

Denmark

Analysis of integration policies and public State-endorsed institutions at national and regional levels in Denmark

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This working paper contains five parts. In the first part of the paper, we shortly introduce some of the main actors in the field of integration policy in Denmark, including The Ministry for Refugees, Immigrants and Integration and The Danish Institute for Human Rights. In the second part of the paper, we describe key policy documents and discourses, particularly involving an analysis of the Alien Act and the Integration Act. Questions that we address in this section are what core concepts appear in the documents, and how the concept of integration is addressed. Other relevant concepts that the analysis underline as central in the legislation are those of **equality and cultural values**: Concepts that the documents present as almost inherently Danish, at the same time as they are used to highlight the dissimilarity of immigrants. In the third part of the paper, we focus on a case study of the action plan **'Employment, participation and equal opportunities for everyone'** (*Beskæftigelse, deltagelse og lige muligheder til alle* - Danish Government 2005b). In the fourth part of the paper, we describe some of the relevant Danish legislation against racism and discrimination. We describe this legislation in relation to EU and other international legislation, and further describe important agents for implementation of anti-racism and anti-discrimination legislation in Denmark. Finally, the fifth part of the paper is a discourse analysis of a preoccupation with the idea of freedom of speech that often appears in Danish debates over immigration and multiculturalism, particularly and most radically during the so-called Cartoon Affair of 2005-2006.

1. Description and historicity of the institutions

Immigration to Denmark is not a new phenomenon. Until recently, however, immigration flows were moderate, and most immigrants came from other Nordic or Western countries. This changed in the 1960s where a growing number of immigrants mainly from Ex-Yugoslavia, Turkey and Pakistan, came to Denmark to work. In 1973, **the government tried to put a stop to immigration from non-Western countries**, but new immigrants have continued to arrive – primarily as a result of family reunifications and asylum. Furthermore, regional conflicts, the breakdown of empires and federations, and conflicts in the Middle East have led to the arrival of several new groups of refugees during the 1980s and 1990s (Hedetoft, 2006b). Today, immigrants of non-Western countries constitute about six per cent of the Danish population, and the focus on integration and on how to manage cultural diversity in Danish society and politics is greater than ever (Danish Immigration Service 2009). Since 2001 a new immigration pattern has emerged as the number of immigrants coming to Denmark to work or study has increased significantly (including immigrants from EU/EEA countries), whereas the number of refugees and family reunifications has been reduced to almost a third of the count in 2001 (Danish Immigration Service 2010, 2004).

Integration as a particular issue has been a declared objective in Danish policy since the 1980s, and in 1983 a new foreigners' law was introduced along with a "Memorandum on Migration policy". A specific integration law, however, was not formulated before 1999, being the first of its kind in a Western country. The law led to some changes in the organisation and implementation of the integration policy. **The municipalities were assigned the main responsibility for carrying out the objectives of the integration policy.** Previously, the task had been divided between the municipalities and the Danish Refugee Aid organization, but to improve the management and coordination of the integration process, all the separate elements were now gathered under the same political authority. For the same reason, and in order to strengthen the focus on integration issues, a new Ministry for Refugees, Immigrants and Integration was established in 2001. The Ministry took over tasks that had previously belonged to the Ministry of Interior, and was assigned responsibility for e.g. the Aliens Act and the Integration Act, statistics on foreigners, ethnic equality, and instruction in Danish language and civics. With the establishment of the new ministry, most issues related to integration are now gathered under one roof (Hedetoft, 2006b).

In 1997, **The Board of Ethnic Equal Treatment** was established mandated by

law to advise the parliament, the government, municipalities, private organizations and other community institutions in issues related to discrimination and ethnic equality. However, along with a number of other boards and councils it was dissolved in 2002. The same year the Danish Institute for Human Rights replaced the Danish Centre for Human Rights, and in 2003 a Complaints Committee for Ethnic Equal Treatment was established at the institute. In 2009, the Committee (as well as the Gender Equality Board) was replaced by the Board of Equal Treatment. Today the main governmental institutions involved in securing and trying the national laws against discrimination and racism are the Danish Institute for Human Rights and the Board for Equal Treatment.

2. Main features of the Danish integration Policy

Two central acts constitute the main body of Danish legislation on immigration and integration: the Aliens (consolidation) Act (*Udlændingeloven*) and the Integration Act (*Integrationsloven*). The Aliens act addresses foreigners' legal status in Denmark concerning for example entry and residence permits (temporary and permanent) whereas the Integration Act concerns the actual processes of integration. Until August 2010, the Integration Act addressed only refugees and family reunification of refugees and immigrants, but a recent law reform has expanded the target group to include for example labour immigrants and their families. When speaking in general about Danish immigration and integration policy other laws are referred to as well; e.g. Act on Danish Nationality, Act on Danish Courses for Adult Aliens, and the Municipal and Regional Election Act.

In Denmark, the rules for citizenship follow the principles of *jus sanguinis*; the citizenship of children following that of the parents. **Dual citizenship is not accepted in Denmark.** Since 2002 several restrictions concerning immigration, residence and citizenship has been introduced; major restrictions include for example the abolition of the rule concerning *de facto* refugees in 2002,¹ and the issuing of the so-called '24-year rule' in 2002, raising the age from 18 to 24 for both parties involved in marriage reunification. The conditions to gain permanent residence permit and citizenship has also been restricted during the last years; e.g. by introducing the 'Integration Contract' in 2006, and the 'Integration Exam' in 2007.

Active participation in society, including political process, is a central theme in the Danish integration policies. Since 1981 immigrants and refugees have had the right

¹ *De facto* refugees are refugees who were granted asylum without being included in the Geneva Convention of 1951. After 2002 only refugees who have a right to protection according to international conventions are granted asylum.

to vote and run for election on municipal and regional level after three years of legal residence (four years since August 2010 due to changes in the *Integration Act* and other related laws). In 1983 the government established the **Council for Ethnic Minorities** (*Rådet for etniske minoriteter*) which has representatives from diverse associations for immigrants. The primary task of the council is to advise the Minister for Refugee, Immigration and Integration Affairs on issues of importance to refugees and immigrants (Integration Act § 43). Furthermore, local councils in the municipalities may set up Integration Councils, which may give advisory opinions on the general effort of integration in the municipality (Integration Act § 42). The Integration Councils have no legal competence.

2.1. Key discourses within Danish integration policy

The stated objective of the Integration Act (§ 1) is to ensure that newly arrived foreigners are given the possibility of using their abilities and resources to become involved as contributing citizens on equal footing with other citizens of Danish society. This must be done *via* an **effort of integration** which:

- a) is based on the responsibility of each individual foreigner to integrate into Danish society (amendment to the Act as of August 2010)
- b) assists to ensure that newly arrived foreigners can participate in the life of society in terms of politics, economy, employment and social, religious and cultural activities on an equal footing with other citizens
- c) assists in making newly arrived foreigners self-supporting as quickly as possible through employment
- d) imparts to the individual foreigners an understanding of the fundamental values and norms of Danish society

The law and the integration policy as such have been criticised from various sides for being imprecise concerning the definition of integration and the longer-term goals of the integration process (Hamburger, 1990, Ejrnæs, 2001). Furthermore, it is noted that the policy points in apparently divergent or even self-contradictory directions; while on the one hand emphasizing cultural sameness, on the other hand it emphasizes equal rights, equal opportunities and self-reliance (Ejrnæs, 2001 & 2002; Hedetoft, 2006a). In the objects clause alone three different understandings of integration or three different benchmarks can be identified: participation in society, self-reliance and understanding of basic norms and values (Ejrnæs 2002).

The notion of equality is central to the Integration Act and in the integration policy as such. However, the concept of equality is closely related to a perception that equality requires a certain degree of sameness. The more alike we are, the easier it is to sustain the idea of equality. To be equal in Danish society, thus tend to imply to be similar (Jöhncke 2007, Hervik 1999). This notion of equality is closely related to the perception of Denmark as a cultural homogeneous country, and to the conceptions of social egalitarianism and universalism as constitutive elements of Danish society (Hedetoft 2006a).

The intimate connection between equality and sameness is reflected in the approach to multiculturalism in Denmark and in the Danish integration policies. Thus, the concept of integration is generally used in the sense of assimilation, and the benchmark of successful integration tend to be individual inclusion and 'cultural transformation' (Hedetoft 2006a, 2003, Hamburger 1990). Furthermore "the Danish political system – unlike the systems of other Nordic countries – does not base itself on the recognition of minorities and only in exceptional cases makes juridical or political allowance for minority rights and cultural claims based on minority status" (Hedetoft 2006a:403). Thus, integration becomes a question of immigrants' cultural capacity to harmonize their values with Danish values, and focus is on 'cultural sameness' (Hamburger 1990, Jensen forthcoming). If the minority groups are not willing or able to adapt to the customs and attitudes of the Danish culture they are not considered fully integrated into Danish society. These assimilationist tendencies are reflected in the Integration Act, e.g. in the emphasis on the need for foreigners to understand and adopt the fundamental Danish values.

As of August 2010, two further objectives were added to the Integration Act. One stating as a purpose that newly arrived foreigners are conscious of the fact that successful integration is a condition to obtain permanent residence permit, and the other emphasizing the responsibility of each individual foreigner to integrate into Danish society. With these amendments, further emphasis is placed on the individual foreigner's own responsibility in the integration process. What is meant by 'successful integration' is not explicitly defined in the Integration Act, but some indications hereof are given in the wording of the Act and in the newly introduced system of points², which allows foreigners to obtain permanent residence after four years if they meet certain

² The system of point was introduced as an amendment to the Aliens Act in August 2010. With the new system the foreigner can apply for permanent residence after four years legal stay in Denmark whereas the requirement before was seven years. However, this requires that the foreigner meets certain demands regarding e.g. work, Danish language skills, economic self support, active participation in society etc. (Law on changes of the Aliens Act, law no. 572).

demands. Thus, 'successful integration' is apparently measured by educational performance, fast acquisition of Danish language skills, integration into the labour-market, economic self-reliance and active participation in society. While those who succeed in meeting these demands are rewarded with a permanent residence permit, those who fail are penalised by a reduction in welfare payments, incentives or pressures to resettle in their countries of origin, and diminished hopes for permanent residence (Hedetoft 2006a). In this way lines are drawn between 'the good' and 'the bad' foreigners, between those who are able to meet the demands and those who are not.

Certain elements of the Integration Act have been criticized for discriminating and marginalizing foreigners. One of these elements is the 'introduction allowance' (*introduktionsydelse*), which is granted to refugees and newly arrived immigrants for a period of up to three years if they can't support themselves. The introduction allowance is lower than the normal social welfare benefits and was introduced in 2002 to ensure faster inclusion on the labour-market (Integration Act § 25-31). At the same time, a so called 'start allowance' (*starthjælp*) was introduced applying to both Danes and foreigners, who have not been living in Denmark for seven out of the last eight years³. Since most Danes who have been out of the country for the above mentioned period do not need it, the provision has been criticized for indirect discrimination against ethnic minorities. Furthermore, researchers as well as human rights actors have blamed the 'start allowance' for causing further marginalization and for increasing poverty levels among ethnic minorities in Denmark (Ejrnæs 2001, ECRI 2006, Amnesty International 2007).

2.2. An intensified focus on culture and immigrants as problems

Central to the Integration Act is the three year Integration Program⁴ offered to newly arrived refugees/immigrants. The program includes Danish language tuition and a number of efforts intended to qualify the refugee/immigrant to find a job. Moreover, a course on Danish society, history and culture has been added to the program due to the recent law changes. The emphasis on Danish traditions and core values in the context of integration is thus intensified. The Integration Program is made jointly by the refugee/immigrant and the municipal authorities, and an individual binding contract

³ Act on an Active Social Policy § 11.

⁴ Refugees and immigrants reunited with a family member are offered an extensive *Integration Program* while immigrants (including their families) coming to Denmark with a permit to work or study are offered a less extensive program called *Introduction course*. Prior to the law reform of August 2010 the Integration Act did not apply to immigrants coming to Denmark holding a working permit.

(*integrationskontrakt*) containing a plan for the first three years of the immigrant's stay in Denmark is outlined; the plan includes goals pertaining to employment and/or education as well as specific activities that can lead to these goals. The municipal authorities monitor the program and the observance of the contract⁵. When the integration contract is made, the refugee/immigrant must also sign a 'Declaration on integration and active citizenship in Danish society' (*Erklæring om aktivt medborgerskab*). The purpose of the declaration is:

to make the values of Danish society visible to the individual foreigner and to make the foreigner conscious of the fact that Danish society expects the foreigner to make an effort in order to become integrated as a participating and contributing member of society on equal footing with other citizens (Ministry of Refugees, Immigrants and Integration Affairs 2006: 10; our translation)

According to the declaration, the refugee/immigrant must, among other things, recognize that he or she is supposed to: respect Danish legislation and protect Danish democratic principles, learn Danish and acquire knowledge about Danish society, be self-supportive, be aware that it is illegal to use force or violence toward one's spouse or children, respect personal freedom and integrity, freedom of belief and expression as fundamental rights in Denmark, be aware that discrimination on the basis of gender, colour, or religion is illegal, and recognize that Danish society is against terrorism (Ministry of Refugees, Immigrants and Integration Affairs 2006: Annex 1).

In addition to cement the notion of Danish core values and state the superiority of these 'acceptable' values, the contract and declaration presumes refugees/immigrants as 'problems' (Fog Olwig & Pærregaard 2007), and they are stereotyped as potentially dangerous (Jensen forthcoming; Silverstein 2005). A focus on values is thus emphasized placing the 'dangerous', 'problematic', 'others' in opposition to the 'free', 'democratic', 'Us'.

Recent years have witnessed an increased focus on 'active participation' and 'fundamental values' in Danish integration policies, and the conceptualization of shared national values is perceived as not only valuable in itself, but also as instrumentally necessary to maintain a well-functioning democratic and liberal society (Mouritsen 2006). This has made some researchers point to a tendency in the Danish integration policy to politicize culture; the continuity of the nation-state is predicated by identity projects which present culture in terms of being politically necessary, where some cultures are beneficial and others are not (Mouritsen 2006, 73; Hedetoft 2003); cf. the Declaration on active participation. Furthermore a *culturalization of politics* is prevalent

⁵ Failure of observance can be sanctioned by withhold of social benefits and influence future possibilities of gaining permanent residence permit (Ministry of Refugees, Immigrants and Integration Affairs 2006: 6).

in the sense that political values are talked about and represented as 'culture' and linked to nationally specific historical traditions or ways of life (Mouritsen 2006: 73; Sjørnslev 2007); e.g. the Danish democracy and welfare state. Culture is thus central in the understanding and debate of integration and some 'cultures' are equated with problems. In 2003, the government presented a new vision and strategy for integration (*Regeringens vision og strategier for bedre integration*; Danish Government 2003). The strategy outlines:

a number of integration problems that can be tracked to the circumstance that many people with foreign background for obvious reasons have other conceptions of right and wrong than the conceptions prevalent in Denmark [...] It goes without saying that the difficulties pointed at not always are of a character that can be removed by law changes and administration. Rooted habits and views of immigrants and refugees or of Danes cannot be changed by legislation. Legislation can however be important since it by this means is possible to express the commonly accepted conceptions of values that should characterize society (Danish Government 2003: 12; our translation)

A dividing line is drawn between 'Them' – (immigrants/refugees) and 'Us' (the Danes).

The problems of integration are ascribed to 'their' differing values which must be altered in order to solve the problems; that is to make 'Them' understand and accept 'Our' values; values that should characterize society. Qua their cultural backgrounds, immigrants are stereotyped as carriers of problems; "a symbolic frontier between the 'normal' and the 'deviant', the 'normal' and the 'pathological', the 'acceptable' and the 'unacceptable', what 'belongs' and what does not" (Hall 1997: 258) is outlined.

Despite the heavy focus on culture and values, it is rarely made explicit what is meant hereby. Instead, the debates revolve around abstract common values such as personal autonomy, egalitarianism and democratic participation, and "even debates that *do* refer to 'the Danish way' hardly scratch the surface of what actually constitutes those 'accumulated habits and expectations' of Danish political culture" (Mouritsen 2006: 85; original italics). This means that the dividing line between 'Them', the immigrants, and 'Us', the Danes/Danish society, remains undefined in the same way as the concept of integration (as process or goal) remains rather undefined. The dividing line is relative in the sense that it can and will be changed (by 'Us'/the majority) as soon as 'They' try to pass it. This is what makes the concept of integration paradoxical (Azar 2001: 69). The constant changes of the legislation on integration illustrate this paradox. A count of the changes of the Aliens and Integration Acts from 2001 till 2010 reveals at 13 significant changes (Ugebrevet A4 2010). In addition, the legislation on obtaining Danish citizenship has been tightened several times during the latest years (ibid).

According to an article in *Ugebrevet A4*, the constant changes of rules and legislation⁶ cause the immigrants to lose sight of the possibility of acceptance and integration in the Danish society. Eva Ersbøll, researcher at the Danish Institute of Human Rights thus describes the changes like a ladder with a new step added every time you reach the top (ibid).

In sum, integration as concept, process and goal stands out rather undefined. Integration understood as assimilation with a strong emphasis on equality in the sense of 'sameness' is however salient; focus is on shared, national values and active participation of immigrants in Danish society. Moreover, self-contradictory tendencies lie within the policies; while on the one hand focusing on equality, on the other hand processes of difference and marginalization is continuously (re)produced. The 'start allowance' can be seen as a structural marginalization while the (re)production of stereotypical understandings of 'Them' (immigrants) as problems and potential dangerous in opposition to 'Us' (ethnic Danes) as a free and democratic people leads to discursive marginalization. The benchmark of successful integration seems to be 'cultural transformation' although the actual content of this transformation remains open. Integration is thus paradoxical; the 'goal' is unknown yet essential in order to be included (e.g. by permanent residence permit or citizenship). Furthermore, it can and will be changed continuously both symbolically and in practice; for example by numerous changes in the immigration and integration policies.

2.3. Case study: employment, participation and equal opportunities for everyone

In this part, we take a look at the action plan 'Employment, participation and equal opportunities for everyone' (*Beskæftigelse, deltagelse og lige muligheder til alle* - Danish Government 2005b), which was launched in 2005 as part of a new agreement on integration; "A new chance for everyone" (*En ny Chance til alle* - Danish Government 2005a). We explore how concepts and categories such as gender, integration, equality, culture, ethnic minority and discrimination are addressed in the action plan and point to key discourses.

The stated purpose of the action plan is to improve the process of integration by ensuring that equal rights regardless of gender and ethnicity are incorporated into four

⁶ For example: 2002: Abolition of the rule concerning *de facto* refugees; permanent residence permit cannot be given before after seven years of legal stay, laws on family reunification is tightened by e.g. the so-called 24-years-rule; 2004: possibility of faster permanent residence permit is given to 'integrated' foreigners; ²⁰⁰⁶: The Integration contract is introduced, rules which make it easier to expel criminal foreigners are made; 2007: Tightening of the conditions to obtain permanent residence permit e.g. by demanding a passed integration exam.

focus areas: sexual roles and prejudices, employment , the educational system and Danish 'life of association' (*foreningslivet*). Within each of these focus areas a number of specific initiatives are formulated. The objectives of the action plan are:

- That women and men of other ethnic background than Danish are not hindered by gender based prejudices or barriers in their free choice and possibility of participation in society.
- That girls and boys regardless of ethnic background complete youth education.
- That women and men have equal opportunities to work; focus is put on gender and ethnicity.
- That women and men, girls and boys have equal opportunity to participate in the Danish 'life of associations' and have an active leisure life regardless of gender and ethnicity.

The action plan states that equal rights for men and women as well as equal status of all people regardless of ethnicity and cultural background are core values of the Danish democracy. It is recognized that efforts within these areas are still required, but at the same time it is stated that one of the big challenges is to include: "the women and men with ethnic minority background who live within patriarchal family patterns. Also here must both women and men have the opportunity to live a free and independent life with equal opportunity to education, employment, and participation in society" (p. 8). '*Also here*' implicitly refers to the understanding that women and men with Danish ethnic background already have a free and independent life, hereby leaving problems of gender inequality and discrimination within the circles of ethnic minorities. The root causes of existing barriers to immigrants' participation in society are thus primarily attributed to ethnic minority families and/or communities, e.g.: "Tradition, culture, family patterns and lack of Danish language skills etc. result in the fact that many immigrants, and especially immigrant women, only to a limited degree have been in contact with the Danish labour market" (p. 25). A dividing line based on stereotypes is thus placed between ethnic minorities living by tradition and patriarchal family structures on the one side and on the other side the ethnic Danes living free lives based on equal opportunities to all.

It is noted in the action plan that ethnic minority men sometimes experience a barrier when seeking jobs, because they are often met with prejudices of being aggressive and criminal. The statement is followed by a reference to a Swedish

research showing that ethnic minority men are apprehended as 'more patriarchal' and *because of that* they have trouble taking orders from female leaders and to do tasks considered to be 'female-tasks' (p. 29). In this case, the discriminatory act is thus reversed leaving the ethnic minority man as the discriminating agent towards women since he can't accept a female leader. A few other times discrimination is mentioned in the action plan as a barrier to integration, e.g. as a hindrance to get a job or internship (p. 9). In most cases, however, the reference is made to discrimination as *personally experienced* without considering to which degree actual discrimination takes place and constitute a barrier to integration. The lacking focus on direct and/or indirect discrimination can be a consequence of the fact that it is very difficult to document. However, when discrimination as a structural barrier to participation in society is hardly mentioned throughout the action plan (apart from the discrimination occurring within the ethnic minority families) it supports and reproduces the understanding of Danish society as an already well-functioning society based on values of equality, democracy and freedom, whereas the problems of discrimination emerge from the different 'cultures' that ethnic minorities bring with them (Andreasen 2007).

When looking at employment as one of the focus areas of the action plan, we see 14 specific initiatives including evaluations, special efforts towards marginalized groups (e.g. unemployed refugee/immigrant mothers), focus on health barriers, gender-mainstreaming, support of entrepreneurs etc. Only one initiative focus on the accommodating labour market by offering a course on diversity management to 10-15 companies who will hire ethnic minority Danes to help them qualify for a job in the Danish labour market (p. 29). The action plan thus seems to be based on the conception that the way to promote participation and create equal opportunities for everyone within the labour market – regardless of gender or ethnic origin – is to adapt everyone to fit the labour market rather than to adapt the labour market to fit diversity.

The discourses on equality as sameness and the understanding of integration as synonymous with assimilation are thus salient in the action plan. These perceptions likewise dominate the initiatives to hinder barriers based on sexual roles and prejudices in general. The seven initiatives in this field include 'opinion adaption' among ethnic minority youth (about legal rights, education, forced marriage, violence), debate on female and male roles targeting ethnic minorities (specifically within families with ethnic minority background), and information campaign towards ethnic minority woman about rights as a woman in Denmark. Again, it is a question of ethnic minorities adapting to Danish society which is implicitly defined as producing equal opportunities to men and

women. It is mentioned in brief that prejudices towards ethnic minority women occur primarily based on their clothes, and it is written that “clothes is a factor that can influence the women’s possibilities of employment” (p. 9). It is not followed, however, by any initiatives on how to include for example women wearing *hijab* into the labour market, or on how to avoid discrimination based on stereotypical perceptions of ethnic minority women. On the contrary, the following pages are concerned with for example how to “break down gender specific prejudices and sexual role patterns within the families” (p. 10). No specific effort is made, in other words, to counteract the exclusion women may experience because they wear the *hijab* since the action plan is based on the assumption that the women are oppressed by – and must break free from – patriarchal family structures (Gressgård & Jacobsen 2003). An oppression which in Danish political and Media discourses is equated with the *hijab* (Andreasen 2007).

In sum, the dominating discourses on gender equality in the action plan (re)produces stereotypical understandings of ethnic minorities as people living by tradition, while Danish society is represented as a society based on values of equality, democracy and freedom. Thus, a line is marked between ‘Us’ and ‘Them’, between the ethnic Danes, who have already achieved gender equality and the ethnic minorities, who have not.

3. Danish legislation against discrimination and racism within a European context

In Denmark there are three levels of legal protection against racism and discrimination: the national level, European level and the international level. These national laws, EU-directives and the UN -conventions involve different parties and institutions.

3.1. Presentation of Danish legislation against discrimination and racism

What is in popular jargon called the *Act against Racism* was the first Danish legal regulation of public expressions of racism or discrimination. The article was introduced into the criminal code in 1939, with the purpose of protecting Jews in Denmark. It was reformulated in 1971 in accordance to UN conventions on questions of anti-racism, expanded in 1987 to include sexual orientation, and tightened in 1995 considering of acts of propaganda. During the 2000s, as a national response to the establishment of both EU-directives and UN conventions, Denmark has passed a number of laws about anti-racism and tolerance. These laws are situated both within the criminal code, in

labour market and in public services legislation (Hansen 2000). The central acts are as follows:

1. *The Act against Racism* (§ 266 b in the Danish criminal code, chapter 27 about defamatory actions), a person publicly or deliberately make a statement or other kinds of utterances, by which a group may be threatened, derided, or disgraced due to his or her race, skin colour, national or ethnic origin, belief or sexual orientation, is to be punished with penalty or prison up till two years. The sentence is increased in acts of propaganda.
2. *The Law against Hate Crimes*. According to the criminal code § 81, no. 6, a sentence increases if the criminal act is targeting ethnic origin, belief, sexual orientation etc..
3. *The Act on Prohibition of Discrimination on the Labour Market*. This law prohibits labour market discrimination on account of race, skin colour, religion or belief, political opinion, sexual orientation, age, handicap or national, social or ethnic origin. The law may be used in cases of discrimination in relation to application to and occupation of vacant jobs, dismissal, transfers, promotions and salary and working conditions.
4. *The Act on Ethnic Equal Treatment* prohibits discrimination on account of race or ethnic origin. The law applies to all public and private organization/enterprise regarding publicly available social security, including social and health services, social goods, education and access to and delivery of goods and services, including accommodation. The prohibition of discrimination also concerns membership of and participation in organizations in various occupations and the benefits such organizations give their members.
5. According to *The Act about probation of discrimination on account of race etc.* a person within business or non-profit activities who denies to serve a person at the same level as others – or give him or her the same access to a public place, performance, exhibition, gathering or the like – due to his or her race, skin colour, national or ethnic origin, belief or sexual orientation, is penalised or imprisoned until 6 months.

After the Cartoon affair in Denmark (in 2005 and 2008) another law (introduced into law in 1866, then § 156) has become relevant in discussions of discrimination on religious grounds:

6. The so-called *Blasphemy Act* (§140 of the criminal code), stating that anyone who publicly mocks the belief or worship of God of any a legally established religion or religious community, is penalised or imprisoned until 4 months.

3.2. Involved parties and institutions

Both *Act against Racism* (no 1) and *The law against hate crimes* (no 2) are acts within the criminal code, and therefore involve filing compliant to the police, which then decide whether the state prosecutor will complete proceedings. Despite the *Blasphemy act* (no 6) is in the criminal code, neither local police nor regional state prosecutors may complete proceedings. Only the central state prosecutor may complete proceedings that concern the Blasphemy act. The *Act on Prohibition of Discrimination on the Labour Market* (no 3), *the Act on Ethnic Equal Treatment* (no 4) and the *Act about probation of discrimination on account of race etc.* (no 5) are civil laws, and involve filing complaints to the Board for Equal Treatment. In Denmark the main governmental institutions involved in securing and trying the national laws are the Board for Equal Treatment and the Institute for Human Rights.

The Board for Equal Treatment is situated under the National Social Appeals Board, which serves as secretariat of the Board of Equal Treatment. The Board deals with complaints related to discrimination based on gender, race, colour, religion or belief, political views, sexual orientation, age, disability or national, social or ethnic origin within the Labour Market, and complaints related to discrimination based on race, ethnic origin or gender outside the Labour Market. It is free of charge to file a complaint to the Board of Equal Treatment. The complaints about discrimination that the Board deals with are covered by the Act on Ethnic Equal Treatment and the Act on Prohibition of Discrimination on the Labour Market.

The Board is composed of three judges who compose the presidency and nine members who have a law degree. The Board members are all appointed by the Minister for Employment, however 3 members are appointed following recommendation by the Ministry for Refugee, Immigration and Integration Affairs, 3 other members following recommendation by the Minister for Gender Equality and 3 members are directly appointed by the Minister for Employment. The decisions made by the Board are final and binding for both parties. In certain situations, the Board may decide on a compensation for the victim of discrimination (e.g. in case of unjustified dismissal). The Board can also set aside a dismissal unless it is considered unreasonable to claim the employment relationship maintained or restored.

The Institute for Human Rights is by law mandated to promote equal treatment and fight racism, and to work as a specialized body of ethnic equal treatment. This mandate is met by making rapports and evaluations, undertaking research, disseminating information, developing tools for securing equality and dealing with individual complaints about discrimination of race or ethnicity. The Institute for Human Rights can provide assistance to victims of discrimination in filing complaints to the police or to the Board of Equal treatment. The Institute for Human Rights has in 2003 with 22 NGO's established a cooperation – *the Committee for Equal Treatment* – that individually and together work for equal treatment and against discrimination on the grounds of gender, age, ethnic background, handicaps, religion and sexual orientation in Denmark. In 2007 the committee adopted a *statement about the including society*, formulating concerns about discrimination, prejudice, and barrier for inclusion in Danish society and the lack of laws and juridical procedures that protect all individuals against discrimination.

3.3. Local policies

While there are national laws and national institutions (the Board for Equal Treatment and the Institute for Human Rights) to secure and try these laws, there are generally no governmental policies ordering anti-discrimination, racism or pro-tolerance policies or activities at the local municipal level. The only exception is a government circular from 1998 with guidelines for local job centres of how to provide anti-discriminatory services (focusing on both indirect and direct discrimination) for ethnic minority citizens.⁷ Otherwise, nation integration laws (from 2007⁸ and to be implemented in 2010) do not formulate any specific aims to meet, or strategies or activities to implement for municipalities.

In some of the bigger Danish municipalities, like Aarhus and Copenhagen, a specific local 'integration policy' is formulated, laying out the municipal administration's broader political issues, aims and strategies. Thus, the Copenhagen municipal integration policy aims, among other things, to 'counteract discrimination', hereby to 'improve equal opportunities' among citizens and lessen crime, which may be an indirect reaction to discrimination, fostering hostility and carelessness towards society and other citizens (Integration policy of Copenhagen Municipality, no. 7, 31-32). In Copenhagen the municipality has extended the activities to prevent discrimination with a quarterly survey among citizens, aiming at monitoring the degree of 'integration' in the city, with measures including citizens' experiences of discrimination, inclusion and

⁷ Cirkular no. 6 of October 29 1998.

⁸ LBK no 1593, of 14/12/2007, Ministry of Refugees, Immigrants and Integration.

safety (Integrationsbarometer). In the municipal integration policy in Aarhus, one of four focus areas (areas of intervention) is 'Citizenship and anti-discrimination' (Municipality of Aarhus 2007:9).⁹

3.4. How does Danish legislation against discrimination and racism relate to European directives?

According to the Eurobarometer on discrimination in EU in 2009, Denmark differs from the average on certain areas. Denmark is among the countries that rank highest in statements of having witnessed discrimination, especially discrimination on ethnic grounds (Directorate-General Employment, Social Affairs and Equal Opportunities 2009: 27, 63). Denmark is also among the countries where discrimination based on religion is most widespread (55 % compared to an average of 39 %) (ibid.: 99). Denmark is below average with regards to thinking that enough effort is being made in Denmark to fight all forms of discrimination (43 % compared to an average of 49 %) (ibid.: 31). Still, Denmark is among the European countries that has adopted significant legislative acts against discrimination, and has a good data collection system on racist crimes (FRA 2009).

Since 2000, the Danish government has passed a number of laws against discrimination and racism as a response to directives of the EU and UN. The European Commission against Racism and Intolerance (ECRI) has been a central actor in monitoring how Danish legislation against discrimination and racism relate to these directives. ECRI published three reports on Denmark in 1999, 2001, and 2006. These reports aroused a lot of debate in Danish society. Whereas the Danish Government has been very critical to ECRI's reports, blaming them for being full of mistakes, Danish human rights actors from the legal profession and NGOs tended to agree with many of its findings.

In its final report (ECRI 2006), which evaluated the progress of incorporating and implementing laws against discrimination and racism in Danish, the committee pointed to some progress, first and foremost that Denmark had ratified some of the European

⁹ The Municipality of Copenhagen has launched two citizens initiatives against a discrimination. First, a 'Discriminationhotline' that provides telephone access to help, guidance and counselling as well as information about rights and ways of filing complaints for victims of discrimination. The discrimination hotline has been created as a co-operation between the Citizen's Councillor and the Department for Employment and Integration at the Municipality of Copenhagen together with several NGO's. Second, a 'Register discrimination' service on the municipal's homepage as a means of overviewing discrimination in Copenhagen. In August 2010 a campaign against hate-crimes 'It's never too late to say I'm sorry' was launched, based on a cooperation between Copenhagen Police, The Municipalities of Copenhagen and Frederiksberg, and the Institute for Human Rights.

Conventions, e.g., an *Act of Ethnic Equal Treatment* and a Complaint Committee, both in 2003. Still, ECRI pointed to the need for further ratification of the European Convention, and the incorporation of international human rights conventions, in particular the *Convention on the Elimination of All Forms of Racial Discrimination* into its national legislation. It called for a more active implementation of acts prohibiting discrimination, especially a more adequate Complaint Committee and a more proactive approach from the Prosecution Service, especially because ECRI found that article 266b of the criminal code was inadequate. Since then, a *Law Against Hate Crimes* has been introduced to Danish society in 2005; the Complaint Committee was replaced by the Board of Equal Treatment in 2009; and anti-discrimination has been adopted within local municipal policies in the cities of Copenhagen and Aarhus (as described in previous section).

In its last report, ECRI furthermore pointed out several continuing problem areas in relation to the potential discriminatory effect of laws of immigration, asylum and integration that tend to put ethnic minorities on an unequal footing. ECRI especially mentions the 'start allowance', the Danish rules on spousal and family reunification, and the lacking rights and access to Danish society of asylum seekers. The Danish government has not eased any of these rules.

In respect to education, ECRI urged the Danish Government to take measures to better integrate ethnic minority children in public schools within a multicultural environment, providing, e.g., mother tongue education. Since 2005 measures have been taken to spread and mix ethnic minority and majority children in public schools, e.g., the 'Copenhagen model' (*Københavnmodellen*). Still, ethnic minority children with non-Western background do not have the same rights to mother tongue education as pupils from EU countries.

In its last report, ECRI furthermore urged the Danish Government to adopt and implement a consistent long-term policy for integrating minority groups in the labour market, e.g. by combating racial discrimination and promoting ethnic diversity at the labour market. According to article 13 of EU's Racial Equality Directive, Denmark was categorised as a specialised body for the promotion of equal treatment *with some limitations in coverage* because trade union members needed to access their trade union, rather than the specialised body, regarding employment cases (EUMC 2006). The Danish government changed this limitation by adding the *Act on Prohibition of Discrimination on the Labour Market* in 2008 (as described in previous section). The

work of the new Board of Equal Treatment includes complaints related to labour market discrimination.

In respect to housing sector and urban planning, ECRI recommended that the Danish Government take measures to ensure more multicultural neighbourhoods to combat segregation. Whereas the Danish government has taken measures to ensure diversity in residential areas since 2004, this has not yet resulted in any significant formation of multicultural neighbourhoods.

Finally, the 2006 report of ECRI pointed to special problem areas such as the general climate of intolerance and discrimination against minorities, in particular Muslim minorities. ECRI particularly blamed the Media and the politicians for this development, pointing to negative the polarizing effects thereof. The role of the Danish Media in creating negative images of ethnic minorities was already pointed out in the 1998-report on the situation regarding racism and xenophobia in the European community (EUMC 1999: 27). The publication of the third ECRI report coincided with the Danish cartoon affair, which initiated a heated public debate on Muslim minorities that is still going on (Jensen, forthcoming). Eleven Muslim organisations in Denmark accused *Jyllandsposten*, the newspaper that published the cartoons, for blasphemy and racial discrimination, but the case was never put on public trial.

Since the work of ECRI, a subsequent report on racist crimes in European countries (FRA 2009) mentions incidents of racist crimes in Denmark. In 2008 there were three cases of racism and discrimination in the employment sector, in relation to discriminatory job advertisements (ibid.: 35). There has also been some incidents of discrimination of Muslim pupils in the education sector, revolving around issues as head scarves and inane suspicions of terror (ibid.: 47). As regards asylum seekers, Denmark has been reported for long waiting periods in detention centres and discriminatory incidents concerning the health of asylum seekers (ibid.: 53). Furthermore, the deportation of two Tunisians and a Dane of Moroccan origin who were declared threats to security by the intelligence service conflicts with Council of Europe's Directive on Common Standards and Procedures in neglecting the right of the individual to challenge the decision to deport him/her (ibid.: 75). Such matters have appeared during the last few years, and may be seen in the context of the cartoon affair and actions against terror.

4. Brief analysis of key discourses from political elites

The Danish political debate over issues relating to immigration, tolerance and the societal role of immigrants, their culture and religion, is both extensive and diverse. The debates often concentrate on the constructive or corrosive cultural norms values of immigrants, and their – as argued by some political agents – economically burdensome role in Danish society. One example of how political elites (e.g. political parties and their MPs) discuss the later topic is that of the Danish People's Party's (DPP¹⁰) call for an integration commission in the summer of 2010. The idea of commissionary analyses of various aspects of the Danish welfare state (e.g. the public school, welfare etc.) has been a frequently used initiative by the Danish government over the last decade. The DPP's argument for an integration commission was, according to party leader Pia Kjærsgaard, that "there has been a reluctance against coupling the working ability of people of immigrant background to the lack of welfare. But I think that we should let the genie out of the box and not be afraid of saying that there is a connection" (quote in Henriksen & Nyhus, 2010).

One interesting aspect of Kjærsgaard's statement is her linking a debate over welfare with that of freedom of speech. She mainly bases her argument for establishing the commission on a lacking willingness and reluctance against debating the topic. This particular formulation and way of arguing persuasively is indeed a key discourse within Danish political debates over (non-Western) migration, integration and multiculturalism. According to some analysts, the debate over freedom of speech is much older than the political and societal awareness that Denmark had become a multicultural and multiethnic society (e.g. Mchangama 2010). However, the idea that freedom of speech is possibly threatened by both immigration, by the naivety of those who defend it, and fundamentally a 'Danish value' that newcomers must learn and abide to is indeed a central of current immigration debates.

We will illustrate the centrality of the theme through two examples: First, the infamous cartoon crisis of 2005 and more recently, the 2010 debates over the suggested abolishment of the Danish racism paragraph and the Swedish electoral campaign.

¹⁰ The DPP (Dansk Folkeparti) is widely known for its anti-immigration and anti-Muslim rhetoric. The party is the most prominent ally of the current liberal-conservative government. However, although the DPP is an easily chosen example of the harsh tone that often characterizes the immigration debate in Denmark, one can find statements similar to those of the DPP across the political spectrum, including both right- and left-wing parties (see e.g. Schmidt, forthcoming).

4.1. Freedom of speech: the cartoons that shook the world

On September 30, 2005, twelve cartoon drawings, all representing the Islamic Prophet Muhammed, were published in the Danish daily *Jyllandsposten*. The newspaper's cultural editor Flemming Rose wrote in a short text accompanying the cartoons that they were based on the concern that a growing number of artists had expressed the fear of saying, writing, or drawing something that could be offensive to Muslims. However, Rose noted that no one living in a secular democracy could expect any kind of exceptionally polite treatment for any reason, including religious orientation. Rather, one should be ready to take "mockery, insult and ridicule.... It is not always pretty to look at...but that is irrelevant in this connection" (*Jyllandsposten* 2005).

The drawings created an international reaction unprecedented in Danish history, boycott of Danish products in several Middle Eastern countries and the burning of Danish flags in Pakistan, Bangladesh, and Indonesia. The fiercest attacks took place in Lebanon and Syria, where the Danish consulate and embassy were burned down to the ground. As Danish political scientist Ulf Hedetoft notes, "What started as a mix of childish pranks and Islamophobic attitudes...developed into a worldwide crisis—setting emotions, identities, and interests in motion that neither the newspaper nor official Denmark would ever have imagined in their wildest nightmares" (Hedetoft 2006c).

The cartoon affair did not develop out of nowhere. More specifically, one can see them as an example of the recurring theme of immigrant values (and just as frequently Islam) as challenging freedom of speech, a value often argued as inherently Danish, as, for example, illustrated by then-prime minister of Denmark, Anders Fogh Rasmussen's (from the Danish Liberal Party) New Year address in early 2004:

Immigrants have to make an effort themselves. They must understand the values that the Danish society is built upon. For generations we have taken these values for granted – among others because we have developed them over generations. But these values are contested within recent year [In Denmark] we have freedom of speech. Even the freedom to speak nonsens. And there is freedom to difference...But the Danish society is built on some fundamental values that one must accept to live here.... For many years we have been stupidly generous [tossegode]. We have not dared to say that some [values] are better than others. But we have to say so now. ¹¹

One interesting aspect of both Flemming Rose's and Anders Fogh Rasmussen's statements are that they, first, describe freedom of speech as an educative project (people living in Denmark, not least newcomers, must learn that this is a core Danish value) and, second, that they describe this core value as being under threat by the very people that they seek to educate. As noted by Tariq Modood in his analysis of the

¹¹ <http://www.statsministeriet.dk/Index/dokumenter.asp?o=2&n=0&t=14&d=1327&s=1>

Cartoon Crisis, there is a tension between the (proposed) right to ridicule and the furthering of integration of Muslims in Denmark (Modood 2006: 6).

A final, noteworthy aspect of the discourse is that while Fogh Rasmussen's and Rose's statements include a critique of outsiders, so is there a parallel strain of internal critique, exemplified by Fogh Rasmussen's and Kjærsgaard's blaming a 'we' (i.e. Danes) for being – in the words of Fogh Rasmussen 'stupidly generous' and in the words of Kjærsgaard 'reluctant' of realizing such threats – whether directed against the Danish welfare state or, often simultaneously, against freedom of speech and 'Danish values'.

The cartoon crisis of 2005-2006 marked a zenith of these debates. However, the crisis did not silence them. In 2010 (the year in which this brief description was written) the freedom of speech card was pulled on several occasions in the immigration/integration debate. One occasion was, as described, the DPP's Media borne campaign for an integration commission. Another was the DPP's campaign of removing § 266b in the Danish criminal code, a suggestion that was supported by some members of parties in government (the Conservatives and the Danish Liberal Party). One argument for removing the paragraph, stated my MP for the Conservatives, Naser Khader was that rather than looking at what people said, they should be judged according to what they did (*Politiken* 2010).

In late August 2010, the same three political parties argued for sending international election observers to Sweden to observe and report on the national election taking place in the country during that period. The background for issuing the suggestion was some Swedish Media channels refusing of airing an Islamophobic election video by the rightwing populist party *Sverigesdemokraterna*. The three Danish parties argued the refusal to be an example of censorship, and further, that democracy in Sweden had to be protected (Beder & Arnfred, 2010). Again, political actors tied discussions over immigration closely to the moment of freedom of speech.

The role that the concept of freedom of speech plays within Danish debates over immigration, integration and multiculturalism both on a national arena and in some cases internationally is worth a more profound analysis than is the case here. However, in conclusion, the concept is an important brick for our understanding of diverse elements of these debates, and how these elements are argued normatively relevant by a broad range of key actors partaking in these debates.

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