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Judgment of the Court in Case C-417/23 | Slagelse Almennyttige Boligselskab, Afdeling Schackenborgvænge

### **Prohibition of discrimination: The Court of Justice clarifies, in relation to the Danish law on public housing, which situations may constitute discrimination based on ethnic origin**

The Danish Law on Public Housing seeks to reduce the percentage of public family housing units in ‘transformation areas’. These areas are characterised, inter alia, by the fact that the proportion of ‘immigrants from non-Western countries and their descendants’ residing in those areas has exceeded 50% during the last five years. Under that law, some of the leases on public family housing units in two residential areas in the Municipalities of Slagelse and Copenhagen have been or are to be terminated. The Danish court hearing a number of disputes regarding those terminations is uncertain whether the legislation at issue constitutes direct or indirect discrimination on the ground of ethnic origin. The Court of Justice notes that ethnic origin is based on several factors. One factor taken in isolation, such as nationality or country of birth, is not sufficient to determine whether a person belongs to a particular ethnic group. For the purpose of examining whether there may be direct discrimination, it will be for the national court to ascertain whether the criterion relating to the proportion of immigrants and their descendants is truly based on the ethnic origin of the majority of the inhabitants of ‘transformation areas’ and whether, as a result, they suffer less favourable treatment, such as an increased risk of early termination of their leases. If the national court finds that there may be indirect discrimination, it will have to examine whether this is nevertheless justified. It would be for that court, inter alia, to ensure, in that regard, that the law at issue pursues an objective in the public interest in a proportionate manner and respects, in particular, the fundamental right to respect for the home.

The Danish Law on Public Housing requires the adoption of development plans designed to reduce, by 1 January 2030, the percentage of public family housing units in so-called ‘transformation areas’ (formerly known as ‘hard ghetto areas’). These are neighbourhoods characterised by a socio-economically disadvantaged situation in terms of unemployment, crime, education and/or average income, as well as by the fact that the proportion of ‘immigrants from non-Western countries and their descendants’<sup>1</sup> residing in those areas has exceeded 50% during the last five years.

In accordance with development plans for the ‘transformation areas’ of Ringparken in Slagelse and Mjølnerparken in Copenhagen, a number of the leases on public family housing units in those areas have been or are to be terminated. Some of the tenants affected are challenging those measures before the national court, arguing in particular that the criterion relating to the proportion of ‘immigrants from non-Western countries and their descendants’ constitutes direct or indirect discrimination based on ethnic origin, which is prohibited by EU law.<sup>2</sup>

The Danish court hearing the cases referred questions on the matter to the Court of Justice for a preliminary ruling.

As regards the question whether the Danish law gives rise to **direct discrimination**,<sup>3</sup> the Court notes that the criterion at issue appears to be decisive for the purpose of identifying ‘transformation areas’ affected by the reduction in the number of public family housing units. However, **it will be for the national court to examine**

**whether that criterion establishes a difference in treatment based on the ethnic origin of the majority of the inhabitants of those areas, thus resulting in the inhabitants of those areas being treated less favourably than the inhabitants of comparable areas in which the proportion of immigrants has not exceeded the 50% threshold.**

The Court explains that the concept of 'ethnic origin' within the meaning of EU law is based on several factors, such as nationality, religion, language, cultural and traditional origin, and background. It is determined on the basis of a set of factors. **Neither the nationality nor the criterion of the country of birth of the person concerned or their parents is sufficient, on its own, to establish that a person belongs to a particular ethnic group.** By contrast, the mere fact that a general criterion laid down in legislation covers several ethnic origins does not, in itself, preclude that criterion from being directly or inseparably linked to the ethnic origin of the persons concerned. Moreover, contextual factors such as the preparatory documents for such legislation may contribute to a finding that the criterion at issue constitutes direct discrimination based on ethnic origin.

As regards whether there is less favourable treatment, the Court considers that such treatment may take the form of **an increased risk, for the inhabitants of 'transformation areas', of having their leases terminated early and, therefore, of losing their home.** That risk appears to be greater than in other residential areas which are characterised by a comparable socioeconomic situation but in which the proportion of immigrants has not exceeded the threshold laid down in the law at issue. The Court points out that certain offensive and stigmatising classifications used in a piece of legislation or in the preparatory documents relating thereto may also establish less favourable treatment of persons belonging to certain ethnic groups.

Should the national court conclude that that law does not constitute direct discrimination, it will still have to examine whether that law gives rise to **indirect discrimination.**<sup>4</sup> That would be the case where the law, despite being worded or applied in an apparently neutral manner, results, in practice, in persons belonging to certain ethnic groups being placed at a particular disadvantage. In that respect, the Court recalls that **that disadvantage need not necessarily affect only one ethnic origin.**

If the national court finds that the law at issue results in such a particular disadvantage, it will also have to examine whether the law at issue pursues the public interest objective relied on by the Danish Government, namely to resolve problems relating to social cohesion and integration in the context of the Danish public housing system, in accordance with the principle of proportionality. That would involve, in particular, determining whether that law, in laying down the obligation to adopt development plans, pursues the objective of promoting social cohesion in a consistent and systematic manner, even though that obligation does not apply to residential areas which differ from 'transformation areas' only in that their residents are not predominantly 'immigrants from non-Western countries and their descendants'. The examination of justification should also take into account the fundamental right to respect for the home.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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<sup>1</sup> An 'immigrant', within the meaning of the Danish Law on Public Housing, is a person born abroad and neither of whose parents was both (i) born in Denmark and (ii) a Danish national. A 'descendant' is defined as a person who was born in Denmark but neither of whose parents was both (i) born in Denmark and (ii) a Danish national, or whose parents, even if they were born in Denmark and acquired Danish nationality, both also retain a foreign nationality. The concept of 'Western countries' includes the Member States of the European Union, Andorra, Iceland, Liechtenstein, Monaco, Norway, San Marino, Switzerland, the United Kingdom, the Vatican City State, Canada, the United States, Australia and New Zealand. All other countries are therefore considered to be 'non-Western countries'.

<sup>2</sup> [Council Directive 2000/43/EC](#) of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

<sup>3</sup> The Court notes that, subject to verification by the Danish court, Directive 2000/43 should be considered to apply to the Danish public housing system. The provision of housing for remuneration under that system concerns access to and supply of housing services within the meaning of Article 3(1)(h) of that directive.

<sup>4</sup> According to Directive 2000/43, indirect discrimination is to be taken to occur where an apparently neutral provision, criterion or practice puts a group of people at a disadvantage on account of their racial or ethnic origin, unless that provision, criterion or practice pursues a legitimate aim and uses appropriate and necessary means for achieving it.