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## **COMMISSION STAFF WORKING DOCUMENT**

### **2022 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**

#### **2022 Rule of Law Report The rule of law situation in the European Union**

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## **ABSTRACT**

The level of perceived judicial independence in Denmark continues to be very high. Gaps in the digitalisation of the judiciary remain, notably related to digital solutions to initiate and follow administrative and criminal proceedings. The limited expenditure on the justice system as a percentage of the GDP and low number of judges remains a long-term challenge, in particular in view of ensuring efficient case-handling. Discussions on a multiannual budgetary framework for the period 2023-2026 are ongoing. A new law on court fees came into force, which aims to make the fees more understandable and to incentivise settlements. The justice system overall remains efficient and legislation to speed-up the handling of criminal cases was adopted. However, the average case-handling times for district courts have increased in both civil and criminal cases in 2021.

Denmark is perceived as the least corrupt country in the EU and the world. The anti-corruption system continues to be based to a large extent on general rules on ethics and integrity, social norms and public scrutiny with a high degree of trust in well-functioning of the public administration. A new national investigative unit was established for a more efficient approach to serious crime including complex corruption cases. New legislation was introduced to strengthen the protection of whistleblowers along with new reporting channels. Additional measures on political party financing to address multiple donations were announced by the Government though no concrete roadmap for their adoption is planned. Challenges regarding the implementation of international recommendations in relation to the anti-corruption framework remain unaddressed, as there are no plans to address the absence of rules on ‘revolving doors’ for ministers and on lobbying, and to ensure adequate control of asset declarations submitted by persons entrusted with top executive functions.

Initiatives to strengthen the media self-regulatory system in Denmark through the creation of a media ombudsperson and to update the current framework for media responsibility to fit the digital media reality are currently ongoing. The independence of the two Danish public service broadcasters is safeguarded by secondary legislation. Political negotiations have been conducted regarding the possible amendment of the Access to Public Administrative Documents Act, which restricts the right to access information in some cases, but there are no concrete plans for reforms yet. Organisations representing Danish journalists, media and cultural stakeholders, together with the Ministry of Justice and the Ministry of Culture, have published a national action plan to further strengthen the already robust framework for the safety of journalists. The Criminal Code has been amended to allow stricter sentences for threats to freedom of expression.

A number of developments related to checks and balances could be observed in Denmark. The first commission of scrutiny, following this newly established system of control, examined the decision on culling of mink and submitted its report to a Parliament committee on 30 June 2022. The Court of Impeachment, responsible for deciding on cases involving breaches of ministerial responsibility, issued a ruling in 2021. In addition, the Government has reviewed the use of the Epidemic Act and invited public comments. The guidelines of Parliament’s Standing Orders Committee on fast-track procedures have been overall respected notwithstanding an increase in legislative activity in 2021. The civil society space remains open and the framework for public participation remains robust.

## **RECOMMENDATIONS**

It is recommended to Denmark to:

- Ensure adequate human and financial resources for the justice system in the next multiannual framework, taking into account European standards on resources for the justice system.
- Adopt new legislation on political party financing that will address the issue of multiple and anonymous donations and introduce sanctions for breaching the rules on the political parties framework.
- Introduce rules on ‘revolving doors’ for ministers and on lobbying, and ensure adequate control of asset declarations submitted by persons entrusted with top executive functions.
- Continue the process geared at reforming 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.

## **I. JUSTICE SYSTEM**

The Danish justice system consists of 24 district courts, two high courts (courts of appeal) and a Supreme Court, as well as two specialised courts<sup>1</sup>. The independent National Court Administration is in charge of the administration and development of the courts, which includes allocation of courts' budgets and management of buildings and systems related to information and communications technology. The independent Judicial Appointments Council<sup>2</sup> makes non-binding proposals for the appointment of judges to the Ministry of Justice, who then proposes them for formal appointment by the executive (the Queen)<sup>3</sup>. Only one judge is proposed per vacancy by the Appointments Council. There have been no cases where the executive did not follow the proposal of the Appointments Council<sup>4</sup>. Disciplinary measures for judges can be issued by Court Presidents or the Special Court of Indictment and Revision<sup>5</sup>. The prosecution service is an autonomous institution acting under the supervision of the Ministry of Justice and led by a Prosecutor General<sup>6</sup>. The Bar and Law Society is the independent body governing the legal profession and ensuring its independence<sup>7</sup>.

### **Independence**

**The level of perceived judicial independence in Denmark continues to be very high both among the general public and companies.** Overall, 84% of the general population and 87% of companies perceived the level of independence of courts and judges to be 'fairly or very good' in 2022<sup>8</sup>. According to data in the 2022 EU Justice Scoreboard, the level remains consistently very high for both the general public and companies since 2016. Both figures have increased in comparison to 2021 (75% for the general public and 83% for companies). However, the level of perceived judicial independence among the general public is slightly lower in comparison with 2016 (88%).

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<sup>1</sup> The Maritime and Commercial Court and the Land Registration Court. CEPEJ (2021), Study on the functioning of the judicial systems in the EU Member States.

<sup>2</sup> Members are appointed by the Minister of Justice and consist of one Supreme Court and one High Court judge proposed by the respective courts, one District Court judge proposed by the Danish Association of Judges, one lawyer proposed by the Bar and Law Society and two representatives of the general public proposed by Local Government Denmark and the Danish Adult Education Association.

<sup>3</sup> With the exception of the President of the Supreme Court, who is selected and appointed directly by the Supreme Court according to an internal procedure. In addition, as regards members of the Supreme Court, the law sets out a special procedure under which the candidate chosen by the appointments board is vetted by judges of the Supreme Court before the appointment is confirmed.

<sup>4</sup> For transparency, the Judicial Appointments Council issues a press release when making their proposal.

<sup>5</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 2.

<sup>6</sup> The Prosecutor General is appointed by the executive (formally the Queen) on recommendation of the Minister of Justice following approval of the Governments' Recruitment Board and can be dismissed on a motivated recommendation of the Minister of Justice (in the latter case the recommendation is submitted directly to the Queen). The Minister of Justice can issue instructions to prosecutors in individual cases, with a number of safeguards applicable (2020 Rule of Law Report, Country Chapter on the rule of law of situation in Denmark, p. 3).

<sup>7</sup> Administration of Justice Act, Chapter 15.

<sup>8</sup> Figures 50 and 52, 2022 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

## Quality

**Gaps in the digitalisation of the judiciary remain, notably related to digital solutions to initiate and follow administrative and criminal proceedings.** The shortcomings as regards digitalisation identified in the 2020 and 2021 Rule of Law Reports<sup>9</sup> have remained largely unchanged. While digital communication tools for courts and the prosecution service are in place<sup>10</sup>, procedural rules for digital tools are only partly in place for civil, administrative and criminal proceedings<sup>11</sup> and digital solutions to initiate and follow administrative and criminal proceedings remain very limited<sup>12</sup>. While gaps still remain on arrangements for machine-readability of judgments<sup>13</sup>, the introduction of an online database for judgments by the National Court Administration as of 6 January 2022 is an improvement<sup>14</sup>. In addition, the National Courts Administration has received funding for a project to develop a new IT system for processing criminal and probate cases<sup>15</sup>. Nevertheless, the COVID-19 pandemic has accentuated the existing gaps concerning the digitalisation of justice, which remains a challenge.

**The resource situation and the low number of judges remains a challenge.** The expenditure on the justice system as a percentage of GDP remains very low in Denmark (at 0.17% of GDP)<sup>16</sup> as does the number of judges per 100 000 inhabitants (at 6.6 per 100 000 inhabitants)<sup>17</sup>, which presents a long-term challenge<sup>18</sup>. The budgetary resources allocated to the Danish courts in the annual budget for 2022 are approximately EUR 257.02 million (DKK 1 911.5 million), which remains stable compared to 2021<sup>19</sup>. In spite of some efficiency gains in 2020<sup>20</sup>, the Danish courts have experienced an increase of pending cases and case processing times in the past years, notably on civil and criminal cases<sup>21</sup>, which, in spite of

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<sup>9</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 4.

<sup>10</sup> Figures 44-45, 2022 EU Justice Scoreboard.

<sup>11</sup> Figure 42, 2022 EU Justice Scoreboard.

<sup>12</sup> Figures 46-47, 2022 EU Justice Scoreboard.

<sup>13</sup> Figure 49, 2021 EU Justice Scoreboard.

<sup>14</sup> The database presently contains a small number of recent judgments, but it will be gradually extended to include more as new judgments are delivered, integration with the IT systems of the courts is improved and new systems for digitising the decisions of the courts are implemented. The judgments are pseudonymised. National Courts Administration (2022), Judgments database is open.

<sup>15</sup> The budget for the project is approximately EUR 81.25 million (DKK 604.6 million). The objective of the new IT system is to replace the outdated IT-systems used by the courts with a more user-friendly, effective and future-proof solution. The project will be rolled out in six stages, whereby the first project stage will be a probate portal that will support the registration of claims concerning the administration of the estate of the deceased, to be rolled out in November 2022 and the last stage in 2026. The Danish district courts deal with about 300 000 criminal and probate cases a year. National Courts Administration (2021), Digitisation of new criminal and probate system under way.

<sup>16</sup> Figure 35, 2022 EU Justice Scoreboard.

<sup>17</sup> Figure 36, 2022 EU Justice Scoreboard.

<sup>18</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 4 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 3.

<sup>19</sup> In 2021, the total financial resources for the judiciary have increased to approximately EUR 259.59 million (DKK 1 931.8 million) compared to approximately EUR 255.79 million (DKK 1 903.5 million) in 2020. In 2021, there were 2 078 full-time employees, including 685 judges and other legal advisers, and 1 202 office staff (in 2020, the figures were 680 and 1 181 respectively). Input from Denmark for the 2022 Rule of Law Report, p. 9-10 and written contribution from the Ministry of Justice in the context of the country visit.

<sup>20</sup> As noted in the 'Efficiency' section below.

<sup>21</sup> The COVID-19 pandemic is not the only reason for the increase in pending cases. The National Court Administration estimates that the activity in criminal cases at the district courts would have been roughly at the same level as in 2019 without the COVID-19 cancellations and other constraints on case management

additional financial allocations in 2021 and 2022<sup>22</sup>, may require a long-term increase in resources in order to address them, in particular for the creation of new posts for judges, as already pointed out by stakeholders in the 2021 Rule of Law Report<sup>23</sup>. In this context, the Danish Association of Judges has emphasised that a number of laws in the past years have increased the burdens on courts and prolonged their disposition times, notably in criminal cases, while no additional longer-term human or financial resources have been allocated to the courts; this has led to an increase in caseload and length of procedures<sup>24</sup>. The multiannual budgetary framework for the Danish courts for the period 2023-2026 is currently being discussed. These discussions normally take place at an administrative level between the National Courts Administration, the Ministry of Justice and the Ministry of Finance<sup>25</sup>. In a departure from previously established practices, however, it has recently been suggested that in light of the challenges faced these discussion should be brought up to the political level and involve exchanges among parties in Parliament (*Folketing*)<sup>26</sup>. According to Council of Europe recommendations, each State should allocate adequate resources, facilities and equipment to the courts to enable them to function in accordance with the standards laid down in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms and to enable judges to work efficiently<sup>27</sup>.

**A new law on court fees came into force which aims to make the fees more understandable and to incentivise settlements.** On 1 October 2021, the new Court Fees Act came into force<sup>28</sup>. It aims to simplify the rules on court fees<sup>29</sup> and to incentivise settlements, by allowing the parties a longer period to reach a settlement, under which the plaintiff or appellant can be reimbursed the court fees<sup>30</sup>. While the stakeholders generally welcomed the

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due to the COVID-19 pandemic. In the last five years, district courts have received significantly more of the serious criminal cases than in the previous five years; at the same time, cases have also become more complex and time-consuming. National Court Administration (2022), Even longer processing times in 2021. National Courts Administration (2022), Graph of average case processing time in selected criminal cases in district courts 2012-2021. National Court Administration (2022), Key figures on case turnover and processing times, pp. 4-5 and 10.

<sup>22</sup> The Government allocated to Danish courts additional funding to tackle the caseload of criminal cases in June 2021 (approximately EUR 3.36 million or DKK 25 million) and for 2022 (approximately EUR 6.39 million or DKK 47.5 million). National Courts Administration (2022), Annual report 2021 has been published. In addition, the Government has allocated EUR 1.75 million (DKK 13 million) per year for the period of 2021-23 to address the caseload impact of the COVID-19 pandemic; written contribution from the Ministry of Justice in the context of the country visit.

<sup>23</sup> See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 3.

<sup>24</sup> The Danish Association of Judges has regularly referred to the issue of resources and impact on efficiency in its replies on legislative proposals, see for example the statements in replies to public consultations on the draft law on police activities or the draft law amending the Criminal Code, the Code of Criminal Procedure and the Road Traffic Act (from 14 March 2022 and 21 September 2021, respectively). The Danish Bar and Law Society has also regularly pointed out that there is a shortage of resources to handle cases and that as a result waiting times have increased dramatically, commentary in *Berlingske Tidende* (2022), Commentary: Long waiting times must not undermine confidence in the justice system (and republished by the Danish Bar and Law Society).

<sup>25</sup> *Altinget* (2022), 'Parties to negotiate on court finances: "It is not a law of nature that the agreement must be administrative'.

<sup>26</sup> *Ibid.*

<sup>27</sup> Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, paragraph 33.

<sup>28</sup> The Law on Court Fees, Law Nr. 425 of 16 March 2021.

<sup>29</sup> A fee of approximately EUR 100 or 200 (DKK 750 or DKK 1 500) applies depending on the value of the court case. Input from Denmark for the 2022 Rule of Law report, p. 8.

<sup>30</sup> Written contribution from the Ministry of Justice in the context of the country visit.

objective of the proposal, they considered it too early to assess its impact<sup>31</sup>. As noted in the 2021 Rule of Law Report, the Ministry of Justice set up a pre-legislative committee to review the existing legal aid system in April 2020<sup>32</sup>. The work of the pre-legislative committee was delayed due to the COVID-19 pandemic, but it resumed its work in September 2021 and is expected to present its results by 31 August 2023<sup>33</sup>.

## Efficiency

**The justice system overall remains efficient, but the average case handling time for district courts has increased in both civil and criminal cases in 2021.** The number of incoming civil, commercial, administrative and other cases at first instance in 2020 remains very high (47.5 cases per 100 000 inhabitants compared to 49.3 cases in 2019)<sup>34</sup> with simultaneously one of the lowest number of judges per 100 000 inhabitants as compared to other Member States<sup>35</sup>. While the clearance rate for civil, commercial, administrative and other cases has remained stable (100.6% in 2019 compared to 100.8% in 2020), the rate for litigious civil and commercial cases has improved markedly in 2020 (111.1%, up from 91.8% in 2019)<sup>36</sup> and the estimated time to resolve litigious civil and commercial cases has slightly decreased on average at all instances in 2020 compared to 2019 (from 222 to 190 days for first instance cases)<sup>37</sup>. However, according to National Courts Administration's data for 2021, the average case handling time for district courts has increased in both civil and criminal cases, and the pending criminal cases at the end of 2021 increased by 16% in spite of a decrease of incoming criminal cases by 11%<sup>38</sup>.

**The Government has adopted legislation to speed up the handling of criminal cases in court, which touches upon the right to choose a lawyer freely.** The Government is undertaking efforts to improve the efficiency of the justice system in relation to the processing of criminal cases, considering that processing times for criminal cases is seeing an increasing trend<sup>39</sup>. Since 2018, the Act on Administration of Justice includes a rule that, in criminal cases related to certain types of offences, defendants cannot choose a certain attorney, if their request of attorney will result in a delay of the proceedings; this rule has been overall expanded to cases related to additional types of criminal offences (dangerous crimes committed against another individual) with an amendment from December 2021<sup>40</sup>. According to the Government, this is applicable in cases where the criminal proceedings foreseen by law would be delayed by more than two or three weeks; the refusal can be

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<sup>31</sup> Information received from the National Courts Administration and the Danish Bar and Law Society in the context of the country visit.

<sup>32</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 3.

<sup>33</sup> Information received from the Ministry of Justice in the context of the country visit to Denmark.

<sup>34</sup> Figure 3, 2022 EU Justice Scoreboard. This category includes all civil and commercial litigious and non-litigious cases, non-litigious land and business registry cases, other registry cases, other non-litigious cases, administrative law cases and other non-criminal cases.

<sup>35</sup> Figure 36, 2022 EU Justice Scoreboard.

<sup>36</sup> Figures 11 and 12, 2022 EU Justice Scoreboard.

<sup>37</sup> Figure 7, 2022 EU Justice Scoreboard. No separate data on administrative cases is available.

<sup>38</sup> National Court Administration (2022), Key figures on case turnover and processing times, p. 2.

<sup>39</sup> National Court Administration (2022), Even longer processing times in 2021, National Courts Administration (2022), Graph of average case processing time in selected criminal cases in district courts 2012-2021, and information received from the National Court Administration during the country visit.

<sup>40</sup> While some types of criminal offences are no longer covered by that provision, a number of criminal offences have been added since December 2021. Written contribution from the Ministry of Justice in the context of the country visit.

appealed to the Special Court of Indictment and Revision<sup>41</sup>. Some stakeholders<sup>42</sup> have expressed caution about a possible impact on the defendants' rights to freely choose an attorney<sup>43</sup>. In addition, to streamline the processing of criminal cases, the Government also tabled a proposal in Parliament in April 2022<sup>44</sup>. Some stakeholders have expressed criticism on some elements of the law, such as the possibility for the police under certain conditions to have access to information of the whereabouts of a suspect or another person without a court order<sup>45</sup>. The prioritisation of certain criminal cases<sup>46</sup> in Danish courts is to the detriment of other cases, including civil cases<sup>47</sup>.

## II. ANTI-CORRUPTION FRAMEWORK

The Danish anti-corruption system is to a large extent based on general rules on ethics and integrity as well as social norms and public scrutiny. Various authorities are involved in preventing corruption, promoting good administrative practice and compliance with the legal framework. This includes amongst others the National Audit Office. The Employee and Competence Agency and the Prime Minister's Office have responsibilities with regard to the promotion of integrity among civil servants and ministers. The Ministry of Justice ensures

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<sup>41</sup> The defendant can appeal the court's decision to deny the requested attorney to the Special Court of Indictment and Revision within a week after the decision. Written contribution from the Ministry of Justice in the context of the country visit.

<sup>42</sup> In the public consultation on the proposal, the Danish Bar and Law Society has noted that a free choice of attorney is one of several pillars of confidence in the process that can lead to serious sanctions and that this must be borne in mind when limiting the choice of defence. Danish Bar and Law Society (2021), Response to the consultation on draft law amending the Criminal Code, the Code of Criminal Procedure and the Road Traffic Act. The Danish Human Rights Institute referred to its consultation response to the 2018 amendment that introduced this rule, in which it expressed the view that the starting point should be that the defendant has the right to choose their attorney and that refusal on the grounds of speeding up the criminal proceedings should be exceptional. Danish Institute for Human Rights (2021), Response to public consultation on draft law amending the Criminal Code, the Code of Criminal Procedure and the Road Traffic Act. The Danish Association of Judges considered that the amendment in practice maintains a status quo and reflects a change in priority of cases to be dealt with first and does not give rise to problems in practice. Written information received from the Danish Association of Judges in the context of the country visit to Denmark.

<sup>43</sup> According to Article 6§ 3(c) of the Convention for the Protection of Human Rights and Fundamental Freedoms everyone charged with a criminal offence has the minimum right to defend himself in person or through legal assistance of his own choosing. The European Court of Human Rights has held that this right cannot be considered to be absolute and, consequently the national courts may override that person's choice when there are relevant and sufficient grounds for holding that this is necessary in the interests of justice. The existence of such grounds has to be assessed in light of the particular circumstances of each case. Judgment of the European Court of Human Rights of 20 October 2015, *Dvorski v. Croatia*, 25703/11, paragraphs 79-82 and the case-law cited therein.

<sup>44</sup> Proposal L 182: Proposal for an Act amending the Penal Code, the Code of Judicial Procedure and various other laws (Streamlining the criminal case chain and the tribunal process, etc. in the Juvenile Delinquency Board, increased access to disclosure and recording of photos, improving police opportunities for investigation, etc.) (*L 182: Forslag til lov om ændring af straffeloven, retsplejeloven og forskellige andre love (Effektivisering af straffesagskæden og nævnsprocessen m.v. i Ungdomskriminalitetsnævnet, øget adgang til videregivelse og optagelse af fotos, forbedring af politiets muligheder for efterforskning m.v.)*) and written contribution from the Ministry of Justice in the context of the country visit.

<sup>45</sup> See notably the responses to the public consultation on the draft law amending the Penal Code, the Code of Judicial Procedure and various other laws by the Danish Association of Judges (2022) and the Danish Institute of Human Rights (2022), p. 16-18.

<sup>46</sup> The so-called VVV-cases related to violence, weapons and rape have a priority in the judicial system and need to be dealt with within 30 days.

<sup>47</sup> See opinion shared by the Danish Bar and Law Society in Berlingske Tidende (2022), Commentary: Long waiting times must not undermine confidence in the justice system.

cooperation between national authorities in elaborating anti-corruption measures<sup>48</sup>. As of 1 January 2022, the State Prosecutor for Serious Economic and International Crime (SØIK) was replaced by two entities: the National Special Crime Unit (SCU) and the State Prosecutor for Special Crime (SPSCU). Denmark does not have a dedicated anti-corruption strategy nor a specialised agency dealing with corruption issues.

**The perception among experts and the business community is that Denmark is one of the least corrupt countries in the world.** In the 2021 Corruption Perceptions Index by Transparency International, Denmark scores 88/100 and ranks first in the European Union and globally<sup>49</sup>. This perception has been stable over the past five years<sup>50</sup>. The 2022 Special Eurobarometer on Corruption shows that 16% of respondents consider corruption widespread in their country (EU average 68%) and 5% of respondents feel personally affected by corruption in their daily lives (EU average 24%)<sup>51</sup>. As regards businesses, 18% of companies consider that corruption is widespread (EU average 63%) and 7% consider that that corruption is a problem when doing business (EU average 34%)<sup>52</sup>. Furthermore, 28% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 34%)<sup>53</sup>, while 50% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 29%)<sup>54</sup>.

**A reform to set up a new national investigative unit responsible for serious crimes, including complex corruption-related cases, has been implemented.** The National Special Crime Unit (SCU) as well as the State Prosecutor for Special Crime Unit<sup>55</sup> (SPSCU) replaced as of 1 January 2022 the State Prosecutor for Serious Economic and International Crime (SØIK)<sup>56</sup>. As a result, SCU has both investigative and prosecution competences and SPSCU, among others, supervises SCU's complex criminal proceedings, and conducts legality control and appeals before the high courts. Their main focus remains the same as that of their

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<sup>48</sup> While the Ministry of Justice has set up an anti-corruption forum for internal coordination, it has not met since 2015 and coordination is carried out through ad-hoc written consultations. Written contribution from the Ministry of Justice in the context of the country visit.

<sup>49</sup> Transparency International (2022), Corruption Perceptions Index 2021, pp. 2-3. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

<sup>50</sup> In 2017 the score was 88, while, in 2021, the score is 88. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last five years.

<sup>51</sup> Special Eurobarometer 523 (2022). The Eurobarometer data on citizens' corruption perception and experience is updated every second year. The previous data set is the Special Eurobarometer 502 (2020).

<sup>52</sup> Flash Eurobarometer 507 (2022). The Eurobarometer data on business attitudes towards corruption as is updated every second year. The previous data set is the Flash Eurobarometer 482 (2019).

<sup>53</sup> Special Eurobarometer 523 (2022).

<sup>54</sup> Flash Eurobarometer 507 (2022).

<sup>55</sup> Danish Government (2020), Reflection Paper for an Agreement on the finances of the Police and Prosecutor's Office 2021-2024 Ministry of Justice, pp. 17-21; Information received by the Prosecution Service in the context of the country visit to Denmark.

<sup>56</sup> Law 2601 of 28 December 2021. As noted in the Rule of Law Report 2021, the objective of the reform was to bring under the same roof investigators and prosecutors, who will be better able to follow serious crime cases all the way from district level to appeal, with the aim of ensuring a more efficient and coordinated approach regarding serious crime, including complex cases of corruption. 2021 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 6.

predecessor institution, namely serious crime cases, including complex corruption-related cases<sup>57</sup>.

**Complex cases involving bribery are addressed effectively while more general reporting of corruption cases is lacking.** The Danish authorities consider that the existing anti-corruption system based mainly on general rules on ethics and integrity, social norms and public scrutiny works well and does not require a dedicated anti-corruption strategy<sup>58</sup>. In 2021, the investigation and prosecution for those cases that was carried out by the State Prosecutor for Serious Economic and International Crime (SØIK)<sup>59</sup> were limited to bribery cases. Authorities continue to report that resources available and training for officials are adequate to fulfil the tasks assigned to them<sup>60</sup>. At the same time, the overall number of investigations and the enforcement of corruption-related cases are difficult to measure within the current system of processing data (case-handling system)<sup>61</sup>.

**There are no plans to address the outstanding shortcomings related to the integrity framework for ministers and top executive functions.** As reported in the 2021 Rule of Law Report<sup>62</sup>, public servants<sup>63</sup> are subject to a Code of Conduct in the Public Sector<sup>64</sup>, which refers to the criminal law provisions and obligations under the Public Administration Act<sup>65</sup>. As regards ministers<sup>66</sup> and top executives, there are currently no plans<sup>67</sup> to address the issue previously highlighted by GRECO, namely that declarations on assets submitted by persons entrusted with top executive functions need to be subject to substantive control<sup>68</sup>. According to the Danish authorities the system works well and further strengthening of the rules in

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<sup>57</sup> Written contribution from the Employee and Competence Agency in the context of the country visit.

<sup>58</sup> Information received from the Ministry of Justice in the context of the country visit.

<sup>59</sup> There were six judgments passed in 2021 (compared to 18 in 2020) based on the Criminal Code section 122 (active bribery), two judgments passed in 2021 (compared to 14 in 2020) based on Criminal Code section 144 (passive bribery), five judgments passed in 2021 (compared to one in 2020) based on the Criminal Code section 299 (private sector bribery).

<sup>60</sup> Information received from the Ministry of Justice in the context of the country visit to Denmark.

<sup>61</sup> According to the Danish authorities, the existing IT system consists of a case-handling system which does not process nor identify statistics on corruption-related cases. Nevertheless, the Danish authorities were able to provide the statistics related to bribery under sections 122 and 144 of the Danish Criminal Code, as in footnote 59 above.

<sup>62</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, pp. 6-7.

<sup>63</sup> Public Servants in Denmark include special advisers and top-level civil servants. 2021 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 6.

<sup>64</sup> Agency for modernisation (2017), Code of conduct in the public sector; 2020 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 6.

<sup>65</sup> Public Administration Act, Chapter 2, Sections 3-6. For the areas not covered by the public administration act, a general fundamental legal principle of impartiality applies; Agency for modernisation (2017), Code of conduct in the public sector; GRECO Fifth Evaluation Round – Evaluation Report, p. 15.

<sup>66</sup> New ministers are given a ministerial handbook which is updated regularly and contains the main applicable rules and guidelines on integrity-related matters regarding governmental work including rules on secondary employment, gifts and other benefits and conflicts of interests. 2020 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 6. However, ministers have legal and political responsibility towards Parliament including duties on truthfulness, confidentiality, disqualification or conflicts of interest. The disregard of these rules can be sanctioned in some instances as stated in Section 5 of the Ministerial Accountability Act of 1964. Application of this provision is very rare. 2021 Rule of Law report, Country Chapter on the rule of law situation in Denmark, p. 7.

<sup>67</sup> Information received from the Ministry of Justice in the context of the country visit to Denmark.

<sup>68</sup> GRECO Fifth Evaluation Round – Compliance Report, recommendation vii, pp. 9-10.

question is not necessary<sup>69</sup>. Overall, due to the lack of a monitoring and verification mechanism, the efficacy of the mentioned rules is difficult to evaluate. There are no plans either to address the GRECO recommendations<sup>70</sup> on the lack of binding rules on asset declarations, and the exclusion of special advisers<sup>71</sup>. Moreover, the authorities report no plans either to adopt legislation establishing a ‘revolving doors’ policy for ministers<sup>72</sup> despite GRECO’s views that the current framework poses integrity risks<sup>73</sup> and despite a public debate on this issue<sup>74</sup>.

**There are no plans to regulate contacts between decision-makers and lobbyists.** As already noted in the 2020 Rule of Law Report, interest representatives have no duty to report on their activities<sup>75</sup>. There are currently no plans to adopt rules on lobbying as the authorities do not consider strengthening of the rules necessary<sup>76</sup>. According to GRECO, introduction of rules and guidance on lobbying is recommended with regard to contacts between persons entrusted with top executive functions and lobbyists. Overall, GRECO also underlined the need to increase the transparency of contacts and subject matters concerning lobbying of persons entrusted with top executive functions<sup>77</sup>.

**Additional measures on political party financing were announced by the Government, though no concrete roadmap for their adoption is foreseen.** Due to the current debate<sup>78</sup> on the shortcomings in the rules on transparency of political party financing<sup>79</sup>, criminal law measures are planned to address situations of several donations below the threshold (approximately EUR 3 000 in 2022), which add up to a sum above the threshold, or through different companies owned fully or partially by the same person, which partly addresses international recommendations<sup>80</sup>. It is not clear at this stage if the new law would also address

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<sup>69</sup> The declarations of ministers are published on the website of the Prime Minister’s Office and thereby subject to scrutiny by Parliament, the press and the public at large, and ministers bear political responsibility for this information, as mentioned above, see GRECO Fifth Evaluation Round – Compliance Report, pp. 9-10.

<sup>70</sup> GRECO recommends (i) enshrining in regulation or legislation an obligation for members of the government to publicly declare their assets, income and financial interests; (ii) that quantitative data on income as well as data on assets and significant liabilities is included in the financial declarations; and (iii) that it be considered to oblige special advisers to declare their financial interests publicly on a regular basis as well. GRECO Fifth Evaluation Round – Compliance Report, pp. 8-9.

<sup>71</sup> Information received from the Ministry of Justice in the context of the country visit to Denmark. Denmark considers that the non-binding nature and the lack of quantitative data strikes a fair balance between transparency and the privacy of the ministers, and that special advisers have a duty to report potential conflicts of interest to the permanent secretary of their ministry or their manager, see GRECO Fifth Evaluation Round – Compliance Report, recommendation viii, pp. 9-10.

<sup>72</sup> Written contribution from the Employee and Competence Agency in the context of the country visit.

<sup>73</sup> GRECO Fifth Evaluation Round – Evaluation Report, p. 8.

<sup>74</sup> Altinget (2022), Hækkerup's shift calls for democratic self-examination, Altinget (2022), Hækkerup's exit reignites debate over conflict of interest: Here are the top politicians who took the revolving door before him, TV 2 (2022), That's why former ministers are so attractive to business.

<sup>75</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, pp. 7-8.

<sup>76</sup> Information received from the Employee and Competence Agency in the context of the country visit to Denmark.

<sup>77</sup> GRECO Fifth Evaluation Round on Denmark – Compliance Report, pp. 7-8.

<sup>78</sup> Politiken (2021), Broad majority in parliament wants to tighten rules and ban Britt Bager-finten.

<sup>79</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 8; Politiken (2022), The Liberal Party kept recipients of party support secret: ‘If the rest of us filled out forms from Tax or other authorities in the same way, we would not get away with it’.

<sup>80</sup> Written contribution from the Ministry of Justice in the context of the country visit.

other outstanding issues such as anonymous donations to political parties and the introduction of sanctions for breaching the rules that are considered a concern by GRECO<sup>81</sup>.

**New legislation was adopted to strengthen the protection of whistleblowers and new reporting channels were created.** The Danish Whistleblower Act was adopted by the Parliament on 24 June 2021<sup>82</sup> and entered into force on 17 December 2021, aiming to transpose the EU Whistleblowers Directive<sup>83</sup>. The Act covers serious breaches of legislation, including both national and EU law. A general external reporting channel in the Danish Data Protection Agency has been established<sup>84</sup>. Since 17 December 2021, the Agency received 45 reports on whistleblowing<sup>85</sup>. Additional funds were granted to the Agency to ensure its capacity to operate this channel<sup>86</sup>. Moreover, two special external reporting channels for the Danish Security and Intelligence Service and the Danish Defence Intelligence Service have been established<sup>87</sup>. The establishment of the special external reporting channels does not affect the whistleblower's right to use the general external reporting channel established in the Danish Data Protection Agency, however, whistleblowers from the services are encouraged to use the external channels established in the ministries<sup>88</sup>. To ensure correct implementation, the Danish Ministry of Justice has published guidance notes for private and public organisations and whistleblowers<sup>89</sup>.

**No specific monitoring for the impact of the COVID-19 pandemic on the measures such as in the area of public procurement has been put in place.** The impact of the new provision added to the Criminal Code in April 2020, doubling the penalty for a number of crimes related to measures adopted as a response to the COVID-19 pandemic<sup>90</sup>, has not yet been assessed. In parallel, the necessity for a close monitoring of rules, in particular related to public procurement implemented during the COVID-19 pandemic, was the object of public debate<sup>91</sup>. The National Special Crime Unit received more than 450 cases of suspected fraud with regard to measures adopted as a response to the pandemic<sup>92</sup>. In parallel, the National Audit Office is currently conducting audits regarding implementation of measures implemented in 2021 and as a follow-up to the audits carried out in 2020<sup>93</sup>.

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<sup>81</sup> GRECO Third Evaluation Round – Addendum to the second compliance report on Denmark.

<sup>82</sup> Law Nr 1436 from 29 June 2021 on the protection of whistleblowers.

<sup>83</sup> Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.

<sup>84</sup> Website of the whistleblower channel in the Danish Data Protection Agency available in English, <https://whistleblower.dk/english>.

<sup>85</sup> Information received from the Ministry of Justice in the context of the country visit to Denmark; Datatilsynet (2022), Whistle-blowing at half a year.

<sup>86</sup> Input from Denmark for the 2022 Rule of Law Report, p. 14.

<sup>87</sup> This is done in order to ensure correct handling of reports concerning the intelligence services, which is likely to include confidential information. The two channels are placed in the Ministry of Justice and the Ministry of Defence respectively.

<sup>88</sup> Written contribution from the Ministry of Justice in the context of the country visit.

<sup>89</sup> Ministry of Justice (2021), Whistleblowing.

<sup>90</sup> See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 9. Stakeholders such as the Danish Association of Judges have criticized this as it removes discretion for judges to consider individual circumstances of a case.

<sup>91</sup> Politiken (2022), 'It's completely, completely wrong what's going on': 2 billion taxpayer kroner worth of rapid tests bought without a tender.

<sup>92</sup> Written contribution from the Danish Police in the context of the country visit.

<sup>93</sup> Information received from the National Audit Office in the context of the country visit to Denmark.

### **III. MEDIA PLURALISM AND MEDIA FREEDOM**

The Constitution provides the overall framework for the protection of the freedom of expression. The tasks, organisational structure and rules of procedure of the national media regulatory authority, the Danish Radio and Television Board, are prescribed in law<sup>94</sup>. Secondary legislation also provides safeguards for the independence of the public service broadcasters<sup>95</sup>. There are no specific laws pertaining to transparency of media ownership, allocation of state advertising, editorial independence or ownership of media companies. Access to documents is regulated in the Access to Public Administrative Documents Act of 2014. The Audiovisual Media Services Directive<sup>96</sup> has been transposed<sup>97</sup>.

**The existing media self-regulatory system is being assessed in view of possible future updates.** In May 2022, the Government announced the new political Media Agreement for 2022-2025 consisting of different policy initiatives<sup>98</sup>. One of the initiatives concerns examining the future role of the Danish Press Council and a possible creation of a new media ombudsperson to support it. The ombudsperson could be based on the Swedish model and could investigate cases on its own initiative and contribute to good journalistic practice through opinion-forming, media ethics debates and initiatives. The Media Agreement states an intention to establish a committee with representation from the media industry, experts and others to make recommendations in this regard with a view to subsequent political discussions<sup>99</sup>. Should the post of the ombudsperson be created, stakeholders have submitted that it will be important that the ombudsperson is appointed by the media industry and not by the Government in order to safeguard the editorial independence of the media<sup>100</sup>.

**Editorial independence has traditionally a strong culture.** According to the Danish Media Liability Act, all news media – broadcast, print and online press – must have one responsible editor empowered to make a final decision regarding the relevant content<sup>101</sup>. There are no specific legal safeguards regarding editorial independence<sup>102</sup>. In practice, this is not being perceived as generating any major issues<sup>103</sup> and the self-regulating body has so far been successful at securing editorial autonomy of the Danish news media<sup>104</sup>, although the MPM 2022 gives some examples of parliamentary parties exerting influence<sup>105</sup>. The fact that most

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<sup>94</sup> The Radio and Television Broadcasting Act, Executive Order on the Radio and Television Board and the Danish Public Administration Act.

<sup>95</sup> The Radio and Television Broadcasting Act, Ordinance of the Radio and Television Broadcasting Act, Act Amending the Act on Radio and Television Broadcasting Act.

<sup>96</sup> Complete transposition of Directive (EU) 2018/1808 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities was notified to the Commission on 18 September 2020.

<sup>97</sup> Denmark ranks 2nd in the 2022 Reporters without Borders World Press Freedom Index compared to 4th in the previous year.

<sup>98</sup> Ministry of Culture (2022), Media Agreement for 2022-2025.

<sup>99</sup> Ibid, p. 13.

<sup>100</sup> Information received from the Danish Union of Journalists in the context of the country visit to Denmark; Journalisten (2022), Government proposals have raised concerns - but in Sweden the state has no power over the media ombudsman.

<sup>101</sup> The Media Liability Act – Consolidating Act 2018-12-27 no. 1719, sections 3 and 5.

<sup>102</sup> 2022 Media Pluralism Monitor, country report for Denmark, pp. 8-9, 16 and 28.

<sup>103</sup> Information received from the Danish Media Association, the Danish Union of Journalists and the Danish Press Council in the context of the country visit to Denmark.

<sup>104</sup> 2022 Media Pluralism Monitor, country report for Denmark, p. 17.

<sup>105</sup> 2022 Media Pluralism Monitor, country report for Denmark, pp. 16-17.

newspapers in Denmark are foundation-owned can serve as a safeguard against commercial pressure exerted by owners<sup>106</sup>. The Media Agreement sets out an intention to study possibilities to update the current framework for media responsibility to fit the digital media reality, including responsibilities of influencers over the content that they upload online<sup>107</sup>.

**The independence of public service media is prescribed by law.** In Denmark, there are two public service broadcasters, Danmarks Radio (DR) and the regional broadcaster TV 2. According to the Radio and Television Broadcasting Act and further regulation in connection with the Act, Danish public service media are organised as independent media undertakings and the State cannot interfere with their programme services or administrative and financial management<sup>108</sup>. Members of, or candidates for, the Parliament, the Regional Council, the European Parliament or municipal councils may not be members of their respective top managerial and supervisory boards<sup>109</sup>. The relationship between public service media and the Government is also guided by an arm's length principle, which means that neither politicians nor the Ministry of Culture should interfere in the decisions of the public service media once the general rules have been laid down, or act as arbiters of taste<sup>110</sup>. The principle is aimed at preventing the political level from interfering in editorial discussions and day-to-day practices<sup>111</sup> and is deemed to result in a low-risk score for the independence of public service media governance and funding<sup>112</sup>. Indeed, the Danish public service media do not report any issues with their independence but identify digital transformation and big tech companies occasionally removing from their digital distribution services public service media content without proper explanation as a source of challenges<sup>113</sup>. DR and TV 2 are both supervised by the Radio and Television Board, which issues regular opinions on statements by broadcasters concerning the performance of public service contracts and licences to provide public service programming<sup>114</sup>. The Media Agreement for 2022-2025 foresees financial strengthening of DR in the coming years<sup>115</sup>.

**A possible revision of the Access to Public Administrative Documents Act continues to be debated.** As noted in the 2020 and 2021 Rule of Law Reports<sup>116</sup>, the Access to Public Administrative Documents Act, which provides the rules for all public administration bodies and Ministries on public access to information and documents, continues to be subject to certain restrictions limiting public and journalistic access to specific governmental files, in particular internal working documents of authorities and documents, which are being

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<sup>106</sup> Blach-Ørsten, M., Burkal, R., Mayerhöffer, E., & Willig, I. (2021), Denmark: High media independence and informal democratic traditions in the newsroom. In J. Trappel, & T. Tomaz (Eds.), *The Media for Democracy Monitor 2021: How leading news media survive digital transformation* (Vol. 2), p. 155.

<sup>107</sup> Ministry of Culture (2022) Media Agreement for 2022-2025, p. 13.

<sup>108</sup> Input from Denmark for the 2021 Rule of Law Report, p. 20.

<sup>109</sup> Article 16(3)(4) and Article 36(2) of LBK Nr. 1350 of 04/09/2020 Ordinance of the Radio and Television Broadcasting Act.

<sup>110</sup> Ministry of Culture (2012), Quadrennial periodic report on measures to protect and promote the diversity of cultural expressions – Denmark, pp. 3-4; written contribution from the Radio and Television Board in the context of the country visit.

<sup>111</sup> Blach-Ørsten, M., Burkal, R., Mayerhöffer, E., & Willig, I. (2021), Denmark: High media independence and informal democratic traditions in the newsroom. In J. Trappel, & T. Tomaz (Eds.), *The Media for Democracy Monitor 2021: How leading news media survive digital transformation* (Vol. 2), p. 167.

<sup>112</sup> 2022 Media Pluralism Monitor, country report for Denmark, p. 16 and 18.

<sup>113</sup> Written contribution from Danmarks Radio in the context of the country visit.

<sup>114</sup> Article 39(1)(3) of LOV nr 2212 of 29/12/2020 Act Amending the Radio and Television Broadcasting Act.

<sup>115</sup> Ministry of Culture (2022) Media Agreement for 2022-2025, p. 6.

<sup>116</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 10; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 10.

exchanged at a time when a minister needs the advice and counsel of his staff<sup>117</sup>. Negotiations mandated by a Parliament resolution<sup>118</sup> are currently ongoing regarding a possible political agreement to restrict the use of some of these exceptions under the Act, which can have the effect of keeping the basis of some political agreements confidential<sup>119</sup>. No proposed solution or timeline has been made public<sup>120</sup>. The Parliamentary Ombudsperson reports that access to documents cases is one of the areas of complaints that are growing rapidly. In 2021, the Ombudsman received 399 complaints related to access to documents, which was an increase of more than 100 complaints compared to 2020<sup>121</sup>.

**An action plan on safety of journalists has been launched and the Criminal Code was amended to introduce more severe sentences for threats to freedom of expression.** In June 2022, the Danish Union of Journalists, the Danish Media Association, International Media Support, UNESCO Denmark, the Ministry of Justice and the Ministry of Culture, published a national action plan on the safety of journalists<sup>122</sup>. The plan's aim is to facilitate journalists' reporting of harassment and threats. Additionally, in December 2021, the Danish Criminal Code was amended to make it an aggravating circumstance when a threat is aimed at preventing the victim from making use of their freedom of speech<sup>123</sup>. The law helps citizens to participate in public debate on social media and applies also to journalists. The MPM 2022 considers that in Denmark, there is a very low risk to the protection of freedom of expression, although risks online are more difficult to assess<sup>124</sup> and two incidents have been reported regarding journalists' ability to publish specific type of information. In December 2021, the Council of Europe's Platform to promote the protection of journalism and safety of journalists published one new alert for Denmark concerning meetings held between the Danish intelligence services (PET and FE) and three Danish media companies in which the intelligence services had warned against unlawful disclosure of classified information following the arrest of four intelligence officers accused of leaking information<sup>125</sup>. The Danish State has clarified that the action was justified in light of the Criminal Code<sup>126</sup>. Danish media stakeholders also point to one strategic lawsuit against public participation (SLAPP) case in Denmark whereby businesspersons sued a journalist and a daily newspaper

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<sup>117</sup> Sections 19 to 33 and Section 35 of the Access to Public Administrative Documents Act.

<sup>118</sup> Danish Parliament (2021), Resolution on the convening of negotiations on the Danish Public Access Act; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 10.

<sup>119</sup> According to Recommendation CM/Rec(2002)2 of the Committee of Ministers of the Council of Europe to member states on access to official documents, Member States may limit the right of access to official documents when set down precisely in law, necessary in a democratic society and proportionate to one of the listed aims.

<sup>120</sup> Information received from the Ministry of Justice, Danish Media Association, the Danish Union of Journalists and the Danish Press Council in the context of the country visit to Denmark.

<sup>121</sup> Parliamentary Ombudsman (2022), 2021 Annual Report, p. 6.

<sup>122</sup> Danish Union of Journalists (2022) Action Plan on the Safety of Journalists.

<sup>123</sup> Input from the Danish Government for the 2022 Rule of Law Report, p. 20; law Nr. 2601 of 28 December 2021, § 1(5).

<sup>124</sup> 2022 Media Pluralism Monitor, country report for Denmark, p. 10; There are no reports of journalists being killed, assaulted or arbitrarily arrested.

<sup>125</sup> Council of Europe, Platform to promote the protection of journalism and safety of journalists, Denmark; flagged also in the Contribution from the Danish Human Rights Institute via ENNHRI for the 2022 Rule of Law Report.

<sup>126</sup> Council of Europe, Platform to promote the protection of journalism and safety of journalists, Denmark, Reply from the Danish authorities (21 March 2022).

for a number of critical articles but later dropped the case<sup>127</sup>. As part of the public discussion around the case, the Chairman of the Danish Bar Council wrote a statement, stressing the need for independent media and asking lawyers to look out for SLAPP cases and consider carefully whether to go to court against journalists and media<sup>128</sup>.

#### **IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES**

Denmark has a unicameral, parliamentary system of government, in which both the Government and members of Parliament can propose legislation, although draft bills are in general presented by the Government. In the absence of a constitutional court, ex-post constitutionality review can be carried out by all courts in concrete cases<sup>129</sup>. The Parliamentary Ombudsperson provides oversight on decisions by public authorities and the Danish Institute for Human Rights monitors the respect of fundamental rights.

**The guidelines of Parliament's Standing Orders Committee on fast-track procedures have been overall respected notwithstanding an increase in legislative activity in 2021.** In 2021, Parliament experienced a significant increase in legislative activity<sup>130</sup>. This was following an agreement between Parliament and Government in 2020 to limit the number of legislative proposals and motions due to the COVID-19 pandemic<sup>131</sup>. As noted in the 2021 Rule of Law Report, a report by the Standing Orders Committee from March 2021<sup>132</sup> proposed a number of guidelines for the use of fast-track proceedings<sup>133</sup>. It also highlights the importance of submitting all proposals, including urgent ones, to a public consultation. After a period in 2020-2021 with a stronger use of fast-track proceedings, the proportion of fast-track proceedings is slowly diminishing<sup>134</sup>. Since the adoption of the Standing Orders Committee report in March 2021, 27 legislative drafts were presented and adopted by Parliament under the fast-track proceedings, which were overall complying with the formal

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<sup>127</sup> Journalisten (2022), Plaintiffs dropped million-kroner case against Jonas; Information received from the Danish Press Council, the Danish Media Association and the Danish Union of Journalists in the context of the country visit to Denmark.

<sup>128</sup> Danish Bar and Law Society (2022), Bar Council says: Lawyers must watch out for SLAPP cases.

<sup>129</sup> This happens rarely and there has only been one case in which the Supreme Court decided to disapply a law for being incompatible with the Constitution that is the 1999, Tvind case, U 1999.841 H.

<sup>130</sup> For the period October 2020 – October 2021, 259 proposals were submitted to Parliament, the highest number in the past ten years. Input from Denmark for the 2022 Rule of Law Report, p. 22 and written contribution from the Danish Parliament Standing Orders Committee in the context of the country visit.

<sup>131</sup> Information received from the Danish Parliament Standing Orders Committee during the country visit.

<sup>132</sup> Standing Orders Committee (2021), Report concerning urgent consideration of government draft laws.

<sup>133</sup> The draft legislation should contain a sunset clause, leading to an act ceasing to apply, unless Parliament before that date has adopted a revision of the relevant provision. Nevertheless, there are exemptions to the use of the sunset clause, for example it is not necessary where the effect of the legislation according to its content is limited or specific well-founded circumstances require an absence of a sunset clause. Furthermore, if there has been no consultation due to extraordinary circumstances, Parliament needs to be provided with an explanation of the relevant circumstances. Written contribution from the Ministry of Justice in the context of the country visit.

<sup>134</sup> The sessional year of the Parliament runs from the first Tuesday of October until the first Tuesday of October the following year. In this context, it is also worth noting that the periods October 2019 – October 2020 and October 2020 – October 2021 were marked by an increase in laws adopted in an expedited procedure, i.e. within 30 days after their proposal, in particular due to the COVID-19-crisis (22% and 14%, respectively). For the period October 2021 – 7 April 2022, the proportion of expedited procedures (5%) appears to be reverting toward the usual proportion (between 3% and 5% between 2012 and 2019). Input from Denmark for the 2022 Rule of Law Report, p. 22 and written contribution from the Ministry of Justice in the context of the country visit.

requirements of the guidelines<sup>135</sup>. While the general framework for stakeholder consultation is considered to be robust<sup>136</sup>, some stakeholders have continued to refer to shortened consultation periods which can limit the ability to participate for civil society organisations with fewer resources<sup>137</sup>.

**A Government report on the use of the new Epidemic Act was subject to a public consultation.** As noted in the 2021 Rule of Law Report, a new Epidemic Act was passed on 23 February 2021 providing for a greater involvement of the Parliament when handling COVID-19 and other future epidemics<sup>138</sup>. Under this Act, before the Government issues an executive order on areas enabled in the Epidemic Act, it must be presented to the Parliamentary Committee of Epidemics<sup>139</sup>. In cases of immediate danger or threats to public health, the consultation of that Committee can be postponed until after the executive order has been issued, but the consultation must take place at the earliest possible date thereafter<sup>140</sup>. This derogation has not been used<sup>141</sup>. In October 2021, the Government sent a report on the use of the new Epidemic Act to Parliament<sup>142</sup>. The report touches upon the experiences of the public authorities in applying the law, such as the impact of the limitation of executive orders to four weeks or the experience in applying the rules on automatic local closures. Subsequently, in February 2022, the Government submitted to Parliament the responses to the report received in the public consultation; the stakeholders have welcomed the review, while among other commenting on the composition of the Epidemics Commission or their experiences on public consultations<sup>143</sup>. The Minister of Health has discussed the report and the responses from the public consultation with parties in the Parliament, and is expected to prepare a change relating to the rules of procedure for the Epidemics Commission, which will be subject to a public consultation<sup>144</sup>. The Parliamentary Ombudsman has received about 100 complaints on Government measures related to the COVID-19 pandemic<sup>145</sup>. The Supreme Court did not review any cases challenging Government measures adopted in response to the COVID-19 pandemic<sup>146</sup>.

**The first example of the new commission of scrutiny procedure examined the decision on culling of mink and has submitted its report to a Parliament committee on 30 June 2022.** As noted in the 2021 Rule of Law Report, in April 2021, Parliament passed legislation introducing a new system of commissions of scrutiny<sup>147</sup>, with commissions able to be

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<sup>135</sup> Written contribution from the Ministry of Justice in the context of the country visit.

<sup>136</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 12.

<sup>137</sup> Contribution from the European Civic Forum for the 2022 Rule of Law Report, p. 4

<sup>138</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 12.

<sup>139</sup> Section 9, first paragraph of the Epidemics Act, Law Nr. 285 of 27 February 2021.

<sup>140</sup> If the committee objects, the Government must repeal the executive order. Section 9, second paragraph of the Epidemics Act, Law Nr. 285 of 27 February 2021.

<sup>141</sup> Input from Denmark for the 2022 Rule of Law report, p. 23.

<sup>142</sup> Danish Ministry of Health (2021), Report to Parliament on the application of the Epidemics Act.

<sup>143</sup> Danish Parliament (2022), Consultation summary and consultation response regarding the Ministry of Health's statement on the application of the Epidemics Act, from the Minister of Health.

<sup>144</sup> Input from Denmark for the 2022 Rule of Law report, p. 23 and information received from the Ministry of Health in the context of the country visit.

<sup>145</sup> The types of complaints concerned a variety of issues, such as access to information by journalists, vaccination framework or whether vaccines should be offered to children. The Parliamentary Ombudsman also carried out own-initiative investigations, for example how the COVID-19 pandemic restrictions were being applied in prisons. Parliamentary Ombudsman (2022), Annual report 2021, p. 5 and information received from the Parliamentary Ombudsman in the context of the country visit.

<sup>146</sup> Information received from the Supreme Court in the context of the country visit.

<sup>147</sup> Act amending the Act on Commissions of Inquiry and the Code of Judicial Procedure.

established under the control of Parliament to carry out a more focused investigation on specific matters within 12 months<sup>148</sup>. The first such commission was set up to examine the Government's actions related to the culling of minks, including whether there was a sufficient legal basis for the decision<sup>149</sup>. The commission of scrutiny carried out a number of hearings, which involved the Prime Minister and a number of members of Government<sup>150</sup>. Its mandate was further expanded in November 2021<sup>151</sup> to include the outreach activities by the police using so-called 'action cards'. On 30 June 2022, the commission delivered its report to the Parliament's Scrutiny Committee<sup>152</sup>, which, on 5 July 2022, endorsed the commission's findings as regards the Prime Minister and a former minister<sup>153</sup>.

**The Court of Impeachment has rendered an important ruling relating to the accountability of a former minister.** The Court of Impeachment consists of up to 15 Supreme Court judges and the same number of members elected by the Parliament<sup>154</sup>. According to the Ministerial Responsibility Act, ministers can be sanctioned if they intentionally or through gross negligence fail to fulfil the duties incumbent on them under the Constitution, legislation in general or pertaining to the nature of their office<sup>155</sup>. In December 2021, the Court of Impeachment sentenced a former minister<sup>156</sup>. Judgments by the Court of Impeachment are very rare and since its establishment in 1849, there have been only six impeachment proceedings (the previous one being in 1995)<sup>157</sup>.

**The Parliamentary Ombudsman and the Danish Institute for Human Rights consider that the authorities cooperate effectively with them and follow-up on their recommendations.** The Parliamentary Ombudsman has sufficient resources to fulfil its mission<sup>158</sup>, but the trend towards an increasing number of complaints may pose a challenge in the future<sup>159</sup>. In terms of complaints received in 2021<sup>160</sup>, since the COVID-19 pandemic they

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<sup>148</sup> By contrast, the Government is responsible for commissions of inquiry. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 13.

<sup>149</sup> The Mink Commission (2021), Terms of reference.

<sup>150</sup> This has included the Minister of Finance, Minister of Justice and Minister of Health. The Mink Commission (2022), Hearings.

<sup>151</sup> The Mink Commission (2021), Terms of reference.

<sup>152</sup> The Mink Commission (2022), The commission of scrutiny has delivered its report.

<sup>153</sup> DR (2022), Mette Frederiksen gets a nose for her role in the mink case, TV 2 (2022), Mette Frederiksen officially gets a nose.

<sup>154</sup> The politically elected members are supposed to add their political experience to the assessment of cases against ministers. They cannot be members of Parliament. In the case at hand, there were only 26 judges because two Supreme Court judges had recused themselves and the number of politically elected members was adjusted downwards accordingly. Danish Parliament (2022), Court of Impeachment and information received from the Supreme Court during the country visit.

<sup>155</sup> Article § 5, paragraph 1 of the Act on Ministerial Responsibility.

<sup>156</sup> The former minister was found guilty to have, in the period from 10 February to 18 March 2016, initiated and maintained a separated accommodation of asylum-seeking spouses and cohabiting couples, where at least one party was under 18 years of age, in breach of Article 8 of the European Convention on Human Rights and in breach of general principles of administrative law. Court of Impeachment, judgment of 13 December 2021, p. 143-144. Court of Impeachment (2021), The Court of Impeachment has ruled in the case against former Minister Inger Støjberg.

<sup>157</sup> Danish Parliament (2022), Court of Impeachment.

<sup>158</sup> The Parliament allocated approximately EUR 12.5 million (DKK 93.3 million) in annual funding of the Ombudsman institution in 2021. Input from Denmark for the 2022 Rule of Law report, p. 25.

<sup>159</sup> According to the Ombudsman's data for 2021, the institution handled a total of 5 587 cases of which about 14% led to an investigation (815 cases, of which 200 full investigations and 615 shortened investigations). Out of the 200 full investigations, 78 have led to criticism or recommendations. In 2021, the Parliamentary Ombudsman opened 5 643 cases, which is the second highest number in the history of this

have more frequently concerned delays in the handling of administrative procedures. Own-initiative investigations have particularly focused on the handling of family matters and access to documents requests<sup>161</sup>. The Parliamentary Ombudsman did not experience any obstruction or refusal to cooperate by public authorities and considers the Ombudsman's recommendations are being implemented<sup>162</sup>. The Danish Institute for Human Rights which is the independent National Human Rights Institution accredited with A-Status, reports that the public authorities tend to take recommendations from the Institute into thorough consideration<sup>163</sup>. The Institute considers to have sufficient resources<sup>164</sup>.

**On 1 January 2022, Denmark had 3 leading judgments of the European Court of Human Rights pending implementation<sup>165</sup>.** At that time, Denmark's rate of leading judgments from the past 10 years that remained pending was at 60% and the average time that the judgments had been pending implementation was only 6 months<sup>166</sup>. The former is explained by the fact that only 5 European Court of Human Rights judgments have been delivered against Denmark in that period, 3 of which were made final in the last 2 years and were pending implementation<sup>167</sup>. On 1 July 2022, the number of leading judgments pending implementation remains at 3<sup>168</sup>.

**The civic space in Denmark remains open with a robust framework for the involvement of civil society organisations.** The civic space in Denmark continues to be considered as open<sup>169</sup> with robust mechanisms for the involvement of civil society organisations<sup>170</sup>. In November 2021, the Government parties agreed to distribute approximately EUR 115 million (DKK 860.5 million) over the next four years, into the social, health and labor market sector, which also includes a civil society strategy for the period 2022-2025 for the aforementioned

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body and just below the record number 5 912 cases in 2020. Parliamentary Ombudsman (2022), Annual report 2021, p. 8 and 72 and information received from the Parliamentary Ombudsman in the context of the country visit.

<sup>160</sup> Parliamentary Ombudsman (2022), Annual report 2021, p. 6-8.

<sup>161</sup> In 2021, the Ombudsman opened an own initiative investigation into the time taken by the Family Court to deal with cases on supervised access after judgment and temporary custody. The Ombudsman has also monitored the authorities' processing times for replying to access to documents requests from journalists and other individuals. Parliamentary Ombudsman (2022), Annual report 2021, p. 6.

<sup>162</sup> Information received from the Parliamentary Ombudsman during the country visit.

<sup>163</sup> Contribution from the Danish Human Rights Institute via ENNHRI for the 2022 Rule of Law Report, p. 2 and information received from the Danish Human Rights Institute in the context of the country visit.

<sup>164</sup> Information received from the Danish Human Rights Institute in the context of the country visit.

<sup>165</sup> The adoption of necessary execution measures for a judgment by the European Court of Human Rights is supervised by the Committee of Ministers of the Council of Europe. It is the Committee's practice to group cases against a State requiring similar execution measures, particularly general measures, and examine them jointly. The first case in the group is designated as the leading case as regards the supervision of the general measures and repetitive cases within the group can be closed when it is assessed that all possible individual measures needed to provide redress to the applicant have been taken.

<sup>166</sup> All figures are calculated by the European Implementation Network and are based on the number of cases that are considered pending at the annual cut-off date of 1 January 2022. See the Contribution from the European Implementation Network for the 2022 Rule of Law Report, p. 38.

<sup>167</sup> Judgment of the European Court of Human Rights of 15 September 2020, *Aggerholm v. Denmark*, 45439/18, pending implementation since 2020, and judgments of the European Court of Human Rights of 9 July 2021, *M.A. v. Denmark*, 6697/18 and of 7 December 2021 *Savran v. Denmark* 57467/15, both pending implementation since 2021.

<sup>168</sup> Data according to the online database of the Council of Europe (HUDOC).

<sup>169</sup> Rating given by CIVICUS, ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

<sup>170</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 14.

sectors<sup>171</sup>. The Danish Institute for Human Rights has raised concerns regarding the prohibition of receiving donations from certain physical persons and legal entities<sup>172</sup> and the draft law on introducing the possibility of police imposing an assembly ban in a locality in order to maintain public order<sup>173</sup>. Though the assembly-ban contained in the ‘Security for all Danes’ proposal was strongly opposed by civil society and ultimately rejected by Parliament in June 2021, stakeholders consider that it demonstrated the need for an increased involvement of civil society organisations in the preparation of legislative proposals, especially related to security measures, that could negatively impact civic space<sup>174</sup>.

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<sup>171</sup> The civil society strategy aims to support volunteer organisations by focusing on strengthened cooperation with civil society on development of welfare solutions. Nevertheless, the proposed financing model is considered as uncertain by some civil society organisations. Previously, civil society organisations used to apply for funding, whereas under the current system fixed amounts are distributed. Some organisations are concerned whether they will be allocated sufficient funds. This funding has replaced the Government's previous social investment fund (Satspuljen). Franet (2022), Country research - Legal environment and space of civil society organisations in supporting fundamental rights – Denmark, p. 3.

<sup>172</sup> In March 2021, legislation introduced a prohibition of receiving donations from certain physical persons and legal entities, which raised some concerns by the Danish Human Rights Institute and stakeholders due to a risk of arbitrariness in its application. In March 2022, a first individual was added to the list of prohibited donors. 2021 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 14 and information received from the Danish Institute for Human Rights during the country visit.

<sup>173</sup> Contribution from the Danish Human Rights Institute via ENNHRI for the 2022 Rule of Law Report, p. 3.

<sup>174</sup> Franet (2022), Country research - Legal environment and space of civil society organisations in supporting fundamental rights – Denmark, p. 5, contribution from the Danish Human Rights Institute via ENNHRI for the 2022 Rule of Law Report, p. 3, contribution from the European Civic Forum for the 2022 Rule of Law Report, p. 3, and written contribution from Nyt Europa in the context of the country visit.

## Annex I: List of sources in alphabetical order\*

\* The list of contributions received in the context of the consultation for the 2022 Rule of Law report can be found at [https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation\\_en](https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation_en).

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## **Annex II: Country visit to Denmark**

The Commission services held virtual meetings in April 2022 with:

- Danish Bar and Law Society
- Danish Media Association
- Danish Union of Journalists
- Danish Press Council
- Danish Institute for Human Rights
- Dansk Ungdoms Fællesråd
- Employee and Competence Agency
- Judges Association
- Ministry of Business
- Ministry of Culture
- Ministry of Justice
- National Audit Office
- National Court Administration
- Nyt Europa
- Parliamentary Ombudsman
- Standing Orders Committee of the Parliament
- Supreme Court
- Transparency International Denmark

\* The Commission also met the following organisations in a number of horizontal meetings:

- Amnesty International
- Article 19
- Civil Liberties Union for Europe
- Civil Society Europe
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Free Press Unlimited
- Human Rights Watch
- ILGA Europe
- International Federation for Human Rights (FIDH)
- International Press Institute
- Open Society European Policy Institute ( OSEPI)
- Osservatorio Balcani e Caucaso Transeuropa
- Philea
- Reporters Without Borders
- Transparency International Europe