

Denmark

On Law and Religion in Denmark for the Brill Encyclopedia

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Published in:
Encyclopedia of Law and Religion

Publication date:
2015

Document Version
Early version, also known as pre-print

Citation for published version (APA):
Christoffersen, L. (2015). Denmark: On Law and Religion in Denmark for the Brill Encyclopedia. In G. Robbers, & W. C. Durham Jr. (Eds.), *Encyclopedia of Law and Religion* Brill Academic Publishers, Incorporated.

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Denmark

I. Social Facts

Since the 1980'ies Danish population has increased due to immigration, now reached 5,6 mio people. Around 0,5 mio people are immigrants from more than 200 different countries; more than 100.000 descendants from immigrants. Among the immigrants, 2/3 keep their original citizenship; among the descendants, 2/3 change citizenship to Danish.

Thus the religious landscape in Denmark is changing. One generation ago 97% of the population belonged to the Danish Evangelical Lutheran National Church (Folkekirken). In 2014 78% of the population are members of Folkekirken; 5-10 % of the population (mostly immigrations and descendants of immigrants) are Muslim; but also the Catholic church is growing due to immigration with now around 50.000 (0,5% of the population) as members. The Jewish population is old, but small (7.000-15.000 people); and a variety of more than 150 different religious communities, being old Christian world churches as well as different Islamic and Buddhist groups, are since the 1990'es recognized in order to get public advantages in regard to immigration of religious leaders, tax reduction and performance of marriage with civil effect. – The most influential change might however be that now nearly 15% of the population is without any religious affiliation. - These changes impact the basic approaches to freedom of religion and belief.

As reaction to this rather quick change of the religious landscape, value questions related to religious matters have become part of day-to-day politics. Proposals of a Burqa-prohibition on basis of recent S.A.S.-judgment from Strasbourg have already been aired. On the other hand, attempts to change the legal status of the Folkekirke are difficult to keep on the political agenda, since the traditional Folkekirke by some political strands are seen as identity marker for true Danishness.

II. Historical Background

700-1000 a.d., Danish powers were widespread in Northern Europe with settlements in Normandie and ruling over eastern England. Vikings met Christianity both in south and west; the earliest Christian graveyard in Ribe is recently dated before 800. - 'The Apostle of the North', Ansgar, arrived from Bremen in 848 to build what according to written sources is seen as the first Christian church 848 in Hedeby. In 965, Christianity became state-religion supported by and supporting the monarchy. This is witnessed by the two runic stones, called the 'baptism certificate of Denmark' (printed as marker of Danishness in current Danish passports). King Harald Bluetooth erected them in Jelling to claim Christianization of the Danes, the existence of Denmark and the border to Germany with Dannevirke.

Influenced by European conflicts between church and state in the 12th century, the earliest written Danish laws in the early 12th century saw concrete impact of the Church by acceptance of Canon law and papal superiority in ecclesiastical matters, broadly speaking. It was thus after approval by

the pope that University of Copenhagen was consecrated in June 1479. Also, the Kings were coronate and anointed by the archbishop in Lund and later by the bishop of Roskilde in Our Ladies Church in Copenhagen. Coronation stopped with introduction of absolutism in 1660; symbolic anointing of the Kings in Church however proceeded until the Constitution of 1849; i.e.: also in the period of Lutheranism as state religion. - After introduction of the Folkekirke with the Constitution of 1849, the reigning monarch is now obliged to be a baptized Lutheran.

In Denmark (which since the Kalmar Union of 1396 by Queen Margrethe I also included ruling over Norway, Iceland, Faroe Islands and Greenland), Lutheranism was introduced in the early 16th century not only by theologians. *Cujus Regio, Ejus Religio* was certainly the case. The Kings got an economic advantage of the dissolution dioceses and monasteries, but they were also personally influenced by the new creed. *Cujus Regio, Ejus Religio* is certainly true in these countries. Reformation with break of church hierarchy and the bishops' secular powers as well as confiscation of their property took place in 1536 after a period of internal wars, however introduced with legislation from the 1520ies giving high court competences in church matters and nationalization of elections of bishops and other posts at the cathedrals. The Kings' 1537 ecclesiastical laws dissolved Canonical Law and re-introduced bishops appointed of and paid by as the monarchs' civil servants (on basis of local elections) and still consecrated, though without apostolic succession.

Since the reformation, church matters in Denmark have thus been organized legally by the secular powers of the country. This was proven of several times before and during absolutism with Chr V Danish Law of 1683 as the main example. Here, it is not any more possible to speak of 'the church' as a body, different from the state. The King was obliged to keep all inhabitants to the one and only pure and true Christian faith (the Lutheran, that is) and in order to do so, priests were sent out in the Kingdom to serve locally. The more than 1500 churches, built before the Reformation and those coming later were kept either through patronage as part of the local manor house or by the parish with the help of tithes, which also covered the income of the priest together with the income from the farm, on which he lived. 1736 confirmation was introduced, with all children having to prove in church their knowledge of Luthers' catechism as result of their school years, as condition for being allowed to take up independent responsibilities, marry, become soldiers, get a work etc. Religious independence was oppressed through legal instruments, prohibiting ordinary people to assemble to read bible and discuss Christianity without the pastor being present, and as late as in 1828 the priests became legally obliged to baptize all children, being it against the will of the parents. – On the other hand, freedom of religion for foreign groups was stated in 1685 with recognition of Jews, Huguenots, Catholics at the Austrian Embassy and others. In 1814 the Jewish community was offered Danish citizenship on the condition, that they gave up their own internal laws and followed the law of the land. Danish citizens were only allowed to change religion or live without religion after the constitution of 1849.

The constitution (grundloven = grl) established the folkekirke as evangelical-lutheran and state supported (grl. § 4) and required the Monarch to be member of the evangelical-lutheran church (grl. § 6). Chapter VII ensures full individual and collective freedom of religion for everyone without any system of acknowledgement, however with nothing taught or done against decency or public

order (grl. § 67). - Legislative powers have according to the constitution the powers to organize the structure of the Folkekirke (grl. § 66), the original idea being, that the church should have the same democratic constitution as state and municipalities. Legislative powers are also given explicit powers by the constitution to organize relations between the state and other religious communities (grl. § 69), though not as a competence to legislate on internal matters of religious communities. Citizens are ensured not to be obliged to pay directly to any religious community not being of his or her faith (grl. § 68); economic or substantial support based on general taxes from municipalities or the state to the Folkekirke (or for that matter other religious communities, see however below) is however not prohibited. Finally, all citizens are obligated under general civil requirements and ensured access to general civil rights and public positions without any difference on basis of religion or belief (or race, which was added to Grl § 70 in 1953).

In 1849 this liberal constitution led to a heated discussions at the constitutional assembly, since, so the argument was, such rules open for Catholic processions in the streets and for Jewish members of Supreme Court. This strand of the assembly would prefer a Lutheran country with much less freedom, the argument being that no external powers (the Vatican) or no external religious laws should impact citizens in the Kingdom. Grundtvig, a priest and leading figure in 19th century liberalism whose focus on the local church and the state as representing the people is still influencing concepts of Danishness, however argued for a narrow concept of religion, related to cultus and ritus and on basis of this for broad freedoms, not only as a private, individual matter, but also including public and collective events. This on the other hand meant, that this winning party at the assembly argued, that there is only one, secular law of the land and that in court judges are bound only by this, the law of the land, not by any religious norms. – The reformatory focus on the local church, ensured by the King as well as distance to religions, establishing parallel legal (and political) orders, is still behind the legal norms.

The first decades of the 20th century saw major reforms in legislation concerning the local and economic organization of the Folkekirke, including abolishment of tithes, expropriation of church land, elections of bishops. Five attempts to establish one church law, giving the church a national body all failed. Social Democratic getting governmental power in the 1920'es sided with Grundtvigian influences in other parties, formulating a church policy based on government and parliament as protectors of individual freedom within the church. This seemed proved with introduction of female priesthood in 1948 against the will of a vast majority of priests and bishops, but supported by majority of church members, as well as with the introduction of church marriages for same-sex-couples in 2012, this time however supported by both church members and the vast majority of priests and bishops.

King Haralds stone argued that he had introduced Christianity and collected the kingdom. In spring 2000, when the current Queen Margrethe II turned 60 (born a week after the German occupation in 1940) and the constitution had turned 150 the year before, the queen was given a series of new tapestries for the hall, where ambassadors and members of rank greet the Monarch at New Year. The tapestries tell this story about a 1000 year old Danish kingdom, based on Christianity. They do however also, by referring to Danish membership of UN, NATO and not least EU as well as to new

religious movements and globalization, problematize whether this intertwining of Christianity and Kingdom can proceed. In December 2000, the Danish Parliament, Government and Monarchy organized the official Millennium-celebrations for the country as a church service in King Haralds old church in Jelling; maybe in order to recapture the old-age Danish model of religion, witnessed by the tapestries. - The Cartoons crisis 2005-2006 together with the social facts, mentioned in the introduction, however shows that the model is changing. Question is: how?

III. Legal Sources and Basic Approaches to Religion and Belief

The constitution of 1849 was revised in 1866; 1915 and 1953; the paragraphs on religion however not in any substantial way. In 1953 Denmark signed the European Convention of Human Rights without any reservations, given that established churches were accepted by the contracting parties. - Denmark has also signed numerous other international treaties holding norms on freedom of religion, including the International Covenant on Civil and Political Rights, conventions on Womens' Rights and on Rights of the Child. ECHR and ICCPR were implemented in Danish legislation in 1992 to avoid further dualist discussions concerning the Danish obligations. Denmark has not signed the 12th Protocol to the European Convention on Human Rights regarding Equality, among others due to its possible impact on different treatment of Folkekirken compared to other religious communities. - ILO-treaties on equality on the labor market and EU-directives on equality in regard to among others race and religion on the labor market are also implemented into Danish law. The Law on Prohibition of Discrimination on the Labor market prohibits any direct or indirect discrimination based on race, religion and belief, gender, sexuality, age and disability. Religious communities (incl Folkekirken) are however, in line with political and other ethos organizations, allowed to require necessary and proportionate religious loyalty from their core employees within quite narrow and pragmatically set standards.

IV. Individual Freedom of Religion and Belief

1. General Scope of Protection

GrL. § 67 has since 1849 been formulated as follows: 'members of the public are entitled to associate in communities to worship God according to their convictions; nothing may however be taught or done that contravenes decency or public order'. The rule has always been understood as a protection of not only the collective, but also individual right to freedom of religion. Danish law is thus fully in accordance with the individual dimensions of ECHR art 9.

2. Status of Minors

Children also enjoy freedom of religion and belief; until they by 18 reach full legal capacity however under the guidance of the parents who have the right to decide the religious upbringing.

Problems arise when parents divorce. Children are by law under common custody by the divorced parents; the state can however under family law decide to deny one of the parents the general right to custody or prohibit certain dimensions of the custody. Administrative cases, where a parent wanted the other parents' involvement of the children in his or her own religious practice prohibited, have been reported; so far cases involving 'normal' religious practice have been solved by involvement of the actual children (from the age of 10) and by reference to freedom of religion; the organization 'Childrens Welfare' however is suspicious to many dimensions of serious/fundamentalist religious practice.

Female circumcision is prohibited by law in Denmark. A recent debate suggests prohibition of male circumcision until the age of 18 by reference to the Convention on Children's rights. Government has so far referred to supervision by the health care system in the practice of male circumcision.

3. Activities Protected

Protected is the individual right to have, adapt, perform or change religion or not having any religious persuasion, all according to one's own decision. Part of this is also the right to worship, preach and practice, individually and collectively, not only in private homes or religious institutions, but, as mentioned, also in the general public, however due to limitation of practical grounds. Protected is also the creed and cult as such.

The constitution does not include rights to conscious objections or to object to general obligations for all citizens on religious grounds. Objection to military service or to medical treatment is however allowed under certain circumstances by law. Objection to participate in teaching of religion in public school is accepted; there are general discussions concerning religious dietary, participation in physical training, in bathing after gymnastics etc.; such conflicts are solved locally and pragmatically. – There is also no right to pray during working hours; some employees however allow for the possibility on pragmatic basis.

General prohibition of religious clothing in the public (streets etc) has until now been understood as against freedom of religion and belief, but will be re-proposed. In public institutions (such as schools, day care etc) a pragmatic and functional approach prevails, allowing for limitations to religious clothing if necessary for the individual to fulfill his or her public duties or gain his or her rights. In court, however, religious symbols are prohibited by law. - Private employers can within limitations of decency require general standards of clothing.

Ritual slaughter is only allowed in public slaughterhouses, the method of slaughtering is recently limited by decree in a way, prompting objections from several Muslim organizations as well as the Jewish synagogue in Copenhagen. Politically this was followed by a promise to ensure access to religiously slaughtered meat, if necessary by import.

Church bell ringing before services, during funerals, before weddings, to mark high holidays as well as morning and evening is allowed. Muezzin call has not been allowed.

4. Limitations to Freedom of Religion or Belief

It is debated in Danish legal discourse, whether the constitution substantially protects religious cult and rite from intervention by law. Question is, whether the limitation in § 67 in regard to ‘decency or public order’ would allow for parliamentary decided legislative interference in religious creed and/or practices. Some tend to understand the limitation as an obligation for (members of) religious communities to follow general laws of the land with no reservation, unless the law itself provides for exemptions. Most scholars however argue a substantial limitation of legislative powers, that is: substantial freedom of creed and practice, unless a clear and threatening disturbance of decency or public order (including the rights of others) is proved.

V. The Legal Status of Religious Communities

No general law regulates how religious communities should be organized and they are by law exempted from laws on organizations and charities. Thus religious organizations can organize the religious dimension according to their self-understanding as associations, charities, or privately owned bodies. Consequently, religious organizations have an extraordinary high level of discretion regarding internal matters; only if they want their members to be able to co-finance their membership by withdrawing what they pay to the church in their individual tax payment, is there an obligation to inform tax authorities about this dimension of the organizational life. And if the organization wants to receive the right to perform marriages with public authority, is there an obligation to go through a procedure of approval. The standards for approval have been set up in by-laws and guidelines; there is however a general critique over lack of security from these standards for the religious communities as well as the lack of transparency into organizational structure, decision-makers and economy. The current government has announced a committee to discuss these matters in second half of 2014.

A religious association can as any other association be dissolved under the constitution, § 78. An association, that operates or attempts to achieve its aims by means of violence, incitement to violence, or similar criminal action against those who think differently, may be dissolved by court decision. Several have suggested Hizb Ut-Tahrir to be dissolved due to its attempt to introduce the Caliphate and its hate speech against Danish soldiers in Afghanistan and against members of Jewish communities in Denmark; the public prosecutor has, however, so far not identified sufficient legal basis for filing the case at court.

Religiously inspired ethos-organizations (schools, hospitals etc) must be organized according to the relevant legislation on e.g. free schools and are not covered by rules on freedom of religion.

The Folkekirke is not one, coherent entity and not a legal subject as such. The 2.200 congregations and churches are legal subjects; the churches are legally speaking independent, but governed by the local congregation councils within frameworks, set by regional, diocesan and national legal, political, judicial and partly economic obligations, support and decision making. New congregation councils are elected every fourth year, in principle by all adult members of the church. Further councils on regional and diocesan level are elected indirectly on basis of the members of the local

councils. - The nearly 2.000 local priests are called by, however legally independent of the congregation council as governmentally appointed civil servants. They are ordained by and under theological supervision of the bishops and in practice also of the 104 regional deans. The ten bishops lead each diocese theologically; they are elected by members of congregation councils and priests in the diocese and formally appointed as state civil servants by the Monarch. – The bishops meet regularly, normally four times a year, and also regularly with the government minister of ecclesiastical affairs. In practice these meetings govern national church affairs. No laws however clarify competences at national level for any appointed or elected body. – The Folkekirke follows common rituals, a common hymn book and a common prayer book with readings for the services for each Sun- and Holliday over the year. They are in practice given legal authority by royal decree, which according to general constitutional law implies that the government minister has to give his or her contra-signature. No laws however clarify competences to change the content of the books or ensure influence from groups in the church, including the bishops, on these central, theological formulations of the church' creed.

VI. Religious Autonomy

Religious communities outside Folkekirken have full religious autonomy, however within the limits of the constitutional formulation, that nothing may be taught or done that contravenes decency or public order (see above). The state has never since 1849 intervened in the creed of any religious community.

The Folkekirke as such has, legally speaking, no religious autonomy. There are conflicting practices in the past on whether or not broad circles in the church have been involved or consented to liturgical changes. – In 2012, the current government set up a committee to investigate the establishment of new bodies at national level in the church to among others oversee changes of the theological books. An official report, Bet 1544/2014, was published April 2014 and the matter is negotiated politically.

The courts are in principle competent also in ecclesiastical matters; since at least Danish Law of 1683 however in a special setting with theological judges added to the legal judges; this system was revised and modernized, but not dissolved, in 1992. Jurisdiction regarding 'ecclesiastical cases' and the very concept 'internal affairs' is central in a at times heated Danish scholarly debate on church autonomy.

VII. Education

Public schools teach a topic, examined in 9th grade, named Christianity, but teaching Christian religion and other religions non-confessional with no interference from the church or other religious communities. The parents can demand their children off this school topic.

Danish children have a constitutional right and an obligation to receive education (§ 76), but not necessarily in public schools. The parents can teach privately, but most of the around 20% of the children, who do not attend public schools, are sent to 'free schools', very often based on a religious

ethos. These schools must meet the same educational requirements as public schools, but can freely choose the means of teaching. – Denmark thus has around 30 Catholic schools, more than 130 free Grundtvigian and Evangelical schools and a Jewish school. Recently, the way is also paved for a group of Muslim schools. – These schools can teach religion as a confessional topic.

University of Copenhagen (1479) has a non-confessional Faculty of Theology. University of Aarhus (1928) also offers theological education, and so does two private, confessional faculties. – After six years of University-studies, the ministry of ecclesiastical affairs offers a practical seminar, compulsory as precondition for being priest in the Folkekirke, and organized long-life-learning. Other religious communities have not succeeded in establishing theological education. Students are denied bringing public study allowances abroad, due to confessional approach of the faculties.

VIII. Religion and Personnel Matters

Employees of the Folkekirke follow normal labor law standards for civil servants or for other employees. They are engaged in labor unions, as are all other in the Danish society; and even though standards of decency apply, these standards are by purpose revised in order to be parallel to general standards for publicly employed personnel. – Gender equality is conflictual, since certain quarters in the Folkekirke do not wish to collaborate with female pastors. The law is clear: congregation councils have a right to choose discriminate between genders, when choosing the pastors, but all employed, including other pastors are obliged to collaborate with all colleagues. – Sexuality or marriage situation is not relevant for employment in the church, even not as a pastor. – A case can be filed if a pastor by purpose preaches clearly outside evangelical-Lutheran Christianity. On proposal from the bishop, the Ministry of Ecclesiastical affairs will file the case at the local courts supplemented by theological judges. One such case led in 1999 to the dismissal of a priest, preaching baptism; another case against a priest who ‘did not believe in God’, was solved through supervision from the bishops. – Employees, hired by diaconal organizations, religious schools etc can according to an exemption in the law be required by the organization to owe loyalty in creed, and possibly also in practice, to the organization.

IX. Finance

The Folkekirke is 90 % self-financed by members’ church taxes, mainly decided by the local congregation councils and the 104 deaneries in collaboration. National member-paid church taxes, covering 15% of the budget, is decided by the government minister of ecclesiastical affairs, supplemented by a minor income from real estate. Church taxes are in practice levied by the municipalities. 10% of the budget is financed through an economic support from the state budget decided by law through the national budget in parliament and paid by all tax payers. The state funding is so far seen as a historical remuneration for expropriation of real estates after the reformation and in 1919 and thus used as payment of the salaries for the bishops and part of the salaries for the priests. Whether this will proceed is an element in current political deliberations; the before mentioned Bet. 1544/2014 suggests a reorganization of the economic relations between the

state and the Folkekirke and introduction of a national council for the church, responsible for among others national economic affairs.

Other religious communities in Denmark are totally self-supporting. Voices from the Catholic Church have suggested that also they be given access to have church taxes levied in order to reach budgetary security. This has so far not got political support. - On the other hand, leading politicians have criticized, that a recent Mosque in Copenhagen is financed by Qatar. – Members of religious communities and tax payers supporting religious and other charities can reduce their income tax with payments up to 850 Euros; that is not a possibility for church tax paying members of the Folkekirke.

Church buildings under the Folkekirke are maintained by the local congregation, financed through church taxes. Other religious buildings can be listed, however with nearly no economic support from the state for maintenance.

X. Religious Assistance in and Access to Public Institutions

Denmark has a system of church chaplaincies in universities, hospitals, the military and prisons; some Muslim hospital- and prison-chaplaincies are added.

Folkekirken has a public role in public matters as e.g. an officially stated service of grief after the Tsunami and official services at the beginning of the year of parliamentary work.

All inhabitants have a right to get their children baptized in the local church when presenting baptized witnesses. Danish civil registration of birth, marriage and death is established electronically on the shoulders of the church registers and kept by the priests in the Folkekirke (except for the southern municipalities where the German system of municipal civil registration was upheld after reintegration of the areas in the Denmark in 1920). The local Folkekirke priest is also authority in burial matters for all citizens, and there is a general right to be buried at the local cemetery; if the family so wish, the deceased can instead be buried according to rituals of other religious communities or without any religious rituals at the same grave yards or at a grave yard belonging to another religious community. – Members of the Catholic Church and of the Baptist congregations recently challenged this role of the Folkekirke by court, arguing this system to be against their freedom of religion and against religious equality. Supreme Court upheld the system, arguing that the Church is simply contracting party for the State in such matters (U 2008.342H).

Weddings can according to the law on marriages be performed with civil authority either by the local mayor; by the local Folkekirke priest; by the vicar in one of the recognized churches; or by a religious leader who is authorized to do so in one of the religious communities, acknowledged for this matter after 1992. Marriage in Folkekirken or in a religious community requires membership from at least one of the parties.

XI. Religion and Family Matters

Even though weddings can be performed according to different religious rituals with legitimacy according to civil law, this does not authorize religious communities (including the Folkekirke) or religious norms with legal impact on family matters; marriage must be performed according to Danish marriage law. – Private International Law and the practice of religious believers from communities with legal norms regarding family matters as part of the faith challenge this one-law-for-all system, so far without any legal consequences.

XII. Religion in Criminal Law and Other Public Regulations

The Danish criminal law code still entails a prohibition of blasphemy, covering all religions. Since 1938, the criminal law code also entails prohibition of hate speech, formulated as a penalizing of public statements that threaten, insult or degrade a group of persons on basis of their race, skin color, national or ethnic origin, faith or belief or sexual orientation. – The prohibition of hate speech is quite often in use; the public prosecutor did however not find the concrete, published cartoons behind the Cartoons-crisis in 2005 grave enough to file a case. – Widespread intellectual and political argumentation favors freedom of speech as unlimited and suggests to abolish these rules; according to the Danish constitution, freedom of speech is however subject to legal limitations. Proposals to change the law have so far been unsuccessful.

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Grundloven (the Constitutional Act of Denmark of 5 June 1849, last amended by law of 5 June 1953; <https://www.retsinformation.dk/Forms/R0710.aspx?id=45902>)

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