

DENMARK

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Summary:

*Denmark is a democratically well-performing country with **high scores across the most essential democratic variables**, including an open civic space, with good funding possibilities, access to relevant actors and institutions, and access for citizens to be engaged and voice their opinions free from fear. But **an increased political focus on security and safety** in recent years is causing concern amongst civil society actors, who **report increasing anti-democratic sentiments in the public debate** and political initiatives challenging certain liberties and rights. What is most concerning is how this trend **disproportionately targeting specific, racialised and marginalised groups** – like in the case of the ‘Security for all Danes’ law package and the legislative changes allowing for the transfer of asylum seekers to a third country outside the EU for the purposes of both asylum processing passed in summer 2021. **The framework for CSOs consultations is generally considered robust**, but a new **tendency of shortened consultation periods** has been noticed, limiting the ability of civil society organisations - especially those with fewer resources at their disposal - to voice any concern and offer guidance to government institutions. Additionally, **the preparation of the national plan for the EU recovery funds saw a lack of involvement of civic organisations**. Although public funding is overall high and well-regulated, there is a voiced need for better funding of democracy-related activities. In the shadow of the pandemic, some civil society actors have also **described ‘a burgeoning tendency to centralise the executive powers’**. **The emergency law passed in August 2021 to halt the nurses’ strike goes in this direction**. The strike is the longest running in Danish history, and the emergency law is an extraordinary measure, given that labour rights issues are usually settled between social partners through collective bargaining.*

¹ The following document is an adapted version of the case study written by Regitze Helene Rohlving in November 2021, for the upcoming publication Activizenship #6.

The regulatory environment for and implementation of civic freedoms

The long tradition of civic engagement is encouraged by public policies

There is a long tradition for civic engagement in Denmark, the first instance dating back to the 18th century, though the modern form of civil society only emerged after the introduction of the Danish Constitution in 1849.² It is estimated that there are more than 100,000 associations in Denmark and, since 2010, the number of Danes active in civil society accounts for around 40%.³

An association is understood as 'a voluntary grouping of persons who come together for a common purpose, or to pursue a common interest'. Any citizen may form an association as guaranteed by Article 78 of the Danish Constitution, as long as the association's activities and purpose are lawful. There is no law on associations in Denmark, but some formal requirements must be met to receive grants or employ staff, for example. The association must also draw up and adopt official statutes, but there is no rule on what such statutes should contain. It is further required that there is some sort of

management committee that acts as the authority. Lastly, an association must have its own defined finances, including its own budget and account keeping. An association must also be democratically structured, and members must pay membership fees in order to be entitled to public grants under the Act on Non-formal Education and Democratic Voluntary Activity.

Though there has been a decrease in the number of registered members of organisations,⁴ there has been increased public and political focus on civil society over the last thirty years.⁵ All Danish governments since the early 2000s have emphasised the important role of civil society in various policy initiatives⁶, with the latest initiative from 2017 declaring that "*civil society and volunteering are of great importance to Danish society. Through voluntary action and commitment, individuals take on a personal responsibility that benefits society as a whole and creates active citizens*".⁷

Security policies risk curbing civil liberties

In recent years, an increased political focus on security and safety has introduced a line of changes, which are feared could jeopardise basic rights. Safety-ensuring initiatives, like counter-terrorism legislation and the Police Act, have been criticised for years for not

² Mette Hjære, Helene Elisabeth Dam Jørgensen og Malthe Lindholm Sørensen. (2018). Tal om frivillighed i Danmark. Frivilligrapport 2016-2018. Center for Frivilligt Socialt Arbejde

³ Mette Hjære, Helene Elisabeth Dam Jørgensen og Malthe Lindholm Sørensen. (2018). Tal om frivillighed i Danmark. Frivilligrapport 2016-2018. Center for Frivilligt Socialt Arbejde.

<https://frivillighed.dk/guides/fakta-og-tal-om-frivillige-organisationer-i-danmark>;

⁴ Hans-Peter Y Qvist, Lars Skov Henriksen, Torben Fridberg, The Consequences of Weakening Organizational Attachment for Volunteering in Denmark, 2004–2012, European Sociological Review, Volume 34, Issue 5, October 2018, Pages 589–601, <https://doi.org/10.1093/esr/jcy030>

⁵ Grubb, A., Henriksen, L.S. On the Changing Civic Landscape in Denmark and its Consequences for Civic Action. *Voluntas* 30, 62–73 (2019). <https://doi.org.ep.fjernadgang.kb.dk/10.1007/s11266-018-00054-8>

⁶ Espersen, Helle Hygum, Torben Fridberg, Asger Graa Andreassen & Niels Westermann Brændgaard (2021) Frivillighedsundersøgelsen 2020 En repræsentativ befolkningsundersøgelse af udviklingen i danskernes frivillige arbejde. VIVE - Det Nationale Forsknings- og Analysecenter for Velfærd

⁷ Regeringen (2017). Strategi for et stærkere civilsamfund. Børne- og Socialministeriet. *Authors own translation.*

attaching sufficient importance to fundamental rights. Other examples include the ban on full-face covering in 2018 and the unconstitutional restrictions imposed on pro-Tibet demonstrators during an official visit from China back in 2012, whose investigations about the conduct of the events are still ongoing.

Covid-19 legislation

The laws introduced for dealing with the Covid-19 pandemic were also heavily criticised for having potentially far-reaching infringements of citizens' rights. These included restrictions on freedom of assembly (with an exception for political or opinion-forming assemblies), personal freedom, respect for personal and private life, but also a strong centralisation of power in the hands of the executive. Amnesty International raised concern for the application of an amendment introduced in the Criminal Code which increased the sanctions for 'regular' offences, if they were committed in connection with Covid-19 pandemic – amendments that are still in place. It was criticised that more specification was needed about when the special paragraph could be applicable to ensure that the measurements in place were not unnecessarily curtailing citizens' freedoms.⁸ For example, in March 2021, a woman received a 2-year prison sentence, as she urged other protesters to "trash the city in

a non-violent way" during a demonstration in January. Her sentence was doubled due to the amendment in the Criminal Code; later, the court reversed the sentence, reducing it to 60 days,⁹ but this remains a worrying use of the legislation and similar situations may arise.

While this shows a worrisome example of restrictions on liberties for the sake of safety, the government was responsive to some of the critics raised by civil society organisations and the national human rights institute, and the new pandemic law of February 2021 did reinforce oversight powers to the parliament and repealed the temporary act of 2020.¹⁰

Police practices

The think tank Justitia noted that practices of the Danish police have interfered with basic freedoms, as was the case with the mass arrests during COP15 in 2009, the detention of people at the protests against the Chinese state visits in 2012 and 2013, and the relocation of several demonstrations.¹¹ Issues of arbitrary surveillance, wider margin of interpretation to the police and lack of sufficient due process guarantees in relation to far-reaching provisions are some of the critical points aimed at the counter-terrorism legislation, which has led to concern for both privacy rights, freedom of speech, and rights of assembly. It has been voiced that the law needs to be reassessed to ensure a better balance concerning the proportionality,

⁸ Amnesty (2021). Amnesty: Folketinget bør se på lov om dobbeltstraf i forbindelse med corona-epidemien. <https://amnesty.dk/amnesty-mener-folketinget-boer-se-paa-lov-om-dobbeltstraf-i-forbindelse-med-epidemien/>

⁹ <https://nyheder.tv2.dk/samfund/2021-06-09-to-coronasager-omgjort-i-landsretten-og-der-er-flere-paa-vej>

¹⁰ Amnesty (2021). Epidemilovforslag med vigtige ændringer. <https://amnesty.dk/epidemilovforslag-med-vigtige-aendringer/>; COMMISSION STAFF WORKING DOCUMENT (2021). Rule of Law Report Country Chapter on the rule of law situation in Denmark Accompanying the document

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS 2021 Rule of Law Report The rule of law situation in the European Union; Danish Institut for Human Rights (2021). Denmark. European Network of National Human Rights Instituts.

¹¹ http://justitia-int.org/wp-content/uploads/2016/01/Analyse_Politiets-indgreb-i-ytrings-og-forsamlingsfriheden_29-01-16.pdf Justitia (2016). Politiets indgreb i ytrings- og forsamlingsfriheden [Police interference with freedom of expression and assembly].

efficiency, and necessity aspects of restrictions.¹²

New security package

In June 2021, the Danish parliament adopted a new security package, known as 'Security for all Danes'. When first introduced as a draft in October 2020, the package was heavily criticised for its "*security-creating assembly ban*", which would allow the police to issue a general ban on staying in a geographical defined area if a group of people exhibit insecurity-creating behaviour. The ban would be for 30 days, extendable for an additional 30 days, and failure to abide by the ban would result in a fine of 10,000 DKK (over 1300 EUR) for a first offence and a prison sentence of up to 1 year for a second offence. The ban could restrict the right to freedom of movement, judicial guarantees, the right to privacy and the right to demonstrate peacefully. For instance, this legislation would have limited the choice of areas to hold the protest, regardless of its meaning or symbolic value. The law referred to "*groups of whom the behaviour would threaten the feeling of security*" which is very difficult to measure. This vague formulation questioned whether the law met the legality requirements, as it exposes citizens to a risk of arbitrariness in the decisions of the police, to a risk of disproportionate impact on gatherings and legal uncertainty. A result of such restrictions could be a general chilling effect, but the law was especially feared for disproportionately

affecting marginalised and racialised groups. In fact, the assembly ban would violate Section 79 of the Danish Constitution, Article 20 of the UN Universal Declaration of Human Rights and risk breaching the EU Race Equality Directive and the EU Charter for Fundamental Rights.

The fear for disproportionality rises from progressively hardening public rhetoric about ethnic minorities, politically labelling specific groups as 'trouble-makers'. This was, for instance, the case when Prime Minister Mette Frederiksen announced the draft law, stating that "*every fifth young man with a non-Western background, born in 1997, had violated criminal law before the age of 21*".¹³ This statement drew a clear link between ethnic minorities and security concerns. It is also important to understand that the security package follows several other measures with the same discriminatory elements. These include the so-called 2018 'Ghetto Package', which was condemned by UN experts for its discriminatory nature as it has made it possible to give harsher convictions to offenders from a 'ghetto area',¹⁴ namely a neighbourhood identified as such based on an exceeded 50% of 'non-Western' immigrants and descendants.

The 2021 security package, and its rhetoric, may well contribute to the already increasing public stigmatisation experienced by these groups. Upon adopting the law, a majority outside the government rejected the assembly ban¹⁵ which can be considered a

¹² Ad hoc group on Fundamental Rights and the Rule of Law (2020). Fundamental rights and the rule of law. Denmark - Country visit report. European Economic and Social Committee.; Enhedslisten (2020): Enhedslisten vil oprette Frihedskommission. <https://enhedslisten.dk/2020/01/28/enhedslisten-vil-oprette-frihedskommission>

¹³ Civic Space Watch (2021). DENMARK: New security package risks restricting the right to peaceful assembly and discriminating against minorities. <http://civicspacewatch.eu/old/denmark-new-security->

[package-risks-restricting-the-right-to-peaceful-assembly-and-discriminating-against-minorities/](#)

¹⁴ New York Times (2018). In Denmark, Harsh New Laws for Immigrant 'Ghettos'.

<https://www.nytimes.com/2018/07/01/world/europe/denmark-immigrant-ghettos.html>

¹⁵ European Center for Non-Profit Law (2021).

Comments on the Draft Act amending the Danish Penal Code, the Act on the Activities of the Police, and the Judicial Care Act ("Security for all Danes" Act). <https://ecnl.org/news/security-all-danes-serious->

victory for the protection of freedoms, as it is further a result of an active civil society standing up for democratic values.¹⁶ Nevertheless, 2021 Bill L 226 allowing for the transfer of asylum seekers to a third country outside the EU for the purposes of both asylum processing and protection of refugees in the third country follows the worrying trend described above and risk violating migrants' rights.¹⁷

The right to participation and dialogue between the sector and governing bodies

A key characteristic of civic space in Denmark is the relatively high degree of openness in the political system to input from civil society, where civil society tends to act as a channel for citizens to raise their concerns and negotiate solutions to problems.¹⁸ The framework for stakeholder consultations is generally considered robust, but a new tendency of shortened consultation periods has been noticed. This limits the ability of civil society organisations - especially those with fewer resources at their disposal - to voice any

concern and offer guidance to government institutions. Additionally, formal structures for the involvement of civil society in the policymaking were not used in the context of the preparation of the national plan for the EU recovery funds, which saw a lack of involvement of civic organisations.

Involvement of civil society is also a matter of funding and, though public funding is overall high and well-regulated, there are concerns over a possible diminution in available financing following the Covid-19 pandemic, but also a voiced need for better funding of democracy-related activities.¹⁹

Another issue for the right to participation is the unprecedented emergency law passed in August 2021 to halt the nurses' strike. The strike is the longest running in Danish history, and the emergency law is an extraordinary measure, given that labour rights issues are usually settled between social partners through collective bargaining.²⁰

[threat-freedom-assembly](#); Civic Space Watch (2021). DENMARK: New security package risks restricting the right to peaceful assembly and discriminating against minorities.

<https://civicspacewatch.eu/denmark-new-security-package-risks-restricting-the-right-to-peaceful-assembly-and-discriminating-against-minorities/>; Civicus (2021). Denmark: Reject discriminatory "Security for all Danes" Act and respect freedom of assembly. <https://www.civicus.org/index.php/media-resources/news/4999-denmark-reject-discriminatory-security-for-all-danes-act-and-respect-freedom-of-assembly>

¹⁶ Mellem Folkeligt Samvirke, Nyt Europa, Amnesty International (2021). Fælles høringssvar til forslag til Lov om ændring af straffeloven, lov om politiets virksomhed og retsplejeloven.

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https://www.ft.dk/ripdf/samling/20201/lovforslag/l226/20201_l226_som_fremsat.pdf

¹⁸ Espersen, Helle Hygum, Torben Fridberg, Asger Graa Andreasen & Niels Westermann Brændgaard (2021) Frivillighedsundersøgelsen 2020 En repræsentativ befolkningsundersøgelse af udviklingen i danskernes frivillige arbejde. VIVE - Det Nationale Forsknings- og Analysecenter for Velfærd

¹⁹ Ad hoc group on Fundamental Rights and the Rule of Law (2020). Fundamental rights and the rule of law. Denmark - Country visit report. European Economic and Social Committee.

²⁰ Civicus Monitor (2021). Government passes emergency law to halt the longest strike in danish history.

<https://monitor.civicus.org/updates/2021/09/20/government-passes-emergency-law-halt-longest-strike-danish-history/>

Recommendations

The developments in contrast to the Danish international outlook

Democracy and human rights are core elements of the Danish international outlook, which is also visible in the funds allocated to such work, like the 'Democratic Fund' with a budget of approximately 6.7 million EUR.²¹ The current strategy for development policy states that *"people have the right to live in security, to be free to think, speak and believe, to be free from oppression and free to participate in the life of their communities"*.²² Promoting such efforts is important work, but it is equally important to cherish and uphold these values at home. There is a risk of sounding hollow in one's democracy promotion and partnerships with civil society abroad, if in the Danish context certain liberties are under stress and marginalised groups are excluded and targeted.

The ministry of Foreign Affairs' website showcases the ways Denmark supports civil society in other countries, fighting against shrinking civic space abroad. However, Denmark has a social-democrats government, driven by populist narratives, that has restricted certain rights for refugees, asylum seekers, and immigrants in the past years. There can be a paradox, then, between what Denmark is saying and its external policies. Denmark strongly condemned the situation

²¹ Huusmann, K.E and L. G Hendriksen (2020). Legal environment and space of civil society organisations in supporting fundamental rights – Denmark. The Danish Institute for Human Right

²² Udenrigsministeriet/Danida (2021). Fælles om verdenen – Danmarks udviklingspolitiske strategi. Juni 2021, ISBN 978-87-93760-66-0

²³ 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/Justitsminist>

for civil society in Belarus, Russia, Hungary, and Poland. Even though the situations are difficult to compare – as, in Denmark, NGOs do not feel threatened, and there are a lot of possibilities for democratic consultations - in internal policy, there are contradictions.

A final word of recommendation

Denmark has high standards when it comes to democratic rights and people's participation in public life, but there are nonetheless also challenges. The deterioration of the democratic tone with a more polarised and tense public debate, but also outright attacks on critical voices, are deeply concerning.²³ The challenges are, though, not only discursive, as introduced legislation holds the possibility to actively curtail certain freedoms and liberties - at times, even disproportionately against marginalised and racialised groups. This must be actively combatted to ensure that everyone feels part of the society, and that everyone can freely engage in (civil) society and enjoy their civil liberties, both locally and nationally.²⁴

[eren-anklagerdirekt%C3%B8r-for-Institut-for-Menneskerettighederne-for-at-agere-politisk](https://politiken.dk/nyheder/art8170239/H%C3%A5rd-kritikRegeringens-kamp-for-tryghed-truer-vores-frihed): 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-kritikRegeringens-kamp-for-tryghed-truer-vores-frihed>

²⁴ Ad hoc group on Fundamental Rights and the Rule of Law (2020). Fundamental rights and the rule of law. Denmark - Country visit report. European Economic and Social Committee.