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What is the Point? – Policies on Immigration and the Language Issue in Denmark

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Abstract¹

The point-system for permanent residence permits and the immigration test for family reunification applicants are two of the latest measures in a string of legal instruments imposing a formal and compulsory requirement of language proficiency for immigrants in Denmark. Drawing upon Danish legislation and policy, this paper will address the issue of language proficiency for integration and immigration purposes. Is it an imposed term of integration, or is it intended as a means for socio-political or even economic integration?

On April 7th, 2011, in an address to the Roman *Accademia di Danimarca*, which was founded to promote the cultural ties between Italy and Denmark, Italian President Giorgio Napolitano praised the Danish manifold contributions to the European Union project. Among other things, because Denmark has

...[P]rovided a social policy of remarkable breadth, scale, and far-sightedness towards its citizens and legal immigrants; Denmark is characterised by a cohesive and advanced society, not only able to protect the individual but also to reward their merits and fulfil their aspirations.²

Some weeks earlier, the new Danish Minister for Refugee, Immigration, and Integration Affairs (now ex-minister³) was appointed, after a scandal of unlawfully denied

¹ The first draft of this paper was written during a visiting period to the University of California at Berkeley, School of Law, in the spring of 2011. I am grateful to Peter Kraus, Johanne Poirier, Keith Banting and all the participants of the RECODE workshop in Helsinki, May 7th, 2011, for their helpful comments and suggestions for improvement. My warmest thanks are also due to Sean Plaisted for his careful proofreading and great encouragement during the drafting of the text. Finally my greatest thanks are to the Danish Agency for Science, Technology and Innovation for the funding of my research activities since 2009.

² Rome, April 7th, 2011. *Intervento del Presidente della Repubblica Giorgio Napolitano all'apertura del Convegno: "Italia in Europa. L'Italia e la Danimarca"*, my translation. Retrieved August 22nd, 2011 <<http://www.quirinale.it/elementi/Continua.aspx?tipo=Discorso&key=2148>>.

³ The Ministry for Refugee, Immigration, and Integration Affairs has since then been abolished by a new government in late 2011, see more in note 17. In the text I refer to the “ex-Ministry for Refugee, Immigration, and

naturalization to stateless children had sunken the latest Minister Birthe Rønn Hombæk. In one of his declaratory speeches, Søren Pind affirmed that

[F]rom now on it must be clear that Denmark only accepts foreigners who adopt and respect Danish values, norms, and traditions, while all the others may as well stay away. My approach is that when people choose to come to Denmark, and want to become citizens, it is of course because they want to become Danish, not because they want to change Denmark. In my view it is the multicultural that makes it all crack (...). Contrary to opposition parties, I do not see the great value in the multicultural society.⁴

Is there a contradiction between these two outlooks? Some commentators may argue that the numerous initiatives adopted in Denmark to integrate citizens are in fact of a “breadth scale and far-sightedness”, as foreigners are given the tools (courses, text materials, integration contracts) and the actual possibility to learn the language and traditions of the Danish way-of-life from the very beginning of their stay in the country. Others may view the Minister’s statement as going in another direction, one more of an effort to prevent “national values, norms, and traditions” to be eroded or altered by contact with other sets of values carried by the presence of immigrants in the country. There may or may not be a contradiction, but in order to be able to give an informed account of the current situation for the integration of immigrants in Denmark, it is pivotal to concentrate our efforts on reviewing the latest immigration policy and the following legal framework set up for regulating the integration of newcomers.

This paper will address the issue of language proficiency for integration and immigration purposes. Language is an aspect of diversity that, when at the centre of legal scholars’ attention, often revolves around the protection of the constitutional right to speak one’s own language. In the European context, much attention has also been paid to the many conceptual and legal problems arising by the multilingualism which fuels the production of the many language versions of EU-law (see e.g. Bengoetxea 2011 and Bobek 2011). The interest of this paper lies in the obligation to learn a new national language when a person decides to move and settle in another country, or is forced to do so because they are asylum seekers. This paper will explore whether it is possible to hypothesize that the requirements imposed are an unnecessary tightening that does not boost the integration of newcomers to Denmark, but mostly poses a barrier to non-western (non EU, so-called “third-country”) nationals before they enter, and thus further complicates their lives when they want to achieve permanent residence in the country.

I will therefore focus in particular on the issue of language in Danish immigration policy, concentrating on the point-system for permanent residence introduced last year. I will then briefly describe the most recently enforced new immigration test, adopted as a requirement for the application for a family reunification permit, also involving the issue of learning Danish for immigration purposes. In the second part of the paper I will try to explore some of the more normative claims about the importance of stressing linguistic integration in the overall strive for the integration of foreigners in Denmark.

Integration Affairs”, as that was the correct designation of the Ministry at the time the legislation at stake in this paper was introduced.

⁴ My translation. Extract from TV interview on Danish Radio, *DR*, March 9th, 2011. Retrieved August 22nd, 2011 <<http://www.dr.dk/Nyheder/Politik/2011/03/09/021347.htm>>.

Learning Danish

The teaching of Danish as a second language is regulated in a specific consolidation act which sets up the rules for the learning objectives and the structure of the education of the Danish language.⁵ Quoting and translating from article 1 of the act,

The purpose of the education of Danish as a second language (Danish Education) is to help adult immigrants, on the basis of their individual backgrounds and their integration's objectives, in obtaining the necessary Danish language skills and knowledge of culture and society in Denmark, so they can participate and become yielding citizens on an equal footing with the other citizens of society.

Para. 2. Danish Education shall contribute to, as soon as possible after the adult immigrants receive a residence permit in Denmark, acquiring the skills in understanding and applying the Danish language and gaining knowledge of the Danish labour market, in order to obtain employment and to become able to support themselves.

Para. 3. Danish Education shall also promote the active use of the Danish language among adult residents and contribute to the gaining of general knowledge and skills that are relevant in relation to work and education and life as a citizen in a democratic society.

The many provisions on the duty to learn the Danish language based on this system of education are to be found across numerous legal instruments, a few of which will be presented in this paper. However, the various legal acts all do refer to the scheme of Danish education set up in this consolidation act which also regulates the placement of foreigners in different classes based on their background skills or knowledge of the Latin alphabet. The placement on the basis of the individual backgrounds of foreigners may have consequences for the preparation received by half of the attendees to Danish language courses, and may be at a lower level than they aspire to achieve. For example, students who do not have a higher education may not receive the best preparation for the obligatory language proficiency test for naturalization (on this and on the build-up of the Danish language education system see table 1 and Adamo 2008: 16).

The permanent residence permit after the 2010-change

Obtaining the permanent residence permit is an important step in the life of a foreigner in Denmark. Before achieving the residence permit, a foreigner with a temporary permission to stay is subjected to an ongoing check, once or twice per year, of whether the conditions for staying in the country are still met. If this is not the case (e.g. if the home country of a recognized refugee with a temporary permission to stay is considered safe to return to) the foreigner will have to leave the country immediately, as the possibility of staying illegally in Denmark without a civil registry number -“CPR-number”- from the National Register of Persons, (indispensable for opening a bank account, enrolling in courses, and requested in virtually every interaction with the public system) does not permit anyone to have a “normal” life of access to work, school, health services and so on.

⁵ Consolidation Act on Danish education for adult foreigners and others (*Bekendtgørelse af lov om danskuddannelse til voksne udlændinge m.fl.*), LBK nr. 1010 of 16/08/2010.

The status of a temporary resident entails limitations regarding access to some social benefits (e.g. grants from the students grant scheme) from the well-established Danish welfare state,⁶ as well as the possibility of easily being deported for criminal offences. When permanent residence is in order, not only is a foreigner's legal status consolidated vis-à-vis a number of legal situations; additionally, having a permanent residence permit for a number of years is a mandatory requirement for obtaining citizenship via the process of naturalization.

Before 2010, a foreigner could obtain legal permanent residence in Denmark after seven years of residence. The number of years required dropped to five for all nationals if the applicant was engaged in a working activity and had acquired a strong attachment to Danish society and for EU citizens, after the 2004 Citizenship Directive was introduced.⁷ In 2010, a new set of rules regarding the permanent residence permit introduced the new "point-system", requiring on the one hand that immigrants obtain at least 100 points in order to be granted the permission to stay in the country indefinitely.⁸ On the other hand, the years of residence required are now set to four years of continuous stay.

The points are divided in three categories: basic requirements (70 points); active citizenship (15 points) and supplementary requirements (15 points). The basic requirements are mandatory, and all have to be met:

- Four years of legal residence in the country;
- No record of serious criminal offences;
- No record of any unpaid debt owing to the state;
- No record of receiving economic support or social security benefits in the three years prior to the application for permanent residence;
- Holding full-time employment in the country for at least two years and six months within the last three years prior to submission of application for a permanent residence permit, and being associated to the labour market at the time of the issue of the permit;
- Signing of a declaration of integration and active citizenship in Danish society;
- Passing the Test in Danish 2 or a Danish language test at a corresponding or higher level.

The active citizenship points (15 points) can be reached either by showing involvement in a Danish organization such as a local association or board committee of such an association, or by passing the novel "active citizenship exam" or "*medborgerskabsprøven*", not to be confused with the citizenship test required for naturalization, "*indfødsretsprøven*". The citizenship test for permanent residence was regulated in detail with a ministerial order⁹ as of April 2011, and was held for the first time in June 2011.¹⁰ The test contains fifteen multiple-choice questions on citizenship in Denmark, Danish social conditions, history, culture and art. The aim of the test is for the applicant to demonstrate that they reached

⁶ The social rights of EU-citizens are protected by means of EU-law (EU Services directive, 2006/123/EC), that bans discrimination on grounds of nationality (see chapter 4 in the Danish aliens consolidation act), but this is not valid for third-country nationals present in the country.

⁷ Directive 2004/38/EC of the European Parliament and of the Council of April 29th, 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

⁸ Articles 11-11a-11b in the aliens consolidation act (*Udlændingeloven*) LBK nr. 947 of 24/08/2011.

⁹ Ministerial order on the active citizenship exam (*Bekendtgørelse om medborgerskabsprøven*), BEK nr. 334 of 13/04/2011.

¹⁰ The text and the correction-sheet for the active citizenship exam can be found on the website of the ex-Ministry of Refugee, Immigration and Integration Affairs. Retrieved August 26th, 2011 <<http://www.nyidanmark.dk/da-dk/Ophold/permanent-ophold/medborgerskab/medborgerskabsproeven/medborgerskabsproeven.htm>>.

knowledge of everyday life and citizenship in Denmark, of private and public offers such as associations, libraries, and of conditions for the participation in working life and leisure time. Moreover, the applicant shall demonstrate that they know about Danish social features such as the welfare system, labour market, working culture, democracy and fundamental values, geography, history, culture and art.

Finally, the last 15 points must be obtained by fulfilling one of these conditions: full-time employment for four years prior to the application; or passing of a degree (master, bachelor or professional education) in Denmark; or passing of the test of Danish language 3, which is the language requirement for naturalization.

Consequently, among the points-qualifying requirements of residence in the country – good conduct, economic self-sufficiency, active employment, and active citizenship – immigrants are now expected to take a test in order to assess whether they have good knowledge of the national language. In the case they have not held full-time employment prior to the application, or they have followed a full-time higher education in Denmark, they have to pass the test of Danish language 3, which is required in order to obtain Danish citizenship. The proof of language proficiency via a test was not an obligatory requirement that applicants were obliged to fulfil in prior legislation. It is not yet known how these new rules, in practice, impact the possibility of achieving a permanent residence permit. What is interesting to remark upon, from a more formalistic point of view, is that a system this punctual fosters transparency, but also imposes on newcomers a considerable amount of requisites.

The obtaining of a residence permit is no longer an assessment of the presence of a certain number of circumstances (long residence, absence of criminal conduct and so on), but an active process that the foreigners are required to go through. The language test and the active citizenship test are mandatory steps to take in order for the authorities to verify that the conditions for permanent residence are fulfilled. They both involve a quite thorough knowledge of the Danish language that is no longer optional to achieve, but mandatory.

Also remarkable is a passage in the declaration of integration and active citizenship in Danish society, which is a mandatory document to sign among the basic requirements to reach the 70 points. The declaration is a long list of “dos and don’ts” in Denmark (see appendix 1), in which the second point recites:

I understand and accept that the Danish language and knowledge of the Danish society is the key to a good and active life in Denmark. I will therefore do my best to learn Danish and acquire knowledge about the Danish society as soon as possible. I understand and accept that I can learn Danish by attending Danish classes offered to me by the district council.

It is, however, not the first time that the legislator stresses the need to acquire proficiency in Danish would in turn serve as a bridge towards a more active participation in the societal life. The requirement was already in force for those individuals who were obliged by law to follow a municipality-led integration program: refugees and family-reunited individuals from third countries (not Nordic or EU-nationals).¹¹ These programmes are language courses and skill development courses which are meant to assist the foreigner’s participation in the life of the community and are defined in an individual contract between the foreigner and the municipality. The programmes are meant to ensure that newly arrived foreigners can make use of their skills and resources so that they can become participating and “productive” citizens as soon as possible. The programme is obligatory to follow for

¹¹ The first integration act was adopted in 1999. The current act is the consolidation act on the integration of foreigners in Denmark (*Bekendtgørelse af lov om integration af udlændinge i Danmark – integrationsloven*) LBK nr. 1062 of 20/08/2010.

three years, and the conditions established in the individual integration contract with the municipality are mandatory.

During the first three years after their arrival, the immigrant is offered Danish language classes free of charge where attendance and active participation are compulsory. A low attendance rate at the class may result in a breach of the conditions of the individual contract on the obligation to follow the introduction programme, which can have knock-on consequences for the immigrant.¹² Apart from deduction of social security benefits, any breach of the integration programme as stated in the individual contract with the municipality can have an effect on the issuance of a permanent residence permit. The language school has a duty to report if a student has a lower than 85% attendance-rate to the municipality, which in turn can decide on whether this should have an impact on the application for a permanent residence permit.

A more in-depth discussion on how the requirements for permanent residence in Denmark now strongly resemble those for the obtaining of citizenship via naturalization is provided further in section 4. Let us first turn to reviewing the immigration test from 2011, which also stresses the obligation for foreigners to start learning Danish before entering the country.

The immigration test for family reunification¹³

On the matter of Danish rules on family reunification, one must distinguish between different nationality categories. For EU and Nordic nationals, when a foreigner has a legal ground (work, study, self-employment) to stay in Denmark, there is a corollary right to bring one's own family to Denmark, which is now clearly and explicitly stated in the 2004 Citizenship directive. For immigrants and asylum seekers who normally come from non-European countries and can be grouped under the common designation of third-country nationals, rules have not been straightforward, or easy to work with, since 2002. The target of the new rules at that time was to restrict the number of foreigners in Denmark to facilitate the integration of immigrants who were already in the country, and counter the practice of pro-forma (arranged) and forced marriages.¹⁴ As a consequence of these restrictions, family reunification for third-country nationals has slowly become a practical impossibility. Reasons for this lie in the very much non-transparent and highly complex system based on requirements, such as 24-years minimum age, substantial attachment/aggregated tie to Denmark (stronger ties to Denmark than to another country), proof of adequate housing, proof of financial stability, etc., which have regulated the family reunification system for third-country nationals since 2002.

Notwithstanding the fact that family reunification with third-country nationals has considerably decreased during the past years, the government has enforced, as of November 2010, a new set of rules for a so-called "immigration-test".¹⁵ As the rules do not apply to EU-citizens, Nordic citizens, and other selected countries (Australia, Canada, Israel, Japan, New Zealand, Switzerland, South Korea and USA)¹⁶ it can be deduced that only non-

¹² Section 20 (5-7) of the consolidation act on the integration of foreigners.

¹³ The immigration test for family reunification is under Parliamentary scrutiny for amendment, and possibly abolishment, as of January 2012.

¹⁴ Draft bill LF 152 2001/2.

¹⁵ Ministerial order on the immigration test (*Bekendtgørelse om indvandringsprøven*) BEK nr. 1251 of 04/11/2010.

¹⁶ Citizens of these countries were specifically exempted from having to fulfil the requirement of passing the immigration test for family reunification, see Ministerial order on the exclusion of certain nationalities from the requirement of passing a test on Danish language and society (immigration test) (*Bekendtgørelse om undtagelse af visse nationaliteter fra betingelsen om bestået prøve i dansk og danske samfundsforhold –indvandringsprøven*), BEK nr. 780 of 29/06/2011.

western third-country nationals are required to prove knowledge of the national language in order to be able to apply for family reunification. The decision to exempt particular nationalities from the requirement of the immigration test was introduced by the ex-Minister of Refugee, Immigration and Integration Affairs (now closed, with its responsibilities transferred to other ministries¹⁷), who wanted to facilitate the access for those foreigners who come from countries that have a considerable similarity to Denmark and therefore have better prerequisites to become integrated in Danish society. The chosen countries are members of OECD, a high rank in the Human Development Index and no visa requirement to enter the European Union. The Ministerial order was not passed without attention from the media on the implications of (unlawfully) directly discriminating on the basis of nationality; recently the Minister has then appointed a commission that will write a report on whether there are any international law constraints that limit the possibility to ease the access of selected nationalities by means of immigration rules.¹⁸

The applicants from non-western third-countries now have to pay 3000 Danish kr. (approx. 400 €) in order to be able to take the test and qualify for a family reunification permit. Moreover, they have to purchase the preparation kit/education package prepared by the ex-Ministry for Refugees, Immigration and Integration, which also includes a film on Denmark and Danish way of life, along the lines of the Dutch test which serves the same purpose.

The preparation kit can only be sent to a Danish address, so if an applicant is residing abroad at the time of the application, they have to rely on the family member who wants to sponsor them to actually receive the material. In addition to this, if an application is accepted and the Ministry requires a foreigner who at that moment lives abroad to take the test, a visa only valid for a month and only valid for entry with the purpose of taking the immigration test will be issued. The foreigner has three months from the acceptance of their application by the Ministry to register, take the test and pass it or else their application will be invalidated. At first sight these can seem as small and trivial administrative details, but they can have an impact on whether the application is successful or not. Missing a deadline, not being able to travel at the time the visa is issued, or having to wait from three to seven months in order to have one's own application processed are all elements taken in consideration by applicants, which may influence their choices and discourage their efforts of trying to establish a family life in Denmark.

Regarding the content of the immigration test, it is a combination of a language test and a test of knowledge on Denmark and Danish society. It is a thirty minute oral exam which can be taken with the help of a computer-system that plays the questions and records the examinee's answers. As stated on the ex-Ministry for Refugee, Immigration and Integration Affairs' website "New to Denmark – The Official Portal for Foreigners and

¹⁷ The Ministry of Refugee, Immigration and Integration Affairs was abolished when a new government took office in Denmark on October 3rd, 2011. The various responsibilities that were before grouped under the Ministry are now divided between the Ministry of Justice (humanitarian residence permit and Danish citizenship), the Ministry of Children and Education (Danish as a second language instruction), the Ministry of Social Affairs and Integration (Integration policy, prevention of radicalization and integration studies) and the Ministry of Employment (integration of refugees and immigrants into the labour market and the educational system, including introduction programmes). The portal "New to Denmark" is still operative, but from January 1st, 2012, the Danish Immigration Service is split into two agencies, one bearing the same name, under the Ministry of Justice, and the new Danish Agency for Labour Retention and International Recruitment, under the Ministry of Employment. See <http://www.nyidanmark.dk/en-us/authorities/the_authorities_behind_the_internet_portal.htm>. Retrieved February 24th, 2012.

¹⁸ See the communication of the ex-Ministry of Refugee, Immigration and Integration Affairs: "Ministry of Integration reveals the names of the members of the new commission" (*Integrationsministeren sætter navne på medlemmer af ny kommission*), August 23rd, 2011. Retrieved August 26th, 2011 <http://www.nyidanmark.dk/da-dk/Nyheder/Nyheder/Integrationsministeriet/2011/August/integrationsministeren_sætter_navne_paa_medlemmer_af_ny_kommission.htm>.

Integration”,¹⁹ the responsibility to learn Danish rests with the foreigner who wants to apply for a family reunification permit.²⁰ The foreigner is therefore encouraged to start the preparation for the test in good time and well in advance before the application is processed and evaluated.

The language test consists of forty questions, divided in four different parts (questions on the examinee’s persona; on text comprehension; understanding of conversations, and of vocabulary), while the test of knowledge consists of thirty questions, both open and multiple choice, on the basis of the film on Danish society; twenty-eight correct answers for the language test and twenty-one correct answers for the knowledge test are required in order to pass the immigration test. All the questions are in Danish and must be answered in Danish.

The objective of the test, as stated in article 9 of the Ministerial order, is on the one hand to verify that the examinees have reached a “*sufficient knowledge of Danish norms, values and basic rights, such as the Danish democratic principles, the individual freedom and personal integrity, freedom of religion and of expression, the equality of sexes and the rights of women*”. On the other hand, the examinees shall prove that they have learned to know about “*more practical and concrete situations, such as the ban on violence, circumcision and unlawful coercion when contracting matrimony, education and parent-responsibility for children, education, health, work, taxes and so forth.*”

Regarding the level of language proficiency required, the level refers to an A1-minus level in the Common European Framework of Reference, which is that of a basic user (see table 2), equalling that of module 1 in the Danish education system (see table 1). The validity of the test is set to two years; therefore if an application is rejected because some other requirement was not met in the meantime, an applicant may be required to take the immigration test a second time if they want to apply at a later stage.

To sum up, the immigration test has further rendered difficult the sponsorship of a residence permit for a family member coming from a third-country. The immigration test can be in many cases a test of language knowledge before the actual stay in the country commences. Proficiency in the Danish language is seen as an indispensable condition for the integration of the foreigner, which is considered responsible for assuring that the process goes as smoothly and as fast as possible. The implications of this argument will be confronted with those of liberal nationalism outlooks in section 5. Before that, I will shortly point at the trends that I see emerging from the adoption of this kind of immigration tool.

Current trends in Danish immigration policy and legislation

Based on the review presented so far on the point-system and the immigration test, we can highlight at least three trends which denote the current unfolding of the immigration policy in Denmark with regard to the issue of language proficiency.

First, the listed conditions in the new point system for residence permits in Denmark resemble the conditions required for obtaining citizenship status. Granted, the language requirements for the two are on two different levels of proficiency, but the requirements of good conduct, self-sufficiency and declarations of loyalty and/or active

¹⁹ Since January 2012 the portal is owned and administered by the Danish Immigration Service (under the Ministry of Justice) and the Danish Agency for Labour Retention and International Recruitment (under the Ministry of Employment). The portal is still active and presents the immigration regulations in force and the other information referred to in this paper as of February 2012, but the portal is due to undergo substantial changes following the splitting of the ex-Ministry for Refugee, Immigration and Integration Affairs and its Immigration Service, see note 17 above.

²⁰ Retrieved August 22nd, 2011 <http://www.nyidanmark.dk/en-us/coming_to_dk/familyreunification/spouses/immigration_test/the-immigration-test.htm>.

citizenship are very similar in both regulations. This on the one hand impinges on the very notion of citizenship, and reduces the latter to a very thin conception that only refers to electoral rights, military duty, and other few exclusive rights of citizenship such as diplomatic protection abroad, or derived supranational citizenship (EU citizenship). When permanent residence is made conditional upon the meeting of so many requirements that shall attest to the economic activity and declaratory intentions of the foreigners to adapt and integrate, the notion of citizenship becomes confined to either a national/cultural sense or to an additional list of rights and duties other than those deriving from permanent residence. In any case, the concept of citizenship is under pressure and development when a concurring legal concept such as permanent residence assumes such a prominent role. On the other hand, if the legislation was meant to consolidate the legal status of immigrants in the country, it should also take into consideration the fact that not all citizens can be active in the labour market at all times. Not only economic crises, but also sicknesses, handicaps, or age can have an impact on the unemployment rates that involve immigrants. The Ministry is aware of the possibility of discrimination on these grounds, and has set up the possibility of waiving some of the requirements if there is an international obligation to do so, for example under the UN Convention on the Rights of Persons with Disabilities.

This last consideration leads me to the second trend which in my view can be traced in recent immigration policy: the focus on the fact that integration in the labour market is good integration. With this I mean that in Denmark, immigrants are expected to become yielding citizens as soon as possible. From 2002, when the new liberal government came to power, the Danish immigration policy has been clearly stated and most transparently published on the website of the Ministry. In 2005 the Government (along with the majority parties, including the opposition party, the Social Democrats) adopted the integration plan: “*A new chance for everyone*”.²¹ The agreement starts by ascertaining that the immigration patterns have shifted, so that from humanitarian and family reunifications reasons, the majority of immigrants now come to Denmark to either work or study. Notwithstanding this fact, since half of the immigrants or their descendants from third countries are still outside of the labour force, the purpose of the initiatives were to guarantee that the “*foreigners residing in Denmark on an equal footing with Danish citizens should become self-sufficient and yielding citizens*”.²² Sustaining that “*a job is the key to successful integration*”,²³ the policy plan suggested several initiatives to facilitate the immigrants’ access to the labour market, increasing education and employment offers, countering “ghettoization” in vulnerable neighbourhoods, and preventing and combatting crime (the latter by means of tightening the rules on expulsion).

The latest policy agreement, called “*New Times. New Requirements*”, was entered in November 2010, between the Government and the Danish People’s Party, the right-wing party which is mostly contrary to immigration from non-western countries to Denmark. The agreement proposed was to introduce a point-system for applicants of family reunification, and the policy plan was criticized among others by the Danish Institute for Human Rights for setting up an unnecessarily complicated system when the immigration test was just about to be introduced, and reducing the predictability of the legal context and consequently the rule of law (Institut for Menneskerettigheder 2010). The bill has passed into law²⁴ as of June 2011. Therefore, from July 1, 2011, the applicants for family reunification – in addition to a number of requirements regarding good conduct, Danish

²¹ “*En ny chance til alle*”. Retrieved August 22nd, 2011 <http://www.nyidanmark.dk/NR/rdonlyres/23C3C847-FE7D-4E7C-B968-522389758291/0/a_new_chance_for_everyone.pdf>.

²² Page 4 in the Danish version of the policy on integration.

²³ Page 2 in the English version of the policy plan on integration.

²⁴ Act on amendment of aliens consolidation act and formation and dissolution of marriage act (*Lov om ændring af udlændingeloven og lov om ægteskabs indgåelse og opløsning*) LOV nr. 601 of 14/06/2011.

exam, and employment – must also prove that they earned a number of points (60 if both spouses are over 24, 120 if one or both are under 24 years of age), based on integration-related qualifications such as language skills and degree of education and work experience, either abroad or in Denmark. The newest point-system then stresses again the importance of activity in the labour market, which is seen as indispensable for obtaining the possibility to enter the country. As mentioned above, this regulation has been in force since July 2011, but just a few months after its introduction, the Minister of Justice started drafting a new bill to abolish it (along with the immigration test), following the coming into power of a new left-wing government in October 2011 that has promised the electorate to amend again the whole system for family reunification.²⁵ Consequently, the administration of family reunification cases and the status of immigrants are equally under stress from the incessant changes in this legal subject area. The future of this unfortunate piece of legislation is therefore one of utmost uncertainty.

The third and final trend highlights the importance of language proficiency for successful integration. In the policy papers that fuel the production of legal texts on integration matters it is assumed that learning Danish is the prerequisite to enter the labour market as soon as possible. Becoming employed would in turn foster integration in the receiving society. It is not my aim to underestimate the importance of language acquisition in order for immigrants to access the society in which they reside, but nevertheless a system organized in this manner is both strict and rigid, since it requires immigrants to pass complicated tests which must be prepared with a considerable amount of resources which not all of them possess, especially when they are coming from non-western third-countries or they are refugees. In the next section I will deepen the discussion on the normative claims that surround the issue of linguistic integration in Denmark.

Normative claims: is linguistic integration necessary for immigrations, or is Danish immigration policy nationalistic?

Linguistic integration, as to say proficiency in the national language of the receiving state, is a reasonable expectation towards immigrants. Even in those states that actively pursue and sustain multicultural policies such as Canada it is acknowledged, that learning an official language is necessary for immigrants in order not to be marginalized and to be able to participate in the democratic processes and institutions of the host country (Kymlicka 1998: 49 and 2002: 353). Language training is an important feature of the introduction programmes that are supposed to facilitate the integration of immigrants in their host countries.

Nevertheless, the requirement of language proficiency can be evaluated from different angles of view. On the one side it is argued that obligatory civic integration policies as the ones in force in the Netherlands – or in the present case in Denmark – are not to be interpreted as a “*rebirth of nationalism or racism*”: according to Christian Joppke (2007: 342), the requirements set up for civic integration of immigration are acceptable as long as they do not interfere with personal and conscience-related choices. Moreover, civic integration policies are counterbalanced by anti-discriminatory laws and policies that seek to ensure the equality of treatment of immigrants. However, the immigration test or the active citizenship test are not “*cognitive statements rather than normative*” (Joppke, *ibid.*

²⁵ Draft of January 6th, 2012. Proposition for act on amendment of aliens consolidation act and formation and dissolution of marriage act. New balance in the rules for family reunification, derogation from act on personal data, art. 7 (8) in some cases in connection with transition to electronic processing, etc. (*Forslag til Lov om ændring af udlændingeloven og lov om ægteskabs indgåelse og opløsning. Ny balance i reglerne om ægtefællesammenføring, fravigelse af persondatalovens § 7, stk. 8, i visse sager i forbindelse med overgang til elektronisk sagsbehandling m.v.*).

342), but compulsory tests of knowledge that immigrants must acquire before entering Denmark or before establishing their permanent residence in the country – or else their possibility of entry or stay in the country can be at risk. This kind of civic integration may be defined as a sort of “coercive integration” that does not leave the immigrants any actual free choice on the patterns they may follow in order to integrate in the Danish society.

On the other hand, for Sune Lægaard (2005 & 2009), a liberal understanding of nationalism which does not refer to any particular conception of ethnicity includes both cultural elements (use of the national language, involvement in the society, a life in line with the values here endorsed) and value-based elements (classical liberal values such as individualism, equal treatment, tolerance and personal freedom). From this standpoint the family reunification rules in force since the 2002-law reform of the Aliens consolidation act are not about societal attachment, but about becoming Danish in a cultural meaning (“cultural nationalism”) as they reinforce the idea, that the state and the nation must be identical and everyone that resides in the country must be Danish insofar as to be a “member of the Danish nation” in a liberal understanding (Lægaard 2005).

In my view these premises are valid descriptions for the current evaluation of the point-system for permanent residence and the immigration test in the Danish legal framework. The focus on adapting and even acquiring Danish values and lifestyle choices seems to transpire in almost every new legal instrument adopted in the last decade. The cultural nationalism approach appears then to pervade the initiatives that support immigrants’ civic integration in their host society. Elements of both approaches are to be found in the Danish legislation and policy around integration, rendering the analysis of these policies or strategies an ongoing enterprise. This is even more needed when the rapid nature by which new measures are adopted often does not leave sufficient room for attentive political scrutiny, nor does it enhance legal certainty when entered into force.

(Tentative) conclusion: From result to cause – first language, then integration?

The evaluation of immigration policy and integration initiatives surely deserves a more substantial theoretical examination than the one presented in the context of this paper. Therefore, the conclusion hereby presented is tentative, and primarily intended to focus on unanswered questions that the new legislation enforced in Denmark poses with regard to the issue of language for integration purposes.

From the review of the latest developments and changes in Danish immigration law it is possible to deduce that, as it is already the case in the area of citizenship law, the process of integration in Denmark is seen as a linear process that the immigrant is responsible for (see Ersbøll 2008). Within this process, language, work activity, and the knowledge and endorsement of Danish values and traditions, like Lego-building blocks (to use an image based on a world famous Danish invention) allow the immigrants to construct their full integration house.

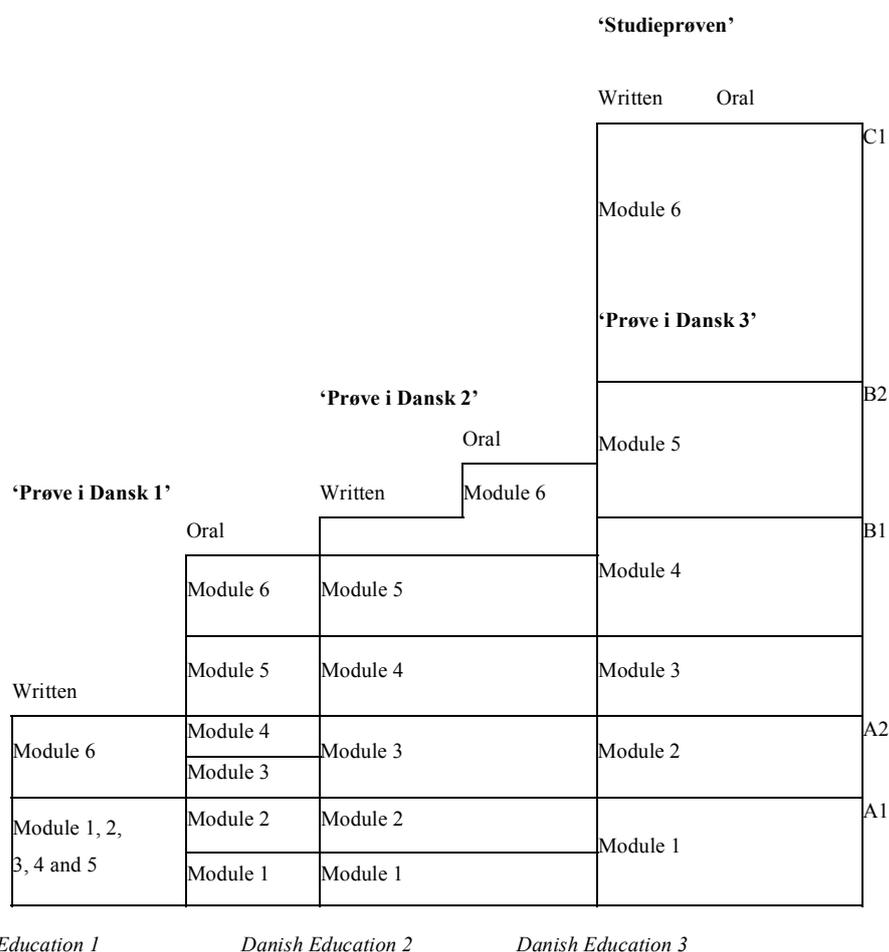
A couple of questions remain unanswered when depicting this very linear and perhaps slightly unrealistic picture of how immigration unfolds. To begin, is it a fair treatment of immigrants when the policies of integration are unilaterally putting the burden of integration only on the shoulders of the foreigner, since the rules are compulsory and not voluntary-based? Secondly, which kind of evidence is used, when the requirement of language proficiency is so strictly enforced, to sustain the belief that only a certain (considerable high) knowledge of the national language is an indicator of integration potential? As recently pointed out by Kees Groenendijk, there is little evidence that pre-departure integration measures actually improve the integration of immigrants, as it is difficult to find valuable empirical data sustaining that language knowledge before entry always fosters a faster integration process (Groenendijk 2011). An in-depth cost-benefit analysis when adopting these “integration strategies” is rarely performed before their

introduction, although it would help to introduce fair immigration policy and legal instruments, as doing so would also consider the burdens that immigrants have to carry in order to be admitted in a receiving country (Groenendijk 2011: 24–25).

As the contribution of sociolinguists can elucidate, language is not a fixed and static fact linked to a specific nation or culture (Jørgensen 2011). The process of integration enhances language proficiency, and vice-versa in a continuous process of mutual development; therefore any attempt to fix the time-schedule to a certain level of proficiency at a specific time of the immigration process, leads to results that are somewhat constructed, rigid, and not sensitive to the personal circumstances of the individuals involved. The unexpected consequences of outlining and enforcing such a strict and inflexible system is to penalise all the individuals which do not correspond to the “ideal” image of the skilled professional that the regulations depict as the one worthy of obtaining permission to enter or stay in Denmark.

Consequently and finally, it can be argued that much more thorough attention of the issues at stake must be taken into consideration before enforcing new policies and legal instruments on language proficiency for immigration and integration purposes in the Danish context.

Table 1
Structure of the Danish Language Education System



Source: Ministerial Order on Danish language education for adult foreigners and others, Annex 1 (*Bekendtgørelse om danskuddannelse til voksne udlændinge m.fl.*), BEK nr. 779 of 29/06/2011. The terms A1, A2, B1, B2 and C1 refer to the Common European Framework of Reference levels.

Table 2

Common reference levels in the “Common European Framework of Reference: Learning, Teaching, Assessment”, Council of Europe reference document for the European Language Portfolio

Global Scale

Proficient User	C2	Can understand with ease virtually everything heard or read. Can summarise information from different spoken and written sources, reconstructing arguments and accounts in a coherent presentation. Can express him/herself spontaneously, very fluently and precisely, differentiating finer shades of meaning even in more complex situations.
	C1	Can understand a wide range of demanding, longer texts, and recognise implicit meaning. Can express him/herself fluently and spontaneously without much obvious searching for expressions. Can use language flexibly and effectively for social, academic and professional purposes. Can produce clear, well-structured, detailed text on complex subjects, showing controlled use of organisational patterns, connectors and cohesive devices.
Independent User	B2	Can understand the main ideas of complex text on both concrete and abstract topics, including technical discussions in his/her field of specialisation. Can interact with a degree of fluency and spontaneity that makes regular interaction with native speakers quite possible without strain for either party. Can produce clear, detailed text on a wide range of subjects and explain a viewpoint on a topical issue giving the advantages and disadvantages of various options.
	B1	Can understand the main points of clear standard input on familiar matters regularly encountered in work, school, leisure, etc. Can deal with most situations likely to arise whilst travelling in an area where the language is spoken. Can produce simple connected text on topics which are familiar or of personal interest. Can describe experiences and events, dreams, hopes & ambitions and briefly give reasons and explanations for opinions and plans.
Basic User	A2	Can understand sentences and frequently used expressions related to areas of most immediate relevance (e.g. very basic personal and family information, shopping, local geography, employment). Can communicate in simple and routine tasks requiring a simple and direct exchange of information on familiar and routine matters. Can describe in simple terms aspects of his/her background, immediate environment and matters in areas of immediate need.
	A1	Can understand and use familiar everyday expressions and very basic phrases aimed at the satisfaction of needs of a concrete type. Can introduce him/herself and others and can ask and answer questions about personal details such as where he/she lives, people he/she knows and things he/she has. Can interact in a simple way provided the other person talks slowly and clearly and is prepared to help.

Source: http://www.coe.int/T/DG4/Portfolio/?L=E&M=/main_pages/levels.html

Appendix I

Declaration on integration and active citizenship in Danish society

Name:

Foreign national's ID/Civil registry number:

I, the undersigned, hereby declare that I will actively endeavour to ensure that I and any of my children and spouse/cohabitant who reside in Denmark will be integrated and become active citizens in Danish society.

I thus declare as follows:

- I shall comply with Danish legislation and respect the Danish democratic principles in every respect.
- I understand and accept that the Danish language and knowledge of the Danish society is the key to a good and active life in Denmark. I will therefore do my best to learn Danish and acquire knowledge about the Danish society as soon as possible. I understand and accept that I can learn Danish by attending Danish classes offered to me by the district council.
- I understand and accept that the individual citizens and their families are responsible for supporting themselves. I shall therefore endeavour to become self-supporting as soon as possible. I understand and accept that I can benefit from becoming self-supporting if I attend the activities described in the integration agreement between me and my local authority.
- I understand and accept that if I am applying for a job and attend a Danish course and the activities described in the integration agreement between me and my local authority, I shall – unless I or my spouse cannot support me – be entitled to receive temporary social benefits.
- I understand and accept that men and women have equal obligations and rights in Denmark and that both men and women shall contribute to society. Men and women thus have the same rights – and in some cases obligations – to education and work, and that men and women have equal rights to take part in the democratic processes. Both men and women have an obligation to pay taxes and to undertake parental responsibilities for their children.
- I understand and accept that it is punishable in Denmark to commit actual violence against or threaten one's spouse and others, including children.
- I understand and accept that in Denmark all children shall be given equal respect and self-expression – be they boys or girls – in order for them to grow up and become active and responsible citizens who are capable of making their own decisions. I shall ensure that my children have the best possible childhood and adolescence, schooling and integration in Denmark. I shall amongst others ensure that my child learns Danish as soon as possible and does his/her homework throughout the school years, and I shall actively collaborate with my child's day care institution and school.
- I understand and accept that circumcision of girls and the use of force to contract marriage are punishable in Denmark.
- I respect the freedom and personal integrity of the individual, equal opportunities for men and women and freedom of speech and religion, which are fundamental constitutional rights in Denmark.
- I understand and accept that discrimination on the grounds of race and skin colour and threats and scorn against groups on the grounds of religion or sexual orientation is illegal in Denmark.

- I understand and accept that Danish society strongly condemns acts of terrorism. I understand and accept that the person who is witness to a crime that is intended to be committed, which gives rise to endangering people's lives or welfare or significant societal values, quite clearly has the obligation to do what is in his or her power to prevent the crime or its results, if necessary by reporting to the police, and that avoidance of this can be penalised with a fine or imprisonment for up to 3 years if the crime is committed or is attempted to be committed
- I understand and accept that active commitment to the Danish society is a precondition for citizenship in Denmark regardless of how long my residency here in the country may last.
- I understand and accept that in order to extend my residence permit the grounds for granting me a residence permit must still exist.
- I understand and accept that the residence permit of indefinite duration is, among other things, normally on the condition that the Test in Danish 2 or a Danish language test at a corresponding or higher level has been passed; that one must have had regular full-time employment here in the country for at least 2 years and 6 months within the last 3 years prior to submission of application for a residence permit of indefinite duration and must continue to be assumed as being associated to the labour market at the time the residence permit of indefinite duration may be granted; that according to the act on active social policy or the integration act, one has not received public benefits in the last 3 years prior to submission of the application for the residence permit of indefinite duration and until the residence permit of indefinite duration may be granted; that one does not have unpaid debt to the public authorities and that one has passed a citizenship test or has displayed active citizenship here in the country through, at least, 1 year's participation on boards, in organisations, etc. I understand and accept that criminal actions may postpone or prevent one from obtaining a residence permit of indefinite duration
- I understand and accept that as a refugee one is no longer entitled to protection if the conditions in one's home country have changed to the effect that one can return. I understand and accept that refugees and their families can be awarded financial support to return to their original home country or previous country of residence if they wish to do so at some point in time.

Date:

Signature:

Source: www.nyidanmark.dk

Legal Texts

- Act on amendment of aliens consolidation act and formation and dissolution of marriage act (*Lov om ændring af udlændingeloven og lov om ægteskabs indgåelse og opløsning*) LOV nr. 601 of 14/06/2011.
- Consolidation act on Danish education for adult foreigners and others (*Bekendtgørelse af lov om danskuddannelse til voksne udlændinge m.fl.*) LBK. nr. 1010 of 16/08/2010.
- Consolidation act on the integration of foreigners in Denmark (*Bekendtgørelse af lov om integration af udlændinge i Danmark – integrationsloven*) LBK nr. 1062 of 20/08/2010.
- Aliens consolidation act (*Udlændingeloven*) LBK nr. 947 of 24/08/2011.
- Ministerial order on the Danish language education for adult foreigners and others (*Bekendtgørelse om danskuddannelse til voksne udlændinge m.fl.*), BEK nr. 779 of 29/06/2011.
- Ministerial order on the immigration test (*Bekendtgørelse om indvandringsprøven*), BEK nr. 1251 of 04/11/2010.
- Ministerial order on the active citizenship exam (*Bekendtgørelse om medborgerskabsprøven*), BEK nr. 334 of 13/04/2011.
- Ministerial order on the exception of certain nationalities from the requirement of passing a test on Danish language and society (immigration test) (*Bekendtgørelse om undtagelse af visse nationaliteter fra betingelsen om bestået prøve i dansk og danske samfundsforhold – (indvandringsprøven)*), BEK nr. 780 of 29/06/2011.
- Proposition for act on amendment of aliens consolidation act and formation and dissolution of marriage act. New balance in the rules for family reunification, derogation from act on personal data, art. 7 (8) in some cases in connection with transition to electronic processing, etc. (*Forslag til Lov om ændring af udlændingeloven og lov om ægteskabs indgåelse og opløsning. Ny balance i reglerne om ægtefællesammenføring, fravigelse af persondatalovens § 7, stk. 8, i visse sager i forbindelse med overgang til elektronisk sagsbehandling m.v.*).

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