

Discrimination on grounds of racial or ethnic origin

The Danish 'ghetto law' case



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Case C-417/23, Slagelse Almennyttige Boligselskab v. MV, EH, LI, AQ and LO

Danish Law on Public Housing, para 61a:

- > vulnerable housing areas
- > parallel societies ('ghettos')
- > transformation areas ('hard ghettos')

Parallel societies / transformation areas

→ > 50% 'immigrants and their
descendants from non-Western countries'

Opinion by Advocate General *Ćapeta*,
delivered 13 February 2025



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Denmark has shifted significantly to the right over the past decade, with migration becoming a key issue in successive elections / Photo: REUTERS

ASYLUM | RWANDA | REJECTED ASYLUM SEEKERS | IRREGULAR MIGRATION | DETENTION CENTERS

Denmark: Unprecedented measures to signal to migrants they are not welcome

Source: infomigrants.net



Press Release
issued by the Registrar of the Court

ECHR 170 (2016)
24.05.2016

Danish legislation on family reunion is discriminatory

Today's Grand Chamber judgment¹ in the case of [Biao v. Denmark](#) (application no. 38590/10) the European Court of Human Rights held:

12 votes to five, that there had been a violation of Article 14 (prohibition of discrimination) read in conjunction with Article 8 (right to respect for private and family life) of the European Convention on Human Rights; and,

14 votes to three, that there was no need to examine the application separately under Article 8 of the European Convention taken alone.

The case concerned the complaint by a naturalised Danish citizen of Togolese origin, Ousmane Biao,

EUROPE • IMMIGRATION

Denmark's increasingly harsh immigration policies

In the run-up to November 1 elections, few candidates dare to propose any relaxation of what are among Europe's harshest conditions for asylum seekers and immigrants.

By Anne-Françoise Hivert (Malmö (Sweden) correspondent)
Published on October 27, 2022, at 3:17 pm (Paris) - ⌚ 5 min read - [Lire en français](#)

Source: lemonde.fr,
27/10/2022

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Art. 2(2) Racial Equality Directive (2000/43/EC)

- (a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation **on grounds of racial or ethnic origin**;
- (b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a **racial or ethnic origin** at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

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Does the Danish Law on Public Housing result in discrimination on grounds of racial or ethnic origin?

Previous case law

CJEU 10 July 2008, C-54/07 (*Feryn*)

'25. The fact that an employer declares publicly that it will not recruit employees of a certain ethnic or racial origin, something which is clearly likely to strongly dissuade certain candidates from submitting their candidature and, accordingly, to hinder their access to the labour market, constitutes direct discrimination [...] within the meaning of Directive 2000/43.'



Previous case law



CJEU (GC) 16 July 2015, C-83/14 (CHEZ Razpredelenie)

'46. [...] the concept of ethnicity [...] has its origin in the idea of societal groups marked in particular by common nationality, religious faith, language, cultural and traditional origins and backgrounds [...].

99-100. 'particular disadvantage' = that it is particularly persons of a given ethnic origin who are at a disadvantage because of the measure in question'

Previous case law

CJEU 6 April 2017, C-668/15 (Jyske Finans)

> CJEU: 'ethnic origin' cannot be determined on the basis of a single criterion

→ **no direct discrimination**

> 'country of birth criterion' does not put persons of a particular ethnic origin at a disadvantage

→ **no indirect discrimination**



**country of birth
outside EU/EFTA
= ethnic origin?**

Opinion of AG Ćapeta in the Danish 'ghetto law case' (C-417/23)

1. Wording, context and purpose of Directive 2000/43

- > 'ethnic origin' as a social construct
- > must be understood to also cover xenophobia

2. Previous case law

- > 'ethnicity' groups people together on the basis of multiple common characteristics, which may include nationality and country of birth (*CHEZ, Jyske Finans*)
- > Directive covers less favourable treatment of non-homogenous groups, if the distinction is based on ethnic origin (*Feryn*)



Opinion of AG Ćapeta in the Danish 'ghetto law case' (C-417/23)

3. Application to the case

- > Danish law defines 'non-western immigrants and their descendants' as different from 'westerners'.
'Western' immigrants and native Danes assumed to be homogenous group that will not have difficulties integrating into Denmark ('us' v. 'them')
- > criterion 'non-western immigrants and their descendants' includes nationality, place of birth and descent

Hence: 'western'/'non-western' distinction is based on ethnic origin



Direct discrimination?

AG Ćapeta:

> tenants in other areas not at risk of losing their homes → unequal treatment

> 'non-western immigrants and their descendants' perceived as social problem → stigmatisation

hence: direct discrimination

(alternatively: indirect discrimination)

Designation of
'transformation area'
(‘western’/‘non-western’)

Local development
plan



Strong points

- 'ethnicity' recognised as socially constructed
- substantive equality approach



Weaknesses

- accepts 'no single factor' approach to ethnicity
- failure to recognize intersectionality/poverty



Thank you for your attention!