

# RESILIO

## Country Report

### Denmark



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### 1. Introduction

Denmark consistently appears at the top of international rankings of rule of law resilience,<sup>1</sup> which is perhaps why Danish domestic discussions on the importance of rule of law resilience are generally carried out among experts and rarely attract wider public attention, with the exception of recent debates on restrictions during the Covid-19 crisis.

Denmark's approach to the rule of law is characterised by a focus on pragmatism and functioning, and to some degree, fewer formal checks and balances. This is partly because the constitution, the *Grundloven* from 1849, is difficult to amend.<sup>2</sup> For instance, the *Grundloven* enshrines fundamental rights such as free speech and the right to assemble, while more 'modern' concepts such as human rights are not included in the Constitution but are instead incorporated into Danish law.<sup>3</sup> Nevertheless, these rights have semi-constitutional status and are treated as such in the practice of Danish law.

Another reason for this pragmatism is the high degree of what might be described as informal or cultural measures, such as low corruption,<sup>4</sup> relatively high trust in government<sup>5</sup> and generally high trust in public institutions. At the same time, these informal measures likely exist because of Denmark's long-term well-functioning institutions, democracy, and economic equality, which together constitute a 'virtuous circle.'<sup>6</sup>

Finally, Denmark shares with the other Nordic states a notion of democracy in which the Parliament is elevated above other branches of government. Danish courts therefore exercise a certain judicial self-restraint, and the 'idea of courts as powerful players in a democracy and the legitimacy of judicial scrutiny of the political process have not yet been embraced by Danish lawyers, judges, politicians, and the general public.'<sup>7</sup>

Instead, practical checks and balances are carried out by independent government organisations that have been established over the years and which now pervade the Danish system. One such key institution was introduced in 1953 when the Constitution was last amended. Inspired by the Swedish model, paragraph 55 established a Danish Ombudsman tasked by the *Folketinget* (Parliament) to examine whether and how national and local administrations comply with applicable law.<sup>8</sup> Although the Ombudsman cannot legally overturn decisions made by national or local administrations, in practice, the Ombudsman's recommendations have great influence over changes to practices, and some influence over allocating responsibility for errors or omissions.<sup>9</sup>

One of the largest changes and, to some extent, greatest challenges to rule of law resilience in Denmark over the past 20 years is the extensive digitalisation of the public sector. This has led to greater efficiency and transparency, but has also given rise to questions about equal access to

public services, and sometimes inadequate compliance of digitised systems with administrative legal rules and principles, especially for more vulnerable groups in society.<sup>10</sup>

A further challenge to rule of law resilience has arisen from the highly politicised debate on immigration and related issues. For more than 30 years and with only a few exceptions, political parties across the political spectre have competed with one another to demonstrate tough stances on immigration. This has resulted in legislation aimed at immigrants that has tested the boundaries of the Constitution, fundamental administrative law, and human rights.<sup>11</sup> In extraordinary two cases in 1995 and 2021, Danish ministers were convicted by the Danish Court of Impeachment, illustrating the ‘ongoing tension between constitutional law and human rights on the one hand, and Danish immigration policy, on the other.’<sup>12</sup>

In general, international critique of Denmark, including issues raised in the EU’s annual rule of law reports, are debated at the political level and often lead to changes. However, there are a few notable exceptions, in particular direct recommendations on the long-standing shortcomings related to inadequate or absent rules governing political party financing, lobby registration, and ‘revolving door’ practices.<sup>13</sup>

## **2. Analysis of the country case along RESILIO model**

### **2.1 Most important systemic factor: judicial resilience**

The most relevant systemic resilience factor is Denmark’s judicial resilience. The judiciary system enjoys a high degree of public trust<sup>14</sup> as well as a high degree of perceived and formal independence. For instance, an EU barometer from 2023 showed that 86% of respondents in Denmark found that the independence of courts and judges were ‘very good’ or ‘fairly good.’<sup>15</sup>

As mentioned in the introduction, Danish courts have a long judicial tradition of self-restraint vis-à-vis the Parliament out of respect for its democratic mandate. This self-restraint is embodied in an often-heard phrase attributed to the politician Viggo Hørup in the late 19<sup>th</sup> century when Danish democracy and parliamentarism were still in their infancy: there is ‘no-one above or next to Folketinget [Parliament].’<sup>16</sup> Such self-restraint can be observed in the

fact that acts of Parliament only been very rarely struck down, which may be one reason why Danish citizens and companies view the courts and judicial system as non-political. However, this does not mean that there are no calls for judicial review; these are merely few and far between. The independence of the Danish judiciary is safeguarded by the Danish Constitution as well as by a range of primary legislation. Over the years, this independence has been gradually reinforced by a series of organisational changes. One such comprehensive change was the 1999 reform that introduced the Court Administration and the Judicial Appointments Council, which handle the courts’ administrative and budgetary matters, and the appointment of judges respectively.<sup>17</sup> Prior to 1999, these were handled by the Ministry of Justice.

The Judicial Appointments Council nominates all judges, except for the Supreme Court President, who is chosen by peers. To ensure judicial transparency and independence, an External Activity Review Board must approve any secondary jobs that a judge wishes to take on. The Board registers how much money judges make and consequently may enforce sanctions against them if they do not comply with the rules on these external activities. The Board publishes all this information every year so that it is available to the public.

Transparent or open justice is also ensured in the strict sense of due-process rules, and in the broader sense through openness towards media and the public in general. In principle, all legal proceedings in Danish courts are open to the public and the media, although a judge may decide to close the doors or impose reporting restrictions on certain details or the identity of the defendant. Day-to-day access to legal decisions taken by judicial organs can be found in the ‘Domsdatabasen’ database.<sup>18</sup>

Even though the Danish Court Administration is responsible for budgetary matters of the courts, overall funding for the judicial system is decided politically. For years, the Danish judicial system has lacked adequate human and financial resources, which has also attracted international criticism of the very long case handling times. In November 2023, all parliamentary parties agreed to a multi-annual increase in the budget,<sup>19</sup> but it remains to be seen whether this is sufficient.

It is noteworthy that the gradual development towards greater judicial independence is championed by all political parties across the political spectrum.

### *Institutional resilience*

Denmark has a long history of using a merit-based system for public sector hiring. Hence, there are no political appointments except for a few ministerial advisors. The functioning of public administration and the public service ethos are generally ranked very high.

However, over the past decade, a series of cases has thrown doubt on whether Danish civil servants live up to the double demand to which they are bound. On one hand, civil servants are obliged to be responsive to political leadership and are expected to conform to and promote the political line laid down by a minister, government, or local council. On the other hand, both the political leadership and the civil service must work within the law; they must speak the truth in Parliament, local councils and regional councils, or when called to account by control bodies such as the Ombudsman. Furthermore, when advising politicians, civil servants must do so at a sound professional level; and they must be party-politically neutral.

Debate has centred on whether the latter demand has been pushed into the background at the expense of the former. The Dybvad report, produced by an expert committee set up by the civil servants' main union,<sup>20</sup> concluded that political counselling is an increasingly important part of everyday life for civil servants which, together with increasing legislative speed, is putting pressure on civil servants' professional skills. However, the report also concluded that 'many parts of the interaction [between civil servants and politicians] are perceived as functioning well, and that it is widely believed that the duties in Codex VII [the seven central duties of civil servants in the national administration] are complied with.'<sup>21</sup>

## **2.2. Most important subsidiary factor: political resilience**

Political, civil, and media resilience in Denmark are mutually reinforcing.

Denmark has been an (almost) uninterrupted democracy for over 170 years,<sup>22</sup> although it is a democracy that has evolved gradually. In the beginning, only around 15% of

the population could vote and it was the king who appointed the governments, sometimes against the majority in parliament. That changed with the introduction of parliamentarism in 1901 and later universal suffrage. Women gained the right to vote in national elections in 1915, and the voting age has been gradually lowered, the last time to 18 in 1978.

According to Freedom House, elections in Denmark are generally free and fair<sup>23</sup> and election turnout is tendentially high. At the last general election in 2022, turnout was 84.2% of those eligible to vote.<sup>24</sup>

Denmark has a unicameral parliament with 179 MPs elected at least every four years.<sup>25</sup> The electoral threshold of 2% often produces a high number of political parties in parliament, which currently stands at 11.<sup>26</sup> Four of these parties can date their history back to the very early years of Danish democracy, while three were created within the last decade, and the rest have been around for between 17 and 65 years. This makes the Danish party system both remarkably stable and volatile at the same time.<sup>27</sup>

The stability is derived from the fact that Danish political life is consensus-oriented and highly institutionalised. Because of the many political parties in parliament, Danish governments are almost always minority governments, often in a multi-party coalition, which must seek support from parliament to ensure there is no majority against its policies (negative parliamentarism).

Furthermore, an informal system of political agreements or settlements – extending beyond the four-year election cycles – exists on almost all major policy areas. These include defence, education, climate and other areas requiring long-term direction, planning, and financing. Such informal agreements have no formal scope, structure, or wording, but are based on unwritten rules and norms which means that the parties are politically – though not legally – obliged to comply. The existence of this system may explain why the arrival of new political parties in parliament does not necessarily reduce political stability or predictability. It also lowers the costs of winning and losing elections as a new government must observe existing political agreements in its policymaking.

Finally, stability also arises from the fact that the Danish political system 'affords considerable inclusion of interest

groups into policymaking across multiple policy areas, and the fact that the social partners — trade unions and business associations — primarily decide the terms and conditions of employment through collective bargaining.<sup>28</sup>

#### *Media resilience*

Media resilience is upheld by a relative plurality in media and high independence,<sup>29</sup> combined with the political will to support Danish-language media through comprehensive state subsidies. There is no political or state interference concerning media content or their organization or working methods. The latter is also referred to as the ‘arm’s length principle.’<sup>30</sup>

The arm’s length principle also applies to the regulatory environment. The media are regulated mainly through the Constitution (freedom of expression) and general legislation, leaving much media behaviour to self-guiding norms and the ethics guidelines of the independent Press Council, although this system is currently under review.

Danish media has experienced some challenges in recent years. First, almost 80% of Danes access Danish-language daily news online. But the willingness to pay for news is limited, particularly among young people. Together with the competition from big global tech platforms for viewer attention and advertising revenue, this has weakened the role of traditional media in Danish society.<sup>31</sup>

Secondly, the 2014 Access to Public Administrative Documents Act has been subjected to severe and ongoing criticism from the media, academia, and some politicians for limiting the media’s access to central political negotiations and decisions.<sup>32</sup>

Thirdly, mis- and disinformation have also formed part of public discourse, especially following the US election in 2016. Several initiatives have sprung from the media itself, such as the Tjekdet.dk website<sup>33</sup> devoted to fact-checking Danish media stories and social media. However, so far there is little evidence of dissemination on Danish social media platforms impacting general elections.

#### *Civic resilience*

As mentioned in the introduction, a contributing factor to civic resilience is the high level of trust in both fellow citizens and government institutions.<sup>34</sup> This general societal

trust is shared with other Nordic countries like Sweden, Finland, and Norway. Some explanations offered for this high trust include the long, uninterrupted political stability and quality of public institutions, including a low degree of corruption. In Transparency International’s annual Corruption Perception Index, Denmark is consistently among the least corrupt countries in the world.<sup>35</sup>

### **2.3 Most important contextual factor: economic resilience**

An important contextual factor is Denmark’s economic resilience. Denmark is often characterised as a small open economy<sup>36</sup> dependent on free trade in the Single Market and globally. Over the last 15 years, annual GDP growth has been around 1.25%, with GDP per capita at approx. US\$ 68,000 per year, meaning that Denmark is currently among the ten wealthiest countries in the world.<sup>37</sup>

Looking at income inequality measured by the GINI coefficient, Denmark scored below the EU average (27.7) in 2022.<sup>38</sup> Although the GINI coefficient has been on the rise since the 1990s, the number of ‘relatively poor’ persons – a measurement used by the National Statistics Office – has declined in recent years from around 254,000 in 2017 to 233,000 in 2021.<sup>39</sup>

Denmark has a well-developed universal welfare state model that has evolved over time, in which ‘benefits and services are individual legal rights that recipients are eligible for through their citizenship or legal residency.’<sup>40</sup> Universal welfare services include free healthcare, free education, student grants, partially free childcare and elderly care. For the most part, these are universally accessible, independent of a recipient’s income and family status. Some minimum socio-economic rights even enjoy constitutional protection, dating back to the original 1849 Constitution, such as the right of all children to education. But most of the Danish welfare state was built in the post-war period, particularly from the 1960s onwards.

Consequently, these rights have resulted in a large public sector and considerable economic redistribution. Although Danes pay high taxes, a large majority consistently prefer improving public services to lower taxes.<sup>41</sup> Because Danes’ expectations of high quality services are rising in tandem with economic growth, a good part of the politi-

cal debate from left to right focuses on future financing of the welfare state, and management of these rising expectations.

A substantial part of Denmark's recent economic growth can be attributed to employees with non-Danish passports,<sup>42</sup> with one study attributing 0.5 percent of annual growth to foreign labour.<sup>43</sup> A diminishing work force and lack of skilled labour are among the biggest challenges ahead for the Danish economy and welfare state, according to economists and politicians from both left and right. As Europe as a whole faces a labour shortage, Danish political debate has centred around lowering work permit requirements for non-EU citizens, since both the private and public sectors are unable to attract enough EU citizens to fill vacant positions.

#### Public discourse and social resilience

Freedom of speech in Denmark is well-defined and wider than in many other European states. Public discourse in Denmark has been heavily influenced by high use of social media, yet the harsh language used online emanates mostly from a small, vocal minority, while many refrain from expressing an opinion. One study showed that the 'worst threats and hatred on Facebook are against young people, women and minorities.'<sup>44</sup>

### **3. Impact of crises on the rule of law: Covid-19 pandemic – mink mess and court chaos**

The Covid-19 pandemic was – as in many other European states – a test case for rule of law resilience in Denmark. The government introduced measures in March 2020 that lasted for around a year, which were generally well received by the public during the pandemic,<sup>45</sup> yet national authorities were put to a number of severe tests.

After the discovery of the first Danish Covid-19 case, the government reacted quickly by proposing amendments to the Emergency Act in March 2020, which delegated far-reaching powers to the Minister of Health and adopted restrictions on fundamental rights and freedoms unprecedented in peace time. Essentially, these amendments transferred almost all competences from the regional Commissions to the Government, removed provisions guaranteeing compensation for interventions under this Act, and centred all significant decision-making in a small

circle around the Prime Minister. An unusually long sunset clause set the amendments to expire a whole year later in March 2021.<sup>46</sup>

This was done without the government declaring a formal state of emergency, since the Danish Constitution has no general emergency mechanism. The majority opposition reacted to this with demands for (online) consultations, to which the Prime Minister and her party's ministers quickly agreed. In other words, the ordinary constitutional framework continued to function during the crisis, for instance with the Parliament adopting laws,<sup>47</sup> although initially on a restricted basis, with many meetings taking place online and voting held in turns.

The largest strain on the rule of law came when the government decided to cull 17 million minks to due risk of Covid-19 mutations, effectively closing the mink industry in Denmark – a decision that later turned out to be illegal. The government was subjected to harsh criticism for allowing the culling to go ahead in the knowledge that there was no legal basis for the decision. The minister responsible resigned, and the Prime Minister was criticised by an independent expert group appointed by Parliament for her 'grossly misleading' remarks announcing the culling.<sup>48</sup>

Other measures tested the boundaries of the Danish Constitution's separation of powers, in particular the government's temporary closure of the courts to an absolute minimum, and its 'requests'<sup>49</sup> on the prioritization of court cases. However overall, the government's measures stayed within its boundaries.<sup>50</sup>

One result of the Covid-pandemic was a much wider public debate than usual on the extent of executive power. The debate was led by the large opposition in Parliament to the one-party minority government, but also among Danes in general. Some even took to the streets to protest restrictions and Covid-19 related legislation.<sup>51</sup>

Finally, learning from the crisis quickly became an important topic for all branches of power as well as the media. For the latter, the arm's length principle was tested in March 2020 when the Ministry of Culture instructed the two public service TV stations to cease production of all content except news, and send their employees home.<sup>52</sup>

The pandemic initially shook the Danish political and legal system, and in some instances pushed the boundaries of the Constitution. But even though some unsettled issues remain, particularly the compensation of mink farmers, the resilience of rule of law in Denmark passed the test.

#### **4. Conclusion**

Danish rule of law resilience is characterised by a high degree of societal trust and norms that are the result of well-functioning public institutions, gradual changes, and political consensus, embedded in a robust economy and ever modernising, universal welfare state.

In recent years, the Covid-19 pandemic placed the most strain on rule of law resilience. Likewise, some systemic strains can be found in institutional, media and social resilience. However, for the time being, the overall rule of law resilience of Denmark is sound.

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### About the author

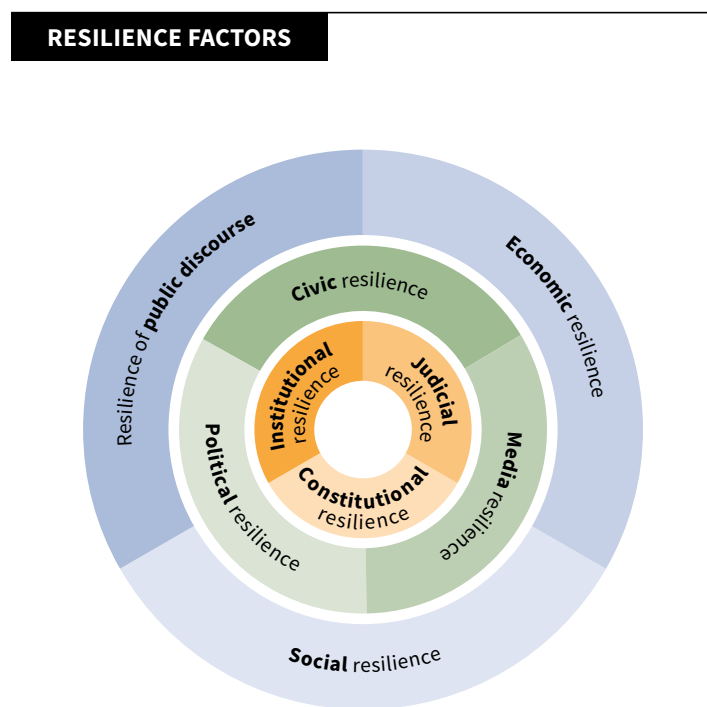
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### About the project

**RESILIO** aims to identify institutional and societal factors that make the rule of law more resilient, thus adding a constructive contribution to academic and policy debates. It draws on a ‘thick’ definition of the rule of law, understood as closely connected to democracy and fundamental rights. The resilience of the rule of law means that the rule of law can experience hazardous events or incremental threats without losing its core function, structure and purpose.

### About the analysis

This paper is part of **RESILIO Country Reports series**. It is a collection of compact analyses that assess the source of rule of law resilience in each EU member state by examining the most prominent resilience factors, using the analytical framework of the RESILIO model.



**RESILIO** offers a multi-layered model of rule of law resilience. Systemic dimension (orange) reflects upon the resilience of the legal setup; subsidiary dimension (green) looks at the phenomena and tendencies present in societies as possible facilitators; and contextual dimension (blue) analyses the broader habitat, determined by structural and systemic variables like economic growth, social cohesion, and general political climate. RESILIO also takes into account the horizontal effects of unpredicted and unprecedented crises that can affect all dimensions of rule of law resilience with different intensity. While each factor is necessary for a resilient rule of law, they are only sufficient in combination.

The considerations in this paper are compatible with the developed conceptual model of the resilience of the rule of law. They focus on **social resilience** as a contextual factor strengthening the rule of law.

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For more information, visit the project website: <https://iep-berlin.de/en/projects/future-of-european-integration/resilio/>

