

Restrictions on Freedom of Religion or Belief in Denmark

A Populist Move?

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Introduction: Freedom of religion or belief under pressure

Denmark is a democracy with high human rights standards, including the right to freedom of religion or belief. However, in recent years an increasing number of laws have been introduced that implicitly or explicitly limit – or have the potential to limit – freedom of religion or belief. The substantial part of this legislation targets Muslim individuals and communities in particular.¹

This trend towards increasing restrictions on religious manifestations and practices is not unique to Denmark, as other European countries display similar developments. The introduction to this volume as well as several of the book's chapters argue that these developments can be understood as expressions of an increasingly populist understanding and use of the right to freedom of religion or belief, in the sense that restrictions are selective and particularistic (aimed at restricting the religious practices and manifestations of particular religious groups) and clientelistic (aimed at protecting the religious practices and manifestations of one's own group). However, while there are aspects of the Danish legislation on freedom of religion or belief – and the debates

1 For an overview of legal restrictions on religion in Denmark, see Lassen, Eva Maria: "Limitations to Freedom of Religion or Belief in Denmark," in: *Religion & Human Rights* 15 (2020), pp. 134–152; Vinding, Niels V.: *Annotated Legal Documents on Islam in Europe. Denmark* (= *Annotated legal documents on Islam in Europe* 18), Leiden/Boston: Brill 2020. For an analysis of selected individual laws, see Petersen, Marie Juul: "Forkynderloven i et menneskeretligt perspektiv," in: Anette Faye Jacobsen/Steven Jensen/Pernille Boye Koch/Marie Juul Petersen (eds.), *Menneskerettigheder i modvind*, København: Samfundslitteratur 2023, pp. 137–153.

around it – that may be characterised as populist, this chapter argues that populism is insufficient as an explanatory framework for understanding the situation in Denmark. Indeed, there are other factors at play. More specifically, we argue that populist voices are intertwined with, first, the historically and demographically determined place of Evangelical-Lutheran Christianity vis-à-vis other religious denominations and religions in Danish society and mentality, second, the kind of secularism experienced in Denmark, and thirdly, the relationship between the mainstream political parties and right-wing parties, representing different assessments of human rights.

“To protect Danish values”: A selective understanding of freedom of religion or belief

Denmark has historically been a largely homogeneous society, including religiously. The Danish Evangelical-Lutheran Church – of which the majority of the population are members – holds a special position as “the People’s Church” (in Danish, *folkekirke*) and is supported by the state in a number of ways, financially and otherwise (for instance public holidays that follow the Evangelical-Lutheran calendar and university education of theologians to the Church). The position of the church as well as other religious communities is based on the Constitution of 1849, which was last amended in 1953. The constitution affords the People’s Church a privileged position compared to other religious communities, as reflected in the saying: “In Denmark we have religious freedom but not religious equality.”

While 73% of the population are members of the Evangelical-Lutheran Church, a number of studies suggest that religion plays little – if any – role in the lives of most Danes.²

Since the 1970s, like other Western European countries, Denmark has experienced increasing immigration in the form of guest workers, immigrants and refugees from different parts of the world. The majority are Muslim, and

2 Hackett, Conrad/Huynh, Timmy: “What is each country’s second-largest religious group?” (22 Jun. 2015), <https://www.pewresearch.org/short-reads/2015/06/22/what-is-each-countrys-second-largest-religious-group/>, accessed on: 22 Jul. 2023; Zuckerman, Phil: *Society without God: What the Least Religious Nations Can Tell Us About Contentment*, New York: NYU Press 2008.

Islam makes up the largest minority religion in Denmark today. The increasing religious diversity – and not least visibility – associated with immigration has challenged Danish society, having to encompass new religious norms and values, including some that may challenge the majority culture and lead to discomfort, disagreements, and outright conflict.³ Denmark has moved from being a largely secular or “cultural Christian” society to what the German philosopher Jürgen Habermas has termed a “post-secular society.”⁴ With this, Habermas does not mean a society in which all citizens have become more religious, but one with a changed consciousness about religion: an understanding of religion as something that cannot be kept out of the public sphere but will remain an inevitable part of society.⁵

There is a focus on Islam as one of the root causes of the various “integration challenges” that Danish society has encountered in the wake of increased immigration. The issue of integration is highly complex, and this is not the place to discuss whether or to what extent there is an empirical basis for this emphasis on religion as an explanatory factor over economic, cultural, political or other factors, for instance. It suffices here to say that recent decades have witnessed the emergence of anti-Islam – or indeed anti-Muslim – sentiments among politicians, in the media and the broader population, whereby certain Muslim norms and practices are perceived as colliding with certain “Danish values,” for example around democracy, gender equality and free speech.

Reflecting broader trends towards the increasing “juridification” of societal problems, one of the ways in which Danish politicians have sought to solve these – perceived or real – clashes between “Danish values” and Muslim norms and practices has been to introduce legislation to restrict the latter in different ways. The so-called Imam package adopted in 2017 is an illustrative example of this. The initiative was a direct reaction to a series of TV documentaries with the title “The Mosques behind the Veil,” aired in February 2016. The documentaries – which were based on under-cover observations and hidden recordings in a number of Danish mosques – caused a major furore insofar as they gave

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- 3 Bielefeldt, Heiner: Report of the Special Rapporteur on freedom of religion or belief on his mission to Denmark (A/HRC/34/50/Add. 1), Human Rights Council 2017, p. 12.
 - 4 Habermas, Jürgen: “Notes on post-secular society,” in: *New Perspectives Quarterly* 25 (4/2008), pp. 17–29.
 - 5 Kühle, Lene/Veyrup Nielsen, Marie: “Mere kontrol med religion? Den nye trossamfund-slov,” in: *Religion i Danmark* 10 (2021), pp. 38–48.

an impression of some imams condoning intimate partner violence and corporal punishment of children, while they considered stoning to be a legitimate religious reaction to for example infidelity.⁶

The programmes were criticised by several academic experts, including for their use of problematic methods and their insufficient understanding of Islamic theology and practice.⁷ Nonetheless, many politicians were convinced that the problems displayed in the documentaries were real and substantial, and that they required immediate legal action.⁸ In May 2016, the government, Social Democrats, Danish People's Party, and the Conservatives therefore entered an agreement to introduce a stricter oversight of religious communities, expanded possibilities for the withdrawal of economic support to these communities, an entry ban for certain religious preachers, and restrictions on certain kinds of expressions made in the context of religious teaching.

From this perspective, recent restrictions can be seen as expressions of a selective or particularistic understanding of the right to freedom of religion or belief, implicitly or explicitly targeting the expressions, practices, and manifestations of a particular religious group. The fact that there seems to be a certain unwillingness on the part of politicians to apply the same rigid standards in cases involving even strongly anti-Muslim discourses may contribute to this reading of the restrictions. It is noteworthy that "The Mosques behind the Veil" led to immediate legal interventions, while authorities would go a very long way to protect the Danish provocateur Rasmus Paludan's extremist expressions and Quran burnings.⁹ Others have noted that cases of sexual ha-

6 Commission on freedom of expression: *Ytringsfrihedens rammer og vilkår i Danmark*, Søborg: Danish Ministry of Justice 2020, p. 129.

7 Vinding: *Legal Documents*; Suhr, Christian: "Usædvanlig bred og uafviselig dokumentation" – undersøgende journalistik i danske moskéer," in: Vibeke Borberg/Hjarn von Zernichow Borberg/Christian Suhr/Niels V. Vinding (eds.), *Når medierne sætter dagsordenen*, København: Djøf Forlag 2021, chapter 7.

8 Christoffersen, Lisbet: "Religionsretlig lovgivning 2014–2019 – bidrag og temaer i kirkeretsantologi," in: Lisbet Christoffersen/Anders Jørgensen/Svend Andersen (eds.), *Religionsretlig lovgivning. Kirkeretsantologi 2019*, Frederiksberg: Eksistensen 2019, p. 12.

9 Rose, Flemming/Mchangama, Jacob: "Altinget: Drop racismeparagraffen for minoriteternes skyld" (12 May 2020), <https://justitia-int.org/altinget-drop-racismeparagraffen-for-minoriteternes-skyld/>, accessed on: 22 Jul. 2023. While government attitudes to Paludan's and other right wing extremists' Quran burnings have changed very recently, and a majority now seems to support criminalization of such actions, this arguably has little to do with concerns for the religious sentiments of Danish Muslims,

rassment and gender discrimination in the Evangelical Lutheran Church, Pentecostal churches and the Catholic Church in Denmark have not been met with the same urgency by politicians compared with similar cases in Muslim communities.¹⁰

“Denmark is a Christian country”

Over the past decades, the Danish People's Party – a self-declared “Islam-critical” right-wing party – has played a key role in this development towards an increasingly narrow conception of the right to freedom of religion or belief, consistently proposing restrictions that target Muslim practices and manifestations.

An important part of the party's argumentation is that such restrictions are necessary to protect Christian majority culture and values. As such, their argumentation reflects a clientelistic conception of the freedom of religion or belief as a right that can be used to restrict the beliefs and practices of others to protect one's own religion. This is perhaps most clearly demonstrated in their proposal to ban headscarves in Danish elementary schools, where the party argues that a ban is necessary to protect Christian culture from Islamic mission:¹¹

“Denmark is a Christian country and has for centuries been shaped by Christianity [...] Our culture, and as such our public institutions are based on Christianity and Christian values. Christianity and Christian holidays are visible in schools and public institutions in the form of adornments, Christmas and Easter decorations, Christian holidays as well as other Christian traditions, e.g. visits to the Church, hymn-singing, and possibly prayer at morning gatherings. At the same time as we in Denmark have a long tradition of Christianity being present everywhere, we also have a tradition

and more to do with international pressure and security risks. The present article does not consider these recent developments, since they occurred after the manuscript was finalised.

10 Hussein, Tarek Z.: “Tavshed om kirkelige krænkelser er hyklerisk” (27 Feb. 2023), <https://politiken.dk/debat/klummer/art9224667/Tavshed-om-kirkelige-kr%C3%A6nkels-er-er-hyklerisk>, accessed on: 22 Jul. 2023.

11 Quotes that have been published in Danish have been translated into English by the authors of the chapter.

of not proselytising for other religions, sects, or political ideologies in public institutions [...] When women carry an Islamic headscarf, they engage consciously or unconsciously in mission for Islam. There should be no space for this in Danish public institutions.”¹²

However, the formal political power of the Danish People's Party is limited, and it is not in a position to have laws passed through parliament without the support of more mainstream parties, notably the Social Democrats, the Liberal Party, the Conservatives, and – most recently – the Moderates (a new liberal centre-right party). These parties may – at least rhetorically – share the understanding of Christianity as an essential part of Danish identity and culture: in fact, the Political Programme of the current government – which comprises the Social Democrats, the Liberal Party, and the Moderates – states that “Denmark is a Christian country.”¹³ Nonetheless, they do not link this to the need for restrictions on certain religious practices and manifestations.

Instead, they tend to justify restrictions with reference to secular “Danish values” of democracy, gender equality, children's rights, etc. As Søren Pape – the leader of the Conservative Party – stated during the parliamentary debate on the Imam package: “If we want a society in which tolerance, freedom and security can thrive, we will sometimes have to put our feet down when it comes to types like these preachers”.¹⁴ Alternatively, in the words of Mattias Tesfaye, then Minister of Integration: “When democracy and religion collide, democracy has the right of way.”¹⁵ From this perspective, the purpose of restrictions is not to protect a particular religious culture or community but rather protect universally acknowledged values and principles.

12 Beslutningsforslag nr. B 47: Forslag til folketingsbeslutning om forbud mod at bære islamisk tørklæde i offentlige institutioner, Folketinget 2020.

13 Regeringen (Danish Government): Regeringsgrundlag: Ansvar for Danmark Oct. 2022. The formulation was introduced by the Liberal Party in their 2015 Political Programme, when they were a minority government with the Danish People's Party as supporting party.

14 Lovforslag nr. L18: Forslag til Lov om ændring af straffeloven (Kriminalisering af udtrykkelig billigelse af visse strafbare handlinger som led i religiøs oplæring), Folketinget 2016, first debate.

15 Socialdemokratiet: Mathias Tesfayes tale ved Socialdemokratiets kongres 2017 (17 Sep. 2017), https://www.youtube.com/watch?v=Q_P2dKi469Y, accessed on: 22 Jul. 2023.

Staying within the limits of the European Human Rights Convention

The strong adherence to human rights standards in Danish legislation further complicates the understanding of recent restrictions on the right to freedom of religion or belief as selective and clientelistic. Despite increasing criticism in recent years, human rights are important to Danish politicians, and much is done to ensure that legislation – including on freedom of religion or belief – lives up to the standards enshrined in the European Convention on Human Rights.

As a result, proposals that clearly contradict international human rights standards are typically short-lived. For instance, this applies to the Danish People's Party's 2021 proposal to register the religious affiliation of persons applying for Danish citizenship. Arguing for the necessity of this initiative, the leader of the party Morten Messerschmidt said: "For many people, being a Muslim raises some fundamental problems with regard to living in a Danish way. Whether it is about views on women, or views on the law or democracy. That is why we want to know which background these people [who apply for citizenship] bring with them."¹⁶ While individual members of the Social Democrats – the ruling party at the time – were initially open to discussing the proposal, the Minister of Justice soon highlighted that "[w]ithin the framework of Denmark's international obligations, it will not be possible to place any weight on information about an applicant's religious conviction in the assessment of an application for Danish citizenship."¹⁷ From this perspective, the European Human Rights Convention protects – including in practice – against overly selective or discriminatory restrictions on the right to freedom of religion or belief.

However, in other cases, adherence to European human rights principles of non-discrimination is arguably of a more nominal character. To avoid accusations of discrimination and stay safely within the limits of the European Convention on Human Rights, the politicians aim at "universalising" restrictions that may have originally been aimed at a particular religious group. The ban on face covering in public is an obvious example. The ban was explicitly motivated by a desire to restrict Muslim women's use of burka and niqab, seen to be an expression of "negative social control" and oppression of women, and

16 Broberg, Mads Bonde: "Dansk Folkeparti vil have muslimer frem i lyset: Nye statsborgeres religion skal stå i lov," in: *Jyllands-Posten* (26 Feb. 2021).

17 Kotkas, Birk Sebastian: "DF vil registrere nye statsborgeres religion: Nu har regeringen set på, om det er lovligt," in: *Altinget* (27 Mar. 2021).

as such a challenge to Danish values of gender equality and women's rights. However, since a ban exclusively on burka and niqab would have entailed a risk of indirect discrimination, the law ended up as a ban on different types of face coverings, legitimised more broadly with reference to the need to "promote and facilitate social interaction and co-existence."¹⁸

From the perspective of the European Court of Human Rights, this is legitimate. The court applies an increasingly wide margin of appreciation in cases related to religion, meaning that member states can go quite far in limiting the freedom of religion or belief within the framework of international obligations, as long as restrictions are not discriminatory, directly or indirectly. Since the case of *S.A.S v. France*, for instance, the court has allowed states to use the protection of vaguely defined notions of "co-existence," "social cohesion" and "living together" as legitimate grounds for restrictions on religious practices and manifestations.¹⁹ In their argumentation for the ban on face covering in the public sphere, Danish legislators leaned precisely on this and other recent case law of the court. As such, the European Court of Human Rights can arguably be said to legitimise rather than prevent the increasingly expansive restrictions on the freedom of religion or belief in Denmark.

In practice, what seems to limit the intended particularism of restrictions is not so much the European Convention on Human Rights but rather the extent to which particularistic restrictions can be "universalised" without extensive implications for other religious or non-religious groups in society. The "universalisation" of the burka ban was feasible to Danish politicians because other types of face coverings could be banned with only few practical implications for others than women wearing burka and niqab. Proposals that cannot be "universalised" in the same way without extensive implications for other religious groups tend to fail. This was arguably the case with the proposal to introduce obligatory translation of all sermons into Danish, which was presented by the Social Democrats as part of its election campaign in 2019 with the aim to counter anti-democratic expressions of certain Muslim preachers.²⁰ When the Social Democrats came into power, the proposal was included in the government's 2020 to 2021 legislative programme, stating

18 Lovforslag nr. LSF 219: Forslag til lov om ændring af straffeloven, Folketinget 2018, subsection 1.

19 *S.A.S. v. France* [GC], no. 43835/11, ECHR 2014.

20 Krak, Nikolaj: "S. Der er brug for større åbenhed om, hvad der foregår i trossamfund," in: Kristeligt Dagblad (30 May 2019).

the need to “create more openness around religious preachers when they are preaching in other languages than Danish.”²¹ The proposal was met with substantial criticism from international lawyers and human rights experts as well as religious actors, both nationally and internationally. In addition to questioning the legitimacy of such restrictions from a human rights perspective or more broadly Denmark’s international obligations, the criticism also made it clear that obligatory translations would have extensive implications for a wide range of religious communities, including non-Danish speaking Christian communities. The proposal is not on the law programme of the current government (2023).

Lack of religious literacy

Over the past 20 years Denmark has witnessed a move towards an increasingly restrictive understanding of the right to freedom of religion or belief, as manifested in various laws and law proposals. While this development has been met with criticism from religious actors, left-wing parties as well as various human rights experts and NGOs, opposition has largely been modest. The vast majority of laws were adopted with support from a wide range of political parties, and as such must be assumed to be supported by the majority of the population. Anti-Muslim sentiments and the – perceived or real – integration challenges associated with Islam alone cannot explain this apparent acceptance of restrictions on a fundamental human right. Broader secularist tendencies and religious illiteracy in Danish society arguably also play an important role in explaining this willingness to restrict religious practices and manifestations.

Danish society is non-religious in many ways. Religion may very well be afforded greater attention in the post-secular society, although this is not necessarily the same as greater acceptance, understanding, or knowledge of religion. Many people do not consider religion relevant at all, and among those that do, the majority seem to have a negative perception of religion. For example, a 2022 poll indicated that more than 70% of the Danish population see religion as a source of conflict, while only 80% see it as a source of peace.²²

21 Regeringen: Lovgivning Folketingsåret 2020/2021, Oct. 2020, p. 29.

22 Tulinius, Bjørg: “Et stort flertal af danskerne ser religion som kilde til konflikt. Kun få tror, at religion fører til fred,” in: Kristeligt Dagblad (10 Jul. 2022).

Many of the laws mentioned above reflect this alienation from – and in some cases even suspicion of – religion, not only Islam but rather religion more broadly. One example is the 2022 law proposal to ensure youth organisations' access to youth educational institutions. Here, ordinary "youth organisations that are engaged in the society" are ensured access, while religious youth organisations that are "seeking access in order to gain new members or [that] act in a brash or preaching manner" are not given the same right.²³ Religion is thus understood to be something fundamentally different from – and more problematic than – political and other (secular) world views and ideologies.²⁴

Summing up

Over the past ten to fifteen years, Denmark has witnessed a move towards an increasingly restrictive understanding of the right to freedom of religion or belief, expressed in legal acts and proposals of such. Many factors contribute to an understanding of this development. Denmark has historically been a highly homogeneous society in religious terms, with the vast majority of the population belonging to the People's Church, which holds a constitutionally-based privileged position. At the same time – and perhaps paradoxically – Danish society has also been strongly secularist, with large parts of the population considering religion as something "private."

With immigration, Danish society has become more religiously diverse, and it now has to encompass new – and much more visible – religious norms, practices and manifestations, including some that run counter to those of the "cultural Christian" or secular majority. In this post-secular society, Islam has come to be seen by many as a threat to "Danishness," whether understood in terms of Christian or secular values. Reflecting this, the majority of recent restrictions on freedom of religion or belief have been aimed selectively at Muslim practices and manifestations.

Populist political parties – in particular the Danish People's Party – have played an important role in facilitating this development, consistently proposing restrictions on a wide range of Muslim practices and manifestations with

23 Law proposal on youth organisations' access to youth education, remarks to §1.

24 Ank, Ingrid: "Kritik af nyt lovforslag: Gymnasielever må gerne tro på demokratiet, men ikke på Gud," in: Kristeligt Dagblad (20 Jun. 2022).

the somewhat clientelist aim to protect “Christian culture and values.” However, the actual laws have been adopted by a broad range of parties, challenging the understanding of restrictions as “populist.” While the mainstream political parties may share the desire to selectively restrict practices and manifestations of particular religious communities, they also emphasise the importance of adhering to European human rights standards. As such, much is done to “universalise” restrictions, ensuring that legislation on freedom of religion or belief lives up to the standards enshrined in the European Convention on Human Rights and the case law of the European Court of Human Rights.

Further complicating the picture, there are restrictions that cannot easily be explained with reference to anti-Muslim sentiments and – perceived or real – integration challenges but instead reflect a broader scepticism or even suspicion of religion more generally. From this perspective, restrictions of freedom of religion or belief may not be expressions of populist right-wing sentiments but rather of a dominant non-religious mentality among broad segments of the population, perceiving freedom of religion or belief as a right that is less important than other human rights.

What does the future hold? In December 2022, a new government made up of Social Democrats, the Liberal Party and the Moderates (a new Social Liberal party) came into power. Unlike previous governments, the new government has the majority in parliament, and as such does not depend on the Danish People’s Party or similar populist parties. This might mean that integration and Islam – key issues for the Danish People’s Party – will receive less political attention in the coming years, in a trend already witnessed during elections where these issues were remarkably absent from political debates. As such, we may expect a decrease in new restrictions on freedom of religion or belief, at least when it comes to restrictions motivated by anti-Muslim sentiments and “integration challenges.” However, at the same time, there are no signs of the government cancelling existing restrictions on freedom of religion or belief, or indeed encouraging a more religiously inclusive society in other ways. In other words, restrictions on certain religious practices and manifestations have become the “new normal” in Denmark.

To conclude on a slightly more positive note, the move towards an increasingly restrictive understanding of freedom of religion or belief has also had a number of encouraging consequences. In recent history, the right to freedom of religion or belief has not played a prominent role in Danish public debate: at best, it was a right that was taken for granted, and at worst one that was considered superfluous and irrelevant. However, recent restrictions have

encouraged intense debates and a renewed acknowledgement of the importance of this right, at least among segments of the population. Furthermore – and perhaps more importantly – opposition to the restrictions has brought together organisations, institutions, and individuals across religious divides, as well as across secular/religious divides, facilitating new alliances, partnerships and friendships among actors united in their understanding of the right to freedom of religion or belief as a universal right for all and a cornerstone in a democratic society.