

Report

# HUMAN RIGHTS IN DENMARK 2023





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The editorial work was completed on 14 March 2024.

**ISBN:** 978-87-7570-246-6

**e-ISBN:** 978-87-7570-247-3

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© 2024 Danish Institute for Human Rights

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## ABOUT THE DANISH INSTITUTE FOR HUMAN RIGHTS

**The Danish Institute for Human Rights is established by law as Denmark's national human rights institution and equality body.**

The Danish Institute for Human Rights promotes and protects human rights. The Danish Institute for Human Rights does this by monitoring and reporting on the human rights situation in Denmark and through analyses and research in the field of human rights.

The Danish Institute for Human Rights advises the Danish Parliament, the Danish Government, other public authorities and private actors on human rights, assists civil society organisations in their work with human rights and contributes to the implementation of human rights in Denmark and abroad. The Danish Institute for Human Rights is also the national human rights institution for Greenland.

The Danish Institute for Human Rights seeks to promote equal treatment for all without

discrimination based on gender, race or ethnic origin, including by assisting victims of discrimination, conducting independent investigations and publishing reports on discrimination issues. In addition, the Danish Parliament has mandated the Danish Institute for Human Rights to protect and promote equality in relation to disability and LGBT+.

The freedoms of the Danish Constitution and the human rights recognised by the international community at any given time form the basis of the work of the Danish Institute for Human Rights.

The Danish Institute for Human Rights submits an annual report to the Danish Parliament on the Institution's activities, as well as developments in the human rights situation in Denmark.

## HUMAN RIGHTS IN DENMARK 2023

**As a national human rights institution, the Danish Institute for Human Rights monitors human rights developments in Denmark. Every year, we take stock of the human rights situation in both a digital overview and a report to the Danish Parliament.**

The printed report covers four selected topics: freedom of expression; digitalisation and artificial intelligence; police and intelligence services; and prisons and detention.

The website of the Danish Institute for Human Rights presents a broader overview of human rights developments in 20 areas ranging from freedom of expression to property rights and from the homeless to the elderly.

The report describes developments in 2023 and includes, where relevant, developments up to March 2024.

The annual status of human rights in Denmark is available in digitised form at [menneskeret.dk/status](https://menneskeret.dk/status).

# FOREWORD

All human beings are born free and equal. This is how the first article of the UN Universal Declaration of Human Rights can be encapsulated in all its simplicity.

2023 was the 75th anniversary of the Universal Declaration of Human Rights. Adopted as a legal and political miracle in the aftermath of a world war that had cost millions of lives and divided the global public. Jointly promoted by the Global North and Global South. Still determinedly advocated by large parts of the international community.

A lot has happened in 75 years. The digital transformation did not feature in the public debate in the middle of the last century. The same can be said for the use of artificial intelligence by law enforcement and mass collection of data by security services. Other conversations remain timeless. The scrutiny of citizens' freedom of expression has been a constant in liberal democracies for decades. Then, as now, society's treatment of criminals is being discussed.

These four themes – digitalisation and artificial intelligence; police and intelligence services; prisons and detention; and freedom of expression – form the framework of the report for 2023. A year that, from a human rights perspective, offered both encouraging and worrying developments.

**Let's start by** saying that, as a Dane, there is good reason to feel safe. Compared to other countries around us, Denmark generally safeguards the rule of law and citizens' fundamental rights.

This is confirmed by the rejection of the vast majority of Danish deportation cases brought before the European Court of Human Rights because Danish courts are sufficiently thorough in their human rights assessment.

At the same time, further human rights progress was made in 2023. Men who are victims of violence now have the same right to help as women. The government is working to separately criminalise war crimes in Danish law. Human rights experts are being appointed to committees when new technology and artificial intelligence challenge democracy, and politicians are responding when the justice system comes under pressure.

A year ago, we raised concerns about the lengthy case processing times in the Danish courts. In November of the same year, politicians agreed to inject more funds into the courts' finances, partly with the aim of minimising the time citizens wait to get their case before a judge.

**This is a step forward that adds** to the other positive developments we have seen over the past year. But there is also cause for concern. Global conflicts have also cast a shadow over Denmark in the past year.

After considerable international debate about the Quran burnings in Denmark, a ban was introduced on the so-called improper treatment of objects of significant religious significance – legislation that interferes with freedom of expression. At the same time, the war in Gaza and Israel has led to reports of increased hate towards Muslims and Jews in Denmark.

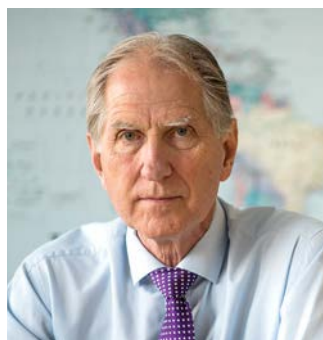


In addition, there are several areas that continue to require human rights attention.

When citizens are left behind in the digitalisation. When misinformation is accelerated by artificial intelligence. When self-censorship subdues the public's willingness to exercise their freedom of expression. When psychiatric patients are subjected to unnecessary coercion. When intelligence services operate without adequate oversight. When municipalities fail people with disabilities. When the Danish Prison and Probation Service lacks resources. When police use unnecessary force.

To maintain the high level of trust in our democracy, these challenges need to be addressed. What they have in common is that human rights can pave the way for solutions. And that broad support for human rights is therefore crucial.

**As a national human rights institution,** our statutory task is to promote and protect human rights in peacetime and during armed conflict. Our work in Denmark in 2023 has included a wide range of consultation responses, studies, conferences and reports. We also regularly advise the government and parliament on human rights issues. This dialogue helps build the platform for human rights – now and for the next 75 years – to contribute to the protection of our Danish democracy and rule of law.



Andreas Kamm  
Chairperson



Louise Holck  
Executive Director



# FREEDOM OF EXPRESSION

**Freedom of expression is a prerequisite for a strong democracy where citizens exercise their right to express themselves. Freedom of expression is threatened when citizens are afraid to express themselves freely.**

Freedom of expression is a cornerstone of a democratic society that cares for the development of both the individual and society.

Freedom of expression ensures that all views – including critical ones – are heard in public debate and creates a basis for a nuanced discussion about the organisation of society. Freedom of expression also protects opinions that are not necessarily popular and that may insult, offend or shock. It is crucial that citizens are free to speak their minds and not restrain themselves.

Today, freedom of expression is under pressure because many people self-censor and hold back from expressing themselves in public. This is mainly due to fear of offensive or derogatory comments, violence, threats or harassment.

It distorts the debate when people refrain from discussing certain topics or stop participating in the public debate altogether, and this is a serious democratic problem.

Freedom of expression is also under pressure from laws that restrict the opportunity for citizens to voice their opinions – often for reasons of national security or public order.

The Danish Parliament is responsible for defining the limits of freedom of expression. While human rights law allows limitations on freedom of expression, such limitations should be implemented with care and precision and take into account the vital importance of freedom of expression to democracy.

In the past year, the so-called Quran law in particular has sparked important discussions about freedom of expression and its limits.

## SELF-CENSORSHIP IN PUBLIC DEBATE

16 per cent of people fail to voice their opinion in public, even though they would have liked to share their views at demonstrations, debates or public meetings.

Almost one in three of those who refrain from expressing themselves in public fear becoming a victim of violence or threats.

This is according to data from an upcoming study from the Danish Institute for Human Rights that will uncover the conditions for freedom of expression in Denmark in 2024. The survey is based on responses from 4,000 Danes who were asked about the reasons why they refrain from exercising their freedom of expression.

When Danes restrain themselves in public, refraining from speaking at a public meeting or staying away

from a demonstration, it is not so much due to fear of breaking the law. More than one in ten refrain from speaking out for fear of their employer's reaction and government surveillance.

Across demographics, a group of Danes fear that otherwise lawful speech will have consequences for their lives and well-being and therefore refrain from sharing their views publicly.

It is not just the individual's freedom of expression that suffers. It is a serious challenge to our democracy when some citizens may feel compelled to practice self-censorship. A democratic society requires citizens to exercise their freedom of expression and actively participate in public debate.



## DANISH ENCROACHMENTS ON FREEDOM OF EXPRESSION

Freedom of expression is a prerequisite for a healthy democracy that allows citizens to express their views, criticise those in power, take an active part in public debate and influence political decisions.

Restrictions on freedom of expression therefore require compelling reasons, such as national security or public order. In many cases, the Danish Parliament has found that such reasons existed.

The Freedom of Expression Commission, which submitted its report in December 2019, found [425 restrictions on freedom of expression](#) in Danish law. [A report published in December 2023, Future of Free Speech, calculated](#) that from 2015 to 2022 Denmark introduced [16 restrictions on freedom of expression](#).

In December 2023, the Danish Parliament passed the so-called Quran law which prohibits the [improper treatment of writings of significant importance to a recognised faith community](#). The law was created to prevent the Quran burnings that took place in the summer of 2023, especially in front of foreign embassies, which triggered criticism and violent reactions in other countries.

In practice, the Quran law is a partial reinstatement of the blasphemy provision that was repealed in

2017. During the consultation period, the Danish Institute for Human Rights [pointed out](#) that the law does not address the fact that, for more than a decade, both the Council of Europe and the UN have recommended that blasphemy provisions be repealed as they can restrict freedom of expression and religion. The Danish Institute for Human Rights also pointed out that the law should be more precise and that there may be a few situations where it would be against human rights to penalise under the law.

Three UN Special Rapporteurs sent [a letter to the Minister for Foreign Affairs](#) the day after the Quran law was adopted, recommending that the Danish government repeal the law. According to the three Special Rapporteurs, the act risks violating Article 19 of the International Covenant on Civil and Political Rights, as the act is too vague, fails to address compelling reasons, and is effectively a blasphemy provision that constitutes a disproportionate restriction on freedom of expression.

The Quran law will be [evaluated in three years](#). The evaluation should answer the questions of whether the act is being used as intended and whether the act leads to more people practising self-censorship for fear of punishment.

## STATE PROTECTION AGAINST HATE SPEECH

While freedom of expression protects the right of citizens to express themselves, the state also has a human rights obligation to [prohibit hate speech based on, for example, nationality, race or religion](#) in order to prevent violence, hate and abuse.

With the rise of social media, it has become easier to post hateful comments or messages to others. The vast majority of all hate speech cases in the period 2000-2020 were committed online, according to the Danish Director of Public Prosecutions' [practice overview](#) on hate speech.

The Ministry of Justice [Victimisation Survey estimates](#) that 21,000 people experienced hate speech online in 2020. A few of these experiences were registered with the police: In 2020, the police registered a total of 122 cases. The discrepancy suggests that more people are experiencing hate speech without it being reported to the police and resulting in a conviction.

Protection against hate speech requires the ban to be enforced. In order to tackle the problem, investigations and prosecutions in this area should be strengthened.

## LANDMARK DECISIONS

### **European Court of Human Rights: Okay to punish French politician for others' hateful comments**

In a [ruling from 15 May 2023](#), the European Court of Human Rights found that it was not a violation of freedom of expression that a French politician was fined for failing to remove others' hateful comments on his Facebook page.

### **Supreme Court (Denmark): Permitted to fly flags of other countries**

On [22 June 2023](#), the Danish Supreme Court found that there was no legal basis to punish a citizen for flying the American flag at his residence. The ban on flying foreign flags was based on a resolution from 1833, issued by the king during the absolute monarchy. [Following the verdict, a majority in the Danish Parliament voted in favour of a resolution](#) instructing the government to present a bill banning the flying of foreign flags. The act is due to enter into force in 2024.

### **Eastern High Court (Denmark): Burning a doll of the Prime Minister was a threat**

In [a ruling dated 13 March 2024](#), the Eastern High Court found that there was a threat to the Prime Minister when three men, as part of a demonstration against the government's corona restrictions, placed a doll of the Prime Minister on a lamppost with a sign reading "She must be put down". The three men were sentenced to 40 days in prison. In [the district court, the three men were acquitted on the grounds of freedom of expression](#).

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## Genveje

Valg af læge

Feriepenge

Flytning

Barsel

Boligstøtte

Søg SU

Ansøg om eller forny dansk pas

Folkepension

Børnepasning

Studiegæld

Familieydelse

Boligskatte og grundskyld

Særligt sundhedskort

Nyt sundhedskort

Det blå EU-sygesikringskort



4°C

Regn



Søg



DAN



18:34

26-01-2024





# ARTIFICIAL INTELLIGENCE AND DIGITALISATION

**Denmark is one of the most digitalised countries in the world. Authorities should keep citizens' rights in mind when digitalising or using AI, otherwise due process may be compromised.**

Digital development is still driven by a few large private technology companies such as Amazon, Apple, Microsoft, Meta and Google's parent company, Alphabet. With their proliferation and market dominance, tech giants are impacting societal institutions and fundamental human rights.

The Danish government has set up commissions and expert groups to assess human and human rights risks associated with tech giants and their business models. Several countries have recognised that the tech giants need to be contained through legislation and regulation – otherwise both the rule of law and democracy risk being damaged.

New EU legislation in Denmark is helping to regulate the tech giants and their cross-border activities. The first EU legislation on artificial intelligence is expected to enter into force in 2025.

In 2023, ChatGPT became commonplace. From processing large data sets and targeting adverts, generative artificial intelligence, of which ChatGPT is a part, can now write text, create images and make videos. On social media, it is becoming difficult to distinguish truth from lies. Misinformation and disinformation can therefore pose some of the biggest threats to our democracy in the short term.

Artificial intelligence is creating new conditions in our society. The use of artificial intelligence by authorities can jeopardise the legal rights of citizens on the one hand and process cases more efficiently on the other.

After the past year, it is clear that the digitalisation of the welfare state must be done with a focus on citizens and their rights, and that new technologies must be regulated to protect fundamental rights and basic democratic principles.

## RIGHTS AND CITIZEN FOCUS IN ARTIFICIAL INTELLIGENCE

According to the Danish Data Protection Agency's [survey](#) from 2023, around 25 per cent of Danish authorities use artificial intelligence in their work.

Artificial intelligence is used in case management to collect large amounts of data that authorities can use to make decisions about services, initiatives or sanctions for citizens. The risk is that both authorities and citizens lose track of what data is collected and how it is used.

For citizens, it can be difficult to find out how authorities arrive at their decisions. The case of the preliminary property valuations is an example of this.

When several Danish homeowners received their preliminary property valuations in the autumn, many deviated significantly from the actual value of their property. Subsequently, homeowners had to apply to correct information and valuations that form the basis for both property tax and land tax in 2024 and 2025.

The preliminary public property valuations were calculated using artificial intelligence, but it has not been made public how the system arrived at the valuations. This is despite the fact that authorities should be able to explain how a system has been developed and how it makes decisions about citizens for the sake of due process. When governments use AI, they should fulfil transparency requirements to protect the legal rights of citizens.

In the case of property valuations, legal certainty is particularly relevant because the decisions affect property rights and because wrong decisions can have major consequences for individuals and society.

Responsible use of AI still has the potential to make government case management more consistent and efficient. But as long as artificial intelligence is deployed without it being public and without transparency about where and how it is used, it can impair citizens' legal rights.

## PUBLIC DIGITALISATION AND LEGAL SECURITY

In one of the world's most digitalised countries, one in three citizens feel digitally challenged in general. [For almost one in 10 of the citizens who are expected to be digital, it is still difficult to use public digital solutions.](#)

According to the Danish [Institute for Human Rights' latest analysis](#), citizens' digital challenges cut across age, education level and labour market affiliation. It is not just the elderly who experience problems with the public sector's digital solutions. According to the survey, many people find that digitalisation makes it difficult to both manage their own lives and take part in society as a citizen.

Digitalisation by public authorities is increasingly compromising citizens' fundamental rights. Practice from, among others, the Danish Parliamentary Ombudsman shows that authorities do not pay sufficient attention to citizens' rights when developing and introducing digital solutions.

In 2023, there were several examples of how authorities' use of inadequate IT systems can lead to citizens suffering a loss of rights.

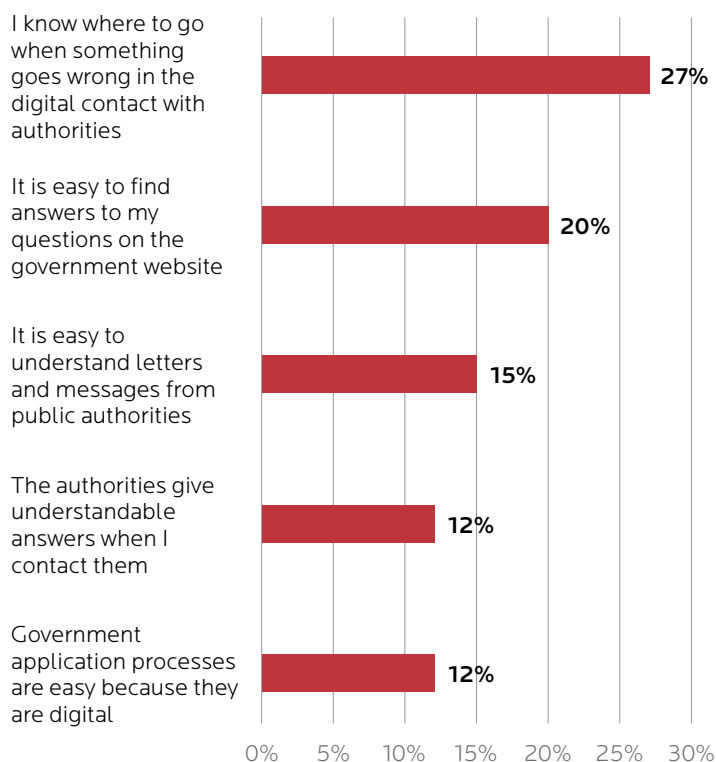
[In June 2023](#), the Ombudsman severely criticised the cross-municipal IT system, Kommunernes Ydelsessystem (KY), which many municipalities use to administer cash benefits. The benefits system had automatically notified a number of citizens that their cash benefits would be reduced. If the citizen did not respond to the enquiry, their benefits were automatically reduced, even if there was no reason to do so.

Digitalisation can also lead to more people giving up on getting the benefits to which they are entitled. A new analysis from [Algorithms, Data and Democracy](#)

[\(ADD\)](#) shows that in the past year 8 per cent of people have given up on receiving a state benefit because the contact with the government was digital.

The study also shows that, for citizens who are expected to be digital, 15 per cent have difficulty understanding letters and messages sent by authorities and 20 per cent cannot find answers on government websites.

### Percentage of the population (not exempt from digital mail) who disagree with the following statements



**Note:** Number of responses = 1,185. The figure shows the percentage who answered "Disagree" or "Strongly disagree" with the statements.

**Source:** Data collected by Norstat for ADD.

## TECH GIANTS' CO-RESPONSIBILITY FOR RIGHTS

When Facebook was born 20 years ago, few could have imagined that the first mouse click would bring about an internet revolution. With three billion users worldwide, Facebook is still one of the most widely used social media platforms.

Like TikTok, Snapchat, Google and the other social media and search engines that followed, Facebook has claimed a large part of the infrastructure for information, communication and public debate.

In recent years, the neutrality of the tech giants has come under the spotlight, especially during elections, wars and conflicts. Exclusion of users, rapid spread of propaganda and fake news via social media algorithms have led to violence against minorities and other vulnerable groups.

In Myanmar, the regime's security forces used Facebook in their campaign against the Rohingya Muslim minority, who were subjected to violence, torture and displacement.

The Cambridge Analytica scandal revealed how Facebook collected user data that was sold on and used in the 2016 US election campaign. The scandal revealed that privacy and data protection rights were far from being protected by the tech giants and that their data could influence democratic elections.

Since then, whistleblowers, lawsuits, fines and hearings in the EU, US Congress and several Western countries have cemented that the data-driven business model of the tech giants is negatively impacting human wellbeing and rights.

The tech giants have also driven the rapid development of artificial intelligence, which has been used to target content and can now also be used to create content.

In Denmark, the government's expert group on tech giants recently recommended that social media's use of artificial intelligence should be regulated to protect the credibility of information. With artificial intelligence, the danger of fake or manipulative content being spread and shared with great speed increases. For citizens, it becomes harder to distinguish truth from lies.

The tech giants' entry into the education system has also attracted attention in Denmark. After a father criticised the lack of protection of his child's data in Google Chromebook and Google Workspace, [in January 2024 the Danish Data Protection Agency ordered 53 municipalities](#) to comply with child data protection rules when using Google products. The Chromebook case shows the societal problems that can arise when authorities have become dependent on the tech giants to deliver welfare and education.

The EU has taken the lead in protecting the rights of EU citizens with a series of rules and laws. With the EU Digital Services and Digital Markets Regulations that have just entered into force, the EU has introduced separate regulation of the activities of the tech giants. In December 2023, [the European Commission, the European Parliament and the Council of Ministers](#) reached an agreement on legislation to regulate the use of artificial intelligence and protect citizens. The new AI act shall enter into force in 2025.

Although new regulations and laws have been introduced and billions in fines have been handed out during 2023, getting the tech giants to comply with the law, and enforcing the law against the tech giants, has proven difficult.



## LANDMARK DECISIONS

### **Citizens unjustifiably saw their cash benefits reduced due to IT system**

[In June 2023, the Ombudsman](#) seriously criticised the cross-municipal IT system, Kommunernes Ydelsessystem (KY), which administers cash benefits. The use of the KY system has led to a large number of citizens having their benefits unjustifiably reduced.

### **Municipality did not take lack of digital skills into account**

[In October 2023](#), the court in Kolding found that a citizen's lack of digital skills can constitute an excusing factor that obliges the authorities to disregard a missed deadline. The citizen lost ten days of sickness benefit because he overlooked a message in e-Boks and therefore failed to submit a digital application in time.



# POLICE AND INTELLIGENCE SERVICES

**Police and intelligence services ensure the security of citizens and the state. To ensure that neither the police nor the intelligence services overstep their authority, controls and safeguards against abuse of power are needed.**

In a constitutional state like Denmark, police and intelligence services are key institutions. They ensure safety, security and order, and protect the fundamental rights of citizens.

Society has granted the police and intelligence services some very special powers. They can use force against citizens on behalf of the state or secretly monitor them. New pervasive surveillance technologies in both police and intelligence services can interfere with citizens' privacy.

With these powers comes a great responsibility to manage this power in a proper and safe manner. In 2023, the police have been linked to i.a. several serious cases of drug trafficking, excessive use of force and bribery, which can undermine trust in the police.

To maintain trust in the work of both the police and the intelligence services, it is important to have legal safeguards and supervisory authorities to protect against abuse and unnecessary use of force.

## HANDLING OF COMPLAINTS AGAINST THE POLICE

The Danish Independent Police Complaints Authority handles complaints about police behaviour and investigates criminal cases against the police. The handling of complaints against the police focuses on whether there are grounds to initiate criminal proceedings or censure the police officers involved.

The Danish Independent Police Complaints Authority has no mandate to investigate or determine whether a citizen has been subjected to human rights violations. This is despite the fact that the state has a human rights obligation to launch an investigation if a citizen complains of inhuman or degrading treatment, such as illegal use of force.

At the same time, cases at the police complaints authority are subject to high standards of proof, which means that any reasonable doubt must be in favour of the police. If there are conflicting statements and no other evidence can be found to support one statement over the other, the case will often be closed without censure or criminal proceedings.

High standards of proof can make it difficult for citizens to have human rights violations recognised, as they have to provide sufficient evidence on their own to support their complaint, which is often very difficult.

However, according to the European Court of Human Rights, the burden of proof lies with the authorities if a citizen has suffered harm in police custody. In such cases, it is the police who must be able to explain the course of events and render it probable that the complainant's injuries were caused by a lawful use of force that was "strictly necessary". If the police

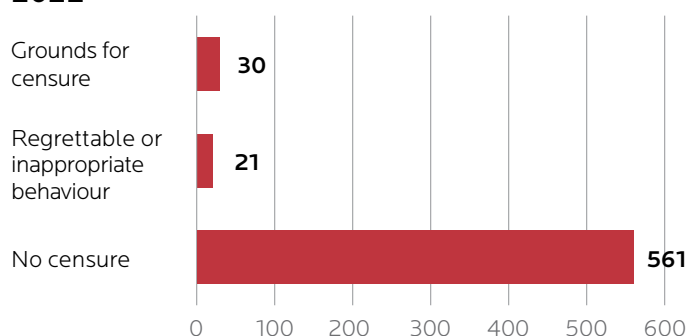
cannot, there is a presumption that the complainant has suffered a human rights violation.

In 2022, the Danish Independent Police Complaints Authority ruled on 612 behavioural complaints cases. 30 of the cases led to censure of the police. [In 561 of the cases, no grounds for censure were found, partly because there were conflicting statements in the case, "one side's word against the other"](#). This corresponds to 92 per cent of the decisions.

More cases could be censured if the police prosecutor's office also had a mandate to investigate and prosecute human rights violations. Currently, human rights violations are not investigated because they fall outside the existing police complaints system.

A better functioning independent police complaints system would benefit both the individual citizen and the police, who depend on public trust to do their job properly.

### Decisions in complaints against police behaviour in 2022



Source: The Danish Independent Police Complaints Authority.



## LACK OF CONTROL OVER MASS COLLECTION OF DATA

The Danish Defence Intelligence Service (FE) and the Danish Security and Intelligence Service (PET) perform an essential societal function of ensuring national security. As part of their work, the intelligence services collect information about citizens, and new technology enables information to be collected on a large scale.

The intelligence services can mass collect data by tapping data from cables or purchasing information that private companies have collected about people's digital behaviour, e.g. from [so-called data brokers](#).

However, mass collection of data can lead to arbitrary and very intensive interference with citizens' right to privacy. Therefore, human rights demand that the work of the intelligence services is controlled and that they operate on the basis of clear and precise rules. This is central to the rule of law and helps to ensure public trust in the intelligence services.

In March 2024, the Ministry of Justice submitted a [draft bill for consultation](#) that implements a political agreement to [expand the mandate of the Danish Intelligence Oversight Board](#) and the Danish Intelligence Services Committee. At the same time, the Danish Security and Intelligence Service will be given the opportunity to refrain from providing information to the Oversight Board in exceptional cases, and there are plans to change the composition of the Oversight Board and its members are appointed.

The political agreement also states that rulings from the European Court of Human Rights mean that there

will be a major restructuring of the supervision of the Danish Defence Intelligence Service. Consequently, [the Ministry of Defence is currently working to](#) change the rules on the supervision of the Danish Defence Intelligence Service.

While several measures in the agreement are positive, more attention should be paid to ensuring that the Intelligence Oversight Board is independent and able to carry out effective control. In addition to strengthening oversight, human rights law requires there to be clear rules on the ability of services to mass collect data.

The Danish rules currently contain a general and vague legal basis for mass collection of data by the intelligence services, and there are no built-in legal safeguards against arbitrary interference and abuse of power. As mass collection of data is very different from traditional, targeted data collection, mass collection requires a separate legal basis. Clearer rules must therefore be established for mass data collection by the intelligence services.

There is still no requirement for the intelligence services to go through the courts when they want to search mass collected data about citizens. However, judicial control is important because the data that intelligence services can acquire paints a very detailed picture of an individual. A judicial authorisation requirement should therefore be introduced when the intelligence services want to search mass collected data.

## REGULATION OF POLICE USE OF FACIAL RECOGNITION

In Denmark, the police can use artificial intelligence for facial recognition. This means that the police can identify Danes travelling in public spaces or gathering for demonstrations.

Facial recognition can be used to browse online material and to monitor citizens with cameras placed in public squares or traffic hubs. The technology can be applied in real time without delay or to previously recorded video or images.

In March 2024, the EU agreed on a new law on artificial intelligence, which, among other things, explicitly regulates the use of facial recognition by the police. According to the EU, this is necessary because the technology and its use by the police can have a significant impact on citizens' freedom and rights. Due to the Danish opt-out on EU justice and home affairs, this part of the act will not apply in Denmark.

There are no clear rules in the Danish Police Act or the Danish Administration of Justice Act on how and when the police may use facial recognition in public places. [The lack of a legal basis is concerning](#) because facial recognition is a serious interference with the right to privacy and can have implications for freedom of expression and assembly. For example, being photo-identified by the police can discourage citizens from attending public meetings or demonstrations.

Facial recognition should only be used in public places when it is strictly necessary and commensurate with the seriousness of the crime being investigated. The police should not be able to use facial recognition without a court order, and there should be effective oversight and redress to protect citizens who have been subject to facial recognition.

## LANDMARK DECISIONS

### Human rights must be respected when intelligence services mass collect data

In a [ruling of 12 September 2023](#), the European Court of Human Rights determined that human rights protection applies when intelligence services mass collect data about individuals abroad. The Court found that the UK had violated a US citizen's right to privacy under Article 8 of the ECHR, even though the complainant was not on UK territory while data was being collected.

### Partially closed doors and handover of the indictment to Lars Findsen

In October 2023, the Danish Supreme Court issued a number of rulings in the Danish Defence Intelligence Service cases. On [12 October 2023, the Danish Supreme Court found that Lars Findsen was entitled to a copy of the indictment from the prosecution](#). The Supreme Court noted that no specific information had been presented that gave reason to fear that unauthorised persons would gain knowledge of the content. On [27 October, the Danish Supreme Court ruled that only parts of the main hearing in the trial against Lars Findsen should take place in camera](#). The Supreme Court emphasised that the information in the case had to be considered public knowledge. On the [same day, the Supreme Court ruled on similar grounds that only parts of the main hearing in the case against Claus Hjort Frederiksen could take place in camera](#).

### Facial recognition is a significant invasion of privacy

The European Court of Human Rights ruled on [4 July 2023](#) that the use of facial recognition technology by the police constitutes a significant interference with privacy. The Court also ruled that due to the (serious) nature of the interference, detailed rules on the use and scope of the technology and strong legal safeguards against abuse and arbitrary use of power are required.



ARRETHUSET





# PRISONS AND DETENTION

## **When people are in prison or detention, they still have rights that the state is responsible for protecting.**

It is part of a prison sentence that an inmate cannot move freely, but the sentence does not mean that the inmate loses all their human rights. Imprisonment is a significant interference with personal freedom, and when the state deprives people of their liberty, it has a special responsibility to safeguard their rights.

Individuals can also be detained before a guilty verdict is reached. Those detained in custody are innocent until proven guilty. Therefore, the state should be cautious in using pre-trial detention and, as soon as there are no compelling reasons to maintain such detention, the person should be released.

Compared to other Nordic countries, Denmark detains people in custody far more often and for longer. This is done under conditions that, according to international standards, are similar to solitary confinement, which can cause serious psychological damage.

The large number of pre-trial detainees is also putting pressure on the Danish Prison and Probation Service, which already has too few prison officers and too many inmates. Tougher and longer sentences mean that more people are spending longer in prison, even though crime rates fell between 2012 and 2022.

The pressure on prisons is also increasing the risk of inmates having their human rights violated, e.g. by not being adequately protected from violence and abuse from other inmates.



## MANY LONG PRE-TRIAL DETENTIONS

A person who is suspected of having committed a crime can be remanded in custody to ensure that they do not flee or hinder the police investigation.

According to the Danish Director of Public Prosecutions, in 2023 more than 1,800 people were remanded in custody for more than three months, and the number has increased in recent years. The average duration of this type of long-term detention was 8.4 months in 2023. This is happening despite the fact that those in custody have not been convicted of a crime.

Denmark uses pre-trial detention far more often and for longer periods than other Nordic countries, and pre-trial detainees make up a large proportion of inmates in its prisons and detention centres.

The conditions of pre-trial detainees mean that they spend the vast majority of their time – up to 23 hours – in their cells. According to the UN Committee against Torture, the many hours in the cell are equivalent to solitary confinement. Detainees are also subject to restrictions on visits and the letters they send out of prison.

The UN Committee against Torture, which examined Denmark in 2023, expresses concern that alternatives to pre-trial detention, such as home detention with an electronic tag, are not being used to combat overcrowding. At the same time, the Committee recommends that Denmark should ensure that restrictions on detainees' contact with the outside world must be necessary, proportionate and based on individual consideration.

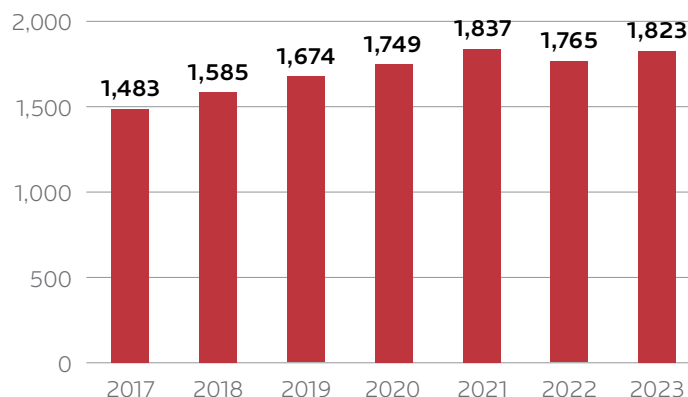
According to human rights law, pre-trial detention must be kept to a minimum and should only be used when other less intrusive alternatives are not feasible. Therefore, the government and parliament should

ensure that the use and length of pre-trial detention are limited.

Most pre-trial detainees in Denmark are in prison because the prosecution can prove on a balance of probabilities that the accused would otherwise complicate the criminal case. It is essential that release takes place as soon as there are no compelling reasons to maintain custody. Therefore, the requirements in the Danish Administration of Justice Act should be tightened regarding what the prosecution must convince the judge of when the police have completed their investigation of the case.

In cases where there is no risk that the accused will complicate the investigation, less intrusive alternatives to pre-trial detention should be used in more cases, such as reporting or residence requirements. As in Norway, it could also be possible to use an electronic tag instead of pre-trial detention.

**Number of long-term pre-trial custodial detentions completed, by year**



**Source:** Figures from 2017-2022 from the Danish Director of Public Prosecutions. Figures for 2023 have been provided to the Danish Institute for Human Rights on request.

**Note:** Prolonged pre-trial detention refers to pre-trial detention that has a duration of more than 3 months.

## OVERCROWDING AND STAFF SHORTAGES IN THE PRISON SYSTEM

In recent years, the Danish Prison and Probation Service has been working to solve serious problems with a shortage of both space and officers in prisons and detention centres. Staff shortages and overcrowding continue to affect the daily lives of both inmates and staff.

The number of inmates has increased in recent years, and [that increase continued in 2023](#). Prison capacity cannot keep up, and in 2023 the average occupancy rate was 101 per cent. In many places, this leads to common rooms being converted into cells, while cells designed for one inmate are housing two inmates.

The lack of prison officers also leaves little or no time to ensure good relationships between staff and inmates so that conflicts can be prevented and officers can support inmates' re-socialisation.

The Danish Prison and Probation Service is still struggling with the same problems that the Danish Institute for Human Rights described in its [2021 report](#): The pressure on prisons still risks leading to violations of inmates' human rights, e.g. inmates not being adequately protected from violence and abuse from other inmates.

Therefore, the government and parliament should ensure that there is the necessary correlation between prison capacity, number of inmates, number of prison officers and responsibilities of prison officers to minimise the risk of human rights violations.

In 2023, Denmark maintained plans to rent prison places in Kosovo due to capacity constraints. According to the Danish [Institute for Human Rights](#), the legal basis is unclear on important points. Even though renting prison places in another country represents a new feature in Danish law with far-reaching consequences for the inmates and the Danish state, the Danish Parliament is granting a great deal of power to the Minister of Justice, who can set the detailed rules.

[The UN Committee against Torture recommends that the Danish state should refrain from renting prison places abroad](#). It is unclear who will be able to sanction inmates and who will have jurisdiction to investigate possible torture or mistreatment of inmates by prison officers in a foreign prison.

## PEPPER SPRAY RULING: INVESTIGATION WITH A FOCUS ON HUMAN RIGHTS

In October 2023, Denmark was ruled against by the European Court of Human Rights in a landmark [case](#) where two prison officers used pepper spray on an inmate in an observation cell at Enner Mark Prison without prior warning.

The ECHR found no evidence that the prison officers' use of force was strictly necessary due to the inmate's behaviour. Therefore, the officers' use of pepper spray on the inmate was in violation of the European Convention on Human Rights.

Denmark was also ruled against for inadequate investigation of the case. The investigation did not reveal whether the use of force and pepper spray was strictly necessary. The police, the Danish Prison and Probation Service and the district attorney rejected the inmate's complaint, and no charges were brought against the prison officers.

The judgment points to a general problem that it is not investigated whether the use of force against inmates may be in violation of human rights. It is only investigated whether the individual prison officer has violated the Danish Criminal Code.

However, the use of force can violate human rights without a prison officer breaking the Danish Criminal Code. In order for Denmark to fulfil its human rights obligations, it must therefore be investigated whether human rights violations have occurred.

When examining Denmark in 2023, the UN Committee against Torture pointed out that it is problematic that pepper spray is part of the standard equipment for prison officers in closed prisons and that the rules allow the use of pepper spray in closed rooms.

## LANDMARK DECISIONS

### **European Court of Human Rights: Use of pepper spray on an inmate was an offence**

In October, the European Court of Human Rights found in the case [El-Asmar v. Denmark](#) that the use of pepper spray on an inmate by Danish prison officers violated Article 3 of the European Convention on Human Rights. The offence concerned both the use of force itself and the inadequate investigation of the case afterwards.

### **Supreme Court (Denmark): Continued pre-trial detention requires specific grounds**

The Danish Supreme Court [ruled that continuing pre-trial detention requires specific grounds when there is a risk that the detainee will affect the investigation and witnesses in a case that the police have finished investigating](#). In this particular case, the Supreme Court found that there were no specific grounds to assume that the defendant would or might impede the investigation, as the investigation had been completed.

### **District Court (Denmark): People serving life sentences can have their contact limited**

It was not a violation of human rights for rules to restrict the rights of life-sentenced prisoners to visits, correspondence and telephone conversations. This was the [judgment](#) of the Court in Nykøbing Falster in November 2023 in a case brought by Peter Madsen. The district court also ruled that Storstrøm Prison had to allow Peter Madsen to visit a specific person and to exchange letters and hold telephone conversations with that person.







## AT A GLANCE: CASES AGAINST DENMARK AT THE EUROPEAN COURT OF HUMAN RIGHTS

**In recent years, the European Court of Human Rights has dealt with several Danish cases, especially deportation cases. When Danish courts have made a thorough human rights assessment, the European Court of Human Rights stands back.**

The European Court of Human Rights is tasked with ensuring that all 47 member states comply with the European Convention on Human Rights. Both citizens and states can complain to the European Court of Human Rights if they believe their human rights have been violated.

Human rights are formulated as general principles to be progressively unpacked and interpreted by the Court, while a certain amount of discretion is left to national courts and parliaments. At the same time, the Court applies a dynamic interpretation that can both narrow and broaden human rights protection.

Currently, 23 Danish cases are waiting to be decided by the European Court of Human Rights. Almost half of Danish cases concern the deportation of foreigners who have committed crimes.

Current government policy states that the options to deport criminal foreigners are limited. Against this background, the government wants to initiate an investigation of Denmark's obligations and opportunities in relation to the European Court of Human Rights and its practice.

Denmark can influence the practice of the European Court of Human Rights in several ways. Together with other member states, Denmark can adopt political declarations and make third-party submissions in cases against other countries, thereby arguing in favour of a Danish understanding of human rights.

If we take a closer look at the deportation area, the figures show that the European Court of Human Rights has dealt with 30 Danish deportation cases

in the last ten years. In four of the cases, in 2021 and 2023, the Court ruled against Denmark, while in the other 26 cases it ruled in favour of Denmark.

The four cases in which Denmark was ruled against involved people who had lived all or most of their lives in Denmark. The European Court of Human Rights found that the Danish courts had not taken sufficient account of the fact that the person sentenced to deportation either did not have a long history of serious crime or suffered from serious mental illness when the crime was committed.

In February 2024, the European Court of Human Rights ruled in favour of Denmark in [six](#) deportation cases.

The latest decisions confirm the general line that the European Court of Human Rights has essentially taken since 2017, which is not to overrule deportations when the Danish courts have been thorough in their assessment of human rights.

The European Court of Human Rights' review of national deportations has thus generally become less thorough in recent years. This is due to persistent pressure from the member states, which through political declarations have expressed a desire for increased restraint on the part of the Court.

The field of deportations illustrates that the European Court of Human Rights listens to objective criticism from member states and that the Court's dynamic interpretation can also lead to a reduction in human rights protection.

## EXAMPLES OF THE WORK OF THE DANISH INSTITUTE FOR HUMAN RIGHTS IN 2023

Among other things, in 2023 we:

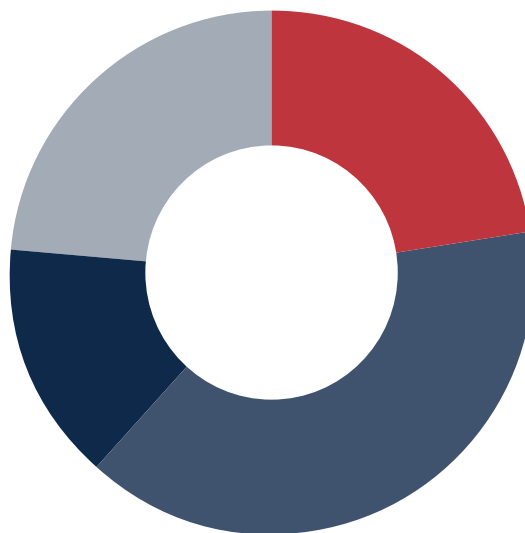
- submitted **42 consultation responses** to draft legislation and executive orders. See all responses at [menneskeret.dk/horingssvar](https://menneskeret.dk/horingssvar)
- published **26 analyses, memos, policy briefs and reports**. Read more at [menneskeret.dk/viden/udgivelser](https://menneskeret.dk/viden/udgivelser)
- published **one book and contributed 13 book chapters, 6 journal articles** and 20 popular articles.
- reached **over 7,000 young people at public meetings and festivals**, with more than 1,000 young people attending events and film screenings.
- provided **experts** for expert committees and legislative drafting committees.
- convened **7 public debates** and **4 specialist events** at the Danish Institute for Human Rights as well as 4 Danish and international conferences and launches elsewhere.
- intervened in **7 individual cases**, 2 of which were before the European Court of Human Rights.
- received **over 1,100 calls to the Discrimination Helpline** and helped over 300 Danes with concrete advice and legal assistance.
- featured in the press **more than 2,000 times with contributions to news features and articles** in national, regional and local media and as the author of opinion pieces and debate articles. See our own news at [menneskeret.dk/nyheder](https://menneskeret.dk/nyheder).



## FINANCES

Every year, the Danish Institute for Human Rights receives a subsidy from the Danish government for our operations and activities in Denmark and Greenland. The subsidy is to ensure that we can work independently. The Danish Institute for Human Rights also receives income from Danida and other donors such as the EU, foundations and other states to implement projects and activities in and outside Denmark.

### DANISH INSTITUTE FOR HUMAN RIGHTS, REVENUE IN 2023



	DKK million.
■ Grant on the national budget	44.3
■ Danida grants for international activities	76.9
■ EU funding for international activities	29.4
■ Other grants for the Institute's work	45.9
<b>Total</b>	<b>196.5</b>





