

Danish contribution to the 2021 Rule of Law Report: Written follow-up questions

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I. Justice System

Question 1: The increase in incoming cases

At the meeting of 9 April 2021, it was explained that a part of the reason for the backlog of pending court cases in 2020 is that the courts have received more cases. The European Commission asked for the reason behind this increase in incoming cases.

A reason for this increase could be that the courts have received more cases from the Prosecution Service. More specifically, the number of open cases within the Prosecution Service has overall been consistent from the end of 2019 to the end of 2020. However, the number of open cases has decreased in many areas such as assault and sexual offences. This means that during the lock down of the courts in part of 2020, the handling of cases within the Prosecution Service has been consistent and in some areas, more cases have been handled. A reason for this could be that the prosecutors have had more time to process cases while the courts were locked down, since they did not spend time in court proceedings.

Question 3: The reasons for setting up the pre-legislative committee and its composition

At the meeting of 9 April 2021, the state of play of the pre-legislative committee on legal aid was explained. The European Commission asked for the reasons of setting up the pre-legislative committee and its composition.

In recent years, a number of reports on how to improve the legal aid system in Denmark have been submitted.

In the light of the fact that a need to improve the system for obtaining legal aid had been pointed out by several parties, the Minister of Justice in April 2020 initiated the work of the pre-legislative committee in order to review the legal aid system.

The committee is composed as follows:

- a current or former judge from the Court of Appeal as chairman,
- a representative of the Ministry of Finance,
- a representative of the Ministry of Justice,
- a representative of the Danish Court Administration,
- a representative of the Department of Civil Affairs,
- a representative of the Association of Danish Judges,
- a representative of the Danish Institute for Human Rights,
- a representative of the Consumer Council, and
- an appointed university teacher with a special knowledge regarding legal aid and free trial.

The committee is assisted in its work by a follow-up group with the aim of incorporating knowledge and experience from practitioners.

The follow-up group is composed as follows:

- a representative from the Danish Bar and Law Society,

- a representative from the Association of Danish Law Firms,
- a representative from the judicial think tank Justitia,
- one or more representatives from the legal aid offices, and
- a representative from Insurance & Pension Denmark.

Question 4: The financing of IT-systems

At the meeting of 9 April 2021, The European Commission asked for information concerning the financing of the modernization of IT-systems.

The Danish National Police's central case management system is scheduled for modernization in the years to come, while some of the central IT-systems for case management, e.g. at the courts and client handling at the prison and probation service, are also scheduled for replacement. Some of these initiatives have already secured funds, while the financing of others depends on ongoing analysis and political negotiations.

Question 5: The legislative proposal on streamlining criminal proceedings

At the meeting of 9 April 2021, The European Commission asked to receive the legislative proposal on streamlining criminal proceedings. This legislative proposal is attached.

Question 6: The whistleblowing mechanism

At the meeting of 9 April 2021, The European Commission asked for more information concerning the whistleblowing mechanism.

The whistleblowing mechanism under the Director of Public Prosecutions is competent regarding serious workplace related breaches. Generally speaking, this includes the following:

- Criminal offences, e.g. theft, fraud, bribery etc.
- Serious or repeated infringements of other legal acts such as the Public Administration Act, the Public Access to Information Act and Data Protection Act.
- Serious or repeated infringements of principles of administrative law, e.g. the principle of proportionality, the objectivity principle etc.
- Serious or repeated infringements of significant internal procedures, e.g. procedures on gifts, work-related travels, accounting etc.
- Severe workplace related personal conflicts, for instance gross harassment
- Sexual harassment
- Deliberate deception of citizens or contractors/partners

Upon receiving information on a possible breach (a reporting), the unit responsible for the whistleblowing mechanism will initially determine whether the reporting falls outside the scope of the mechanism (e.g. because it is manifestly unfounded). In such case, the case will be closed.

If the reporting falls within the scope of the whistleblowing mechanism an investigation will normally be initiated. If necessary, this investigation could involve external authorities or public supervisory bodies.

Should the investigation point to wrongdoing, the following actions could be taken:

- In case of a criminal offence, the matter could be handed over to the police or the Independent Police Complaints Authority.
- In case of gross negligence etc. by an employee, disciplinary measures (e.g. suspension or lay-off) could be imposed.
- Cases of gross negligence etc. by a contractor/partner could be met with contractual consequences (such as the termination of a contract).

II. Checks and balances System

Question 5: Could you briefly describe the intentions behind the law prohibiting the receipt of donations from certain natural and legal persons and how it is ensured that its application will be proportionate to the aims?

The purpose of the law is to counteract that natural and legal persons, including foreign government authorities and State-controlled organizations and companies, can act against or undermine democracy and fundamental freedoms and human rights by making donations.

The law allows for the registration of natural or legal persons, who act against or undermine fundamental freedoms and human rights in Denmark, on a prohibition list. It is illegal to receive donations with a cumulative sum exceeding 10,000 DKK within 12 consecutive months from persons appearing on the list.

A person can be registered on the prohibition list if it can be assumed on the basis of available information, that the person in question acts against or undermines democracy and fundamental freedoms and human rights, and there is a certain probability that the person will donate to recipients in Denmark. In each individual case, the Danish authorities will assess, whether inclusion on the list is proportional to the legitimate aims of the law. The decision to include a person on the list can be challenged in court and can be subject to complaints to the Danish Parliamentary Ombudsman.

III. Media Pluralism

Question 2: Plans to submit a legislative proposal to introduce more severe sentences for threats aimed at preventing the victim from making use of his/her freedom of speech.

At the meeting of 9 April 2021, The European Commission asked to receive any new information regarding the process of a legislative proposal to introduce more severe sentences for threats aimed at preventing the victim from making use of his/her freedom of speech.

Currently, there is no new information regarding the process or content of the legislative proposal.

Question 3: Legislative measures

At the meeting of 9 April 2021, The European Commission asked about new legislative measures on the basis of the findings by the independent expert panel appointed by Parliament concerning the handling of the COVID-19 pandemic

The Ministry of Justice notes that the new Epidemics Act (adopted in February 2021) introduces several provisions to secure a more transparent process when introducing new restrictions for the prevention and control of epidemics.

With the new Epidemics Act there will be access to information about the basis of the restrictions that may apply in pursuance of the Act such as restrictions on assembly, closure of premises etc. In accordance with the Act a number of provisions can only be enforced, if the Epidemics Commission, which is appointed by law, has presented their position on whether new measures should be introduced or not. A recommendation from the Epidemics Commission must reflect any disagreements in the Commission. The Commission consists of representatives from the ministries and health authorities.

Subsequently, if the relevant minister chooses to follow a recommendation to introduce new measures, the recommendation must be submitted to the Parliament's Epidemic Committee, which will be able to reject the recommendation.

In accordance with the Epidemics Act it is mandatory to publish recommendations from the Epidemics Commission regardless of whether the relevant minister chooses to follow the recommendation(s) from the Commission.

IV. Anti-corruption framework

Question 1: The date of the latest forum meeting

At the meeting of 9 April 2021, The European Commission asked about the date of the latest meeting in the Anti-Corruption Forum.

The Anti Corruption Forum had its latest forum meeting on 27 May 2015.

However, the Ministry of Justice has reached out to the relevant members of the forum on an ad hoc basis, whenever a need for coordination or communication regarding anticorruption has occurred.

Question 6: How the rule on conflict of interest indirectly affects the interaction with lobbyists and if there have been any examples of this

Civil servants (including top executive functions) have a duty to report potential conflict of interest to the permanent secretary of their ministry/managers. If a public employee has a conflict of interest with regard to a case matter, the employee may not make decisions in the matter, participate in decisions, or in other ways take part in handling the case in question. The practical consequences of the fact that a conflict of interest exists with regard to a particular case will typically be that the matter is transferred to a colleague. Potential conflicts of interest are handled within the individual workplace, and The Danish Employee and Competencies Agency is therefore not able to provide any concrete examples on how the rule on conflict of interest indirectly affects the interaction with lobbyists.

However a public employee has a conflict of interest if:

- The employee has a special personal or economic interest in the outcome of a case.
- The employee has a close family connection to a person who has such an interest.

Other circumstances might raise doubts about the employee's impartiality, for example because there is a matter of a close friendship – or the opposite – with the person involved in the case in question. Whether a specific interest creates a conflict of interest for the employee in a particular case depends on a concrete assessment. A conflict of interest exists if the interest, for example a personal or financial interest, is generally capable of casting into doubt the impartiality of an employee. It is thus not important whether the employee or manager judges that in a specific case the employee can keep the irrelevant interest from influencing the case. The decisive issue is whether the interest is generally capable of casting into doubt the impartiality of an employee. A theoretically example could be: A municipal caseworker must make a decision as to whether a building permit should be issued to build an additional floor onto a house next to the caseworker's brother's house. The caseworker would have a conflict of interest. Regardless of what the exact relationship is between the caseworker and the brother, the caseworker must decline to handle the case.

Question 7: Examples of top executive functions moving from the public to the private sector.

As mentioned at the meeting on 9 April 2021, the Danish Parliament considered a proposal for a motion to establish a working group with a view to preparing possible models for rules regarding “revolving doors” in 2016.

However, a majority of Parliament voted against the proposal. The exchange of knowledge between the political sector and the private sector is considered to be of high importance in Denmark.

There are currently no plans to introduce specific rules regarding revolving doors. However, Denmark already has the following rules that ensures and sustains integrity – also in case of termination: The duty of confidentiality and bribery is sanctioned under the Criminal Code. Lack of compliance with the rules will therefore entail a violation of the Criminal Code, and can be sanctioned. Both rules ensures the safeguarding of confidential information when moving from the public sector to a position in the private sector.

In 2018, former Minister of Business resigned because he got a job as the director for The Danish Chamber of Commerce. In 2015 former minister of finance resigned because he got a high ranked job in the consulting agency McKinsey.

Question 9: An organisational chart of the new national investigative unit

At the meeting of 9 April 2021, The European Commission asked the Ministry of Justice to forward an organizational chart of the new national investigative unit.

The Ministry of Justice can inform the European Commission that the Ministry is underway in preparing such an organizational chart, but that it is not ready for publication yet. There is no fixed date yet for the finalization of the material.

V. Financial Supervisory Authority

Question 3: Data shared at the virtual country visit

At the meeting of 9 April 2021, The European Commission asked to receive the data shared during the meeting concerning developments over the past two-three years with respect to reports to the police, criminal investigations, court cases and convictions in the area of money laundering.

In criminal law, money laundering is covered by section 290 and 290a of the Criminal Code. Section 290 of the Criminal Code, the receiving of stolen goods, concerns all forms of proceeds from punishable offences (e.g., theft, people smuggling, drug crime and fraud). Both natural and legal persons (companies, associations, etc.) may be convicted for receiving stolen property/money laundering under the provisions of the Criminal Code.

Section 290a of the Criminal Code is directed at money laundering, both when money constitutes the direct proceeds of the predicate offence and when proceeds in any form other than money have been converted into money that is then laundered. The provision was introduced on 1 July 2018 and criminalizes some of the acts concerning the handling of the proceeds of crime formerly comprised by section 290 of the Criminal Code on the receiving of stolen goods. Unlike section 290, the provision of section 290a also concerns acts that the perpetrator of the predicate offence carries out him- or herself. The provision thus expresses a certain new form of criminalization regarding the perpetrator of the predicate offence. In practice, the perpetrator of the predicate offence will namely be liable to punishment under section 290a of the Criminal Code if the money laundering transactions he or she has carried out significantly exceed the customary handling of the proceeds of crime.

The Director of Public Prosecutions has searched the police case management system (POLSAS) to retrieve data regarding criminal investigations, court cases and convictions in the offence codes for money laundering (section 290a). Note that it is not possible to retrieve data specifically regarding money laundering under section 290.

Money laundering – section 290a of the Criminal Code from 2019-2021

	2019	2020	2021
Reports	320	1,145	429
Charges	104	990	832
Indictments	58	292	491
Convictions	28	18	7

Note:

The numbers are based on data from the police case management system (POLSAS). The numbers are therefore subject to some uncertainty, as POLSAS is a case management system and not an actual statistics system. It should be noted that data are dynamic which means that the numbers are not final. The numbers may change due to corrections or delayed updates of the data in POLSAS, new convictions etc. Thus, changes may occur depending on the time of extraction of the information, and post-registrations may occur.

The charges, indictments and convictions are measured by the number of charges (counts) which means how many people pr. case number that has been charged, indicted or convicted. The reports are measured by the number of cases.

The numbers are based on the latest conviction. The conviction may have been appealed in the meantime. Therefore, the convictions are not necessarily final.

Data as of 3 April 2021.