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DENMARK

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Introduction

1. ADF International is a global alliance-building legal organization that advocates for religious freedom, life, and marriage and family before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name “Alliance Defending Freedom”), ADF International has accreditation with the European Commission and Parliament, the Fundamental Rights Agency of the European Union, the Organization for Security and Co-operation in Europe, and the Organization of American States.
2. This report focuses on Denmark’s human rights record regarding freedom of expression and freedom of religion.

(a) Freedom of Speech

Denmark’s “hate speech” laws

3. Denmark, as with many other European nations, has enacted laws prohibiting so-called “hate speech”. Section 140 of the Danish Criminal Code states:

Any person who, in public, mocks or scorns the religious doctrines or acts of worship of any lawfully existing religious community in this country shall be liable to imprisonment for any term not exceeding four months.

4. Section 266(b) of the Danish Criminal Code states:

(1) Any person who publicly, or with the intention of wider dissemination, makes a statement or imparts other information by which a group of people are threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion, or sexual orientation, shall be liable to a fine or to imprisonment for a term not exceeding two years.

(2) When handing down the punishment, it is to be considered as an aggravating circumstance that the statement is in the nature of propaganda.

5. The official commentary on Article 266(b) states that “This provision was inserted in the Criminal Code in 1971 in connection with Denmark’s ratification of the International Convention on the Elimination of All Forms of Racial Discrimination, to ensure full compliance with Article 4 of that convention.” However, as the cases below demonstrate, Denmark’s restrictions on speech go far beyond what is permitted under international law.

Examples of “hate speech” cases

6. On 30 September 2005 the Danish newspaper, *Jyllands-Posten*, published 12 editorial cartoons, most of which depicted the Islamic prophet Mohammed in an unflattering light. After more than 50 international publications reprinted the

cartoons, protests erupted around the world resulting in at least 100 deaths.¹ A number of offended Muslim organizations filed a complaint with the Danish police claiming that offences had been committed under sections 140 and 266(b) of the Criminal Code.

7. On 6 January 2006 the Regional Public Prosecutor decided to discontinue the investigation because there was not a reasonable suspicion that a criminal offense had been committed. Not satisfied with the outcome, the group appealed to the Director of Public Prosecutions who upheld the ruling in his decision of 15 March 2006.²
8. Still not satisfied, the group made a claim to the UN Human Rights Committee in which they alleged they had been denied an effective remedy for incitement to hatred against Muslims. The Committee declared the case inadmissible for failure to exhaust domestic remedies as the group's appeal from the outcome of a 2008 domestic private prosecution was still pending.³
9. Although attempts at prosecution in this instance were not successful, a chilling effect on freedom of speech was nevertheless caused by the case being brought in the first place. As one writer has pointed out, "[T]he real danger posed by Europe's speech laws is not so much guilty verdicts as an insidious chilling of political debate, as people censor themselves in order to avoid legal charges and the stigma and expense they bring."⁴
10. In another case in 2010, the Danish historian, journalist and free speech activist, Lars Hedegaard, was charged under section 266(b) by the Danish Public Prosecutor for allegedly racist speech. The charge related to a December 2009 interview in which Hedegaard remarked on the high incidence of crime in areas of high Muslim populations. Hedegaard subsequently maintained that his words had been taken out of context and insisted that he did not seek to accuse all Muslims, or even the majority, of this kind of behaviour.⁵
11. Hedegaard was initially found innocent but subsequently convicted by a superior court. Commenting on his conviction, Hedegaard pointed out that whether or not his words were true happened to be completely irrelevant during his trial. He wrote:

¹ 'Cartoon Body Count: Death by Drawing', 11 April 2006. Available at <<http://www.cartoonbodycount.com/stats>>.

² Director of Public Prosecutions, 'Decision on Possible criminal proceedings in the case of Jyllands-Posten's Article "The Face of Muhammed"', File No. RA-2006-41-0151, 15 March 2006. Available at <http://www.rigsadvokaten.dk/media/bilag/afgorelse_engelsk.pdf>.

³ UN Human Rights Committee, 'Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights', 18 April 2008. Available at <<http://sim.law.uu.nl/SIM/CaseLaw/fulltextccpr.nsf/160f6e7f0fb318e8c1256d410033e0a1/5cc6821f39c062b4c125745200446af6?OpenDocument>>.

⁴ Alexander, Gerard, 'Illiberal Europe', American Enterprise Institute for Public Policy Research, 2006, p.3.

⁵ 'Lars Hedegaard Acquitted', Gates of Vienna, 20 April 2012, Available at <<http://gatesofvienna.blogspot.co.at/2012/04/acquittal-of-lars-hedegaard.html>>.

I should have the right to prove my case. I could have called witnesses. I could have quoted holy books and statements, and I could have referred to facts. But you cannot do that in a court of law in Denmark if you are accused under this infamous Article 266(b). Whether or not what you are saying is true is immaterial. If somebody feels offended or if the prosecutor thinks that somebody has a reason to feel offended, whether or not you speak the truth has no bearing on the case.⁶

12. On 20 April 2012 Hedegaard was acquitted by the Danish Supreme Court, based on the Court's finding that he did not intend to disseminate his remarks to a wider audience.⁷ Hedegaard commented, "The Supreme Court has clearly upheld the principle that for a statement to be criminal, it must have been made with the intent of public dissemination. We may still talk freely in our own homes."⁸
13. The day after Hedegaard was charged, the Danish Justice Minister at the time announced that the country's "hate speech" laws should be reviewed. The Copenhagen Post reported that the minister was "preparing the ground for changes to laws criminalizing racist and blasphemous speech on concerns they could be misused as political instruments to restrict free speech."⁹ However, such changes have not taken place.
14. In 2014, Danish authorities considered pressing criminal charges against a young poet for using insulting speech. Yahya Hassan is a young poet whose debut book sold 80,000 copies and contains many poems which are heavily critical of the religious environment in which he was raised. In January 2014, a local politician demanded that he be charged under section 266(b). Hassan now wears a bulletproof vest and receives protection from Denmark's domestic intelligence agency at speaking engagements.¹⁰

Freedom of speech in international law

15. Article 19 of the Universal Declaration of Human Rights states that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Article 19 of the International Covenant on Civil and Political Rights confirms this right, and states that restrictions

⁶ 'Round Three of the Trial of Lars Hedegaard', Middle East Forum, 8 April 2012. Available at <<http://www.meforum.org/3209/lars-hedegaard-trial>>.

⁷ Case note available (in Danish) at <<http://www.domstol.dk/hojesteret/nyheder/pressemeddelelser/Pages/Frifindelseisagomforhennedeogndevrdigendeudtalelserommuslimer.aspx>>.

⁸ 'Lars Hedegaard Acquited', Gates of Vienna, 20 April 2012. Available at <<http://gatesofvienna.blogspot.co.at/2012/04/acquittal-of-lars-hedegaard.html>>.

⁹ 'Denmark: Prosecution of Free Speech Advocate may prompt Changes to Racism Laws', The Legal Project, 6 August 2010. Available at <<http://www.legal-project.org/blog/2010/08/denmark-prosecution-of-free-speech-advocate-may>>.

¹⁰ Andrew E. Harrod, 'Danish Muslim Apostate Faces Hate Speech Charges', Front Page Magazine. 2 January 2014. Available at <<http://www.meforum.org/3710/yahya-hassan-denmark>>.

on freedom of expression are only valid if they are prescribed by law, and necessary to pursue one of the limited aims specified within the Covenant.

16. While there are clear limitations placed on freedom of speech in some international documents, notably Article 20(2) ICCPR and Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, there is still a high threshold for when restrictions on freedom of expression are valid. Former UN Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, has noted that “Article 20 [of the ICCPR] was drafted against the historical background of the horrors committed by the Nazi regime during the Second World War.” Therefore, the “threshold of the acts that are referred to in Article 20 is relatively high.”¹¹
17. Moreover, the Special Rapporteur has stated that freedom of speech should not be restricted any further than international law currently allows, noting that “any attempt to lower the threshold of Article 20 of the Covenant would not only shrink the frontiers of free expression, but also limit freedom of religion or belief itself. Such an attempt could be counterproductive and may promote an atmosphere of religious intolerance.”¹² The Special Rapporteur further recommended that “expressions should only be prohibited under Article 20 if they constitute incitement to imminent acts of violence or discrimination against a specific individual or group.”¹³
18. Similarly, UN General Comment No. 34 makes it clear that restrictions on the right to freedom of expression “should not go beyond what is permitted in paragraph 3 [of Article 19] or required under article 20.”¹⁴
19. Hence, while there are limitations placed on speech in international law, the overwhelming emphasis in the international human rights documents is the protection of freedom of speech, and restrictions should not go beyond what is already in place.

(b) Freedom of Religion

20. In 1989, Denmark became the first country in the world to allow same-sex couples to legally register as domestic partners. In June 2012, the government passed a bill legalizing same-sex marriage.¹⁵
21. However, unlike other countries that have legalized same-sex marriage, Denmark has forced the state church – the Evangelical Lutheran Church in Denmark – to conduct same-sex ceremonies within its churches.

¹¹ Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, further to Human Rights Council decision 1/107 on incitement to racial and religious hatred and the promotion of tolerance, A/HRC/2/3, 20 September 2006, § 47.

¹² *Id.*, § 50.

¹³ *Id.*, § 47.

¹⁴ UN General comment No. 34, 12 September 2011, CCPR/C/GC/34, § 49.

¹⁵ <http://www.pewforum.org/2015/06/01/gay-marriage-around-the-world-2013/#denmark>.

22. Under the law, priests of the Evangelical Lutheran Church are permitted to opt out of performing the same-sex ceremonies. However, the local bishop must arrange for a replacement priest to carry out the ceremony.¹⁶
23. Forcing a church to perform same-sex ceremonies is a clear violation of the fundamental right to freedom of religion, as guaranteed by numerous international treaties to which Denmark is a party, most notably Article 18 ICCPR. Article 18(1) holds that “Everyone shall have the right to freedom of thought, conscience and religion,” and the manifestation of this right occurs “in community with others.” Limitations are only valid if they are as are prescribed by law and are necessary to pursue one of the very limited aims specified within the Covenant.
24. A church’s ability to operate freely as an autonomous entity – free from arbitrary State intervention – is at the heart of religious freedom. As the European Court of Human Rights has held:
- ...religious communities traditionally and universally exist in the form of organized structures. They abide by rules which are often seen by followers as being of divine origin. [...] Seen in this perspective the believers’ right to freedom of religion encompasses the expectation that the community will be allowed to function peacefully, free from arbitrary State intervention. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society.”¹⁷
25. By forcing the Evangelical Lutheran Church to conduct same-sex ceremonies, Denmark has undermined the church’s right to operate autonomously and free from State control. Accordingly, Denmark’s insistence that the church conduct same-sex ceremonies is an ongoing violation of the fundamental right to freedom of religion.

(c) Recommendations

26. In view of the above, ADF International recommends the following:
- Repeal section 140 and section 266(b) of the criminal code, in line with international obligations on freedom of expression.
 - Repeal the law of June 2012 that compels the Evangelical Lutheran Church to conduct same-sex ceremonies.

¹⁶ <http://www.telegraph.co.uk/news/worldnews/europe/denmark/9317447/Gay-Danish-couples-win-right-to-marry-in-church.html>.

¹⁷ *Hasan and Chaush v Bulgaria*, Application N° 30985/96, 26 October 2000 § 62.