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Advocate General's Opinion in Case C-417/23 | Slagelse Almennyttige Boligselskab, Afdeling Schackenborgvænge

AG Ćapeta: The Danish legislation on public housing in transformation areas constitutes direct discrimination based on an ethnic criterion

The Danish legislation on public housing distinguishes between several types of neighbourhoods with unfavourable socio-economic situations in terms of their levels of unemployment, crime, education, and income. The areas in which, in addition to an unfavourable socio-economic situation, the proportion of immigrants from non-Western countries and their descendants has exceeded 50% for the last five years have then been categorised as 'transformation areas' (formerly known as 'hard ghettos'). The law requires the public housing associations owning such areas to draw up a development plan setting out how the proportion of public housing units in the transformation areas is to be reduced to 40% by 1 January 2030. This may include the sale of properties to private developers, demolition, or conversion of family housing into housing for young people. In such cases, the leases of the previous tenants must be terminated.

Tenants who found themselves in such a situation in two transformation areas — the Schackenborgvænge estate in Slagelse, and Mjølnerparken estate in Copenhagen — are challenging the legality of development plans adopted on the basis of the Danish legislation on public housing.

The Eastern Regional Court, Denmark harbours doubts as to whether the Danish legislation is compatible with the Race or Ethnic origin Directive.¹

In today's Opinion, Advocate General Tamara Ćapeta finds that the division between 'Western' and 'non-Western' immigrants and their descendants is based on ethnic origin. She considers that, although 'non-Westerners' are an ethnically diverse group, what unites that group is not a commonality of factors that form 'ethnicity' within that group, but rather the perception by the Danish legislature that this group does not possess the characteristics of the other group, the 'Westerners'.

The Advocate General then recalls that direct discrimination occurs when adverse treatment is based directly on ethnic origin. Therefore, even though tenants whose leases were terminated were not selected on the basis of their non-Western origin, they nevertheless suffer direct discrimination on the basis of the ethnic criterion.

The first reason to consider that **direct discrimination has occurred, the Advocate General explains**, is that **the legislation puts those tenants in a precarious position in relation to security of their right to a home, thus resulting in their less favourable treatment in comparison to tenants of other neighbourhoods in a comparable situation, in which the majority of the population is of 'Western' origin.**

Secondly, **the ethnic criterion used by Danish legislation stigmatises the ethnic group** whose structural disadvantage in their ability to integrate into Danish society was recognised, **thus curtailing rather than enhancing their chances to integrate into that society.**

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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¹ [Council Directive 2000/43](#) of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.