Denmark 2024

Information from: Danish Institute for Human Rights

Follow-up to last year’s rule of law recommendations

State authorities' follow-up to regional actors’ recommendations on rule of law

Adequate human and financial resources for the justice system

In the Country Chapter on the rule of law situation in Denmark 2023, the European Commission recommends Denmark to ensure adequate human and financial resources for the justice system in the next multiannual framework based on the increases in 2023 and taking into account European standards on resources for the justice system.

On 22 November 2023, the Danish government and all members of the Danish Parliament (Folketinget) made an agreement on the economy of the courts from 2024 to 2027. With the agreement, the parties will give the courts a substantial financial boost of approximately DKK 2.3 billion, which aims to tackle the problem of long case-processing time. In addition, the parties will implement a number of changes that aims to improve the efficiency of the administration of justice based on recommendations from the Rørdam Committee and recommendations from the Danish Council of Administration of Justice (Retsplejerådet).

However, it is the assessment of the Danish Institute for Human Rights (hereafter also referred to as “the Institute”) that a number of the initiatives considered by the committee entails setbacks in terms of legal certainty. This concerns the initiative to expand the use of judgments in absentia and the measure that certain criminal cases should be processed without the use of lay judges. Furthermore, the Institute is concerned with the proposal to raise the current limit for when a civil case can be appealed to the High Court without permission from the Appeals Permission Board, from DKK 20,000 to DKK 50,000.

Reform of the Access to Public Administrative Documents Act

Further, in the 2023 Rule of Law Report, the European Commission recommends Denmark to advance with the process to reform the Access to Public Administrative Documents Act in order to strengthen the right to access documents, in particular by limiting the grounds for rejection of

disclosure requests, taking into account the European standards on access to official documents.

On 11 January 2024 the Danish Parliament (Folketinget) made an agreement to set up an expert committee tasked to submit proposals for amending the Access to Public Administrative Documents Act. In particular, the committee shall focus on the rules that regulate access to documents in the political decision-making processes, e.g. the so-called ministerial service rule (section 24) and the parliamentary politician rule (section 27, no. 2).

The committee is tasked to submit a proposal that entails a greater access to documents in the political decision-making processes, including professional assessments. In this connection, the committee's proposal must consider that a certain level of protection must be maintained for internal political decision-making processes, including in relation to internal government discussions.

NHRI’s follow-up actions supporting implementation of regional actors’ recommendations

To support the implementation of the recommendations, the Danish Institute for Human Rights published a news piece on the Institutes website on the European Commission’s 2023 Rule of Law Report . The news piece had a particular attention to the recommendation concerning adequate resources for the justice system, but also highlighted the recommendation on public access administrative documents.

Further, the Executive Director of the Institute has engaged in dialogue with senior officers at the Danish Ministry of Justice and made the Institute available to engage in the work of the expert committee on amending the Access to Public Administrative Documents Act.

State authorities' follow-up to NHRI’s recommendations regarding rule of law

In the ENNHRI 2023 Rule of Law Report the Danish Institute for Human Rights gave, among others, two recommendations to address challenges regarding the use of artificial intelligence:

- The Danish Ministry of Justice should, with the involvement of the Danish Data Protection Authority and the Danish Digital Agency, issue guidance on the use of profiling models by public authorities, with a particular focus on human rights and rule of law challenges.
- The Danish Agency for Digital Government should, as part of the joint public work with municipalities and regions, create a public register of all public authorities' use of profiling models aimed at citizens.

In October 2023, the Danish Data Protection Agency published guidelines for public authorities on the use of AI in data processing. The guidelines include guidance on the need for public authorities to carry out data protection impact assessments whenever an AI system is likely to pose a high risk on the violation of human rights.

Also in October 2023, the Danish Data Protection Agency published a mapping on the use of AI system among the public authorities.

The mapping shows that the use of artificial intelligence is not yet widespread. Among the solutions in use, authorities have made basic considerations, such as identifying a legal basis for processing personal data, but the authorities find it more difficult to comply with the more complex requirements of data protection rules, such as conducting impact assessments.

The Institute is concerned with the findings of the mapping. Thus, the Institute recommends that the Danish government and Parliament (Folketinget) introduce a legal requirement for public authorities to conduct impacts assessments when the authorities put in use systems with artificial intelligence. The impact assessment must cover all use of the system from end-to-end.

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Information from: Danish Institute for Human Rights

Independence, effectiveness, resilience and establishment of NHRIs

International accreditation status and SCA recommendations

The Danish Institute for Human Rights was last reaccredited with A-status in October 2018. In relation to the selection and appointment process, the SCA noted that the Institute had taken steps to amend its bylaws to ensure a broad, transparent and uniform selection process. It encouraged the Institute to advocate for the Human Rights Council of Greenland to adopt a guideline or similar administrative instrument to regulate the selection process. In October 2020, the Human Rights Council of Greenland adopted guidelines to regulate the selection process.

Further, the SCA acknowledged that there is a relevant body of Danish jurisprudence defining ‘personal and professional integrity’. In the interest of clarity and consistency, the SCA encouraged the Institute to provide greater

precision in its bylaws or other binding administrative guidelines to clarify the scope of ‘personal and professional integrity’ as it relates to the dismissal of members of the Board of Directors.

In addition, the SCA encouraged the Institute to continue to interpret its protection mandate in a broad manner and to conduct a range of protection actions, including monitoring, enquiring, investigating and reporting.

The SCA noted that the Institute is not explicitly mandated with the responsibility to encourage ratification or accession to international human rights instruments. Acknowledging that the Institute conducts these activities in practice, the SCA encouraged the Institute to advocate for amendments to its enabling law to make this mandate explicit.

Regulatory framework

The Danish Institute for Human Rights notes the following changes of its regulatory framework within the reporting period:

The Danish Parliamentary Ombudsman is designated as the National Preventive Mechanism (NPM) under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The task is carried out in collaboration with DIGNITY – Danish Institute Against Torture and the Danish Institute for Human Rights. On 28 December 2023, the Ministry of Justice promulgated royal decree no. 1802 which provides a legal basis for DIGNITY – Danish Institute Against Torture and the Danish Institute for Human Rights to collaborate with the NPM on inspection visits in Greenland in the same way as in Denmark.

On 6 October 2023, a revision of the Institutes’ bylaws entered into force. The changes to the bylaws were instigated by the Board of Directors of the Danish Institute for Human Rights. To further enhance the independence of the governance structure of the Institute, article 9(2) of the bylaws was strengthened. The article further strengthens the independence of the Institute since it was added that board members should resign in case of election to the Danish Parliament or the Greenlandic Parliament (Inatsisartut). Other changes include the use of more gender-neutral language and virtual participation in board meetings.

NHRI enabling and safe environment

The Danish Institute for Human Rights stresses that the state authorities continue to sufficiently ensure its independence.

Denmark 2024

Information from: Danish Institute for Human Rights

Democracy - checks and balances, disinformation, and law-making processes

Separation of powers

In January 2023, The Danish Minister of Defence ordered that the Danish Intelligence Oversight Board (Tilsynet med Efterretningstjenesterne/TET) should stop overseeing the collection and onward transmission of bulk data intercepted by Danish Defence Intelligence Service (Forsvarets Efterretningstjeneste/FE). The decision followed a disagreement between FE and TET on the scope of TET's authority to supervise FE's processing of bulk data.

According to Danish law, it is the Minister of Defence who has the competence to determine the interpretation of the legal framework for FE, including the scope of TET's supervision. However, the decision is controversial, as it appears from the annual reports by TET from 2015 to 2021 that TET, in general, has kept oversight of FE's processing of bulk data (see TET's Annual Reports on FE from 2015 to 2021).

In the Institute's view, the decision is problematic as what follows from the case law from the European Court of Human Rights is that collection and processing of bulk data by a secret intelligence service must be subject to independent and legal review (see Big Brother Watch and Others v. The United Kingdom, para. 356).

Access to information

On 12 December 2023, the Danish government began a public consultation on a draft law amending the Danish Access to Public Administrative Documents Act and the Danish Public Administration Act. To protect civil servants from threats and harassment, the government has proposed to extend the grounds for rejection of access to information. The motivation behind the draft law is that information about the employee's name can - with the help of social media or the internet in general - be used to search for other information about the employee, e.g. about the employee's private residence, family relationships or hobbies, which can be misused to exert pressure or harassment etc. against the employee. The proposal lowers the threshold for when a request is presumed to serve an unlawful purpose or can be defined as harassment.

Further, the government has proposed that, in certain cases, it should be possible for authorities to use anonymisation by excluding the name of certain

employees when applying for access to information about individuals' employment relationships in the public sector.

The Danish Institute for Human Rights recognises that public employees should not be subjected to violence, threats, intimidation, or harassment when they are doing their job and that the draft law would follow a legitimate purpose in this case. However, at the same time it is important to ensure transparency in public administration, as far as possible, and allow the introduction of restrictions only when the aim cannot be obtained by less intrusive measures.

Overall, it is the assessment of the Institute that the proposed amendments do not sufficiently balance, on the one hand, the need for openness in public administration and, on the other hand, the need to protect certain particularly vulnerable public employees against harassment, etc.

To prevent unduly limitation to access to information, the Institute delivered a consultation response to the Ministry of Justice on 16 January 2024. In the consultation response the Institute recommends that:

- The proposed extension of grounds to reject access to documents under the Danish Access to Public Administration Act due to risk of harassment is to be deleted.
- Public authorities' ability to ensure effective anonymisation of selected public employees must appear directly in the wording of the Danish Access to Public Administration Ac Freedom of Information Act and the Danish Public Administration Act.
- It is clarified in the draft law that anonymisation should only be used in exceptional cases.
- Access to information on names should not be limited for the media and recognised research institutions.

Further, on January 19 2024 the Institute published a news piece on its website with the above-mentioned critique that also included the Institute’s recommendations for the government.

NHRI’s recommendations to national and regional authorities

With regards to the human rights obligation of oversight of interception and processing of bulk data by a secret intelligence service the Danish Institute for Human Rights recommends:

- The Danish courts should be granted jurisdiction to settle disagreements between FE and TET on the interpretation of the legal basis of the intelligence services.

On access to information from state authorities and public documents the

Danish Institute for Human Rights recommends:

- The proposed extension to reject access to documents under the Danish Access to Public Administration Act due to risk of harassment should not be adopted.
- Access to information on names should not be limited for the media and recognised research institutions.

Denmark 2024

Information from: Danish Institute for Human Rights

Securitisation's impact on the rule of law and human rights

Data retention

A securitization narrative also lies behind the yearly prolonging of the duty on telecommunication companies to put in place general and indiscriminate data retentions despite it being a serious interference on the right to respect for private life and the protection of personal data. Such a duty was once again prolonged from March 2023 until March 2024.

The Danish Institute for Human Rights assess that the criteria for putting in place general and indiscriminate retention of data is at risk of violating EU law. This is so, as the criteria in the Danish rules on data retention is not sufficient to ensure that general and indiscriminate retention of data is only applied for situations where there is a serious and actual or foreseeable threat to national security, and that such period is kept at what is strictly necessary. There is also a risk that general and indiscriminate data retention becomes systematic in nature.

Improper treatment of writings with significant religious significance for a recognised religious community

On 7 December 2023, the Danish Parliament passed a law that criminalises improper treatment of writings with significant religious significance for a recognised religious community.

The law was motivated by recent burnings of the Koran that – according to the Danish government - have meant that Denmark, in many parts of the world, was increasingly seen as a country that facilitates the mockery and denigration of other countries and religions. According to the government, burnings of the Koran can have major consequences that fundamentally damage Denmark and

the interests of likeminded countries in the world. Furthermore, the law was motivated by information from the Danish Security and Intelligence Service (PET) that had stated that the recent Koran burnings also have had an impact on the current terrorist threat level has intensified from an already high level (see the preparatory works pertaining to the law, page 2).

It is the assessment of the Danish Institute for Human Rights that the law does not overly restrict freedom of speech. However, because of the level of discretion in the ban, the Institute is still concerned that the law can pose challenges for law enforcement authorities and for individual citizens who may be deterred from expressing otherwise lawful criticism of power and religion for fear of punishment. The Institute finds it positive that the law and its application will be evaluated three years after its entry into force, as was recommended in the Institute's consultation response.

Trials against Claus Hjort Frederiksen and Lars Findsen

In Denmark, Former Minister of Defence, Claus Hjort Frederiksen, was, similarly to former Head of the Danish Defence Intelligence Service (Forsvarets Efterretningstjeneste/FE) , Lars Findsen, accused of violating his duty of confidentiality by, on several occasions, disclosing secrets of importance to national security. During the trial against Claus Hjort Frederiksen, the prosecution had requested an entirely private hearing because certain elements of the case were confidential and because it was not possible to divide the trial into an open and a closed part. The request was contested by the accused who both claimed to be innocent.

In a decision on 27 October 2023, the Supreme Court stated that the prosecution had not presented sufficiently concrete arguments that could justify that the case should take place completely out of the public sphere. The Supreme Court also stated that the criminal case concerned information about a cable collaboration between FE and the American NSA, which at the time had to be considered publicly known. The request for a private hearing could only be accepted for those parts of the trial that were not already known to the public.

Moreover, during the trial against Lars Findsen, the prosecution would not hand over the indictment to him on the grounds that he would violate his duty of confidentiality in relation to the content of the indictment.

In a decision on 12 October 2023, the Supreme Court stated that the prosecution had not presented any specific information that gave reason to fear that Lars Findsen would violate his duty of confidentiality in relation to the content of the indictment. On this basis, the Supreme Court found that Lars Findsen was entitled to receive the indictment.

It is the view of the Institute, that in both above-mentioned cases the

prosecution attempted to keep trials closed without any real reasoning. This practice is concerning in relation to the right to a fair trial in cases that revolves around national security.

After the abovementioned decision the prosecution service decided to withdraw the indictments against both the accused. This was decided after FE had informed the prosecution service that FE no longer considered it reassuring to make the highly classified information that the cases concerned available for the criminal cases.

Consequently, the courts did not give rulings on the substance of the cases.

Conditions and rights of detainees

The Danish Institute for Human Rights notes the negative impact of securitisation on the human rights of persons deprived of their liberty in Denmark. This has led to a severe pressure on the Prison and Probation Service in Denmark which affects the conditions and rights of detainees in its the institutions (see Numbers from the Prison and Probation Service – First Quarter 2023, page 3. In recent years, the number of inmates has increased, while prison and detention capacity has not kept pace.

In 2022, the Danish Prison and Probation Service had to manage an average occupancy rate of 99.6 percent. This puts pressure on the physical environment, with common rooms being taken over and double-bunked cells being established (see the answer from the Danish Minister of Justice to question no. 200 (Alm. del) from the Danish Parliament's Committee on Legal Affairs).

The Institutes considers it to be paramount to ensure the necessary correlation between prison capacity, the number of inmates, the number of prison officers and the tasks of prison officers to limit the risk of human rights violations.

NHRI's actions to promote and protect human rights and rule of law in the context of national security and securitisation

Data retention

To combat general and indiscriminate data retention, the Danish Institute published a legal brief on the issues connected with the rules and practice vis-a-vis data retention on 11 September 2023. In the legal brief the Institute recommends that:

- The Danish government and the Danish Parliament (Folketinget) ensure that the legislation only allows for the general and indiscriminate data

retention in extraordinary situations as established by the Court of Justice of the European Union
- The Danish government and the Danish Parliament ensure in the future law that the data retention of citizens within defined geographical areas does not in practice include virtually all citizens in Denmark.

Moreover, the Institute presented the conclusions of the legal brief in a news piece the same day.

Further, on 18 January 2024 the Institute has submitted a consultation response on new draft legislation on the subject.

Improper treatment of writings with significant religious significance for a recognised religious community

The Institute submitted two consultation responses as the draft law was presented twice with different wording (see links above). The Institute also published a news piece when the first draft law was presented with the Institute's initial assessment of the draft law.

Moreover, the Institute's Executive Director, Louise Holck, participated in a online debate on freedom of speech hosted by DJØF (Union for social science and business economics graduates).

NHRI's recommendations to national and regional authorities

The Danish Institute for Human Rights recommends that:

- The Danish Government and the Danish Parliament (Folketinget) ensure that the legislation only allows for the general and indiscriminate data retention in extraordinary situations as established by the Court of Justice of the European Union.
- The Danish Government and the Danish Parliament (Folketinget) ensure the necessary correlation between prison capacity, the number of inmates, the number of prison officers and the tasks of prison officers to limit the risk of human rights violations.

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Information from: Danish Institute for Human Rights

Implementation of European Courts' judgments

In the ENNHRI 2023 Report on the state of the rule of law in Europe, the Danish Institute for Human Rights flagged the judgment in the case of Aggerholm v. Denmark, which raises certain issues related to general measures taken by the authorities to ensure its effective implementation.

As also mentioned in the same report, the Danish Institute for Human Rights submitted a joint statement under Rule 9 together with two NGOs (Dignity and Better Psychiatry) in 2022. In 2023, the Institute and the two NGOs have submitted another Rule 9 statement. The parties have argued for the Danish Government to allocate more resources to the psychiatry field in order to enable the institutions to work on reducing the use of physical restraints measures in psychiatric wards and to introduce effective legal guarantees supporting the overall principles of the Danish Mental Health Act.

The case of Savran v. Denmark concerns a Turkish national diagnosed with paranoid schizophrenia, who entered Denmark in 1991 when he was six years old. Following a criminal conviction, he received an expulsion order combined with a permanent ban on re-entry in 2009. In 2015 the High Court upheld the expulsion order. The Court found a violation of ECHR Article 8, as the decision not to revoke the expulsion order in 2015 constituted a disproportionate interference with the applicant's right to private life, since the authorities had failed to take into account and to properly balance the interests at stake. The authorities had not had due regard to the fact that he was exempted from punishment on account of his mental illness, the fact that between 2009 and 2015 he had undergone medical treatment for his mental disorder, or the strength of his ties to Denmark as compared to those to Turkey. After the decision of the European Court of Human Rights, The Special Court of Indictment and Revision denied the request to reopen and reassess the expulsion decision, because the applicant has not consented to the resumption of the revocation proceedings. With reference to this case, the Government of Denmark is in the process of amending the Danish Administration of Justice Act , so that a case can be reopened in order to comply with a final judgment from the European Court of Human Rights, also when the convicted has not consented to the case being reopened.

NHRI's actions to support the implementation of European Courts' judgments

The Danish Institute for Human Rights has submitted a statement under Rule 9 in the abovementioned case (Aggerholm v. Denmark) to prevent inhuman and degrading treatment of patients in mental health facilities – in cases where restraint measures are used by personnel.

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Other challenges to the rule of law and human rights

Concerns about intelligence services' mass collection of data

The Danish Institute for Human Rights is concerned of the human rights challenges caused by the intelligence services' mass collection of data from so-called open-source intelligence.

Private companies have developed advanced digital tools that can use a name or email address to create detailed personal profiles based on data taken from people's digital behaviour. These tools are made available to intelligence services for a fee.

The data is aggregated from many different open sources online, e.g. social media and other publicly available sources. Further, data can be aggregated by buying data sets from so-called data brokers. This data sets can contain billions of data points that originate from sources such as cookies, commercial data and location data. This data can expose the interests and actions of a person draw a very precise profile of a person’s private life. However, with this type of data collection, there is no requirement for a court order as the information is considered to have been acquired via freely available sources.

In the Institute’s view, the Danish government and Parliament must introduce legal guarantees in relation to mass collection of information by the intelligence services, including open-source intelligence. They must, inter alia, establish independent prior checks, for example in the form of a court order, when the intelligence services use keywords to filter mass-collected information.

Complaints regarding police personnel

In Denmark, complaints regarding police personnel can be lodged with the Independent Police Complaints Authority. After receiving a complaint and making an initial assessment of the facts of the case, the Authority decides to investigate the case either as (1) a complaint over the conduct of the police officer, or (2) as a criminal case.

Cases regarding “complaints over conduct” are investigated and decided solely by the Authority, cf. Chapter 93b of the Administration of Justice Act (Retsplejeloven). When making a decision in a case, the Authority may criticize

the conduct of the police officer in question, if it finds that his or her conduct was not in accordance with applicable rules. On the basis of this criticism, the employer of the police officer can decide to impose disciplinary sanctions, e.g. a warning or reprimand, depending on the severity of the criticism.

Cases regarding police conduct that may amount to a criminal offence are investigated by the Authority, cf. Chapter 93c of the Administration of Justice Act. After the investigation is finished, the case is passed on to the Regional Prosecutor, who ultimately decides whether to bring charges against the police person in question or not.

Thus – as in the case of complaints over prison personnel – the focus of the police complaints system is whether there is a basis for pursuing a criminal or disciplinary case against the individual police person, rather than whether there is state responsibility for inhuman or degrading treatment of the complainant. In the view of the Institute, the Authority does simply not currently have adequate legal basis to process cases distinctly related to inhuman or degrading treatment (unless such cases fall within the types of cases described above).

To summarize, the Institute is concerned that several incidents of inhuman or degrading treatment may take place that are not identified or effectively investigated, because they fall outside the scope of the Danish system for handling complaints over police and prison personnel.

NHRI's recommendations to national and regional authorities

The Danish Institute for Human Rights recommends that:

- The Danish Government and Parliament amends the legal framework to require a court order when intelligence services use keywords to filter mass-collected information.
- The Danish Government and Parliament gives the Independent Police Complaints Authority a clear mandate to investigate and decide on cases regarding state-responsibility for inhuman and degrading treatment.

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