Privacy in Denmark: overview

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LEGISLATION

1. What national laws (if any) regulate the right to respect for private and family life and freedom of expression?

The Danish Constitution, adopted on 5 June 1953, guarantees certain fundamental human rights, including the freedom of expression, the right to personal liberty and the right to privacy. The right to privacy prohibits violations of the home and the following are subject to judicial order (unless an exception applies under statute):

- House searches.
- Interferences with the confidentiality of private communications.
- Secret surveillance through the use of television, camera or similar instruments.

Denmark ratified the European Convention on Human Rights (ECHR) in 1953. The ECHR was incorporated into Danish law in 1992. The case law of the European Court of Human Rights (ECHR) contains relatively few cases where Denmark has been found to violate Article 8 and 10 of the ECHR.

In addition, a number of laws specifically regulate the protection of the right to privacy as guaranteed by the Danish Constitution and the ECHR. The following are the main examples:

- Administration of Justice Act. The Act contains provisions that regulate the circumstances under which the police can use secret surveillance, house searches, body searches and similar interferences with the right to privacy for the purpose of preventing and solving crime.
- Criminal Code. The Act contains provisions that criminalise various interferences with the right to privacy.
- Act on Processing of Personal Data. The Act regulates the collecting and processing of personal data.
- Act on Video Surveillance. The Act regulates television surveillance of areas used for ordinary traffic and workplaces.
- Act on the Danish Security and Intelligence Service (PET). The Act contains provisions that regulate the collecting and processing of personal data by the PET. The provisions are based on (but not identical to) the Act on Processing of Personal Data.

2. Who can commence proceedings to protect privacy?

Persons affected by interferences with their right to privacy can commence proceedings before a Danish court provided that the interference lies within the jurisdictional scope of Danish privacy laws (see Question 4). This applies to Danish and non-Danish citizens, unless specifically restricted, and in certain circumstances to judicial persons.

In addition, the Danish Data Protection Agency supervises compliance with the Danish Act on Processing of Personal Data and can on its own initiative commence examinations regarding the processing of personal data.

3. What privacy rights are granted and imposed?

The privacy rights granted under Danish law mainly include, but are not limited to:

- Protection against house searches, body searches, secret surveillance (including television surveillance) and similar interferences with the right to privacy.
- Protection against the disproportionate collection and processing of personal data and logging of telecommunication and online activities.
- A right to be informed of processing activities and to request and obtain access to your personal data.

However, the exercise of privacy rights granted under Danish law is not unrestricted. Offsetting interests can justify interferences of privacy and can warrant different kinds of restrictions to the privacy rights. This includes restrictions for the purpose of preventing terrorism and other forms of crime or for the purpose of protecting other fundamental rights, such as the freedom of speech.

4. What is the jurisdictional scope of the privacy law rules?

As a general rule the jurisdictional scope of Danish privacy laws is limited to Denmark, unless specifically extended. For the Danish Act on Processing of Personal Data, the jurisdictional scope is linked to the geographic location where the data controller is established. This scope is based on the underlying EU Directive.

Danish privacy laws can be invoked against actions of the Danish state, and in certain circumstances, against actions of private persons, individuals and judicial persons.

5. What remedies are available to redress the infringement of those privacy rights?

Remedies available under Danish law include damages and injunctions. Some infringements also qualify as criminal offences.

In addition, infringements of the rights guaranteed under the Danish Act on Processing of Personal Data can be redressed by a complaint to the Danish Data Protection Agency (DDPA). It is within the DDPA's competence to issue prohibitions and injunctions. The DDPA can also refer a case to the police, if appropriate.
When national remedies are exhausted (without satisfactory result) the infringement can be brought before the European Court of Human Rights.

6. Are there any other ways in which privacy rights can be enforced?

In Denmark non-compliance with the OECD Guidelines for Multinational Enterprises (OECD Guidelines) can be redressed by a complaint to the Mediation and Complaints-Handling Institution for Responsible Business Conduct (Institution). The OECD Guidelines include provisions on respect for human rights (chapter IV) and respect for consumer privacy (chapter VIII, point 6). It is, among other things, within the competence of the Institution to issue public statements that criticise conduct found to be in violation of these provisions. The statements of the Institution are not legally binding.

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