

# State of the Rule of Law in Europe in 2022

## Reports from National Human Rights Institutions

Denmark



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# Denmark

*Danish Institute for Human Rights*

## Impact of 2021 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 to address any of the issues reported on in the 2021 ENNHRI Rule of Law Report.

### Impact on the Institution's work

The Danish Institute for Human Rights stressed that the 2021 ENNHRI Rule of Law Report has helped give a fruitful overview of the rule of law situation in Europe.

## Independence and effectiveness of the NHRI

### International accreditation status and SCA recommendations

The Danish NHRI was last reaccredited with A-status in October 2018 (1).

In relation to the selection and appointment process, 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 advocate for the Human Rights Council of Greenland to adopt a guideline or similar administrative instrument to regulate the selection process. The council subsequently adopted a guideline in October 2020.

The SCA acknowledged that there is a relevant body of Danish jurisprudence defining 'personal and professional integrity'. Nonetheless, in the interest of clarity and consistency, the SCA encouraged the NHRI 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. The Institute's Bylaws were subsequently adjusted in January 2020.

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

## **References**

- (1) [https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/SCA\\_Report\\_October\\_2018-Eng\\_FINAL.pdf](https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/SCA_Report_October_2018-Eng_FINAL.pdf)

## **Regulatory framework**

There have been no changes in the regulatory framework after the 2021 ENNHRI Rule of Law Report.

The situation of the Danish NHRI in terms of its independence, effectiveness and regulatory framework is balanced. The Danish Institute for Human Rights does not have a constitutional basis. The Institute is established by law as an independent state institution. The institution is bound by legislation on e.g. access to information, public archives, financial accountability and transparency, but the Government has no power of instruction over the institution concerning its strategic priorities, choice of actions, analyses etc.

As a National Human Rights Institution, it has a mandate to contribute to access to justice for individuals, including through monitoring, reporting, analyses, awareness raising etc. The Institute does not have a general mandate to handle complaints made by individuals. The Institute provides limited legal assistance to individuals, especially concerning equal treatment and through strategic litigation in selected cases.

## **Enabling and safe space**

In general, the relevant state authorities have good awareness of the Danish NHRI's mandate, independence and its role. The addressees of the Danish NHRI's recommendations are not legally obliged to provide a reply. The Danish Institute for Human Rights found, however, that state actors tend to take recommendations from the Institute into thorough consideration.

The Danish Institute for Human Rights works with political policy processes in Denmark and Greenland in various ways. One way is by responding to public consultations on draft bills, including giving recommendations for alterations of the text etc. Furthermore, the Danish Institute for Human Rights does research and analyses in various fields of human rights and equal treatment giving recommendations to, primarily, public authorities to enhance the protection and promotion of human rights. It reports to international organisations on human rights in Denmark and Greenland and cooperates with different

stakeholders, including state authorities and civil society. The Danish Institute for Human Rights also gives legal advice to people experiencing discrimination and takes steps of strategic litigation in selected matters of principle.

There are no specific, formal measures established in order to protect and support the NHRI, heads of institution and staff against threats and harassment and any other forms of intimidation (including SLAPP actions). Rules of immunity are uncommon in Danish legal tradition and only apply to members of Parliament and of the royal family.

## Human rights defenders and civil society space

### Laws and practices negatively impacting on civil society space and/or on human rights defenders' activities

The Danish Institute for Human Rights identified two examples of laws, measures that negatively impact on civil society space and reduce human rights defenders' activities:

1. The introduction in 2021 of rules banning donations from persons or organisations attempting to undermine democracy and fundamental human rights and freedoms through donations was described in the 2021 ENNHRI rule of law report. The Danish Institute for Human Rights noted that the rules posed a risk of arbitrariness and legal uncertainty. As of March 2022, a list of prohibited donors has not yet been published.
2. In a bill, also described in the 2021 ENNHRI rule of law report, the Danish Government suggested 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. – a “safety-creating ban” – to keep an area safe from a group of persons likely to make residents or other persons in the area unsafe. However, after much criticism of e.g. the risk of arbitrariness in the enforcement of such rules, including from the Danish Institute for Human Rights, the bill could not reach the necessary political support and was rejected.

### References

Ban on donations:

- 2021 ENNHRI rule of law report: [https://ennhri.org/rule-of-law-report-2021/denmark/#Human\\_rights\\_defenders\\_and\\_civil\\_society\\_space](https://ennhri.org/rule-of-law-report-2021/denmark/#Human_rights_defenders_and_civil_society_space)
- Information (in English) on the list of donors prohibited from making donations to Denmark: <https://us.dk/vores-opgaver/forbudslisten/list-of-prohibited-donors/>

“Safety-creating ban”, rejected 3 June 2021:

- Danish Parliament website (in Danish): L 189 B Forslag til lov om politiets virksomhed (Tryghedsskabende opholdsforbud), rejected:  
<https://www.ft.dk/samling/20201/lovforslag/l189B/index.htm>

### **Access to and involvement of civil society actors in law and policy making**

As described in the 2021 ENNHRI rule of law report, the Danish Institute for Human Rights found that law-making processes could sometimes be expedited or in other ways differ from usual procedure and with expedited or no public consultation. In general, though, public consultation took place with regard to law-making processes and with a consultation time period of 3-4 weeks, therefore providing access and involvement of civil society actors in law and policy making.

### **NHRI’s role in promoting and protecting civil society space and human rights defenders**

The Danish Institute for Human Rights cooperate with a range of civil society actors to protect and promote human rights and to facilitate a link between civil society and the authorities.

Through the “Human Rights Alliance” the Danish Institute for Human Rights established a partnership with Roskilde Festival (music festival), Amnesty International Denmark, Ungdomsbureauet (“the Youth Bureau”), Mino Denmark and Danish Youth Council. The partnership works to promote knowledge of and support to human rights among young people in Denmark through campaigns and events related to education, arts, creativity and sport.

### **References**

- Information on the Human Rights Alliance (in Danish):  
<https://menneskeret.dk/unge-kamp-frit-lige-samfund>

### **Check and balances**

The Danish Institute for Human Rights found several examples of laws, processes and practices that impact the mechanism of checks and balances:

#### **Impeachment of minister for unlawful administration**

In December 2021, former minister of foreigners and integration, Ms. Inger Støjberg, was sentenced to 60 days in prison for maladministration in a trial before the Court of Impeachment. Impeachment of a minister for maladministration is extremely rare in

Denmark and only the second in 25 years. The court consists of up to 15 Supreme Court judges and the same number of politically appointed judges. This case, having also been scrutinised by a commission beforehand, concerned a decision in February 2016 of separating asylum-seeking couples, where one of the persons were under 18 years, allowing no exceptions. Following instructions from the minister (overriding internal doubts as to the legality of the measure), couples were separated and accommodated in separate asylum centres without the possibility of an individual examination of their case, violating their rights under the European Convention on Human Rights (Article 8) and overriding common principles of administration. Several external actors, including The Danish Institute for Human Rights, had contacted the Ministry of Foreigners and Integration and raised concern over the decision.

### **New type of examination commission, anchored in parliament**

A new act from April 2021 allows the Danish Parliament to establish “scrutiny commissions” consisting of three independent experts, of which at least one is a judge, with the purpose of examining cases which have been under heavy criticism either in the Parliament or in the public. The examination should last less than a year and the scope should be a shorter/smaller format than existing ad hoc examination commissions established by the Government.

### **Doubt about legal basis for mink culling**

Due to the covid-19 pandemic, as described in the 2021 ENNHRI rule of law report, the Danish government in November 2020 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 2020 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. As of January 2022, the case is under examination by the first parliamentary scrutiny commission, the so-called “Mink Commission”, established under the new rules described above. A report is expected to be published in 2022.

### **References**

Impeachment trial:

- The Court of Impeachment press release (in Danish), including link to judgement from 2021 impeachment case against former minister Ms. Inger Støjberg, 13 December 2021, <https://rigsretten.dk/aktuelt/2021/12/rigsretten-har-afsagt-dom-i-sagen-mod-fhv-minister-inger-stoejberg/>

- Consolidated Act no. 641/1986 on the Court of Impeachment (in Danish): <https://www.retsinformation.dk/eli/lta/1986/641>

Parliamentary Scrutiny Commissions:

- Act no. 671 of 19 April 2021 on scrutiny commissions etc. (in Danish): "Lov om ændring af lov om undersøgelseskommissioner og retsplejeloven (Indførelse af granskningskommissioner, Folketingets samtykke til nedlæggelse af undersøgelseskommissioner m.v.)", <https://www.retsinformation.dk/eli/lta/2021/671>
- Background information on Parliamentary Scrutiny Commissions (in Danish): <https://www.minkkommissionen.dk/da/baggrund>

The Mink Commission:

- Information on the Mink Commission (in Danish): "Granskningskommissionen om sagen om aflivning af mink", <https://www.minkkommissionen.dk/da>

### **Trust amongst citizens and between citizens and the public administration**

The level of trust among citizens and between citizens and the authorities is very high in Denmark. A few cases, though, resulted in widespread criticism, including the "mink culling case", as described above and in the 2021 ENNHRI rule of law report.

### **NHRIs as part of the system of checks and balances**

The Danish Institute for Human Rights strives to participate in legislative processes and other policy measures via a range of avenues, including public consultation, contact with decision makers and stakeholders as well as through strategic litigation in selected matters of principle.

For example, please see the 2021 ENNHRI Rule of Law Report concerning Institute's work on a new epidemics act.

Examples also include the Institute's work in the case leading to an impeachment trial against the former minister of foreigners and integration) as well as data retention (described above). On data retention, the Danish Institute for Human Rights has been consistent throughout the years in its critique that Danish legislation should be in accordance with jurisprudence from the Court of Justice of the EU.

Lastly, the Institute intervened before the national courts in support of a man from Syria, M.A., who was barred from family reunification with his wife under rules of a mandatory waiting period of three years. The case went on to the European Court of Human Rights. In July 2021, the Grand Chamber with 16 votes to 1 found the national rules in violation of the

European Convention on Human Rights, article 8. The Danish Institute for Human Rights had intervened in the case before the Strasbourg Court.

### **References**

- Our work on a new epidemics act: Please refer to the 2021 ENNHRI rule of law report, [http://ennhri.org/rule-of-law-report-2021/denmark/#Human\\_rights\\_defenders\\_and\\_civil\\_society\\_space](http://ennhri.org/rule-of-law-report-2021/denmark/#Human_rights_defenders_and_civil_society_space)
- The Danish Institute for Human Rights third-party intervention in M.A. v. Denmark – see the European Court of Human Rights, judgment 9 July 2021, <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-211178%22%5D%7D>

### **NHRI's recommendations to national and regional authorities**

The Danish Institute for Human Rights recommends that national and regional authorities ensure transparency and public consultation in law-making procedures.

### **Functioning of the justice system**

The Danish Institute for Human Rights reported that the case handling times at the Danish courts were under pressure, due to an increase in the number and complexity of cases and partly due to a backlog from the covid-19 lockdown in 2020. Criminal cases which earlier on took approximately 4 months to hear in 2017, now take approximately 7 months.

To ensure progress in cases before the courts, the Act on Administration of Justice includes a rule that defendants in criminal case cannot choose a certain defence lawyer, i.e. a lawyer of their own choice, if the choice will result in a delay of the proceedings of a certain time period. This rule has been expanded with an amendment from December 2021. The Danish Institute for Human Rights had recommended that the limitation of choice should only apply after an individual assessment by the court in each case if the limitation – and consequently an assignment of another defence lawyer – is necessary for the case handling.

Another measure, adopted in June 2021, also with a view of furthering efficiency in the case handling of the courts, tightens up the rules of documentation for allowed absence if the defendant cannot meet in court. The defendant must now, at the latest by the time of the beginning of a court hearing, present the necessary documentation, e.g. a medical certificate. If the demands are not met, and the defendant is absent, the case can go ahead without the defendant being present. The Danish Institute for Human Rights had recommended that the law should take into account situations where it would be

practically impossible to produce the necessary piece of documentation at the beginning of the hearing.

### **References**

- On case handling times at Danish courts, please see press release by the Courts of Denmark, 18 March 2022 (in Danish), “Endnu længere sagsbehandlingstider i 2021”, <https://domstol.dk/aktuelt/2022/3/endnu-laengere-sagsbehandlingstider-i-2021/>
- Act no. 2601 of 28 December 2021 amending Administration of Justice Act (in Danish), Lov om ændring af straffeloven, retsplejeloven, hvidvaskloven og forskellige andre love (Implementering af initiativer i aftale om politiets og anklagemyndighedens økonomi 2021-2023, herunder etablering af National Enhed for Særlig Kriminalitet), <https://www.retsinformation.dk/eli/lta/2021/2601>
- Danish Institute for Human Rights, public consultation memo on limitation of choice of defence lawyer (in Danish), 20 September 2021, <https://menneskeret.dk/hoeringsvar/implementering-initiativer-aftale-politiets-anklagemyndighedens-oekonomi-2021-2023>
- Act no. 1169 of 8 June 2021 amending Administration of Justice Act (in Danish), Lov om ændring af retsplejeloven og forskellige andre love og om ophævelse af lov om udpankning og om udlæg uden grundlag af dom eller forlig (Effektivisering af straffesagskæden, digital kommunikation i skiftesager, pligtig afgangsalder for dommerfuldmægtige m.v.), <https://www.retsinformation.dk/eli/lta/2021/1169>
- Danish institute for Human Rights, public consultation memo on documentation for allowed absence (in Danish), 12 March 2021, <https://menneskeret.dk/hoeringsvar/effektivisering-straffesagskaeden-mv>

### **NHRI’s recommendations to national and regional authorities**

The Danish institute for Human Rights recommends that Denmark provides the necessary funding of the courts to ensure that case handling times are kept at a reasonable level in accordance with Article 6 of the European Convention on Human Rights.

## Media freedom, pluralism and safety of journalists

With regards to media freedom and threats to journalists, the Danish Institute for Human Rights reported the incident where the two chiefs of Denmark's two intelligence services (Danish Security and Intelligence Service and Danish Defence Intelligence Service) took initiative to meetings with CEOs and editors-in-chiefs at the largest Danish media, including Berlingske Media, JP/Politikens Hus and DR (Danish Broadcasting Corporation) in December 2021. According to news reports, the intelligence chiefs held the meetings to remind media executives that passing on classified information might be a criminal offence, risking imprisonment for up to 12 years. The visits, which followed the arrest a few days earlier of four intelligence officers accused of leaking information in a case where charges are still secret to the public, were seen as an intimidation campaign by media executives.

### References

- (in English): World Association of News Publishers, "World's Press Alarmed by Chilling Effect on Danish Press Freedom", 14 December 2021, <https://wan-iffra.org/2021/12/worlds-press-alarmed-by-chilling-effect-on-danish-press-freedom/>
- (in Danish): Politiken (Danish daily newspaper), "Professor i medieret om PET's og FE's besøg hos mediechefer: Det lyder ikke til, at man har orienteret helt sagligt om gældende ret", 14 December 2021, <https://politiken.dk/indland/art8527430/Det-lyder-ikke-til-at-man-har-orienteret-helt-sagligt-om-g%C3%A6ldende-ret>
- (in Danish): Berlingske (Danish daily newspaper), "PET og FE er på intimideringstur blandt chefredaktører og udgivere", 13 December 2021, <https://www.berlingske.dk/samfund/pet-og-fe-er-paa-intimideringstur-blandt-chefredaktoerer-og-udgivere>

## Corruption

The Danish Institute for Human Rights stated that there are, in general, very few detected cases of corruption in Denmark.

Nonetheless, it is worth highlighting that a new act on whistle blowers, adopted in 2021, requires that public authorities and larger enterprises (50 or more employees) must establish an internal system of whistle blower protection. The act also makes way for a whistle blowers channel to the Danish Data Protection Agency.

## References

- Act no. 436 of 29 June 2021 on the protection of whistle blowers (in Danish), Lov om beskyttelse af whistleblowere, <https://www.retsinformation.dk/eli/lta/2021/1436>
- The whistle blower channel in the Danish Data Protection Agency, <https://whistleblower.dk/english>

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

The Danish Institute for Human Rights assessed that while in 2020 the impact of measures undertaken by Danish authorities in response to COVID-19 pandemic on the national rule of law was worrying, in 2021 the situation improved. It resulted from the fact that the covid-19 blanket restrictions or official guidelines in 2020-2021, have developed into more tailor-made restrictions or guidelines in the winter of 2021-2022, even if some restrictions/guidelines, also this year, has had serious consequences for a range of actors of society, including but not limited to elective hospital procedures, universities/schools, restaurants, cafés, night clubs, etc.

In Denmark and Greenland, a political ambition to keep society open as much as possible in close observance of the development of the covid-19 epidemic and vaccination rates has been observed in 2<sup>nd</sup> half of 2021. Some restrictions were reintroduced, however, e.g. restrictions on culture life (closed theatres, concert venues, museums, zoos etc.), closed night clubs and restricted opening hours on restaurants etc, including limits on number of persons assembled, as well as travel restrictions.

Vaccination against covid-19 is voluntary and either full vaccination, a negative Covid-19 test or documentation of a cleared infection has been sufficient to participate in public life, including visits to hospitals, care homes etc. Furthermore, there is a possibility of being exempt from documenting vaccination, test, infection, if a person signs a solemn declaration stating that exemption is mandated by health reasons.

In a few weeks of December 2021, Greenland introduced vaccine as a requirement of participating in public life in parts of the country. As of January 2022, Greenland changed its test strategy due to an overwhelming a number of Covid-19 cases, thereby limiting tests to people with or in risk of serious illness. As a consequence of the changed test strategy, persons from 15 years of age, who were not vaccinated against Covid-19, could not go to restaurants, the library, indoor sporting activities, museums, theatres/cinemas, hairdressers etc. Shops, mail offices, public authorities' offices etc. were not included. This rule applied until February 2022.

Please refer to the 2020 and 2021 ENNHRI rule of law report to learn more on Covid-19-measures in Denmark and Greenland.

## References

- Danish authorities' official website on covid-19 restrictions, <https://en.coronasmitte.dk/rules-and-regulations> (accessed 10 January 2022).
- Greenlandic authorities' official website on covid-19, <https://corona.nun.gl/en/>
- Order on restrictions for parts of Greenland (only in force in a few weeks of Nov.- Dec. 2021) in Danish), Selvstyrets bekendtgørelse nr. 65 af 20. november 2021 om restriktioner for Nuuk m.fl., <https://lovgivning.gl/da-DK/Lov?rid={10544CB2-2E40-4DFC-84C0-3CF10AEAE660}>
- Order on restrictions for the whole of Greenland (in Danish) as of 26 January 2022, Selvstyrets bekendtgørelse nr. 8 af 25. januar 2022 om midlertidige restriktioner for hele landet, <https://lovgivning.gl/da-DK/Lov?rid={AC72B8F2-0A98-45F0-826F-1E3EA15BDE7E}>

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

Covid-19 still affects the work of the Danish Institute for Human Rights, both in terms of less travel and less meetings/events in person with partners and authorities, and in terms of more work being done from home. While the positive aspects of digitalised meeting facilities etc. have been explored and in some way institutionalised, negative effects of not travelling, not meeting each other and external partners as much in person as before, are also seen. Physical visits and inspections to institutions (National Preventive Mechanism) have taken place in 2<sup>nd</sup> half of 2021, while in the 1<sup>st</sup> half they were held digitally.

## Other relevant developments or issues having an impact on the national rule of law environment

### New data retention rules still in risk of violating EU law

In November 2021 the Danish Government presented a bill to the Parliament to ensure that Danish rules on data retention follow jurisprudence from the Court of Justice of the European Union which puts a ban on general and indiscriminate retention of traffic and location data from electronic communication unless there is a serious and actual or foreseeable threat to national security. The coming act shall regulate the registration and storage of traffic and location data and the later access to these data in criminal investigation and proceedings. In its assessment of the draft bill, the Danish Institute for

Human Rights found that retention is still in risk of being general and indiscriminate and that the access by police and prosecution to these data by and large is a continuation of previous practice which was in violation of EU law. In its remarks to the bill, the Ministry of Justice admits that there is a serious risk of a part of the new rules being found in violation of EU law (“væsentlig procesrisiko”). The Danish Institute for Human Rights finds it problematic that changing governments since 2016 have postponed a revision of rules violating EU law and now, at last taking an initiative of new rules, are proposing retentions scheme which to the Institute’s opinion is also likely to be in violation of the EU Charter of Fundamental Rights. The bill was adopted by the Parliament in March 2022.

### *References*

Data retention:

- Bill no. 93, presented before parliament on 18 November 2021 and adopted in March 2022 (in Danish), “Forslag til Lov om ændring af retsplejeloven og lov om elektroniske kommunikationsnet og -tjenester (Revision af reglerne om registrering og opbevaring af oplysninger om teletrafik (logning) m.v.)”: <https://www.ft.dk/samling/2021/lovforslag/193/index.htm>
- Danish Institute for Human Rights, public consultation memo (in Danish), “Revision af reglerne om registrering og opbevaring af oplysninger om teletrafik (logning) m.v.”, 25 October 2021: <https://menneskeret.dk/hoeringsvar/revision-reglerne-registrering-opbevaring-oplysninger-teletrafik-logning-mv>