



FUNDAMENTAL RIGHTS
AND THE RULE OF LAW

Authorities' observations on the report on the country visit to Denmark

21-22 December 2020



European Economic
and Social Committee



JUSTITTS MINISTERIET

Ministry of Justice

European Economic and Social Committee
Fundamental Rights and Rule of Law Group

Date: 4 March 2021
Office: Constitutional Law and Human Rights
Division

Contact: Karen Fowler Lund
Our ref.: 2020-301/21-0001
Doc.: 1861661

Observations from the Danish Government on the draft report of the European Economic and Social Committees Fundamental Rights and Rule of Law Group on its virtual visit to Denmark on 21-22 December 2020

The Government of Denmark would like to thank the Fundamental Rights and Rule of Law Group for the constructive discussions on 22 December 2020 and wishes to present additional comments to the subsequent draft 'Report on the virtual visit to Denmark 21-22 December 2020' in the following sections.

The Government of Denmark believes that the rule of law and fundamental rights are basic important principles in a democratic society and thus supports the work of the Fundamental Rights and Rule of Law Group in its efforts to promote respect for these values in EU Member States.

1. Fundamental rights to social partners

Regarding *social dumping* it should be noted, that the Government has taken a number of measures to combat social dumping. With the Finance Act for 2020, the Government has strengthened the total allocation for the fight against social dumping by an extra DKK 245 million. The grant will be raised for the next three years to the highest level ever. A large part of the money goes to the joint government action, which is carried out in collaboration between the Danish Working Environment Authority, the tax authorities and the police.

The Government has established a new state control unit to control labor clauses by verifying that private suppliers and their subcontractors performing work for the state comply with proper pay and working conditions in all parts of the major construction projects in Denmark.

Furthermore, the Government has tightened the requirements for Danish and foreign drivers, to prevent wage dumping on the roads. All drivers who drive cabotage in Denmark must have a salary corresponding to the most representative in the road transport industry.

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2. *Freedom of association and assembly*

Due to COVID-19 restrictions certain limitations on freedoms of association and assembly has been enforced. As stated during the meeting, these restrictions are proportionate and within the boundaries of the Constitutional Act and the European Convention on Human Rights. The Government would like to add that a broad range of assemblies, events, activities etc., however, are exempted from the ban. Thus, the executive order, for example, does not apply to the Danish Parliament, the Courts or political assemblies, events, activities etc.

The draft report further mentions the draft law on “*Security for all Danes*” (“*Tryghed for alle danskere*”). The purpose of this legislative proposal is, among other things, to enable the police to issue a general prohibition of sojourn at a specific place to which there is common access, if a group of people exhibit behaviour, which is suited to cause insecurity for residents and passers-by in the area. Hereby, the police will be given a new tool to effectively respond to groups of people causing insecurity in an area.

On the topic of *Counter-Terrorism legislation*, it can be noted that substantial counter-terrorism initiatives have been launched in the last couple of years, since the 2015 terror attacks in Copenhagen. Recent initiatives have focused on the areas of foreign fighters and countering terrorism financing. Currently, a review is conducted on the legislation regarding the Danish Security and Intelligence Service with the involvement of independent experts and relevant NGOs.

3. *Freedom of expression and freedom of the media*

On the concern regarding the *democratic tone* in Denmark, the Government would like to add highlighted conclusions of the Commission of Freedom of Expression. The Commission, established in 2017, was tasked with describing and concluding on the overall framework and general conditions of freedom of expression in Denmark, among other things. In 2020, the Commission reached the overall conclusion freedom of expression is well protected in Denmark. However, freedom of expression does face certain challenges, which must be addressed, such as situations where people through harassment, coercion or terror attempts to prevent others from taking part in the public debate. The Government will include the Commission’s observations and recommendations in its further political work in the area.

The Government is currently in the process of transposing the EU Whistleblowing Directive into national law. The transposition bill is foreseen to be discussed in the Danish Parliament in the spring 2021. The material scope of the Directive is limited to breaches of specific areas of Union law. To ensure a comprehensive and coherent legal basis of protection of the whistleblower in national law, it is proposed to extend the material scope of the transposition bill to include, inter alia,

serious breaches of national law and Union law.

4. *The right to non-discrimination*

Discrimination of any kind is unacceptable and Denmark aims to ensure equal treatment of all groups of society. The Act on Prohibition against Discrimination on Grounds of Disability prohibits discrimination in all parts of society outside the labour market on grounds of disability. The law entails the possibility of filing complaints for direct and indirect discrimination to The Danish Board of Equal Treatment. The Board may award compensation and invalidate dismissals.

On 1 January 2021 an amendment to this law entered into force underlining the responsibility of schools and daycares to undertake reasonable accommodation for children and young people. With the amendment, The Danish Board of Equal Treatment will also have the competence to consider complaints of lack of reasonable accommodation and to award compensation if the complaint is justified

With regards to the mentioned *paradigm shift* in the draft report, the Government would like to note that following the refugee crisis, particularly the situation in Syria, the (former) Danish Government introduced a new form of temporary protection status, to be used in cases where the obligation to provide (subsidiary) protection under international conventions is based on a particularly serious situation in a third country resulting in arbitrary violence and attacks on civilians.

In 2015, it was introduced as a condition for family reunification to foreigners with temporary protection status that the temporary protection status had been extended after one year. In 2016, the condition was amended in that the family member in Denmark must have held temporary protection status for three years. The condition does not apply to family members who are 1951 Convention refugees or beneficiaries of subsidiary protection when individually persecuted. The postponement is derogated from in all cases where Denmark's international obligations so require.

Regarding the reference to the "jewellery law" which refers to the seizing of valuable assets from asylum seekers, only amounts exceeding DKK 10.000 per person and items of major financial value i.e. exceeding DKK 10.000 will be seized. However, personal items of special sentimental value will not be seized, e.g., wedding rings, engagement rings etc.

On the topic of the situation in *pre-expulsion refugee camps*, the Government maintains that foreign nationals, without legal right to remain in Denmark, are obliged to leave the country as soon as possible. As a result, return efforts are highly prioritised by the Government. The Government wishes to clarify that when an application for asylum has been denied, the asylum seeker is obliged to leave

the country in accordance with the return decision. If he or she does not leave the country voluntarily, the person in question will be placed at a return center and the removal will be done forcibly, if necessary.

One of the purposes of administrative detention can be to motivate rejected asylum seekers, who refuse to cooperate with Danish authorities on their return. As a general rule, an asylum seeker can bring an administrative detention to an end by cooperating with the authorities. The legality of an administrative detention can be brought before a court, and the court must consider the lawfulness and proportionality of the detention.

Regarding the reference to the CPT report of the Council of Europe, the Government wishes to clarify that international reports, such as the mentioned report, always will be taken into due consideration.

In relation to the action plan on housing initiatives to counteract parallel societies adopted in 2018, it can be noted that the overall objective of the action plan is to create open, non-isolated residential areas with mixed income housing that reflects the surrounding community and offer better environment for a positive social development. The goal is to ensure that all persons in Denmark, regardless of background and birthplace, will grow up with the same opportunities in life.

In response to the voiced recommendation of Denmark to work on a national action plan against antisemitism, the Government can inform FRRL, that the work on a national action plan against antisemitism has commenced. The action plan will, among other things, focus on informing about Jewish life and educating about the Holocaust in order to counteract prejudices against Jews. The action plan is expected to be launched in 2021.

Finally, in august of 2020 the Government proposed 10 legislative initiatives to better protect rights of LGBTI-persons in Denmark. The proposed amendments will explicitly prohibit discrimination on the basis of sexual orientation, gender identity, gender expression and sex characteristics both inside and outside the labor market. The right to obtain remedy with the Danish Equal Treatment Board will follow accordingly. The amendments are expected to go to Parliament in the fall of 2021.

The Government notes that Denmark follows international standards and procedures in regards to healthcare for transgender persons. Regarding intersex persons, Denmark notes that surgery based on cosmetic indications is illegal for children under the age of 18. Surgery is only conducted on medical indication and after thorough medical evaluation by specialized medical experts in a multidisciplinary setting, and is never performed solely with the intention to decide the sex of a child or for gender normalization reasons. Training of health care staff

is continuously strengthened, and guidelines regarding treatment of intersex persons are constantly evaluated and assessed.

5. The rule of law

The section of the rule of law in the draft report mentions a challenge related to ensure accessible legal aid and justice. With regards to this topic, it should be noted that the a Committee has been established with the aim to review the current regulations in relation to legal aid. The Committee has also been tasked to put forth recommendations on how to improve the current regulation. The Committee is expected to conclude its review before summer 2022.

Participants also mentioned a trend towards the extension of surveillance in the public sphere and the handling of data retention contrary to European standards. As regards the issue of data retention, the Government notes that it expects to submit new draft legislation on data retention to parliament in October 2021 in light of recent judgments by the European Court of Justice and notably the judgments of 6 October 2020.

The Government would again like to extend its gratitude to the FRRL Group for its visit to Denmark on 22 December 2020 and to let the FRRL Group know, that the Government is available, should there be any follow up questions based on these additional observations.

Yours sincerely

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Published by: "Visits and Publications" Unit
EESC-2021-38-EN

www.eesc.europa.eu



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Print
QE-02-21-680-EN-C
ISBN 978-92-830-5356-9
doi:10.2864/014714

Online
QE-02-21-680-EN-N
ISBN 978-92-830-5359-0
doi:10.2864/263051

EN