

## EUDO CITIZENSHIP OBSERVATORY

### *NATURALISATION PROCEDURES FOR IMMIGRANTS DENMARK*

Eva Ersbøll

February 2013

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

***Naturalisation Procedures for Immigrants  
Denmark***

**Eva Ersbøll**

*February 2013*

EUDO Citizenship Observatory

**Migration Policy Group**

in collaboration with

**Robert Schuman Centre for Advanced Studies**

Naturalisation Procedures Report, RSCAS/EUDO-CIT-NP 2013/7  
Badia Fiesolana, San Domenico di Fiesole (FI), Italy

© 2013 Eva Ersbøll

This text may be downloaded only for personal research purposes.  
Additional reproduction for other purposes, whether in hard copies or electronically,  
requires the consent of the authors.

Requests should be addressed to [eucitac@eui.eu](mailto:eucitac@eui.eu)

The views expressed in this publication cannot in any circumstances be regarded as  
the official position of the European Union

Published in Italy  
European University Institute  
Badia Fiesolana  
I – 50014 San Domenico di Fiesole (FI)  
Italy  
[www.eui.eu/RSCAS/Publications/](http://www.eui.eu/RSCAS/Publications/)  
[www.eui.eu](http://www.eui.eu)  
[cadmus.eui.eu](http://cadmus.eui.eu)

Research for EUDO Citizenship Observatory Reports has been jointly supported by the European Commission grant agreement HOME/2010/EIFX/CA/1774 ACIT and by the British Academy Research Project CITMODES (both projects co-directed by the EUI and the University of Edinburgh).

The financial support from these projects is gratefully acknowledged.

For information about the project please visit the project website at <http://eudo-citizenship.eu>

# Naturalisation Procedures for Immigrants

## Denmark

Eva Ersbøll

### Table of contents

INTRODUCTION .....	4
THE DANISH DECISION MAKING PROCESS IN NATURALISATION CASES .....	4
The Danish naturalisation system, a unique case.....	4
Three authorities deal with naturalisation matters .....	4
The police receive and review applications for citizenship .....	5
The Ministry of Justice checks applications and documentation.....	5
The Ministry of Justice decides whether to include an applicant in a Bill on naturalisation or to reject the application.....	5
The Danish Parliament, the Folketing, has the sole and exclusive competence to grant naturalisation.....	6
The Ministry of Justice notifies applicants of the grant of citizenship .....	6
FIVE DIMENSIONS OF ADMINISTRATIVE PRACTICES AND THE PROCEDURES FOR NATURALISATION.....	6
Promotion: how much do authorities help applicants to meet the legal conditions?.....	7
No Danish tradition of state-run naturalisation campaigns.....	7
Official webpage and individual counselling .....	7
Distribution of application forms.....	8
Assessment of the applicant's integration etc. during the naturalisation process.....	8
Publicly-run or subsidised language courses etc. ....	8
Citizenship ceremony.....	9
Documentation: how can applicants prove that they meet the legal conditions? .....	10
Documentation requirements .....	10
Proof of identity .....	10
Assessment of language knowledge .....	10
Assessment of societal knowledge.....	11
Exemption from the language and societal knowledge requirements .....	11
Proof of economic resources: self-support and no overdue debt to public authorities....	11
Criminal record requirements .....	12
Requirement of renunciation.....	13

Discretion: how much room do authorities have to interpret the legal conditions? .....	13
Discretionary powers in refusals.....	13
Fraud and serious threat to public policy or national security .....	15
Information given to applicants during the procedure.....	16
Discretion in assessment of requirements.....	16
Bureaucracy: how easy is it for authorities to come to a decision?.....	17
Official costs during the naturalisation procedure.....	17
Deciding authorities, document checking and length of procedure.....	18
Expertise of deciding authorities .....	19
Review: how strong is judicial oversight of the procedure?.....	20
Review of naturalisation procedures and decisions.....	20
Appeal process for language tests.....	21
Appeal process for the citizenship test.....	21
Other safeguards in the naturalisation procedure.....	21
EXPECTED CITIZENSHIP LAW REFORMS .....	22
CONCLUSION.....	22



## INTRODUCTION

This article examines how the Danish naturalisation system works out for different people. A number of questions will be dealt with, such as whether eligible foreign residents are informed about their possibilities to naturalise and how to apply, whether the authorities help by checking their applications, and how they come to a final decision. The basic assumption is that the ways that laws are implemented can lead to significant variation in naturalisation rates within a country, between groups of applicants, and over time.

Five dimensions of administrative practices and procedures on naturalisation will be covered in the article. First, however, the article will give a brief account of the Danish decision making process in naturalisation cases.

## THE DANISH DECISION MAKING PROCESS IN NATURALISATION CASES

### The Danish naturalisation system, a unique case

Denmark has a naturalisation system *sui generis* specified by the Danish Constitution, which in sect. 44 (1) states that foreigners can only acquire Danish citizenship by statute. The arrangement goes back to the first Danish constitution of 1849. At that time the provision was considered rooted in ‘general constitutional concepts’, as the aim was to avoid the formerly absolute ruler, the King, being the sole grant-awarding authority. Instead, the legislature was assigned the exclusive competence to naturalise foreigners.

Foreigners may acquire citizenship by either a general or a personal (singular) Act. The Danish Citizenship Act<sup>1</sup> is a general Act according to which certain groups of foreigners acquire citizenship *ex lege* by descent, adoption, legitimation, declaration etc. Most foreigners, however, are required to apply for acquisition of citizenship by naturalisation, granted by a singular Act of the Danish Parliament (the Folketing).

The legislature’s requirements for naturalisation are not adopted by law. Instead, the criteria are agreed upon by the political parties that command a majority in Parliament. Afterwards the criteria are published in a naturalisation circular.<sup>2</sup>

### Three authorities deal with naturalisation matters

The police receive applications for naturalisation and check formalities. Thereafter, the police send the applications to the ministry responsible for naturalisation, at present the Ministry of Justice. The ministry checks whether the naturalisation criteria are met in each case and if so, include the applicant in a Bill on naturalisation. Bills on naturalisation are introduced in Parliament twice a year. The Parliament grants naturalisation by the adoption of a Bill on naturalisation.

<sup>1</sup> See the citizenship Act at [http://www.nyidanmark.dk/NR/rdonlyres/52136BD4-FA62-4818-AABB-5709AABAC6A6/0/consolidation\\_act\\_no\\_422\\_7\\_june\\_2004.pdf](http://www.nyidanmark.dk/NR/rdonlyres/52136BD4-FA62-4818-AABB-5709AABAC6A6/0/consolidation_act_no_422_7_june_2004.pdf)

<sup>2</sup> See the circular in force: Circular Letter No. 61 of 22 September 2008 at: [http://www.nyidanmark.dk/NR/rdonlyres/2DA2D909-D91F-4E36-92E7-32C8F8DED7FD/0/cirk\\_nr\\_61eng\\_2\\_naturalisation.pdf](http://www.nyidanmark.dk/NR/rdonlyres/2DA2D909-D91F-4E36-92E7-32C8F8DED7FD/0/cirk_nr_61eng_2_naturalisation.pdf)

### **The police receive and review applications for citizenship**

According to the naturalisation circular sect. 25 (1), an application for naturalisation must be submitted on a special application form to the Police Commissioner of the police district where the applicant lives. Applicants living in the Municipality of Copenhagen shall submit their applications to the Commissioner of the Copenhagen Police.<sup>3</sup>

According to the circular's sect. 26 the police shall, upon receipt of the application, review the information contained in the application form and the enclosed documents together with the applicant. During that appointment, the police shall ensure that the applicant has understood the significance of giving information and making statements by solemn declaration. The police add their notes and forward the file to the Ministry of Justice.

### **The Ministry of Justice checks applications and documentation**

The Ministry of Justice receives applications for citizenship and the necessary documentation from the police.<sup>4</sup> On this basis, the ministry examines whether the applicants fulfil the naturalisation requirements. In doing so the ministry must follow the guidelines in the naturalisation circular which describe the requirements to be satisfied in order for the ministry to list an applicant in a naturalisation Bill (without prior submission to the Naturalisation Committee of the Danish Parliament). Applicants are listed in the Bills by name, municipality, and year of birth, birth place and present citizenship/statelessness.

### **The Ministry of Justice decides whether to include an applicant in a Bill on naturalisation or to reject the application**

The Ministry of Justice drafts naturalisation Bills and list in the Bills persons who satisfy the conditions for naturalisation.<sup>5</sup>

Having received and examined an application, the ministry informs the applicant of whether he or she satisfies the conditions for naturalisation. Applicants who do not fulfil the conditions are informed by the ministry that they are not eligible for Danish citizenship at present. Applicants who fulfil the conditions are informed by the ministry that they will be listed in the next naturalisation Bill introduced in Parliament by the Ministry of Justice.

Certain applications must be handed over by the ministry to the Naturalisation Committee of the Parliament for a decision. It is spelt out in the naturalisation circular that the ministry must hand over cases on dispensation and other specified cases. Also questions of interpretation must be submitted to the Naturalisation Committee. Applicants, who are accepted by the Naturalisation Committee, will subsequently be included in a naturalisation Bill by the ministry.

Since 2002, it has been stated in the introduction to the Naturalisation Circular that the ministry's examination of applications for citizenship does not involve decisions

---

<sup>3</sup> See the circular [http://www.nyidanmark.dk/NR/rdonlyres/2DA2D909-D91F-4E36-92E7-32C8F8DED7FD/0/cirk\\_nr\\_61eng\\_2\\_naturalisation.pdf](http://www.nyidanmark.dk/NR/rdonlyres/2DA2D909-D91F-4E36-92E7-32C8F8DED7FD/0/cirk_nr_61eng_2_naturalisation.pdf)

<sup>4</sup> Stateless persons born in Denmark can, however submit their application for citizenship directly to the ministry.

<sup>5</sup> Requirements with respect to residence, age, renunciation of present citizenship, general conduct, overdue debt to public authorities, self-support, command of the Danish language and knowledge of Danish society, culture and history.

pursuant to law, but is considered preparation of Bills.<sup>6</sup> Anyhow, the examination carried out by the ministry to ascertain whether an applicant satisfies the requirements of the naturalisation circular is very similar to the examination normally carried out by the public administration. Therefore, the rules of the Public Administration Act and other principles of public administration are normally observed when the ministry examines a naturalisation case.<sup>7</sup>

### **The Danish Parliament, the Folketing, has the sole and exclusive competence to grant naturalisation**

Sect. 44(1) of the Danish Constitution, stating that no alien can obtain Danish citizenship other than by an Act of Parliament, means that naturalisation is the exclusive prerogative of the legislature.

Bills on naturalisation are given three readings in Parliament. The readings in Parliament take two to three months. Normally a naturalisation Bill introduced in April will be adopted around late June of the same year, and a Bill introduced in October will be adopted around late December of the same year.

When a naturalisation Bill is adopted by Parliament, the Queen must sign the Bill before the Act enters into force.

### **The Ministry of Justice notifies applicants of the grant of citizenship**

When an Act on naturalisation has entered into force, the included applicants will receive a letter from the Ministry of Justice on their acquisition of Danish citizenship. At the same time the ministry will send each applicant an 'information form' about family matters, which is to be filled in by the applicant. This is necessary for the ministry to determine whether any of the applicant's children will become Danish citizens based on the applicant's acquisition of Danish citizenship (extension of acquisition of citizenship). When the ministry has received the completed information form, the ministry will send a Danish citizenship certificate to the applicant. The certificate may include the applicant's children. The Ministry will report those who have become Danish citizens to the Danish Central Office of Civil Registration (CPR).

## **FIVE DIMENSIONS OF ADMINISTRATIVE PRACTICES AND THE PROCEDURES FOR NATURALISATION**

As mentioned in the introduction, five dimensions of administrative practices and procedures on naturalisation will be covered in greater detail in this chapter. These are as follows: promotion, documentation, discretion, bureaucracy, and review.

---

<sup>6</sup> See Part 1 in the naturalization circular. The perception is now challenged before the Danish courts, see about High Court judgment of 7 September 2012 at <http://eudo-citizenship.eu/citizenship-case-law/?search=1&name=&year=&country=Denmark>

<sup>7</sup> See the introduction to the naturalisation circular.

## Promotion: how much do authorities help applicants to meet the legal conditions?

### No Danish tradition of state-run naturalisation campaigns

Denmark does not run naturalisation campaigns or similar ‘promotion activities’ in order to encourage applicants to apply for naturalisation. The general understanding is that Danish citizenship is something special and must be earned. Rather than encouraging immigrants to naturalise, Denmark has since 2002 attempted to reduce the annual number of naturalisations. Thus, Denmark has not endorsed the idea of democratic inclusion, as among others the Norwegian government has advocated. Instead, it has been the Danish viewpoint that naturalisation requirements must be high since citizenship gives access to participation in national elections and citizens must be qualified to participate. This perception may, however, change under the new centre-left government which took office in October 2011.

Still, as things stand Denmark does not run naturalisation campaigns and has not established specific information or counselling services for naturalisation applicants. Neither has Denmark drawn up state-run or –funded promotional materials like official leaflets, brochures and pamphlets on naturalisation (although formerly a brochure has existed).

### Official webpage and individual counselling

A valuable help to applicants for citizenship is the official Danish webpage [http://www.nyidanmark.dk/en-us/coming\\_to\\_dk/danish\\_nationality/](http://www.nyidanmark.dk/en-us/coming_to_dk/danish_nationality/) where applicants may find answers to many questions on naturalisation criteria, procedures, fees etc. The content does not cover the benefits of naturalisation, but it is possible to find answers to often asked questions about acquisition and loss of Danish citizenship – written in relatively simplified language.

However, some requirements may be decided or agreed upon by the Naturalisation Committee and still not be published, neither in the circular nor at the webpage, for instance requirements for children who acquire Danish citizenship by extension of their parent’s acquisition. In such cases, applicants are referred to counselling from the authorities.<sup>8</sup>

In line with the general principles of administrative law, the competent authorities offer individual counselling. The Nationality Division under the Ministry of Justice has an open telephone counselling Monday, Tuesday, Thursday and Friday between 9 a.m. and 12 noon, and at the local police station applicants may receive information on naturalisation criteria and procedures. When an applicant submits an application to the police, the police will, as already mentioned, examine the application form and the enclosed documents during a meeting with the applicant, before submitting the application etc. to the ministry.

---

<sup>8</sup> See also Ida Elisabeth Koch: Statsborgerret, in Lone B. Christensen and others (eds.): *Udlændingeret*, 3. udgave (2006), p. 622.

### **Distribution of application forms**

In April 2008 a new procedure was launched. Under this procedure the applicant must fill in a ‘citizenship application kit’ comprising an application form and a form documenting the applicant’s ability to self-support. The application form includes a number of declarations to be signed by the applicant:

- A solemn declaration (on correct information)
- A declaration on consent to information retrieval
- A declaration on allegiance and loyalty to Denmark and the Danish society and willingness to observe Danish legislation and respect fundamental Danish principles of law
- A declaration on renunciation of present citizenship
- A declaration on any criminal offence committed
- A declaration on not having committed any offence comprised by Parts 12 and 13 of the Criminal Code (offences against national security).

Apart from this, the citizenship application kit includes a checklist and the guidelines for naturalisation (the naturalisation circular).

The application form may be downloaded and printed from the website<sup>9</sup> or collected at the local police station. The form is not distributed through other state offices, non-state organisations or the like. Denmark has not introduced any interactive self-assessment tool (e.g. questionnaire or calculator).<sup>10</sup>

As mentioned, the form etc. must be handed in personally at the local police station. There is no possibility for submitting the application to the police/the Ministry of Justice online.

### **Assessment of the applicant’s integration etc. during the naturalisation process**

Normally, applicants are listed in naturalisation Bills after the Ministry of Justice has ascertained that they fulfil the conditions for naturalisation. Any help from the ministry will consist in counselling; see below on the possibilities for help at language courses and dispensation from the general requirements.<sup>11</sup>

### **Publicly-run or subsidised language courses etc.**

To be listed in a naturalisation Bill an applicant must prove knowledge of both the Danish language and society. The societal knowledge must be proven by presenting a certificate of a special citizenship test and the knowledge of the Danish language must be proven by presenting a particular language examination certificate.<sup>12</sup>

---

<sup>9</sup> See the application form [http://www.nyidanmark.dk/en-us/coming\\_to\\_dk/danish\\_nationality/application\\_form.htm](http://www.nyidanmark.dk/en-us/coming_to_dk/danish_nationality/application_form.htm)

<sup>10</sup> However, as mentioned, a personal checklist is attached to the application form.

<sup>11</sup> Questions on ‘integration’, including language and societal knowledge *assessment* do not arise during the normal naturalisation process; whether an applicant fulfils the conditions i.e. the language and integration requirements will be judged upon the documentation attached to the application.

<sup>12</sup> Sufficient Danish skills may also be proved by other diplomas etc., among others a certificate of the lower secondary school-leaving examination after either 9th or 10th grade with an average mark of at least 7 (at the 13-point scale) or 04 (at the 7-step scale) in the Danish disciplines (other than neatness).

Since 2010 there is free access to publicly run or subsidised Danish language courses for all foreigners who have reached the age of 18 and have a residence permit or other permission to hold habitual, legal residence in Denmark, including persons with EU registrations and EU residence cards.

According to the Act on Danish Courses for Adult Aliens and Others,<sup>13</sup> foreigners are offered a Danish language course lasting three years. There are three different Danish language courses: Danish Course 1, Danish Course 2 or Danish Course 3.<sup>14</sup> The scope of each of the three courses corresponds to 1.2 years' full-time study. The three courses target different groups of foreigners according to their previous schooling, i.e. no schooling, limited schooling and extensive schooling, respectively.

Students with special needs, for instance as a result of dyslexia, other learning difficulties, post-traumatic stress disorder (PTSD), other psychiatric illnesses or brain injuries, etc., are offered tuition in small groups or – in very special cases – individual tuition.

In order to prepare for the citizenship test, foreigners are not offered any publicly run or subsidised integration course. They may instead prepare for the civil knowledge test by reading a text book.<sup>15</sup> The book can be bought or viewed and downloaded (free of charge) from the website of the Ministry of Children and Education. Furthermore, it is possible to listen to the text by downloading an MP3 file. In addition, supplementary literature for preparatory purposes may be downloaded from the Ministry's web page.<sup>16</sup>

### Citizenship ceremony

The Presidium (the presiding committee) of the Parliament decided in 2006 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 this Citizenship Day has been arranged every year. The aim is to emphasise that being granted Danish citizenship is an important event and to demonstrate that in Denmark there is a short distance between citizens and Members of Parliament. The Speaker of the Parliament holds a speech of welcome and there is music and entertainment. Afterwards the political parties welcome the new citizens who have the possibility to visit the Parliament and its buildings and talk with MPs. In 2012, 29 April, when the seventh Citizenship Day was arranged, 56 out of 175 MPs participated in the Citizenship Day.<sup>17</sup> The event is appreciated by participating new citizens and their relatives who frequently declare that here they meet 'a Denmark they would like to see more often'.<sup>18</sup> The ceremonies are covered in the media.

<sup>13</sup> <https://www.retsinformation.dk/Forms/R0710.aspx?id=133131>

<sup>14</sup> Foreigners are also offered a course at a higher level, leading to the Higher Education Examination (the study test).

<sup>15</sup> *Danmark for og nu – læremateriale om historie, kultur og samfundsforhold til indfødsretsprøve* (Denmark past and present – study material for the citizenship test on history, culture and society).

<sup>16</sup> See the ministry's webpage: <http://uvm.dk/Uddannelser-og-dagtilbud/Uddannelser-til-voksne/Overblik-over-voksenuddannelser/Dansk-for-voksne-udlaendinge/Indfoedretsproeve>

<sup>17</sup> <http://www.ft.dk/aktuelt/statsborgerskabsdag/program.aspx>

<sup>18</sup> See Tine Damsholt: Statsborgerskabets materialiseringer, vestlige statsborgerskabsceremonier i et ny årtusind, in *Tidskrift for kulturforskning* Vol. 7, no.1; 2008, p. 5-27.

## Documentation: how can applicants prove that they meet the legal conditions?

### Documentation requirements

The documentation requirements for naturalisation are clearly specified in the application form requesting that applicants attach the following documents to the application:

- Copy of passport
- Copy of permanent residence permit
- Original or confirmed copy of relevant language examination certificate
- Original or confirmed copy of the certificate of the special citizenship test
- A completed form on self-support
- Documentation for parental authority for applicants who wish their children to be included in the application

When an applicant personally submits an application for citizenship to the police, he or she must bring all the necessary documents in original in order for the police to confirm the copies.

It is stressed in the application form that an applicant who does not fulfil the naturalisation requirements will be met with a refusal. Therefore applicants are recommended not to apply before they can meet all requirements. If the form is not filled in correctly the handling of the case will last longer or the application will be refused.<sup>19</sup>

### Proof of identity

It is not an explicit requirement (as it is in some other Nordic countries) that applicants for naturalisation must assert their identity. Consequently there are no rules providing for alternative means to prove identity.

In order to submit an application for naturalisation, an applicant must submit a copy of his or her passport and a copy of a permanent residence permit. Often, foreigners hold a foreign national passport. However, some foreigners may not be in possession of a national passport for humanitarian or accessibility grounds. In this case Denmark will normally have issued them an alien's passport or a convention passport (for recognized refugees).

In any case, the ministry secures that identity information is confirmed by the Aliens Register and the Central Office of Civil Registration (CPR).

### Assessment of language knowledge

Applicants can use many legal means to prove their Danish language knowledge (e.g. certified language school test, school and university diplomas). Schedule 3 to the naturalisation circular lists the valid exams etc.<sup>20</sup>

---

<sup>19</sup> An application will also be refused, if not all conditions are fulfilled at the time of application. In this case, a new application for a reopening of the case is necessary.

<sup>20</sup> See [http://www.nyidanmark.dk/NR/rdonlyres/2DA2D909-D91F-4E36-92E7-32C8F8DED7FD/0/cirk\\_nr\\_61eng\\_2\\_naturalisation.pdf](http://www.nyidanmark.dk/NR/rdonlyres/2DA2D909-D91F-4E36-92E7-32C8F8DED7FD/0/cirk_nr_61eng_2_naturalisation.pdf)

### Assessment of societal knowledge

The only way an applicant can prove sufficient knowledge of the Danish society, culture and history is by submitting a certificate documenting that he or she has passed the Danish citizenship test.

### Exemption from the language and societal knowledge requirements

The only stipulated provisions on exemption are the naturalisation circular's sect. 24 (3) and (4) on exemption from the language and societal knowledge requirements. The exemption criteria are restrictive. A question on exemption will be submitted by the Ministry of Justice to the Naturalisation Committee of the Parliament if the applicant documents that he or she suffers from a physical or mental illness of a very serious nature and consequently finds him- or herself to be incapable – or to have no reasonable prospects – of satisfying the conditions. The circumstances must be documented by a certificate from a medical professional.

The procedure is specified in a note to sect. 24 stating that the responsible ministry is assumed to submit questions of exemption to the Naturalisation Committee in cases where the applicant for example suffers from a severe mental or physical disability (such as Down's Syndrome), is brain damaged, blind, deaf or suffers from a severe mental disorder such as (paranoid) schizophrenia, a psychosis or a severe depression. The ministry is further assumed to refuse the application of applicants who suffers from PTSD, also where the condition is chronic and this is documented by a certificate from a medical professional.

This last mentioned guideline on exclusion of applicants suffering from PTSD has been heavily criticised and complaints have been submitted to international organs like the Human Rights Committee and the European Court of Human Rights. Moreover, a case has been brought before the Danish courts.<sup>21</sup> Based on the critique, the guideline was softened in 2011 when a new procedure was introduced for applicants with PTSD – and notably also for other applicants with long-term impairments – who have had their application for exemption refused. Such applicants are now informed that the ministry is prepared to re-consider their application for exemption if they document having participated in Danish language education and attempted to pass a test in Danish language and the citizenship test.<sup>22</sup> This modification has, however, not removed the discriminatory treatment of applicants with PTSD whose applications for exemption can still not be submitted directly to the Naturalisation Committee, regardless of the seriousness of their illness and their medically documented inability to satisfy the conditions.

### Proof of economic resources: self-support and no overdue debt to public authorities

It is, according to the naturalisation circular (sect. 23), a condition for being listed in a naturalisation Bill that the applicant supports him- or herself. This means that the applicant must not have received any assistance under the Act on an Active Social Policy or the Integration Act during the last year prior to the introduction of the naturalisation Bill.<sup>23</sup> Furthermore, at the time when the Bill is introduced in Parliament, the applicant must not

<sup>21</sup> See Judgment of 7 September 2012 by the High Court at <http://eudo-citizenship.eu/citizenship-case-law/?search=1&name=&year=&country=Denmark>

<sup>22</sup> See [http://www.nyidanmark.dk/da-dk/Nyheder/Nyheder/Udlaendingeservice/2012/Oktober/fornyet\\_behandling\\_dansk\\_indfodsret\\_langvarig\\_funktionsnedsaettelse.htm](http://www.nyidanmark.dk/da-dk/Nyheder/Nyheder/Udlaendingeservice/2012/Oktober/fornyet_behandling_dansk_indfodsret_langvarig_funktionsnedsaettelse.htm)

<sup>23</sup> This requirement does not comprise assistance in the form of isolated benefits of a minor amount that are not directly related to support, or benefits that are comparable with wages or salary or a pension or replace such payment.

have received this kind of public assistance for an aggregate period exceeding six months within the last five years.

The applicant must inform the authorities of whether he or she has received any public assistance and hand over a form completed by the municipality regarding self-support.

A further economic naturalisation condition is that the applicant must not have any overdue debt to public authorities (sect. 22). Any outstanding public debt (as specified in the circular) is a bar to being listed in a naturalisation Bill, even if the applicant has made a repayment arrangement with the relevant public authority. The applicant is, however, offered a month's respite in order to repay outstanding public debt. The Ministry of Justice obtain information from tax authorities and other authorities.

### **Criminal record requirements**

According to the naturalisation circular, sect. 19, it is a condition for being listed in a naturalisation Bill that the applicant declares not having committed any offence comprised by Parts 12 and 13 of the Criminal Code (crimes against the state). A person making a false declaration on this point may be deprived of his or her Danish citizenship pursuant to sect. 8 A of the Danish Citizenship Act.<sup>24</sup> Applicants sentenced to at least 60 days' imprisonment for violation of Parts 12 and 13 of the Criminal Code and applicants sentenced to permanent expulsion or imprisonment for 18 months or more cannot be listed in a naturalisation Bill. Applicants with other sentences cannot be listed in a naturalisation Bill until the expiration of a certain waiting period, as specified in Schedule 2 to the circular. Applicants charged with an offence cannot (during the prosecution) be listed in a naturalisation Bill.

The applicant must provide a solemn declaration of any criminal offence committed (sect. 20).<sup>25</sup> This includes all criminal offences that the applicant has been charged with or sentenced for, including suspended sentences and fines. The applicant must also provide details of criminal offences he or she has committed, but not yet received any sanction for.<sup>26</sup>

The Ministry of Justice obtains information from the Central Criminal Register. Furthermore, the ministry submits Bills on naturalisation to the National Security Service. If the Security Service considers one or more of the applicants listed in the Bill a danger to national security, the Minister of Justice will (as the head of the Security Service) pass on this information to the Naturalisation Committee with a recommendation for exclusion of the applicant(s) from the naturalisation Bill – and from being granted naturalisation for a specified period (sect. 21). Allegedly the waiting period will normally be five years.

---

<sup>24</sup> [http://www.nyidanmark.dk/NR/rdonlyres/52136BD4-FA62-4818-AABB-5709AABAC6A6/0/consolidation\\_act\\_no\\_422\\_7\\_june\\_2004.pdf](http://www.nyidanmark.dk/NR/rdonlyres/52136BD4-FA62-4818-AABB-5709AABAC6A6/0/consolidation_act_no_422_7_june_2004.pdf)

<sup>25</sup> Applicants sentenced to at least 60 days' imprisonment for violation of provisions of Parts 12 and 13 of the Criminal Code and applicants sentenced to permanent expulsion or sentenced to imprisonment for 18 months or more cannot be listed in a naturalisation Bill. Applicants with other sentences cannot be listed in a naturalisation Bill until the expiration of a certain waiting period, cf. the list in Schedule 2 to the naturalisation circular.

<sup>26</sup> This means that, regardless of the amount, an old fine for shoplifting or a speeding fine always has to be mentioned in the declaration, even if the applicant has a clean criminal record when applying for naturalisation. The applicant must also report on any criminal offence committed abroad.

### Requirement of renunciation

It is (so far) a precondition for being listed in a naturalisation Bill that the applicant agrees to renounce his or her present citizenship (sect. 4). In the application form the applicant must endorse being willing to renounce his or her present citizenship.<sup>27</sup>

The Ministry of Justice has details about the citizenship legislation in different countries around the world. The ministry makes it a condition that applicants are released from their present citizenship, if they are from a country where they will not automatically lose their citizenship when they acquire a foreign citizenship, and if they can apply to the authorities to be released from their citizenship.

If so, they will be naturalised conditionally. This means that when Parliament has adopted the naturalisation Bill in which they are listed, and the Act has entered into force, the Ministry will send them a special notice that they will only be awarded Danish citizenship when they prove that they have been released from their present citizenship. The Ministry will fix a deadline for the release. An applicant who fails to prove the release before the deadline expires will not become a Danish citizen on the basis of the adopted naturalisation Act.

Not all applicants are asked to renounce their citizenship. Persons with refugee status in Denmark and persons from countries where experience shows that it is impossible or implies extreme difficulties to obtain release from citizenship are not subject to the requirement. The same applies when it is documented that an applicant has been denied release or has made a serious, but unsuccessful attempt to be released from his or her present citizenship (sect. 4(2)).

### Discretion: how much room do authorities have to interpret the legal conditions?

#### Discretionary powers in refusals

As already mentioned, all discretionary powers lie with the legislature. The Ministry must observe the guidelines agreed upon in Parliament. Thus, if an applicant fulfils the conditions in the naturalisation circular, the ministry must list said person in a naturalisation Bill. If not, the applicant will normally receive a refusal from the ministry. In certain situations, however, the ministry is assumed to submit applications to the Parliament's Naturalisation Committee which may exempt an applicant from the general conditions. In doing so the ministry must follow indications received from Parliament. It is for the ministry to try to anticipate the decision of the committee.<sup>28</sup>

The understanding of the allocation of authority between the minister, the ministry and the legislature seems challenged by the way the Ministry of Justice has conducted a naturalisation case before a Danish high court.<sup>29</sup> On this occasion, the Ministry has described the agreement whereby (three of) the political parties in the Parliament have laid down the general guidelines on the preparation of naturalisation Bills (implemented in the naturalisation circular) as a legally non-binding political agreement on the drafting of Bills on naturalisation, 'that is, how the government intends to use its authority pursuant to

<sup>27</sup> See <http://eudo-citizenship.eu/news/citizenship-news/716-dual-citizenship-delayed-at-least-another-year->

<sup>28</sup> See the naturalisation circular Part 1 where it is stated that persons listed in the Bills will either satisfy the requirements in the guidelines or have been listed following submission to the Naturalization Committee.

<sup>29</sup> See High Court Judgment of 7 September 2012 on judicial review of a decision on nationality at <http://eudo-citizenship.eu/citizenship-case-law/?search=1&name=&year=&country=Denmark>

the constitution's sect. 21 to decide the content of a Bill to be presented in Parliament'. The ministry has explained that within the compass of the Constitution it may freely decide the content of a Bill without being bound neither by the political agreement nor the naturalisation circular. This so called 'government prerogative' implies, according to the ministry, that the government's decisions on presentation and formulation of Bills on naturalisation cannot be subjected to judicial review; and hence, neither the ministry's refusals of citizenship and refusals of submitting applications to the Naturalisation Committee can be subjected to judicial review.

This assertion will be tested before the Supreme Court on 5 September 2013. The plaintiff has claimed that the ministry's refusal of citizenship as provided by the naturalisation circular is to compare with an administrative decision authorised in law and consequently, such refusal may be subject to judicial review. As a rule, the ministry's refusals of citizenship, based on the Parliament's guidelines on naturalisation, are given in accordance with the guidelines, and the decisions are taken independently, that is without any involvement of the Parliament in the concrete cases.

In practice, however, when it comes to the ministry's decision on whether to hand over a case to Parliament, an amount of discretion appears unavoidable. This assumption seems to be confirmed by the statistics. In 2005, the Naturalisation Committee refused 544 submitted applications for dispensation, and approved only 237. The inconsistency is reflected in the fact that a majority in the committee the same year argued for restrictions of the general naturalisation criteria. After the restrictions had been agreed upon in December 2005, the committee rejected a smaller part of the submitted applications for dispensation, while, on the other hand, the ministry had to refuse a correspondingly larger part of the received applications for naturalisation (according to the general guidelines). In 2007, 2008 and 2009 the number of refusals exceeded the numbers of grants.<sup>30</sup>

In order to achieve concordance, the ministry and the Parliament interact. By way of example, when the political majority in Parliament changes after a general election, so does the composition of the Naturalisation Committee and this may cause the ministry to ask the committee whether more or other applications are to be handed over to the committee. The referendum in 2011 caused such a reaction.<sup>31</sup> The committee had from 2005-2011 examined 1077 applications for dispensation from the language and/or civil knowledge requirement and refused the request in 701 cases (without any reasoning). After the election, 701 applicants have been allowed to bring their case up again, and so far 90 per cent of these applicants have been granted dispensation by the 'new' Naturalisation Committee. The only reason for the change is, so to say, that there now is another (more liberal) political majority in the committee.<sup>32</sup>

In principle, the Naturalisation Committee of the Parliament has full discretionary power to grant dispensation from any naturalisation requirement. The committee acts on behalf of the legislature which is not (and cannot be) bound by any

<sup>30</sup> Source: Statistics from the Ministry of Justice, 8 March 2012.

<sup>31</sup> See the news on the changed practice of 14 June 2012 at [http://www.nyidanmark.dk/da-dk/nyheder/nyheder/udlaendingeservice/2012/juni/fornyet\\_forelaeggelse\\_ansogninger\\_folketingets\\_indfodsrets\\_udvalg.htm](http://www.nyidanmark.dk/da-dk/nyheder/nyheder/udlaendingeservice/2012/juni/fornyet_forelaeggelse_ansogninger_folketingets_indfodsrets_udvalg.htm)

<sup>32</sup> See press coverage <http://politiken.dk/politik/ECE1685719/udlaendinge-fik-afslag-i-aarevis---nu-kan-de-blive-danske-statsborgere/>

(ordinary) law. The provision on acquisition of citizenship in sect. 44(1) of the constitution is a norm of competence and does not stipulate any substantial requirement to naturalisation.<sup>33</sup>

Still, it must be born in mind that international conventions, including principles of equal treatment and non-discrimination, may limit the Parliament's discretionary power.<sup>34</sup>

### **Fraud and serious threat to public policy or national security**

It goes without saying that an applicant for citizenship will not be granted citizenship status if it is proven during the application procedure that he or she is guilty of fraudulent conduct in a matter decisive for the acquisition of citizenship. (Fraudulent conduct may be intentionally incorrect or misleading information given during the application procedure or suppression of relevant information.) In such a case a refusal will be given due to the fact that relevant naturalisation criteria are not fulfilled.

If the National Security Service considers an applicant a danger to national security, the Minister of Justice will, as mentioned above, submit the case to the Naturalisation Committee with a recommendation for exclusion of the applicant from being listed in a naturalisation Bill. The Security Service's estimate may be classified as discretionary – contrary to the decision of the Naturalisation Committee, which in this particular situation (so far) without exception has followed the Minister of Justice's recommendation without taking any account of the applicants' personal situation.

In practice, two applicants who have been considered a possible security threat have been naturalised. However, also in these cases the Committee followed the minister's recommendation; the minister's recommendation on naturalisation was motivated by Denmark's international obligations, since both applicants were born stateless in Denmark, and Denmark is bound by the UN Convention on Reduction of Statelessness (1961) to grant such applicants Danish citizenship. The first applicant was naturalised in 2011 and the case caused intense political discussion and disagreement.<sup>35</sup>

The Danish Citizenship Act provides for deprivation of citizenship in cases of fraud (sect. 8 A)<sup>36</sup> and in cases where the applicant is sentenced for having committed crimes against the state (sect. 8 B).<sup>37</sup> In a case on deprivation of citizenship, a judge must make a proportionality assessment before deciding whether the person concerned is to be deprived of his or her Danish citizenship by court order.

In a few cases, the Danish courts have dealt with deprivation of citizenship due to fraud and crimes against the state. Citizens have been deprived of Danish citizenship due to fraud, even where the deprivation left them stateless, but in the one and only case relating to crimes against the state, the court did not find deprivation of citizenship justified in spite of

<sup>33</sup> See Eva Ersbøll: *Dansk indfødsret i international og historisk betydning* (2008), p. 591.

<sup>34</sup> See Eva Ersbøll: Staten diskriminerer i sager om statsborgerskab, in *Advokaten* no. 2 2009, p. 10-13. This is also the plaintiff's claim in the case that will be tried in the Supreme Court on 5 September 2013.

<sup>35</sup> See newspaper article on the disagreement: <http://www.cphpost.dk/news/politics/opposition-leaders-call-break-un-convention>

<sup>36</sup> A citizen may be deprived of Danish citizenship even though that would make him or her stateless. If the citizen concerned has acquired Danish citizenship by birth, it is in practice impossible to become stateless due to fraud.

<sup>37</sup> A person sentenced for violation of one or more provisions of Parts 12 and 13 of the Criminal Code may be deprived of his or her Danish citizenship by court order unless that will make the person concerned stateless. The provision applies to all Danish citizens regardless of how they have acquired their citizenship.

the defendant's gross crime. Among other things the court took into consideration that the defendant was only 16 years of age when he committed his crime and that he was born and raised in Denmark.<sup>38</sup>

### Information given to applicants during the procedure

Applicants for naturalisation must meet in person with the police who may inform them about the application procedure etc. They may also approach the Ministry of Justice for information on the progress of their application. They have a right to be heard during the procedure, but it is pre-announced that if they do not fulfil the requirements for naturalisation, including requirements for documentation, their application may be refused on the existent basis.

Some applicants have criticised that the police do not tell them whether they fulfil the requirements for naturalisation, and that the police require a fee in cases where the police ought to realise that they do not fulfil the requirements and that consequently they cannot be naturalised.<sup>39</sup> The conduct of the police may stem from the text in the introduction to the naturalisation circular stating that the authorities in connection with the examination of applications for naturalisation and when otherwise providing guidance for persons who wish to make such application may not 'seek to cause the persons concerned to abandon their wish to have their applications examined'.

Presumably this injunction relates to the particular Danish naturalisation system where decisions on naturalisation ultimately lie with the Parliament. If this is the background, this purely theoretical point of view should be given less weight than considerations for applicants in need of guidance.

### Discretion in assessment of requirements

Most of the requirements for naturalisation are described unambiguously in the naturalisation circular. The Ministry has, as already mentioned, in principle no discretionary power. Persons who fulfil the requirements are listed in a Bill on naturalisation, and persons who cannot meet the requirements are met with a refusal. Only cases which make dispensation possible are in advance presented for the Parliament's Naturalisation Committee, which may take discretionary decisions.<sup>40</sup>

The Ministry of Justice is authorised to list applicants who fulfil the general conditions in Bills on naturalisation, together with applicants who fulfil certain specific conditions stipulated in the naturalisation circular. The circular provides for exemptions from the general residence requirement and the renunciation requirement respectively, and moreover it provides for special treatment of certain groups. In all these cases, it is for the Ministry of Justice to include the qualified applicants in a Bill on naturalisation.

There are no exemption provisions concerning fees. Neither are there alternative procedures to prove identity. An applicant's identity will normally have been

<sup>38</sup> See the decisions at <http://eudo-citizenship.eu/citizenship-case-law/?search=1&name=&year=&country=Denmark>

<sup>39</sup> The INTEC project, Integration and Naturalisation tests: the new way to European citizenship, see the Danish report at

<http://menneskeret.dk/arbejdsomr%C3%A5der/forskning/resultater/intec+rapport>

<sup>40</sup> Cf. however, the viewpoints of the Ministry of Justice in the High Court judgment of 7 September 2012 mention above and at <http://eudo-citizenship.eu/citizenship-case-law/?search=1&name=&year=&country=Denmark>

proven during the procedure for issuing him or her a residence permit. If uncertainty regarding an applicant's identity, exceptionally, should arise during the ministry's handling of an application for citizenship, a solution will normally be reached by the aid of the police and/or the Immigration Service.

Some applications must according to the circular be referred by the ministry to the Naturalisation Committee for a discretionary decision on naturalisation. This applies to applications from persons who live in marriage with a Danish citizen and have separate residences, making it doubtful whether the spouses cohabit (sect. 8 (3)). Moreover, it applies to applications from persons who have informed the authorities about committed criminal offences that do not appear in the Central Criminal Register (sect. 20 (2)). Lastly it applies to applications from persons who, without being Danish born, have previously had Danish citizenship and who do not satisfy the general residence conditions (schedule 1, section 3).

It is noteworthy that the circular provides for a strange arrangement indicating possibilities for further discretionary decisions (sect. 29), since it states that the Ministry of Justice, after the first reading of a naturalisation Bill, shall send the following surveys to the Naturalisation Committee for the use of the committee in its consideration of the Bill and the parties' decisions on any private member's amendments:

- Survey of persons listed in the Bill upon submission to the Naturalisation Committee
- Survey of persons in the Bill sentenced to imprisonment, measures pursuant to Part 9 of the Criminal Code or suspended sentences

Previously, MPs from some political parties have widely suggested that already included applicants should be excluded from a naturalisation Bill.<sup>41</sup> In practice, however, any applicant who is listed in a Bill and who continuously (during the reading of the Bill in Parliament) fulfils the naturalisation requirements can be sure of being granted naturalisation.<sup>42</sup>

Since the Naturalisation Committee in principle is free to naturalise any foreigner it wishes to naturalise, the committee may grant exemptions from all conditions. This possibility ought to be apparent from the naturalisation circular.

## **Bureaucracy: how easy is it for authorities to come to a decision?**

### **Official costs during the naturalisation procedure**

Applying for naturalisation involves costs. For students enrolled at a language course both the education and the language examination required for naturalisation is free of charge. However, if a foreigner based on self-tuition wants to register at a language school for a *language examination*, he or she may be charged a fee of 1000 DKK (about 134 €). Applicants who enrol for *citizenship test* at a language school must pay a fee of 693 DKK (about 93 €) to the test organiser.

<sup>41</sup> See the Danish country report <http://eudo-citizenship.eu/docs/CountryReports/Denmark.pdf>

<sup>42</sup> The practice with proposals for exclusion of identifiable applicants from naturalisation Bills during their reading in Parliament is highly questionable and arguable against article 8 of the European Convention on Human Rights, see Eva Ersbøll: *Dansk Indfødsret i International og historisk belysning* (2008), p.651 f, 719 f and 767 f.

A *naturalisation fee* of DKK 1,000 (about 134 €) is payable in connection with the submission of an application for naturalisation.<sup>43</sup> The fee is an ‘all inclusive’ naturalisation fee to be paid once by the applicant and it includes the applicant’s children who acquire Danish citizenship by extension of their parent’s acquisition. However, any child who has to apply independently (children who for some reason cannot apply together with a parent) must pay a fee.

If an application for naturalisation is refused, and the applicant applies again later on, no fee for the (re)application is required.

As a rule all applicants have to pay at least 1693 DKK (about 227 €) in total for the citizenship test and the naturalisation fee. There are no differences in rates or exemptions for any group of applicants (married, children, stateless persons, refugees, persons with low income etc.).<sup>44</sup>

Costs may increase if the applicant has to pay for a language examination, and additional costs may be incurred by applicants who do not pass the citizenship test at first attempt. A small survey indicates that many applicants make several attempts to pass the test, and each time they must pay the fee of about 93 €. <sup>45</sup> This way, an application for citizenship may be rather costly. Most alarming is the situation for large stateless families when the parents do not fulfil the criteria and the children must apply for naturalisation individually. If for instance a poor family has to pay for six children, the fee (6000 DKK or more than 800 €) may be prohibitive.

### **Deciding authorities, document checking and length of procedure**

The Danish naturalisation system can be characterised as bureaucratic, since three different authorities, the police, the Ministry of Justice and the Parliament, are involved in the proceedings which may be of long duration, among other things due to the fact that decisions are taken by the legislature by adoption of naturalisation Bills that are only introduced in Parliament twice a year.

In order for an applicant to be included in a naturalisation Bill, either in October or April, his or her application must be fully examined by the Ministry before a ‘closing day’ in August or January respectively. The ‘closing days’ are related to the National Security Service’s examination of applicants for naturalisation. The Ministry of Justice and the Security Service have requested – and the Naturalisation Committee has agreed on – a stop for admissions to a naturalisation Bill three months before a Bill is to be presented in Parliament. The purpose of the arrangement is to give the Security Service a possibility to investigate thoroughly whether circumstances related to any of the applicants may justify a recommendation on exclusion from the Bill based on the opinion that the applicant(s) may be a danger for national security.<sup>46</sup>

<sup>43</sup> cf. sect. 12 of the Naturalisation Act and Executive Order No. 162 of 7 March 1995 of the Ministry of Justice.

<sup>44</sup> In the literature the fee is criticized as ‘quite burdensome’ especially for applicants with low income, see Silvia Adamo: *Citizenship Law and the Challenge of Multiculturalism, the Case of Denmark*, PhD-thesis (2009), p. 82.

<sup>45</sup> See the Danish INTEC-report: <http://www.humanrights.dk/focus+areas/research/results/intec+report>

<sup>46</sup> See memorandum to the Prime Minister concerning the Ministry of Integration’s handling of applications for citizenship from stateless persons born in Denmark, p. 4: [http://www.nyidanmark.dk/NR/rdonlyres/3BF66A68-D192-43A2-9E77-AD455948AE60/0/redegorelse\\_stm\\_statslose.pdf](http://www.nyidanmark.dk/NR/rdonlyres/3BF66A68-D192-43A2-9E77-AD455948AE60/0/redegorelse_stm_statslose.pdf)

As the naturalisation procedure works, an applicant who has not had an application fully examined by the August closing day will at the earliest be listed in the Bill presented in Parliament next year in April and adopted in June. No regulation on time limits/maximum length exists.

An additional problem is that before being able to apply for naturalisation, an applicant must enrol and pass the citizenship test which is also conducted only twice a year, in June and December. If an applicant misses the deadline for enrolment for the test (in April and December), he or she will have to wait for another half year in order to be able to enrol.

The Parliament also does not rely fully on information given in the application and checked once by the Ministry of Justice. The Minister of Justice must, after having presented a naturalisation Bill in Parliament, check once again whether the applicants listed in the Bill (still) fulfil the naturalisation requirements. Applicants who no longer fulfil the requirements will be excluded from the Bill during its reading in Parliament. They will not be heard before the exclusion, and the decision on their exclusion seems to be taken without closer consideration. Some applicants fear exclusion due to a (maybe unwarranted) charge with a crime or an accidental traffic violation.<sup>47</sup>

Some attempts have been made to streamline the naturalisation procedure, among others the launch of the citizenship application kit including information on all the necessary documentation to be enclosed and forms to be signed. In addition it is for the Ministry to receive most of the necessary information from various authorities (tax authorities, the Civil Registration System, the Central Register of Claims, and the Central Criminal Register etc.). Still, the accumulated waiting period for nationality may be long.

### **Expertise of deciding authorities**

The Nationality Division of the Ministry of Justice is a specialised body in citizenship legislation and practice, and the police officers who handle naturalisation cases will normally have participated in courses on naturalisation practice and requirements held by the Nationality Division.

Also the Naturalisation Committee is solely occupied with naturalisation, but it can hardly be characterised as a specialised body. The committee is one of the Parliament's 'workshops'. It prepares naturalisation Bills to be debated and voted on in the Chamber of the Danish Parliament. The committee has 17 MPs as members. As a rule, each political party is represented in proportion to the party's number of seats in the Parliament.<sup>48</sup>

The MPs in the Naturalisation Committee are elected MPs with different educational background, but normally not experts in naturalisation. They may hold meetings with and ask questions of civil servants and the Minister responsible for naturalisation. They will after some time achieve some expertise in nationality matters, but still the system has inherent limitations. MPs will normally also be members of other parliamentary committees, and they may not necessarily be an elected member of the Naturalisation Committee for more than one electoral period (which is four years as a maximum). Thus, they cannot be expected to have a complete overview of the citizenship legislation, including international law obligations in citizenship matters.

<sup>47</sup> See the Danish INTEC-report: <http://www.humanrights.dk/focus+areas/research/results/intec+report>

<sup>48</sup> When forming a committee, the parties will, however, often join forces in electoral alliances to have as many committee members as possible.

This problem was illustrated by the so called ‘statelessness case’.<sup>49</sup> The case concerned wrongful refusals of citizenship to stateless persons who were born in Denmark and entitled to Danish citizenship according to the Convention on the Rights of the Child (1989) and the UN-convention on the Reduction of Statelessness (1961). After the citizenship Act had been amended in 1999 and 2004, the entitlement to citizenship according to the 1961-convention was no longer implemented in Danish law. In return, responsible ministers had promised that stateless applicants with a conventional requirement on citizenship in Bills on naturalisation would be included in Bills on naturalisation without fulfilling the general naturalisation criteria, but for some (not yet completely clarified) reasons, their applications were in a number of cases wrongfully refused.<sup>50</sup> The responsible ministers had not informed the Parliament about the special procedure for stateless applicants and vice versa, the Naturalisation Committee had not asked the ministers about the state of affairs. In 2010, the then Minister of Integration decided to adjust the practice and correct the wrongdoings. In 2011, when the media focused on the case, several parliamentarians declared that they were not in a position to comprehend such complex legal questions.

Thus, many problems are encapsulated in a naturalisation system where the competent authority, the Naturalisation Committee, has a heavy workload and is composed of part time members who are not specialised in citizenship law.

## **Review: how strong is judicial oversight of the procedure?**

### **Review of naturalisation procedures and decisions**

Due to its unique naturalisation procedure Denmark has been unable to ratify the European Convention on Nationality without reservations. It has been necessary to make a reservation to article 12, to the effect that this article on review shall not be binding on Denmark.<sup>51</sup>

The reason given for the reservation is as follows:

‘Pursuant to section 44 of the Danish Constitution, naturalisation shall be granted by law. The Folketing (Danish Parliament) and, on behalf of the Folketing, the Naturalisation Committee of the Folketing are not part of the public administration and, consequently, are not bound by the general rules of administrative law, which implies that there is no right to an administrative review.

Introducing a right to review into the Danish procedure of considering applications for Danish nationality by naturalisation, cf. Article 12 of the Convention, would require an amendment to the Danish Constitution’.

It is worth noting that it is not an easy matter to amend the Danish Constitution – which was last amended in 1953.<sup>52</sup>

The reservation does not mention judicial review. In 2011, a naturalisation case was for the first time brought before the Danish courts. As mentioned above, proceedings were instituted against the Ministry of Justice which had refused an application for naturalisation – and

<sup>49</sup> See about the case <http://politiken.dk/newsinenglish/ECE1216665/roenn-hornbech-to-be-replaced/>

<sup>50</sup> A commission of inquiry has been appointed to investigate what actually happened, see <http://statsloesekommissionen.dk/619.html>

<sup>51</sup> The instrument of ratification was deposited on 24 July 2002.

<sup>52</sup> According to the government platform of 2011 the governments finds that there is a need for a Danish discussion of a new constitution, and the government intends to invite the political parties in the Parliament to debates on the terms of reference for a constitutional commission.

refused to submit the application to the Naturalisation Committee as an application for exemption from the general naturalisation criteria. In September 2012 the case was dismissed by a Danish high court with the reasoning that the Ministry acted as part of the legislature and had not taken an administrative ‘decision’ which could be subjected to judicial review according to section 63 in the Danish Constitution on the courts’ empowerment to decide any question relating to the scope of the executive’s authority.<sup>53</sup> The case is to be brought before the Supreme Court for a final settlement of the question on judicial oversight.

### Appeal process for language tests

As mentioned above, the Danish language schools offer three years free education to be completed with a Danish language exam. Right after the oral examination, students receive their marks. Marks for the written examination are given as fast as possible after the exam.<sup>54</sup> Normally, students will be given an explanation for their marks if they ask the test organiser for one.

Students may make a complaint against both the test result and the conduct of the exam to the language school. The decision of the school may be brought before the Ministry of Children and Education. The Ministry may decide on both the students’ results (if a complaint is substantiated) and on the conduct of the exam.

### Appeal process for the citizenship test

The result of a citizenship test will be given to the participants as fast as possible after the conduct of the test.<sup>55</sup> The examinees have a right to get a (free) copy of their answers.<sup>56</sup> A list of the correct answers is published, and since the citizenship test is a multiple choice test, participants may this way easily check whether they have answered the questions correctly.

Participants have the possibility to complain of the conduct of the citizenship test to the Ministry of Children and Education. The complaint must be lodged within four weeks after the test has been taken. Likewise participants may make a complaint to the ministry against the test results within four weeks after they have been informed about the results.

The ministry may decide on both the results and on the validity of specific test questions. A few questions have been declared invalid in practice.

### Other safeguards in the naturalisation procedure

Sect. 44(1) of the Danish Constitution and the way it is implemented in Danish law is the background for the peculiar Danish practice where it is assumed that decisions on naturalisation can neither be appealed nor brought before the Danish Parliamentary Ombudsman. Moreover, the Naturalisation Committee’s decisions are given without reasoning and there is, in general, a lack of legal safeguards (otherwise normal for administrative law decisions).<sup>57</sup>

<sup>53</sup> See the High Court’s judgment of 7 September 2012 to be published at <http://eudo-citizenship.eu/citizenship-case-law/?search=1&name=&year=&country=Denmark>

<sup>54</sup> See regulation on Danish language exams for adult foreigners, bekendtgørelse nr. 781 af 29. juni 2011 om prøver inden for danskuddannelse til voksne udlændinge m.fl., sect. 33 (10) and 47 (3).

<sup>55</sup> See the regulation on the citizenship test: bekendtgørelse nr. 1106 af 17. september 2010 om indfødsretsprøven, sect. 27 (4).

<sup>56</sup> See the regulation, sect. 35 (1).

<sup>57</sup> This has been criticized in the literature, see among others: Eva Ersbøll: Retten til at have rettigheder, in Morten Kærum and others (eds.): *Grundloven og menneskerettigheder i et dansk og europæisk perspektiv*

Lastly, discrimination in naturalisation matters is not explicitly prohibited under national law.

## EXPECTED CITIZENSHIP LAW REFORMS

When the Danish centre-left government replaced the former Liberal-Conservative government the new government announced in its government platform of October 2011 that it would amend the Danish citizenship regulations.

Under the heading ‘Citizenship – Equal possibilities for all’ it stated, among other things, that safeguards for applicants for citizenship are to be strengthened and that the requirements for citizenship are to be adopted by an Act rather than by changing political agreements. Furthermore, a number of the material conditions will be softened, a new citizenship test and new *ius soli*-rules will be introduced and dual citizenship will be tolerated.

The government has not yet published its concrete proposals for new provisions and procedures on citizenship acquisition etc.<sup>58</sup> So far, it has only been announced that negotiations on the reform would commence late autumn 2012, and that a Bill containing the legislative basis for a new citizenship test will be presented in Parliament in 2013.<sup>59</sup>

## CONCLUSION

Denmark’s unique system where foreigners, according to the Danish Constitution, can only be granted citizenship by law may, paradoxically, be the cause of both good and very bad naturalisation standards.

Naturalisation must be granted by the legislature, but when applications for naturalisation in thousands are to be handled, the legislature is dependent on help from administrative authorities. These authorities can, however, not be trusted with any independent discretionary power in naturalisation matters, since the sole naturalisation competence rests with the legislature. Consequently, it is a *sine qua non* that detailed and binding guidelines for naturalisation are given to administrative bodies dealing with naturalisation.

Moreover, since it is rather complicated to make the Danish naturalisation system function, relatively efficient procedures have been introduced. It has been made clear from the start of the procedure which documents and certificates are needed and all documents etc. are requested at once. Furthermore, efforts are directed towards informing applicants about the naturalisation procedure.

Danish administrative law is well-developed, and although it has so far been the general opinion that the Ministry of Justice is not bound by the administrative law requirements in naturalisation matters, these requirements have influenced the way naturalisation matters are handled. Thus, normally there is no problem involved in

---

(1997) and Ida Elisabeth Koch: Retssikkerhed i forbindelse med erhvervelse af indfødsret ved lov – retlige og politiske hindringer, *Juristen* No. 1 (1999).

<sup>58</sup> The naturalisation Bill to be presented in Parliament in October 2012 will be based on the existing guidelines.

<sup>59</sup> See more at <http://eudo-citizenship.eu/news/citizenship-news/716-dual-citizenship-delayed-at-least-another-year->

recognising applicants' identity, obtaining personal documents etc., and legal safeguards exist for applicants who are referred to pass language and civil knowledge tests.

Thus, in these respects, Danish naturalisation standards are reasonably good. Unfortunately, in too many other respects they are incredibly bad.

There is no tradition for naturalisation campaigns, no encouraging of immigrants to apply for citizenship and no information on the advantages of citizenship. The legislature may, in principle, change its mind about naturalisation criteria from naturalisation Bill to naturalisation Bill, and in practice changes take place when the composition of the Naturalisation Committee changes. Some applicants have been confused by the lack of 'warnings' against applying from the police in cases where they are bound to receive a refusal due to non-fulfilment of the naturalisation criteria. The fact that they have to pay a fee (also) in these fruitless cases provides a particular problem.

The costs for naturalisation are higher than the costs for a passport, and although they may not in a Danish context be excessive, it is a problem that fees cannot be waived for applicants with special needs, among others refugees and stateless persons, and children who have to apply for naturalisation independently. Especially in the case of large families with children who have to apply for naturalisation independently, including stateless children entitled to Danish citizenship, fees that are doubled up for each child may be prohibitive and thus inconsistent with the European Convention on Nationality, article 13(2).

In general, it is a problem that the requirements are inflexible. Fees for citizenship tests may be paid several times, and the limited possibilities of taking the citizenship test (only twice a year) constitute a problem in itself. For applicants who cannot pass the test on their first attempt, the subsequent waiting periods may prolong the total waiting period for naturalisation substantially.

The naturalisation procedure provides a problem in itself. All in all, the procedure may take a year or more, even in simple cases. Another inconvenience is the uncertainty suffered by some applicants during the naturalisation process, for instance due to the fact that a charge of an offence may imply an exclusion from naturalisation which may be felt as an imminent danger lasting until the adoption of the Act. Moreover, decisions on exclusion are taken without hearing of the applicant and seemingly also without any concrete considerations as to proportionality etc.

The most crucial problems are, however, the complete discretion in cases which are decided by the Naturalisation Committee, both cases on dispensation and cases where the applicant is considered a possible danger to Denmark's security, plus the lack of legal rights during and after the procedure, including the lack of reasoning and (as things stand so far) appeal possibilities.

Eventually, this criticisable situation may ameliorate with the adoption of the citizenship law reform as announced by the centre-left government now in office. Hopefully, a new 'naturalisation Act' will authorise the administration (for instance the regional public administration) to grant naturalisation by entitlement in cases where the Act's naturalisation criteria are fulfilled.

In order to comply with the Constitutional Act, an Act on naturalisation must contain distinct naturalisation criteria. The text must not leave any room for discretionary administrative decisions and must not include vague clauses. The only task which can be left to the administration is to ascertain that the applicants meet the Act's criteria whereby they will acquire citizenship (directly) 'by statute'. Such an arrangement may shorten the length of the naturalisation procedure and allow the application of general legal safeguards, including both administrative and judicial appeal possibilities.

