



Race Discrimination and Access to Public Housing: the Court of Justice's *Slagelse* Decision

Lucía López Zurita

On 18th December 2025, the Court of Justice (the Court) issued its much-awaited decision on the case C-417/23, [*Slagelse Almennyttige Boligselskab v. Afdeling Schackenborgvænge*](#), (the “Danish Ghetto” case). A lot has been written about this ruling already (to name but a few: [Serde Atalay](#), [Boris Belortaja](#), [Sarah Ganty](#), [Marzia Genovese](#) as well as during the [Oxford-European Law Review online event](#) with Iyiola Solanke, Tamara Čapeta, Nozizwe Dube, Hannah Eklund, and Bruno de Witte). This contribution focuses on a relatively detailed description on the factual component of the case, and offers a brief discussion of the decision, also in the light of the AG Opinion.

The facts of the case

Denmark has for quite some years now introduced legislation (both hard and soft law) to combat what the Danish Legislature and Government consider to be “[parallel societies](#)”. The legislation needs to be understood in the broader context of the very strict Danish migration policy (including, among others, access to family reunification even for Danish citizens, [particularly those not born in Denmark](#)). An important part of that legislation concerns public housing, and in particular the possibility to alter the composition of residential areas deemed to have special difficulties with integration. To this end, the Danish [Law on Social Housing \(Almenboligloven\)](#) classifies housing areas as “ghettos” or “hard ghettos” (the legislation has recently changed the terms to “parallel societies” and “transformation areas”). The law provides for the development of plans to reduce social housing in this type of areas. The dwellings affected are owned by Housing Associations, which are private non-profit entities subject to strict regulation, but which have a certain degree of independence from the government and enjoy organizational autonomy. These associations manage themselves the dwellings they own and offer them for rent at regulated prices, typically below market rates.

There are two consecutive stages in the [classification of a residential area as “parallel society” or “ghetto”](#). First, an area that fulfills two of four criteria related to the residents’ attachment to the labor market, criminal records, educational attainment and average income can be classified as “vulnerable residential area”. To be classified as “ghetto”,



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though, a “vulnerable area” needs to comply with a further criteria: at least 50% of the residents must be “[non-Western immigrants](#)” (born in some countries listed below, regardless of nationality) or “[descendants of non-Western immigrants](#)” (born in Denmark, but without at least a parent who is both Danish and born in Denmark). Residential areas remain “transformation areas/hard ghettos” if classified as “ghettos” for five consecutive years.

[Danmarks Statistik](#) (Danish Institute for Statistics) developed the categories of Western/non-Western, which were later adopted in the Danish legislation. “Western countries” include all countries in the EU, Andorra, Australia, Canada, Iceland, Liechtenstein, Monaco, New Zealand, Norway, San Marino, Switzerland, the UK, the USA and the Vatican. “Non-Western countries” include the rest of Europe, all countries in Africa, the Americas, Asia, Oceania and stateless persons.

It is important to note that both “non-Western” immigrants and their descendants can be Danish citizens, but what is crucial is that either they were not born in Denmark or their parents were not born in Denmark. By contrast, a person is deemed to have Danish origin, regardless of their place of birth, where one of their parents is both Danish and born in Denmark. In the cases before the Court, the vast majority of those affected were Danish citizens. This leads some authors to speak of a “[stratified citizenship](#)”, especially since [acquiring Danish nationality is extremely difficult](#).

Typically, once a residential area has been classified as a “ghetto”, the municipality and the housing association must work together to come up with a development plan, which the Minister has to later approve. By contrast, “vulnerable areas”, which comply with the socio-economic criteria without reaching the percentage of “non-Western” population, do not require such plans. The development plans shall reduce public housing to 40%, which is usually achieved by means of the demolition or reconversion of buildings, with the subsequent termination of rental contracts for the affected tenants. Importantly, the concrete and individual choice of the tenants that will be evicted does not consider their “Western” or “non-Western” origin.



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Precisely two of those plans lie at the origin of the preliminary ruling at issue. The districts of Schackenborgvænge in Slagelse and Mjølnerparken in Copenhagen were designated as “ghettos” in 2018. Development plans were drawn, as mandated by the legislation. In application of the plans, the tenancy agreements of a number of residents were terminated.

A preliminary point is of relevance here. [As noted by Professor de Witte](#), the questions of the Danish court to the Court refer to the Danish legislation and not to any of the plans that develop it concretely for each of the “ghettos”. Thus, it is somehow puzzling that the Court seems to be thinking at times of the development plans and not of the legislation. Needless to say, once the Court considers that the legislation is based on an ethnic origin, any development of that legislation would be tainted by this finding and consequently incompatible with the [Race Equality Directive](#) (RED).

The reference before the Court asked whether “ethnic origin” includes a group of persons defined as “non-Westerners” and their descendants, and if so, whether the Danish legislation constitutes direct or indirect discrimination within the meaning of the RED. The questions are possible because the Race Equality Directive «shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to (...) access to and supply of goods and services which are available to the public, including housing» (Article 3(1)h RED). The applicability of the Directive to the case was not contested.

The Opinion of the AG

In her Opinion, AG Ćapeta gave a clear and unequivocal answer to each of the two questions referred. In her view, the distinction operated in the legislation between “Western” and “non-Western” is unquestionably based on ethnic origin, regardless of the fact that it encompasses more than one hundred nationalities. Indeed, as the Opinion explains, «what unites that group (...) is not a commonality of factors that form “ethnicity” within the group; it is rather the perception by the Danish legislature that this group does not possess the characteristics of the other group, that is, of “Westerners” (Opinion, para. 86)». By contrast, the Danish legislator effectively constructs “Westerners” as a homogeneous group aligned



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with Danes. The distinction is therefore one based on ethnic origin.

Against this background, it must be inferred that the Danish legislation constitutes direct discrimination on grounds of ethnic origin. To reach this (unsurprising) conclusion, the Opinion compares residents of areas classified as “ghettos” with those living in areas designated as “vulnerable”. Only the former face the risk of eviction. As noted, the decisive difference between these two types of areas is the proportion of residents classified as “non-Western” in ghettos, but not in vulnerable areas. The differential treatment thus sits directly on the criteria of ethnic origin and amounts to direct discrimination. On this point, the AG appears to harbor no doubt.

Nevertheless, in line with the Court’s usual practice, the Opinion also examines the measure through the lens of indirect discrimination, in case the Court was unconvinced that the case amounts to direct discrimination. The Commission had also advanced this argument [at the hearing](#), on the basis that the specific development plans did not explicitly take the ethnic origin of the residents to be evicted into account. Yet, the concrete development of the law in the plans was not raised by the referring court (see De Witte above). Even so, assuming that the measure was to be regarded as “neutral” (Article 2 RED), residents whose tenancy agreements are terminated are selected on the basis of socio-economic criteria only once their area of residence has been previously classified as a “ghetto”. That classification is driven by the prior categorization of residents as “non-Westerners”.

Since indirect discrimination arises where «a neutral rule affects one ethnic group more than others in statistical terms», it is evident that “non-Westerners” are exposed to a significantly higher risk of adverse treatment. While indirect discrimination may be justified by a legitimate aim pursued through appropriate and necessary means, and while the Opinion offers ample guidance to conduct such proportionality assessment, the AG ultimately remains skeptical that the Danish rules meet that standard.

The Decision of the Court

The preliminary ruling of the Court provides a somehow mixed answer to the questions



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referred by the national court. The first part of the ruling seems to find that the Danish legislation amounts to direct discrimination on the grounds of ethnic origin. The Court misses the opportunity to better define what ethnic origin means and instead goes back to its previous case law (particularly [CHEZ](#) and [Jyske Finans](#)) stating that nationality/country of origin are “neutral” for what concerns ethnic origin, and therefore insufficient to determine a person’s ethnic origin. They can, however, be some two of the factors, together with other elements, used to determine the ethnic origin of a person. Even with this loose definition, the decision is relatively straightforward in seeing the ethnic origin as determinative of the distinction between “Westerner” and “non-Westerner”. In this sense, it rejects that the breadth of the concept “non-Westerner” has any relevance in this finding. From here, what follows is a classic analysis of direct discrimination. The Court has no difficulty in setting “vulnerable areas” as the pertinent comparator and the adverse treatment suffered by those residing in “ghettos” as an increased risk of being forced to abandon their houses. It is irrelevant that the concrete selection of tenants does not consider their ethnic origin or that it might also affect “Westerners”.

The assessment could have stopped at this point, as expressed by Professor de Witte. If preliminary rulings are meant to establish a dialogue aimed at assisting national courts with the interpretation of EU law they need, it would seem that the Court had already replied to the Danish court’s question with its finding that the national legislation amounted to direct discrimination. Nevertheless, it is not uncommon for the Court to offer an alternative assessment based on indirect discrimination (as did the AG). In this case, as noted, the Commission had raised the argument at the hearing, submitting that the measures constituted indirect, rather than direct discrimination. This likely explains why the Court provides an extensive analysis of how the measures could amount to indirect discrimination. The problem is, however, that this analysis seems to no longer refer to the Danish legislation, but rather to its implementation plans.

Leaving the pertinence of the analysis aside, indirect discrimination occurs where an apparently neutral provision, criterion or practice puts persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or



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practice is objectively justified by a legitimate aim and complies with the proportionality test. The Court merely restates that, was the Danish provision considered to apply in an “ostensibly” neutral manner, it could amount to indirect discrimination if it would place persons of a particular racial or ethnic origin at a “particular disadvantage” compared with other persons. The measure could still be compatible with EU law if it pursued a legitimate goal in a proportionate manner, which the national court would need to assess following the guidance of the Court.

The Court consider that in its fight against so-called parallel societies, Denmark could be pursuing objectives of social cohesion and integration. These goals are not only legitimate but afford ample discretion to the Member States to design and implement their policies, as long as the measures are applied consistently and systematically in the national space. Crucially, though, these objectives cannot justify measures targeting EU citizens (para.151). The Court is doubtful that this is the case in Denmark, as comparable situations have been addressed in significantly less restrictive manners in “vulnerable areas” where the majority of the population is not of “non-Western origin”. It is then easy for the Court to conclude that residents in “ghettos”, unlike those in vulnerable areas, face the risk of losing their homes, which constitutes a disproportionate interference in their fundamental right to a home. Yet, as it is always the case in the context of the preliminary ruling procedure, it is for the national court to conduct this assessment.

Concluding remarks

The Court has had few opportunities to interpret the RED, [given the scarcity of references](#), and this judgment therefore feels, to some extent, like a missed opportunity. In particular, the Court could have further clarified the meaning of “ethnic origin”, addressed the notion of race head-on (see [Dube](#)) or engaged more extensively with the role of stigmatization in establishing direct discrimination. Differential judgments [are not per se a bad idea](#), but perhaps [less deference and more clarity](#) would have been more useful to the national court, and more instructive for the development of a solid jurisprudence on race equality.



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That said, there is also much to commend in the decision, especially its (hopefully) definitive departure from *Jyske Finans* and its affirmation, which nevertheless could be clearer and more explicit, that EU citizens cannot be targeted by measures justified on grounds of integration and social cohesion. The ball is now back in the Danish court's hands, but with the current climate in Europe, it probably will not be long until the Court has to confront the matter again.