



# Denmark

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Oline Nyegaard Grothen is currently studying a master's degree in law at the University of Copenhagen. She possesses a particular interest and capability in the field of international law and international criminal justice alongside safeguarding human rights. Besides studying Oline has served as a full-time intern for the permanent mission of Estonia to the UN for the second half of 2022, where she primarily covered the 6<sup>th</sup> committee on counter-terrorism, law of the sea and the crime of aggression. Presently she is working part time at a Danish law firm and as a project employee for Justitia on top of her board work, at a Danish student association.

## Country Summary

Despite consistently ranking highly in free speech indexes such as Justitia’s free speech index (2<sup>nd</sup> out of 33 countries) and Freedom House’s Freedom in the world report (97/100 global

freedom score), an unprecedented number of speech restrictive laws have been enacted between 2015 and 2022. Five laws provide for restrictions on religious speech, known as the anti-radicalization bill (one on religious preaching, one aimed to limit the funding of mosques and Islamic communities, one imposing a ban on the burqa and one prohibiting certain religious preachers from entering the country). Two laws related to gang violence restricted freedom of movement and expression of suspected gang members. One law criminalized cooperation with foreign intelligence services to modify and affect the public formation of opinions or political decision making. In 2018 a major revision of the Danish penal code's provisions on defamation tripled the fines for libel and introduced a fivefold increase of the fine for libel applicable to managing editors of mass media outlets and made it easier for the Danish prosecution service to initiate defamation cases on behalf of potential victims. The law was criticized as having a potential chilling effect on the public debate and press freedom. In 2021 the Danish criminal prohibition on hate speech (section 266b of the penal code) was extended to include gender identity, expression or characteristics. In 2023, the Supreme Court ruled that the satirical drawing of the Little Mermaid sculpture was not in violation of the sculptor's copyright and is protected by free speech.

## Introduction

The beginning of the period was characterized by political discussions stemming from a violent terrorist attack in February 2015 causing two deaths: one at an event celebrating the freedom of speech and another at a young person's party at the synagogue of Copenhagen. The attack sparked a debate about how to safeguard Danish democracy and values including the freedom of speech. This debate was further inflamed by the actions of right-wing politician, Rasmus Paludan, who pushed the boundaries of free speech with various provocative acts, including burning of the Koran and covering of it in bacon.

It is worth noting that in 2023 (outside the temporal scope of the report but significant in terms of its content), the Danish government has proposed a ban on burning the Koran after a series of burnings caused uproar in Muslim communities. The law will make "improper treatment" of "sacred writings" (such as the Bible and the Koran) a criminal offense punishable by a fine and jail sentence of up to two years.<sup>182</sup>

The Covid-19 pandemic had a major impact on the Danish legislative scheme from 2020-2022 making obstacles for both the freedom of assembly and the freedom of expression.

The findings of the so-called Tibet Commission in 2022 that the Danish Ministry of Foreign Affairs and the Danish Police Service during Chinese state visits in 2012 and 2013 had acted

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<sup>182</sup> <https://www.bbc.com/news/world-europe-66602814>; <https://reason.com/2023/08/30/denmark-may-ban-burning-the-Koran/>; <https://time.com/6302649/denmark-swedens-Koran-burnings-commitment-to-free-speech/>

illegally by hindering anti-China protesters in voicing their discontent also influenced the debate.

At the end of the period, a book by a former employee of the Danish Security and Intelligence Service, disclosing so far undisclosed facts about the secret service and a criminal case against a former Minister of Defence accused of disclosing state secrets, sparked much debate. Discussions concerned how to weigh the need in a democracy for transparency and openness against the interest of the country's secret services and national security and in connection with that also the freedom of speech.

As in other countries the debate on free speech in Denmark has of course also been influenced by international debates about Russia's interference in other countries' elections and misinformation concerning covid, wars etc. The question of how to regulate social media has also played out in Denmark.

## I. Legislation

### Religious practice

In 2016 religious preachers were prohibited by law<sup>183</sup> from entering Denmark if the preacher has been listed as being a threat to national security in Denmark – e.g., by having earlier made statements that could lead to the belief that he or she would encourage the undermining of democracy and social order in Denmark. The legislation was passed together with multiple other laws aimed at ensuring that preachers who are believed to undermine Danish culture and values and/or support parallel legal systems (e.g., Sharia law) will not be able to preach in Denmark. At present 30 preachers are on the public list<sup>184</sup>, which is renewed every other year. In addition to the public list, there is a list of an unknown number of people whom the authorities are keeping an extra eye on. This list is not public.

Also in 2016, a law was enacted<sup>185</sup> making it is an offense, as a religious preacher, to try to undermine Danish democracy and values in religious sermons, by explicitly condoning certain criminal acts. In 2021,<sup>186</sup> statements that promote child marriage or amount to "psychological violence" were included in the law. A legislative proposal from the government that all sermons preached in Denmark should be translated into Danish was abandoned after three years of negotiation. The proposal was met with huge protests not only from the Danish state church, but also many other congregations and religious organisations.

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<sup>183</sup> <https://www.retsinformation.dk/eli/Ita/2016/1743>

<sup>184</sup> <https://www.nyidanmark.dk/en-GB/Words and Concepts Front Page/US/Religious workers/Religious publishers with a ban on entry>

<sup>185</sup> <https://www.retsinformation.dk/eli/Ita/2016/1723>

<sup>186</sup> <https://www.retsinformation.dk/eli/Ita/2021/415>

### *Protection of public officials*

In 2016 the Danish parliament also passed a revision of section 121 of the Danish penal code which criminalizes subjecting public officials (including elected politicians) to mockery, abuse or insult. The revision increased the maximum penalty from six months to one year in prison leading to criticism that public officials and politicians were protected at the expense of ordinary citizens engaging in robust criticism and political debate.<sup>187</sup>

Legislation was adopted in 2021 to reduce the possibilities of funding mosques and Islamic communities in Denmark<sup>188</sup> by states, organizations or persons who seek to undermine Danish core values and human rights. The law does this by creating barriers for economic transactions.

Following much debate and protest, a law was adopted during the period under review banning the wearing of any form of garment in public which covers the face totally,<sup>189</sup> except if the garment is worn for justified purposes, e.g., as protection from cold weather or doing sports that require facial protection. Headscarves and turbans can be worn, but not burqas or niqabs. The law entered into force on August 1<sup>st</sup>, 2018. According to the Danish newspaper "Berlingske",<sup>190</sup> 60 people were charged under the law over the following two years, two thirds of which were citizens wearing a burqa or niqab.

### *Blasphemy*

In 2017, the Danish Parliament repealed the blasphemy provision in the Danish Penal Code (Section 140). The section stated that anyone who publicly mocks the religious teachings or worship of religious communities legally existing in this country is punished by a fine or imprisonment for up to 4 months. The section had not been in use for more than 40 years when charges in the spring of 2017 were brought against a man who had posted a video on the internet showing the burning of a Koran. This initiated a political debate that led to Section 140 being repealed.

### *Defamation*

In 2018 a major revision of the Danish penal code's provisions on defamation tripled the fines for libel and introduced a fivefold increase of the fine for libel applicable to managing editors of mass media outlets and made it easier for the Danish prosecution service to initiate defamation cases on behalf of potential victims in particularly serious cases.<sup>191</sup>

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<sup>187</sup> [https://www.ft.dk/ripdf/samling/20161/lovforslag/l73/20161\\_l73\\_som\\_fremsat.pdf](https://www.ft.dk/ripdf/samling/20161/lovforslag/l73/20161_l73_som_fremsat.pdf)

<sup>188</sup> <https://www.retsinformation.dk/eli/lta/2021/414>

<sup>189</sup> <https://www.retsinformation.dk/eli/lta/2018/717>

<sup>190</sup> <https://www.berlingske.dk/samfund/tildaekningsforbuddet-er-blevet-overtradt-60-gange-pa-to-ar-og-langtfra>

<sup>191</sup> [https://www.ft.dk/ripdf/samling/20181/lovforslag/l20/20181\\_l20\\_som\\_fremsat.pdf](https://www.ft.dk/ripdf/samling/20181/lovforslag/l20/20181_l20_som_fremsat.pdf)

### Communications

A law allowing the blocking of certain websites was adopted in 2017<sup>192</sup>. A website can be blocked, if there is reason to believe that certain crimes are committed on the website. The original legislative proposal included all criminal offenses, but during the legislative process, the number of offenses was limited substantially due to protests from, *inter alia*, Justitia. The final law, however, allows the blocking not only of websites used to commit acts of terrorism, but also of websites used to threaten civil servants and to commit certain economic crimes.

In 2017, the administration of a secured institution was given the right to deny residents internet access<sup>193</sup> throughout the institution. The legislation unfortunately does not provide any guidelines on how and when the rules are applicable.

Due to several gang related shootings in Copenhagen, in 2018 the government adopted laws restricting the right to privacy relating to leading gang members' access to mail and phone calls<sup>194</sup> while serving a prison sentence. In addition, persons convicted of gang related crimes can be banned from moving, staying, or taking up residence in the area where the crime was committed.

In 2019, a law was also passed criminalizing cooperation with foreign intelligence services to modify and influence the public formation of opinions, political decision making and elections in Denmark.<sup>195</sup>

At the end of the period, in 2021, hate speech concerning a person's gender identity, gender expression or gender characteristics was included in section 266 b of the criminal code,<sup>196</sup> making it a criminal offense to publicly insult and threaten people due to their gender identity, gender expression or gender characteristics.

## **II. Non-Legislative Developments**

### The Freedom of Speech Commission

The Freedom of Speech Commission<sup>197</sup> was formed by the government in 2017. The commission was chaired by the former head of the Central Bank of Denmark, who is not a lawyer. Several other members of the Commission were, however, skilled lawyers. The Commission published a comprehensive report in 2020 with findings regarding the condition of the freedom of free speech in Denmark, political trends, public opinion, and future recommendations. A significant, worrying finding was that Danes eagerly support freedom of

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<sup>192</sup> <https://www.retsinformation.dk/eli/lta/2017/674>

<sup>193</sup> <https://www.retsinformation.dk/eli/lta/2018/221>

<sup>194</sup> <https://www.retsinformation.dk/eli/lta/2017/672>

<sup>195</sup> <https://www.retsinformation.dk/eli/lta/2019/269>

<sup>196</sup> <https://www.retsinformation.dk/eli/lta/2021/2591>

<sup>197</sup> <https://www.regeringen.dk/nyheder/2020/ytringsfrihedskommissionen-afleverer-betaenkning/>

speech in general, but are more reluctant in their support if a statement has negative consequences for others or society. The Commission called on the government to be more cautious in adopting new laws that could affect the freedom of speech negatively and to ensure that laws that do affect freedom of speech are clear and precise, to minimize the negative effects of such regulation.

### *The Tibet Commission*

In 2022, a commission chaired by a high court judge<sup>198</sup> concluded that the Danish Ministry of Foreign Affairs and Danish Police acted illegally by: (i) restricting protesters in voicing their discontent with Chinese authorities, (ii) removing Tibetan flags which the protesters hoisted and (iii) barring protesters behind buses, to ensure that the Chinese delegation would not be faced with the protests during Chinese state visits in 2012 and 2013.

## **III. Enforcement**

### Dissolving and Banning of the Gang “Loyal to Familia” by the Supreme Court

Over several years there has been political pressure on the police to dissolve and ban specific criminal gangs. As it had been considered unconstitutional, the police however did not act until 2018. The decision of the police was brought before the Supreme Court, which in 2021<sup>199</sup> decided that the banning and dissolving of the gang was in accordance with the constitution. The ban means that it is illegal for the gang to carry on its activities, and to possess or use the “coat of arms” of the gang in public.

### *The Covid-19 Cases*

In the early days of the pandemic, a law was passed<sup>200</sup> stating that criminal offenses committed to take advantage of the pandemic should be punished more severely than other similar offenses. This led to, for example, a case against a person who – in connection with protests regarding the government’s handling of the pandemic – had not followed orders from the police. The prosecution service, referring to the above-mentioned law, called for a more severe punishment than under normal circumstances, but the high court rejected the plea, stating that this would be an infringement of the right to demonstrate.

In another case three men were charged with threatening the prime minister of Denmark during a demonstration, by putting up a doll in a tree with the face of the prime minister and a note saying, “she must and will be exterminated”. The men pleaded that they were paraphrasing an earlier statement made by the prime minister during a press conference, and that they had no other intention than criticizing the government’s handling of the pandemic,

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<sup>198</sup> <https://www.justitsministeriet.dk/pressemeddelelse/tibetkommissionen-ii-har-afgivet-sin-beretning/>

<sup>199</sup> <https://domstol.dk/hojesteret/aktuelt/2021/9/ulovlig-forening-oploest/#loyal>

<sup>200</sup> <https://www.retsinformation.dk/eli/Ita/2020/349>

including the government's unconstitutional order to cull all Danish minks. They were acquitted by the district court, but the case has been appealed to the high court by the prosecution service<sup>201</sup>. The three men were under custody for several weeks in connection with the case, initially indicted for attempting to overthrow the constitutional order. A woman protesting the arrest of the three men was herself arrested, and her telephone and PC confiscated and searched after she had posted a picture of the doll on social media with a petition to release the arrested men. The prosecution service ultimately decided not to charge the woman.

### The Case of the Satirical Drawing of the Little Mermaid Sculpture

Another interesting case concerned a large Danish newspaper who had printed a satirical drawing of a famous Danish sculpture "The Little Mermaid". Up until this point, it had been considered legal under Danish law to make satirical drawings of copyright protected pieces of art. However, in 2022, the Eastern High Court found that this principle did not have the necessary foundation and ruled that such drawings were in violation of Danish copyright law. In 2023, the case was brought to the Danish Supreme Court. The reasoning behind this was that various lawyers and professors, amongst others, spoke up about this ruling, which they deemed to be in violation with what the law prescribes. Ultimately, the Supreme Court ruled in 2023 that the satirical drawing was not a violation of the intellectual property of the heirs of the artist.<sup>202</sup>

### **Conclusion**

National security and cohesion concerns loom large in the expression restrictions enacted in Denmark in the period under review. How to respond to a potential erosion of Denmark's largely secular and liberal culture in the face of immigration partially explains some of the more monoculturalist legislative developments relating to religious practice. This theme was picked up on in UN Human Rights Committee reviews. These issues, of course, both predate the 2015-22 period (e.g., with the Muhammed cartoon furor) and continue to rumble on in 2023 (with the religious object desecration legislative proposals). Danish traditional tolerance of intolerance when it comes to free speech seems to be evolving – as evidenced by the inclusion of hate speech against gender identity, gender expression or gender characteristics in the criminal code. The enforcement examples cited show the courts can act as a forum for robust speech protection. However, public safety concerns, in the case of the "Loyal to Familia" gang, trumped expressive rights.

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<sup>201</sup> <https://anklagemyndigheden.dk/da/anklagemyndigheden-anker-dukkesagen>

<sup>202</sup> <https://domstol.dk/hoejesteret/aktuelt/2023/5/karikaturtegning-og-foto-af-den-lille-havfrue-kraenkede-ikke-ophavsretten/#havfrue>