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COUNTRY REPORT: DENMARK

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September 2009
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European University Institute, Florence
Robert Schuman Centre for Advanced Studies
EUDO Citizenship Observatory

Report on Denmark

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Denmark

Eva Ersbøll

1 Introduction

Unlike many other European countries, Denmark has not reformed its citizenship law at the beginning of the new millennium, and it has not followed the European trends in citizenship law of facilitating naturalisation, extending entitlement to citizenship, accepting multiple citizenship and introducing *ius soli* elements into its citizenship law. Far from providing for easier access to citizenship, Denmark has made the conditions for the acquisition of citizenship stricter during the last ten years. Existing citizenship legislation is generally based on Danish citizenship traditions.

Danish citizenship law has its origin in political conditions, which go back to the eighteenth century. Foreigners, especially Germans, had at the time a strong influence in the state administration which in 1776 made the Danish autocratic King promulgate an act on *Indfødsret* or *Ius Indigenatus* according to which access to public positions in the Kingdom became the prerogative of native-born subjects and those who were considered equal to them.

The Act on *Indfødsret* was not a citizenship law in the current sense of the word, but it had many of the characteristics of a citizenship law. The acquisition of the status of 'native-born' was, in principle, based on *ius soli*, but soon *ius sanguinis* became of importance, as only children born on the state's territory of Danish parents acquired *indfødsret* at birth, while children born on the territory of alien parents had to remain in the Danish Kingdom in order to fulfil the acquisition criteria. As to immigrants, the only way to acquire a status equal to that of native-born persons was through naturalisation by the King.

When Denmark became a democracy in 1849, the King lost his sole authority to grant naturalisation, as the Constitution stated aliens could only henceforth acquire *indfødsret* (*ius indigenatus*) by statute. Around this time, *indfødsret* was increasingly seen as a citizenship or nationality concept, as political rights became attached to this status.

Apart from its provisions on naturalisation (changed by the 1849 Constitution), the 1776 Act was in force until 1898, when Denmark adopted its first general 'citizenship law' changing the fundamental acquisition principle from *ius soli* to *ius sanguinis*. The name of the new law was 'The act on the Acquisition and Loss of *Indfødsret*'.

Denmark operated at that time with both the status '*indfødsret*' and the status 'citizenship' based on domicile which had different contents, but there was a wish to simplify things by equalising '*indfødsret*' and 'citizenship'; therefore, in the draft new act every time the word '*indfødsret*' was mentioned, it was explained by adding 'citizenship'- with brackets around 'citizenship'. However, in Parliament there was a certain hesitation as to whether this was a proper solution. The final answer was negative, but eventually, in the 20th century the two concepts merged. Since then, Danish legislation has used the words '*indfødsret*' and 'citizenship' (in Danish 'statsborgerret' or 'statsborgerskab') synonymously; in Denmark the word 'nationality (in Danish 'nationalitet') normally signifies a link to a certain country, for instance within the Foreign Service, aviation or navigation.

A citizenship law reform took place in 1925 and again in 1950 when gender equality was introduced as a principle (some inequality still exists even today, as only children with a Danish mother and not children with a Danish father acquire Danish citizenship *ex lege* at birth, if they are born abroad and out of wedlock). The citizenship law in force at present is the 1950 Act, although amended several times, especially during the last ten years.

Since the late 1890s, the Danish citizenship law has been based on Nordic cooperation. Until recently, the Nordic citizenship laws have been almost similar. The differences as to naturalisation stem to a large extent from the Danish constitutional requirement on aliens' acquisition of Danish citizenship by statute, which means that decisions on naturalisation are made by the legislative power in acts granting citizenship, mentioning each of the applicants by name etc.

The ending of Nordic homogeneity regarding citizenship law has, among other things, been triggered by some of the Nordic countries' changed attitudes on the toleration of multiple citizenship. Traditionally, all Nordic countries disapproved of this status; citizens lost their citizenship in cases of voluntary acquisition of another citizenship and in cases of naturalisation, applicants were normally required to renounce their former citizenship. However, since toleration of multiple citizenship was made acceptable by the 1997 European Convention on Nationality, Sweden, Finland and Iceland have reformed their citizenship laws and introduced toleration of multiple citizenship as a main principle, while Denmark has strongly rejected changing its traditionally negative attitude towards this status.¹ A discussion on this issue has however taken place in 2008-2009.

Denmark has also responded differently in other respects to new challenges stemming from globalisation and immigration, among other things by increasing its already relatively high barriers to naturalisation. Thus, Denmark is the only Nordic country with a general residence requirement of nine years (eight years for refugees and stateless persons) and a conduct requirement excluding aliens from naturalisation on a permanent basis (in so far as they have been sentenced to imprisonment for eighteen months or more). The Danish language requirements have also been made more stringent, first in June 2002 and later in December 2005 and November 2008. The effect was a sharp fall in the number of naturalisations from 2002 to 2003, followed by an increase until 2006 when a new decrease began. The new decrease may be expected to be more permanent due to the extended language requirements and the new condition according to which applicants for naturalisation must be self-supporting in the sense that they must not have received social benefits for more than an aggregate period of half a year within the last five years.

The high barriers to naturalisation for long-term immigrants do not apply to citizens from the Nordic countries. Traditionally, Denmark has facilitated the acquisition of citizenship for Nordic citizens. In the aftermath of the Second World War the Nordic countries discussed the introduction of a common Nordic citizenship; however the issue was set aside for more urgent matters. Instead, a Nordic agreement was concluded, entitling citizens from the Nordic countries to privileged acquisition of citizenship through notification / declaration and facilitated naturalisation. Today, the residence requirement for naturalisation of Nordic citizens is two years, and since 2004, only second-generation immigrants from other Nordic countries may be granted Danish citizenship by entitlement.

Ethnically, Denmark has had a homogeneous population since 1864, and even though the country has now, like other European countries, become a country of immigration, it has not identified itself as such. On the other hand, Denmark has not given much consideration to its own emigrants either, and the approximately 25,000 Danes who have emigrated annually over the last decades have also faced some problems.

¹ See E. Ersbøll, 'Statsborgerskab - Medborgarskab - Europæisk Konvergens - Nordisk Divergens?', *Mennesker og Rettigheder, Nordic Journal of Human rights*, 21 (2003), 147-64.

One problem has been a lack of voting rights in Danish parliamentary elections due to a Danish constitutional condition requiring residence in Denmark. Expatriates have tried to have the interpretation of the residence requirement softened through the political system, but so far it has been the general understanding that an amendment of the constitution is necessary in order to extend expatriates' electoral rights.

Another problem has been the legislative barriers for expatriates wishing to settle in Denmark with their foreign family due to an amendment of the Danish Aliens Act in 2002. The purpose of the act was to curb immigrants' rights to family reunification with spouses from their country of origin, however based on the consideration that many immigrants have acquired Danish citizenship, the law was changed, and Danish citizens as well as non-citizens had to meet the same requirements: among others in order to settle in Denmark with a foreign spouse, the couple's aggregate ties to Denmark had to be stronger than the couple's aggregate ties with any other country. This 'attachment requirement' prevented many expatriates from resettling in Denmark with their foreign family. Strong public criticism of the arrangement made the government change the law again in 2004 and since then Danish citizens who have held Danish citizenship for 28 years or more no longer have to fulfil the attachment requirement. The amendment has, however, created a new problem of discrimination between Danish citizens, depending on the length of time they have been citizens.

The fact that the Danish citizenship law has the highest barriers for naturalisation among the Nordic countries may not only be a matter of Danish history and traditions plus domestic politics but may also have to do with the special Danish procedural arrangement for naturalisation and the fact that criteria for naturalisation are not adopted by law, but – with the doors closed – negotiated and agreed upon by political parties representing a majority in Parliament. Making naturalisation criteria a matter of agreement between political parties may have curbed more in-depth considerations on the meaning of citizenship and its influence on immigrants' integration into Danish society.

2 Historical background and changes

2.1 Pre-constitutional time

The Danish state has been a Kingdom known as Denmark from around 900. Due to its favourable geopolitical position at the entrance to the Baltic Sea the Danish monarchy was able to exercise hegemony over Northern Europe since the late middle ages. The Danish state has been described as a composite state stretching from the North Cape to Hamburg. However, in the middle of the seventeenth century Denmark lost its hegemony over Northern Europe to the newly established Swedish empire around the Baltic (Østergaard 2000: 147).

In 1660, the Estates handed over to the King the realm as a kingdom of inheritance, and the absolute monarchy came into being. The Royal Act of 1665 allowed the King freely to choose his 'servants'. Persons of noble birth lost their privileges, and the King invited foreigners, especially German aristocrats, to serve as high officials in order to exclude the Danish nobility from re-gaining political influence. In the eighteenth century, public discontent with the German influence in state administration erupted. A growing nationalism was fuelled by J. F. Struensee's regime from 1770–1772. Struensee was German speaking and considered a foreigner, and he ruled the country through cabinet orders on behalf of the King. After his regime was brought down, a Danish-minded government became a necessity and the Act on *Indfødsret* (*Ius Indigenatus*) supported Danish national politics.

The title of the 1776 Act was 'Indføds-Retten, according to which all public positions in his Majesty's Kingdom are exclusively reserved for native-born subjects and those who are

respected as equal to them'. In the preamble, the arrangement was reasoned by fairness: it was considered reasonable and fair that 'the children of the country should enjoy the bread of the country and that the advantages of the state should fall to the lot of its citizens'. For the first time, the subjects of the state were acknowledged as the citizens of the state. It is worth noting, however, that the Act on *Indfødsret* was not Danish as such, as the Danish state at that time consisted of the Kingdoms of Denmark and Norway and the duchies of Schleswig and Holstein,² and all residents in the multinational state were considered the King's subjects.

The aim of the act was to secure public positions for native born subjects. Therefore, the first section of the act stated that in order to obtain a public position, a person should be born in the states or born to native-born parents who were travelling or serving the King abroad. However, public positions could also be given to persons who were considered equal to native-born persons, especially those who served the King and wealthy estate owners. In order to achieve such an equal status, a letter of naturalisation was required from the King.

The legal status of foreigners and their children was otherwise regulated in sect. 9 of the act. According to this provision, all foreigners who were not considered equal to native-born persons (through naturalisation) would have the same freedom to reside and work in the Kingdom and the same protection by the government as formerly. Furthermore, it was established that such foreigners' 'children who are born in the Danish State one and all shall be respected and regarded completely as native-born if they remain in the State'. This provision was, after a while, interpreted as limiting the *ius soli* principle in the first section of the act such that only children born of native-born parents acquired *indfødsret* at birth. For other children, the acquisition was conditional on their staying in the country. It seems fair to suggest that all children born in the territory were considered native-born, but children born of foreign parents would only acquire the rights attached to the status if they remained in the realm; if, eventually, this condition was not fulfilled, the *ius indigenatus* would lapse.

2.2 The first Danish Constitution, 1849

In the Napoleonic wars, Denmark-Norway and Sweden were on opposite sides. After Napoleon's defeat, the Danish King was, as a result of his alliance with Napoleon, compelled to cede Norway to Sweden in 1814; 'in return' for Norway, the King received the Duchy of Lauenburg. This altered the balance between the Nordic and the German populations in the composite state. With the duchies, Schleswig and Holstein and Lauenburg, as part of the realm, around a third of the population became German; the Dual Monarchy gave way to the so-called *Gesamtstaat* ('*Helstat*' or United Monarchy) (Østergaard 2000: 155).

Separate Schleswig-Holstein and Danish movements evolved and demanded on the one hand German unification and on the other hand Nordic unity. The revolutions abroad influenced the national movements, and the Three Years War between Prussia and Denmark broke out in 1848. At that time, the Danish King had appointed a new, national-liberal government to draft a constitution. For the drafters of the constitution, the Belgian Constitution became an important model, which, among others, is reflected in the Constitution's provision according to which no alien in the future could acquire *indfødsret* 'except by statute'. During the discussions on this provision, there were political disagreements between the Eider-Danish National Liberals, who wanted Schleswig incorporated in Denmark (and the Southern border of Denmark at the River Eider between

² In addition, the state comprised the Atlantic dependencies of Iceland, the Faroe Islands and Greenland plus colonies in the West Indies, West Africa and India.

Schleswig and Holstein), and the supporters of the multinational united monarchy (Østergaard 2000: 157). On the one side, a Scandinavianist, the famous Danish minister and poet, N. F. S. Grundtvig, suggested that citizens from Sweden and Norway should be entitled to *indfødsret* after a certain period of residence in Denmark. On the other side, an influential supporter of the united monarchy and future Prime Minister, A. S. Ørsted, was completely opposed to proper Danish legislation on the acquisition of *indfødsret* as long as uncertainties existed about the duchies' relations with Denmark.

The first Danish constitution was adopted on 5 June 1849. It did not contain any provision on citizenship or citizenship, but some provisions dealt with the concept of *indfødsret*; apart from the provision for aliens' acquisition of *indfødsret* by statute, the Constitution contained provisions on having *indfødsret* as a condition for appointment as civil servant and for electoral rights at parliamentary elections.

As the June Constitution was adopted at a time of uncertainty as to the duchies' attachment to Denmark, it only applied to the Danish Kingdom. However when in 1851 the Three Years War ended and the united monarchy lived on it became necessary to adopt a common constitution for the entire monarchy. By the new Constitution of 1855, *indfødsret* became a common matter for the whole Kingdom. However, problems amongst the pro-German and the Danish population continued, and in 1858 the Constitution was annulled for Holstein and Lauenburg. In 1863, Denmark tried to tie Schleswig to the Kingdom through a new common Eider-Danish Constitution, but this provoked the German powers, and in 1864, Prussia and Austria declared war on the Danish state. Eventually Denmark suffered a 'self-inflicted defeat' and had to cede Schleswig, Holstein and Lauenburg in 1864. (Østergaard 2000: 156). As a result, Denmark became a 'nation state' with an ethnically homogeneous population, and more than 150,000 Danes ended up living outside the Danish state (Lundgreen-Nielsen 1992: 145). According to the Vienna Treaty of 1864, art. XIX, they could optionally retain their status as Danish subjects if they moved to Denmark within a six year time limit. Thousands of persons used this opportunity each year until 1872, when the new German Empire changed its legislation in such a way that the persons concerned could stay in Germany as Danish subjects.

2.3 Danish Emigration

Around the mid nineteenth century, Denmark started to become a country of emigration. Factors like a growing population, poverty, low income, high prices for land, unemployment and better possibilities for transportation made many, especially young Danes, emigrate overseas, first and foremost to America. Danish emigration was also caused by the loss of Northern Schleswig in 1864. Although the more than 150,000 Danes who then came under the German regime were able to opt for Denmark, many of them considered America to be a more attractive alternative. Danish emigration culminated in the 1880s, when around 80,000 Danes left their native country (Stilling & Olsen 1994: 30).

For the Danish-Americans it was important to become American citizens. The concept of *indfødsret* had then increasingly become the legal expression of being 'Danish', but the 1776 Act did not include provisions for renunciation or loss of *indfødsret*. This legal situation was unpractical, as foreign states could require the renunciation of all legal connections with the country of origin as a condition for naturalisation. In practice, Denmark would release a person from his or her status as a Danish subject, but this would not lead to the loss of Danish *indfødsret*. Therefore in 1871, an act on the loss of *indfødsret* was adopted (Act No. 54 of 25 March 1871 including an Addition to the Act on *Indfødsret* of 15 January 1776).

According to this law, Danish native-born subjects who were naturalised as foreign citizens could no longer enjoy the rights attached to Danish *indfødsret* and neither were they under any obligations stemming from the *indfødsret*. However, upon taking up residence in Denmark again, their subjecthood might change; if they had not been released from their subjecthood to the foreign state they could notify the Minister for the Interior of their wish to be released and if they stayed in Denmark for two years or more, they were presumed to have resigned from their foreign subjecthood (unless this was counteracted by international treaty).³

Still, from a citizenship law perspective, the legal situation was chaotic. Even though *indfødsret* was to be considered a citizenship concept, another Danish citizenship concept existed at the same time. The Danish Ministry of the Interior described the difference between the two concepts by reference to the fact that Danish *indfødsret* was inalienable, while this was not the case with Danish citizenship: ‘anyone who by taking up habitual residence in Denmark has entered into a permanent subjecthood to the Danish state is without any formal act considered a Danish citizen... hence it follows that reckoned among the Danish subjects are also persons without Danish *indfødsret*. It may frequently happen that Danish subjects are released entirely from their subjecthood by a formal act, especially when this is necessary for becoming naturalised in a foreign state, but such release does not lead to the loss of a person’s *indfødsret*.’⁴

The legal uncertainty as to who were citizens and who were foreigners became increasingly intolerable. In other countries, the distinction between the two concepts had at that time become clear, and a consistency between the national and international perceptions of the citizenship concept was achieved, though not in Denmark. A Danish citizenship law reform became therefore imperative.

2.4 The 1898 citizenship law reform

During the nineteenth century, citizens increasingly participated in public life, public authorities assumed more functions, social assistance was developed, access to international communication and travel became increasingly easy, and international cooperation was strengthened. These developments contributed to making the citizen/foreigner distinction more relevant, and it became natural to introduce fundamental citizenship principles, such as the principles of *ius sanguinis* and family unity into the Danish citizenship law (Larsen 1948b: 118).

Moreover, in 1888, Denmark and Sweden ratified a bilateral agreement on poverty relief and repatriation, which also made it clear that more uniform citizenship law reforms were necessary. The two countries prepared a provisional draft recognising that the Danish provisions were based on principles ‘from times past’, and that an amendment was necessary with a view to international cooperation.⁵ Denmark and Sweden wanted Norway to participate

³ The so-called Bancroft-treaties (1868–1874) between the United States and a number of other states illustrate another effort to solve the problems connected to migration and naturalisation. The important consideration was to achieve an arrangement for the migrants’ military obligations making it possible for the state of emigration to consider the naturalisation lapsed if an emigrant returned to his native country. A Danish-American convention in this respect was signed 20 July 1872.

⁴ Letter of 18 September 1875 (1332/1875) to the Ministry of Foreign Affairs, see K. Larsen, *Indfødsretslovene II, Cirkulærer Og Afgørelser* (Copenhagen: Ejnar Munksgaard, 1948a) at 47.

⁵ Provisional draft of a legislation as uniform as possible for Denmark and Sweden concerning acquisition and loss of nationality (*Foreløbigt udkast til en saa vidt muligt ensartet Lovgivning for Danmark og Sverige angaaende Erhvervelse og Fortabelse af Statsborgerret*) (1888).

in a common citizenship law reform, and a commission with delegates from the three countries was set up to work out draft acts.

In 1890, the draft was finished.⁶ Norway had already adopted a new citizenship act in 1888. In Sweden, a new act (the first Swedish act on citizenship) was passed in 1894; like the Norwegian act, it was based on the *ius sanguinis* principle, confirming the former Swedish customary rules. A similar bill on Danish *indfødsret* was presented to the Parliament in 1896 equating '*indfødsret*' with 'citizenship' (as already mentioned with brackets round 'citizenship'). According to the preparatory work, the reason for granting a person *indfødsret* and thereby political rights etc. was that said person was affiliated to the state as citizen/national; furthermore, by using the word *indfødsret* synonymously with citizenship in the new act, an amendment of the Danish Constitution became unnecessary.

In Parliament, however, there were, as mentioned in the introduction, hesitations as to whether it would be a proper solution to abruptly replace the old citizenship concept with a new one, which should only be granted to native-born persons. The result would be that persons affiliated to the Danish state through many years of residence could claim diplomatic protection from foreign states, and Danish expatriates without *indfødsret* could become 'stateless'.

Consequently, the bracketed word 'citizenship' was removed, and it was emphasised in the act that it did not change the legal status of persons who had become Danish citizens by taking up residence in Denmark. With this amendment, the new act was adopted as Act No. 42 of 19 March 1898 on the Acquisition and Loss of *Indfødsret*.

The act introduced, as already mentioned, *ius sanguinis* as the fundamental acquisition principle. According to the first section, a child born in wedlock acquired Danish *indfødsret*, if the father had Danish *indfødsret*, and it was emphasised that this applied irrespectively of whether the child was born in the country or abroad. Sect. 9 on children born out of wedlock stated that an illegitimate child would acquire Danish *indfødsret* if the mother had Danish *indfødsret*. However, if the mother's citizenship status was changed due to her marriage with another man than the child's father, there would not be a change of the child's *indfødsret*. Furthermore, sect. 10 contained the well-known rule of presumption establishing that children who are found in the realm and whose citizenship cannot be ascertained are considered citizens until the contrary has been established.

It was underlined in the preparatory work that the recognition of the *ius sanguinis* principle and the introduction of conferring *indfødsret* by descent should not exclude other modes of 'conferring *indfødsret* without the will of the individual', which would lead to the malpractice known from France, where foreigners in accordance with the principle of descent had been able to transfer their foreign citizenship to their offspring during an indefinite number of generations. A solution to this problem could have been to introduce a rule of presumption similar to the French double *ius soli* principle, but this idea was given up, as a complete socialisation was considered normally to occur already for the first generation of foreigners born and brought up on the territory. Instead, the act stated in sect. 2 that a person born and brought up in Denmark would acquire Danish *indfødsret ex lege* at the age of nineteen, unless said person already had a foreign citizenship and within the previous year had declared his or her wish not to acquire Danish *indfødsret*. Children of foreigners who themselves had retained a foreign citizenship could, in this way, not give such a declaration.

⁶ Draft Law on Acquisition and Loss of Nationality, prepared by commissioners for Denmark, Sweden and Norway (*Udkast til Lov om Erhvervelse og Tab af Statsborgerret, udarbejdet af Kommitterede for Danmark, Sverige og Norge*) (1890).

Danish *indfødsret* acquired by a man via this mode would be extended to his wife and children. The provision in sect. 2 was rather similar to sect. 9 in the 1776 Act, as it had been interpreted in practice by 1898.

At that time, most countries followed the principle of family unity as to citizenship, and due to the husband's principal status, a foreign married woman acquired her husband's citizenship by marriage. This principle was also codified in the new act, sect. 3. By such a marriage also the couple's children would acquire Danish *indfødsret*, if they were less than eighteen years old and unmarried. The provision caused some concern, but it was considered to be in harmony with liberal ideas on the right to respect for family life without interference from the authorities.

It was incontrovertible that it should continue to be possible to acquire Danish *indfødsret* through naturalisation; however the naturalisation requirements were not laid down in the new act, which in sect. 4 confined itself to refer to the constitutional provision, according to which no alien could acquire *indfødsret* except by statute. In addition, it was stated that naturalisation of a man also included his wife and children unless otherwise decided. Hitherto, it had been a precondition for naturalisation that all persons to be naturalised were explicitly mentioned by name in an act on acquisition of *indfødsret*, but as a consequence of the recognition of the principle of family unity, Parliament agreed upon a rule of presumption, according to which it would normally be in the best interest of all parties that wife and children acquired *indfødsret* with the husband.

In a time of emigration, it was natural to legislate on the loss of *indfødsret*, as renunciation of a former citizenship was often made a condition for naturalisation abroad. Therefore, according to sect. 5, a Dane who acquired a foreign citizenship would lose Danish *indfødsret*, and if said person was a married man, and the foreign citizenship was extended to his wife and children, they would also lose their *indfødsret*, unless they stayed in Denmark. This new rule applied regardless of whether the person in question acquired the foreign citizenship voluntarily or not.

Another innovative rule was contained in sect. 5, para. 2, which stated that a person who wished to become a foreign citizen could be released from his or her citizenship relationship to Denmark by a royal resolution, conditioned by said person's acquisition of a foreign citizenship within a certain time limit.

As to a Danish woman's loss of *indfødsret* by marriage to a foreigner, the act established that also the couple's children born before the marriage would lose their *indfødsret* upon the parents' marriage, if the children were under majority and unmarried – even if they became stateless.

Furthermore, the law contained provisions on the suspension of *indfødsret* for persons who resided abroad continuously during a period of ten years. These rules were considered an alternative to rules on loss of citizenship by expatriation, but they were repealed in 1908, before they had any legal effect. Like larger emigration countries, Denmark recognised the importance of emigrants being able to retain their original citizenship and the importance for the Danish state of emigrants being affiliated to Denmark.

When the First World War began, many Danish subjects and persons with Danish *indfødsret* lived in Northern Schleswig with unclear legal status. The provision on *ius indigenatus* in the Vienna Peace Treaty of 1864, art. XIX, para. 5, was interpreted differently in Denmark and Prussia. The primordial French text which stated that '*(l)e droit d'indigénat, tant dans le Royaume de Danemarck que dans les Duchés, est conservé à tous les individus qui les possèdent à l'époque de l'échange des ratifications du présent Traité*' (Larsen 1948b: 54).

Denmark understood the term '*indfødsret*' to mean the same as the German term '*Statsangehörigkeit*', but in German law '*Statsangehöriger*', *Unterthan*' and '*Statsbürger*' were analogous terms (national, subject and citizen), and the Prussian government considered an option for subjecthood to be decisive for the option of '*indigenat*', whereas Denmark considered it to be possible for a person with *indigenat/indfødsret* to be released from his or her subjecthood while still retaining *indigenat/indfødsret* and '*citizenship rights*', with, among others, the right to remain in and return to the country of citizenship/*indfødsret* (Matzen 1907: 4).

This legal uncertainty created many problems for persons who had opted for Denmark, but remained in Schleswig. Prussia had promised not to expel persons who had opted for Denmark from Germany, and in 1914 they were ordered to do German military service, although many of them had already done or were doing their military service in Denmark. This made the Danish government pass an act granting *indfødsret* to such persons. The events illustrate which problems the unique peculiarity of Danish citizenship law created, and within the following years it was accepted in Danish law and practice, that Danish *indfødsret*, subjecthood, citizenship and nationality were to be seen as synonymous concepts.

In 1916–1918, the extension of the Danish realm changed again. Denmark transferred the West Indian Islands to the USA and recognised Iceland as an independent state. According to the Act on the Danish-Iceland Federation, Icelandic citizens in Denmark were granted equal rights to those of Danish citizens, and vice versa. Another important change of the area of the realm took place at the end of the First World War, when it was decided by the Treaty of Versailles, that Germany should cede parts of Southern Jutland to Denmark. Following a referendum, the Northern part of Schleswig was reunited with Denmark in 1920, and all inhabitants in this area acquired Danish citizenship and lost their German citizenship, however with the possibility to opt differently within a two years' period.

2.5 The 1925 citizenship law reform

The First World War and the general social development invoked a new reform of the citizenship laws. Again, Sweden invited Denmark and Norway for talks, and this time the crucial question was the status of married women. Women were gaining civil and political rights equal to men, and women's organisations lobbied for equality regarding citizenship rights as well. The question of gender equality was controversial, but eventually, in 1924–1925 Denmark, Norway and Sweden adopted new citizenship laws based on a new common Nordic report.⁷

It turned out that the time was not yet ripe for giving married women independence in terms of citizenship. In many other countries, the citizenship law still provided for the loss of a woman's citizenship by her marriage to a foreigner, and consequently, it was considered necessary to let foreign women married to Danish men acquire their husband's citizenship by marriage, disregarding the inconvenience created by this arrangement. Therefore, the new Citizenship Act's sect. 3 contained a provision that was almost similar to sect. 3 of the 1898 Act on automatic transfer of Danish citizenship to a foreign woman by her marriage to a Danish man – and likewise to the couple's unmarried children below eighteen years of age.

Furthermore, the new law continued the former provision on automatic acquisition of citizenship at birth, *ex lege*, by descent. A child born in wedlock acquired Danish citizenship,

⁷ New draft citizenship laws, prepared by delegates from Denmark, Norway and Sweden, 1921 (*Udkast til nye Statsborgerretslove, udarbejdede af Delegerede for Danmark, Norge og Sverige*, 1921).

if the father was a Danish citizen, and a child born out of wedlock acquired Danish citizenship if the mother was a Danish citizen. (The new law placed both rules in sect. 1.) Also the 1898 Act's acquisition modes for foundlings (sect. 1(2)) and second and third generations of immigrant descent (sect. 2) were continued, and so was the naturalisation rule (sect. 4).

Delegates from the Nordic countries had suggested in their common report that the Swedish and Norwegian provisions on naturalisation should attach importance to the applicant's age, residence and period of residence in the country in question, conduct and ability to provide for his or her family plus loss of a former citizenship. Such conditions were also part of the Danish naturalisation practice, according to which the residence requirement was fifteen years for aliens in general, and less for citizens from Norway and Sweden (ten years, since 1914).⁸ There was a requirement of 'honest and sober conduct'. Crimes committed which were considered degrading resulted in a waiting period of 25 years and rehabilitation was required, while imprisonment with hard labour excluded naturalisation. Only persons who could provide for themselves and their family could gain citizenship. Applicants should master the Danish language, and their children should enjoy a Danish education and attend Danish school.

When a person who was granted naturalisation had a wife and unmarried children younger than eighteen years of age, they would be naturalised simultaneously unless otherwise decided (sect. 4 (2)). However, in terms of loss of citizenship, a significant change was introduced for married women and their children, as their loss of Danish citizenship was made conditional on them acquiring a new citizenship (sect. 5). Thus, if the man was stateless, or if the law in his country did not transfer his citizenship to his wife and children, they would keep their Danish citizenship. In Parliament, there was even a wish to couple the loss of citizenship to *voluntary* acquisition of a new citizenship, but opposition towards dual citizenship hindered this solution. Another innovation was a provision, according to which the loss of a citizenship acquired by birth only became effective upon emigration from Denmark (sect. 5, last sentence). This rule has been called a modern 'adscription' (Larsen 1948b: 344).

A new rule on the loss of Danish citizenship due to birth and residence abroad was introduced (sect. 6). According to this new rule, a Danish man or an unmarried Danish woman who was born abroad and had never resided in Denmark would lose Danish citizenship upon attaining 22 years of age. Citizenship could however be retained by means of a royal resolution. If a married man lost his citizenship via this mode, the loss would include his wife and children born in marriage. The same rule on loss applied to a woman and her children born out of marriage.

The 1925 Law was in force until 1950, but the Second World War led to some amendments. The rule on the loss of Danish citizenship due to birth and residence abroad was suspended at the outbreak of the war. After the end of the war certain other provisions on automatic acquisition of citizenship regarding German citizens and persons of German origin were suspended, including those involving Danish women married to Germans, due to radically changed circumstances. .

One of the suspended rules was the socialisation-based mode of acquisition for second generation of immigrant descent. The rule was based on an assumption of integration, which could not be taken for granted in relation to second generation of German origin after the German occupation of Denmark, 9 April 1945, where Germans had settled in Denmark and endeavoured to strengthen resident Germans' German-national sentiment. Neither could it be

⁸ The general residence period suggested in the Norwegian and Swedish draft Acts was five years.

presumed that a marriage between a Danish man and a German woman was entered into without regard to the woman's future citizenship status. The third group whose right to Danish citizenship was suspended was Danish women married to Germans. Such women could no longer retain their Danish citizenship, irrespective of whether they had acquired it at birth and still lived in Denmark. This suspension in particular was considered problematic, and it was only in force until 1947, while the other suspensions lasted until 1948. In the interim period, individuals from the groups excluded from obtaining Danish citizenship in accordance with the suspended provisions might acquire Danish citizenship through naturalisation based on the legislature's individual assessment of their case. The government regretted this arrangement, but due to the constitutional requirement on aliens' acquisition of citizenship by statute it was impossible to leave any discretion to administrative authorities.

2.6 The 1950 citizenship law reform

During the Second World War, a wish for further Nordic cooperation arose, and the introduction of a common Nordic citizenship was discussed. A Danish citizenship expert, the head of the Ministry of Interior's Citizenship Office, Knud Larsen, drew up a booklet on Nordic citizenship of May 1944. He presented the idea of establishing a union citizenship common for all citizens of the Nordic union and 'no one else'. The common Nordic citizenship should be attached to the internal citizenship of each member state; he concluded that, as a consequence, the countries would need uniform citizenship legislation (Larsen 1944: 39). Naturalisation would, one way or another, be a matter of common interest, as it would bring with it rights in other member states. Therefore, in cases of naturalisation, a hearing procedure amongst the countries should be established (Larsen 1944: 77).

Apart from the question of a common Nordic citizenship, it was especially the unsatisfactory citizenship status of married women that made a citizenship reform necessary. In a common Nordic report of 1949, Nordic delegates pointed out that the principle of equality as well as the states' interest in being able to control their citizenry made a citizenship law reform necessary.⁹ Nevertheless, the unity of the family should be taken into consideration. If spouses in mixed marriages had different citizenship then a married woman might lose her unconditional right to stay in her husband's country and her social citizenship rights. Therefore, the Aliens Acts should be administered in such a way that a wife would not be separated from her husband, unless a pressing social need necessitated her expulsion, and the social welfare system should be reconsidered. Moreover, a foreign spouse to a Danish citizen should be able to acquire Danish citizenship on favourable conditions.

As the Nordic delegates feared that the introduction of a common Nordic citizenship would postpone the general citizenship law reforms, they could not recommend the introduction of such a status at once. Instead, they recommended that rules illustrating the mutual connection between the Nordic states should be adopted. Among other things, each of the Nordic states should grant citizens from the other Nordic states an optional right to their citizenship, and residence in another Nordic state should to a certain extent be considered equivalent to residence in the state granting its citizenship. Finland and Iceland did not participate in the negotiations, but the rules on preferential treatment of Nordic citizens should also come into force in these countries by an agreement between the countries.

⁹Report including new draft citizenship laws for Denmark, Norway and Sweden, prepared by delegates from the three countries. (*Betænkning med udkast til nye statsborgerretslove for Danmark, Norge og Sverige, afgivet af delegerede for de tre lande*) (1949).

The bill introduced in the Danish Parliament in 1950 was in complete conformity with the delegates' recommendations. Apart from the suggestions on gender equality and the special rules for Nordic citizens, it contained a provision on natural-born Danish citizens' reacquisition of a lost Danish citizenship and a provision on deprivation of Danish citizenship due to violation of the Danish Criminal Code's parts 12 and 13 on gross disloyalty towards the Danish state.¹⁰ Except for the provision on deprivation of citizenship, the bill was adopted in 1950 (as Act No. 252 of 27 May 1950 on Danish Citizenship). This act is still in force today, but has been subject to several amendments.

The 1950-Act continued the 1925-Act's provisions on acquisition of Danish citizenship through descent at birth (*ius sanguinis*), but despite the introduction of the principle of gender equality as to granting women an independent citizenship, it did not give a married woman the right to pass her citizenship on to her children. The reason for this omission was animosity against dual citizenship. As an exception, a married woman could (only) pass her citizenship on to the children in cases where the husband was a stateless person or where the child would not acquire the citizenship of the father at birth (sect. 1). As to a child born out of wedlock of a Danish father and an alien mother, the principle of transfer of the father's citizenship to the child by the parents' marriage (legitimation) was re-enacted, among other things, in order to achieve equality among siblings born before and after the marriage (sect. 2).

In regard to the second generation of immigrant descent, it was indisputable that those born and raised in the country should have an unconditional right to Danish citizenship, but the provision on this mode of acquisition (sect. 3) was reformulated due to the fact that in many countries the automatic acquisition of citizenship as applied until then would not lead to the loss of a former citizenship, and neither would the acquisition of a new citizenship before the age of 21. Therefore, the second generation immigrant offspring's acquisition of citizenship was made dependent on making a declaration to that effect between the ages of 21 and 23 (addressed to the county governor or other relevant authority). A person who was stateless or who would lose his or her foreign citizenship by the acquisition of Danish citizenship could already make the declaration once having attained the age of eighteen. Furthermore, based on experiences from the war, a new provision was introduced excluding citizens from an enemy state from the scope of the provision.

Another novelty was the introduction of the right to reacquisition of citizenship, already known from the Norwegian and Swedish citizenship law. Although the right only applied to persons with a genuine link to Denmark – as only natural-born Danish citizens with residence in Denmark until attaining the age of eighteen were covered – and although there was a two years' residence requirement, the rule caused misgivings in Parliament. The reactions had to do with Denmark's frontier with Germany. There were objections to the fact that while young German-minded persons from Northern Schleswig having acquired German citizenship during the World War were able to reacquire Danish citizenship from the perspective *ubi bene, ibi patria*, elderly, Danish-minded persons born in the region while it was in German hands, would fall outside the scope of the provision requiring the declaring person to be a natural-born Danish citizen. Eventually the rule was included in the Danish citizenship law (sect. 4) driven by a wish for Nordic legal unity.

¹⁰ According to the bill, it was a precondition for deprivation of citizenship that said person had been sentenced to imprisonment for at least one year. The proposal on expatriation had its background in situations of treason during the Second World War, but was rejected by Parliament for several reasons.

The new provision on naturalisation (sect. 6) was identical to the traditional Danish naturalisation rule, but it originated from the gender equality principle that a wife was no longer part of her husband's naturalisation. It was, however, assumed that a married woman should be able to acquire her husband's citizenship under favourable conditions (more favourable than those regarding a husband applying for his wife's citizenship). Children should still be included in the acquisition of a citizenship by their parents, either by declaration (sect. 5) or naturalisation (sect. 6 (2)).

It had hitherto been the rule that any acquisition of a foreign citizenship would lead to the loss of Danish citizenship, regardless of whether the acquisition was voluntary or involuntary. This would no longer be the case. According to the 1950 Act's sect. 7(1), (2) and (3), Danish citizenship will be lost by (1) any person who acquires a foreign citizenship upon application or with his or her express consent, (2) any person who acquires a foreign citizenship by entering the public service of another country and (3) an unmarried child under eighteen years of age who becomes a foreign citizen by the fact that either parent holding or sharing custody of the child acquires a foreign citizenship in the manner indicated in para. 1 or 2 hereof, unless the other parent retains Danish citizenship and shares custody of the child.

Furthermore, according to sect. 8, Danish citizenship may be lost due to permanent residence abroad. Any person, born abroad and who has never lived in Denmark nor been staying abroad under circumstances indicating some association with the country will lose his or her Danish citizenship on attaining the age of 22. Furthermore, if such a person has a child who has acquired Danish citizenship through him or her, the child will also lose his or her citizenship. In 1950, the loss would occur regardless of whether it created statelessness, but this is no longer the case (see sect. 2.7 and 2.99). There is also a provision to grant an application for retention, submitted before the applicant's 22nd birthday.

Sect. 9 contains a provision on voluntary renunciation of Danish citizenship, following an application and conditioned by the acquisition of another citizenship within a certain time limit.

Finally, the 1950 Act introduced specific rules as to citizens from the Nordic countries. Under a Nordic agreement, the King could decide that one or more of the rules in sect. 10 A–C should be applied. According to the rule under A, birth in an agreement country was equivalent to birth in Denmark, and residence in an agreement country until the declaring person's twelfth birthday was equivalent to residence in Denmark; the reason for this was the close relationship between the Nordic countries regarding language, culture and way of life.¹¹ According to the rule under B, a citizen from an agreement country, who had acquired his or her citizenship by another mode of acquisition than naturalisation, could after ten years of residence in Denmark acquire Danish citizenship by making a declaration if between the ages of 21 and 60 years; a precondition was, however, that the person concerned had not been sentenced to imprisonment or any measure equivalent to imprisonment. This rule was not only seen as a confirmation of the close relationship between the countries, it was also meant to ease the pressure on the countries' naturalisation systems. According to the rule under C, a person who had lost Danish citizenship and had subsequently remained a citizen of a Nordic country could recover his or her Danish citizenship by submitting a declaration to that effect

¹¹ By limiting the age to twelve, it was intended to secure that the declaring person had attended Danish school for a period of two to three years.

to a county governor or other relevant authority after having taken up residence in Denmark. The aim of this provision was to facilitate movement over the Nordic borders.¹²

2.7 The 1968 and 1978 changes to the Act on Danish citizenship

Apart from legislation passed as a consequence of the German occupation and the gender equality principle, the first substantial amendment of the 1950 Act was made in 1968. It was brought about by a recommendation from the Nordic Council on easing the existing rules on access to citizenship for Nordic citizens and the adoption of the 1961 UN Convention on the Reduction of Statelessness. Denmark was reluctant to ratify the 1961 Convention due to its art. 8 (3) allowing a contracting state to retain provisions on deprivation of citizenship for citizens who had acted inconsistently with their duty of loyalty towards the state.¹³

However, the Nordic countries agreed to amend their citizenship laws in order to follow the Convention's requirements on the reduction of statelessness and the Nordic Council's recommendations on facilitating the acquisition of their citizenship for citizens from the other Nordic countries. The Danish Citizenship Act was changed by Act No. 399 of 11 December 1968 amending sect. 3 in such a way that birth on Danish territory was no longer a requirement for second generation immigrant descendants' acquisition of Danish citizenship; instead they could acquire citizenship by making a declaration to that effect between the ages of 21 and 23 years, insofar as they had lived in Denmark for at least five years before the age of sixteen and permanently between the ages of sixteen and 21. The right also applied to persons aged eighteen who had lived in the country permanently for the previous five years and prior to that for a total of at least five years if they were stateless or would automatically lose their former citizenship as a result of the acquisition of the new citizenship.¹⁴ In general, upbringing in Denmark was considered sufficient to create the link necessary for the acquisition of citizenship.

Furthermore, the Citizenship Act's sect. 8 (2) was brought into conformity with the 1961 Convention's art. 6, according to which a child's extended automatic loss of citizenship shall be conditional upon the possession or acquisition of another citizenship, and in agreement with the recommendation from the Nordic Council, residence in another Nordic country for an aggregate period of not less than seven years should be considered equivalent to residence in Denmark (in which case the provision on loss due to permanent residence abroad, see sect. 8 (1), would not be applicable). Lastly, the period of ten years required before a Nordic citizen could acquire Danish citizenship by declaration, see sect. 10 B, was reduced to seven years, and the residence requirement for Nordic citizens in regard to naturalisation was reduced to three years.

The next matter of principle to be discussed in Parliament was the question of a married woman's right to pass her citizenship on to her children. Since the recognition of a married woman's right to an independent citizenship, the Parliament did several times take up this question for consideration. It was agreed that a solution should be found within the framework of the Nordic cooperation, but in 1969 and 1972 the question came up again in

¹² On 21 December 1950, Denmark, Norway and Sweden agreed to implement the provisions mentioned under A-C.

¹³ The Convention was ratified by Denmark ten years later.

¹⁴ The provision should fulfil the requirements in art. 1 of the 1961 Convention as to a contracting state's granting of its citizenship to persons born on its territory who would otherwise be stateless, see art. 1 (1) (b) and 1 (2). It comprised any foreigner born on the state territory, as it was often difficult to prove whether a person was stateless or not.

Parliament due to the many ‘foreign workers’ who had arrived in Denmark and the increasing number of mixed marriages. Again, the question was referred to the Nordic Council, but in 1977 a private bill was passed and adopted, amending sect. 1 of the Citizenship Act by granting a child born in wedlock Danish citizenship at birth if at least one of the child’s parents was a Danish citizen.

At the same time, a new provision, sect. 2 A, was included in the law, granting a foreign adopted child under the age of seven a right to Danish citizenship by declaration if the child resided in Denmark with the adoptive parents both being Danish citizens. Again here, the dislike of dual citizenship was the reason for choosing the acquisition mode of ‘declaration’ instead of automatic acquisition, *ex lege*, by adoption.¹⁵

Furthermore, sect. 9 on the renunciation of citizenship was changed by the inclusion of a new para. 2 according to which a foreign citizen permanently resident in a foreign country cannot be denied release from his or her (additional) Danish citizenship. This amendment was brought about by the 1977 European protocol (amending the 1963 Convention on reduction of multiple citizenship, which was ratified by Denmark in 1972), stating in art. 1 that a contracting state may not withhold its consent to release if the applicant has his or her ordinary residence outside the territory of the state.

Finally, the 1978 amendment contained a new rule on the loss of citizenship by residence in an agreement country and a transitional rule on the acquisition of Danish citizenship by a person born of a Danish mother between 1 January 1961 and 1 January 1979 by the mother submitting a declaration in this regard between 1 January 1979 and 31 December 1981.

2.8 Political changes affecting naturalisation debates in the 1980s and 1990s

Since the First World War, Denmark had pursued a rather restrictive immigration policy, but the years 1969-1971 marked an exception. In Denmark as well as in other European countries with full employment, migrant workers were recruited as ‘guest workers’, and Denmark had a net immigration of around 20,000 foreigners from non-EC and non-Nordic countries. However, in 1973, things changed (Ersbøll 2001: 246). The oil-crisis contributed to bringing an end to immigration, Denmark joined the EC, and a landslide election changed the party-political structure; support for the ‘old parties’ fell, and new parties entered Parliament, among them the Progress Party fighting high taxation and a big public sector. The composition of the different governments became more complex and their parliamentary base narrower (Rerup & Christiansen 2005). The political climate changed, and the changes influenced the parliamentary debates on naturalisation.

Traditionally, naturalisation acts had been adopted without discussion in Parliament, but this practice changed gradually in the 1970s and 1980s. In 1976, a member representing the Progress Party in the Parliamentary Committee on Citizenship suggested a bill on naturalisation be amended by the exclusion of an applicant. The reason for this proposal, which was criticised as something historically unique, was that the applicant did not fulfil the normal criteria (of a consecutive residence period) for naturalisation, and the Progress Party was unwilling to grant him Danish citizenship in order to make it possible for him to become a Danish civil servant. In 1978, Members of the Progress Party declared their general discontent about the naturalisation of applicants who had sold or used drugs, and in 1981,

¹⁵ Only in 1986 was the provision changed in order to grant foreign adopted children Danish citizenship automatically by virtue of the adoption order.

they proposed to exclude three applicants from a bill, as they were against granting Danish citizenship to persons who had committed a crime within the required residence period of seven years; this proposal also met with strong opposition from the other parties, and in order to protect the applicants' right to privacy, two parties, the Centre-Democrats and the Socialist People's Party, tried to get the doors closed during the parliamentary reading of the bill. Nevertheless, the naturalisation criteria were tightened when a new circular on naturalisation was published in 1981 in order to implement a recommendation from the Nordic Council on the reduction of the residence requirement for Nordic citizens to two years and on naturalisation of men and women in mixed marriages on equal terms.

In the following years, there was no disagreement on citizenship law (apart from an incident on naturalisation of a sportsman in order to allow him to play for the national team), but strong disagreement arose in 1983 regarding the new Aliens Act. The Social Democrats had relinquished power in 1982. A new coalition government came into office under the leadership of a Conservative prime minister, and the problems came out into the open when the opposition managed to get the new Aliens Act adopted with very liberal admission criteria. In the late 1980s, elections were called at short intervals, and refugee and immigration issues moved into the centre of the political debate.

By Act No. 159 of 18 March 1991, the Minister for the Interior was authorised to issue regulations regarding fees for application for naturalisation. A fee of DKK 3000 (around 400 Euro) was suggested, but the political parties disagreed as to the fairness of requiring a fee from applicants without any certainty of being naturalised. However, following re-election of the government, the Minister for the Interior agreed to reduce the fee to DKK 1000 (around 135 Euro), and the proposal was adopted.

In 1993, the longest-reigning Prime Minister since the end of the Second World War had to step down following an inquiry into the Conservative Minister for Justice's illegal inactivity concerning the handling of applications from Tamil refugees on family reunification (the so-called 'Tamil case'). This paved the way for a new Social Democratic government (Rerup & Christiansen 2005). The political atmosphere was severely affected by the preceding events. Customarily, the Progress Party suggested amendments to the bills on naturalisation, which were passed three times a year. The party disagreed with the naturalisation criteria agreed upon by a majority among the political parties, and the Party's representatives on the parliamentary standing committee on citizenship, the Naturalisation Committee of the Danish Parliament, proposed that a number of applicants who fulfilled the naturalisation criteria nevertheless be excluded due to crimes, public debt or 'insufficient knowledge of the Danish language'. The proposals were formulated in such a way that the applicants in question could be identified by name through their number in the bill. Questions were raised as to the legality of this practice, which seemed to violate the right to privacy, but since the Ministry of Justice did not confirm its illegality, the practice continued (until recently).

During the debate on fees for applications for naturalisation, the Progress Party had raised the question of the introduction of rules for the deprivation of citizenship, and in the following years the party put forward several proposals for parliamentary resolutions on tightened requirements for the acquisition of Danish citizenship. Almost identical proposals were put forward again and again for several years, not only on strengthening the requirements for naturalisation, but also on the introduction of a quota system for naturalisation (maximum 1000 naturalisations per year).

In 1994, the Liberals and the Conservatives also put forward a proposal for a parliamentary resolution on more rigorous requirements for naturalisation. They regarded

Danish citizenship as a ‘seal of approval’ which should be deserved, and therefore, applicants should be able to read and write Danish to a reasonable extent, and they should not have any public debt. Furthermore, they should have been free of crimes for a number of years, and serious crimes should prohibit naturalisation. Also this proposal was reintroduced during the following three years, and in the wake of all the proposals, naturalisation practice changed further.

Previously, only members of the Progress Party had proposed amendments to the bills on naturalisation with a view to excluding applicants with a criminal record, public debt etc., but after 1994, members of the Liberals (with one exception) and the Conservatives also stated their wish to make it more difficult for foreigners with a criminal record and public debt to acquire Danish citizenship, and later the Liberals also proposed amendments to the bills suggesting that a number of applicants be excluded.

Subsequently, the Social Democratic led government came to an agreement with the Liberals and the Conservatives on a tightening of the criteria for naturalisation. However, one year later new disagreements arose after the Naturalisation Committee of the Danish Parliament had decided to include some applicants in a bill on naturalisation against the wish of Liberal committee members. After that, both the Liberals and the Conservatives proposed that a number of applicants should be excluded from the bills, although in far fewer numbers than those proposed by the Progress Party and the Danish People’s Party (a new party formed by a breakaway group from the Progress Party, which had split into two sections in 1995). Like the Progress Party, the Danish Peoples Party made several proposals for parliamentary resolutions on tightening the requirements for naturalisation etc.

In 1997-1998, the parliamentary debate on citizenship quietened down. The Commissioner of the Council of the Baltic Sea States on Democratic Institutions and Human Rights, including the Rights of Persons belonging to Minorities, had published his report from 1996 on Criteria and Procedures for Obtaining Citizenship in the CBSS Member States, and representatives of the Socialist People’s Party approached the Minister for Justice for an interpellation on the government’s intention to follow the recommendations. With the exception of the Progress Party and the Danish People’s Party, all political parties agreed to a parliamentary resolution in which Parliament stressed the importance of considering the acquisition of Danish citizenship as a crucial positive element in the process of foreigners’ integration in Denmark.

2.9 Implementation of international conventions in 1997 and 1998

For a short period it seemed as if the political debate on citizenship would be more harmonious. The Act on Danish Citizenship was amended in 1997 in order to implement the Hague Convention on the Protection of Children and Cooperation in Respect of Inter-country Adoption (1993)¹⁶ and in 1998 in order to implement the European Convention on Nationality (1997).¹⁷ By the 1998 amendment, children born out of wedlock were granted equal rights with children born in wedlock to acquire either of the parents’ Danish citizenship, with the exception of children born abroad to a Danish father and a foreign mother. Furthermore, an alien child, under twelve years of age, adopted through a Danish adoption order or a decision on adoption taken abroad and valid under the Danish Act on Adoption will become a Danish citizen if adopted by a married couple where at least one of the spouses is a Danish citizen, or

¹⁶ Act No. 233 of 2 April 1997.

¹⁷ Act No. 1018 of 23 December 1998.

by an unmarried Danish citizen. The rules on second generation's acquisition of Danish citizenship were made more flexible by allowing the last five year period to be spent in Denmark within a six year period, among other things in order to give these young people the same opportunity as other young people to spend one year abroad before starting an education, without hampering their entitlement to Danish citizenship. Finally, it was made a condition for the loss of citizenship due to permanent residence abroad that the person in question did not thereby become stateless.

2.10 Frequent restrictions of the citizenship Act the past ten years

Soon, however, new political disagreements cropped up. Among the proposals for parliamentary resolutions from the mid 1990s there had been a proposal from the Liberals and the Conservatives to make the mode of acquisition of citizenship by declaration for second-generation offspring of immigrant descent conditional on the absence of a criminal record. This proposal was reintroduced in 1999 and followed by proposals from the Danish People's Party and Freedom 2000 (a new party formed by members of the then dissolved Progress Party). Both parties wanted the declaration mechanism to be abolished. In their opinion it would be more in harmony with the Constitution's sect. 44 (1) on aliens' acquisition of citizenship by statute to let the democratically elected politicians consider all applications for citizenship through the naturalisation procedure. As a result, the Minister for Justice (at that time responsible for citizenship matters) introduced a bill on making second generation immigrant descendants' access to citizenship by declaration conditional on the absence of a criminal record. The bill was introduced even though the Minister in 1996 had defended the existing entitlement to citizenship (by declaration) as fair and moreover based on the Nordic Agreement. The amendment was adopted within about one week.¹⁸

Other proposals for parliamentary resolutions from the 1990s regarded deprivation of citizenship. The Danish People's Party had in 1997 and 1998 suggested legislation providing for deprivation of citizenship in cases of fraud and imprisonment for serious crimes. At first, the Minister for Justice turned down the proposal, but in the autumn of 2001, he introduced a bill on amendment of the Citizenship Act making deprivation of citizenship possible for persons who have acquired Danish citizenship by fraudulent acts.

A general election was called for 20 November 2001 and in the light of the terrorist attacks on the World Trade Centre on 11 September 2001 the election campaign had been supposed to centre on Denmark's role in the fight against terror. Instead refugee and immigration issues took centre stage. The Social Democrats and the left-wing parties lost many of their mandates, and the Liberals became Denmark's largest political party. Together with the Conservatives they formed a government with parliamentary support from the Danish People's Party (Rerup & Christiansen 2005).

The Liberals had promised to strengthen the immigration and asylum policy and to carry through a better integration of foreigners into Danish society before the elections, and a Ministry for Refugee, Immigration and Integration Affairs (the Ministry for Integration) was subsequently established to implement this policy. This Ministry became responsible for citizenship issues, and the new Minister for Integration reintroduced the bill (annulled due to the elections) on deprivation of citizenship, which was adopted on 19 March 2002 (as sect. 8 A).

¹⁸ Act No. 1102 of 29 December 1999.

At almost the same time the Minister introduced another bill including two different proposals for changes. The first proposal implied that persons acquiring Danish citizenship according to the special rules for Nordic citizens should prove that they thereby lose their former citizenship. Even though Denmark has constantly wished to avoid multiple citizenship, such a provision had not before then been necessary as all the Nordic countries had provided for loss of their citizenship *ex lege* in cases of voluntary acquisition of a foreign citizenship; but the situation changed when Sweden accepted dual citizenship, and by making Nordic citizens' acquisition of citizenship by declaration conditional on proof that any other citizenship will thereby be lost, the new provision (adopted as sect. 4 A) neutralised the effects of Sweden's toleration of multiple citizenship.¹⁹ The other amendment was a rule divesting a marriage contracted by a person already married of legal effects under the Citizenship Act as long as both (bigamous) marriages subsist (adopted as sect. 2 B). Consequently, children born in number two marriage are considered to be born out of wedlock. This change does not affect the citizenship of children born in Denmark, since all children born in Denmark (whether in or out of wedlock) are given equal citizenship rights; but this equality of status does not apply to children born abroad, and whereas children born in a bigamous marriage from a citizenship point of view are considered to be born out of marriage, such children with a Danish father and an alien mother will not acquire their father's Danish citizenship *ex lege* at birth. The reason for this amendment was that the government considered it offensive that Danish citizenship could be acquired automatically on the basis of a person's several co-existing marriages.²⁰

In 2003, the Danish People's Party entered into agreement with the government on carrying through rules on repealing second generation immigrant descendants' entitlement to Danish citizenship by declaration and deprivation of citizenship due to committed crimes, and in 2004, a bill was presented to Parliament to fulfil the agreement.

Following the change, only second-generation immigrant descendants from the Nordic countries have access to citizenship by declaration; furthermore, a condition is included that the declarants must prove that the acquisition of Danish citizenship will cause them to lose their former citizenship. The ground given for the amendment was that the actual composition of the Danish population no longer affords the necessary certainty as to the requisite integration of persons from non-Nordic countries falling under the declaration rule (sect. 3). It was mentioned in the explanatory notes that the existing provision entitling second generation of immigrant descent to acquire Danish citizenship (sect. 3), aimed at fulfilment of Denmark's obligations resulting from the UN Convention of 30 August 1961 on the Reduction of Statelessness as to persons born in the realm without a citizenship. The proposed limitation of sect. 3 implied that these obligations should be fulfilled in another way. Therefore, the Ministry of Integration should – after having informed the Naturalisation Committee – include persons covered by the 1961 Convention in a bill on naturalisation;²¹ other stateless persons who had fallen under the declaration-rule even though they were not covered by the 1961 Convention would in the future be treated in accordance with the normal guidelines for naturalisation.

It was taken into consideration that the state according to the European Convention on Nationality (1997) shall facilitate the acquisition of its citizenship for persons who are born

¹⁹ The proposal was based on a new Nordic Agreement on Nationality (of 14 January 2002).

²⁰ See Act No. 193 of 5 April 2002.

²¹ Problematic with respect to an effective implementation of the entitlement to citizenship (for persons who fulfil the 1961 Convention's requirements) is that it has not found expression in any Danish regulation, including the new 2005 agreement, see below.

and/or lawfully and habitually resident in its territory for a period of time beginning before the age of eighteen. But since it was already provided for in the normal guidelines that some Danish born persons may be granted facilitated naturalisation and that persons who arrive in Denmark before the age of fifteen may apply for naturalisation at the age of eighteen, it was considered that the Danish obligations pursuant to the 1997 Convention were fulfilled.²²

Also deemed to be in accordance with the 1997 Convention was a new provision (sect. 8 B) on deprivation of citizenship due to certain crimes against the state included in the Criminal Code's Parts 12 and 13. The explanatory notes state that citizenship and citizenship rights presuppose loyalty to Denmark and the vital interests of the Danish society, and if a person is convicted for crimes against the state, the said person has, according to the view of the government and the Danish People's Party, shown such a lack of loyalty that there ought to be a possibility for deprivation of citizenship. The provision on deprivation of citizenship applies to all Danish citizens regardless of whether they are citizens by birth or have acquired their citizenship subsequently and therefore it is considered to be in harmony with art. 5 (2) of the 1997 Convention prohibiting discrimination between citizens. Furthermore, as the provision does not authorise deprivation of citizenship if that will make the person concerned stateless, the provision is considered in accordance with Denmark's international obligations to avoid statelessness.²³

The amendment of the Citizenship Act was adopted with a narrow majority by the votes of the Liberals, the Conservatives and the Danish People's Party (61) against the votes of the Social Democrats, the Socialist People's Party, the Social Liberals, the Red-Green Alliance and the Christian People's Party (50).

2.11 Restrictions of naturalisation practice in the new millennium

The first bill on naturalisation that was presented in Parliament in spring 2002 comprised 4,263 foreigners with children. According to the spokesman of the Danish People's Party that was in total '7,551 strangers whom the Members of Parliament had no possibilities of knowing and controlling'. Granting these people naturalisation by an act on naturalisation would in his opinion come close to a violation of the constitution. In his opinion Danes were, due to the catastrophic immigration policy, in risk of becoming strangers in their own country.²⁴ The viewpoints were rejected by the government parties, the Liberals and the Conservatives, but these parties agreed with the Danish People's Party on the need for restriction of the naturalisation criteria, and since the three parties formed a majority in Parliament, they were able to decide the citizenship policy among themselves.

Thus, in May 2002, the three parties entered into an agreement on new strengthened requirements for naturalisation. The agreement was transformed into a new circular on naturalisation, No. 55 of 12 June 2002. It was agreed that in future only two bills on naturalisation should be presented in Parliament annually. As a new condition for

²²There remains however some doubt as to the fulfilment since a general facilitated acquisition of citizenship for second and third generations of immigrant descent seems to be lacking, insofar as persons belonging to these groups can only be granted naturalisation independently at the age of eighteen where many of them will fulfil the normal residence requirement of nine years and no further facilitation applies (generally speaking).

²³ See the 1997 Convention, art. 7 recognising deprivation of citizenship without creating statelessness in cases of conduct seriously prejudicial to the vital interest of the state party (including treason and other activities directed against the vital interests of the state but not criminal offences of a general nature according to the explanatory report).

²⁴ E. Ersbøll, *Dansk Indfødsret I International Og Historisk Belysning* (Copenhagen: Jurist- og Økonomforbundets Forlag, 2008) at 685ff.

naturalisation, the applicants must sign a declaration on faithfulness and loyalty to Denmark. The residence requirements were increased by two years (nine years for aliens with no special status, eight years for refugees and stateless persons and from six to eight years for spouses of citizens – depending on the length of their marriage). The rules on conduct were strengthened, i.e. a sentence to imprisonment between one and two years implied a waiting period of eighteen years, and a sentence of more than two years excluded naturalisation forever. Also overdue debt to the state precludes naturalisation. Lastly, an examination certificate was required as documentation of the applicants' knowledge of the Danish language, society, culture and history; furthermore, the former exception for persons over the age of 65 was repealed, which was heavily criticised by the opposition.

The 2002 restrictions resulted in a decline in the annual number of naturalisations. While the number in 2002 had been 17,727 (applicants including children), it dropped in 2003 to 6,184 (applicants including children). However, in 2004 a new increase appeared after many applicants, who had been forced to put their applications on hold due to the new requirement on a language examination certificate, had passed a language exam. The Danish People's Party demanded a language test at a higher level comparable to school leaving examination of the public lower secondary school. The then Minister for Integration maintained that Danish language at the already given level: Danish Test 2 (comparable to ALTE level 2 and the Council of Europe level B1) was sufficient; with this level, students would be able to take part in discussions on issues concerning the society etc. at the level required in school leaving exams.²⁵

In 2004 and 2005, the annual number of naturalisations increased to 9,485 and 10,037, respectively, and there were reasons to believe that the increase would continue. The Danish People's Party which in the parliamentary election in 2005 had been further strengthened declared that it was time for the second phase of the aliens policy. Among the initiatives announced was a requirement that an applicant for naturalisation had to be self-supporting for at least ten years. The Party was again involved in the negotiations on new naturalisation criteria while negotiations with the Social Democrats and the Social Liberals failed.

The course had to do with the party composition of the Parliament. Once again after the 2005 election, the Liberals and the Conservatives formed a majority together with the Danish People's Party, and once again, the Liberals had set new goals for their coming term in government. This was a continuation of the 'contract policy' developed by the Prime Minister before the 2001 election; the strategy was to create a 'contract' with the voters based on clear pledges in a limited number of clearly identified fields.²⁶ The Prime Minister did not want to break his word – as his predecessor had done with unfavourable consequences as to his credibility – and the safety net was support from the Danish People's Party, who in turn wanted agreements in order to pursue their goal. Thus, on 8 December 2005, a new naturalisation agreement was concluded between the government parties and the Danish People's Party.

The agreement, which entered into force 12 December 2005, was transformed to a new circular on naturalisation, No. 9 of 12 January 2006. It stipulated that applicants for citizenship must declare that they have not committed any crimes dealt with in the Criminal Code's Parts 12 and 13 (sect. 19 (1)). The rules on conduct were further strengthened, i.e. a sentence to a term of imprisonment of more than 60 days for violations of the Criminal Code's Parts 12 and 13 as well as a sentence to a term of imprisonment of more than eighteen

²⁵ Minister Bertel Haarder, see [www.ft.dk/Samling/20041/salen/L58_BEH1_17_8\(NB\).htm](http://www.ft.dk/Samling/20041/salen/L58_BEH1_17_8(NB).htm)

²⁶ See the website of the Liberals: <http://www.venstre.dk/index.php?id=4620>

months exclude naturalisation forever (sect. 19(2)).²⁷ As a new condition, the applicants must be self-supporting in the sense that they must not have received social benefits according to the social assistance law or the integration law (at that time) for more than one out of the last five years (sect. 23).

In addition, the Danish language skill requirements were raised considerably from Test in Danish 2 (comparable to ALTE level 2 and the Council of Europe level B1) to Test in Danish 3 (comparable to ALTE level 3 and the Council of Europe level B2). The tests complete three years Danish language courses: 'Danish Education Programme 2' and 'Danish Education Programme 3', respectively, and while the target group of Danish Education programme 2 is persons with relatively short term school attendance, the target group of Danish Education Programme 3 is persons with an average or long term school attendance, i.e. a vocational education, upper-secondary school or a long term higher education. At that time, the language schools reported that on a national basis only around 25-30 per cent of all participants were referred to Danish Education Programme 3.

Exemption from the new language test requirement is possible only under very special circumstances, such as documented very severe physical or psychological disease resulting in the applicant not being able to fulfil the language requirements. In a note to the provision on exemption (sect. 24) it was made clear that the Ministry of Integration is presumed to submit the cases for exemption to the Parliamentary Committee on Citizenship in cases where the applicant has a severe physical handicap (such as Down Syndrome), is brain-injured, blind or deaf, or has severe psychological diseases such as (paranoid) schizophrenia, a psychosis or a severe depression. It added that the Ministry is presumed to refuse applications for exemption from persons suffering from PTSD (Posttraumatic stress disorder) – 'even if the condition is chronic and this is documented by a medical declaration'. The Minister for Integration has explained that the reason for the exclusion is that PTSD 'is not a mental disease of such a severe nature that it as such can form the basis for submission to the Committee on Citizenship'.²⁸

Another novelty was the introduction of a citizenship test by which the applicants shall demonstrate their knowledge of Danish culture, history and society. The test is introduced under the provision of section 24(2) in the naturalisation circular and implemented in May 2007. It is organised by the language schools across Denmark as a multiple choice test with a list of potential answers to each question – modelled on the Dutch societal knowledge test with a total of 40 questions to be asked out of which 28 should be answered correctly within 60 minutes.²⁹

Among the 40 questions, 35 were selected from a question bank with 200 questions (in Danish). The question bank was made public at the homepage of the Ministry of Integration, where the applicants could read both the 200 questions and the corresponding correct answers. Based on this arrangement where the applicant could learn all the answers to the questions in the test bank by heart, about 97 per cent of the tested persons passed the test. Many applicants considered the citizenship test a 'piece of cake' and as a whole it gave rise to criticism. It was widely held that the test was very easy to pass and therefore needless.

²⁷ There are other intensifications, i.e. any fine for violation of the Criminal Act's chapters 12 and 13 incur a waiting period of 6 years, and imprisonment of up to 60 days for such violations leads to a waiting period of 12 years from when the sentence is served.

²⁸ Letter of 20 January 2006 to the Rehabilitation and Research Centre for Torture Victims.

²⁹ See E. Ersbøll, 'On Trial in Denmark', in Eva Ersbøll, Dora Kostakopoulou, and Ricky Van Oers (eds.), *A Re-Definition of Belonging? Language and Integration Tests in Europe* (forthcoming 2009).

Especially immigrant descendants wondered why they had to take the citizenship test – many had a Danish education and had done well in Denmark for a long time. They considered it highly unfair to be compelled to take a test concerning their knowledge about Denmark in order to be allowed to apply for Danish citizenship. Other participants said that they disliked a test form that only tested their ability to learn by heart.³⁰

Also the Danish People's Party found the test too easy to pass and made demands for a revision, but the Conservatives refused to introduce further restrictions for applicants for naturalisation.³¹ At that time, the impact of the restricted language requirements had appeared; in 2006, the annual number of naturalisations had decreased to 6960 (applicants including children), and a vague decrease continued in the years following when transitional rules still have had an impact.

However, a particular incident changed the political situation, namely the 25 July 2008 Metock judgement from the European Court of Justice (ECJ).³² The judgement, in which the court maintained that union citizens who have made use of their right to freedom of movement pursuant to the Free Movement Directive (2004/38/EC) have a right to family reunification with a third country national family member irrespective of whether the family member has previously stayed legally in another EU member state, caused strong reactions in Denmark. Among members of the government parties and in particular among members of the Danish People's Party it was widely held that complying with the judgement would lead to undermining the 'fair and consistent' Danish aliens policy. The Danish People's Party voiced the possibility of neglecting the judgment; the government, however, stood firm on its implementation. In return, on 22 September 2008, the government entered into a political agreement with the Danish People's Party - with a view to 'combat the possible negative consequences of the Metock judgment'. According to the political agreement, the principles behind the Danish immigration policy would be upheld; the government would implement the Metock-judgment, but at the same time strive towards an amendment of the EC Free Movement Directive. New control mechanisms in immigration cases should be established and, a bit surprisingly, the language requirement and the citizenship test requirement were to be strengthened.

Thus, with effect from 10 November 2008,³³ the citizenship test questions and answers can no longer be found on the homepage of the Ministry of Integration; only sample questions are accessible. In addition, 32 out of the 40 questions (instead of 28) must be answered correctly in order to pass the test, and the applicants have only 45 minutes (instead of an hour) to complete the test. Since the new test requirements applied to applicants who had already registered for the December test, only 4,684 out of 5,636 enrolled remained registered for the test. Among these 1,014 passed; thus the pass rate in December 2008 was 22 per cent. At the test of 17 June 2009, only 2,809 foreigners had registered for the test; the pass rate is still unreported.³⁴

As to the Danish language requirement it is no longer sufficient to pass Danish Test 3 (B2); passing requires mark 6 (the 13-point scale) or mark 2 (the 7-step scale); the general

³⁰ *Ibid*

³¹ *Berlingske Tidende*, 13 May 2008; Tom Behnke, the chairman of the parliamentary standing committee on citizenship, the Naturalisation Committee of the Danish Parliament, added that even if it was possible to pass the test with parrot learning, the applicants would know more than many Danes, and under all circumstances it was too early to make amendments.

³² Case C 127/08.

³³ See Circular No. 61 of 22 September 2008 on naturalization.

³⁴ Ersbøll, 'On Trial in Denmark'.

language requirement is now: a certificate of having passed Danish Test 3 with an average mark of at least 7 (the 13-point scale) or 4 (the 7-step scale) (or another comparable exam).³⁵

The restrictive rules have, as already mentioned, led to changes in naturalisation numbers even though the number of immigrants who are enrolled in Danish Education Programme 3 has increased.³⁶ In the spring of 2009, only 1356 applicants with 471 children were naturalised; thus, even if the number of naturalisations in the autumn does not decrease, fewer than 4,000 foreigners (including children) will acquire Danish citizenship by naturalisation this year. A factor to be taken into consideration is the corresponding number of refusals of naturalisation. While the number of refusals due to lack of Danish language proficiency was less than 1000 up to 2003, it exceeded 1000 in the following years, and in 2008, the annual number of refusals amounted to 3446. Parallel with this, the number of dispensations from the naturalisation criteria, and first and foremost the language requirement, has decreased. Until 2003, most of the applications for dispensation from the language requirement were met. In 2003 and 2004 less than half of the applications were met (106 out of 227 and 105 out of 275 respectively). And in 2005 an even more dramatic change happened as only 65 out of 540 applicants were granted dispensation. The following years the number of applicants granted dispensation was 103 out of 359 (2006), 37 out of 108 (2007) and 41 out of 227 (2008).

3. Current citizenship regime

3.1 The main modes of acquisition and loss of citizenship

Like in other European countries, the main rule of attribution of citizenship is *ius sanguinis* at birth. According to the citizenship Act, section 1(1) a child is Danish citizen if born to a Danish father or a Danish mother. Where the child's parents are not married and only the father is a Danish citizen, the child will only acquire Danish citizenship if born within Denmark. This is the only example of gender inequality in the Danish citizenship Act.

Another birthright based mode of acquisition of citizenship is legitimation; according to section 2, a child of a Danish father and an alien mother who has not acquired Danish citizenship at birth, will acquire Danish citizenship through the subsequent marriage of the parents. It is a condition that the child is unmarried and under 18 years of age at the time of the marriage. However, a marriage contracted by a person already married has no legal effects under the citizenship Act, cf. section 2A.

In principle, Denmark does not provide for *ius soli* acquisition of citizenship. Still, according to section 1(2) a child found abandoned in Denmark will, in the absence of evidence to the contrary, be considered a Danish citizen. The foundling's automatic acquisition of citizenship at birth is based on the presumption that (at least one of) the parents are Danish.

A stateless child born in Denmark has since 1992 been entitled to naturalisation, see the naturalisation circular section 17.

³⁵ Sufficient language skills may still be proved by a certificate of the lower secondary school leaving examination after 9th or 10th grade with an average mark of at least 6 (at the 13-point scale) or 2 (after the 7-step scale) in the Danish disciplines, see Circular No 61 of 22 September 2008. The restriction as to DT3 resulted from the agreement of 22 September 2008 between the government and the Danish People's Party on the handling of the EU-legislation on free movement see sect. 4.1.

³⁶ Eva Ersbøll (2009).

The most important rules on acquisition of citizenship after birth are the general residence based naturalisation rules, as provided for in the Citizenship Act's section 6 and the naturalisation circular. As described in this chapter, we are dealing with discretionary granting of citizenship to foreigners with a permanent residence permit after (normally) at least nine years of residence and fulfilment of other restrictive conditions on, among others, renunciation of a former citizenship, good conduct, no debts to the state, certification of knowledge of Danish language (level B2), passing a citizenship test and proof of having been self-supporting for four and a half years.

Spouses' acquisition of Danish citizenship is facilitated under slightly relaxed conditions regarding (only) the residence requirement; the rules on spousal transfer are contained in the naturalisation circular, section 8 and 9, stating that a person who has lived in marriage with a Danish citizen may be naturalised after six consecutive years of residence in Denmark when the marriage has lasted and the spouse has been Danish for not less than three years. When a marriage is of two years' duration, seven years of residence is required, and where a marriage is of one year's duration, eight years of residence is required. Up to one year's cohabitation prior to marriage is considered equivalent to marriage during the period in question. Under certain conditions aggregate periods of residence may count.

For immigrants' descendants, the most important rule on acquisition of Danish citizenship is the Citizenship Act's section 6(2) according to which children of naturalising parents acquire Danish citizenship simultaneously with the parent(s). Filial extension of citizenship is conditioned by the parent(s) having custody over the child, the child being unmarried and under the age of 18 years and residing in Denmark; if a child is over the age of 15, certain conduct requirements apply.

As a rule, children can not acquire Danish citizenship independently if their parents (in principle) have the possibility of applying for Danish citizenship by naturalisation. This means that if parents can not fulfil the naturalisation requirements, their children have no possibilities of becoming Danish children during their childhood. Only if the parents are prevented from applying for naturalisation, for instance because they already have naturalised, their children may apply for naturalisation independently.

Adopted children are covered by the rules on descendants. Furthermore, adopted children may acquire Danish citizenship automatically by the adoption. According to the Citizenship Act section 2A, this applies to an alien child under twelve years of age adopted through a Danish adoption order if the child is adopted by a married couple where at least one of the spouses is a Danish citizen, or by an unmarried Danish citizen. The same applies in cases where the child was adopted by a decision taken abroad which is valid under the Danish Act on Adoption of Children. Children over the age of 12 years are referred to acquire Danish citizenship by naturalisation after two years of residence before their 18 years birthday; certain other conditions apply, including conduct requirements. A number of favourable acquisition rules apply to Nordic citizens, see sect. 3.2

As to loss of Danish citizenship, renunciation is possible in case where a person wishes to become a foreign citizen; if that person is a foreign resident release cannot be denied, see section 9. Danish citizenship will automatically be lost in cases where a Danish citizen acquires a foreign citizenship either upon application, with his or her express consent or by entering the public service of another country. Unmarried children who become foreign citizens together with their parents will also, as a rule in such cases, lose their Danish citizenship, see section 7.

Furthermore, according to section 8, any person born abroad who has never lived nor been staying in Denmark under circumstances indicating some association with the country

will lose his or her Danish citizenship automatically on attaining the age of 22 years unless this will make the person concerned stateless. The Ministry of Integration may however grant an application for retention of Danish citizenship – if submitted before the applicant's 22nd birthday.

Deprivation of Danish citizenship is possible in cases where Danish citizenship is acquired by fraudulent conduct (section 8A) and where a person is convicted of violation of Part 12 or 13 of the Criminal Code concerning crimes against the state (section 8B); in the last mentioned case, deprivation of citizenship must not make the person concerned stateless. Cases on deprivation of citizenship are resolved by court order, and the proceedings are governed by the rules of administration of justice. Until now a couple of court orders have deprived citizens of their citizenship pursuant to section 8A, while the only case so far concerning deprivation of citizenship pursuant to section 8B has been rejected.

Summarizing the characteristics of Danish citizenship law, it is noteworthy that in principle, Denmark does not tolerate dual or multiple nationality. However, as an estimate, around 40 percent of all naturalised foreigners have been allowed to retain their former citizenship due to exemption rules in compliance with international law obligations. The general question on toleration of multiple citizenship was for the first time debated in Parliament in 2008 and 2009 on the initiative of Danish emigrants. Proposals for parliamentary resolutions were presented by two political parties, the Liberal Alliance and the Social Liberals, but they were turned down by a majority (members of the Liberals, the Conservatives, the Danish People's Party and the Social Democrats), see below under 4.2.

Besides, looking into Danish citizenship legislation and practice, the most striking peculiarities are the almost complete absence of rules on socialisation based acquisition of citizenship, the extremely severe requirements for naturalisation especially as regard language skills and the unique naturalisation procedure followed in Denmark, leaving out, among other things, the possibility of appeal.

As already mentioned, for more than two hundred years immigrant descendants have been entitled to Danish citizenship. From 1776 to 1950, the entitlement was *ius soli* based and Danish citizenship was acquired automatically at majority. In 1950, acquisition by declaration was introduced, but still immigrant descendants had a legal right to Danish citizenship. In 1976, the *ius soli* based entitlement to Danish citizenship at majority was replaced by a residence based entitlement: five years of residence before the declaration and ten years of residency in total during childhood. In 1999, a conduct requirement was introduced, and in 2004, the general entitlement rule was repealed. Since then, immigrant descendants are referred to apply for Danish citizenship by naturalisation and they have to fulfil the general naturalisation requirements. The naturalisation circular provides for few facilitations for applicants who have entered Denmark prior to attaining the age of fifteen. They may apply for Danish citizenship at the age of 18, and applicants who have undergone a substantial part of their general education or vocational training in Denmark may apply for naturalisation after four years of residence in Denmark, but for immigrant descendants who are born in Denmark or who have settled in Denmark as minor children, these facilitations have no substantial impact; thus, they can hardly count as facilitations required by the ECN, article 6 e and f.

Around one third of the immigrants and two third of their descendants have acquired Danish citizenship. When considering the remaining two thirds of the immigrants and one third of the descendants, it has to be taken into consideration that as a rule, the Danish language requirement applies to all applicants for naturalisation regardless of age and regardless of which 'immigrant generation' they belong to: first, second, third etc. (a former exemption of persons over the age of 65 was repealed in 2002). The requirement has the

highest level in Europe (B2) and it has an exclusive effect since, among others, persons with little schooling or with learning difficulties and many elderly people are unable to pass Danish Test 3 with grade 4 whatever efforts they make. In this regard, it constitutes a special problem that severely traumatised refugees and other persons with chronic PTSD in all probability for this reason will be prevented from both passing the language exam and applying for dispensation from the language requirements.³⁷

This point leads to the third peculiarity, namely the Danish naturalisation procedure. The procedure is a legislative procedure, which has implications as to the obligation to give reasons for refusals of citizenship and the right to review; see the ECN article 11 and 12. These issues will be further dealt with below in sect. 3.3.

3.2 Specific rules and status for certain groups

As already mentioned, Nordic citizens have a special status in Denmark. Descendants of Nordic citizens are the only group which has retained their entitlement to Danish citizenship after the entitlement provision concerning immigrant descendants was amended in 2004. Thus, citizens of a Nordic country will acquire Danish citizenship by making a declaration to that effect to a regional Danish state administration office if they: have attained the age of eighteen, but not yet 23, reside in Denmark, have resided in Denmark for an aggregated period of not less than ten years of which an aggregate period of not less than five years must be within the last six years, are unpunished and are not charged with a criminal offence (section 3A).

Furthermore, entitlement to Danish citizenship is granted to adult Nordic citizens who have acquired their Nordic citizenship in a manner other than by naturalisation when they have resided in Denmark during the previous seven years without being sentenced to imprisonment.

Moreover, special rules on re-acquisition of Danish citizenship by declaration after two years residence apply to Danish-born citizens who have lived in Denmark until attaining the age of 18 years and have lost their Danish citizenship by acquisition of a foreign citizenship (section 4). In general, the claimant must prove by the act the loss of the former citizenship, and, in general, the Danish citizenship grant will comprise his or her children (section 4A and 5).

Furthermore, to a certain extent, residence in another Nordic country counts as residence in Denmark. This is the case for Nordic citizens making declarations between the age of eighteen and 23, but only if residence in the other Nordic country precedes, by not less than five years, the making of the declaration and the declarant's 16th birthday. A person who has lost Danish citizenship and subsequently has remained a Nordic citizen may acquire Danish citizenship by declaration by taking up residence in Denmark. Moreover, persons who are born abroad and have never lived in Denmark may retain their Danish citizenship on attaining the age of 22 if they have lived for an aggregate period of seven years or more in another Nordic country.

Naturalisation also is facilitated for Nordic citizens and persons who have previously held Danish citizenship or who are of Danish descent as well as for Danish-minded persons from South Schleswig; for some among these groups only two years residence is required, but supplementary conditions may apply.

³⁷ Ersbøll, 'On Trial in Denmark'.

3.3 Special institutional arrangements

The impact of the Danish constitution

Like most European democracies, Denmark has a tripartition of power: the legislative, the executive and the judicial power (see sect. 3 of the Constitutional Act of Denmark (1953)). The legislative authority is conjointly vested in the King (the government) and the Parliament (the *Folketing*). The only constitutional provision on the acquisition of citizenship is sect. 44 (1), according to which ‘no alien shall be naturalised except by statute’, instituted by the first Danish Constitution (1849). The idea was to transfer the competence of granting *indfødsret* from the (former) sovereign King to the King and the Parliament (the legislature). As already mentioned, the model for the rule was a similar provision in the Belgian Constitution. The Constituent Assembly considered such a provision to be rooted in ‘general constitutional concepts’. The aim was to avoid the King (the administration) being the sole grant-awarding authority; instead, the legislature should grant naturalisation either by a general or a personal (singular) act. There was no further indication as to how the legislature should deal with naturalisation matters.

When the new Parliament (the *Rigsdag*) read the first bill on naturalisation (of ten applicants), there were different opinions on the procedure to be followed. The Three Years War and the national division between the supporters of the Eider policy and the united monarchy (*helstats-*) policy influenced the debate; among other things it was discussed whether citizens from the Nordic countries and citizens from Germany should be dealt with in the same way.

A practice soon developed, however, according to which the Ministry responsible for the *indfødsret*-legislation (under the June Constitution the Ministry of the Interior) drafted bills on naturalisation including applicants whom the Ministry presumed fulfilled the legislature’s requirements for naturalisation. At first, it was assumed that the 1776 Act’s conditions on acquisition based on special achievement for the country should be taken into consideration, but in practice affiliation to ‘the people’ became decisive. Among the crucial elements from the beginning was knowledge of the Danish language; in addition, a long period of residence on the state territory and good conduct were necessary preconditions. A bill on naturalisation contained the names of the individual applicants, small biographies and information as to whether the local authorities could recommend their naturalisation. Over time, general guidelines from the Parliament to the Ministry were given in the form of circulars,³⁸ and personal sensitive information regarding the applicants was removed from the bills.³⁹

Bills on naturalisation are, like other bills, subject to three readings in the Chamber. After the first reading, the bill is referred to a committee, which since 1953 has been the standing committee: the Naturalisation Committee of the Parliament (the *Indfødsretsudvalg*) that is composed of 17 Members of Parliament representing the major parties. The Naturalisation Committee may receive confidential information on the applicants’ conduct, language ability etc. and ask questions of the relevant minister. When the Committee has dealt with the bill, it submits a report to the Parliament. Traditionally, as practice developed, the

³⁸ Only recently have all the criteria been published; until 1997 the more detailed guidelines were contained in a confidential ‘office circular’.

³⁹ At present, the applicants’ name, municipality, year of birth, country of origin and former nationality are published in the bills on naturalisation. Confidential information as to residence, language abilities, public debt and possible punishable acts are given to the Naturalisation Committee.

Parliament felt a kind of obligation to grant citizenship to all persons included in a bill on naturalisation,⁴⁰ but since the late 1980s this practice changed, and several amendments for exclusion of certain applicants from the bills became, as already mentioned, a usual feature of the committee report. This has, however, changed with the 2005 agreement according to which the political parties behind the agreement, which includes the Danish People's Party, will vote for the government's bill on naturalisation.⁴¹

In the course of time, an increasing number of foreigners have applied for naturalisation. From 1 January 1850 to 31 December 1914, a number of 11,495 foreigners were naturalised,⁴² which is less than the number of naturalised persons within each year from 1999 to 2004 (except for 2003). It is self-evident that it is no longer possible for the Naturalisation Committee to deal with each applicant's case. The examination is left to the relevant ministry, now the Ministry of Integration. However, doubtful cases are referred to the Committee, which decides whether an applicant is to be included in a bill.

In general, the legislative naturalisation process is out of step with present day conditions. The naturalisation criteria, which were earlier agreed upon by the members of the Naturalisation Committee, have now been decided by three of the Parliament's eight political parties. There is no in-depth public discussion on the criteria in Parliament. Applicants who fulfil the criteria may count on being naturalised, but they have no legal guarantee; the criteria may be amended at relatively short intervals and even retroactively, and there is no accessible regulation on doubtful cases and exemptions from the general criteria, which seems inconsistent with the rule of law (Ersbøll 1997: 202; 2008: 772). It has been a general perception, as naturalisation is based on the discretion of the Parliament, that no one has a *right* to Danish citizenship. In principle, there are no restraints on the Parliament's and the Naturalisation Committee's discretionary powers other than the limitations which follow from international agreements and conventions ratified by Denmark (Kleis & Beckman 2004: 106). During the reading of the bills there has been some division in Parliament, causing much discussion, until recently often during all three readings. The legislative treatment of the naturalisation cases may lead to delays for even obvious cases – as most of the cases are.⁴³ In general it is detrimental to the applicants' protection of due process because of the lack of possibilities for appeal.⁴⁴

A more up-to-date arrangement might be brought about in three different ways. For several reasons, the best solution would be to repeal the Constitution's sect. 44 (1), however amending the Danish Constitution is very difficult. The Constitutional Act's sect. 88 requires firstly that Parliament pass a bill for the purpose of a new constitutional provision; secondly,

⁴⁰ For a long period there were amendments to include additional applicants, but the only applicants to be excluded would be those who had died or withdrawn their application.

⁴¹ So far, the Danish People's Party has proposed amendments, which could not be agreed upon, and the Party was not put under an obligation to vote for the government's bill. In future, the only amendments for exclusion to be expected will be the Minister for Integration's own amendments concerning applicants whose conditions have changed in the period between their inclusion in the bill and its reading in Parliament.

⁴² Alphanumeric list of names of persons naturalised in the years 1850–1915, drawn up by the Ministry of the Interior (1916).

⁴³ Under all circumstances applicants who fulfil the criteria will have to wait around half a year for a bill to be prepared and adopted, see below.

⁴⁴ As a consequence of the Constitution's sect. 44 (1), Denmark has made a reservation to the European Convention on Nationality, art. 12 on the right to an administrative or judicial review. In the reservation it states that the legislature grants naturalisation and as the legislature is not bound by the general rules of administrative law, no rights exist for an administrative review. Nothing is mentioned regarding the possibilities of judicial review, which cannot be totally excluded.

that writs shall be issued for the election of a new Parliament and that the bill shall be passed un-amended by the new Parliament; subsequently, the bill shall, within six months after its final passage, be submitted to the electors for approval or rejection by direct voting. In order for the bill to come into force it is required that a majority of the persons taking part in the voting and at least 40 per cent of the electorate vote in favour of the bill. Especially the last requirement is considered difficult to fulfil.⁴⁵

Another solution might be to adopt a general act on naturalisation, authorising the administration to grant naturalisation by entitlement if and when the conditions in the act are met. In order to comply with the Constitutional Act, such act must contain completely distinct naturalisation criteria. The text must not leave any room for discretionary administrative decisions and must not include vague clauses. The only task which may be left to the administration is to ascertain that the applicants meet the act's criteria whereby they will have acquired citizenship (directly) 'by statute'. Consequently, decisions on dispensation from the general criteria must still rest with the legislature. The adoption of such a general act on naturalisation by entitlement was discussed in Parliament at the beginning of the twentieth century. Recently, a similar proposal has been advocated in the Danish literature (Koch 1999: 35), but it is at present rather unlikely that the Parliament will vote for this solution.

However, some members of Parliament, the Social Liberals, have suggested as a third solution the adoption of a general act on naturalisation containing the naturalisation criteria while still leaving the competence of granting naturalisation to Parliament. While such a procedure would ensure an open parliamentary debate on the criteria and allow the participation of all Members of Parliament it would not solve the problems of delays or of the lack of review possibilities etc. The proposal has however not gained support in Parliament; the view being that as long as Parliament (in principle) may naturalise on the basis of different criteria each time a bill is to be passed, it is useless to adopt a general law containing the naturalisation criteria.

Under the present system, the police receive application forms and check formalities, e.g. whether they have been correctly filled in and all the required documentation has been submitted.⁴⁶ Thereafter, the individual cases are sent to the Ministry of Integration, which checks whether the naturalisation criteria are met and, if so, it includes the applicants in a bill on naturalisation. The ministry has had rather long waiting periods – up to eight months – before starting the examination of an application, but in April 2008 a new procedure was launched. Under the new procedure the applicant must fill in 'the citizenship application kit' comprising an application form and a form documenting the applicant's ability to self-support. The applicant is responsible for filling in the forms and for furnishing the necessary documentation. The forms etc. must be submitted to the police and from there forwarded to the Ministry of Integration. Bills on naturalisation are introduced in Parliament in April and October, and in order to be included in a naturalisation bill either in April or October, the application etc. must be fully examined by the Ministry before 16 January or 14 August respectively. Thus, if for instance a submitted application is not fully examined on 16 January, the applicant will have to wait until late October before he or she can be listed in a naturalisation bill.

The reading of the bills normally takes from two to three months, and after their adoption the Ministry of Integration will notify the persons included and send them proof of

⁴⁵ Since 1849 the Constitution has only been (substantially) amended four times.

⁴⁶ As it has not been discussed whether to transfer this task from the police to other local authorities; however this question seems likely to be raised with an amendment of the present naturalisation system.

their Danish citizenship. Persons whose naturalisation is conditioned by their release from a former citizenship will receive a proof of their Danish citizenship only after they have documented their release. The Presidium (the presiding committee) of the Parliament has decided to invite new Danish citizens to an official welcoming celebration; on 26 March 2006, the first ‘Citizenship Day’ was arranged in Parliament for all new citizens naturalised during the preceding year and their family. Since then, a Citizenship Day has been arranged each year in the spring; in 2009, around 1,500 new citizens participated, listened to speeches and talked with members of Parliament.⁴⁷

The (general) Act on Danish Citizenship (1950) was adopted and is amended in the same way as other acts, and as with many other (general) acts, there will normally be a hearing procedure among different ministries, institutions and organisations before the bill’s introduction in Parliament.

The process of implementation

While the Ministry of Integration and the Parliament (and the police) share responsibility for the implementation of the rules on naturalisation of foreigners, the Ministry of Integration alone is responsible for decisions about whether a Danish citizen with permanent residence abroad may keep his or her Danish citizenship (sect. 8 (1)) and for making decisions on the release from Danish citizenship (sect. 9).

Regional authorities like the regional Danish state administration offices, the High Commissioner of the Faroe Islands and the High Commissioner of Greenland are responsible for the implementation of the provisions on the acquisition of citizenship by declaration (by entitlement, see sect. 3 and 4). Persons entitled to Danish citizenship may submit a declaration to these authorities, and once a declaration is received it cannot be withdrawn. If the conditions specified in the relevant provision of the Citizenship Act are met at the date on which the declaration is received, citizenship is acquired and effective from that date, and a citizenship certificate is subsequently issued to the declaring person. The process of implementation shall, in principle, be uniform, as the Constitution’s sect. 44 (1), as mentioned earlier, leaves no room for discretionary decisions; the task of the authorities is merely to ascertain whether the unambiguously formulated conditions are met, in which case citizenship is acquired *ex lege* (by statute).

The competence to make decisions on deprivation of citizenship due to fraudulent conduct during the procedure of acquisition of Danish citizenship (sect. 8 A) or due to violation of part 12 and 13 of the Danish Criminal Code (sect. 8 B) lies with the courts of justice (normally the district court where the person concerned lives or resides). It is up to the prosecutor, at the request of the Ministry of Integration, to institute proceedings for deprivation of citizenship. Proceedings are governed by the rules for the administration of criminal justice.

The Ministry of Integration has published information on the conditions for acquisition and loss of citizenship etc. Such information is also accessible on the Ministry’s homepage, which furthermore contains the answers to frequently asked questions on citizenship (in Danish and English), but there are no public outreach programmes encouraging immigrants to naturalise (or expatriates to reclaim Danish citizenship).

⁴⁷ The initiative comes from the Social Liberals following American and Canadian models.

While, as a rule, the legislature's decisions on naturalisation cannot be appealed, the regional authorities' decisions may be appealed to the Ministry of Integration and the Ministry's decisions may be brought before the Parliamentary Ombudsman and/or a court of justice.

4 Current political debates and reforms

In contrast to several other European countries, Denmark has not had a general approach to the promotion of the acquisition of citizenship. The present government has declared that 'one shall deserve becoming a Danish citizen'.⁴⁸ It has been the wish of the government to strengthen the conditions for the acquisition of citizenship in order to make them 'respond more precisely to the society's expectations of the individual making an effort to become part of Danish society'. The Social Democrats consider an application for Danish citizenship as a desire for further integration in the Danish society. The left-wing parties and the Social Liberals have welcomed foreigners applying for Danish citizenship considering access to citizenship as part of the integration process and crucial for integration, for which reason they want relaxed criteria for naturalisation. The most deliberate and goal oriented naturalisation policy has been pursued by the Danish People's Party – with a view to reducing the overall number of naturalisations. Spokesmen for the party reject the idea of access to citizenship as a means of integration; they consider Danish citizenship as the most precious gift from the Danish people to foreigners who apply for it and deserve it – after having completed a process of integration. Before the general election in 2001 a spokesman of the party warned against 'replacement' of the Danish population and the creation of a 'multi-ethnic society'; in particular, he warned against the fundamentalist tendencies within Islam. Furthermore, having regard to the Danish Constitution, the party considers a reduction of the numbers of applicants to be necessary in order for the Members of Parliament to be able to 'know and control' the applicants included in the bills on naturalisation.⁴⁹ The party's ideal is an annual quota of 2,000 in order to prevent the number of naturalisations being a threat to the Danes' birthright to their own country.

In 2002, the government expressed a wish to sharpen the conduct and language requirements, among other things because the naturalisation criteria were seen as instrumental in the process of integration. Danish citizenship was seen as something to strive for: a 'carrot' for foreigners to adapt to Danish society, be independent, learn Danish and be able to socialise with the Danes. When the Danish People's Party made demands for a language test comparable to the school leaving examination of the public lower secondary school to be passed with a mark of nine (above average), the then Minister for Integration rejected the demand, which would imply that two thirds of the applicants would be excluded from being naturalised. The Minister for Integration who could not accept that only well educated people would be able to qualify for naturalisation. Also practical people – who, as the minister added, are often even more useful – should have the possibility of becoming Danish citizens.⁵⁰

Due to this disagreement the minister opened the way for negotiations on new naturalisation criteria with political parties other than the Danish People's Party, notably the

⁴⁸ 'The Liberals' programme (Time for change)'.

⁴⁹ The spokesman has often referred to the Constitution and the naturalisation requirements decided by the first parliamentary committee on citizenship and the 1776 Act stating that the children of the country should enjoy the bread of the country.

⁵⁰ Minister Bertel Haarder, see [www.ft.dk/Samling/20041/salen/L58_BEH1_17_8\(NB\).htm](http://www.ft.dk/Samling/20041/salen/L58_BEH1_17_8(NB).htm)

Social Democrats, but also the Social Liberals. However, the succeeding Minister for Integration reached an agreement with the Danish People's Party, and like this party she found that 'acquisition of nationality presumes that the applicant is already integrated in Danish society'.⁵¹ This could be seen as an illustration of the trend described in the literature (Howard 2009) of mainstream centre-right parties moving further to the right on the citizenship issues most likely to capture vote shares going to far right parties, but, in fact, the later restrictions are to a greater extent to be seen as a consequence of the government's wish to accomplish its promises to the voters which presupposes an agreement with the Danish People's Party.

The Social Democrats have by and large accepted the existing requirements, while the Social Liberals' and other opposition parties' main objections regarded the diminished possibilities for dispensation from the demands on skills in the Danish language and knowledge of the Danish society.

The latest debate on Danish citizenship has concerned the question on toleration of multiple citizenship. Proposals as to legislation or closer examination concerning this issue were however turned down in May 2009 by the Liberals, the Conservatives, the Danish People's Party and the Social Democrats. Their arguments were that the Danish Ministry of Foreign Affairs had informed the Ministry of Integration that Denmark would not as a rule be able to exercise diplomatic protection in favour of a Danish citizen against another state whose citizenship that person also possesses. Furthermore, they attached importance to information from the Ministry of Justice concerning extradition problems in cases where a Danish citizen after having committed crimes in Denmark might flee to another country whose citizenship that person also possesses and who may not extradite its own citizens. The Danish People's Party added to this that the exclusive attachment to one and only one country is an inherent element in citizenship as such. The rest of the parties in Parliament put emphasis on the inconvenience the present rules cause for many emigrants as well as immigrants. They considered that the benefits of multiple citizenship clearly outweigh the disadvantages.⁵²

5 Conclusions

Denmark was originally a rather typical state-nation consisting of several entities; however after having been defeated in its wars, Denmark had lost most of its territories. In the nineteenth century, Denmark evolved into a homogeneous nation-state with a political culture and identity based on an interaction between language, people, nation and state (Østergaard 2000: 143). It has been pointed out that the Danish national identity and political culture combine features of what is often referred to as East European integral nationalism typical of smaller, recently independent nation-states and the patriotic concept of citizenship in the older West European state-nations, and that the explanation for this apparent paradox is that Denmark belongs to both families (Østergaard 2000: 144).

Danish citizenship policy should be seen in a broad historical perspective including Denmark's geopolitical position. When it comes to the naturalisation of foreigners, Denmark has pursued a more exclusive policy than its Nordic neighbouring states, especially by setting up requirements for longer periods of habitual residence in its territory. Historically, during

⁵¹ Translation of part of a letter of 7 June 2006 from the Minister for Integration, Rikke Hvilshøj, to the Danish Institute for Human Right (2006/307-108).

⁵² *Indfødsretsudvalget B 55 – bilag 13*; www.ft.dk

parliamentary debate on citizenship issues it has been indicated that Denmark has had an immigration that differs from the other Nordic countries. One of the reasons may have been that the Danish capital is located at the edge of Denmark very close and directly towards Sweden. For instance, around the beginning of the First World War Members of Parliament were concerned about the fact that ten times as many Swedish citizens moved to and were naturalised in Denmark, compared with Danish citizens who moved to and were naturalised in Sweden. They argued for more restrictive naturalisation criteria asserting that the Swedish applicants were motivated by the Danish social welfare system, although the Minister for the Interior suggested that the attractive Danish capital close to the Swedish hinterland could be part of the explanation. An even more influential factor has probably been the fact that the only neighbouring country connected to Denmark is Germany, which historically has had a strong, competing influence on Denmark; German states were in war with Denmark at the time of its constitutionalism and for a long time immigrants from Germany formed another major part of the applicants for naturalisation.

During the last decades another influential factor may have been that the legislature has continuously demonstrated that it is divided on matters of immigration and citizenship; another decisive factor is the party composition of the legislature. The government has led the so-called ‘contract policy’ and in order to retain its credibility by living up to ‘the contract’ with the voters, on crucial questions it needs to be in agreement with the Danish People’s Party; and this party stands firm on its insistence on restrictive naturalisation criteria. The Social Democrats have not been able to agree on a common immigration policy, and the leaders of the party have been weakened by this internal disagreement. During the last election, the Social Democrats found to their cost that they could not benefit from discussions on the aliens policy. These conditions may curb any interest in a reform of the more than fifty year old citizenship act.

As far as the Danish People’s Party is concerned, the party has succeeded in carrying through the policy which members of the party have advocated since the party came into existence. It has been implemented to a large extent while the Danish People’s Party has acted as a supporting party to the Liberal-Conservative government. In this course, many former social democratic voters have voted for the Danish People’s Party. The Social Democrats have during the last years been without much political influence. In 2005, the newly elected chairman of the party promised to ‘work the government out of the offices’ by coming to terms with it, but since the government’s policy is carried out with the support of the Danish People’s Party, the Social Democrats’ influence has to some extent been limited to concessions.

As matters stand, the present Act on Danish Citizenship dates from 1950 and no regular reform has seriously been considered – in spite of the increasing immigration to Denmark and an almost comparable Danish emigration. On the contrary, while other countries tend to tolerate multiple citizenship, Denmark maintains so far its traditional opposition to this status, and while other countries tend to replace discretionary naturalisation by entitlement to citizenship for certain groups, Denmark has repealed its traditional provision granting second generations of immigrant descent a right to Danish citizenship.

Thus, while Denmark had a citizenship law in line with many other European and especially the Nordic countries in the twentieth century, this has changed – not only due to the tougher criteria for the acquisition and loss of citizenship, but maybe even more because some of the other countries have provided for easier access to their citizenship. Insofar as there has been a converging development this can to some extent be traced to international agreements and conventions, which have set some standards as well as some limitations.

During the last years, there has not been a general perception of *the right to a citizenship* as a means of integrating foreigners into the social and political life of Denmark or as a desirable goal in itself. Instead, *the strengthening of the criteria* for acquisition of citizenship has been seen as a means to fulfil the visions and strategies of the government regarding the integration of foreigners. The abolition of (non-Nordic) second generation immigrant descendants' right to Danish citizenship is aimed at ensuring 'that the possibility of acquisition by declaration cannot be used in situations where the persons concerned have had their habitual residence in another country as children, during the most important years for integration'. Some politicians have used the traditional interpretation of the constitutional provision on foreigners' acquisition of citizenship by statute to justify repealing the second generation immigrant descendants' right to citizenship in a way that seems to be unfounded. When the constitution of 1849 was adopted, it was the general idea that persons who were born and brought up in Denmark were 'Danish' as a matter of fact. Repealing their entitlement to citizenship seems to be out of line with both past and present considerations towards integration.

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