

Denmark

Danish Institute for Human Rights

International accreditation status and SCA recommendations

The Danish NHRI was re-accredited with A status in October 2018. The SCA noted that the NHRI had taken steps to amend its bylaws to ensure a broad, transparent and uniform selection process. It encouraged the NHRI to continue to interpret its protection mandate in a broad manner and to conduct a range of actions, including monitoring, enquiring, investigating, and reporting. The SCA also encouraged the NHRI to provide greater precision in its bylaws or in another binding administrative guideline on the scope of the grounds of dismissal of members of the board of directors, to ensure security of tenure.

Impact of 2020 rule of law reporting

Follow-up by State authorities

The Danish Institute for Human Rights is not aware of any follow-up action by State authorities after the 2020 ENNHRI Rule of Law Report.

Impact on the Institution's work

The 2020 ENNHRI Rule of Law Report has helped give a fruitful overview of the rule of law situation in Europe, which the Danish Institute for Human Rights has benefitted from in several parts of our work, especially while doing desk research.

Follow-up initiatives by the Institution

While the Danish Institute for Human Rights has used the 2020 ENNHRI Rule of Law Report, as described above, it has not given us reason to initiate specific follow-up measures.

Independence and effectiveness of NHRIs

Changes in the regulatory framework applicable to the Institution

There have been no changes in the regulatory framework after the 2020 ENNHRI Rule of Law Report.

Enabling space

The Danish Institute for Human Rights works with legislative processes in Denmark and Greenland in various ways. Primarily by responding to public consultations on draft bills, including giving recommendations for alterations of the text etc. We also do research and analyses in various fields of human rights and equal treatment giving recommendations to, primarily, public authorities in order to enhance the protection and promotion of human rights.

It is our impression that, in general, state actors take recommendations from the Danish Institute for Human Rights into thorough consideration.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

In May 2021 in a press interview (cf references), the Minister of Justice criticised the Executive Director of the Danish Institute for Human Rights, Ms. Louise Holck, for being inappropriately political. The reason was that Ms. Holck in April 2021 in a press interview (cf references), representing the Institute, voiced concern over a common direction of Danish legislation amendments in recent years restricting personal freedoms, even if these restrictions may not amount to human rights violations. Examples included initiatives increasing surveillance in public areas and the prohibition of demonstrations in certain areas. Ms. Holck expressed that the human rights discourse in Denmark should not be reduced to a question of minimum protection, that is where the one thing that matters is how limited a protection Denmark can provide without being held in violation of human rights by the European Court of Human Rights. The Minister of Justice expressed that, seeing that the Institute did not voice a risk of human rights violations as such, such a concern is a political assessment which Ms. Holck should reserve for her personal expressions, e.g. when voting.

Established by law and in accordance with the Paris Principles, the Danish Institute for Human Rights is an independent institution shall, among other tasks, give advice to government, parliament and other public authorities on human rights in order to protect and promote human rights. Among the duties of the Institute is to give advice on the developments in the human rights situation in Denmark. The Institute thus not only voices concern when a political initiative could be in direct violation of human rights, but also comments on and give recommendations in situations, where e.g. the level of protection or personal freedom is reduced, rather than increased.

References

- Daily newspaper, Politiken, "Justitsministeren anklager direktør for Institut for Menneskerettighederne for at agere politisk" ("The Minister of Justice accuses Executive Director of the Danish Institute for Human Rights for acting politically"), 16 may 2021, <https://politiken.dk/indland/art8201096/Justitsministeren-anklager-direkt%C3%B8r-for-Institut-for-Menneskerettighederne-for-at-agere-politisk> (may be behind pay wall)
- Daily newspaper Politiken, "Hård kritik: Regeringens kamp for tryghed truer vores frihed" ("Harsh criticism: The Government's fight for safety threatens our freedom"), 18 April 2021, <https://politiken.dk/nyheder/art8170239/H%C3%A5rd-kritik-Regeringens-kamp-for-tryghed-truer-vores-frihed> (may be behind paywall)

Human rights defenders and civil society space

1. The Danish Parliament has adopted an act aiming at safeguarding democracy by hindering natural or legal persons in impeding or attempting to undermine democracy and fundamental human rights and freedoms through donations. The act includes a public list of banned natural or legal persons, in particular foreign state authorities or state-controlled organisations or companies. A receiver of a donation from a natural or legal person on this list will be fined the equivalent of 30% of the donation.

The Danish Institute for Human Rights found the wording of what constitutes "undermining the democracy" to be (too) vague and open for interpretation. The Institute noted, among other things, the risk of the law being arbitrary and giving rise to legal uncertainty and recommended specifying on which grounds a natural or legal person can be included on the list of banned persons.

2. In a bill, the Danish Government suggests giving the police powers to forbid individuals to be present in a specific public place, i.e., a square, a part of a street etc. As a "safety-creating ban" the measure should keep an area safe from a group of persons which is likely to make residents or other persons in the area unsafe. The Danish Institute for Human Rights has found that there is a risk of arbitrariness in the enforcement of such a measure, seeing that the police is given a wide margin of appreciation and is not obligated to give a warning before a ban is issued.

3. The National Agency for Education and Quality (*Styrelsen for Undervisning og Kvalitet* (STUK)) has in the past years reinforced its supervision of independent private schools (*friskoler*) in Denmark. This has led to a withdrawing of government subsidies from several schools based on Islamic values and consequently the closure of seven schools. The Danish Parliamentary Ombudsman has by letter on 20 September 2020 raised the question as to whether STUK has breached the schools' right to be heard before the decision to withdraw and reimburse government subsidies and withdraw the status of the schools as a private school (*friskole*).

The Danish Institute for Human Rights cooperates with civil society organisations in order to promote human rights and to contribute to an inclusion of the views of civil society in different processes, e.g., in the preparation of international reporting and scrutiny under the UN Universal Periodic Review (UPR) or UN treaty bodies.

References

- Act no. 414 of 13 March 2021 on the prohibition of receiving donations from certain physical persons and legal entities (Lov om forbud mod modtagelse af donationer fra visse fysiske og juridiske personer) (in Danish): <https://www.retsinformation.dk/eli/lta/2021/414>
- The Danish Institute for Human Rights, public consultation response to draft bill on prohibition of receiving donations from certain physical persons and legal entities, 20 March 2020 (in Danish), <https://menneskeret.dk/hoeringssvar/forbud-modtagelse-donationer-visse-fysiske-juridiske-personer>
- Bill L189 2020-21 on introducing the possibility of police ordering persons to stay away from public places (Forslag til lov om ændring af straffeloven, lov om politiets virksomhed, retsplejeloven og udlændingeloven (Forbud mod deltagelse i nattelivet, tryghedsskabende opholdsforbud, udvidet adgang til beslaglæggelse af værdigenstande og udvisning af udlændinge dømt for vanvidskørsel m.v.)), introduced to parliament 10 March 2021 (in Danish), <https://www.retsinformation.dk/eli/ft/202012L00189>

- The Danish Institute for Human Rights, public consultation response to draft bill introducing the possibility of police ordering persons to stay away from public places (forslag til lov om ændring af straffeloven, lov om politiets virksomhed og retsplejeloven (Tryghedsskabende opholdsforbud, forbud mod deltagelse i nattelivet og udvidet adgang til beslaglæggelse af værdigenstande)), 11 February 2021, <https://menneskeret.dk/hoeringssvar/tryghedsskabende-opholdsforbud-forbud-deltagelse-nattelivet-udvidet-adgang>
- Article in the Danish daily newspaper "Information": Several islamic schools have had their government subsidies withdrawn – the Danish Ombudsman goes into the matter ("Flere muslimske friskoler har fået frataget statstilskud – nu går Ombudsmanden ind i sagen"), 12 October 2020 (in Danish): <https://www.information.dk/indland/2020/10/flere-muslimske-friskoler-faaet-frataget-statstilskud-gaar-ombudsmanden-sagen>

Checks and balances

Laws affecting the system of checks and balances

1. Expedited legislative processes take place in the Danish Parliament a few times a year, whereby the parliament with $\frac{3}{4}$ of the votes can decide to make an exemption to the common rule in parliament that 30 days must pass between the presentation of a bill and the final vote on the same bill. For instance, two central acts changed the former epidemics act during March 2020. The first act basically shifted the powers of the act from the then regional Epidemic Commissions to the Minister of Health and introduced a range of new powers for the minister, including the possibility of forbidding events, assemblies etc., restricting public transport and regulating measures of contact tracing etc. This act was introduced and adopted the same day, meaning that three readings and committee work all took place on the 12 March 2020. The second act introduced extra measures and was introduced, considered and adopted between 26 and 31 March 2020.

2. As mentioned in the 2020 ENNHRI Rule of Law Report, examples of expedited legislative processes include some of the measures taken in response to the COVID-19-crisis, creating a legal basis for various increased executive powers, including restrictions on freedom of assembly, personal freedom, respect for personal and private life etc. In February 2021, a new permanent act on the handling of epidemic diseases was adopted by parliament, whereby the temporary acts

adopted through 2020 were repealed. The new act was considered under normal legislative procedure.

3. Among the features of the new epidemics act is that some measures initiated by the executive branch in the handling of an epidemic can be vetoed by a parliamentary committee, a procedure untraditional and uncommon in Danish legal tradition. However, the procedure aims at ensuring the democratic foundation of the introduction of certain restrictions for the general public during an epidemic including, inter alia, assemblies, access to schools, day care, libraries, shops and businesses, the visiting of care homes and hospitals, public transport, etc.

4. In November 2020, the Danish government decided to cull all mink in mink farms in Denmark, amounting to 12 to 15 million animals, due to threat of mink being the centre of new coronavirus mutations. The decision was carried through during November and December but caused outrage and the resigning of the cabinet minister responsible, when it turned out that it was doubtful if the decision, at the time it was taken, had sufficient legal basis.

Trust in state authorities

In general, the level of trust among citizens and between citizens and the authorities is very high in Denmark. Whereas the level of trust in the government's handling of COVID-19 was also generally high during 2020, the mink crisis during November and December, described above, resulted in widespread criticism.

NHRI engagement as part of the system of checks and balances

The Danish Institute for Human Rights participates in legislative and policy processes as described above. The Institute has been highly engaged in the process leading to the new Act on epidemics (described above). The institute has amongst other things participated in meetings with the minister of health and a number of members of parliament to discuss the balance of handling an epidemic while at the same time respecting human rights and the rule of law.

References

- Act on epidemics (Lov om epidemier m.v. (epidemiloven)), act no. 285 of 27 February 2021, in Danish, <https://www.retsinformation.dk/eli/lta/2021/285>
- Examples of expedited procedures: Act no. 208 of 17 March 2020, link to Danish Parliament's time schedule for the bill (L133/2019-20), <https://www.ft.dk/samling/20191/lovforslag/l133/index.htm>. Act no. 359 of 4 April 2020, link to Danish Parliament's time schedule (L158/2019-20), <https://www.ft.dk/samling/20191/lovforslag/l158/index.htm>
- COVID-19: All mink in Denmark must be culled, press release, Ministry of Food, Agriculture and Fisheries in Denmark, 5 November 2020, <https://en.fvm.dk/news/news/nyhed/covid-19-all-mink-in-denmark-must-be-culled/>
- Government's report to Danish parliament on the mink case, 18 November 2020, in Danish, <https://www.ft.dk/samling/20201/almdel/mof/bilag/130/index.htm>
- Excerpt of international news articles on the mink culling:
- BBC, 10 November 2020, <https://www.bbc.com/news/world-europe-54893287>
- Reuters, 17 November 2020, <https://www.reuters.com/article/health-coronavirus-denmark-mink/danish-government-finds-backing-for-mink-cull-law-idINL8N2I31O3>
- The Washington Post, 18 November 2020, <https://www.washingtonpost.com/world/2020/11/18/denmark-mink-cull-coronavirus-minister/>
- Our World in Data, Trust, <https://ourworldindata.org/trust> (last visited 5 March 2021)
- BBC, 19 October 2020, <http://www.bbc.com/travel/story/20201018-samfundssind-the-single-word-that-connects-denmark>

Functioning of justice systems

The Danish government is during 2020–22 conducting an analysis of the system of access to legal aid in Denmark. The Danish Institute for Human Rights was invited to participate in the working group which also consists of representatives from different parts of government, the judiciary, academia, and the Danish Consumer Council and with a reference group with, inter alia, the

Danish Bar and Law Society. The working group shall go through present legislation for legal aid and its linkages to private insurance and give recommendations for possible changes.

The Institute is intervening in cases before national courts and/or international courts, namely the European Court of Human Rights, when we assess that the case includes matters of principle concerning human rights or equal treatment and that the Institute can add value to the case in light of our resources available to make the intervention.

References

- The Ministry of Justice, in Danish, <https://www.justitsministeriet.dk/ministeriet/raad-naevn-og-udvalg/udvalg-om-retshjaelp-og-fri-proces/> (last visited 5 March 2020).

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

Please see the 2020 ENNHRI Rule of Law Report and the information provided above under the part on checks and balances.

As described above, The Danish Institute for Human Rights has given advice to the government and members of parliament – both in public consultation responses and in meetings – on human rights and rule of law protection during 2020, including during the considerations on a new epidemics act which was adopted in February 2020 and entered into force 1 March 2021.

Most important challenges due to COVID-19 for the NHRI's functioning

The Danish Institute for Human Rights is assisting the Danish Parliamentary Ombudsman in its duties as National Preventive Mechanism. During 2020 and 2021 many, if not most, of the inspections have been carried out by tele-conference, including interviews with persons deprived of their liberty and staff.

