent or guardian acts on the child's behalf and decides on procedural matters. As a general rule, the child is represented by his/her parent. An exception is when the child is not under parental authority; then the child's representation falls under the responsibility of a guardian[52].

In social law cases of, for example, forced removal and placement into care, children and young persons aged 12 or above have the right to complain to the National Social Appeals Board over a decision made by the Children and Young Persons Committee.[53] They may also require the decision of the National Social Appeals Board to be brought before the courts.[54] The child or young person has a right to free legal assistance as well the support of a third person advisor in these cases.[55]

In special cases on paternity, children are regarded as parties to the case and have the legal procedural capacity to act regardless of their age[56]. If there is a need for it, the court will appoint a lawyer for the child in these cases[57].

The parent or the guardian must ask a child who is above 15 years of age before making decisions on important matters, and thus also before acting and deciding on important procedural matters in the individual court case[58].

Furthermore, in cases concerning court examination of decisions made by the State administration on adoption without prior consent from the biological parents, the child is also a party to the case and therefore possesses procedural legal capacity. The court appoints a lawyer for the parties and may decide to appoint a guardian for the child. The guardian then becomes a party to the case instead of the child[59]. The court is responsible for the preparatory inquiry and disclosing of the case[60].

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48 Section 5 of the Act on Inheritance (*Arveloven*).
49 Section 257 of the Administration of Justice Act (*Retsplejeloven*).
50 Section 1 of the Act on Parental Responsibility (*Forældreansvarsloven*) and section 1 of the Act on Guardianship (*Værgemålsloven*).
51 The legal minimum age for marriage is 18 years of age. The local municipality may grant an exemption and allow marriage of young persons between 15 and 18 years of age.
52 Section 50 of the Act on Guardianship (*Værgemålsloven*).
53 Section 168 of the Act on Social Services.
54 Section 169 of the Act on Social Services.
55 Section 72 and 48a of the Act on Social Services.
56 Section 456e of the Administration of Justice Act (*Retsplejeloven*).
57 Section 456g of the Administration of Justice Act (*Retsplejeloven*).
58 Section 26 of the Act on Guardianship (*Værgemålsloven*).
59 Section 475c of the Administration of Justice Act *(Retsplejeloven).*
60 Section 475e of the Administration of Justice Act *(Retsplejeloven).*

Married children have full procedural capacity to act and therefore can file lawsuits and participate in civil judicial proceedings in their own right.

The court may dismiss the case immediately if it appears from the pleadings or other available information that a party is under 18 years of age[61].

When a child attains the age of 18 during a civil proceeding, he/she gains full procedural capacity to act and can decide on procedural matters on his/her own behalf.

In practice, it is rare that Danish courts adjudicate in civil cases involving children as plaintiffs or defendants[62].

The child as a plaintiff

In accordance with the general rules described above, a child may have the status of plaintiff, but due to his/her lack of procedural capacity to act, cannot independently bring a case before domestic courts in his/her own name[63]. 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.

Even though parents or guardians represent the child in court cases, they may not, without the consent of their child, initiate legal proceedings relating to property rights that the child can dispose of, e.g. an inheritance[64]. The same is true if the dispute relates to a valid contract which the child has concluded in his/ her own name[65]. Finally, the parents must ask children above 15 years of age before bringing an important matter before the court or before taking an importance procedural action[66].

The child as a defendant

In accordance with the general rules described above, a child can be sued under Danish law. There is no minimum age. Children of all ages can be sued, thus children as young as four or five years old can be held accountable for damage they have caused depending on the circumstances (according to Danish law the child must have acted more carelessly than a reasonable child of the same age would have acted). 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[67].

If a child can be blamed for damage caused by negligence, the person who has been affected by the damage can claim compensation of up to DKK7,500 (EUR1,000) from the person, who has parental custody over the child. This is the case, even if the person with parental custody over the child cannot be blamed for the damage (for example it was not the fault of the person as the person fulfilled his/her obligations related to the supervision of the child). The persons are only liable for a maximum of DKK7,500 (EUR1,000) for each wrongful act or omission. If the compensation claim is higher, the child must pay the rest. In general, the responsibility of the child is not transferred to his/her parents. If the parents can be blamed for the damages caused (e.g. in cases where the lack of supervision of the child led to the damage), they may independently be held liable for the full amount of compensation of the damage caused by their child. [68]

The child as a witness

Everybody – including children - is obliged to testify in a court procedure if he/she is invited by the court to attend as witnesses[69]. An agreement of a parent/guardian is not necessary for the

[61] **Section 258 of the Administration of Justice Act (*Retsplejeloven*).**
[62] **Information collected through consultation with judge of Eastern High Court.**
[63] **Section 257 of the Administration of Justice Act (*Retsplejeloven*).**
[64] **Section 257 of the Administration of Justice Act (*Retsplejeloven*).**
[65] **Section 257 of the Administration of Justice Act (*Retsplejeloven*).**
[66] **Section 26 of the Act on Guardianship (*Værgemålsloven*).**
[67] **Section 257 of the Administration of Justice Act (*Retsplejeloven*).**
[68] **Section 1 of the Act on Liability for Damages of Children (*Lov om hæftelse for børns erstatningsansvar*).**
[69] **Section 168 of the Administration of Justice Act (*Retsplejeloven*).**

participation of the child in the proceedings as a witness. There is no minimum age limit in this regard in the Danish legislation.

Close relatives of a party to a case (including children) are not obliged to testify during the actual proceedings[70]. Danish legislation does not specify other conditions under which a child could refuse to testify.

The civil courts decide on how witnesses under 15 years of age should be questioned and by whom[71]. 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. The Court may give compensation to such representative. For children who are at least 15 years old but are younger than 18 years old, no such special rules apply.

In practice, it is very rare that children below 18 years of age are invited to attend as witnesses in civil judicial proceedings[72].

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, defendants or witnesses. Most of the cases deal with children in various forms of family conflicts. In cases on custody and residence, both parents of the child will be parties to the case and have the power to ask for a decision from the civil courts. The child is not an autonomous party to a family case and does not have the powers of a party.

A conflict on custody and residence of a child is initially dealt with by the regional state administrations. The regional state administration will call the parents to a meeting and try to help the parents to come to an agreement about custody or residence. The regional state administration will offer the parents child-welfare counselling or family mediation. If an agreement has not been reached and if one of the parents requests it, the regional state administration will conclude the case and bring it before the civil court[73]. It is the parents who are parties to the judicial proceeding, and the civil courts will review the cases in entirely new proceedings. No final decision is taken by the regional state administration.

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 and are rarely invited by the courts to the actual hearing[74].

Section 35 of the **Act on Parental Responsibility** confers a right on a child who has reached the age of 10 to take direct contact with the State Administration to call the parents for a meeting about custody ('the child's right of initiative')[75]. This rule confers on children the power to initiate a family law case with the regional State Administration. The purpose of this rule is to reinforce the parents' and authorities' focus on the needs of children - in particular the need of older children - to express their views and feelings in this type of case, the ultimate aim being to ensure that the child is seen and heard. The child does not have the status of an actual legal party to the case. That status will belong to the child's parents.

Chapter 5 of the **Act on Parental Responsibility** regulates interim measures regarding children. The child cannot initiate such interim measures but the parents can. Most often the interim measures deal with interim custody and residence in cases where one of the parents wants to move to another city or country. The interim measures are imposed by the regional state administrations and can be brought to the civil courts[76]. Additionally, in cases of interim measures the best interests of the child must be taken into account[77].

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70 **Section 171 of the Administration of Justice Act (*Retsplejeloven*).**
71 **Section 183(3) of the Administration of Justice Act (*Retsplejeloven*).**
72 **Information collected through consultations with a city court judge and a High Court judge.**
73 **Section 40 of the Act on Parental Responsibility (*Forældreansvarsloven*).**
74 **Information collected through consultation with a city court judge.**
75 **Section 35 of the Act on Parental Responsibility (*Forældreansvarsloven*).**
76 **Section 26 of the Act on Parental Responsibility (*Forældreansvarsloven*).**
77 **Section 34 of the Act on Parental Responsibility (*Forældreansvarsloven*).**

Before any special support measures can be put in place, and a child for instance is placed outside the family home, the municipal council must normally perform a child protection examination[78]. This examination must include a consultation with the child. The consultation may be dispensed with if factors such as the maturity of the child or the nature of the case strongly suggest that the decision should be made without prior consultation. If the consultation cannot be conducted, steps shall be taken to establish the views of the child. The consultation may be conducted without the consent and presence of the custodial parent. The Act on Social Services furthermore specifies that the child has the right to a third party advisor.

2.2 Provision of information

General rules applicable regardless of the role of the child in civil judicial proceedings

With respect to the provision of information, there are no child-specific provisions in Danish legislation, which implies that generally the same rules apply to children as to adults. Section 73 of the Act of Social Services does, however, state that the municipal council must notify the custodial parent and the child aged 12 and above about the right of access to records provided for under the Public Administrations Act and the right to be heard before decisions are taken on e.g. forced removal of a child, medical examination and treatment without the consent of the custodial parent.

There are no general rules obliging the authorities to provide information to children in a child-friendly manner. However, the Children's Office at the Danish Parliamentary Ombudsman, The National Social Appeals Board and the National Council for Children, provide information for children and young persons in a child-friendly manner on their websites.[79] The National Council for Children has also published short booklets on the rights of children placed in care outside the home aimed at children and young persons. Moreover, the Danish Government helps fund a toll-free phone line for children operated by the non-governmental organisation Children's Welfare in Denmark. This NGO also runs a state-funded advisor programme that provides third party assistance to children in social law cases under the Act on Social Services.

The child as a plaintiff

Child plaintiffs participate in civil judicial proceedings as parties to the case but without procedural legal capacity to act. This is also the case with respect to child employees in connection with their employment contract. Married children constitute an exception to this rule, as they have both material and procedural legal capacity to act[80]. (See **Section 2.1**) Parents or guardians will represent their children in procedural matters[81] and will appoint a lawyer, if this is deemed to be necessary. A child cannot obtain a procedural legal capacity to act by hiring a lawyer on his or her own.[82]

Information to parties and lawyers on how to make a writ can be found on the general website of the Danish Courts[83]. The parents, guardians or their lawyer must communicate all information to the child, including information on legal remedies, as the parents or guardians represent their children in procedural matters.

Children do not receive information about the civil judicial proceedings in their own right. If the court needs to provide information to the child during a civil case, it is only obliged to provide the information to the parents, guardians or their lawyer and not to the child.

The child cannot request information during the civil judicial proceedings in his/her own right. Requests on behalf of the child are filed by his/her parent, guardian or lawyer. There are no specific provisions for specific age groups in this respect.

Danish legislation does not provide special protection to children who reside in a different Member State.

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78 **Section 48, 50 and 52 of the Act on Social Services (Serviceloven).**
79 **Children's Office at the Danish Parliamentary Ombudsman and Appeal Board website.**
80 **Section 1 of the Act on Guardianship (*Værgemålsloven*).**
81 **Section 257(1) of the Administration of Justice Act (*Retsplejeloven*).**
82 **Bernard Gomard og Michael Kistrup, Civil proceedings (*Civilprocessen*) (2007), page 356.**
83 **Civil Courts: information on case procedures.**

In Denmark, child plaintiffs do not receive child-friendly materials from the courts[84]. Moreover, there are no child-friendly websites explaining the main characteristic of civil judicial proceedings. Neither Danish law nor the courts have established specific measures to ensure that children receive information on the availability of support services or organisations which can provide support to them[85].

The child as a defendant

Children can act as defendants in civil judicial proceedings. As described above, as a main rule they do not have procedural legal capacity to act. This means that their parents or guardians will represent them during the course of the proceedings.

If the child has two parents, a writ against the child must be proclaimed to both parents[86]. It is the parents or guardians who must inform the child of the writ.

The child as a witness

When the child acts as a witness, he/she will be invited by the court to testify by means of a subpoena. Subpoenas are not served on the child directly, but on his/her guardian or parents. Information provided to the parents is not an alternative to providing information to the child – it is the only way to provide information. Therefore subpoenas are not written in a child-friendly language. Although it is not spelled out in Danish legislation, in practice, it is the obligation of the child's parent or guardians to explain to the child the information contained in the subpoena.

All witnesses, including both adults and children, are provided with a range of information including the following[87]:

1. Adequate description of the rights and obligations of the witness;
2. Indication of the purpose of the invitation;
3. The location of the court;
4. The time and place of the trial;
5. Information about the notice period the witness is entitled to;
6. Information on the legal consequences of non-appearance.

Under Danish law, witnesses are not entitled to request information from courts.

Child witnesses above 15 years of age are subject to a duty to testify and in the worst case they can be detained if, for example, they do not want to say anything during questioning in court[88]. Children below 15 years of age are not subject to such sanctions as they are below the age of criminal responsibility.

The court decides on how and by whom child witnesses below 15 years of age should be questioned. The court can call in a representative from the local municipality to assist the child witness during the questioning[89]. The court will inform the parents or the guardians if such measures are taken and the parents/guardians must give the information to the child.

Witnesses, including child witnesses, residing in a different Member State do not receive information on special arrangements.

It is not a legal requirement in Denmark to provide child witnesses with child-friendly materials about their role in the civil judicial proceedings.

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84 **Information collected through consultation with a High Court Judge.**
85 **Information collected through consultation with a High Court Judge.**
86 **Section 157(1) of the Administration of Justice Act (*Retsplejeloven*).**
87 **Section 175 of the Administration of Justice Act (*Retsplejeloven*).**
88 **Section 178 of the Administration of Justice Act (*Retsplejeloven*).**
89 **Section 183(3) of the Administration of Justice Act (*Retsplejeloven*).**

The child in any other role

Family cases are the most typical civil cases involving children. However, in practice children almost never participate in the actual court hearings[90].

In family law cases, a conversation between the child, an expert specialising in children, and the judge normally takes place prior to the trial and in a separate room from that of the trial[91]. The purpose of this conversation is to allow the child to talk to the judge and the child expert about his/her situation with the parents. There are no rules obliging the judge or the child expert on behalf of the court to explain to the child in a child-friendly manner at a later stage the outcome of the court hearing and the judgement.

In family law cases, the parents or guardians must provide the children with the relevant information. The children do not receive information directly from the courts.

In social affairs cases, the municipal council has a duty to inform the child, as mentioned in **Section 2.1**. Furthermore, the child in general has the right to a third party advisor and, in some cases, has the right to free legal counsel.

2.3 Protection of the child's private and family life

General rules applicable regardless of the role of the child in civil judicial proceedings

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 (closed doors). 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 proceedings could potentially harm somebody, including a child plaintiff, defendant or witness[92]. 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[93]. 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 peace and order in the court[94]. Court proceedings in cases concerning custody of the child are held in camera. Decisions taken in an in 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 judgment. Violation of these prohibitions is punishable by a fine or, under aggravating circumstances, by imprisonment of up to 6 months[95].

In general, in civil court cases including family cases it is not allowed to take photographs or TV-pictures or to transmit sounds from the court proceedings[96]. The media is bound by self-regulatory ethical rules, which regulate the way the media can report on court proceedings. The ethical rules are overseen by the Press Council which is an independent, public tribunal dealing with complaints about the mass media. There are no child-specific rules in the Press Ethical Rules. In general, according to the Press Ethical Rules: "The mention of a person's family history, occupation, race, nationality, creed, or membership of organisations should be avoided unless this has something directly to do with the case"[97]. The Press Council cannot impose a sentence on mass media or assure the complainant financial compensation. The Press Council can express its criticism and may direct the editor to publish the decision of the Council to an extent specified by the Council.

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90 **Information collected through consultation with a High Court judge.**
91 **Section 450a of the Administration of Justice Act (*Retsplejeloven*).**
92 **Section 29 of the Administration of Justice Act (*Retsplejeloven*).**
93 **Section 29 of the Administration of Justice Act (*Retsplejeloven*).**
94 **Section 29d of the Administration of Justice Act *(Retsplejeloven).***
95 **Section 453 of the Administration of Justice Act (*Retsplejeloven*).**
96 **Section 32 of the Administration of Justice Act (*Retsplejeloven*).**
97 **The press ethical rules.**

Protection of personal data, including sensitive personal data, is governed by the **Act on Personal Data (*Persondatalov*)**, which implements the Data Protection Directive[98]. Furthermore, all public servants must abide by a rule of confidentiality[99]. All public servants are also subject to a duty of notification to the local municipal board in case they become aware of a child who, for example, has suffered violence or other kinds of abuse[100].

Children, who are not considered as parties in a judicial proceeding, do not have access to all records or documents that are submitted to the courts. A child could, however, on his/her own – or through the legal representative – request access according to the general rules on public access to documents in the Administration of Justice Act. The child could also invoke the right of access according to the Act on Personal Data. Documents filed to the court can be consulted by the child's legal representative on the child's behalf[101].

As a general rule, individuals do not have the possibility to refuse – or otherwise challenge – the decision of a public authority or court to grant public access to documents to other individuals. However, in court proceedings access to documents is, as a general rule, quite limited if the requesting party is not a party in the case[102].

The Act on Personal Data provides that any person who has suffered injuries as a result of the controller processing data contrary to the rules in the act must have the right to damages. The law also provides for criminal sanctions for non-compliant processing[103].

No information has been found as to steps taken to, for example, avoid the generation of conflicts between parent(s) and the child regarding the judicial proceedings on family relations.

The child as a plaintiff

The general rules described above apply.

The child as a defendant

The general rules described above apply.

The child as a witness

The general rules described above apply.

The child in any other role

Besides the general rules described above, in civil court cases on custody and residence of a child a conversation between a child expert, the child and possibly the judge takes place before the court hearing. The judge will initiate this child conversation and inform the parents or guardians who will then inform the child that the child conversation will take place. The main content of this conversation is disclosed to the parties of the case, who are typically the parents of the child. Disclosing the content of this discussion to the parents of the child might generate conflicts between the child and his/her parents. Thus if it is in the best interests of the child, the court may decide that the parents will not be given insight into the content of the conversation with the child[104].

In cases on parental custody the trials are always held in camera, meaning that names cannot be disclosed and no one can be present and listen in the courtroom during the proceedings[105].

In cases on forced removal of a child, the court can decide that disclosure of the court proceedings or the court decision may not disclose the name, position or residence of the people implied in the

[98] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.
[99] Section 27 of the Act on Administrative Procedure (*Forvaltningsloven*).
[100] Section 153 of the Act on Social Services (*Serviceloven*).
[101] Information provided in writing by Danish authorities.
[102] Section 41-41h of the Administration of Justice Act.
[103] Section 69-71 of the Act on Personal Data.
[104] Section 450c of the Administration of Justice Act (*Retsplejeloven*).
[105] Section 453 of the Administration of Justice Act (*Retsplejeloven*).

case or in any other way reveal their identity. Violations of these prohibitions are punishable by a fine. [106]. However, although the names of the parties to the case cannot be disclosed, the doors are open in the sense that relatives and others can listen to the proceedings[107]. Decisions on protection of private life and on hearings behind closed doors etc., in cases of parental custody and forced removal are taken automatically by the judge.

2.4 Protection from harm and ensuring a child friendly process

General rules applicable regardless of the role of the child in civil judicial proceedings

As a general rule, Danish legislation does not contain reference to measures which are in place to protect children from harm during the civil judicial proceedings.

Judicial authorities or courts are not encouraged or required to take provisional decisions or make preliminary judgments where children are concerned.

Under Danish law, cases involving children are not subject to a special fast-track procedure.

Danish law does not contain the requirement of ensuring that premises and places where children are heard are child-friendly.

However, the court is competent to appoint a representative to assist child plaintiffs and witnesses, if it is considered necessary.

Besides the rules applicable to in camera hearings, which are described above under **Section 2.3**, there are no other legal provisions in place to protect children from harmful images and information.

There are no legal requirements in place to avoid the presence of children during the civil judicial proceedings. However, as described under **Section 2.1.**, children, regardless of their role, are rarely present during court proceedings.

Danish law does not oblige courts to adapt the procedure (e.g. its language or lengths) to the child's pace and attention span or the communication difficulties that a child might have.

It is noted that in some cases differentiated rules apply to children in other roles. Where such rules exist they are stated below under the relevant bullet.

The child as a plaintiff

The general rules described above apply.

The child as a defendant

The general rules described above apply.

The child as a witness

Besides the general rules described above, Danish law contains child-specific rules relevant for child witnesses only.

In order to provide assistance to child witnesses who are under 15 years of age during the hearing of the child, the court may appoint a representative from the local municipality or another appropriate person[108].

[106] **Section 473 of the Administration of Justice Act (*Retsplejeloven*).**
[107] **Section 473 of the Administration of Justice Act (*Retsplejeloven*).**
[108] **Section 183(3) of the Administration of Justice Act (*Retsplejeloven*).**

The child in any other role

In cases on custody and residence of the child, the court may appoint a child expert to participate in the preparatory meetings preceding the actual court proceeding[109]. In order to settle the case out-of-court proceedings, i.e. via court mediation, the court can ask the child expert to hold meetings with the parents and the child (child conversation) and collect relevant information, for example from child care institutions or the school.

If a settlement is not reached during court mediation, another child expert may be asked by the judge to carry out an investigation. In such an investigation the child expert will have conversations with the child, the parents and other relevant individuals from child care institutions, schools, etc. After that, a report is written, which can be used as evidence in the actual court proceeding[110].

Despite the general principle that the parties have free access to provide evidence to the court, in practice, parents or guardians have no possibility to doubt or question the child expert or the report from the child expert. Attorneys of the case are not allowed to call in witnesses to, for example, provide a "picture" other than the picture that has been drawn up by the child expert.

In the court hearing, the child expert will express what he or she finds to be the perspectives and best interests of the child. This opinion from the child expert will often form the primary basis for the decision by the judge[111].

If a family court case on custody or residence of the child involves serious parental conflict and therefore there is a risk of causing harm to the child, the court may appoint a person to assist the child during the proceedings[112]. The assisting person can access the files of the case and be present during meetings and the actual court proceedings. The assisting person's job is to assist and monitor the child and to defend his/her interests during the proceedings. In practice, it is rare that such an assisting person is appointed and the child has no right to request such an assisting person.

Under Danish law, family law cases involving children are not subject to a special fast-track procedure. It is noted, however, that in practice, judges and other actors involved in family law cases are often in favour of shortening the period of time for setting the date of the actual court hearing in order to reduce the burden of court cases on children[113]. In the two High Courts (See **Section 1**), a special fast track procedure has been established in practice. The aim of the procedure is that 55% of the cases must be adjudicated within a maximum of four months and that 85% of the cases must be adjudicated within a maximum of six months[114]. A few cases take longer, e.g. if a child evaluation has to be initiated. In the city courts the cases may take longer than 4-6 months. This is the case even though the city courts prioritise cases involving children. The reason is that city courts more often need to initiate child evaluations than the High Courts.

Chapter 5 of the **Act on Parental Responsibility** (*Forældreansvarsloven*) regulates interim measures regarding children (for example temporary custody and temporary residence). The child cannot initiate such interim measures but the parents can. Most often the interim measures deal with custody and residence in cases where one of the parents wants to move to another city or country[115]. In cases of interim measures the best interests of the child must also be taken into account[116].

Chapter 11 of the Act on Social Services states the child's right to a third party advisor in cases of support for children and young persons with special needs (see **Section 2.1.)**

[109] **Section 450 a of the Administration of Justice Act (*Retsplejeloven*).**
[110] **Section 450 b of the Administration of Justice Act (*Retsplejeloven*).**
[111] **Information collected through consultation with a lawyer.**
[112] **Section 450 d of the Administration of Justice Act (*Retsplejeloven*).**
[113] **Research Department of the Ministry of Justice, Act on Parental Responsibility– the perspective of the child, in Department of Family Affairs, Evaluation of the Act on Parental Responsibility (2011), page 57(*Justitsministeriets forskningsenhed, Forældreansvarsloven – Belysning af barnets perspektiv, i Familiestyrelsen, Evaluering af forældreansvarsloven – Bilag (2011), side 57*).**
[114] **Information collected through consultation with a High Court judge.**
[115] **Section 26 of the Act on Parental Responsibility (*Forældreansvarsloven*).**
[116] **Section 34 of the Act on Parental Responsibility (*Forældreansvarsloven*).**

2.5 Protecting the child during interviews and when giving testimony

General rules applicable regardless of the role of the child in civil judicial proceedings

As a general rule, Danish legislation does not contain child-specific measures for the protection of children while giving testimony. However, as stated under **Section 2.4**, when interrogating a child, the court may, amongst others, appoint a representative to assist the child.

At the outset, judges do not have the formal power to allow a child not to testify. However, in practice judges always take the special situation of the child into consideration when deciding on the need of hearing a child.

Except for cases which are linked to parental responsibility (see below the section on child in other roles) and for decisions made under Chapter 11 of the Act on Social Service, it is not a legal requirement to take into account the child's age and maturity while collecting information from him/her.

There are no legal provisions in place regulating the admissibility of information received from children by the courts. This implies that the general rules determining the rights and obligations of adults apply, in accordance with which all relevant information can be provided to the courts[117]. The judge may decide that proof – including a testimony from a child – is deemed to be irrelevant to the proceedings and should not be admitted[118].

No information has been found on limitations of the number of child interviews and their length. In general, no rules regulate who can accompany children during civil judicial proceedings.

The child as a plaintiff

Regarding the interrogation of child plaintiffs, the rules described in **Section 2.4** apply. If a parent or guardian is questioned, the interrogation takes place according to the normal rules on witness interrogation[119].

The child is supported by his/her parents or guardians and lawyer, whose presence is statutory during the hearing of the child.

The child as a defendant

The general rules described above as well as the rules regulating the role of child plaintiffs apply.

The child as a witness

Like adults, children are not obliged to testify against their close relatives or against others if such testimony would cause serious injury to them[120].

Besides the general rules described above, there is one rule specific to child witnesses. In order to provide assistance to child witnesses who are younger than 15 years old during the questioning, the court may appoint a representative from the local municipality or another appropriate person.

When preparing concrete court proceedings, the judge may question the attorneys on whether they think it is necessary to order the hearing of a child witness[121]. Instead of inviting a child to witness at a court hearing, children can be asked to provide a written testimony.

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[117] **Bernard Gomard og Michael Kistrup, Civil proceedings (*Civilprocessen*) (2007), page 223.**
[118] **Section 341 of the Administration of Justice Act (*Retsplejeloven*).**
[119] **Chapter 18 of the Administration of Justice Act (*Retsplejeloven*).**
[120] **Section 171 of the Administration of Justice Act (*Retsplejeloven*).**
[121] **Information collected through consultation with a city court judge.**

The child in any other role

In cases on custody and residence, the civil court is responsible for informing and disclosing the case and the court decides on the provision of evidence (dispositive case)[122]. This means that the judge can, for example, force the parents to testify as witnesses during the court proceedings. The court can also initiate various forms of child expert opinions and expert opinions on parents.

In cases on custody and residence, depending on the age and maturity of the child, his/her own views must be taken into account[123]. This principle is of particular importance and the legislation has been amended in order to provide for the gathering of the child's opinions and views. In cases that concern the custody and residence of the child, courts initiate a conversation with the child in question prior to the actual court hearing (child conversation)[124]. As a main rule, the conversation is held without the presence of the parents. A child expert holds the conversation and the judge may participate. Child conversations are often held in special rooms and the way these conversations take place are rather informal. Sometimes judges show the children around the court house and seek to put them at their ease, e.g. by offering them soft drinks during the actual conversations[125].

In most cases related to Chapter 11 in the Act on Social Services, the child must be consulted before a decision is made, and the child's views must be taken into account[126].

2.6 Right to be heard and to participate in civil judicial proceedings

The child as a plaintiff

As explained under **Section 2.1**, child plaintiffs are represented by their parents or guardians during civil judicial proceedings. However, the fact that children are represented does not exclude them from being heard in their own right. This right is not spelled out in the Danish **Administration of Justice Act**, thus it is up to the judge to decide whether the hearing of the child plaintiff if necessary. The consent of the child's parent or guardian is necessary for the hearing of the child by the court.

Based on the above it can be concluded that in Denmark there are no requirements/policies in place to ensure that child plaintiffs are heard. It is up to the parents and their lawyer to assess whether the child should participate and testify as a party in the court proceedings.

As explained under **Sections 2.1** and **2.2**, the child's parents or guardians and their lawyer are the persons who communicate all information to the child. This obligation of the legal representatives extends to the communication of court judgements as well.

The fact that children cannot act as plaintiffs in the civil judicial proceedings in their own right also determines their involvement in the enforcement phase of the procedure. In other words, the child can only enforce his/her legal rights via his/her parent or guardian (See **Section 2.11**).

Under Danish law it is not a legal requirement to communicate with children in a child-friendly manner. Moreover, Danish legislation does not contain reference to communication techniques used while hearing children. As explained under **Section 2**, courts are not obliged to assess the evolving capacity of child plaintiffs. Giving due consideration to the child's evolving capacity is a legal requirement in case of certain procedures which concern children in other roles only.

There are no legal requirements in place to remove obstacles for child plaintiffs to access courts.

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 a situation constitutes a breach of law, the termination of the running of the limitation period will be suspended until the day that the child learns about the breach of law[127]. A child cannot intervene in a court case

[122] Section 450 b of the Administration of Justice Act (*Retsplejeloven*).
[123] Section 5 of the Act on Parental Responsibility (*Forældreansvarsloven*).
[124] Section 450 c of the Administration of Justice Act (*Retsplejeloven*).
[125] Information provided through dialogue with a city court judge.
[126] Section 48 of the Act on Social Services (Serviceloven).
[127] Section 3(2) of the Act on Limitation (*Forældelsesloven*).

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.

The child as a defendant

The same rules apply to child defendants as to plaintiffs.

The child as a witness

Witnesses, including both adults and children, are not parties to civil proceedings, thus have no formal participation rights during the proceedings.

They are only able to participate and be heard if invited by the court. The rights and obligations of witnesses, including the rules applicable to giving a testimony, are set out in **Section 2.1.** of this report.

Rules applicable to the provision of information to child witnesses are described under **Section 2.2**.

Provisions regulating the hearing of child witnesses are provided under **Section 2.5**.

The child in any other role

In family law cases, the **Act on Parental Responsibility**[128] requires the child's own views to be taken into account depending on his/her age and maturity. The conversation between the child, an expert specialising in children, and the judge will take place before the trial and in a room different from the room of the trial[129]. The purpose of this child conversation is to allow the child to talk to the judge and the child expert and tell about his/her situation with the parents.

In family cases, the parents or guardians must provide the children with relevant information. Children do not receive information directly from the courts. The child does not normally have a lawyer on his/her own.

In practice, children almost never participate in the actual court hearings of family cases[130]. During the actual court hearing of family law cases on custody or residence of a child, the trials are held in camera and the judge is the person who decides on all aspects of the case. The parties are not allowed to request the hearing of someone, as it is the judge's competence to decide on the means of gathering evidence (e.g. whose hearing is necessary).

Due to the above, children in other roles (i.e. children who are the subject of these cases) are not normally heard during the actual proceedings, despite the wish of their parents. This also might mean that people who take care of the child are not invited. As an example, the court might fail to invite a person who, due to the subsequent marriage to the child's mother or father, has been taking care of the child for a long time[131].

There are no legal requirements in place with respect to the communication of court judgments to children in other roles.

With respect to the hearing of children in other roles, Danish legislation does not require the use of special communication techniques.

Children in other roles, as explained under **Section 2.1.** have no access to court; they might be heard if the court decides so.

[128] **Section 5 of the Act on Parental Responsibility(*Forældreansvarsloven*).**
[129] **Section 450 a of the Administration of Justice Act (*Retsplejeloven*).**
[130] **Information collected through consultation with a High Court judge.**
[131] **Information collected through consultation with a lawyer.**

2.7 Right to legal counsel, legal assistance and representation

The child as a plaintiff

Child plaintiffs are represented by their parents or guardians during the civil judicial proceedings as they in general do not have procedural legal capacity to act.

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 mandating a lawyer. Instead of the child, it is his/her parents or guardians who instruct the lawyer and who terminate his/her mandate.

If there is a conflict between the child and his/her parents or guardians, the court will appoint a legal guardian for the child. For example, the court must appoint a legal guardian in an inheritance case where there is a conflict between the child and his/her parent or guardian[132].

A child plaintiff can benefit from free legal aid if he/she does not have sufficient property or income[133]. The child's parents or guardians can file a request for 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[134].

The child as a defendant

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

The child as a witness

Children being called as witnesses do not have the right to request a lawyer free of charge. In general, witnesses, including both adults and children, can always seek additional legal counsel at their own expense. In principle in such situations, the child would then cover the costs. 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.

Like adult witnesses, child witness cannot be granted free legal aid. Only plaintiffs and defendants can be granted free legal aid.

In order to provide assistance to a child witness who is under 15 years old, as described under **Section 2.5**, the court may order a representative from the local municipality or another appropriate person to assist the child witness during the questioning[135].

The child in any other role

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[136]. 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 and monitor the child and to defend his/her interests during the proceedings. In practice, it is rare that such an assisting person is appointed and the child has no right to request the services of such an assisting person.

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[132] **Section 15 of the Act on the Administration of Estates (*Arveloven*).**
[133] **Chapter 31 of the Administration of Justice Act (*Retsplejeloven*).**
[134] **Section 3 of the Executive Order on Free legal Aid *(Bekendtgørelse om fri proces)*.**
[135] **Section 183(3) of the Administration of Justice Act (*Retsplejeloven*).**
[136] **Section 450d of the Administration of Justice Act (*Retsplejeloven*).**

An evaluation of the Act on Parental Responsibility illustrates that children often wish to have an adult to talk to, especially an adult who is not involved in the case[137].

A child aged 12 and above has the right to a lawyer free of charge, in case of certain types of decisions under the Act on Social Services, as mentioned in **Section 2.1**.

Children in other roles are not represented by lawyers. Moreover, children in other roles cannot benefit from free legal aid.

2.8 Alternatives to judicial proceedings

General rules applicable regardless of the role of the child in civil judicial proceedings

There are two types of alternative dispute resolution (ADR) mechanisms in Denmark in which children can be involved: court mediation and out-of-court family mediation. In the case of court mediation, the child can be involved in the procedure as a plaintiff or a defendant; in the case of family mediation, the child is typically the subject of the proceeding and does not have the status of a party to the case.

Court mediation has been allowed in Denmark since 2008. Rules applicable to court mediation are set out in the **Administration of Justice Act** (*Retsplejeloven*) and in particular its Chapter 27. Except for the Supreme Court, all courts in Denmark offer court mediation as an alternative to traditional court proceedings or traditional conciliation proceedings[138]. Civil and commercial matters can be referred to court mediation. Court mediation is not mandatory in Denmark, which means that it is up to the parties to decide on the reference of their case to mediation.

The term 'court mediation' is not defined in the **Administration of Justice Act**. However, it follows from the exploratory notes of the 2007 Bill that court mediation is a procedure through which the parties themselves, with the assistance of a neutral mediator, negotiate a reasonable solution[139]. The Ethical Guidelines applicable to judges, lawyers and attorneys who can act as court mediators also provides a non-binding definition of mediation[140].

Court mediation differs from traditional conciliation procedures run by a judge in the sense that in case of the latter procedure, the starting point is the demands of the parties, and it aims for the assessment of the legal aspects of the conflict. During court mediation, the mediator focuses on the interests and needs of the parties instead of assessing the legal aspects. The purpose of court mediation is not to determine who is right and who is not, but to create a forum for concluding agreements by which the parties themselves agree on their needs and future[141]. However, there is a close link between traditional court proceedings and court mediation. It follows from the fact that court mediation only applies to cases that have already been initiated before a court[142].

A child will only know of court mediation if his/her parents or guardian inform him/her about that possibility. The parents or guardian will take all procedural decisions on behalf of the child and it is not in the power of the child to decide on the reference of his/her case to court mediation or traditional civil procedures. The **Administration of Justice Act** does not contain reference to the role of the child in court mediation and/or the protection of the child in court mediation.

The content of settlement agreements in court mediation differs from the content of judgments in traditional civil court proceedings. In around 50% of the settlement agreements, the agreement

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[137] Department of Family Affairs, Evaluation of the Act on Parental Responsibility (2011), page 17 (*Familiestyrelsen, Evaluering af Forældreansvarsloven (2011), side 17*).

[138] Conciliation agreements are settlements that are reached after the judge himself in a trial procedure has conciliated between the parties and proposed a settlement.

[139] Bill no. 2007/2 LSF 17 of 28. November 2007, Amendments of the Administration of Justice Act, regarding no. 8 (*Lovforslag om ændring af retsplejeloven mv.*).

[140] See: Ethical Guidelines applicable to judges, lawyers and attorneys For an English translation see *Vibeke Vindeløv*, Reflexive Mediation - with a Sustainable Perspective, DJØF Publishing, Annex C.

[141] Bill no. 2007/2 LSF 17 of 28. November 2007, Amendments of the Administration of Justice Act, regarding no. 8 (*Lovforslag om ændring af retsplejeloven mv.*).

[142] Lin Adrian, Between *Trial and roundtable talk - court-based mediation in theory and practice* (Lin Adrian, *Mellem Retssag og rundbords samtale – Retsmægling i teori og praksis, Jurist- og Økonomforbundets Forlag*, 2012, page 52).

goes beyond the scope of the original claim of the parties. In general, the content of the settlement agreements in court mediation is more creative in nature[143].

Family law mediation is an out-of-court procedure conducted by the State Administration in Denmark, and is conducted in cases where there are conflicts between the parents about the custody and residence of the child, as well as in cases where the parents have conflicts about how much time and interaction each of them may have with the child[144]. In accordance with the **Act on Parental Responsibility**, decisions must be taken in a way that protects the child's best interests[145]. As explained under **Section 1**, the legal concept of 'safeguarding the best interests of children' is not defined in the **Act on Parental Responsibility**.

Out-of-court family mediation is not mandatory in Denmark. It is up to the parents to refer their case to out-of-court family mediation and it cannot be imposed by the courts. Procedural rules applicable to family mediation are not set out in legislation. In other words, it is up to the State Administration to tailor the procedural rules to the specific case. This implies that legislation does not contain reference to the rights and obligations of the child.

There are no general statistics on the use and success of family mediation in Denmark. Due to financial cuts in the public sector in Denmark, family mediation is not used to the same extent as previously[146].

There are no legal provisions in place that prevent the child from accessing courts. Considering that children do not have full procedural capacity to act, their parents or guardians could refer the child's case to a court on the child's behalf.

The child as a plaintiff

Children can be parties to court mediation if their parents or guardians decide so, as children do not have procedural legal capacity to act, thus their parents or guardians represent them. The rights and obligations of children as well as the rules applicable to their participation are the same as in the case of adults participating in court mediation.

In family cases, a child cannot be a plaintiff as family mediation is a procedure between the child's parents.

The child as a defendant

The same rules apply to child defendants as to child plaintiffs.

The child as a witness

Court mediation does not involve witnesses and children cannot be heard as witnesses in court mediation.

As referred to above, legislation applicable to out-of-court family mediation does not contain procedural rules. Thus the involvement of child witnesses in family mediation cases is not specified in legislation either.

The child in any other role

Legislation on court mediation does not contain reference to the involvement of children in other roles.

As referred to above, children can be subject to out-of-court family mediation cases. The involvement of children in these proceedings is not specified in legislation.

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[143] **Lin Adrian, page 368.**
[144] **Act on Parental Responsibility (*Forældreansvarsloven*) Section 32.**
[145] **Act on Parental Responsibility (*Forældreansvarsloven*) Section 4.**
[146] **Conclusion based on stakeholder consultation with a lawyer.**

An increasing number of family cases involving the custody of children are dealt with in court mediation.

2.9 Remedies or compensation for violation of rights and failure to act

The child as a party (plaintiff or defendant)

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

The parent or the guardian must ask the child 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)[147].

As referred to above under **Section 2.7**, children are often represented by their lawyers in the proceedings. The lawyer's involvement extends to the appeal proceedings.

If there is a conflict between the child and his/her parents or guardians, the court will appoint a legal guardian for the child. For example, the court must appoint a legal guardian in an inheritance case where there is a conflict between the child and his/her parent or guardian[148].

Only the parties to a case can appeal a court decision involving children[149]. 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 a situation constitutes a breach of law, the termination of the running of the limitation period will be suspended until the day that the child learns about the breach of law[150]. 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.

The child as a witness

Witnesses, including both adults and children, have no possibility to appeal against court decisions.

The child in any other role

Children in other roles have no possibility to appeal against court decisions.

2.10 Legal costs

The child as a plaintiff and defendant

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 stamp duty for filing an application, for example if they lose a case[151].

The court may decide to order the sharing of costs between the plaintiff and defendant.

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[147] **Section 26 of the Act on Guardianship (*Værgemålsloven*).**
[148] **Section 15 of the Act on the Administration of Estates (*Arveloven*).**
[149] **Chapter 36 of the Administration of Justice Act (*Retsplejeloven*).**
[150] **Section 3(2) of the Act on Limitation (*Forældelsesloven*).**
[151] **Chapter 30 of the Administration of Justice Act (*Retsplejeloven*).**

Just like adults, a child who has been granted free legal aid will be exempted from the obligation of paying the stamp duty for filing an application[152]. Furthermore, custody and paternity are free from stamp duty[153].

The child as a witness

Child witnesses are not obliged to cover legal costs or to pay stamp duty.

The child in any other role

Children in other roles are not obliged to cover legal costs or to pay stamp duty.

2.11 Enforcement of civil court judgements

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 the 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[154].

Except for the requirement of being represented by a legal representative or guardian, there are no measures in place to protect children from harm.

Detention cannot be imposed as a coercive measure against children.

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.

A special regulation exists with respect to damages. If a child defendant can be blamed for damage caused by negligence, the person who has been affected by the damage can claim compensation of up to DKK 7,500 (EUR 1,000) from the person who has custody of the child. This is the case even if the parent cannot be blamed for the damage.

The parents are only liable for a maximum of DKK 7,500. The persons with parental custody of the child are only liable for a maximum of DKK 7,500 for each wrongful act or omission. If the compensation claim is higher, the child must pay the rest. In practice the child is liable regardless of whether the child has a source of revenue. The family will often have taken out a family insurance/private liability insurance covering the child's liability. Otherwise the claimant will not be compensated. In general, the responsibility of the child is not transferred to his/her parents. However, if the parents can be blamed for the damages caused (e.g. in cases where the lack of supervision of the child led to the damage) they may independently be held liable for the full amount of compensation for the damage caused by their child[155].

The child as a witness

Witnesses do not play a role in the enforcement phase of the procedure.

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[152] **Section 13 of the Act on Court Fees/Stamp duty *(Retsafgiftsloven)*.**
[153] **Section 12 of the Act on Court Fees/Stamp duty *(Retsafgiftsloven)*.**
[154] **Section 52(2) and section 75 of the Act on Social Services.**
[155] **Section 1 of the Act on Liability for the Damages of children (*Lov om hæftelse for børns erstatningsansvar*).**

The child in any other role

In family law cases, enforcement of judgements on the custody and residence of a 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[156]. If the child's mental and physical health is exposed to "just" danger, the enforcement can take place.

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 of 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 can - but is not obliged to - order a representative from the local municipality to protect the interests of the child during the enforcement phase[157].This representative may not be affiliated with any of the parents. Furthermore, 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 on custody, residence or access, a child expert and a representative from the municipality must be present[158]

[156] Section 536(6) of the Administration of Justice Act (*Retsplejeloven*).
[157] Section 537 of the Administration of Justice Act (*Retsplejeloven*).
[158] Section 537(4) of the Administration of Justice Act.

Conclusions

General approach to children in civil judicial proceedings

The Administration of Justice Act contains procedural law rules applicable to proceedings on civil and commercial law, family law and labour law matters. As a main rule when it comes to the involvement of children in civil judicial proceedings, the same rules apply to children as to adults. Besides the Administration of Justice Act, the Act on Parental Responsibility, the Act on Social Services and the Act on Legal Protection and Administration in Social Matters are especially relevant in cases regarding children.

There are no specialist institutions dealing with children in civil judicial proceedings. The Children's Office at the Danish Parliamentary Ombudsman established in November 2012 deals with administrative complaints against public institutions for reasons of not complying with rules and legislation. The Ombudsman does not participate in civil judicial proceedings.

Judges do not receive specialised training on how to treat children. However, in social law cases concerning, for example, forced removal and placement of a child in care, the district court is assisted by two child experts. Officials working for the Danish public administration may have specialised in working with children and young people as part of their initial training. Furthermore, an extensive number of courses aimed at municipal council caseworkers etc. are offered. There are no special training requirements for the court bailiffs who carry out enforcement of family cases

Best interests of the child

In family law cases, it is a legal requirement set out in the Act on Parental Responsibility to safeguard the best interests of the child. The best interests of a child are generally to be understood as the child's right to both parents.

A number of special procedural rules apply in civil court cases on custody and residence of the child. In such cases conversations are held between the child in question and a child expert and possibly the judge. The court can also order assistance for the child from a representative of the local municipality.

Furthermore, the best interests of the child must be taken into account in relation to decisions made according to Chapter 11 of the Act on Social Services.

The child as a plaintiff, defendant and witness and children in other roles

A child may be a party to a civil lawsuit (material legal capacity to act), but the holder of parental custody or a guardian acts on his/her behalf and decides on procedural matters.

All persons, including children, are obliged to testify in a court proceeding if invited by the court to attend as witnesses. An agreement of a parent/guardian is not necessary for the participation of a child in the proceedings as a witness. There is no minimum age limit in this regard in Danish legislation.

Most of the cases regarding children (i.e. family law cases) that are dealt with in civil proceedings concern children in roles other than those of the plaintiffs, defendants or witnesses. In cases on custody and residence, both parents of the child will be parties to the case and have the power to ask for a decision from the civil courts. Despite the child having a great and individual interest in the case, the child is not an autonomous party to a family case and does not have the powers of a party.

Provision of information

With respect to the provision of information, there are no child-specific provisions in Danish legislation. Nor are there any rules obliging the authorities to provide information to children in a child-friendly manner. However, several governmental, quasi-governmental and independent bodies,

including the Children's Office at the Danish Parliamentary Ombudsman provide information to children and young persons about their rights in a child-friendly manner.

Child plaintiffs and defendants are, as a general rule, informed by their legal representative or guardian, whereas witnesses receive information in their own right. Children in other roles also receive information from their legal representatives or guardian and in specific areas according to the Act on Social Services, from the municipal council.

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.

In cases on parental custody, the trials are always held in camera, meaning that names of the persons involved in the case cannot be disclosed and no one can be present in the courtroom during the proceedings. In cases of, for example, forced removal and placement of children in care, the court may direct that proceedings be conducted behind closed doors. Moreover, public disclosure of the identity of persons referred to during the proceedings without the permission of the court is prohibited.

Protection from harm

In cases on parental custody, trials are always held in camera. Special assistance (i.e. assistance of a representative from the local municipality) during the civil judicial proceedings can only be provided to child witnesses and to children in other roles.

Protecting the child during interviews

As a general rule, Danish legislation does not contain child-specific measures for the protection of children while giving testimony.

There is one rule specific to the protection of child witnesses. In order to provide assistance to child witnesses who are younger than 15 years old during questioning, the court may appoint a representative from the local municipality or another appropriate person.

In cases that concern the custody and residence of the child, courts initiate a conversation with the child (who is neither a party nor a witness) prior to the actual court hearing (child conversation). Child conversations are always led by a child expert.

The right to be heard

Child plaintiffs and defendants are represented by their parents or guardians during the civil judicial proceedings. Children do not have an independent right to intervene in their court case.

In family law cases involving children in other roles, and in cases of a child who needs special support according to Chapter 11 of the act on Social Services, it is a legal requirement to take into account the child's own views depending on his/her age and maturity.

Right to legal counsel

Child plaintiffs and defendants are generally represented by their parents or guardians during the civil judicial proceedings as they do not have the procedural legal capacity to act. The child's parents or guardians may mandate a lawyer to represent the case before the court. Mandated lawyers can provide assistance to the plaintiff while filing the lawsuit and during the phase of the procedure that happens before the court.

A child plaintiff and child defendant can benefit from free legal aid if he/she does not have sufficient property or income. The child's parents or guardians can file a request for legal aid. It is mainly the income and property of the child that determines whether free legal aid can be granted; however, the financial situation of the parents or guardian will be taken into consideration as well.

If a family court case on custody or residence of the child is especially conflictual between the parents and 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. The assisting person can access the files of the case and be present during meetings and the actual court proceedings. This person's job is to assist and monitor the child and to defend his/her interests during the proceedings. In practice, it is rare that such an assisting person is appointed and the child does not have an independent right to request for the services of such an assisting person.

In cases of, for instance, forced removal of a child from her/his home, a child aged 12 and above has the right to appeal to the National Social Appeals Board and to require the Board's decision to be brought before the court. Furthermore, the child, as well as her/his parents holding custody rights, parents, has the right to free legal assistance.

Alternatives to judicial proceedings

There are two types of alternative dispute resolution (ADR) mechanisms in Denmark in which children can be involved. These mechanisms are court mediation and out-of-court family mediation. In the case of court mediation, the child can be involved in the procedure as a plaintiff or a defendant, whereas in the case of family mediation, the child is typically the subject matter of the proceeding and does not have the status of a party to the case and will not participate in the mediation. Children do not have the right to ask for ADR mechanisms in their own right. However, the Act on Parental Responsibility provides that a child who has reached the age of 10 can ask the state administration to convene a meeting with the parents about custody which the child considers problematic and would like his/her parents to resolve.

Remedies or compensation

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

There are no 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. 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.

Legal costs

Children can act as plaintiffs and defendants in civil judicial proceedings. Just like adults, child plaintiffs and defendants can be requested to pay legal costs and/or to cover the stamp duty for filing an application if they lose a case.

Enforcement

Civil judgements involving children as plaintiffs or defendants are enforced according to the normal enforcement rules and take place by the Bailiff's courts. In family law cases, enforcement of judgements on the custody and residence of a child also takes place by the Bailiff's courts.

There are no special training requirements for the court bailiffs, who carry out enforcement of family cases, but a child expert and a representative from social services will assist the bailiffs.

Enforcement cannot take place if the child's mental and physical health is exposed to a serious danger.

Strengths and weaknesses

In practice, there is often a tension between Section 11 of **The Act on Parental Responsibility** providing for mandatory shared custody and Section 4 of the same Act providing for the best

interests of the child[159]. This is the case, for example, in situations where the child has experienced violence from one of the parents. Some practitioners express concern that a child may be forced to spend time with a violent parent. It appears, however, from a government evaluation of the Act on Parental Responsibility from 2011 that the authorities handle such cases of abuse in a consistent manner and that the abuse will be given paramount importance when deciding on such cases[160].

According to some practitioners, although conversations with children are led by a child expert, it can be questioned whether the best interests of the child always prevail. In particular, there are no special training requirements for judges on how to treat children. The same is true for court bailiffs, who carry out enforcement of family cases. These cases are very sensitive as they often involve situations of children being forced away from one parent to spend time with the other parent. In practice, it also happens that junior trainee judges with no experience in dealing with children are responsible for enforcement of decisions in family cases[161].

Finally, enforcement cannot take place if the child's mental and physical health is exposed to a serious danger[162]. A weakness of the legislation is that if the child's mental and physical health is exposed to "just" danger, then the enforcement can take place.

[159] Jes Anker Mikkelsen and Anne Buhl Bjelke, 'Note on the burden of proof in law and legal certainty in the law on parental responsibility in Theme Issue 2 on Parental Responsibility Act' (2010).
[160] Department of Family Affairs, Evaluation of the Act on Parental Responsibility (2011), page 17 (*Familiestyrelsen, Evaluering af Forældreansvarsloven (2011), side 17*).
[161] Ibid.
[162] Section 536(6) of the Administration of Justice Act (*Retsplejeloven*).

List of Legislation

- Act No 429 of 31 May 2000 on the processing of personal data
- Act on Limitation (*Forældelsesloven*) – Consolidated Act no. 1063 of August 28, 2013
- Aliens Act (*Udlændingeloven*) – Consolidated Act no. 863 of June 25, 2013
- Act on Parental Responsibility (*Forældreansvarsloven*) – Consolidated Act no. 1073 of November 10, 2012
- Administration of Justice Act (*Retsplejeloven*) – Consolidated Act no. 1008 of October 24, 2012
- Act on Administrative Procedure, (*Forvaltningsloven*) – Consolidated Act no. 988 of October 9, 2012
- Act on Social Services (*Serviceloven*) – Consolidated Act no. 810 of July 19, 2012
- Act on Prohibition of Discrimination on the Labour Market (*Lov om forbud mod forskelsbehandling på arbejdsmarkedet*) – Consolidated Act no. 1349 of December 16, 2008
- Act on Inheritance (*Arveloven*) – Act no. 515 of June 6, 2007
- Act on Guardianship (*Værgemålslov*) – Consolidated Act no. 1015 of August 20, 2007
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