UTRECHT JOURNAL OF
INTERNATIONAL AND EUROPEAN LAW

How to Deal with Really Good Bad-Faith Interpreters: M.A. v Denmark

CASE NOTE

HELGA MOLBÆK-STEENSIG

ubiquity press

ABSTRACT

Can a State that no-longer officially pursues an integration agenda for a group of refugees claim integration as a legitimate aim to interfere with the fundamental rights of said group? If domestic courts' careful consideration of international human rights law and practice widens the State's margin of appreciation, is it then narrowed when States ignore national and international organisations' warnings of non-compliance with human rights law? Can the European Court of Human Rights refer to EU-law to establish the existence of a European consensus when the respondent State in question has opted out of EU-regulation in the area? The Grand Chamber judgment M.A. v Denmark from 9 July 2021 raises these questions but answers only some. This article aims, through an analysis of M.A. v Denmark and its political and legal background, to seek some answers in this carefully worded judgment.

CORRESPONDING AUTHOR:

Helga Molbæk-Steensig

European University Institute, IT

helga.molbaek-steensig@eui.eu

KEYWORDS:

M.A. v Denmark; legitimate aim; margin of appreciation; asylum; European Court of Human Rights

TO CITE THIS ARTICLE:

Molbæk-Steensig, H, 'How to Deal with Really Good Bad-Faith Interpreters: M.A. v Denmark' (2022) 37(1) *Utrecht Journal of International and European Law* pp. 59–65. DOI: https://doi.org/10.5334/ujiel.563

INTRODUCTION

On 9 July 2021, the European Court of Human Rights (ECtHR) found that Denmark had violated a Syrian refugee's right to family life.[1] The Court ruled that the mandatory three-year waiting period for family reunification he was subjected to, was excessive, and not a proportional interference with the right to family life in comparison with the legitimate political aims of integration and immigration control. The case warrants analysis for three reasons; first, the facts of the case raise serious concerns about the government's claimed legitimate aims, which were not addressed in the Court's arguments. Second, the case reveals interesting aspects of what Çalı has referred to as the 'variable geometry'[2] in the Court's evaluation of procedural protection of rights in different countries –namely the tendency for the Court to differentiate the amount of deference it affords to States based on whether these States are identified as applying the Convention in good faith or not.[3] Lastly, the Court's reference to EU-law has sparked a, for Denmark, unusual debate not on *how* to implement the judgment but on *whether* to implement it at all, and what new restrictions to enact in its place.

M.A. v Denmark has already received some attention in academic blogposts and in the press. Thomas Gammeltoft-Hansen and Mikael Rask Madsen have linked the case to the complicated relationship between Denmark and the ECtHR on the topic of asylum and immigration, calling it a 'departure' from an existing trend of increased deference on these topics and a limit to the use of an asylum policy of indirect deterrence.[4] The case has also been investigated by Nikolas Tan and Jens Vedsted[5] who focused on proportionality, and by Louise Halleskov Storgaard, who looked into the general importance of the case for the interpretation of Article 8 of the ECHR.[6] I have also written a blog-post myself dealing first and foremost with the Court's use of the margin of appreciation.[7] What the present article contributes, is two-fold, first, it engages with the problem of temporality in the determination of legitimate aims, questioning whether a country's changes to political aims post-facto can influence whether an aim remains legitimate, and second, it includes the question of execution in its analysis. Execution carries particular importance in this case since, at the time of writing (Winter 2021/22), a debate emerged in the Danish press and Parliament in which the national-conservative Danish People Party argues that the judgment is not in fact binding on Denmark, because it relied on EU-law for which Denmark has an opt-out.[8] This claim has not gone unchallenged,[9] but it has not gone away either. At the time of writing, the Aliens Act retains the three-year mandatory waiting period, but the authorities administrate with a two-year period using an inbuild paragraph for exceptions (9(c) in the Aliens Act). When this practice was challenged in Parliament,[10] the opposition parties in the coalition supporting the original three-year period[11] suggested enacting additional restrictions on immigration and asylum elsewhere to compensate for the liberalisation in family reunifications,[12] wishing to retain the same level of negative national branding[13] and asylum deterrence.

The present article, thus, questions whether temporality impacts: (1) the legitimacy of aims, –-ie, can a country claim integration as a legitimate aim if it no longer pursues that aim?– or (2) the good faith presumption – ie, can a country claim to act in good faith if it has previously ignored multiple warnings that it was administrating in non-compliance with human rights law? It further explores how and whether opt-outs may impact the applicability of a European Consensus argument in the determination of the width of the margin of appreciation. To answer these questions, the following pages provide a summary of *M.A. v Denmark* and the national context. This is followed by an account of the problem of temporality in the determination of a State's legitimate aims and presumed good faith, as well as an analysis of Court's determination of the width of the margin of appreciation, incorporating the quality of the national procedure and the use of the Emerging Consensus doctrine, including EU-law. Lastly, the concluding remarks include perspectives for ECtHR practice in general.

A) THE CASE IN BRIEF

M.A. v Denmark concerns M.A., a Syrian national who applied for asylum in Denmark in April 2015. While he had originally applied for individual protection, he, like many Syrian refugees in Denmark, was instead granted a temporary residence permit for generalised protection. This is a special protection status for asylum seekers who are deemed not to be individually persecuted, but who are nonetheless at risk because of indiscriminate violence against civilians in their home country. In the Danish legislation, those with individualised protection are granted asylum in accordance with the rules stated in the 1951 Refugee Convention under Articles 7(1) and 7(2) in the Aliens Act, while those with generalised protection (Article 7(3)) are not protected by the Refugee Convention but are, however, granted temporary asylum.[14] The decision of which category of protection to grant each individual applicant is made by the Ministry for Immigration and can be appealed once to the semi-judicial Refugee Appeals Board. There are no further options for appeal. The distinction is important because the generalised protection status impacted all steps of M.A.'s exchange with the Danish authorities. The 7(3) category was introduced in February 2015 as a response to the high influx of refugees from Syria.[15] As was Article 9(1)(i)(d) which introduced a one-year mandatory waiting period before refugees with 7(3) status could apply for family reunification. In February of 2016, Article

9(1)(i)(d) was amended again extending this waiting period to three years.[16]

M.A. submitted his request for family reunification on November 4th, 2015. It was rejected on July 5th, 2016, because he had not been in possession of a residence permit for at least three years. After appealing to the Refugee Appeals Board without success, M.A. instigated domestic court proceedings complaining that the refusal of family reunification violated his right to family life under Article 8 of the ECHR taken alone and in conjunction with Article 14. The case went through the Danish judicial system, leading to a Supreme Court decision in 2017, before eventually ending up at the ECtHR in January 2018 where the Chamber relinquished jurisdiction in favour of the Grand Chamber. The Chamber delivered its judgment on July 9th, 2021, declaring that the applicant had suffered a violation of his rights under Article 8. In the meantime, the applicant, having endured the mandatory waiting period, submitted another application for family reunification which was granted in September 2019.

B) TEMPORALITY, LEGITIMATE AIMS, AND THE GOOD FAITH PRESUMPTION

Time plays an important role in this case since Danish legislation and the justification for it changed throughout the period. In November 2015, after residing in Denmark for five months M.A. applied for family reunification when the waiting period was one year. By the time the application was reviewed in July 2016, the Aliens Act had been amended, retroactively increasing the waiting period to three years.[17] Additionally, the government claimed immigration control when faced by a large influx of refugees as a legitimate aim,[18] an aim usually accepted by the ECtHR.[19] By 2016 however, the number of asylum applications to Denmark was lower than expected[20] and by 2017 it had returned to normal levels.[21] The ECtHR noted that this fall in asylum applications had not prompted the government to revise its three-year waiting period, even though a sunset clause had been included with the 2016-amendment,[22] raising questions of whether the large influx was really the reason for the legislation changes at all. In the preparatory documents for Bill 87, a different aim was established. The aim has been on the spot in parliamentary debates about the execution of the judgment: the objective of making Denmark a less attractive destination for asylum seekers.[23] This aim is not, however, mentioned in *M.A. v Denmark* nor in the government's observations.[24]

Denmark further claimed integration as a legitimate objective of the interference, but this too is influenced by the temporal perspective. There are two potential problems with Denmark claiming integration as a legitimate aim for postponing family reunifications. First, there are diverting opinions on whether integration really benefits from the denial of reunification; in *M.A. v Denmark*, the government argued that it does, because it keeps the number of new arrivals low, and there are limits to how many new individuals a State can integrate at once.[25] The applicant, on the other hand, argued that family reunification was important for successful integration, since being separated from one's family had a negative impact on mental health.[26] The ECtHR catered to both claims, accepting the State's legitimate interest in immigration control, whilst pointing out that family reunification could well benefit integration due to its role in social cohesion.[27] Second, there is a temporal concern with regards to integration. Can a State that no-longer officially pursues an integration agenda for refugees claim integration as a legitimate aim for its interferences with their fundamental rights? The question becomes relevant because in 2019 Denmark removed the goal of integration for individuals with generalised protection under § 7(3) from the Aliens Act, replacing it with an aim of repatriation.[28] The 2019 Bill 140 removed the language of integration from the Aliens Act, but the change was not merely linguistic. For refugees with residence permits granted under 7(3), the level of integration into Danish society as evidenced by language-skills, employment, education etc. carries no weight in the determination of whether to withdraw or prolong a residence permit.[29] Given this change, it might well be reasonable to question the integration-motive claimed by the government. On the other hand, the facts of the case took place in 2016, when integration was still an official aim for refugees with temporary protection status. The Danish Supreme Court had avoided having to deal with this conundrum by considering only the circumstances that existed at the time of the Refugee Appeals Board's decision.[30] The ECtHR took a similar approach,[31] ignoring both the changes in the approach to integration and the government's claim that Syria was safe to return to in 2018.[32] – a claim not presently shared by many other countries. Due to the 2019 changes to the Aliens Act, said claim has influenced the highly criticised automatic withdrawals of residence permits for most refugees from Syria.[33]

There is also a temporal dimension in the variable geometry-related question of whether Denmark could be said to have applied the convention in good faith. The good faith assumption is a foundational requirement for parties to any treaty.[34] In short, the logic is that a State that can be trusted to apply the Convention in good faith can presumably also, in most cases, be entrusted with its interpretation and may, as a result, be entitled to a certain margin of appreciation.[35] In *M.A. v Denmark* the government argued that the ECtHR had not adjudicated a case similar to it before,[36] and the Court determined on the basis hereof that the State did not have the benefit of clear guidance from caselaw on whether a three-year waiting period was acceptable of not.[37] This is not entirely accurate however, since the Danish Parliament had been warned by the Danish Institute of Human Rights and by the Council of Europe Commissioner for Human Rights

before passing the bill of potential non-compatibility with ECHR Article 8, as well as Article 17 of the United Nations' International Covenant on Civil and Political Rights.[38]

In response to these warnings, Bill 78 was the first in which Danish legislators openly accepted a so-called 'process risk' of a violation judgment at the ECtHR,[39] specifically regarding the three-year waiting period. The preparatory documents for the 2016 amendment explicitly Stated that 'there is a certain risk that when reviewing a specific case, the Court may decide that Denmark cannot generally make it a condition for family reunification that [those with generalised protection] have resided for three years in Denmark'.[40] After the bill was ratified, there were additional warnings both in the abstract –as the Parliamentary Assembly of the Council of Europe (PACE) issued two resolutions expressing concern over barriers to family reunification in 2018–[41] and in the concrete –in the United Nations Human Rights Committee report on Denmark in 2016 where the High Commissioner for Refugees urged bringing the law into compliance with the Covenant on Civil and Political Rights–.[42] It is therefore clear that the government had been warned repeatedly *before* the case went before the ECtHR and had openly and wilfully decided to ignore these warnings.[43] The ECtHR did not spell out any doubts on whether Denmark had applied the Convention in good faith. Nevertheless, the mentioning of these warnings in the judgment suggests that the State's choice to ignore the UN and Council of Europe reports has, at least, been noted.

C) EUROPEAN CONSENSUS, THE MARGIN OF APPRECIATION AND THE PROCEDURAL TURN

As mentioned in the introduction, the implementation of *M.A. v Denmark* has raised controversy in Denmark. One question which has been given particular focus in legal review is whether the ECtHR can rely on EU-regulations which are not applicable in Denmark because of the Danish opt-out on certain judicial integrations including asylum[44] to determine the width of the margin of appreciation. There are two reasons why the answer to this question is 'yes'. The first is pragmatic: the Danish government requested that the Court engage with the EU-regulations on the matter in its initial observations delivered to the Court on January 15th, 2019.[45] Therefore, Denmark can hardly use the inclusion of those arguments to avoid implementing the judgment. Second, the government referred to EU-law to point out that the practice of requiring a waiting period for refugees before they can request family reunification is common in other European countries as well, making the reference to EU law part of the Court's well-established approach of reviewing whether a European Consensus has emerged on the question, as part of its determination of the width of the margin of appreciation.[46]

Another element in the determination of the width of the margin is the quality of the domestic courts' application of the Convention. The ECtHR has placed emphasis on this in the determination of the width of the margin openly in its case law since *MGN limited v United Kingdom*[47] and *Von Hannover v Germany*.[48] In the literature, this focus has been labelled the 'procedural turn'[49] and is linked with the identification of good and bad faith interpreters, since the application of subsidiarity requires a careful examination at the national level.[50] In *M.A. v Denmark*, the Danish Supreme Court judgment, of which substantive parts are cited in paragraph 22 is an example of what such a procedural understanding of subsidiarity might look like.[51] The Supreme Court engaged in depth with both the Convention and existing caselaw from the ECtHR before deciding that the differentiation between different categories of refugees in the Danish Aliens Act effectively meant that the existing caselaw was not applicable to the case at hand. It also argued that in recent similar judgments,[52] the ECtHR had not questioned the mandatory waiting period but had found violations due to the unreasonably lengthy application process, which was not the problem facing M.A. in Denmark. The Supreme Court, thus, made an implicit suggestion that good governance ought to widen the margin of appreciation.

The ECtHR paid attention to the thorough review of the Supreme Court[53] and agreed that it had not reviewed a case such as this one before.[54] It went on to grant the State a wide margin of appreciation, both due to the case's novelty and the thorough treatment of Convention-based arguments in the Supreme Court case.[55] The ECtHR also maintained, however, that even a wide margin is still limited by the duty of protecting individuals at risk of human rights violations.[56] In the final balancing, the ECtHR established that it would not question the distinction made by the Danish legislature between individuals facing personal or generalised threats,[57] because EU and UN rules made similar distinctions.[58] It would also not question the rationale of a two-year waiting period as was allowed for in the EU family reunion directive.[59] It still found, nonetheless, that Denmark's three-year waiting period for family-reunification was excessive, especially since the law did not grant any option for an individual assessment with focus on the right to family life.[60] Hence, *M.A. v Denmark* enters a relatively rare category of violation-judgments in cases where the State was granted a wide margin of appreciation.

CONCLUSIONS AND PERSPECTIVES

The question then remains whether in such a situation, a State can still claim to be a good faith interpreter entitled to a wide margin of appreciation just because

its administration employs a relatively swift processing of cases, and its Supreme Court appears well-versed in the caselaw and interpretive principles of the ECtHR. The ECtHR reached a 16–1 judgment resulting in a very carefully worded 'no'. Other member States looking for similarly clever procedural loopholes might take heed. It is another matter entirely whether the judgment also contributes to rendering rights practical and effective, rather than theoretical or illusory. The decision of the Grand Chamber not to question immigration control as a legitimate aim in the interference with the right to family life for refugees, combined with the statement that a two-year mandatory waiting period would have been striking an acceptable balance,[61] may well embolden States in restricting family-reunifications –now certain to be free from ECtHR scrutiny as long as they keep waiting periods below this threshold. Similarly, the Court's limited critique of the State's unsubstantiated claim that restrictions in family-reunifications benefit integration, and non-engagement with the fact that the Aliens Act no-longer pursues an integration aim for refugees makes this judgment more superficial and less useful in future policy work for any good faith interpreters.

The ECtHR cited the warnings issued by various national and international actors to the Danish government that they were likely in non-compliance with international human rights and refugee law. It, however, did not engage directly with the fact that the State had ignored the letters and reports urging it to change course. In subsequent parliamentary debates, the question was raised of whether this judgment, which was forewarned and to an extent anticipated, might motivate the coalition behind the changes to the Aliens Act to rethink the intensity of its use of the deterrence strategy to control immigration.[62] Ongoing developments suggest that this will not be the case. The government has explicated that it is determined to make the smallest possible changes in the Act to ensure compliance with the judgment, and a majority in parliament issued a declaration stating that it welcomed the government's 'continued challenging of the ECtHR's interpretations' and 'efforts to limit Court activism.'[63] M.A. v Denmark is the first time in which the 'process risk' of human rights litigation mentioned in the preparatory works of L 87 resulted in a violation-judgment. In the meantime, however many other laws[64] have been adopted with an acceptance of a 'process risk' of international litigation, in a fundamental way changing the Danish approach to human rights compliance.

For the individuals in question, the case unfortunately also demonstrates the real costs of States being willing to test an over-burdened ECtHR. Although processed faster than average,[65] the judgment still arrived only after M.A. had already been reunited with his wife. And more worryingly, by the time the judgment was issued, Denmark had also decided to revoke large portions of the residence permits granted based on the Alien Act's Articles 7(3) and 9(1)(i)(d), claiming as the first European country that parts of Syria were now safe enough for refugees to return.[66] In real political terms Denmark can thus change the law in question with very little consequence, having already achieved its goal of receiving fewer refugees during the large influx in 2015–2016.

NOTES

1 M.A. v Denmark App no 6697/18 (ECtHR, 9 July 2021).

2 Başk Çalı, 'Coping With Crisis: Whither the Variable Geometry in the Jurisprudence of the European Court of Human Rights' (2018) 32 Wisconsin International Law Journal 237, 240–241.

3 ibid 270.

4 Thomas Gammeltoft-Hansen and Mikael Rask Madsen, 'The Limits of Indirect Deterrence of Asylum Seekers' (Verfassungsblog, 9 June 2021) <https://verfassungsblog.de/the-limits-of-indirect-deterrence-of-asylum-seekers> accessed 13 March 2022.

5 Nikolas Feith Tan and Jens Vedsted-Hansen, 'How long is too long? The limits of restrictions on family reunification for temporary protection holders' (Odysseus Academic Network, 27 September 2021) <https://eumigrationlawblog.eu/how-long-is-too-long-the-limits-of-restrictions-on-family-reunification-for-temporary-protection-holders/> accessed 13 March 2022.

6 Louise Halleskov Storgaard, 'Menneskerettighedsdomstolens dom om treårsreglen' (RuleofLaw.dk, 19 July 2021) <> accessed 13 March 2022.

7 Helga Molbæk-Steensig, 'M.A. v Denmark: Is Denmark (still) a good-faith interpreter with legitimate aims?' (Strasbourg Observers, 21 September 2021) <https://strasbourgobservers.com/2021/09/21/m-a-v-denmark-is-denmark-still-a-good-faith-interpreter-with-legitimate-aims/> accessed 13 March 2022.

8 Deb F8: Parliamentary Debate in Denmark on 27 October 2021, the Minister of Immigration regarding the change of the three-year rule to a two-year rule (Forespørgsel F8, 2021–2022 Samling) available at: <https://www.ft.dk/samling/20211/forespoergsel/F8/BEH1-10/forhandling.htm> accessed 13 March 2022.

9 Morten Messerschmidt, 'Menneskeretten vil tvinge EU ind ad bagdøren' *Jyllands-Posten* (Aarhus, 15 July 2021) <https://jyllands-posten.dk/debat/kronik/ECE13128019/menneskeretten-vil-tvinge-eu-ind-ad-bagdoeren/> accessed 13 March 2022; Morten Messerschmidt, 'Danskerne har ikke brug for Den Europæiske Menneskerettighedskonvention' *Berlingske* (Copenhagen, 10 October 2021) <https://www.berlingske.dk/kronikker/morten-messerschmidt-danskerne-har-ikke-brug-for-den-europaeiske> accessed 13 March 2022.

10 Claus von Barnekow, 'Tidligere ambassadør: NB og DF fører indenrigspolitik på international menneskerettighedsdom' *Altinget* (Copenhagen, 1 September 2021) <https://www.altinget.dk/eu/artikel/tidligere-ambassadoer-nye-borgerlige-og-df-foerer-indenrigspolitik-paa-international-menneskerettighedsdom> accessed 13 March 2022; Louise Holck, 'Menneskerettigheds-domstolen trækker de nødvendige grænser' *Berlingske* (Copenhagen, 18 October 2021) <https://www.berlingske.dk/kronikker/institutchef-gaar-i-rette-med-messerschmidt-menneskerettighedsdomstolen> accessed 13 March 2022.

11 The regulations relevant for this case have been enacted by a broad coalition of the current Social Democratic government and the former Liberal-Conservative governments as well as the National-Conservative Danish People's Party.

12 Deb F8 (n 10) at 13:52: Motion V 6, which was, however, ultimately rejected. Available at: <https://www.ft.dk/samling/20211/vedtagelse/v6/index.htm> accessed 13 March 2022.

13 Thomas Gammeltoft-Hansen, 'Refugee policy as "negative nation branding": the case of Denmark and the Nordics' (2017) Danish Foreign Policy Yearbook 99, 101.

14 The Aliens Act 2019 (Bekendtgørelse af udlændingeloven).

[15] Bill L 72 was proposed on 14 November 2014 and passed 3 February 2015. The preparatory documents are entitled 'Som fremsat', at 6, Section *2.1.1.3.1*. All documents related to the bill available at: <https://www.ft.dk/samling/20141/lovforslag/l72/index.htm> accessed 13 March 2022; Gammeltoft-Hansen (n 13) argues that this change had been made necessary by changes in CJEU and ECtHR case law developments on 'subsidiary protection' 104–106.

[16] Bill L 87 was proposed on 10 December 2015 and passed 26 January 2016. The preparatory documents are entitled 'Som fremsat', at 76, point 8. All documents related to the bill available at: <https://www.ft.dk/samling/20151/lovforslag/l87/index.htm> accessed 13 March 2022.

[17] *M.A.* (n 1) paras 13–22.

[18] ibid paras 94, 142–143.

[19] ibid para 147.

[20] ibid para 85.

[21] ibid para 63.

[22] ibid para 180.

[23] Preparatory works to L 87 (n 16) 8; Deb F8 (n 10).

[24] Observations of the Govt. of Denmark, 'Application No. 6697/18 M.A. v Denmark: Observations of the Government of Denmark' (UUI Almen.del 2018/19 2019) Endeligt svar på spørgsmål 629 para 40 discusses legitimate aims. Available at: <https://www.ft.dk/samling/20181/almdel/uui/spm/629/svar/1578727/2054057.pdf> accessed 13 March 2022.

[25] *M.A.* (n 1) para 95.

[26] ibid para 83.

[27] ibid para 165.

[28] L 140 was proposed 15 January 2019 and passed 21 February 2019. Changes to the law in 'Som vedtaget'. At 9 para 2 subsection 1. All documents related to the bill available at: <https://www.ft.dk/samling/20181/lovforslag/L140/index.htm> accessed 10 July 2021.

[29] The Aliens Act (n 14) para 19.

[30] *M.A.* (n 1) para 22.

[31] *M.A.* (n 1) para 128.

[32] *M.A.* (n 1) para 99.

[33] Human Rights Watch, 'Denmark: Flawed Country of Origin Reports Lead to Flawed Refugee Policies' (2021) <https://www.hrw.org/news/2021/04/19/denmark-flawed-country-origin-reports-lead-flawed-refugee-policies> accessed 13 March 2022.

[34] Vienna Convention on the Law of Treaties (adopted 22 May 1969, entered into force 27 January 1980) 1155 UNTS 331 art 31.

[35] Çalı, (n 2) 240.

[36] Observations of the Govt. of Denmark (n 24) para 49.

[37] *M.A.* (n 1) paras 136, 178.

[38] ibid para 106.

[39] ibid para 33.

[40] L 87 (n 16) para 33.

[41] *M.A.* (n 1) paras 60–62.

[42] ibid para 110.

[43] When questioned by Parliament about why the government had not reacted to these warnings earlier, the Minister of immigration stated that while the ministry had been wrong in assuming they could enact the three-year waiting period without recieving a violation judgment, the government had also been warned when they enacted the one year waiting period and therefore 'those that are constantly yelling that we are violating human rights, were also wrong' Deb. F8 (n 10) Tesfaye at 13:16.

[44] Messerschmidt (15 July 2021) (n 8).

[45] Observations of the Govt. of Denmark (n 24) paras 20–39.

[46] Shai Dothan, 'Why Granting States a Margin of Appreciation Supports the Formation of a Genuine European Consensus' (2015) 22 iCourts Working Paper Series 1, 5.

[47] *MGN Limited v the United Kingdom* App no 39401/04 (ECtHR, 18 January 2011).

[48] *Von Hannover v Germany (no. 2)* App nos 40660/08 and 60641/08 (ECtHR, 7 February 2012).

[49] Oddný Mjöll Arnardóttir, 'Organised Retreat? The Move from "Substantive" to "Procedural" Review in the ECtHR's Case Law on the Margin of Appreciation' (European Society of International Law Annual Conference Oslo, September 2015) 1; Eva Brems and Laurens Lavrysen, 'Procedural Justice in Human Rights Adjudication: The European Court of Human Rights' (2013) 35 Human Rights Quarterly 176, 177; Janneke Gerards, 'Procedural review by the ECtHR: A Typology' in Janneke Gerards and Eva Brems (eds), *Procedural review in European fundamental rights cases* (Cambridge University Press 2018) 127–160.

[50] Çalı (n 2) 241–242.

[51] The dissenting judge Mourou-Wikstrom called the Supreme Court's judgment 'exemplary in many ways'. *M.A.* (n 1) Dissenting opinion para 26.

[52] *Tanda-Muzinga v France* App no 2260/10 (ECtHR, 10 July 2014); *Mugenzi v France* App no 52701/09 (ECtHR, 10 July 2014); *Senigo Longue and Others v France* App no 19113/09 (ECtHR, 10 July 2014).

[53] *M.A.* (n 1) paras 149, 181–191.

[54] ibid paras 130, 140.

[55] ibid para 161.

[56] ibid paras 145–146.

[57] ibid para 177.

[58] ibid paras 24–30.

[59] ibid para 192.

[60] ibid para 193.

[61] ibid para 192.

[62] Deb F8 (n 10) at 13:52.

[63] Parliamentary Declaration: V 50 Om Den Europæiske Menneskerettighedsdomstol. Fremsat under F26. (2021). Available at: <https://www.ft.dk/samling/20201/vedtagelse/v50/index.htm> accessed 13 March 2022.

[64] Including on the law on citizenship, Bill L 38 2019 (lov om ændring af lov om dansk indfødsret og udlændingeloven) 11. Available at: <https://www.ft.dk/ripdf/samling/20191/lovforslag/l38/20191_l38_som_fremsat.pdf> accessed 13 March 2022; and data protection, Bill L 93 2021 (Lov om ændring af retsplejeloven og lov om elektroniske kommunikationsnet og -tjenester) 52. Available at: <https://www.ft.dk/ripdf/samling/20211/lovforslag/l93/20211_l93_som_fremsat.pdf> accessed 13 March 2022.

[65] The average length of proceedings from communicaiton of the case to final judgment is just above five years. Calculated using Øyvind Stiansen and Erik Voeten, 'ECtHR judgments' (Harvard Dataverse 2019) v3. <https://dataverse.harvard.edu/dataset.xhtml?persistentId=doi:10.7910/DVN/OBYUO5> accessed 1 January 2020.

[66] Bethan McKernan, 'Denmark strips Syrian refugees of residency permits and says it is safe to go home' *The Guardian* (London, 14 April 2021) <https://www.theguardian.com/world/2021/apr/14/denmark-revokes-syrian-refugee-permits-under-new-policy> accessed 13 March 2022.

COMPETING INTERESTS

The author has no competing interests to declare.

AUTHOR AFFILIATIONS

Helga Molbæk-Steensig orcid.org/0000-0002-7659-8737

European University Institute, IT

REFERENCES

Arnardóttir O M, 'Organised Retreat? The Move from "Substantive" to "Procedural" Review in the ECtHR's Case Law on the Margin of Appreciation' (European Society of International Law Annual Conference Oslo, September 2015) 1. DOI: https://doi.org/10.2139/ssrn.2709669

Brems E and Lavrysen L, 'Procedural Justice in Human Rights Adjudication: The European Court of Human Rights' (2013) 35 Human Rights Quarterly 176. DOI: https://doi.org/10.1353/hrq.2013.0000

Çalı B, 'Coping With Crisis: Whither the Variable Geometry in the Jurisprudence of the European Court of Human Rights' (2018) 32 Wisconsin International Law Journal 237.

Dothan S, 'Why Granting States a Margin of Appreciation Supports the Formation of a Genuine European Consensus' (2015) 22 iCourts Working Paper Series 1. DOI: https://doi.org/10.2139/ssrn.2597949

Gammeltoft-Hansen T, 'Refugee policy as "negative nation branding": the case of Denmark and the Nordics' (2017) Danish Foreign Policy Yearbook 99. DOI: https://doi.org/10.2139/ssrn.3902589

Gerards J, 'Procedural review by the ECtHR: A Typology' in Gerards J and Brems E (eds), *Procedural review in European fundamental rights cases* (Cambridge University Press 2018) 127. DOI: https://doi.org/10.1017/9781316874844

TO CITE THIS ARTICLE:
Molbæk-Steensig, H, 'How to Deal with Really Good Bad-Faith Interpreters: M.A. v Denmark' (2022) 37(1) *Utrecht Journal of International and European Law* pp. 59–65. DOI: https://doi.org/10.5334/ujiel.563

Submitted: 05 August 2021 **Accepted:** 03 November 2021 **Published:** 04 July 2022