

Meeting the moment: how the Race Equality Directive and the Danish “Ghetto” case require courts to fight modern racial discrimination

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In November, Denmark’s Supreme Court will consider a case concerning the State’s division of its citizens into those of “Western” and “non-Western” background. This classification is the lynchpin of the country’s ‘Ghetto Package’ of laws, which has led to the loss of thousands of family homes across the country. At the end of last year, the Grand Chamber of the Court of Justice of the European Union (“CJEU”) paved the way for the Danish courts to finally rule measures pursuant to this legislation unlawful under racial discrimination law. This article explores the implications of this judgment (“Judgment”), not just for Denmark but the whole region.

Crucially, in this current moment of division and escalating hostility towards racialised groups, the ruling rejected modern-day attempts to water down the protections of the Race Equality Directive (“Directive”).¹ The Judgment makes clear that equality remains a fundamental part of the bedrock of the region, and that domestic courts throughout the European Union (“EU”) are obliged to condemn all forms of racism and racial discrimination – including new, evolving forms introduced under the guise of social cohesion and integration.

The ‘Ghetto Package’

“I moved to Denmark when I was only seven years old. I never could have imagined that my own country would do this to me. I have four children who were born here, all of whom are professionals: a lawyer, engineer, psychologist and social worker. No matter how well we do, we will all still be defined by the term ‘non-Western.’ Now we have lost the home that my children were raised in. Nothing can replace our treasured family home which was full of those special memories, it’s just not the same.”

These are the words of Mr. Muhammad Aslam, quoted by his counsel, Mr. Eddie Khawaja, at the end of his oral submissions before the Grand Chamber of the CJEU. Mr. Aslam, who travelled along with around 50 other fellow Danes to Luxembourg to attend the hearing, had lived in his home in Mjølnerparken, Copenhagen, for over 30 years before it was sold as part of a “development plan” under Denmark’s ‘Ghetto Package’ of laws.

The Package was introduced in the summer of 2018 as a bundle of over 20 legislative proposals affecting spheres of life as diverse as travel, childcare, criminal justice and housing. The stated aim of these laws is to ‘eradicate’ residential areas officially designated by the State as “ghettos.”² Significantly, these neighbourhoods are distinguished from other areas classed by the government as having the same socio-economic factors, on the explicit basis that the

¹ Council Directive 2000/43/EC of 29 June 2000 (“Directive”).

² The terminology was changed in 2021, including from “ghetto” to “parallel societies” in order to “make them attractive to a wider circle of housing seekers” (see the preparatory works of Bill No. L 23, available at: https://www.ft.dk/ripdf/samling/20211/lovforslag/l23/20211_l23_som_fremsat.pdf); the substance of the law remains.

majority of residents are labelled as “non-Western immigrants or descendants.”³ “Western” countries include Australia and New Zealand (which are both located in the Eastern hemisphere) and those labelled as “non-Western” include Danish citizens and individuals born and raised in Denmark.⁴

The loss of family homes stems from a key provision within the law which requires a reduction of “common family housing” in “tough ghettos” to a maximum of 40% by the year 2030.⁵ “Common housing” is a particularly Danish form of independent, not-for-profit housing based on principles of democracy and affordable homes for all, while “tough ghettos” are areas that have met the criteria of a “ghetto” for five years. In 2018, this was applied retrospectively to areas such as Mjølnerparken, with the legislative papers specifying that reduction can take place through means such as demolition and sale –leading to evictions.⁶

Mr. Aslam is one of a group of residents who filed a case in May 2020 challenging ministerial approval of the development plan entailing the sale of over 200 family homes in his neighbourhood.⁷ The residents argue that governmental approval of the development plan is discriminatory under both the Directive and the European Convention on Human Rights, and also that it violates other fundamental rights, including the right to respect for the home. Despite numerous references to “ethnic origin” in the legislative papers and even a declaration on the radio by the relevant Minister that the law related to “ethnic divides,” inside the courtroom the Danish government has consistently argued that “non-Western” background is unrelated to ethnic origin, seeking to rely upon an earlier CJEU decision of *Jyske Finans*.⁸

³ Section 61a(1) of the Common Housing Act (“CHA”) (as amended) defines a “vulnerable housing estate” as an area of “common housing” inhabited by over 1000 residents where at least two of four socio-economic criteria are met. Section 61a(2) of the CHA (as amended) provides that an area that would otherwise be a “vulnerable housing estate” is defined as a “ghetto” where the share of residents of “non-Western background” exceeds 50%.

⁴ The definition of “Western” by Statistics Denmark is: The Member States of the European Union (including the former Member State of the United Kingdom); Andorra; Iceland; Liechtenstein; Monaco; Norway; San Marino; Switzerland; Vatican State; Canada; The United States of America; Australia; and New Zealand. “Non-Western” background covers “immigrants” and “descendants.” An “immigrant” is defined as a person born abroad, whose parents were foreign citizens or born abroad. A “descendant” is defined as a person born in Denmark, whose parents were immigrants or descendants with foreign citizenship. The above definitions do not apply to an individual categorised as being of “Danish origin” however this designation is only applied if at least one parent was born in Denmark and has Danish citizenship. See Statistics Denmark, “Indvandrer i Danmark 2021” available at: <https://www.dst.dk/Site/Dst/Udgivelser/GetPubFile.aspx?id=34714&sid=indv2021> Being born in Denmark does not automatically lead to Danish citizenship.

⁵ Section 168a(1) of the CHA (as amended).

⁶ Section 61a(5) of the CHA (as amended) provided for a transitional period in the years 2018 to 2020. During this time, “tough ghettos” were defined as areas which have fulfilled the criteria for being a “ghetto” for the previous five years. This transition provision became permanent under an expansion of the law in 2021.

⁷ Further details of the case can be found on the Open Society Justice Initiative’s casepage, which is available at: <https://www.justiceinitiative.org/litigation/tenants-of-mjolnerparken-v-danish-ministry-of-transport-and-housing>

In September 2024, the CJEU’s Grand Chamber of 15 judges and the Advocate General gathered to hear a preliminary reference in respect of this and a joined case, known collectively as Case C-417/23. The Advocate General issued her opinion on 13 February 2025 (“AG Opinion”) and the Grand Chamber issued its judgment on 18 December 2025 (Judgment of the Court (Grand Chamber) of 18 December 2025, Case C-417/23 *Slagelse Almennyttige Boligselskab, Afdeling Schackenborgvænge, XM, ZQ, FZ, DL, WS, JI, PB, VT, YB, TJ, RK v MV, EH, LI, AQ, LO, Social-, Bolig- og Ældreministeriet*) (“Judgment”).

⁸ Judgment of the Court (First Chamber) of 6 April 2017, Case C-668/15 *Jyske Finans A/S v Ligebehandlingsnævnet, acting on behalf of Ismar Huskic* (“*Jyske Finans*”). Quotes from the then Minister of Housing on the national radio programme P1 Orientering on 27 May 2020 (following the filing of the case at Denmark’s Eastern High Court, in

As such, the residents successfully requested Denmark's Eastern High Court to make a preliminary reference to the CJEU on the correct interpretation of the Directive, with the Court ultimately asking whether the Directive covers "non-Western" background and whether the legislation gives rise to direct or indirect discrimination.

The purpose and protections of the Race Equality Directive

It is perhaps worth reminding ourselves that racial discrimination law as we know it is rooted in human rights frameworks that emerged in the aftermath of the atrocities of World War II.⁹ The overarching goal is often encapsulated by the phrase "Never Again," which is used both by United Nations and European bodies.

The EU has been explicit in drawing from these frameworks, noting, for example, in the aftermath of the murder of George Floyd that it is committed to the fight against racism and recalling that all human rights are universal, indivisible and interrelated.¹⁰ This history is also noted in the Preamble to the Directive, which refers to those frameworks.¹¹ Significantly, the Preamble also acknowledges that race is a social construct, by making it clear that the use of the term "race" does not imply the acceptance of theories that attempt to determine the existence of separate human races.¹² While race is a social construct, the far-reaching and devastating consequences of racial discrimination are, of course, very real. The Preamble reflects this too, both by setting out the wide scope of the Directive (which reaches beyond employment into education and goods and services, including housing) and by concluding that

response to a question about the difference between a vulnerable housing estate such as Byparken/Skovparken in Svendborg, which has the same socio-economic criteria, but not the same number of "non-Western" immigrants and descendants – and which therefore is not required to reduce the number of homes – and Mjølnerparken) included: "Yes, and that is because this legislation is made to combat parallel societies. We don't want a society like the one in New York where people with Chinese background live in one neighbourhood and people with Afro-American background live in another neighbourhood. We want that people meet each other across **ethnic** divides (...)" and "They reinforce each other; those problems with crime, unemployment, **ethnic norms** that are different from the mainstream in Denmark." (emphasis added)

⁹ 1948's Universal Declaration of Human Rights was followed by the European Convention on Human Rights in 1950, and in 1965 the landmark International Convention on the Elimination of All Forms of Racial Discrimination bound United Nations member states to eliminate racial discrimination and promote equality. All of these instruments contain protections against racial discrimination. Country-specific legislation was then introduced in particular states such as the United Kingdom and finally followed by landmark, comprehensive directives harmonising the law throughout the European Union, particularly in the form of the Directive.

¹⁰ EU Statement on Racism and Discrimination, Meeting of the Committee of Ministers, 8 July 2020, available at: https://www.eeas.europa.eu/eeas/eu-statement-racism-and-discrimination_en

¹¹ Directive, recital 3.

¹² Recital 6 of the Directive states that the "European Union rejects theories which attempt to determine the existence of separate human races. The use of the term 'racial origin' in this Directive does not imply an acceptance of such theories." In 2022, having regard to the Directive and the work of the European Commission against Racism and Intolerance, the European Parliament also acknowledged that the concept of 'race' is a social construction and declared that the use of the concept of 'racialisation' has the potential to aid understanding of the processes underpinning racism and racial discrimination. It stated that racialised groups are ascribed "certain characteristics and attributes that are presented as being innate to all members of each group concerned, based on characteristics, such as skin colour, ethnic or national origin or religion, or perceived membership of a specific group" (European Parliament, Resolution on racial justice, non-discrimination and anti-racism in the EU (2022/2005(INI)), 10 November 2022, Recital B ("Resolution").

the objective of the Directive is to “ensure a common high level of protection against discrimination in all the Member States.”¹³

For those with lived experience of racial discrimination and racist violence, facing the daily challenge of simply pursuing their lives undisturbed, there is no need to explain that this high level of protection is at least as important now as when it was first introduced. The EU has acknowledged that, despite protections against racial discrimination having existed for six decades, racial discrimination has increased in recent years.¹⁴ For example, the EU Fundamental Rights Agency found in its most recent report on *Being Black in the EU* that 45% of people of African descent reported experiencing racial discrimination, a significant increase from 39% in 2016.¹⁵ Surges in racism are evident across the region, including beyond the EU.¹⁶

Over the years, the CJEU has elaborated the meaning of the “high level of protection” guaranteed by the Directive, including through its two key prohibitions of direct discrimination and indirect discrimination.¹⁷ The former arises where someone is subjected to *less favourable treatment* than another in a *comparable situation*, on *grounds of racial or ethnic origin*. Indirect discrimination, on the other hand, concerns an apparently neutral provision, criterion or practice that would put *persons of a [particular] racial or ethnic origin* at a *particular disadvantage* compared with others, unless *objectively justified*. The first “particular” in respect of indirect discrimination is in square brackets here because it does not appear in the English language version of the Directive. It does, however, feature in certain other languages, including Danish, and has had an influence on the understanding of the CJEU’s caselaw. The following whistle-stop tour through the CJEU’s key cases on the Directive helps explain the meaning of fundamental concepts contained within these protections, as well as the background to the ‘Ghetto Package’ ruling.

The early case of *Feryn* concerned public statements by an employer that he wished to recruit a fitter but that “Allochtonen” (which has been translated in some language versions of the decision to “immigrants” but is commonly referenced as foreigners and comes from the concept of emerging from another soil) could not be recruited.¹⁸ The CJEU held that an

¹³ Directive, Article 3(1)(h) and recital 28.

¹⁴ International Day for the Elimination of Racial Discrimination: Statement by the High Representative on behalf of the European Union, 20 March 2026, available at: <https://www.consilium.europa.eu/en/press/press-releases/2026/03/20/international-day-for-the-elimination-of-racial-discrimination-statement-by-the-high-representative-on-behalf-of-the-european-union/>

¹⁵ European Fundamental Rights Agency, *Being Black in the EU: Experiences of People of African Descent*, 2023, page 14.

¹⁶ See, for example, European Commission against Racism and Intolerance, *Annual Report on ECRI’s Activities covering the period from 1 January to 31 December 2025* (2026); Glasgow Times, “Scotland hate crime charges hit record high as cases surge 25 per cent,” accessible at: <https://www.glasgowtimes.co.uk/news/scottish-news/26242761.scotland-hate-crime-charges-hit-record-high-cases-surge-25-per-cent/>; Reuters, “Belfast’s minority groups living in fear after ‘racist thuggery,’” 11 June 2026, accessible at: <https://www.reuters.com/world/uk/belfasts-minority-groups-living-fear-after-racist-thuggery-2026-06-11/>; European Union Agency for Fundamental Rights, *Being Muslim in the EU – Experiences of Muslims*, 25 October 2024.

¹⁷ Articles 2(2)(a) and 2(2)(b) of the Directive.

¹⁸ Judgment of the Court (Second Chamber) of 10 July 2008, Case C-54/07 *Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV* (“Feryn”), para. 41.

employer stating publicly that it will not recruit employees of a certain ethnic or racial origin constitutes direct discrimination, and that this was not dependent on an identifiable victim.¹⁹

In *CHEZ*, the practice at issue was an energy company's installation of electricity meters at a higher height in a district in Bulgaria mainly inhabited by persons of Roma origin, as compared with other areas.²⁰ The CJEU identified two grounds of less favourable treatment/particular disadvantage: the difficulty or impossibility of consumers to check the meters to monitor their consumption of electricity; and the offensive and stigmatising nature of the practice.²¹ The latter arose from the suggestion that those of Roma origin were, as a whole, considered to be potential perpetrators of unlawful conduct such as meter-tampering.²² This type of stereotype was also found to be relevant to the assessment of a presumption of direct discrimination, shifting the burden of proof to the respondent, as well as in the strict interpretation of objective justification in the context of indirect discrimination.²³ In particular, the latter required the courts to consider whether the residents' legitimate interests in having access to electricity in conditions which do not have an offensive or stigmatising effect had been unduly prejudiced.²⁴

On "ethnic origin," the CJEU held in *CHEZ* that, given the Directive's purpose and the rights which it is upholding, its protection benefits "all" persons who suffer less favourable treatment or particular disadvantage on protected grounds.²⁵ This is despite differences in some language versions of the Directive which refer to "his" ethnic origin in the context of direct discrimination.²⁶ As such, the Grand Chamber found that the protection extended to Ms. Nikolova, who had brought the case, even though she herself was not Roma.²⁷ This is sometimes described as 'discrimination by association' but in fact is not a separate category at all: it simply means that discrimination arises where ethnic origin is the factor on which the treatment is based, regardless of the identity of any victim. The CJEU therefore concluded that a measure such as the electricity company's practice constitutes direct discrimination if the domestic court determined that it was introduced and/or maintained for reasons relating to the ethnic origin common to most of the inhabitants of the district concerned.²⁸

The opinion of the CJEU in *CHEZ* was reiterated and further elaborated in the judgment of *Jyske Finans*.²⁹ This case concerned a Danish credit institution's practice of asking for

¹⁹ The CJEU held that it would be for the respondent to rebut the presumption of discrimination arising in these circumstances and that it could do so by showing that the actual practice of recruitment did not correspond to the public statements. *Feryn*, para. 34.

²⁰ Judgment of the Court (Grand Chamber) of 16 July 2015, Case C-83/14 *CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia* ("*CHEZ*").

²¹ *CHEZ*, paras. 87, 108 and 125.

²² *CHEZ*, para. 84.

²³ See paras. 82 and 117 of *CHEZ*. If the referring court found that a presumption of direct discrimination had arisen, the respondent would have the task of rebutting it by proving that the establishment and retention of the practice were not in any way founded on the fact that the districts were inhabited mainly by Bulgarian nationals of Roma origin, but exclusively on objective factors unrelated to any discrimination on the grounds of racial or ethnic origin (*CHEZ*, para. 85).

²⁴ See *CHEZ*, paras. 124 and 125.

²⁵ *CHEZ*, paras. 56 to 60.

²⁶ See para. 53 of *CHEZ*.

²⁷ See *CHEZ*, paras. 56 and 59. An analogy was drawn with Case 303/06 *Coleman v Attridge Law* in the context of disability discrimination under the Equal Treatment Directive, where the CJEU also accepted that discrimination against an individual on the ground of a protected characteristic need not relate directly to a characteristic held by a victim (Judgment of the Court (Grand Chamber) of 17 July 2008).

²⁸ *CHEZ*, para. 129(3).

²⁹ Judgment of the Court (First Chamber) of 6 April 2017, Case C-668/15 *Jyske Finans A/S v Ligebehandlingsnævnet, acting on behalf of Ismar Huskic* ("*Jyske Finans*").

additional proof of identity in respect of loan applicants born outside of the EU or European Free Trade Association. The CJEU held that the country of birth criterion does not, *per se*, provide a direct and inextricable link to ethnic origin.³⁰ It noted that ethnic origin cannot be determined solely on the basis of one criterion relating to societal groups (such as language, religion, tradition or cultural backgrounds) but should instead be based on a range of elements, objective and subjective.³¹ Furthermore, it cannot be presumed that each state has only one ethnic origin.³² The CJEU therefore found that there was no direct discrimination arising from the credit institution's practice.³³ Similarly, in relation to indirect discrimination, the CJEU held that it is necessary to carry out a specific concrete comparison of the placing of persons of a particular ethnic origin at a disadvantage. Accordingly, the argument that a person's country of birth was generally more likely to affect persons of a given ethnicity than other persons was insufficient.³⁴

The parties' arguments in the 'Ghetto Package' case

Enter Denmark's 'Ghetto Package' of laws, which puts all of these principles to test. The residents, supported by third party-intervenors in the form of the national equality and human rights body, the Danish Institute for Human Rights, and two United Nations Special Rapporteurs – as well as written submissions from the Kingdom of Spain – argued that both questions accepted by the CJEU should be answered in the affirmative. In other words, that "non-Western" background is covered by "ethnic origin" and that the legislative scheme gives rise to discrimination.

In particular, the residents' position is that direct discrimination arises because there is *less favourable treatment* in affected areas:

- in the form of the loss of family homes and stigmatisation (both because of the derogatory nature of the terminology in the legislation itself, as well as stereotypical and derogatory statements made in the context of the laws about those who live in "ghettos" and those of "non-Western" background);
- *as compared with* areas which have met the criteria of "vulnerable housing estates" for five years (which have the same socio-economic criteria as "tough ghettos" apart from that the majority of residents are not of "non-Western" background);
- *on grounds of racial or ethnic origin*, as there is a direct and inextricable link between "non-Western" background and racial or ethnic origin because of its definition, characterisation and usage:

³⁰ *Jyske Finans*, para. 20.

³¹ *Jyske Finans*, para. 19.

³² *Jyske Finans*, para. 21.

³³ See para. 25 of *Jyske Finans*.

³⁴ *Jyske Finans*, para. 33. The CJEU came to similar conclusions in Judgment of the Court (First Chamber) of 15 November 2018, Case C-457/17 *Heiko Jonny Maniero v Studienstiftung des deutschen Volkes eV* and Judgment of the Court (Fifth Chamber) of 10 June 2021, Case C-94/20 *Land Oberösterreich v KV (Aide au logement)*. The former concerned an Italian individual who brought a claim against a German institution in relation to the restriction of scholarships for legal studies abroad to candidates who had successfully completed a law exam in Germany. The CJEU held that this did not constitute indirect discrimination on grounds of racial or ethnic origin because there was nothing to show that any given ethnic group would be affected as compared with others. In the second case, it was held (for the same reason), that a requirement that all third-party nationals have language skills in order to access housing assistance does not fall under scope of the Directive.

- the definition is not geographically coherent because the grouping of Western countries contains Australia and New Zealand, and all of the countries included in the grouping have majority white populations;
- the definition of “non-Western” background includes “descendants,” (with its own expansive definition), with the effect that the categorisation can last for multiple generations, demonstrating an emphasis on inherited characteristics and extraction rather than neutral factors such as place of birth;
- there have been numerous and repeated explicit references to “ethnic origin” in the context of the legislation, and “non-Western” background is used interchangeably with “ethnic origin;”
- those of “non-Western” background are characterised as a homogenous ethnic group with common ascribed features including in relation to ethnic factors such as language, tradition, religious values and other ‘norms,’ with the same problems and traits/tendencies to engage in negative lifestyles. The statements further disclose that stereotypically “non-Western” people or lifestyles are considered to be different from the (white, Christian) majority and not truly Danish; and
- in the statistical analysis preceding the introduction of the legislation sub-groups of Turkish, Somali and Lebanese were explicitly referred to as significant “ethnic” groups within “non-Western” background.

The residents argue, in the alternative, that indirect discrimination arises because they have presented statistics showing the *majority groupings* in Mjølnerparken are “non-Western immigrants and descendants” and/or sub-groups of Somali and Lebanese and that:

- *these groups are at a particular disadvantage (in the form of the loss of family homes and stigmatisation) as compared with persons of other ethnic groups; and*
- *there is no objective justification: the removal of those of “non-Western” background from residential areas is not a legitimate aim nor integration; and reducing common family housing is neither necessary nor appropriate.*

The main counter-arguments from the Ministry (as represented by the Kingdom of Denmark before the CJEU) are that there is no direct discrimination because there is no direct and inextricable link between non-western background and ethnic origin:

- *the “non-Western” category is based solely on country of birth and citizenship of the individuals and their parents;³⁵*
- *this is similar to the sole criterion in Jyske Finans;*
- *88% of the world’s population is covered by “non-Western” background with no ethnic commonalities; and*
- *the scheme was not intended to select persons based on their ethnic origin.*

In the alternative, the State argues that there is objective justification in the event that indirect discrimination arises (which it denies), on the basis of integration.

The Judgment

The Grand Chamber’s decision clarifies principles of EU law and the correct interpretation of the Directive in alignment with the residents’ arguments.³⁶ These include findings that (subject to the determination of the domestic courts):

³⁵ This is disputed by the residents as factually wrong.

³⁶ While, as it has also stated in previous cases, the CJEU found that it cannot declare provisions of national law incompatible with EU law, it sought to provide as much guidance as possible to the Danish courts: see Judgment, para. 95.

- bearing in mind that the loss of one's home is a most extreme form of interference with the right to respect for the home and that the legislation gives rise to an increased risk of loss of homes, both this and stigmatisation can constitute less favourable treatment/particular disadvantage;³⁷
- the comparator is relevant "vulnerable housing estates" – areas that have had the same socio-economic factors as "ghettos" for five years but without a majority of "non-Western" residents;³⁸ and
- "non-Western" background is not equivalent to the "country of birth" criterion in *Jyske Finans* and can be covered by "ethnic origin" for the purposes of the Directive.³⁹

As in *CHEZ*, the CJEU concluded that where a presumption of direct discrimination arises, the only way that Denmark would be able to rebut this would be to show that the adoption of the law was not *in any way* based on the ethnic origins of the majority of the residents.⁴⁰ (emphasis added)

In reaching these conclusions, the CJEU evoked the human rights roots of the Directive by quoting from two landmark racial justice cases from the European Court of Human Rights.⁴¹ In particular, it fundamentally reaffirmed that racial discrimination is a particularly invidious kind of discrimination with dangerous consequences and that authorities must be particularly vigilant and use all available means to combat racism.⁴² The findings in the Judgment demonstrate that the Directive's protections must be interpreted broadly while all limitations must be interpreted strictly. It thus sets out in detail the obligations of both the Danish courts to apply the Directive properly to the 'Ghetto Package' but also for courts throughout the EU to tackle the scourge of racial discrimination, however it continues to shift and evolve. Momentously, the CJEU completely dismissed confusions that arose following the *Jyske Finans* judgment and during the course of the preliminary reference procedure, including any attempts to water down the high level of protection of the Directive on the basis that integration is a special situation requiring different rules. The following takeaways stand out.

1. The Directive covers affordable housing

Questions were raised during the procedure about the scope of the Directive. "Common housing" is a form of independent, not-for-profit housing built on Danish principles of democracy and affordable housing for all.⁴³ At a time when affordable housing is in severe crisis in many member states, the CJEU has clarified that the Directive covers common family housing, as (subject to the verification of the domestic courts) the residents pay rent for a

³⁷ Judgment, paras. 121, 122, 123, 126 and 127.

³⁸ Para. 113 of the Judgment: "In the present case, tenants of common family housing residing in transformation areas appear, so far as their lease is concerned, to be in a situation comparable to that of tenants benefiting from a similar lease in vulnerable residential areas which have, during the last five years, fulfilled at least two of the socioeconomic criteria, but in which the proportion of 'immigrants from non-Western countries and their descendants' has not exceeded 50%."

³⁹ Judgment, para. 100 and 110.

⁴⁰ Judgment, para 128.

⁴¹ These are ECtHR (Grand Chamber), 13 November 2007, *D.H. and Others v. the Czech Republic*, which found the education of Roma children in "special schools" to be unlawful, and ECtHR, 20 February 2024, *Wa Baile v. Switzerland*: the first judgment of the European Court of Human Rights to find both substantive and procedural violations in respect of ethnic profiling.

⁴² Judgment, para. 79.

⁴³ "Common housing" has been mistranslated in the English version of the Judgment as "public housing."

service.⁴⁴ In these circumstances, it is irrelevant that the lessors are not-for-profit organisations and whether the amount that residents pay is below market value.⁴⁵

Common housing is not public housing. However, more broadly, it is worth noting the Advocate General's opinion that although public housing in general is outside the scope of EU law, where a state has chosen to provide it, it must do so in a non-discriminatory way under the Directive.⁴⁶

2. Political rhetoric can give rise to discrimination

The CJEU made it clear in its Judgment that stigmatisation can constitute less favourable treatment or particular disadvantage and that this can arise from political rhetoric.

Specifically, it stated that, in assessing whether stigmatisation has arisen, the Danish courts can look at both:

- the terminology used for the affected neighbourhoods and whether it is, at national level, offensive and stigmatising;⁴⁷ and
- statements contained in various legislative preparatory documents, to see if they suggest that the national legislation is based on stereotypes or prejudices against “immigrants from non-Western countries and their descendants,” or contributes to perpetuating them.⁴⁸ In this regard, the CJEU referred to a paragraph within the Advocate General's opinion, which includes the following statement:

*“[b]y generalising those characteristics perceived as negative and unacceptable in Denmark and attributing them to all immigrants and their descendants from non-Western countries, the [law] seems not only to be based on prejudice, but it also contributes to the perpetuation of that stereotyping and stigmatisation.”*⁴⁹

3. Country of birth and nationality can be relevant to “ethnic origin”

The CJEU emphasised that, when considering an undefined concept such as “ethnic origin,” it is necessary to take into account the Directive's objective of ensuring a common high level of protection and the context within which the concept occurs. This includes giving weight to the human rights considerations noted above, including the obligation to exercise special vigilance against racial discrimination.⁵⁰

The CJEU then proceeded to effectively distinguish the present case from *Jyske Finans*, on the basis that the “non-Western” classification is not “based solely on the criterion of the country of birth of a given person and his or her parents, or on the sole criterion of the nationality of the latter, but on a complex combination of those criteria” and a consideration of the Western/non-Western country groupings.⁵¹

The Judgment emphasises that while, for example, country of birth or nationality alone are of themselves insufficient, they can be taken into account with other factors for the purpose of

⁴⁴ Judgment, para. 58.

⁴⁵ Judgment, para. 59.

⁴⁶ AG Opinion, para. 58.

⁴⁷ Judgment, para. 126.

⁴⁸ Judgment, para. 127.

⁴⁹ AG Opinion, para. 152.

⁵⁰ See Judgment, paras. 75 to 80.

⁵¹ Judgment, para. 100.

assessing whether there is direct discrimination on the basis of “ethnic origin” within the meaning of Directive.⁵²

4. It is not necessary that only one ethnic group is affected

With regard to direct discrimination, the CJEU ruled that that “the mere fact that a general criterion such as that of ‘immigrants from non-Western countries and their descendants’ may be considered to refer to several ethnic origins is not sufficient, in itself, to preclude such a general criterion being based on the ethnic origin of the persons concerned.”⁵³

This is because it “would be contrary to the effectiveness of Directive 2000/43 if the objective of combating discrimination based on racial or ethnic origin, as provided for in Article 1 thereof, did not apply where several ethnic groups are subject to the same discrimination.”⁵⁴ In other words, it would make no sense for the discrimination of one ethnic group to be prohibited but the discrimination of two or more to be lawful. In coming to these findings, the Grand Chamber also referenced *Feryn*, noting that the CJEU did not rule out the possibility that a broad concept such as ‘*allochtones*,’ referring in essence to all foreign nationals, may relate to racial or ethnic origin within the meaning of the Directive.⁵⁵

Similarly, the CJEU held in respect of indirect discrimination that it is not necessary that only people of a single particular ethnic origin are put at a particular disadvantage, even though the words “particular ethnic origin” appear in the Danish language version.⁵⁶

In doing so, the CJEU also ironed out limiting misunderstandings that arose following the *Jyske Finans* judgment.

Finally, as in *CHEZ*, the CJEU found that it is irrelevant whether the less favourable treatment or particular disadvantage extends beyond the concerned racial or ethnic group(s).⁵⁷ This means that it does not matter whether victims include individuals such as Ms. Nikolova in the *CHEZ* case or Ms. Majken Felle in the *Mølnerparken* case, an individual classed as an “ethnic Dane” who lost her home along with her “non-Western” neighbours.⁵⁸

5. Direct discrimination arises whenever ethnic origin determines differential treatment

The CJEU reiterated from *CHEZ* that:

*“it is sufficient, in order for there to be direct discrimination...that a consideration relating to ethnic origin determined the decision to introduce a difference in treatment.”*⁵⁹

It further explained that the surrounding context can demonstrate this. In this case, it held that the preparatory works for the ‘Ghetto Package’ are likely to contain relevant information as to whether the law establishes a difference on the basis of such a consideration.⁶⁰ The Grand

⁵² Judgment, para. 86.

⁵³ Judgment, para. 101.

⁵⁴ Judgment, para. 102.

⁵⁵ Judgment, para. 103.

⁵⁶ See Judgment, paras. 137 to 140 regarding language version differences.

⁵⁷ Judgment, para. 125.

⁵⁸ See the Open Society Justice Initiative, *Displacement by Design: Resisting Denmark’s Race-based Housing Laws*, 2024, available at: <https://www.justiceinitiative.org/publications/displacement-by-design-resisting-denmark-s-race-based-housing-laws> for more details of the stories of Majken Felle and other residents.

⁵⁹ Judgment, para. 106.

⁶⁰ Judgment, para. 105.

Chamber highlighted a number of relevant excerpts from this context which explicitly refer to ethnic origin, including:

*“A high concentration of citizens of a different ethnic origin is therefore an indication that attention should be paid to the area in question.”*⁶¹

6. Integration is not a get-out-of-jail free card

A couple of outlandish suggestions arose during the course of the procedure that integration is such an important issue that any discrimination on this basis is almost automatically justifiable – or perhaps doesn’t fall within the scope of the Directive at all. These have been given short shrift in the Judgment.

Firstly, as set out above, the CJEU is clear that the legislative scheme does fall under the scope of the Directive. Secondly, intention is not of any relevance to direct discrimination, which cannot be justified in any circumstance.⁶² It should therefore not be a surprise that the CJEU firmly rejected a suggestion that direct discrimination should not be held to arise in the context of integration laws which also impact individuals who are not part of the targeted ethnic group. In particular, it was argued that there could be no direct discrimination where the overall goal was integration and individual leases were not terminated on the grounds of each particular resident’s ethnic origin. As touched upon above, this was not accepted by the CJEU, which emphasised the findings in *CHEZ* relating to individuals such as Ms. Nikolova and Ms. Felle. It agreed with the residents that none of them would have been put at risk of losing their homes if they had lived in a “vulnerable housing estate,” which has comparable socio-economic factors with the exception of having a majority of “non-Western” residents.⁶³ The CJEU ultimately concluded that the legislative scheme constitutes direct discrimination insofar as it is established that the adoption of the law is based on ethnic origin and that the effect is that all of the residents in the area are treated less favourably than the inhabitants of comparable areas but in which the proportion of those of “non-Western” background does not exceed 50%.⁶⁴

Thirdly, although intention *is* of relevance to the assessment of objective justification:

- the Advocate General pointed out that “the road to hell is paved with good intentions,”⁶⁵ while
- the CJEU spelled out that, while integration may be a legitimate aim, the courts must apply a critical lens whenever it is offered up as a justification.

The CJEU held that although integration of third-country nationals is a fundamental objective of the EU and that member states are afforded broad discretion in this regard, the ‘Ghetto Package’ cannot be justified by that objective. This is because it also applies to persons who are nationals of a member state, including the Kingdom of Denmark.⁶⁶ All of the residents in the Mjølnerparken case are Danish citizens.

It further noted that although member states also enjoy broad discretion in relation to housing policy, the State could not rely upon:

- its arguments relating to the financing of public housing, as the scheme was not aimed at resolving any problems in this context but rather social cohesion; nor

⁶¹ Judgment, paras. 18 and 105.

⁶² Unless limited exceptions such as genuine occupational requirement, which are not of relevance here, apply.

⁶³ Judgment, para. 120.

⁶⁴ Judgment, para. 17.

⁶⁵ AG Opinion, para. 146.

⁶⁶ Judgment, para. 151.

- an objective of promoting access to housing for certain categories of persons, as the development plans could lead to a loss of housing.⁶⁷

The CJEU reiterated that objective justification must be construed strictly and that, even though the Danish legislation may in principle fall within an area of broad discretion, member states cannot discriminate in such areas.⁶⁸ The Grand Chamber underscored that the Directive states that racial discrimination can *undermine* the achievement of EU objectives, including social cohesion.⁶⁹

The CJEU then set out a very lengthy step-by-step process for courts to follow in assessing whether a purported integration measure can be objectively justified.⁷⁰ The following are simply a few of the highlights.

The Grand Chamber ruled that the respondent must demonstrate that the measure is actually capable of attaining the stated objective.⁷¹ In this regard, the CJEU referred to two paragraphs of the AG Opinion, which identified a need for the respondent to explain what in particular it means by integration. Put shortly, these paragraphs highlight that Denmark's justification would need to include a demonstration of how losing the roof over one's head helps those labelled "non-Western" get a job, stay out of crime and learn Danish (to the extent any of these issues even apply).⁷²

The CJEU also found that the measure must genuinely reflect a concern to attain the stated objective and that it must be applied in a consistent and systematic manner.⁷³ Here, the CJEU noted that there had been no reduction of common housing in "vulnerable housing estates," characterised by comparable socio-economic conditions.⁷⁴

Finally, the Grand Chamber stated again that the loss of a home is a most extreme form of interference with rights that places the person concerned and his or her family in a particularly vulnerable position. It found that the State's discretion is lower in such circumstances.⁷⁵ Specifically, the domestic courts must include consideration of Article 7 of the EU Charter (the content of which is the same as Article 8 of the European Convention on Human Rights) in its assessment of whether a measure is appropriate and necessary. In the Danish case, this includes considering whether there were independent tribunal determinations of each eviction, taking into account factors such as rehousing (but only if suitable for the needs of those who are evicted) but also that families have resided lawfully in their homes and for many years.⁷⁶ The proportionality assessment also must include the fact that those concerned belong to an underprivileged social group and take into account their resulting needs.⁷⁷

⁶⁷ Judgment, paras. 153 to 155.

⁶⁸ Judgment, para. 156.

⁶⁹ Judgment, para. 157.

⁷⁰ Judgment, paras. 158 to 174.

⁷¹ Judgment, para. 160.

⁷² AG Opinion, paras. 167 and 168.

⁷³ Judgment, para. 161.

⁷⁴ Judgment, para. 162.

⁷⁵ Judgment, para. 170.

⁷⁶ Judgment, paras. 171 to 172 and 174.

⁷⁷ Judgment, para. 173.

Conclusions

As the cases now work their way through the domestic courts, the focus shifts back to Denmark. Having set out the obligations of those courts to keep pace with the insidious modern evolution of racial discrimination, and clarified any misunderstandings of EU law, the CJEU has provided the Danish courts with the tools to finally make the EU's promise of a common high level of protection a reality by reaching the same conclusion as the Advocate General. Namely, that "non-Western" background is covered by the protected grounds of the Directive and that the 'Ghetto Package' is directly racially discriminatory. These conclusions are also in line with a plethora of condemning findings from international treaty monitoring bodies.⁷⁸

More widely, the 'Ghetto Package' is not only reflective of trends throughout the region but, dangerously, has also served as inspiration for other countries who have teased copycat plans. As politicians and others across Europe become more emboldened in their targeting and dehumanising of racialised and marginalised groups, the law is clear on the duty of states and institutions to weed out racism and protect all citizens from having their lives blighted by it. Following the Judgment, the courts are now fully equipped to tackle modern manifestations – however they continue to shift and seek to disguise themselves. This includes guarding against proxy wording for race/ethnic origin, toxic political rhetoric problematising and stereotyping racial and ethnic minorities, and the use of integration as an excuse to discriminate or treat racialised groups as second-class citizens.

As Europe sits at the crossroads of this current moment, in making the right decision the Danish courts will also help move the region back in the right direction – away from the very thinking that gave rise to the Directive in the first place – and, most importantly, ensure that nobody has to suffer again as the residents of Mjølnerparken have:

"My dad is a doctor, and my mother is in biotech...No matter what I achieve, I will never be perceived as part of society, but I will remain "non-Western." ...It is devastating to be stigmatised and discriminated in this way in a country which I believed had modern values and freedom of education, in a country where I was born and raised."

Former resident of Mjølnerparken, Iman Aljanaby

⁷⁸ See Committee on Economic, Social and Cultural Rights, Concluding observations on sixth periodic report of Denmark, UN Doc. E/C.12/DNK/CO/6, 12 November 2019 ("CESCR"), paras. 51 and 52, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW7I1MtEjVgFZjOTx%2Bv7mTUvkKWW%2FrjBRu8HNz0Bl%2Bzb87gtYlimVL5%2BjFD6f1L76xMZCYMwTzITb2Jpme6cOwejXBwB%2Bnoj%2FiM2aq3gz1%2BR9>; Secretariat of the Framework Convention for the Protection of National Minorities, Fifth Opinion on Denmark, Advisory Committee on the Framework Convention for the Protection of National Minorities, ACFC/OP/V(2019)003, 29 January 2020, paras. 14 and 44, available at: <https://rm.coe.int/5th-op-denmark-en/1680996202>; Committee on the Elimination of Racial Discrimination, Concluding observations on the combined twenty-second to twenty-fourth periodic reports of Denmark, UN Doc. CERD/C/DNK/CO/22-24, 1 February 2022, para. 11, available at: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhstNvdqlswU%2fbIKYXnDigeHpVR7vhfmtq2zJgCh0Qh6pZb%2f2pJ2OvOexajQHSx0KvS9jWnPmXM0m4sGBFnnGcDxjRhQbEqWpbbrjdB5%2bl41oBxoBmprjgm11GG01NjiXPw%3d%3d>; and European Commission against Racism and Intolerance, ECRI Report on Denmark (sixth monitoring cycle), 9 June 2022, page 6, available at: <https://rm.coe.int/6th-ecri-report-on-denmark-/1680a6d5e4>