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COMMISSION STAFF WORKING DOCUMENT

2020 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

2020 Rule of Law Report The rule of law situation in the European Union

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ABSTRACT

The Danish judiciary enjoys a consistently high perceived level of independence and some steps have been taken in 2019 to further improve the framework for disciplinary measures and accountability of judges. The justice system is characterised by a good level of efficiency, despite a slight increase of the disposition time in the past years. At the same time, stakeholders have raised some concerns over a lack of sufficient resources and some challenges remain as regards the digitalisation of the judiciary. Several initiatives by the Government and the National Courts Administration aim to address these challenges, including through a project to use digital tools to monitor the average length of pending cases.

According to surveys, Denmark is perceived as one of the least corrupt countries in the EU and the world. Although Denmark has no dedicated anti-corruption strategy or agency in place, it has established an Anti-Corruption Forum that improves coordination for authorities to produce their own anti-corruption-related arrangements. Danish public institutions have built a reputation for transparent administration and a reliable and functional corruption prevention framework. A central aspect of the integrity system is the low degree of formalisation of anti-corruption rules on ethics and integrity, with few regulations and control measures to prevent corruption, particularly for top executive functions. Denmark's track record of implementing recent international recommendations, in particular on political party funding and oversight of members of Parliament, is limited.

The national media regulatory authority, the Danish Radio and Television Board, operates in an independent manner and has a robust organisational structure. There are no specific laws regulating transparency of media ownership but the national Central Business Register could be used to access some information. Certain exceptions to the Access to Public Administrative Documents Act have been introduced, partly restricting the right to access information in practice. A specific Commission on Freedom of Expression has been set up with the purpose of promoting the debate on the framework and general conditions for freedom of expression, a freedom which is protected by the constitution and already benefits from the robustness of democratic tradition and institutions in Denmark.

The system of checks and balances is characterised by an inclusive process for enacting legislation with a comprehensive framework for preparing legislation, including the consultation of stakeholders. The Parliamentary Ombudsman has a well-established role in ensuring oversight over the decisions of public authorities. Recent campaigns by the National Courts Administration aim at raising awareness of the importance of the rule of law and the role of the judiciary, including through educational videos, curricula for teachers and a dedicated website for journalists. The Danish Institute for Human Rights ensures involvement of a broad range of civil society organisations through its Human Rights Council, which has a key advisory function.

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 courts¹. 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 ICT systems. The independent Judicial Appointments Council² 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)³. 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. For transparency, the Judicial Appointments Council issues a press release when making their proposal for a vacancy. The Prosecution Service is an autonomous institution acting under the supervision of the Ministry of Justice and led by a Prosecutor General⁴. The Law and Bar Society is the independent body governing the legal profession and ensuring its independence⁵.

Independence

The judiciary enjoys a very high level of perceived independence. Overall, 86% of the general public and 80% of companies consider the independence of courts and judges to be 'fairly or very good', with a notably high percentage of the general public (41%) considering independence to be 'very good'. These figures have overall been stable at a high level since 2016 for the general public and are similarly consistent for businesses since 2010⁶.

Several measures have been taken to strengthen the accountability framework for judges and its safeguards. Two types of disciplinary measures for judges exist: court presidents can issue a warning to a judge for negligence or carelessness in their performance, while the Special Court of Indictment and Revision⁷ can issue warnings, impose fines and in case of serious misconduct, dismiss a judge or suspend them if criminal proceedings have

¹ The Maritime and Commercial Court and the Land Registration Court. CEPEJ (2020), Study on the functioning of the judicial systems in the EU Member States.

² 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 Judges Association, 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.

³ 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.

⁴ 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).

⁵ Administration of Justice Act, Section 15.

⁶ Figures 44, 46 and 48, 2020 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%).

⁷ The Special Court of Indictment and Revision is composed of one Supreme Court, High Court and District Court judge each, one lawyer and one professor of law, appointed by the executive on nomination by the judiciary (for the judges-members) and the Bar and Law Society (for the lawyer).

been instituted against the judge⁸. Since 2019, a warning given by a court president can also be appealed to the Special Court of Indictment and Revision⁹, adding an additional safeguard to the system, which is consistent with Council of Europe recommendations¹⁰. This reform was triggered *inter alia* by the Judges' Association, based on a specific case in which a judge had received a warning by a President that the judge considered to be unfounded, but had no possibility for review. Another relevant development regarding the accountability framework for judges is the adoption by the Judges' Association (in cooperation with the National Courts Administration) of interpretative explanatory comments to the ethical guidelines for judges. The comments, adopted in 2019, further specify the 2014 ethical guidelines for judges by providing concrete examples for their application. This also replies to a recommendation from Group of States against Corruption (GRECO)¹¹.

The power of the Minister of Justice to issue instructions to the prosecution service in individual cases is accompanied by safeguards and not used in practice. According to the Administration of Justice Act, the Minister of Justice can issue general guidelines for how the prosecution carries out its tasks, as well as give instructions to prosecutors in individual cases, which can include an instruction not to prosecute.¹² The instruction must be issued in writing, be reasoned, and sent to the Speaker of Parliament in writing.¹³ In practice, according to the authorities, it appears that there was only one case of such an instruction by the Minister of Justice, which took place in 1995, and where the Prosecutor General was ineligible to give an instruction due to a conflict of interest. This practice, combined with the legal safeguards in place, appear to mitigate the risk to the autonomy of the prosecution¹⁴. Following the recent case law of the Court of Justice of the European Union on the European Arrest Warrant¹⁵, the existence of this right to instruction has led Denmark to change in 2020 its procedure for issuing such arrest warrants¹⁶.

⁸ Decisions by the Special Court of Indictment and Revision can be appealed to the Supreme Court. Administration of Justice Act, Section 48-49.

⁹ Administration of Justice Act, Section 48a.

¹⁰ Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para 69. See also judgment of the Court of Justice of 25 July 2018, *LM*, C-216/18 PPU, para. 67.

¹¹ GRECO Fourth Evaluation Round, recommendation v, which GRECO now considers to be implemented satisfactorily. GRECO Fourth Evaluation Round - Interim Compliance Report, p. 5. See also ECtHR, judgment of 9 January 2013, *Oleksandr Volokov v. Ukraine*, application n° 21722/11, §§ 175-179.

¹² Administration of Justice Act, section 98(3). Separately, there are cases in which the Minister of Justice must by law decide whether a case is to be prosecuted or not, including for terrorism-related offences, high treason and offences against the state, Administration of Justice Act, Chapter 12.

¹³ Figure 55, 2020 EU Justice Scoreboard.

¹⁴ According to Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe, para. 13(d), "where the government has the power to give instructions to prosecute a specific case, such instructions must carry with them adequate guarantees that transparency and equity are respected in accordance with national law". As regards the safeguards, para. 13 (points d to e).

¹⁵ Judgment of the Court of Justice of 27 May 2019 in joined cases *OG*, C-508/18 and *PI*, C-82/19 PPU.

¹⁶ As of 15 February 2020, the courts are the only authority competent to issue a European Arrest Warrant. Act on the Extradition of Offenders, Section 46 and 47. See also the Report by the European Commission on the implementation of Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, p. 5-6.

Quality

Some concerns have been raised over the decreasing expenditure for the justice system. Denmark's expenditure on law courts as a percentage of GDP is low and has decreased in past years¹⁷. The number of judges per inhabitant is also notably low¹⁸. A 2020 report by the Association of Judges on 'The judges' working conditions' provides a detailed analysis of the workload of judges, highlighting that the number of judges has stagnated and resources have slowly been reduced since 2011, while the caseload has increased¹⁹. In particular, concerns have been raised over the decrease in court staff, which places a higher workload on judges. In June 2020, the Government granted additional funding to the courts to deal with an increased backlog due to the closure of courts during the COVID-19 pandemic, which provides for additional posts for judges²⁰.

Some initiatives to address outstanding challenges regarding digitalisation of the judiciary are ongoing. Electronic means for submitting a case and summons online and for following the stages of proceedings are available only to a limited degree in courts²¹. While all third-instance judgments are published, this is only partially the case for first- and second-instance judgments and arrangements for machine-readability of judgments are limited²². According to information from the National Courts Administration, the creation of a comprehensive online database of judgments, including anonymisation of judgments, is under preparation for 2021. The National Courts Administration is also implementing a project to use digital tools to monitor the average length of pending cases, which aims to help project future case handling times²³.

Efficiency

The justice system handles its caseload efficiently, but the clearance rate has somewhat dropped. The estimated time to resolve civil, commercial, administrative and other cases is very low, and remains below average for litigious civil and commercial cases at all instances, although it has slightly increased in past years²⁴. At the same time, the clearance rate for litigious civil and commercial cases has somewhat decreased in past years, dropping from 102% in 2017 to 95% in 2018 and 94% in 2019. The number of pending cases still remains low, in particular for litigious civil and commercial cases²⁵.

¹⁷ Expenditure per inhabitant is at an average level, but has also consistently decreased since 2012. Figures 32 and 33, 2020 EU Justice Scoreboard.

¹⁸ Figure 35, 2020 EU Justice Scoreboard.

¹⁹ Danish Association of Judges, The judges' working conditions, p. 5-8.

²⁰ Communique of Ministry of Justice of 24 June 2020, New judges must relieve the pressure on courts.

²¹ Figure 27, 2020 EU Justice Scoreboard.

²² Figure 28 and 29, 2020 EU Justice Scoreboard.

²³ Input from Denmark for the 2020 Rule of Law Report, p. 10.

²⁴ No separate data on administrative cases is available.

²⁵ Figures 5-15, 2020 EU Justice Scoreboard. 2019 data regarding the clearance rate available at: Danish Courts, Civil Cases.

II. ANTI-CORRUPTION FRAMEWORK

The anti-corruption system is to a large extent based on informal rules on ethics and integrity as well as social norms and public scrutiny. Several authorities are involved in preventing corruption, promoting good administrative practice and compliance with the legal framework. This includes amongst others the Financial Supervisory Authority, the Parliamentary Ombudsman and the Auditor General. 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. A specialised unit for corruption and foreign bribery cases within the State Prosecutor for Serious Economic and International Crime has special competences to investigate serious corruption cases. Prevention of corruption is broadly regulated for civil servants, but Denmark currently has no specific law to protect whistle-blowers.

Denmark ranks 1st both in the European Union and worldwide on the Transparency International Corruption Perception Index²⁶. Only 35% of respondents to a Eurobarometer survey consider corruption to be widespread (EU average: 72%) and only 7% say that they are personally affected by corruption in their daily life (EU average: 26%). As regards businesses, 16% of companies consider corruption to be widespread (EU average: 63%) and only 5% of companies consider that that corruption is a problem when doing business (EU average: 37%). 25% of people find that there are enough successful prosecutions to deter people from corrupt practices (EU average: 36%) while 51% of companies consider that people and businesses caught for bribing a senior official are appropriately punished (EU average: 31%)²⁷.

The Danish Criminal Code criminalises corruption and related offences. The criminal sanction in respect of active bribery and passive bribery²⁸ in the public sector is a fine or imprisonment of up to six years and in respect of bribery in the private sector²⁹ a fine or imprisonment of up to four years. With regard to legal persons, fines can be imposed on legal persons in respect of an offence under provisions of the Criminal Code³⁰. In 2018, Denmark adopted an amendment of the Penal Code on money laundering, which increases applicable penalties (from 6 to 8 years maximum penalty)³¹.

Denmark reviewed its overall approach to enforcement and created a specialised unit for corruption and foreign bribery cases within the Special Prosecutor's Office for economic crime (SØIK) in 2014. The Police, the Prosecution Service and a specialised unit within the Special Prosecutor's Office for economic crime (SØIK) are the relevant authorities for investigating and prosecuting corruption. SØIK is a specialised prosecution department that also functions as coordination body. The SØIK also hosts the national financial intelligence unit and has, since 2015, a unit for international cases, including cases concerning the bribery of foreign public officials³². Within the police, there has been a recent strengthening of procurement procedures and efforts to inform and train police officers on the Code of Ethics adopted in 2015³³. A whistle-blower system established in 2019 allows the reporting of criminal offenses and violations of administrative law, including conflicts of

²⁶ Transparency International (2020), 2019 Corruption Perceptions Index.

²⁷ Flash Eurobarometer 482 (2019), Businesses' attitudes towards corruption in the EU.

²⁸ Criminal Code. Section 122 and section 144.

²⁹ Criminal Code. Section 299 (2).

³⁰ Section 306 cf. section 2

³¹ *Folketinget* (the Danish Parliament), act no 711 from 2018.

³² UNCAC (2017), UNCAC implementation review – country review report of Denmark.

³³ GRECO Fifth Evaluation Round – Evaluation Report.

interest. Citizens can address complaints to the Independent Police Complaints Authority, which executes external oversight and control of the Police and Prosecution service³⁴. GRECO has however recommended that the authorities analyse the need for introducing a requirement for police officials to declare financial interests on a regular basis, as well as measures to raise awareness of police staff of their duty to report corruption-related misconduct within the police service³⁵.

Denmark does not have a dedicated entity for promoting integrity and preventing corruption, but rather several authorities with distinct tasks. Whilst Denmark does not have a dedicated anti-corruption agency or strategy, it has established an Anti-Corruption Forum³⁶ which meets on an ad hoc basis for authorities to improve coordination and share information. Ministries cooperate and draft anti-corruption laws. The Financial Supervisory Authority has issued guidance, manuals and instructions on ethical conduct and financial aspects of the fight against corruption. The Office of the Auditor General audits state institutions and examines the expenses mandated by Parliament and State Companies. In addition, other authorities such as the Employee and Competence Agency at the Ministry of Taxation and the Prime Minister's Office have tasks related to the promotion of integrity and preventing corruption related to the management of public administration³⁷. Denmark's tradition of high ethical standards and transparency in public procedures has led to few formal rules or control measures to prevent corruption, particularly for persons entrusted with top executive functions, and GRECO has recommended to formulate rules that are more binding³⁸.

The Employee and Competence Agency has issued codes of conduct for civil servants whilst ministers are provided with guidance on integrity matters upon appointment. A revised version of the Code of Conduct in the public sector published in December 2017 contains rules on secondary employment and a decorum requirement for public employees. The Employee and Competence Agency has published in 2017 the revised "Code of Conduct in the Public Sector" and in 2015 the "Code VII – 7 key duties" which set ethical standards and rules of conduct for public employees. To complement these, e-learning courses were developed for all central administration employees. However, these codes do not apply to ministers who are provided with a handbook with guidance on integrity matters upon appointment. Denmark also has no code of ethics for parliamentarians or top executive functions³⁹, although these are addressed in a public letter to members of Parliament informing them of their responsibilities regarding ethical conduct and upholding public trust. GRECO has recommended to develop codes of conducts for both members of Parliament and members of the Government, in particular as regards conflicts of interest, and to develop an overall strategy for integrity of persons with top executive functions⁴⁰.

The Public Administration is bound by rules on impartiality, which entail a duty to report any potential conflicts of interests. According to the Public Administration Act, any

³⁴ GRECO Fifth Evaluation Round – Evaluation Report, p 48.

³⁵ GRECO Fifth Evaluation Round – Evaluation Report, recommendations xiii and xiv.

³⁶ Brings together representatives of the Ministry of Justice, the Prosecutor General, the SØIK, the Ministry of Foreign Affairs, the Ministry of Finance, etc. with the goal of improving co-ordination and information sharing between authorities in the context of the fight against corruption.

³⁷ GRECO Fifth Evaluation Round – Evaluation Report, p. 17.

³⁸ GRECO Fifth Evaluation Round – Evaluation Report.

³⁹ A code of conduct entitled "Good Conduct in the Public Sector", distributed to all public servants. The purpose of this publication is to clarify basic duties and responsibilities for public sector employees.

⁴⁰ GRECO Fifth Evaluation Round – Evaluation Report, recommendations i, ii and iii.

person employed by, or acting on behalf of a public administration body, is disqualified from being involved in a particular case, which may raise doubts about impartiality. To avoid conflicts of interest, Ministers are required to give up any (remunerated or unremunerated) occupation in a private or public company upon taking office⁴¹. This however does not include self-employment, financial interests, honorary occupations or those associated to a minister's political party. Although the Public Administration Act's provisions are applicable to Ministers, it leaves them considerable discretion to report a potential or apparent conflict of interest, without providing much guidance. In addition, it does not contain any enforceability measures⁴². For members of Parliament, there is no general definition of conflict of interests and the current framework does not provide a reporting mechanism. GRECO has recommended the introduction of a requirement of ad hoc disclosure when a conflict may emerge in relation to a matter under consideration in parliamentary proceedings⁴³.

Whilst asset declaration systems exist, these are not systematically controlled or enforced. For members of Parliament, a regular public registration of occupations and financial interests exists and is subject to public scrutiny on the Parliament's website. However, GRECO has recommended to ensure standards of conduct are applicable to them, where necessary⁴⁴. Whilst compliance by members of Parliament with the register of economic interests is generally high, it is not complete⁴⁵. Similarly, there are no general rules regarding a duty to declare financial interests for high-level civil servants, although all ministers are required to declare their financial interests on the basis of a standard form to be submitted upon entering office and updated annually. The scheme is not based on legislation, but successive governments have complied with the regime as if mandatory⁴⁶. Ministers who are also members of Parliament are not part of the Parliament's declaration scheme. Unlike the regime in place for members of Parliament, this scheme explicitly includes certain financial interests of spouses and/or partners. However, GRECO has recommended enacting these guidelines into legislation, widening the scope of declarations and introducing substantive controls⁴⁷.

The Danish system does not have clear rules and guidance on how persons entrusted with top executive functions engage in contacts with lobbyists. There are also no reporting or disclosure requirements applicable to those who seek to influence government actions and policies. Yet, whilst in all 27 EU Member States, a majority of respondents consider that too close links between business and politics in their country lead to corruption, the lowest scores were recorded in Denmark (47%) (EU average: 76%)⁴⁸. Lobbying in some form or another (in particular by interest groups) is an accepted part of the decision-making process, with the intention of creating broad-based support for decisions. Nonetheless, introducing rules and

⁴¹ Pursuant to Article 8 of the Act on Remuneration and Pensions for Ministers.

⁴² GRECO Fifth Evaluation Round – Evaluation Report, paragraph 67-69.

⁴³ GRECO Fourth Evaluation Round – Evaluation Report, recommendation ii.

⁴⁴ GRECO Fourth Evaluation Round – Evaluation Report, recommendation iv.

⁴⁵ Website Folketinget: <https://www.ft.dk/da/medlemmer/medlemmer-uden-registreringer>.

⁴⁶ The declarations are to include occupations (held currently and in the past 5 years), self-employment with an annual turnover of more than DKK 50.000 (approximately EUR 6.700), corporate interests of more than DKK 50.000 (approximately EUR 6.700) (including current investments), financial agreements with former and/or future employers, membership of associations.

⁴⁷ GRECO Fifth Evaluation Round – Evaluation Report, recommendations vii, viii.

⁴⁸ Special Eurobarometer 502 (2020).

guidance for contacts with lobbyists and third parties seeking to influence governmental processes and decisions, and increasing the transparency of such contacts, has been advised⁴⁹.

There are no clear rules on ‘revolving doors’. In the absence of a specific “cooling off period” policy, there have been several reports of Ministers moving directly into top political lobbying jobs. Despite GRECO recommending the introduction of rules to deal with the employment of persons entrusted with top executive functions following the termination of their service in the public sector, there are currently no concrete plans to introduce such a regulation⁵⁰.

There are dedicated mechanisms to protect whistle-blowers but there is no overarching legislation. Denmark currently has no specific law to protect whistle-blowers. However, legislation exists in the financial sector as part of the transposition of the Capital Requirements Directive IV⁵¹. The Danish business association advises companies to establish arrangements on a voluntary basis should they wish to do so. In addition, there are other existing systems in place in the public sector or in certain sector specific areas, including the external and internal procedures of the Financial Supervisory Authority, a Danish Business Authority external whistle-blower scheme regarding issues related to potential violation of audit legislation, and a scheme in the area of the European Regional Development Fund and the European Social Fund⁵².

Political party financing issues have been highlighted in international evaluations, and most recommendations are not yet implemented. These recommendations include addressing perceived shortcomings such as the lack of obligations on reporting donations above certain thresholds, and ensuring independent monitoring in respect of the funding of political parties and electoral campaigns⁵³. Eurobarometer figures show that Denmark is the only country where the proportion of respondents who agree that there is sufficient transparency and supervision of political party financing decreased since 2013 (41% in 2013, to 34% in 2019 (EU average: 32%))⁵⁴.

Whilst repressive measures appear adequately applied, there is a lack of broadly available statistics related to corruption. Although there have been recent criminal convictions for corruption-related crimes⁵⁵ and important court decisions are published in the pay-for-access official judicial journal, Denmark does not publish statistics on foreign bribery investigations, and cases commenced or concluded⁵⁶.

⁴⁹ GRECO Fifth Evaluation Round – Evaluation Report, recommendation v.

⁵⁰ GRECO Fifth Evaluation Round – Evaluation Report, recommendation vi.

⁵¹ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms.

⁵² Most recently a dedicated whistle-blower portal was set up by the Danish Business Authority for alerts regarding fraud with coronavirus/covid-19 related compensation schemes (LOV nr 796 af 09/06/2020).

⁵³ GRECO Third Evaluation Round - Second Compliance Report.

⁵⁴ Special Eurobarometer 502 (2020).

⁵⁵ Such as breaching rules on conflicts of interests and misuse of power, and a number of serious crimes investigated in connection with money laundering

⁵⁶ Transparency International (2018), Exporting corruption – progress report 2018: assessing enforcement of the OECD anti-bribery convention, p. 43.

III. MEDIA PLURALISM

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. There are no specific laws pertaining to transparency of media ownership or allocation of state advertising. Access to documents is regulated in the Access to Public Administrative Documents Act of 2014⁵⁷.

The Danish Radio and Television Board operates independently. The tasks and organisational structure of the independent authority are established in the Danish Radio and Television Broadcasting Act. The media unit in the Agency for Culture and Palaces is the secretariat of the Radio and Television Board. According to the Board, they consider their organisational structure to be robust, even if some decisions have elicited strong political interest⁵⁸. A very low risk for the independence and effectiveness of the media authority is also registered in the latest edition of the Media Pluralism Monitor (MPM 2020). The rules of procedure of the Board are set out in an executive order, which has been updated following the revision of the Audio-visual Media Services Directive (AVMSD). The Minister appoints eight members of the Board, including the chair and vice-chair for four years. Reappointments are possible. One member is appointed by the Collaboration Forum for Listeners and Viewers Organisations and one member by the Association of Judges. Dismissal of the head/members of the collegiate body have to follow the rules of the Administration Act. Prior to the decision on dismissal, the member concerned must be heard. The decision must be in writing and include an explanation. Furthermore, the member must have the option to file a complaint regarding the decision and appeal it to a court. The decisions of the Radio and Television Board cannot be appealed to the Ministry – only to the courts. As for all administrative decisions, the Parliamentary Ombudsman can handle complaints with regard to the case management.

The Danish Press Council (*Presse Nævnet*) is an independent self-regulating body under the Ministry of Justice, established by law⁵⁹. It deals with complaints concerning the Danish mass media and is composed of eight members appointed by the Minister of Justice, representing journalists, the public and the editorial managements of the printed press and radio and television. The chairman and the vice-chairman are appointed upon recommendation by the President of the Danish Supreme Court. The Press Council can express its criticism in cases concerning sound press ethics and direct the editor of the media in question to publish a reply and/or the decision of the Council. However, it cannot impose a sanction or award the complainant a financial compensation⁶⁰.

There are no specific rules on transparency of media ownership or allocation of state advertising. State advertising must comply with the general rules in the Radio and Television Broadcasting Act and the secondary legislation in connection with the Act, based on the AVMSD. The MPM 2020 remarks that ownership above 20% of the shares has to be included in the annual accounts in all companies, including media companies, but there are no particular requirements for media companies. Danish media stakeholders have indicated

⁵⁷ The Reporters Without Borders' annual World Press Freedom Index continuously ranks Denmark among the best performing countries, currently in the third place. See <https://rsf.org/en/ranking>.

⁵⁸ Written input from the Radio and Television Board, pp. 1 – 2.

⁵⁹ The Media Liability Act – Consolidating Act 2018-12-27 no. 1719.

⁶⁰ Danish Press Council (*Presse Nævnet*) website, <https://www.pressenaevnet.dk/press-ethical-rules/>.

that despite the lack of specific rules, they anyway consider the level of the national transparency of media ownership to be rather satisfactory in practice, notably through the Central Business Register and when it comes to the owners of the main media outlets⁶¹.

The right to information is subject to certain restrictions. The Access to Public Administrative Documents Act, which provides the rules to all public administration bodies and Ministries on public access to information and documents, has been amended in 2014, subsequently limiting public and journalistic access to certain government files⁶². Section 7 of the Act states that anyone can request the disclosure of the documents entered into or created by a public administration body as part of its administrative procedures in connection with its activities as an authority. This access, however, is limited with regards to some types of cases, documents or information, in particular internal working documents of authorities or documents which are being exchanged at a time when a Minister needs the advice and counsel of his staff⁶³. Stakeholders indicate that the exemptions in cases involving assistance and advice to the Minister and communication with members of Parliament in the legislative process can have the effect of keeping the basis of some political agreements confidential⁶⁴. The Parliamentary Ombudsman has also found the exception on Ministerial service to have a restricting effect on the right to access in practice⁶⁵.

Denmark has a strong tradition of freedom of expression. The overall framework for the protection of the freedom of expression is found in the Constitution⁶⁶. The Reporters Without Borders' annual World Press Freedom Index continuously ranks Denmark among the best performing countries, currently in the third place in the world⁶⁷. Nevertheless, in Denmark imprisonment is among the possible sanctions for defamation⁶⁸. The MPM 2020 regards the protection of the freedom of expression to carry very small risks due to the overall robustness of democratic tradition and institutions in Denmark. In 2019 and 2020, the Council of Europe's Platform to promote the protection of journalism and safety of journalists did not publish any alert concerning Denmark⁶⁹. A specific Commission on Freedom of Expression⁷⁰ was established in 2017/2018, with the aim to assess the framework and general conditions for the freedom of expression. It delivered its report in April 2020, contributing to broad political discussions regarding the status of freedom of expression in the Danish society⁷¹.

⁶¹ Information received in the context of the country visit.

⁶² Also to be noted in this context that according to the MPM 2020, the main risk to the protection of journalists lies with the fact that the right to information is not explicitly protected in the constitution.

⁶³ Sections 19 to 33 and Section 35 of the Access to Public Administrative Documents Act.

⁶⁴ Sections 24 and 27 (2) of the Access to Public Administrative Documents Act; Information received in the context of the country visit and e.g. statements by the Danish Union of Journalists, Open Administration; or Danske Medier., Danske Medier welcomes the publication of the Freedom of Expression Commission's report on Thursday.

⁶⁵ Section 24 of the Access to Public Administrative Documents Act. Annual Report of the Parliamentary Ombudsman (2016), pp. 141-142.

⁶⁶ Section 77 of the Constitution.

⁶⁷ Reporters without Borders, 2020 World Press Freedom Index.

⁶⁸ https://cmpf.eui.eu/wp-content/uploads/2019/01/decriminalisation-of-defamation_Infographic.pdf

⁶⁹ Council of Europe, Platform to promote the protection of journalism and safety of journalists <https://www.coe.int/en/web/media-freedom>.

⁷⁰ Input from Denmark for the 2020 Rule of Law Report, p. 20.

⁷¹ In line with Recommendation CM/REC(2016)4 of the Committee of Ministers of the Council of Europe on the protection of journalism and safety of journalists and other media actors that calls for a comprehensive legislative framework that enables journalists and other media actors to contribute to public debate effectively and without fear.

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 cases⁷². The Parliamentary Ombudsman provides oversight over decisions by public authorities and the Danish Institute for Human Rights monitors the respect of fundamental rights.

The process for enacting legislation involves a comprehensive preparatory process. The Ministry of Justice's legal quality guidelines⁷³ provide detailed instructions on the process for preparing legislation, including on legislative programming and preparatory steps, such as potential preparatory commissions and mandatory impact assessments (*inter alia* of economic and environmental impact and administrative consequences for citizens). Draft laws by the Government are generally published for open consultation on a Government portal (for a recommended minimum period of four weeks) and directly sent for external consultation to concerned authorities and organisations⁷⁴. Draft laws also undergo a technical legislative review by the Ministry of Justice, including to ensure conformity with international human rights obligations⁷⁵.

The Parliamentary Ombudsman plays a key role in providing oversight of administrative decisions. The Parliamentary Ombudsman, elected by the Parliament after each general election⁷⁶, functions as an appeal authority for administrative decisions, providing an assessment on the conformity of the acts of public authorities with existing legislation or good administrative practice. The Ombudsman can act on the basis of complaints or conduct own-initiative investigations. In 2019, the Ombudsman handled 5,368 complaints, many of which related to questions of access to public records, and 163 own-initiative investigations focussing on more general issues affecting a larger number of citizens⁷⁷. The Ombudsman's opinions, which can include recommendations to authorities to re-open a case or change a decision, are non-binding. According to information from both the authorities and the Ombudsman, public authorities generally follow the recommendations in practice. In addition to the Ombudsman, the Danish Institute of Human Rights functions as the National Human Rights Institution and was re-accredited with A-Status by the Global Alliance of National Human Rights Institutions in 2018. It also acts as the national equality body.

Civil society space in Denmark is considered to be open⁷⁸ and the civil society organisations are closely involved through a Human Rights Council. The Danish Institute for Human Rights involves a large number of civil society organisations from different thematic fields through its Human Rights Council, which assesses the design and

⁷² 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, in the 1999, Tvind case, U 1999.841 H.

⁷³ Ministry of Justice, Legal Quality guidelines.

⁷⁴ See the online platform *Hoeringsportalen*.

⁷⁵ Input from Denmark for the 2020 Rule of Law Report, p. 24.

⁷⁶ The Ombudsman can also be dismissed by the Parliament, if they no longer enjoy its confidence.

⁷⁷ Parliamentary Ombudsman, 2019 Annual Report, p. 39.

⁷⁸ Rating by CIVICUS; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

implementation of the NHRI's activities, can recommend new activities and appoints six of the 14 members of the board of directors⁷⁹.

The decision-making process leading to the suspension of courts' activities during the COVID-19 pandemic has been subject to debate. Emergency measures in response to the COVID-19 pandemic were taken based on an amendment of the Epidemics Law transferring the power to adopt decrees to combat the pandemic to the Minister of Health. The law was adopted unanimously by Parliament on 12 March 2020.⁸⁰ On the same day, the National Courts Administrations announced that in view of the COVID-19 pandemic, only the most critical functions of courts would be maintained and urgent and critical cases would be prioritised⁸¹. Since then, some debate has emerged as to whether this decision was taken in line with constitutional provisions regarding the independence of the courts. A study by think-tank Justitia⁸² argues that the National Courts Administration may have gone too far in its guidance given that, based on the Constitution and the Administration of Justice Act, the National Courts Administration is not empowered to make decisions on prioritising cases instead of the courts. In public statements, academics and the Association of Judges have also voiced concerns, while acknowledging the extraordinary circumstances which required swift action. The Ministry of Justice and the National Courts Administration have contested these views⁸³. The Parliament has appointed an independent expert panel, which will examine the Government's overall handling of the pandemic and is expected to present results by the end of 2020.

The National Courts Administration is active in promoting the rule of law. In recent years, the National Courts Administration undertook a series of efforts to promote the rule of law, better understanding of the justice system to a variety of target groups and improve the user focus of the justice system. This includes initiatives addressed to the general public, through educational videos, to school children through model curricula for teachers, to journalists via a dedicated website and to lay judges, by providing comprehensive information materials to them before they start their mandate⁸⁴.

⁷⁹ The Human Rights Council includes civil society organisations e.g. working in the fields of the judiciary, media or refugees as well as (non-voting members) ministries, public authorities and political parties. The other members of the board of directors are appointed by the Danish universities, the Greenland Council for Human Rights and the staff members of the NHRI.

⁸⁰ The power to adopt such decrees had previously belonged to committees of health officials and politicians at local level. The adoption of the amendment followed the ordinary legislative procedure but with three hearings condensed in 18h – use of such a fast-tracked procedure can be decided by vote of $\frac{3}{4}$ of Parliament.

⁸¹ National Courts Administration, Emergency preparedness at the Courts of Denmark: Further information.

⁸² Justitia, Rule of Law and COVID-19, pp. 95-104.

⁸³ Information, Mails cast doubt on whether the closure of the courts was in accordance with the Constitution.

⁸⁴ For more information see the website of the National Courts Administration.

Annex I: List of sources in alphabetical order*

* *The list of contributions received in the context of the consultation for the 2020 Rule of Law report can be found at (COM website).*

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Virtual country visit to Denmark in the context of the 2020 Rule of Law Report.

Annex II: Country visit to Denmark

The Commission services held virtual meetings in June and July 2020 with:

- Danish Journalists' Association
- Danish Judges' Association
- Danske Medier
- Danish Press Council
- Ministry of Justice
- National Courts Administration
- Parliamentary Ombudsman
- Prosecution Service
- Special Prosecutor's Office
- Supreme Court
- Transparency International Denmark

In addition, the Agency for Culture and Palaces provided a written contribution in place of a virtual meeting.

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

- Amnesty International
- Civil Liberties Union for Europe
- Civil Society Europe
- Conference of European Churches
- EuroCommerce
- European Center for Not-for-Profit Law
- European Centre for Press and Media Freedom
- European Civic Forum
- Free Press Unlimited
- Front Line Defenders
- ILGA-Europe
- International Commission of Jurists
- International Federation for Human Rights
- International Press Institute
- Lifelong learning Platform
- Open Society Justice Initiative/Open Society European Policy Institute
- Reporters without Borders
- Transparency International EU