QUO VADIS, DANISH ECCLESIASTICAL LAW? SOME REFLECTIONS ON RECENT DEVELOPMENTS: THE *IMAMPAKKE* AND THE ACT ON RELIGIOUS COMMUNITIES OTHER THAN THE *FOLKEKIRKE*

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Resumen: El Derecho eclesiástico en Dinamarca se caracteriza por una ausencia de separación entre la Iglesia Nacional Danesa *(Folkekirke)* y el Estado, en un contexto de libertad religiosa constitucionalmente garantizada. Se examina el marco constitucional relativo a la *Folkekirke,* la religión y el Derecho. El presente artículo apoya una mayor autonomía para la Iglesia, de acuerdo a lo establecido en la Constitución danesa. Además, se adentra en la legislación reciente sobre otras confesiones religiosas. La política legislativa en este campo en las dos últimas décadas ha mezclado a menudo cuestiones como la religión, la política inmigratoria y la noción de «danesidad», la identidad danesa que ha estado en buena medida monopolizada por una visión neo-nacionalista. Este artículo analiza de modo crítico el llamado *Imampakke,* un acuerdo político que implica medidas legislativas dirigidas a sacerdotes, pastores o imanes y confesiones religiosas distintas de la *Folkekirke*, con un particular foco en el Islam. Se analizan algunas leyes consecuencia de dicho pacto, haciendo hincapié en la amplia inseguridad jurídica que conlleva como algo especialmente problemático. Igualmente, se pone en cuestión su oportunidad, su necesidad, su encaje con los derechos humanos y la estrategia del Partido Popular Danés. La reciente ley sobre confesiones religiosas distintas de la *Folkekirke* también es analizada. El artículo propone una perspectiva jurídica diferente en relación a las distintas confesiones religiosas. Proteger y fortalecer los derechos humanos, la igualdad de género y los derechos LGBTI, así como abordar situaciones de coerción social, no es contradictorio con una aproximación inclusiva en la legislación en materia religiosa en sí misma y en su relación con la política legislativa sobre inmigración. Se sugiere una reformulación de la noción de «danesidad», una mayor igualdad

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jurídica entre las distintas confesiones y la *Folkekirke* y, en particular, un fortalecimiento de la seguridad jurídica en la legislación en materia religiosa.

Palabras clave: Dinamarca, religión, *Folkekirke, Imampakke,* Islam, derechos humanos, seguridad jurídica.

Abstract: Ecclesiastical law in Denmark is characterised by a lack of separation between the Danish National Church *(Folkekirke)* and the State, in a context of constitutionally guaranteed freedom of religion. The constitutional framework for law, religion and the *Folkekirke* is examined. The article argues in favour of a more autonomous Church, in accordance with the Danish Constitution. Furthermore, it delves into recent legislation concerning other religious communities. Legal policy in the field in the last couple of decades have often intertwined issues such as religion, immigration or the notion of «Danishness» neo-nationalism has monopolised to a great extent. The article critically discusses the *Imampakke* and some of the legislation passed as a consequence. The *Imampakke* is a political agreement involving legal measures targeting preachers and religious communities and, in particular, with the Islam in mind. It is criticised as problematic, in particular, the broad legal uncertainty that surrounds the agreement and the legislation derived from it. Other matters are also questioned, such as its opportunity, necessity, alignment with human rights and the political strategy of the Danish People's Party. The recent act on religious communities other than the *Folkekirke* is also discussed. This article proposes a different legal approach. Ensuring the protection of human rights, gender equality and LGBTI rights and tackling contexts of social coercion is not in contradiction with an inclusive legislation on religion alone and in connection with the legal policy on immigration. It is suggested a redefinition of the notion of «Danishness», further legal equality among religious communities and the *Folkekirke* and, in particular, a reinforcement of legal certainly in legislation concerning religion.

Keywords: Denmark, religion, *Folkekirke, Imampakke,* Islam, human rights, legal certainty.

1. STRUCTURE OF THE ARTICLE

First, the article introduces the main features of Danish ecclesiastical law. Section 2 examines the constitutional framework on religion in Denmark and, in particular, the Evangelical-Lutheran Church of Denmark *(Folkekirke).* Section 3 discusses the socio-political environment regarding other religious communities, Islam in particular. Once the Danish socio-political context is briefly discussed, section 4 delves into the *Imampakke,* a political agreement reached by the Government and three political parties back in 2016. This agreement resulted in various legal measures focusing on religious communities other than the *Folkekirke*. Some of these legal measures are critically analysed. Section 5 examines Act n. 1533 of 2017 on other religious communities, consequence of §69 of the Danish Constitution. Finally, section 6 concludes with further reflections on the *Folkekirke,* the Danish legal policy towards religious minorities in the last couple of decades, considerations on human rights and some final remarks.

2. CONSTITUTIONAL FRAMEWORK FOR RELIGION AND THE *FOLKEKIRKE*

Current Danish ecclesiastical law is a consequence of the Reformation of the sixteenth century and of the Constitution of 1849 (the *Grundlov*). As a result of the Reformation, the Church became subdued to the State. The *Grundlov* established that the National Church of Denmark or Danish People's Church (in Danish, the *Folkekirke*) is an Evangelical-Lutheran State-supported Church referred to as the «Established Church of Denmark»[2]. It is regarded as one of the pillars of the Danish society[3]. The five provisions of Section VII of the Constitution are devoted to the *Folkekirke* and religion in Denmark. Its §66 states that «the constitution of the Established Church shall be laid down by statute». This provision mandates the passage of a comprehensive law by the *Folketing*. The intention behind it was to give the Church more autonomy from the State. This would involve a departure from the framework in force during absolutism. However, in more than one and a half centuries and in spite of some

[2] §4 of the *Grundlov*. On the discussion about what terminology is the best to use for the *Folkekirke,* see CHRISTOFFERSEN, Lisbet, «State, Church and Religion in Denmark. At the Beginning of the 21st Century», in *Law & Religion in the 21st Century - Nordic Perspectives,* eds. Lisbet Christoffersen, Kjell Å Modéer, and Svend Andersen, 1st ed, DJØF Publishing, Copenhagen, 2010, pp. 145-147. In this article, the terms *Folkekirke,* Danish National Church or simply the Church will be used indistinctly.

[3] Together with the territory, the monarchy and the division of powers, see *ibid*. p. 147.

attempts[4], §66 of the *Grundlov* is still to be implemented. The consequence is that the *Folkekirke* has not achieved a degree of autonomy the *Grundlov* foresaw in 1849. Thus, it remains not only part of the State but also without a synod or a body to speak on its behalf.

In parallel, §67 of the Constitution grants freedom of religion, «provided that nothing contrary to good morals or public order shall be taught or done». This provision was a breakthrough for the time it was enacted, but has remained unchanged since then. It may have fallen short of the current human rights standards. This is pointed out by the United Nations (UN) Special Rapporteur, Heiner Bielefeldt, in his Report on freedom of religion and belief in Denmark of 2016[5]. The Special Rapporteur underlines that, in order to comply with international legal provisions such as art. 18 of the International Covenant on Civil and Political Rights or art. 9 of the European Convention of Human Rights (ECHR), the limits to freedom of religion, §67 of the *Grundlov* describes, should be interpreted restrictively.

Regarding other religious communities or denominations, §69 of the *Grundlov* establishes that they must be regulated by statute. Unlike the *Folkekirke,* which still lacks the comprehensive constitution or statute the *Grundlov* mandates, legislation on other religious communities was passed by the Danish Parliament in 2017[6], 168 years after the enactment of the Constitution.

Concerning financial matters, §68 lays down that nobody is obliged to «make personal contributions» to a religious community if the person is not a member of such denomination. The word «personal» must be highlighted and read in conjunction with §4 which imposes an obligation on the Danish State to support the *Folkekirke*. The consequence is that the *Folkekirke* obtains resources via taxation in two ways. On the one hand, members of the *Folkekirke* pay a percentage of their tax contributions based on a rate that varies among municipalities (from 0.41% in Gentofte *kommune* to 1.30% in Læsø *kommune*)[7]. Some 74.3% of the Danish population were members of the Danish National Church in January 2020 and membership has been slowly declining (it was 89.3% in 1990)[8]. On the other hand, there is an

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[4] VALDEMAR VINDING, Niels, and CHRISTOFFERSEN, Lisbet, *Danish Regulation of Religion, State of Affairs and Qualitative Reflections,* 1st ed, Centre for European Islamic Thought, Faculty of Theology, University of Copenhagen, Copenhagen, 2012, pp. 10-11.

[5] Report of the Special Rapporteur on freedom of religion and belief on his mission to Denmark of 28th December 2016, A/HRC/34/50/Add.1, paras. 5, 35 and 74.

[6] Act n. 1533 of 19th December 2017, on religious communities other than the *Folkekirke*.

[7] 'https://www.km.dk/folkekirken/oekonomi/kirkeskat/kirkeskatteprocenter' (retrieved, 27-12-2021).

[8] 'https://www.km.dk/folkekirken/kirkestatistik/folkekirkens-medlemstal' (retrieved: 27-12-2021). See also LODBERG, Peter, «Folkekirken i tal»,, *Religion i Danmark 2009,* University

annual budget line for the *Folkekirke* coming from the general tax collection. It is here where the expression «personal contributions» becomes relevant, as this budget line is not considered part of the «personal contributions». Hence, all taxpayers, members or not of the *Folkekirke,* contribute to its support via taxation. This budget line amounts to some 10% of the annual budget of the Danish National Church[9]. There is nothing like a personal contribution via taxation to other religious communities, although the recognised ones are eligible to some tax deductions.

The constitutional picture on religion is completed with §70, referring to civic and political rights and duties and stating that nobody shall be discriminated based on «creed or descent». The freedom of religion granted by the *Grundlov* covers both private and public practice and applies to everyone within Danish boundaries. There is one exception, the King (currently Queen Margrethe II), who must be a member of the Evangelical-Lutheran Church, pursuant to §6 of the Constitution.

In summary, the system resulting from the *Grundlov* is not a separation between the Church and the State. On the contrary, the *Folkekirke* is part of the State. This is combined with a constitutionally guaranteed freedom of religion. Everyone is free to practice the religion she wishes or none at all. In fact, Danish society is rather secularised and administration and legislation remain secular in the sense that the content of the law is not formally influenced by any religious denomination.

However, this framework involves a privileged position of the *Folkekirke* compared to the rest of religious communities. This privileged position exists at the expense of a limited autonomy, as §66 has never been implemented. There is neither a synod nor an archbishop. There is no relation of hierarchy among the ten bishops (eleven taking into account the one in Greenland, as the Faroese *Folkekirke* is independent from the Danish *Folkekirke* since 2007). It is the Danish Government, via its Ministry of Ecclesiastical Affairs (*Kirkeministeriet*), the one responsible for administratively managing the Church, whilst the Parliament is in charge of legislative matters. It is understood that neither the Government nor the Parliament interferes in the theological affairs of the Church, although boundaries may not always be so clear. Priests and other employees of the *Folkekirke* are regarded as public employees of the State and anyone can

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of Århus, Århus, 2009, p. 12. In accordance with the figures gathered by Lodberg, in 2009, 90% of the deceased persons belonged to the *Folkekirke,* whilst those baptised fell down to 73%.

[9] On the economy of the *Folkekirke,* see 'https://www.km.dk/folkekirken/oekonomi' (retrieved: 27-12-2021).

openly consult the vacancies for priests on the website of *Kirkeministeriet*[10]. The unequal position of the Danish National Church as a State Church vis-à-vis other religious communities goes beyond these matters. Thus, the *Folkekirke* is in charge of the registration of births, regardless of whether the parents are members of the *Folkekirke* or not[11]. That means, among other things, that the Danish National Church manages personal data of non-member citizens. Furthermore, the *Folkekirke* manages most cemeteries at a local level. Although everyone can be buried there, non-members have to pay a higher amount for that[12]. Other religious communities can build a cemetery, prior authorisation by the Ministry of Ecclesiastical Affairs. The State does not support it financially, although the religious community may get tax deductions for that[13]. Currently, there is a Muslim cemetery created in the municipality of Brøndby.

As an Evangelical-Lutheran Church, marriage is not a sacrament for the *Folkekirke*. Since the Reformation, family law has been in the hands of the State. Divorce was possible, albeit on limited grounds. The marriage law reforms of the 1920s, passed in a climate of cooperation with other Nordic countries, eased the access to divorce and strengthened equality between men and women[14]. The *Folkekirke* kept a low profile during the elaboration of the new legislation[15]. It accepted these reforms which, in any case, were not aimed at challenging the Church. A religious ceremony remained possible and gender equality was not in contradiction with the Church. The main aim of the reforms was to become a step more in the construction of the welfare state[16]. Moreover, regarding the position of the *Folkekirke,* it must be noted the influence of the theologian and philosopher Grundtvig and the notion of *frisind,* which may be translated as tolerance, advocating an inclusive Church.

The current marriage system corresponds to the so-called facultative system of Anglo-Saxon type. The couple may choose between a religious and a civil ceremony, but the law that applies to marriage is Danish family law passed

[10] 'https://www.km.dk/folkekirken/ledige-stillinger/ledige-praestestillinger' (Retrieved, 27-12-2021).

[11] Act n. 225 of 31st May 1968, on registration of births and deaths.

[12] CHRISTOFFERSEN, Lisbet, «Religion and State. Recognition of Islam and Related Legislation», in *Islam in Denmark: The Challenge of Diversity,* ed. Jørgen S. Nielsen, 1st ed, Lexington Books, Lanham, 2012, p. 63.

[13] 'https://www.km.dk/andre-trossamfund/begravelsespladser/' (Retrieved, 27-12-2021)

[14] Act n. 276 of 30th June 1922 on marriage formation and dissolution.

[15] ANDERSEN, Mie and ROSENBECK, Bente, «Ligestilling, ægteskab og religion», *Kvinder, Køn og Forskning,* no. 4 (2006): p. 225.

[16] KRONBORG, Annette, and LETH SVENDSEN, Idamarie, «Divorce - how Danish Law became liberal, and what to do now?», *Interpreting Divorce Laws in Islam,* eds. Rubya Mehdi, Werner Menski, and Jørgen Neilsen, 1st ed, DJØF Publishing, Copenhagen, 2012, p. 307.

by the *Folketing*. Officially recognised religious communities other than the *Folkekirke* may also officiate marriage ceremonies with civil law effects.

The privileged position of the *Folkekirke* is such because of the position of the State itself. One could talk about a symbiosis Church-State in which the latter controls and supervises the former. As mentioned, there is a lack of an internal body (e.g., a synod) to speak on behalf of the Church, consequence of its limited autonomy.

This legal framework with no separation between the State and the Danish National Church differs from the paths recently taken in the neighbour countries Sweden and Norway. The Church of Sweden became separate from the State in 2000. The aim was to achieve a neutral State in relation to the different religious communities. Nonetheless, in spite of this formal separation, the Church of Sweden still keeps a strong link with the State, e.g., the State collects membership taxes for the Church free of any fees[17]. It remains the majority Church in the country. Other religious communities may also receive financial support from the State by fulfilling certain conditions[18].

In the case of the Church of Norway, the Evangelical-Lutheran Church ceased to be the official religion of the State in 2012[19]. It remains the Established Church of Norway and as such shall be supported by the State, but other religious communities should also be supported «on equal terms»[20]. In any case, the Church of Norway gained autonomy from the State (e.g., priests are no longer public employees since 2017). An act comprises the regulation of both the Church of Norway and other religious communities[21].

In this comparative context, the Danish National Church remains a rara avis, being both a State Church and a Church with very limited autonomy from the Government and the Parliament. The UN Report above mentioned uses the expression «freedom but not equality» *(frihed men ikke lighed)* to describe the particular position of the *Folkekirke*[22]. One could add that such freedom is limited regarding the *Folkekirke* as it is both privileged and subordinated to the State. The Danish path suggests a reaffirmation of the current legal framework, not in line with the latest developments in Norway and Sweden. How is it com-

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[17] Pettersson, Per, «State and Religion in Sweden: Ambiguity Between Disestablishment and Religious Control», *Nordic Journal of Religion and Society,* 24, no. 2 (2011), pp. 123 ff.

[18] Act on support to faith communities (SFS 1999:932) and the regulation on State subsidies to faith communities (SFS 1999:974).

[19] As was stated in the former §2 of the Constitution of Norway.

[20] §16 of the Constitution of Norway.

[21] Act 2020-4-24-31 on religious communities.

[22] Report of the UN Special Rapporteur on freedom of religion and belief on his mission to Denmark of 28th December 2016, A/HRC/34/50/Add.1, para. 9.

patible with a rather secularised society as the Danish one in which both membership and attendance are in steady decline? It can be claimed that the *Folkekirke* is regarded as part of the Danish culture and identity. Its significance goes beyond religion. At the same time, from a somehow opposed point of view, it has been argued that the current status involves a control of the State over religion which reinforces secularisation[23].

State churches are perfectly compatible with international human rights legal instruments, provided that they do not «result in any impairment of the enjoyment of any human rights and fundamental freedoms, or in any discrimination against adherents to other religions or non-believers»[24]. However, apart from being a State Church, the *Folkekirke* also lacks the degree of autonomy that would mean having an internal body to speak on its behalf. In this regard, it must be pointed out the Parliament and the Government's failure to implement §66 of the *Grundlov* and its mandate to pass a statute which regulated the constitution of the *Folkekirke,* after no less than 172 years. This situation amounts to a case of «unconstitutionality by omission». Instead of enacting a law that contradicts the *Grundlov,* the legislature simply fails to comply with a constitutional mandate. A Report on the management of the *Folkekirke* from 2014, concerning §66, states: «Today this provision has hardly any other legal content than a requirement that the governance of the Church must be regulated by law»[25]. This interpretation hardly matches the wording of the constitutional provision and the aim of developing a more autonomous *Folkekirke*. §66 refers to a constitution *(forfatning)* for the *Folkekirke,* not simply that matters concerning the *Folkekirke* are regulated by law. This wording contrasts with §69 regarding other religious communities which simply mentions that they shall be regulated by statute. However, constitutional review of laws in Denmark is uncommon and, in practice, it is not possible to make this constitutional mandate effective unless the Parliament complies with it. The result is that the current *Folkekirke*'s legal framework is what resulted after the passage of the *Grundlov* but not exactly what the *Grundlov* aimed for.

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[23] *Ibid.* paras. 13, 17.

[24] OSCE/ODIHR Guidelines on the Legal Personality of Religious or Belief Communities, 2015, para. 41 'https://www.osce.org/odihr/139046' (Retrieved 27-12-2022) and UN Human Rights Committee (HRC), *CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion),* 30 July 1993, CCPR/C/21/Rev.1/Add.4, para. 9 'https://www.refworld.org/docid/453883fb22.html' (Retrieved, 27-12-2022).

[25] Report 1544 of April 2014 on the management of the *Folkekirke,* by the Commission on a more coherent and modern governance for the *Folkekirke* – Ministry of Ecclesiastical Affairs, p. 216.

The Danish constitutional framework for the *Folkekirke* and other religious communities deserves further comments. The UN Special Rapporteur, as mentioned, suggests a broad interpretation of §67 of the *Grundlov* in order to comply with the ECHR and other international legal instruments. In the reply to the UN Report by the Danish Government, this points out that, «respectfully», the interpretation of the *Grundlov* is a matter of Danish law[26]. This response is, however, questionable, at least in two ways. First, the ECHR is Danish law[27]. Differentiating between an interpretation of the *Grundlov* in accordance with Danish law or with the ECHR makes little sense in this regard. Second, the Danish Constitution does not establish any mechanism for its interpretation. There is no constitutional court in Denmark and there has traditionally existed scepticism to constitutional review of laws by the courts[28]. The Supreme Court has been acknowledged the possibility to carry out constitutional review. However, only once it considered part of an act contrary to the *Grundlov* in a given case[29]. It is considered that the Parliament itself assesses the constitutionality of its own laws, even if this may not be very realistic. In any case, the judicial power has kept a very cautious and low profile regarding constitutional review. Both the ECHR and the case law of the European Court of Strasbourg apply to Denmark and, in practice, constitutional review is more likely to happen in such context.

3. RELIGIOUS COMMUNITIES IN DENMARK OTHER THAN THE *FOLKEKIRKE* AND THE SOCIO-POLITICAL ENVIRONMENT

The number of religious communities and entities different from the *Folkekirke* have not ceased to grow in the last decades. Religious communities in Denmark may be classified into three types: first, the *Folkekirke* with its special status; second, the recognised religious entities; third, the officially non-recognised religious entities. The constitutional freedom of religion is not limited to the members of the *Folkekirke* or the recognised religious communities. It is extended to anyone, including atheists, agnostics and those who do not belong to any religious community (as mentioned, with the exception of the Queen).

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[26] Report of the UN Special Rapporteur on freedom of religion or belief on his visit to Denmark: comments by the State of 14th February 2017, A/HRC/34/50/Add.2.

[27] It was ratified by Denmark on the 3rd September 1953 and incorporated into Danish law by Act n. 285 of 29th April 1992 on the European Convention of Human Rights.

[28] Róɢvi, Kári á, *West-Nordic Constitutional Judicial Review,* DJØF Publishing, Copenhagen, 2013, pp. 187-188.

[29] The *Tvind* case, U.1999.841H.

In terms of figures, according to the data compiled by the Centre for Contemporary Religion of the University of Århus[30], 74.3% of the population are members of the *Folkekirke* as of January 2020. Among other Christian communities, the Catholic Church is the biggest one with some 45.000 members. It is estimated that there are approx. 300.000 Muslims, being the Danish-Turkish Islamic Foundation the biggest recognised Muslim entity. Beyond Christians and Muslims, there are some 25.000 Hindus, about 2000 Sikhs and some 5.000/6.000 Jewish.

To a relevant extent, the increase of other religious communities different from the *Folkekirke* in the last couple of decades has been due to immigration. Political and media attention to religion has also escalated in parallel, with the consequent impact on legislation. The media-political-social debate has mainly focused on Islam in Denmark and has intertwined and mixed issues on religion, immigration, ethnicity, cultural clashes, national identity and the notion of «Danishness». This context can be defined as tense and had a peak with the publication of the Muhammad cartoons by *Jyllands-Posten* in 2005. Muslims and Islam have often been portrayed negatively, with some far-right wing parties like the Danish People's Party (*Dansk Folkeparti*) strongly focusing its political agenda on Muslims and immigration[31]. Negative attitudes towards Muslims and Islam have often been the result of the view that Islam is in contradiction with Danish values and Danish culture.

When it comes to religious expressions, it has generally been said that Danes and Scandinavians in general keep religion as a private and individual matter with low public profile and little relevance in political discussions[32]. Back in 1849, during the constitutional debates on freedom of religion, concerns were raised that such a freedom could lead to Catholic processions on the streets and Jewish judges appointed to the Supreme Court, but the tolerant and liberal perspective of the theologian Grundtvig prevailed[33]. In parallel with immigration, the influx of some religions different from the Evangelical-Lutheran, Islam in particular, has often been seen as a challenge (or as a threat) to this

[30] REINTOFT CHRISTENSEN, Henrik, and VEJRUP NIELSEN, Marie, «Velkommen til Religion i Danmark 2020», *Religion i Danmark 2020,* University of Århus, Århus, 2021, pp. 2-4.

[31] ANDERSON, Joel and ANTALÍKOVÁ, Radka, «Framing (implicit) matters: The role of religion in attitudes toward immigrants and Muslims in Denmark», *Scandinavian Journal of Psychology,* 55 (2014), p. 593.

[32] *Ibid.* p. 598; PETTERSSON, Per, «State and Religion in Sweden: Ambiguity Between Disestablishment and Religious Control», *Nordic Journal of Religion and Society,* 24, n.º 2 (2011), pp. 120, 129-130.

[33] CHRISTOFFERSEN, Lisbet, «Religion and State. Recognition of Islam and Related Legislation», in *Islam in Denmark: The Challenge of Diversity,* ed. Jørgen S. Nielsen, 1st ed, Lexington Books, Lanham, 2012, p. 58.

approach of keeping religion in a private sphere. However, one may argue, the assumption that religion in Denmark has traditionally been kept within the private sphere is not quite right in terms of law, policy and society. The *Folkekirke* is part of the State, with a Ministry for the Church as part of the Government and *Folkekirke*'s priests are public employees. Some 66% of Danish youngsters are confirmed in the Danish National Church, usually with a party or social events with classmates afterwards[34]. Although declining, marriage ceremonies are celebrated in the Danish National Church[35]. The question of a religious ceremony in the *Folkekirke* was relevant in the socio-political debates on the introduction of same-gender marriage. It even resulted in a lawsuit against the constitutionality of the new marriage law before the Supreme Court, which upheld the constitutionality of the religious marriage ceremony for same-gender couples in the *Folkekirke*[36]. Furthermore, there is a subject on Christianity (comprising other faiths to some extent) as part of the curriculum of Danish schools[37]. Various public holidays in Denmark correspond to Christian festivities. Therefore, in this sense, it is difficult to sustain that religion can just be seen as a private and individual matter with little presence in the public/political sphere. This also applies to other Scandinavian countries. The neighbour country, Norway, in article 2 of its Constitution, literally states that «our values will remain our Christian and humanist heritage». Therefore, the question is not whether religion is mainly kept privately or expressed in public. In any event, freedom of religion, as guaranteed by the *Grundlov,* comprises both its private and public practice for everyone[38]. This naturally includes practicing no religion at all and expressing atheistic views in public. Thus, the abovementioned clash can be better explained by the different ways in which the various religious communities and individuals exercise the constitutionally guaranteed public practice of religion, together with an increasingly restrictive policy on immigration.

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[34] 'https://www.folkekirken.dk/om-folkekirken/folkekirken-i-tal/konfirmation and https://www.folkekirken.dk/livets-begivenheder/konfirmation/fest-og-familie'(Retrieved, 27-12-2021).

[35] In 2020, there were 7670 weddings in the *Folkekirke,* which correspond to some 27% of the total, 'https://www.folkekirken.dk/om-folkekirken/folkekirken-i-tal' (Retrieved, 27-12-2021).

[36] U.2017.1795H.

[37] 'https://emu.dk/grundskole/kristendomskundskab?b=t5' (Retrieved, 27-12-2021).

[38] Christoffersen, Lisbet, «Religion and State. Recognition of Islam and Related Legislation», in *Islam in Denmark: The Challenge of Diversity,* ed. Jørgen S. Nielsen, 1st ed, Lexington Books, Lanham, 2012, p. 59. Furthermore, International legal instruments guarantee freedom of religion or belief both «individually or in community with others and in public or private», see UN Human Rights Committee (HRC), *CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion),* 30 July 1993, CCPR/C/21/Rev.1/Add.4, para. 4 'https://www.refworld.org/docid/453883fb22.html' (Retrieved, 27-12-2022).

Negative attitudes towards, in particular, Islam in Denmark, have been involved into a discussion on the concept of «Danishness» and have been very present in media and political debates. In an interesting study, Lindhardt supports that the defining characteristics of the notion of «Danishness» have been framed in recent decades by the Danish right-wing neo-nationalism as opposed to Islam and Muslims in Denmark[39]. Neo-nationalism has been described as «the revival of nationalism in the face of globalisation and, as is generally the case with most forms of nationalism, often has an important ethnic element»[40]. The content of «Danishness» seems to have developed based on a distinction between «we» and «they» in which «they» are regarded as a threat to Danish culture and values[41]. Lindhardt analyses four topics[42]. The first one, in the wake of the cartoon controversy, is freedom of speech. The second one is the controversy about serving pork in schools, the so-called «meatball gate». The third topic is mixed-gender swimming as opposed to women-only swimming lessons. Finally, the author mentions the handshake in citizenship ceremonies.

I will briefly comment two of these topics: the «meatball-gate» and the handshake. The first controversy, Lindhardt reports, had the consequence that Randers municipality introduced a norm to ensure that «Danish food culture» should be respected in day-care local institutions and had to include pork[43]. This suggests that the criterion of «Danish food culture» prevails over other criteria. Danish food culture is diverse with typical dishes made with fish, vegetables or meat other than pork. Highlighting pork meat as a defining element of «Danishness» is an added factor to distinguish it from Muslim culture and an element of confrontation. However, it also excludes other groups who do not eat pork like the Jewish or simply vegetarian citizens or people with views opposed to meat production. One may wonder if they are «less Danish» because of not eating pork. Concerning the handshake, some Muslims do not shake hands with persons of the opposite-gender outside their familial circle. In order to oppose this practice, an executive order was enacted in 2018,[44] which made

[39] LINDHARDT, Martin, «In Denmark we eat pork and shake hands! Islam and the anti-islamic emblems of cultural difference in Danish neo-nationalism», *European Journal of Cultural Studies* (2021), pp. 1-2.

[40] SEDGWICK, Mark, «Something varied in the State of Denmark: Neo-nationalism, anti-Islamic activism and street-level thuggery», *Politics, Religion & Ideology,* 14, no. 2 (2013), p. 211.

[41] LINDHARDT, Martin, «In Denmark we eat pork and shake hands! Islam and the anti-islamic emblems of cultural difference in Danish neo-nationalism», *European Journal of Cultural Studies* (2021), p. 5.

[42] *Ibid.* p. 7 and ff.

[43] *Ibid.* p. 10.

[44] Executive Order n. 1767 of 27th February 2018 on municipal councils' holding of constitutional ceremonies.

compulsory for anyone wishing to acquire Danish nationality to shake hands during the public ceremony. §8 of this executive order expressly mentions that the handshake must take place «without gloves, palm against palm». The process for getting Danish citizenship is restrictive, long and complex, as many requirements must be fulfilled in terms of residence, language and other conditions. The handshake appears as an added unnecessary stone at the end of a long journey. The city council representative must sign a declaration stating that such handshake actually happened[45]. This requirement was highly contested by many city councils and mayors, also some run by politicians belonging to the party in government at the time, the right-wing Liberal Party *(Venstre)*[46]. And suddenly Covid-19 emerged. The first reaction of the current social-democratic government was to stick to the requirement and to postpone the ceremonies. Thus, the idea of handshake as a fundamental and unavoidable element to become a Danish citizen has been further reinforced, even in such a serious context as a worldwide pandemic. Only as the pandemic endured, the requirement was temporarily lifted but not abolished[47].

One may say that neo-nationalism, in particular, the far-right *Dansk Folkeparti,* managed to have a monopoly on framing the content of «Danishness» [48]. It comprises what is meant to be understood as defining elements of Danish values, culture and identity. *Dansk Folkeparti*'s agenda is not only focused on Islam, it is also anti-immigration and anti-European Union. Due to the electoral system in Denmark, it was decisive in supporting right-wing governments since the beginning of the century. Whilst different citizens may have different views of what «Danishness» entails, last decade developments in politics, some media and the law, seem to have gone in the direction of «one size fits all», one-sided definition of «Danishness». This of course does not only affect persons belonging to a specific faith. It also affects Danes who do not necessarily endorse or feel comfortable with a corseted understanding of Danish identity and culture framed in those terms.

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[45] *Ibid.* §9.

[46] 'https://www.dr.dk/nyheder/politik/venstre-borgmestre-gaar-imod-stoejberg-klar-til-ignore-re-krav-om-haandtryk' (Retrieved, 27-12-2021), 'https://www.berlingske.dk/politik/socialdemokratisk-borgmester-gar-i-rette-med-eget-parti-er-det-naeste-at' (Retrieved, 27-12-2021). This requirement was also contested in some Danish media, 'https://www.information.dk/indland/2019/12/lov-haandtryk-bygges' (Retrieved, 27-12-2021). A survey showed that a majority of Danes were against the handshake requirement, 52% versus 36%, 'https://www.altinget.dk/artikel/flertal-af-danskerne-afviser-at-lovgive-om-haandtryk' (Retrieved, 27-12-2021).

[47] Act n. 966 of 26th June 2020.

[48] 'https://www.information.dk/indland/2019/12/lov-haandtryk-bygges' (Retrieved, 27-12-2021).

As mentioned, media, social and political debates around religion in general and Islam in particular have been mixed with issues on ethnicity, immigration or refugees. Furthermore, the agenda of *Dansk Folkeparti* have also influenced other parties like the conservatives *(Konservative Folkeparti),* the liberals *(Venstre)* and the social democrats *(Socialdemokratiet).* The radicalisation of Danish legal policy on immigration and asylum seekers in the last decades is well known inside and outside Denmark. The current social-democratic government has continued with this tightening tendency, adopting policies of previous right-wing governments as their own. An overview of Danish immigration law exceeds the scope of this article. The latest developments in Danish ecclesiastical law respond to this combination of matters.

4. THE SO-CALLED *IMAMPAKKE*

In March 2016, the Danish TV-channel TV2 broadcasted a documentary in which hidden cameras recorded what happened inside eight Danish mosques. Among others, the TV program showed an imam preaching to women. The content of his preaching referred to punishments in an ideal Islamic state. Among other statements, he said that women who committed adultery should be stoned or whipped according to Sharia law, depending on the case. The preaching also mentioned that apostate who abandon Islam should be killed. Another imam explained how and in which cases a child could be physically punished. The TV program was titled «Mosques behind the Veil» *(Moskeerne bag sløret)*[49]. The documentary became viral and, just a couple of months later the main parties of the Danish Parliament reached an agreement titled «on initiatives directed against religious preachers who seek to undermine Danish laws and values and support parallel legal views»[50]. The political parties in the agreement were the three main right-wing parties and the social-democrats (the Liberals –*Venstre*– which held the government at the time, the Conservative Party –*Konservative Folkeparti*– and the Danish People's Party –*Danske Folkeparti*– and the Social-democratic Party –*Socialdemokratiet–).*

[49] Further on the documentary, TV2 can be consulted (in Danish) at 'https://nyheder.tv2.dk/samfund/2016-03-03-moskeerne-bag-sloeret-faa-overblikket-over-tv-2s-afsloeringer' (Retrieved, 27-12-2021).

[50] The agreement of 31st May 2016, entitled in Danish *Aftale mellem Regeringen, Socialdemokratierne, Dansk Folkeparti og Det Konservative Folkeparti om initiativer rettet mod religiøse forkyndere, som søger at undergrave danske love og værdier og understøtte parallelle retsopfattelser* can be consulted on the website of the Ministry of Ecclesiastical Affairs 'https://www.km.dk/fileadmin/share/kursus/Aftalepapir.pdf' (Retrieved, 17-12-2021)

I will discuss the content of this agreement that, as a package, involves a number of measures, either to amend or to introduce various laws. It addressed priests and preachers from all religious communities out of the *Folkekirke*. There are several questionable points on this agreement but in my opinion the most problematic one is the deep legal uncertainty it involves and is translated into the legal changes resulting from the agreement. It targets preachers who seek to undermine «Danish laws and values». Whilst the term «laws» gives room to little doubts, this is not the case with the term «values». What are the «Danish values» the agreement refers to? The expression «Danish values» is repeated several times in the agreement's text, but it is said nowhere what those values are. Are there any values beyond the ones enshrined in the laws that should be taken into account? If the values the accord refers to are those included in the laws, then talking about «Danish laws and values» is simply redundant. If other values must be considered, who determines what those Danish values are?

If one continues reading, the expression «undermining the basic elements in society» appears. Same question as before: what are these basic elements and who defines them? They are not described anywhere in the agreement. Later, it reads that the parties to the accord «agree that there must continue to be great room to express what one wants. No parties want to be the police of views. There must be room for different religious denominations in Denmark». One could apply the Latin sentence *excusatio non petita, accusatio manifesta* because the text goes on by saying that the aim is to set a limit on preachers which, same expression as before, «undermine Danish laws and values and support parallel legal views». It is also not clear what «supporting parallel legal views» comprises. Everyone must comply with the law but do not necessarily have to agree with it. This is why people choose different political options to influence the law-making process in a democratic system. Freedom of expression has limits, derived from the respect for fundamental rights and interdiction of hate speech and discrimination, *inter alia,* on grounds of gender, ethnicity, sexual orientation or gender identity. However, the term «Danish laws» covers, in principle, any sort of law, not only those aimed at protecting human rights.

As a consequence of section 1 of the agreement under the title of «withdrawal of the public recognition», the legislation on public educational activities *(folkeoplysningsloven)* was amended to sharpen the access of certain associations to local funds and use of local premises[51]. These are associations that

[51] Act n. 1553 of 13th December 2016 on the amendment of the act on public educational activities and the act on tax assessment.

«work against or undermine democracy or the basic human rights and freedoms»[52]. The burden of control is on the municipalities. Three years later, in 2020, an evaluation report by the Knowledge Centre for Public Educational Activities showed that nine out of ten municipalities found challenges when implementing the new regulation, primarily in relation to resources, its interpretation and the administrative burden generated[53]. In three years' time, there was only one rejection concerning the use of a public building in one municipality[54]. Municipalities expressed their doubts on how to interpret the very notion of «undermining democracy»[55]. In light of the results of these legal amendments, which can hardly be described as a success, one may conclude that they were unnecessary but what is more: they clearly represent another example of the legal uncertainty resulting from the *Imampakke*.

Another part of the *Imampakke* refers to the control and limitation of donations from abroad to religious communities in Denmark. As a result, Act n. 414 of 2021 was enacted[56]. This Act was elaborated by the Ministry of Immigration and Integration. Its §1lays down that the purpose is to stop donations from physical or legal persons, including foreign persons, foreign State authorities or organisations, which (once again) «work against or undermine democracy or the basic human rights and freedoms». The Ministry of Immigration and Integration shall assess which donors fulfil these requirements and to include them on a public list[57]. Data to be published are the name, nationality, residence, date and place of birth, address and name, logo, address and management in case of legal persons[58]. It is not required that the donor previously sent a donation to an association or religious community in Denmark to be on the list, it is sufficient if there is a «likelihood that the donor intends to donate

[52] *Ibid.,* §1.

[53] Report on the evaluation of the amendments of the act on public educational activities by the Knowledge Centre for Public Educational Activities of August 2020, which can be consulted at: 'https://www.vifo.dk/vidensbank/downloads/evaluering-af-aendringen-af-folkeoplysningsloven/9c96830f-8cf9-47ef-b33e-ac4b00b49b01' (Retrieved, 27-12-2021).

[54] See *ibid.,* p. 9. See also: 'https://www.vifo.dk/nyheder/pressemeddelelser/2020/0002_aendring-af-folkeoplysningsloven-har-foert-til-oeget-tilsyn-med-foreninger-og-et-enkelt-afslag-paa-leje-af-lokale/' (Retrieved, 27-12-2021), 'https://dfs.dk/nyheder/nyheder/imamlov-foerte-til-et-afslag-paa-tre-aar/' (Retrieved, 27-12-2021).

[55] Report on the evaluation of the amendments of the act on public educational activities by the Knowledge Centre for Public Educational Activities of August 2020, pp. 16, 51. See also 'https://www.vifo.dk/nyheder/nyheder/2020/0524_svaert-for-kommuner-at-tolke-stramning-af-folkeoplysningsloven/' (Retrieved, 27-12-2021).

[56] Act n. 414 of 13th March 2021 on prohibition against receiving donations from certain physical and legal persons.

[57] *Ibid.,* §2.

[58] *Ibid.,* §4.2.

to one or more recipients in Denmark». The comments or *travaux preparatoires*[59] to the Act consider worrying that foreign donors, by supporting «religious buildings and other activities in Denmark», may generate support for «attitudes and ideologies that can contribute to undermine the values on which Denmark is based»[60]. To determine the inclusion of donor on the list, information could be taken from other authorities, organisations, private persons, newspapers, websites, etc.[61].

During the hearings on the proposal for this Act n. 414 of 2021 the Danish Institute for Human Rights (DIHR) made some remarks[62]. It pointed out that this legislation affects freedom of religion, freedom of association and the requirement of legality when regulating these matters, as required by the ECHR[63]. The DIHR expressed its concerns about the lack of clarity regarding the criteria and the basis to determine when a physical or legal person may be included on the list of forbidden donors[64]. Similarly, it criticised the lack of precision of the expression «might gradually break down the understanding of democracy», mentioned in the *travaux preparatoires*[65]. This expression has remained there and no further clarification is given. These *travaux preparatoires* simply provide some examples of non-exhaustive circumstances in which a donor may become part of the list[66]. Furthermore, the DIHR advised against the inclusion of the address of the donors, which nonetheless remains.

As the DIHR pointed out, the conditions for inclusion of an organisation or person on the list are unclear and unprecise. One must not forget that such

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[59] The concept *travaux preparatoires* is understood in this article as comprising both the reports issued by commissions in charge of the preparation of the proposal for an act as the comments *(bemærkninger)* to the act proposal, common in Danish law and for the interpretation of the acts.

[60] Proposal 81 of 11th November 2020 on act on prohibition of donations from certain physical or legal persons, General Comments, section 2.1.2. Assessment by the Ministry on Immigration and Integration on the proposed legislation.

[61] *Ibid.* section 2.2.2. Information on the case based on open sources and collaboration with other authorities.

[62] Reply by the Danish Institute for Human Rights on the hearing on the draft to the proposal on prohibition against donations from certain physical and legal persons, 20th March 2020. It can be consulted at: 'https://menneskeret.dk/hoeringssvar/forbud-modtagelse-donationer-visse-fysiske-juridiske-personer' (Retrieved, 27-12-2021).

[63] *Ibid.,* pp. 3-6.

[64] *Ibid.,* pp. 2, 6-7.

[65] *Ibid.,* p. 6.

[66] The examples given are: organisations which aim at replacing democracy by a caliphate; those calling for violation of human rights or supporting the replacement of courts by Sharia courts based on Sharia law; organisations that spread messages threatening groups or individuals based on race, ethnicity, nationality, gender or sexual orientation. See Proposal n. 81 of 11th November 2020 on act on prohibition of donations from certain physical or legal persons, Specific Comments to §1.

list shall be publicly available. Once again, we find that this Act is covered by a veil of legal uncertainty. Thus framed, a piece of legislation which concerns fundamental rights and freedoms requires particular care with regards to legal certainty. Expressions as the one pointed out by The DIHR, «might gradually break down the understanding of democracy», what do they mean, exactly? What «gradually break down» stands for? What is the content of the «understanding of democracy» the act refers to? As it is so vaguely worded, the Act leaves a huge margin of interpretation to the Ministry of Immigration and Integration when taking decisions with such strong implications.

Furthermore, §2.2 of Act n. 414 of 2021 on donations states that the Ministry of Immigration and Integration shall consult the Ministry of Foreign Affairs before adding a foreign organisation to the list. In case the Ministry of Foreign affairs reports that its inclusion could have essential consequences on foreign policy, the Ministry of Immigration and Integration shall refrain from including such organisation. This provision is thus stating that foreign affairs, diplomatic, political or economic interests or strategies would determine the final inclusion of a physical or legal person (let us not forget that Act n. 414 of 2021 includes foreign public authorities). In consequence, one may easily conclude that the protection of human rights and democracy this legislation is supposed to pursue depends on and is subject to the foreign affairs' interests of the country. Let us say that we have two similar foreign governmental organisations from two different countries. Both of them are similar in their characteristics and may qualify for becoming part of the list. However, one of them is part of the administration of a country with which Denmark has some relevant economic, political or other interests. Following the wording of the Act, one may quite likely be included whilst the other one will not, even if they share the same conditions. Does it mean that an association or religious entity in Denmark could be recipient of donations from one of them and not from the other one? One may suggest that, if the aim of this Act is to protect human rights, making them explicitly subject to other interests undermines the credibility of its alleged purposes.

The *Imampakke* also contains other measures which I will not discuss in detail. One of them is the elaboration of a public list of foreign preachers who are considered to spread hate in society *(hadprædikanter)* and whose entry into Denmark is forbidden[67]. Another measure relates to priests, imams or preachers and their capacity to officiate a religious marriage with civil law effects. It establishes a requirement of decorum and they must pass a course on Danish family

[67] The list can be consulted here: 'https://nyidanmark.dk/da/News%20Front%20Page/2021/06/National%20sanction%20list%20updated' (Retrieved, 27-12-2021).

law, equality and democracy, focused on freedom of speech and religion, gender equality and non discrimination on grounds of sexual orientation. Another section devotes to sanctions for certain expressions in the context of religious preaching, such as violence, terror, paedophilia or assassination, among others.

Finally, I would like to comment on the reference to sexual orientation in this so-called *Imampakke*. The protection and development of equality and non-discrimination on grounds of sexual orientation and gender identity must be central to the agenda of any democratic country, which is also member of the EU and part of the ECHR. Denmark has taken major important steps in this direction, often being at the forefront on LGBTI rights. It was a pioneer by introducing the registered partnership for same-gender couples back in 1989[68]. It passed an act on same-gender marriage in 2012[69] and introduced an act on co-motherhood in 2013[70]. In 2014, another piece of legislation was approved to allow the change of legal gender without prior surgery requirement[71]. Recently, Act n. 2591 of 2021 was passed, among other things, strengthening the protection of LGBTI persons against discrimination and hate speech[72]. There is still much to do to continue reinforcing LGBTI rights, but Denmark can be acknowledged for its relevant developments in this direction.

Interesting enough, one of the main parties to the *Imampakke* is the far-right *Dansk Folkeparti*. This party has a well-known track-record of opposition to all legal initiatives above mentioned that have involved steps forward on LGBTI rights. Some statements from politicians in *Dansk Folkeparti* have been regarded as homophobic and discussed in the media[73], and have encountered opposition from Danish LGBTI organisations. Let us provide some examples. During the passage of same-gender marriage in 2012, the Member of Parliament (MP) of *Dansk Folkeparti,* Christian Langballe, said in Parliament: «Marriage is based on the premise that it takes a man and a woman to have a child and to start a family –that is what reality and biology tell us; that is what experience and tra-

[68] Act n. 372 of 7th June 1989, on registered partnership.

[69] Act n. 532 of 12th June 2012 on marriage between persons of same-gender.

[70] Act n. 652 of 12th June 2013 amending the children act, the act on adoption, the act on procedure and various other acts (co-motherhood).

[71] Act n. 752 of 25th June of 1014 amending the act on the Central Registry of Persons.

[72] Act 2591 of 28th December 2021 on amendment of the act on equality between men and women, act on prohibition of different treatment in the workplace, among others, act on criminal law and other acts.

[73] As an example, Engelbreth Larsen, Rune, «Homofobi i Dansk Folkeparti?» 'https://politiken.dk/debat/arkiv_debattoerer/engelbreth/art5045989/Homofobi-i-Dansk-Folkeparti' (Retrieved, 27-12-2021). The author gives an account of several statements made by *Dansk Folkeparti* politicians, including the expression of «extremist homosexuals» in relation to the Copenhagen LGBT Pride.

dition tell us»[74]. He continued by saying that «Jesus himself acknowledges and affirms that a marriage is a marriage between a man and a woman, which is based on an order»[75]. *Dansk Folkeparti* MP Maria Krarup remarked that language was «being forced» by including same-gender couples within the legal term of marriage, as marriage is «a relation between a man and a woman to found a family»[76]. On the approval of the act on co-motherhood, *Dansk Folkeparti* MP and party's speaker for family matters, Mette Hjermind Dencker, made the following statement: «(…) What is next? (…) Are we going to be able to marry other than humans, maybe even animals?»[77] It is worth mentioning some statements made by the *Dansk Folkeparti* during the parliamentary debate on the recent proposal to combat hate speech based on, among other grounds, sexual orientation and gender identity, and compare them with *Dansk Folkeparti*'s position on the *Imampakke*. MP Mette Hjermind Dencker considered that a homophobic statement or behaviour against a person, at the workplace or at a club, should be solved privately without resorting to a specific law, which she considered unnecessary[78]. She added: «I would say that one gives people [by passing the act against hate speech towards LGBTI persons] an opportunity to draw a victim card and say: Yes, offended! Now I have a legal basis here»[79] Additionally, she opined that it is not possible to criticise the LGBTI Pride and that is a «big problem for the freedom of expression in Denmark»[80].

These examples do not only evidence the opposition of *Dansk Folkeparti* to strengthening LGBTI rights in Denmark by systematically voting against the above-mentioned laws. They also evidence their double standards. The party strongly supported the *Imampakke,* which includes measures against hate speech on sexual orientation grounds. Apparently, for the party it is unacceptable if such hate speech is pronounced by a religious preacher, Muslim in parti-

[74] 3rd Reading at the *Folketing,* 7th June 2012, of the Proposal 106 on amendment of the act on marriage celebration and dissolution, act on the legal effects of marriage and act on procedure and repeal of the act on registered partnerships (marriage between persons of the same-sex), Collection 2011-2012.

[75] *Ibid.*

[76] 1st Reading at the *Folketing,* 20th March 2012, of the Proposal 106 on amendment of the act on marriage celebration and dissolution, act on the legal effects of marriage and act on procedure and repeal of the act on registered partnerships (marriage between persons of the same-sex), Collection 2011-2012.

[77] 1st Reading at the *Folketing,* 16th April 2013, of the Proposal 207 amending the children act, the act on adoption, the act on procedure and various other acts (co-motherhood).

[78] 1st Reading at the Folketing, 12th October 2021, of the Proposal 18 on amendment of the act on equality between men and women, act on prohibition of different treatment in the workplace, among others, act on criminal law and other acts.

[79] *Ibid.*

[80] *Ibid.*

cular, but not so much in other spheres of society and by other persons (regardless of whether they may be as or more influencing than a preacher). These double standards, one may conclude, demonstrate a lack of genuine support to LGBTI rights. These seem to be brought to the table only if they are useful to develop other party's agendas such as anti-immigration or anti-Islam policies.

In summary, the *Imampakke* singles-out one particular religion, targets preachers, imposes challenges on municipalities with little practical effect, evidences the double standards of certain political parties and in particular, if is presided by deep legal uncertainty translated into the laws resulting from it. Legal uncertainty is particularly relevant when enacting legislation dealing with human rights and fundamental freedoms such as gender equality, LGBTI rights, freedom of expression or religion. Moreover, it seems that the legislative package has been put forward just as a reaction to the broadcast of a TV-documentary. One may also wonder: has the *Imampakke* actually been necessary? §266b of the Danish Act on Criminal Law[81] punishes with up to two years imprisonment those persons who make statements or communications publicly or with the aim of reaching wider circles, «threatening, insulting or degrading a group of people because of their race, skin colour, national or ethnic origin, faith or sexual orientation». It is considered an aggravating circumstance if the communication has the character of propaganda. Furthermore, §266 punishes with up to two years imprisonment anyone who is suitable for causing other persons a «serious fear for their own or others' life, health or welfare, threatens to commit a criminal act». These provisions are under Chapter 27 titled «violations of peace and honour» and Chapter 26 dealing with «crimes against personal freedom». These provisions are previous to the *Imampakke,* they were already there to punish hate speech and threats against health, life or welfare committed by individuals, without singling out religious communities or specific groups of people. If one adds this fact to the little or no success of some *Imampakke* measures (such as the *folkeoplysningslov)* and the concerns on the broad legal uncertainty, the need for the legislative measures resulting from the *Imampakke* is easily questionable.

5. ACT N. 1533 OF 2017 ON RELIGIOUS COMMUNITIES OTHER THAN THE *FOLKEKIRKE*

In 2017, the mandate of §69 of the Danish Constitution was finally translated into a comprehensive statute to regulate religious communities outside the

[81] Consolidated Act n. 1851 of 20th September 2021, on Criminal law.

Folkekirke. Why now? According to the *travaux preparatoires* to the Act, one main reason was the increasing number of religious communities (and followers) in Denmark different from the *Folkekirke*[82]. The *Imampakke* agreement was also taken into account in the *travaux preparatoires*.

Religious communities and entities were invited to be heard during the *travaux preparatoires* in some middle-term meetings. However, hearings are, in any case, a common practice in the law-making process in Denmark. The Act is not constructed on the basis of agreements with religious communities and, in this sense, it is coherent with the State's approach to religion in general. I will not go through Act n. 1533 of 2017 in detail but just discuss some its main points. To a great extent it follows the administrative practice developed to date[83].

First, as is common in the Danish law-making process, a commission was formed to discuss the elaboration of a proposal for a comprehensive statute, namely the Commission on Religious Communities. The composition of this commission did not include any member of a religious community. Professors of law, legal sociology, history of religion and theology composed it. Besides, it included representatives from some ministries: Ministry of Justice, Ministry of Immigration and Integration, Ministry of Taxation and Ministry of Ecclesiastical Affairs. The Ministry of Ecclesiastical Affairs is, at the same time, responsible for the administration of the *Folkekirke*. It is interesting that the only religious community not affected by the statute was, at least somehow, present in the Commission via the Ministry of Ecclesiastical Affairs. The work of the Commission materialised in the Report n. 1564 of 2017.

The Act establishes the requirements for a religious community to be recognised as such by the State with the rights and obligations that come with such recognition. §1 of the Act defines religious community as a community «if members gather around a belief in powers that are superior to people and natural laws according to formulated doctrines and rituals». During the hearings, some religious entities considered the definition a restrictive one and it was pointed out it does not comprise well some religions like Buddhism[84].

In order to be registered as a recognised religious community, a number of requirements must be met pursuant to §7 of the Act. First, it must have at

[82] Report 1564 of 1st March 2017 by the Commission on Religious Communities, on a comprehensive statute on religious communities other than the *Folkekirke,* Section 1.3, Commission's mandate.

[83] KÜHLE, Lene, and VEJRUP NIELSEN, Marie, «Mere kontrol med religion? Den nye trossamfundslov», *Religion i Danmark 2020,* University of Århus, Århus, 2021, p. 38.

[84] Report 1564 of 1st March 2017, on a comprehensive statute on religious communities other than the *Folkekirke,* Sections 5.5.2. Definition and use of the terminology «recognised religious communities» and 5.6.1 Definition of religious community.

least 50 members with Danish nationality or residing in Denmark. Second, it must not encourage or carry out activities contrary to the applicable law. Third, the religious community must submit its name and address, number of adult members and its statutes, as well as the name of the person responsible for the registration.

Two other requirements are the submission of 1) «a text that expresses, describes or refers to the religious basis or teaching tradition in the faith of the religious community» and 2) «documentation for or description of the religious community's central rituals». The latter received critiques from some religious entities. Some claimed this is an internal faith-related matter, other underlined the lack of precision on what these rituals should be, and some added that they do not have particular rituals or these have no fixed character[85]. One could indeed agree that the rituals are an internal matter of the religious entity or community with little relevance for its registration and public recognition. What seems relevant for the recognition is the basic principles and purposes of the religious community. This is something already included in the first requirement.

One of the main points the Act regulates is the possibility for religious authorities, priests or imams to officiate marriage ceremonies with civil law effects. As mentioned before, marriage may be celebrated via a religious or a civil ceremony. Regardless, civil law applies to the marriage. This possibility is articulated in a way in which the religious community may send a request to the Ministry of Ecclesiastical Affairs to authorise a person to perform weddings[86]. There is no general authorisation for a religious community. Instead, each person is individually assessed. It is considered that the person exercises public authority when conducting the ceremony. It is thus required that the ceremony does not involve conditions against Danish law or different treatment based on gender[87]. As required by Danish law, the ceremony must be carried out with the presence of two witnesses[88].

One added requirement (with only few exceptions) is a consequence of the *Imampakke*. Priests who are authorised to officiate weddings must pass a compulsory course on Danish family law, freedom and democracy[89]. It seems sensible and necessary that those conducting marriage ceremonies have knowledge on the marriage law of the country. However, the course is just a two days

[85] *Ibid.* Sections 5.5.3 and 5.6.2 on mapping of rituals.

[86] §15.1 Act n. 1533 of 19th December 2017, on religious communities other than the *Folkekirke*.

[87] *Ibid.,* §15.5

[88] *Ibid.,* §15.4.

[89] *Ibid.,* §17.

course, at the price of some 6.375 Danish *kroner* (approx. 850 euros), paid by the participant. In the hearings, one religious community asked if two days are sufficient[90]. This is a reasonable question to raise. Family law is a complex matter that can hardly be understood in two days' sessions. If one consults the program for the course,[91] it includes topics like division of property in case of divorce, matters of inheritance or unmarried relationships. Moreover, it covers broad matters like rule of law, freedom of religion and equality. In just two days, participants can get a taste on these matters at best.

The Act lays down that further rules on this course may be agreed between the Ministry of Ecclesiastical Affairs and the Ministry of Immigration and Integration. It draws one's attention that a course focused on family law does not involve the Ministry of Social Affairs (responsible for family law), the Ministry of Justice or the Ministry of Equality but, instead, it mentions the Ministry of Immigration and Integration. One explanation is that a number of priests or preachers may come from abroad. In any case, it also evidences, once again, how law and legal policy in Denmark is quite often intertwining religion and immigration policies.

Pursuant to Chapter 6 of the Act, recognised religious communities have obligations regarding their finances, such as submitting their annual accounts. The Ministry of Ecclesiastical Affairs has the responsibility of control over the religious communities and entities, ensuring the requirements for recognition remain fulfilled. It was criticised in the hearings that such control is carried out by the Ministry that is, at the same time, in charge of the administration of the *Folkekirke*[92]. In fact, strengthening equality between the *Folkekirke* and other religious communities was often raised during the hearings[93].

Two controversial matters were discussed internally in the Commission and with the religious communities. These were named Model 1 and Model 2[94]. Model 1 added some further requirements for recognised religious denominations regarding their internal organisation. This should be based on the democratic participation of their members and the principle of equality. Model 2 implied that «the purpose or behaviour» of the religious denomina-

[90] Report 1564 of 1st March 2017, on a comprehensive statute on religious communities other than the *Folkekirke,* sections 5.6.5. Requirement on decorum, course and sworn declaration for officiants.

[91] The program can be consulted at 'https://www.kp.dk/videreuddannelser/familieret-frihed-og-folkestyre/' (Retrieved 27-12-2021).

[92] Report 1564 of 1st March 2017, on a comprehensive statute on religious communities other than the *Folkekirke,* section 5.5.9 Control of religious communities.

[93] *Ibid.,* Section 5.5.5. Further requirements for recognition.

[94] *Ibid.,* Section 5.4. Proposal for an Act on religious communities.

tion must not «undermine democracy and fundamental rights and freedoms». In both written and oral hearings[95], various religious communities sharply reacted against these two models. Some denominations, like the Catholic Church, asked what Model 1 would imply for already recognised religious communities. Some mentioned that they should simply not apply to the previously recognised ones. Furthermore, the DIHR underlined the need of caution when adding requirements that could create unnecessary limits to religious communities. Some religious entities were concerned with the interference in their internal affairs this could involve. A dominant view among religious communities was to avoid any other requirements beyond what §67 of the *Grundlov* already establishes. Model 2 was criticised for the vagueness of its terms and for resembling the agreement of 2016 (the *Imampakke),* seen as result of political pressure. The Commission was divided regarding Model 1: a majority was in favour whilst a minority did not support it[96]. The Commission proposed not to implement Model 2[97]. In the end, none of these requirements were incorporated to the final Act.

The new statute has positive and negative aspects. Finally, the mandate established by §69 of the *Grundlov* is implemented, even if to a great extent confirms previous administrative practice. In principle, a comprehensive statute provides more legal certainty than the previous situation and the religious communities were at least heard in the hearings. However, as Kühle and Vejrup Nielsen point out, the Act increases the level of control over religious communities, which also entails an increasing administrative burden[98]. It must be reminded that official recognition of a religious community is not a requirement to exercise freedom of religion in Denmark, pursuant to §67 of the *Grundlov*. It remains to be seen how the Act will work in the long run and if the higher control counterbalances the benefits of the registration. It may persuade some religious communities to practice their faith without any official recognition. If that were the result, the distance State-other religious communities would deepen as a consequence. One could characterise the Act as a «one size fits all» statute, aimed a covering very diverse religious communities (all but the *Folkekirke),* with different history, purpose, content and structure. In spite of the

[95] *Ibid.,* Sections 5.5.5 and 5.6.4 on further conditions for recognition.

[96] *Ibid.,* Section 6.3.1 on possible continuation of the requirement on the form of organisation of the religious community.

[97] *Ibid.,* Section 6.3.1.3. The Commission does not propose further requirements on the behaviour of the religious communities.

[98] Kühle, Lene, and Vejrup Nielsen, Marie, «Mere kontrol med religion? Den nye trossamfundslov», *Religion i Danmark 2020,* University of Århus, Århus, 2021, p. 46.

participation of religious communities in the hearings, Act n. 1533 of 2017 is, in any case, representative of a unilateral approach to law and religion.

6. SOME FURTHER COMMENTS AND FINAL REMARKS

Denmark remains a country in which there is no separation between Church and State. The *Folkekirke* is part of the State. There are arguments supporting a State Church from various points of view. One of them is that it presupposes a guarantee for a tolerant, inclusive and open *Folkekirke*. The UN Special Rapporteur highlighted the endeavours of the *Folkekirke* to seek interreligious dialogue in Denmark, trying to build bridges in an environment in which some religious minorities were seen with mistrust from some socio-political sectors[99]. Nonetheless, he considered that a way towards the disestablishment State-Church would not have to undermine this work and its traditional spirit of tolerance and inclusiveness[100].

Remaining a State Church or not, one could argue that a more autonomous *Folkekirke* would actually strengthen the features underlined by the UN Special Rapporteur. In 2019, the Danish newspaper *Kristeligt Dagblad* carried out a survey among *Folkekirke*'s priests about their electoral preferences[101]. The result of the survey showed that two thirds of the priests voted to centre-left/left-wing parties, being the social-liberal *Radikale Venstre* the most popular choice with 17% of support. Only 4% of the priests showed support for the far-right *Dansk Folkeparti*. At the time of the survey, the right-wing Liberal Party *(Venstre)* government was in power with parliamentary support from *Dansk Folkeparti,* the second largest party back then. The newspaper mentioned that one main reason for the political preferences inside the Church was the hard line and restrictive policies against immigration, refugees and some other religious communities pursued by the Government. Even if right-wing parties have often highlighted the relevance of the *Folkekirke* as part of Danish identity, *Kristeligt Dagblad* suggested that priests gave more weight to social issues as immigration or asylum seekers. In this sense, it is not surprising that the social-liberal *Radikale Venstre,* a pro-European Union party with an inclusive position towards immigration, was the most preferred one. The radicali-

[99] Report of the Special Rapporteur on freedom of religion and belief on his mission to Denmark of 28th December 2016, A/HRC/34/50/Add.1, para. 20.

[100] *Ibid.,* para. 73.

[101] 'https://www.kristeligt-dagblad.dk/kirke-tro/de-fleste-praester-stemmer-paa-partier-der-vil-svaekke-folkekirken' (Retrieved, 27-12-2021).

sation of the legal policies to restrict immigration, family reunification and refugees during the previous right-wing governments and followed by the current social-democratic one may be seen contradictory with the traditional inclusiveness and tolerance of the *Folkekirke*. The Church could benefit from more autonomy to speak as one voice, for example, by having an internal body to speak on its behalf.

In any case, there is a legal reason to support a more autonomous *Folkekirke:* the mandate the *Grundlov* establishes in its §66. I have argued that the lack of a comprehensive statute with the constitution of the Church, as §66 mandates, is a situation that amounts to unconstitutionality by omission.

The *Imampakke* has been critically analysed in this article, focusing on some of the legislative measures it involved. Its opportunity is questionable. Legislation as a quick reaction to a TV-program may be explained in terms of media and socio-political strategies, but not in legal terms, in particular when dealing with fundamental rights. Second, the *Imampakke* targets preachers from any religious community in Denmark and, in particular, with Islam in mind. One of the focus is criminalisation of preachers' hate speech expressions. One rationale behind it appears to be their level of influence. One may wonder why priests and no other categories of persons who may be as or more influencing in society.

From a legal point of view, as mentioned, the most problematic issue the *Imampakke* and its resulting legislation entail is deep legal uncertainty. This is particularly worth of criticism when we deal with legislation concerning various fundamental rights. Expressions like «working against or undermining democracy», «undermining Danish values», «supporting parallel legal views», «attitudes and ideologies that can undermine the values in which Denmark is based» or «gradually break down the understanding of democracy» are clear examples of such legal uncertainty. This uncertainty has received critiques from the DIHR or various municipalities, among others.

Legal uncertainty gives a broad margin of interpretation to the authorities. Let us think of Act n. 414 of 2021 on prohibition of donations from certain donors. The vagueness in which the Act is worded (including its *travaux preparatoires)* gives the Ministry of Immigration and Integration much freedom to assess if a donor is to become part of the public list of forbidden ones. This legal uncertainty may easily risk leading to arbitrariness. Is the Ministry of Immigration and Integration ultimately interpreting what is meant by «undermining Danish values» or «gradually break down the understanding of democracy»? In my understanding, some measures derived from the *Imampakke,* framed as they are, may enter into contradiction with the current European and

International human rights standards. Finally, the necessity of the *Imampakke* is questionable. Other provisions were already available to prosecute individuals for hate speech. Furthermore, the amendment of the *folkeoplysningslov* has proven to have little success.

Regarding a notion like «Danish values», it is worth reproducing some expressive words by the minority in the Commission on Religious Communities:

> «[Trying] to impose special attitudes on a circle of citizens and values –which are admittedly shared by the vast majority in Danish communities, but which have not found expression in legislation or others rules of law– are inconsistent with the tradition of freedom that otherwise has been and is prevalent in the country.»[102]

These words, in my opinion, describe quite well the problem faced when using terms like «Danish values» or «basic elements of Danish society». They allow me to make some further reflections on «Danishness». The UN Special Rapporteur mentions in his Report cases of young Danish persons, born and raised in Denmark, who were often demanded «more integration» and underlines that integration may sometimes be used as a requirement for assimilation[103].

It is out of the scope of this article to delve into the notions of integration versus assimilation. However, the notion of «Danishness» in the last decades, influenced by neo-nationalist views as mentioned, seems to have evolved towards an exclusionary «one size fits all» idea of «Danishness». The UN Special Rapporteur called for a more inclusive notion[104]. However, «Danishness» or Danish identity is a concept that goes much beyond religious affiliation or immigration issues, which are often mixed up. It involves the whole society in which citizens from different backgrounds and points of view may not agree with a dominant neo-nationalist understanding of the term.

The defence, protection and strengthening of human rights is a top priority for any democratic State. Therefore, it is out of question that the State should focus on gender equality and LGBTI rights, tackling issues of social control or restrictions to fundamental freedoms. In the end, it should support vulnerable groups. However, a genuine support for these rights has not always been the

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[102] Report 1564 of 1st March 2017, on a comprehensive statute on religious communities other than the *Folkekirke,* Section 6.3.1. Potentially keeping the requirement on the form of organisation of the religious communities. Minority composed by Prof. Peter Lodberg and Prof. Hans Gammeltoft-Hansen.

[103] Report of the Special Rapporteur on freedom of religion and belief on his mission to Denmark of 28th December 2016, A/HRC/34/50/Add.1, para. 31.

[104] *Ibid.*

case in the political scenario. An evidence of this is the position of *Dansk Folkeparti* towards LGBTI rights in Denmark, as previously discussed. Moreover, the State itself is also bound by the international legal instruments on human rights it is part of. Let us remember the judgment of the European Court of Human Rights in the case *Biao v. Denmark*[105], concerning family reunification, in which the Danish State was condemned for violation of the European Convention of Human Rights based on discrimination on the grounds of ethnicity[106]. One may assume that, when using expressions like «undermining fundamental rights and freedoms» in the legislation, it was excluding legal measures adopted by the Danish State itself, even if condemned in judgments such as the mentioned one. States should be exemplary in their compliance with human rights law. In this context, one can see the recent judgment by the Court of Impeachment of the Danish Realm, condemning a former Minister for Immigration and Integration for separating couples of asylum seekers, among other things, because of violation of art. 8 of the ECHR[107].

Law on religion needs to be approached taking into consideration the context in which it is passed and functions. Law and legal policy concerning religious communities other than the *Folkekirke* have often been intertwined with immigration matters and Islam in Denmark. The result gives the impression of a *totum revolutum,* in which gender equality and LGBTI rights are mixed with topics with media and public attention such as the consumption of pork meat or the handshake in citizenship ceremonies. It also gives the impression that some politicians and law-makers have entered into some matters like an elephant in a porcelain house, in the wake of some public and media reactions, which may also be one explanatory factor of the legal uncertainty analysed before. This may undermine legal measures to enhance human rights. In any case, I would not define the legal policy towards other religious communities as pragmatic. Last two decades' legal approach to immigration and religious affairs has been restrictive with frequent underlying negative messages.

Any democratic State must focus on ensuring and enhancing human rights as gender equality or LGBTI rights, tackling situations of social coercion. At

[105] *Biao v. Denmark* [GC] no. 38590/10, ECHR 2016.

[106] Back then, the Minister of Immigration and Integration was Inger Støjberg, who declared that, regardless of the judgment, her Ministry would continue with the with the hard line on immigration in a way or another, see 'https://politiken.dk/indland/politik/art5623212/St%C3%B8jberg-efter-dom-S%C3%A5-m%C3%A5-vi-stramme-p%C3%A5-en-anden-m%C3%A5de' (Retrieved, 27-12-2021).

[107] Judgment by the Court of Impeachment of the Realm of 13/12/2021. Inger Støjberg was condemned to two months imprisonment by directly separating asylum-seeking partners when one of them was under 18 years old.

the same time, a positive, non-divisive approach, often missing, would be necessary to favour inclusiveness of people from different cultural, national, ethnical, religious or political backgrounds. In my understanding, a positive and inclusive approach requires at least two conditions: strengthening the dialogue between the State and the various religious communities, as well as those not belonging to any specific faith, agnostics or atheists. This involves more autonomy for the *Folkekirke* in line with the current Danish Constitution and walking towards more equality between this one and the other religious communities. The second condition is a dominant notion of «Danishness» different from an exclusionary, neo-nationalist influenced approach to it. Instead, an understanding framed on the basis of traditional features of society as tolerance and inclusiveness should be highlighted. As part of Europe and in a globalised World, diversity potentially benefits society as a whole. Furthermore and in any event, legislation on religious matters should pay careful attention to the legal certainty so often mentioned in this article, avoiding broad and vague terms and expressions as the ones examined here.

Finally, about Act n. 1533 of 2017, it is positive that it brings a legal framework for religious communities and fulfils a constitutional mandate, but it also entails more control over religious communities. For example and from a comparative perspective, in Spain there is an act on religious freedom since 1980 but later on the State reached agreements with various religious communities and entities, framing the relationship between them and the Spanish State[108]. Although this seems unlikely in Denmark at this point, it remains to be seen how Danish ecclesiastical law will evolve in the future. One can speculate that it may go in the direction of more formal equality between the *Folkekirke* and other religious communities. Ecclesiastical law is also a matter of those neither belonging to nor practicing any religion.

[108] See Act 7/1980, of 5th July, on religious freedom and the following agreements: Act 24/1992 of 10th November, approving the cooperation agreement of the Spanish State with the Federation of Evangelical Religious Entities of Spain; Act 25/1992, of 10th November, approving the cooperation agreement of the Spanish State with the Federation of Jewish Communities of Spain; Act 26/1992, approving the cooperation agreement of the Spanish State with the Islamic Commission of Spain.