FOLKETINGET

Managing the Covid-19-Crisis:

Report delivered to the Standing Orders Committee of the Danish Parliament January 2021

Summary

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On February 27 2020, the first Dane received a positive test for covid-19. This was the start of a dramatic crisis. In the coming weeks, the number of cases increased, following the same pattern as in the neighboring countries. February 27 also marked a change in the Danish approach to covid-19. Up to that date, the authorities had followed the new virus disease quite closely. This was the case for The Danish Health Authority (Sundhedsstyrelsen), the national agency responsible for surveillance of health services, and the agency responsible for emergency planning within the health sector. Statens Serum Institut, the disease control unit and national institute of infectious diseases, had done the same. According to their reports, which they published regularly, the new corona virus, SARS-CoV-2, was a cause of concern for public health. Yet, their conclusion was that covid-19 did not present a serious threat to Denmark. Here developments once more followed the same pattern as in the other countries of Northern Europe.

It was not everybody who observed developments of covid-19 with similar calm. More than a month earlier, the permanent secretary of The Prime Minister's Office had asked for a memo on the situation and the risks it involved from the Danish Ministry of Health. Still, the overall conclusion of the authorities remained that there was no imminent danger of the epidemic spreading to Denmark. It was also that the health authorities should continue monitoring international developments and provide the hospitals and other health services with information on the virus and guidance and recommendations on how to handle it. Again, the approach was similar to that recommended by the authorities in neighboring countries and compatible with the risk assessments by international institutions like WHO and ECDC, the EU agency of disease control. When the situation aggravated internationally, the authorities revised their assessments of the risks involved. Especially developments in late February and early March in Italy caused concern.

From routine surveillance to partial lockdown

February 27 2020 marked a dramatic change of strategy. From the early days of 2020, health authorities had followed developments in first China, later Asia and from the end of February Italy with systematic attention. With the risk assessment being that the disease was not very dangerous and its spread to Denmark improbable, the handling was routine, undertaken within the procedures set up for monitoring new diseases. However, on this date, the Prime Minister moved the issue from a routine matter for which the health authorities were responsible to the top of the government agenda. The Prime Minister summoned the cabinet committee responsible for security matters. Present were not only the ordinary members (the ministers of justice, defense, foreign affairs among others, their permanent secretaries, and the heads of the intelligence services) but also the Minister of Health, his permanent secretary and the heads of national health authorities.

From this occasion and on, the government intensified communication through the first of a series of press conferences that came to mark the spring of 2020. Here, the Prime Minister addressed citizens with a grave message and announced the very first restrictions directed at containing the new virus. At this stage, restrictions had the form of recommendations to her fellow citizens, for example as to the size of public gatherings. Simultaneously, the government started on its inner lines a dedicated and strong rearmament of its health emergency setup.

Stage 2 (February 27-March 10) in the handling strategy was short-lived. At a new press conference on March 11 2020, forewarned on the day before, the Prime Minister announced a dramatic change of strategy. A mitigation strategy aiming at holding down the rate of infections to prevent a breakdown of intensive care units and hospitals in

general replaced the containment strategy based on infection tracking and isolation. The four pillars of the new strategy emphasized prevention of the spread of the virus in society, keeping down the number of infections, protecting the elderly and other vulnerable groups, and focus on the virus in the health care sector. The instruments on which the new strategy relied were a partial lockdown of society and the economy accompanied by a revision of the infectious diseases act. The government launched the lockdown in three steps:

1. Already on March 6 2020, the Prime Minister urged citizens to avoid public gatherings.

2. March 11 2020, the Prime Minister announced a partial lockdown comprising school closings, closings of day care, closings of private insti tutions, private associations, meetings in religious communities, discharge of public emplo yees in non-critical jobs, recommendations that private employers arrange for employees to work from home, restrictions on public transportation etc.

3. During the next week, the government followed this up with new restrictions including closing of shopping centers, restaurants and hotels, tighter restrictions on public gatherings, and on March 13, the government announced the closure of borders.

The restrictions introduced during March 2020 seemingly had their effect. At any rate, the level of infections was falling. At the end of the month, the Prime Minister announced that the government was now preparing for a gradual reopening of society and of the economy. She followed this up at another press conference on April 6 where she revealed the government's plan for a differentiated and gradual reopening. Day cares and primary schools opened again from April 15, and the upper limit for public gatherings was raised a few days later. Large public gatherings remained banned until the end of August. As it was the case when the government decided to close down Denmark, the reopening was the result of a series of decisions announced consecutively at press meetings throughout the spring and early summer.

Already at the Prime Minister's first announcement of the covid-19 restrictions, she made clear that the government was aware of the economic and social consequences of the restrictions imposed on citizens and businesses. Consequently, the government was ready to set up a program for economic relief directed at both private business and the complex network of associations and non-profit organizations that are characteristic of Danish social life. This marked the initiation of a series of financial support packages. Together they make up an extremely differentiated set of measures. In economic terms, the most important measures were guarantees targeted at large, respectively small and medium-sized businesses and a government compensation package, i.e., the state pays part of employers' wage bill for a period.

The covid-19 organization

At the end of February 2020, when management of covid-19 moved to the top of the government agenda, the government over a few days made a series of decisions that created a temporary organization of central government dedicated to handling the imminent crisis. Normally, Danish central government relies on ministries with departmental ministers as political executives within their respective portfolios. They are subject to coordination by the Ministry of Finance and the Prime Minister's Office with two cabinet committees acting as the hubs of governmental coordination. Even if weakened in recent times, departmental autonomy remains wide. There are, of course, a standing setup for crisis management. Below the cabinet security committee is a complex emergency organization and a set of national emergency plans, which specify procedures for crisis management whatever their precise character. Emergency planning and the emergency management activated in case of crisis is based on the sector responsibility principle, i.e., the branch of government and its agencies responsible for the administration of a particular policy area are also the lead agencies in case of crisis. Thus, The Danish Health Authority is designated the lead agency in case of a public health crisis. However, crisis management has a cross-sectoral dimension that calls for coordination among several branches of government. Therefore, the sector responsibility principle also provides for a superstructure in the form of the National Operational Staff (NOST), a resting body chaired by a high-ranking police officer and with members representing all branches of government at the level of agencies. NOST is to be activated in case of a crisis whatever its nature.

The covid-19-setup did not do away with this basic organization or with the sector responsibility principle guiding crisis management. However, the government, probably at the initiative of the Prime Minister's Office, adapted and expanded the crisis organization to a level of unprecedented size and scope. There were several features to this covid-19-organization:

- The Prime Minister's Office engaged strongly in crisis management.
- The government decided to create a temporary interdepartmental coordinating body, the AC-group, chaired by a high-ranking civil servant from the Department of Justice. Its task was to coordinate the initiatives taken to handle the crisis. All members of the group were high-level civil servants from the most affected ministerial departments.
- The Department of Justice and The Department of Business, Industry and Financial Affairs were assigned a role as coordinators of respectively the preparation of crisis-legislation and the financial support packages.
- The National Operative Staff got a superstructure. This was a narrow staff group, the NOST+, having to secure the liaison between the operational units responsible for the implementation of crisis measures such as supplying hospitals and care institutions with personal protective equipment and setting up test centers and the AC-group and the Department of Justice. A high-ranking police officer chaired NOST+ with members drawn from the most involved agencies as well as the private sector.

Strengthening the executive

From February 27 2020, a sense of urgency marked crisis management. This was clear from the internal communication across the central ministers and agencies. It was also an obvious aspect of the covid-19 organization described above. Finally, it applies to the instruments it introduced in order to be at the forefront of the pandemic as it developed. The general strategy was to base crisis management on strong executive action. The problem was that the legislation in force did not provide the government and its agencies with the legal instruments that would allow it to make the kind of interventions and restrictions that it found necessary to cope with the crisis. At her press conferences on March 10 and in particular March 11, the Prime Minister therefore announced that the government would ask Parliament to make an exception from Parliament's standing orders so that Parliament could pass the crisis bills the government was going to present to it within one day. When the following day the government presented to Parliament and made public the bills announced, it was also evident that the proposed legislation gave unusually wide authorizations to departmental ministers, especially the Minister of Health, to legislate by statutory laws. Finally, the authorizations opened for restrictions on individual rights and privacy ingrained in the constitutional order, while ministers also got the power to derogate from legislation in force. The table below provides some basic facts of the wide-ranging implications of the crisis legislation unanimously passed by Parliament on March 11 for the first suite of legislation and on March 31, 2020 for a revision of the infectious diseases act that further strengthened executive power. This latter law went into force in early April 2020.

Covid-19-legislation March-April 2020

Legislation	The infectious diseases act	Other covid-19-related
Laws passed by parliament	2	20
Authorizations to legislate by statutory law	23	28
Statutory laws	33	14
Amendments of statutory laws	20	3

The most important legislation introduced as part of the covid-19 crisis management was the revision of the infectious diseases act. The act in force at the outbreak of the pandemic had a long history dating more than hundred years back and not thoroughly revised since 1979. It had been revised and adapted on several occasions in the past but never undergone a general revision, for example with the new pandemic risks in focus. Early March, the government concluded that the act needed an overhaul. Among other things, the intention was to centralize power so that authority moved from the old regional epidemic boards to the Minister of Health. It also concluded that a revised law should provide flexibility and executive authority by delegating statutory power to the minister. The implication was that Parliament was put aside and that the Danish Health Authority, having a key part in health emergency management, was sidelined to an advisory position. The table shows the scope of delegated authority and demonstrates that ministers actually used this executive authority by issuing several statutes within a very short period.

Covid-19-crisis legislation was more wide-ranging than this. The crisis strategy also involved changes in several other laws, and again this legislation enclosed a considerable number of authorizations to ministers to legislate by statute.

Both formal legislation passed by Parliament in March and April and the many statutes issued by ministers contained sunset clauses. For the infectious diseases act, the clause stated that the act would expire by March 31, 2021, although the government's declared intention was to send a new and permanent act through Parliament during the fall of 2020. For the statutes, the clauses were tighter, although later revisions of the statutes often postponed expiry. As the numerous authorizations to legislate by statute gave rise to considerable concern, the government and the parties in Parliament agreed to set up a group where the Minister of Health would meet with the parties' health-policy spokespersons, among other things to keep Parliament informed on the use of statutory law.

Crisis decision making

From late February and through the spring, the covid-19 crisis was the predominant issue in Danish politics. It also influenced administrative and political decision making in important ways. Normal procedures for interdepartmental coordination were generally suspended. The covid-19 organization described above replaced for a while conventional procedures for interdepartmental coordination both at the cabinet level and at the level of top civil servants. At the same time, new actors, especially The Ministry of Health and its agencies, moved to the forefront together with the Ministry of Justice, The National Police and NOST. The same was the case with The Ministry of Business, Industry, and Financial Affairs together with one of its agencies. Similarly, The Ministry of Foreign Affairs assumed an important role in processing information on the development of the pandemic in other parts of the world, thus keeping the government and the authorities updated, in organizing assistance to Danes stranded abroad, and in setting up and updating restrictions on international travelling.

Executive dominance marked decision making within this setting. It was also highly centralized with the Prime Minister's Office and the Prime Minister in key roles. Quite unusually for Danish central government, the Prime Minister's Office was directly involved in policy-making and hands-on control of the implementation of the measures taken against covid-19. The procedures on which policy preparation relied took the form of centrally formed and very specific demands as to the drafts that departmental ministries and their agencies had to deliver within extremely tight time schedules. The AC-group mentioned above operated as the coordination hub connecting departmental ministries with each other and managing communication streams between the Prime Minister's Office and the rest of central government. At the same time, portfolio frontiers were broken down with especially the Department of Justice providing support way beyond legal advice to other departments heavily burdened by covid-19 tasks. Finally, centralized communication through frequent, televised press conferences and press releases from departmental ministries coordinated by the Prime Minister's Office characterized crisis management.

Due to the decision to launch a revision of the infectious diseases' act in the middle of the crisis and not least due to the decision to endow the political executive extensive powers to legislate by statute, legislative issues became a matter of contention. This happened in several ways. First, the government, a one-party minority government,

chose not to involve other parties in negotiations before presenting its proposed legislation to Parliament. It informed party leaders about its proposed measures immediately before it went to Parliament with its proposals. Second, it insisted on the need to suspend regular rules of procedure in order to speed up parliamentary negotiations. Third, the many authorizations to ministers in the proposed legislation opened a contentious debate over parliamentary controls in which the government was reluctant to give in. Fourth, according to conventional procedure, departmental ministries send draft bills and draft statutes in public hearing before the presentation to Parliament, respectively before their formal and binding issuance. However, the government suspended these procedures for all covid-19 drafts. Fifth, there was one important exception to this. In preparing the financial support packages, the government set up a joint covid-19 taskforce on which senior officials sat with representatives of business associations and the unions.

Strengths and weaknesses

The account of Danish authorities' covid-19 crisis management is comprehensive and detailed. It documents the complexities as well as the very real uncertainties with which crisis management was confronted during the period investigated. The report also acknowledges that managing a large-scale and protracted crisis like covid-19 goes well beyond health policy and the management of health emergencies. Combined, these characteristics lift the development of an appropriate crisis strategy from the administrative to the highest political level. The evaluation of crisis management keeps focus on five themes that deserve attention if policy-makers want to draw lessons for the management of future health emergencies from the experience during the early stages of the covid-19 pandemic.

These themes are:

- The quality and timeliness of health professional provided to political decision makers.
- The effectiveness and appropriateness of the covid-19 organizational setup.
- Legal concerns raised by covid-19 crisis management.
- Implications for health care and the hospitals created by the covid-19 strategy.

An important fifth theme is the interaction between Parliament and government during the crisis. Due to its importance, the latter theme is dealt with separately below.

These are complex and wide-ranging themes. It is therefore not possible to summarize the full nuances and details drawn up in the report. The report points to both strengths and weaknesses in Danish covid-19 crisis management throughout the period from January to April 2020. Furthermore, the report emphasizes that it is much too early to pass judgment on the appropriateness and effectiveness of the overall strategy to cope with covid-19.

The table below draws up the principal conclusions for each of the four themes. This is set out in a very brief form in order to summarize main points from the evaluation. The general message is that in general the government, the civil service, including the health authorities, succeeded in developing a manageable strategy for handling the crisis. However, the conclusion is also that there is a critical lesson to be learned for future health emergencies.

Relative strengths and weaknesses in the Danish covid-19 strategy during the early stages of the pandemic

Strengths	Weaknesses
The provision of health professional advice	
Health authorities delivered state-of-the-art advice developed with care, given time constraints and uncertainties involved. Policy makers asked for health professional advice, took it into consideration while insisting on the primacy of politics. Health authorities, especially the Danish Health Agency insisted on its duty to provide free and frank advice.	Health authorities tended to rely on former experience from handling influenza epidemics on which health emergency planning built. This resulted in a certain inertia in adapting to the situation and for the Danish Health Authority a reluctance to provide the government with the answers solicited by it. Information to both Parliament and the general public tended to communicate that covid-19 measures strictly followed advice received from health authorities.
The covid-19 organization	
Given considerable uncertainties and time constraints involved, central government organization proved highly flexible in adapting to the situation, organizationally and in the mobilization of civil service resources. The distribution of roles between generalist departments, including the Prime Minister's Office, and specialized agencies, including health professional authorities and the national police turned out to be complementary. The sector responsibility principle proved adaptable to the situation.	Even if the risks of a pandemic were spotted very early at the central level, steps to prepare for an emergency were only taken when covid-19 arrived in Denmark. Strong centralization provided for strict coordination but created bottlenecks and risks of overloading and mistakes in the preparation of a crisis strategy. Haste at later stages of the crisis created new risks of mistakes.
Legal issues	
With the decision to revise the infectious diseases act and several other acts, the civil servants responsible for drafting the new legislation are openly aware of the legal issues involved, e.g. the restraints on individual freedoms, citizens' privacy, and patients' rights of self-determination.	According to the sources on which the report builds, legal concerns were subject to attention within government decision making, the priority being given to combatting covid-19 according to a strict precautionary principle.
Impact on the health care and hospital sector	
The government and the health authorities successfully managed to mobilize hospital capacity to serve covid-19 patients, including the mobilization of extra intensive care capacity. With some delay it also gains control over the provision of health care and hospitals with personal protective equipment, and from April it succeeds in building up test-facilities.	The prognoses behind the dimensioning of covid-19-related capacity rely on a worst-case scenario dominated by the priority given to the treatment of covid-19 patients over other patients. The prognoses overestimate the demand for covid-19 related capacity creating a situation with excess capacity in hospitals. The prognoses behind the prioritization are not updated as it turns out that they overestimate ICU-needs.

In its analysis of Danish crisis management at the early stages of covid-19 the report compares systematically the Danish experience with crisis management in neighboring Germany, Norway, and Sweden. It finds conspicuous similarities between crisis strategies in Denmark, Norway and Germany, while Sweden opted for a very different strategy. These similarities apply to the content of crisis measures taken and their timing. This raises the question why we find this combination of similarities and differences between four countries with very similar economies and highly developed health sectors. One possible explanation might be institutional. There certainly are important differences among the four countries. These institutional differences clearly influence the choice of decision-making procedures and place different constraints on political and administrative decision makers. However, with similar outcomes in three of the countries and a deviating outcome in Sweden, the report concludes that political choice and not political institutions and administrative organization has been prevalent.

A vital component in the government's covid-19 strategy was the revision of the infectious diseases act and the ensuing delegation of wide-ranging statutory powers to especially the Minister of Health. This by itself constituted an encroachment on conventional principles of parliamentary supremacy. The haste with which the legislation was passed through Parliament and the lack of parliamentary controls with the minister's use of his newly won statutory authority gave rise to considerable debate.

Following its mission, the report analyzes the interaction between Parliament and government during the months of March and April. The overall conclusion is that the government was able to win broad, mostly unanimous support from Parliament to its policy and, in addition, that Parliament demonstrated its willingness to accommodate to situational contingencies. Still, the experience from the covid-19 crisis highlights several weaknesses.

First, the stressful situation was to a very high extent the result of prior negligence on the part of both governments and parties as to the need for overhauling the infectious diseases act. It was unchanged for a long period. Contrary to the design of the organization of emergency management, nobody had seemingly asked whether it provided an appropriate legal framework for dealing with health emergencies of a new global kind. Second, with the arrival of covid-19, there was no time to initiate a systematic and conscientious preparation of a reform of an infectious diseases regime for the future. Nor was there time to involve the many and different sources of insight into infectious diseases management that are available in both the scientific community and civil society. Third, the time constraints put on Parliament clearly implied a loss of both legal quality and democratic legitimacy.

The report unravels these problems. It also shows that the parliamentary contact group set up to facilitate exchanges between the Minister of Health and parties in Parliament, at least during the period of investigation, operated as a channel for the minister's information of the group about the development of covid-19 rather than as a forum of parliamentary control and political exchanges. The conclusion from this part of the analysis therefore is that crisis management during the covid-19 epidemic damaged parliamentary democracy and contributed to a decline in democratic legitimacy.

Recommendations

The purpose of the report is lesson drawing. The report here makes clear that any lessons drawn from the covid-19 crisis must be compatible with the principles and practices that characterize Danish parliamentary democracy. This is a government accountable to Parliament and with departmental ministers as political executives. The report also emphasizes that any lessons drawn must be easy to implement and respectful with regard to the uncertainties prevailing when at some point in the future society is again threatened by a severe health crisis originating for example from a hitherto unknown virus. For the investigation committee, there is little doubt that crises of this type call upon political action. Still, political leaders can only cope competently with such crisis if a strong administrative infrastructure is in place. Political leadership must trust that they receive competent, up-to-date, and timely advice from civil servants in both ministerial departments serving ministers and in the agencies where strong health professional expertise resides. At the same time, the organizational setup around the provision of such advice must be designed to minimize any risk of misrepresentation of the available information and evidence.

When the covid-19 crisis broke out, considerable uncertainties prevailed. A new corona virus as it was called at the time and the disease caused by it confronted the international community with a mixture of uncertainty and potential risk. Health authorities and health scientists had insufficient insight into it. Simultaneously, the risks threatening society call upon a much broader range of expertise such as economists and lawyers. The committee's recommendation is to set up a series of high-level panels with expertise within epidemiology and virology, macroeconomics, and law. These panels have to be activated when an epidemic or pandemic is threatening. Their advice, too, must be public. It is only through this combination of multi-source and open advice that political decision makers in government and Parliament will receive valid estimates of the risks and uncertainties involved.

Based on the analysis of the covid-19 experience, the report warns against undue centralization at the top of government. It creates bottlenecks and results in an increased risk of mistakes when many decisions, some of them extremely specific, are centrally controlled. Drawing on its analysis, the committee points out that the sector responsibility principle worked and was adaptable to situational contingencies and that departmental ministries were flexible and cooperative when it came to the mobilization of staff resources and getting the covid-19 organization operative within an extremely short time.

Crisis management during the spring of 2020 rested on a broad political consensus in Parliament. The strong executive dominance that marked crisis management and not least the revision of the infectious diseases act that Parliament passed in two rounds in March and April was extremely contentious both among political parties and in the public discourse. This strife carried on when the government in the fall presented a draft for a permanent infectious diseases act to replace the act falling for the sunset clause on March 31 2021. All the parties outside the government rejected this draft and insisted on negotiations that curbed the executive authority and installed parliamentary controls of the executive in future health crisis.

These negotiations were brought to an end in December 2020. In a compromise, the government and a majority of parties agree to set up a standing parliamentary committee responsible for controlling the government in situations where the act of infectious diseases is activated. First, the government is obliged to present any draft statutes to the committee. If a majority on the committee speaks out against the draft statute, the Minister of Health is not entitled to issue it. Second, that the revised act of infectious diseases contains an exhaustive list of authorizations to which this procedure applies. Third, that draft statutes 'to the greatest extent possible' shall be subject to hearings. Fourth, that all statutes issued according to the act shall contain sunset clauses.

Parliament's covid-19 investigation

The Danish Parliament's Standing Orders Committee commissioned the report summarized above. An independent investigation committee composed of five professors representing expertise within the fields of virology and immunology, health law and public law, health economics, and public administration and political science was given half a year to conduct the investigation.

The group, according to an agreement between the Chairman of Parliament and the Prime Minister, had access to any government documents related to covid-19. However, the group had no permit to interview ministers and civil servants involved in the management of the covid-19 crisis.

It is the first time in Danish parliamentary history that Folketinget, the Danish Parliament, has initiated an investigation of this kind under its own auspices. This institutional innovation is an outcome of a debate going on for some years about strengthening Parliament's powers of control.