

Discrimination on grounds of racial or ethnic origin: CJEU caselaw, with a focus on case C-417/23 (Danish “ghettos” case)

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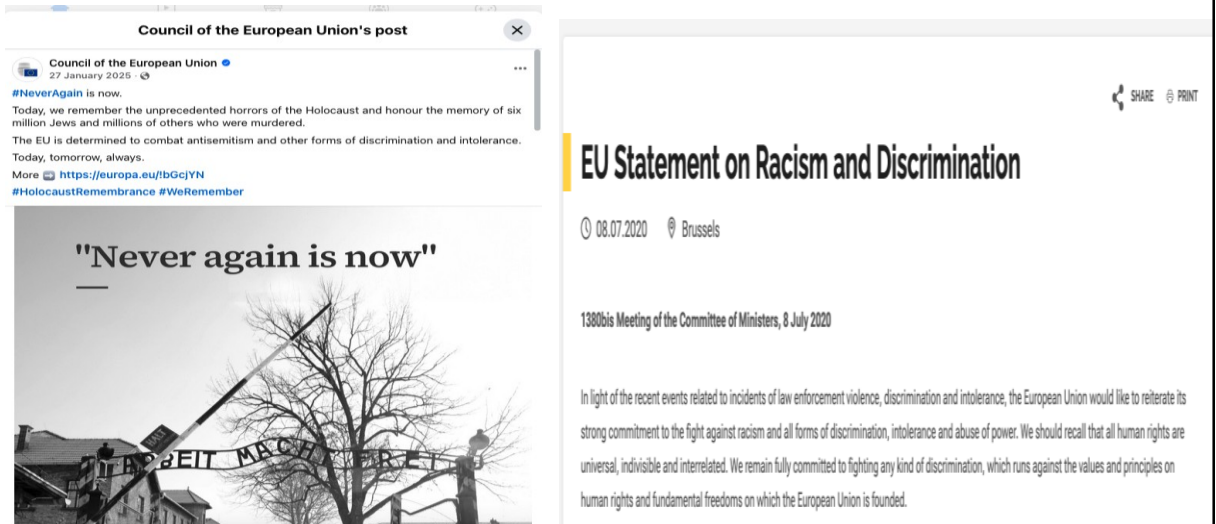
Overview

- Background to racial discrimination law
- Key principles developed in CJEU cases
- Denmark’s “Ghetto Package”
- Grand Chamber judgment of 18 December 2025
- Key takeaways: how should you apply this case in your own decisions?

This presentation contains simplified summaries of decisions and does not constitute legal advice.

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Background to racial discrimination law



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Background to racial discrimination law

Preamble to the Race Equality Directive (2000/43)

(2) In accordance with Article 6 of the Treaty on European Union, the European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States, and should respect fundamental rights as guaranteed by the European Convention for the protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, as general principles of Community Law.

(3) The right to equality before the law and protection against discrimination for all persons constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of all forms of Discrimination Against Women, the International Convention on the Elimination of all forms of Racial Discrimination and the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are signatories.

...

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Background to racial discrimination law

Preamble to the Race Equality Directive (2000/43)

(6) 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.

...

28) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the EC Treaty, the objective of this Directive, namely ensuring a common high level of protection against discrimination in all the Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the proposed action, be better achieved by the Community...

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Background: the current moment

The EU has the competence to combat discrimination on these grounds. It is doing so by putting forward legislation that aims to protect people against discrimination and carrying out a range of activities to promote inclusion and diversity.

How Europeans perceive discrimination

The latest Eurobarometer survey, published in 2023, shows that over half of respondents see discrimination as being widespread in their country. In addition, 21% of respondents say they felt discriminated against or experienced harassment in the past year.

Percentage of Europeans that believe discrimination is widespread in their country on the following grounds:

65% being Roma	61% skin colour	60% ethnic origin	57% being transgender
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Source: Eurobarometer survey on discrimination in the European Union, 2023

What the Commission is doing

The Commission acts on a range of fronts to tackle discrimination, namely by:

- supporting experts and organisations to combat discrimination on the ground

the institutions > Topics > Meetings > News and media > Documents and research >

Home > Press > Press releases

Council of the EU | Statements and remarks | 20 March 2024 14:00

International Day for the Elimination of Racial Discrimination: Statement by the High Representative on behalf of the European Union

Racial equality is not an aspiration reserved for some, but a right guaranteed for all. This simple principle was agreed by countries across the world when they adopted the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Yet six decades on, the promise remains unfulfilled.

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Key protections under the Directive

Direct discrimination

Article 2(2)(a) of the Directive provides that:

“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***.” (emphasis added)

Indirect discrimination

Article 2(2)(b) of the Directive states that indirect discrimination occurs where an apparently neutral provision, criterion or practice would:

“put ***persons of a [particular] 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.” (emphasis added).

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What do these concepts mean?

Less favourable treatment/particular disadvantage

Grounds of racial or ethnic origin/persons of a [particular] racial or ethnic origin

Objectively justified

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Case C-54/07 *Feryn*

Judgment of the Court (Second Chamber) of 10 July 2008, *Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV*

Facts

Public statements by an employer that:

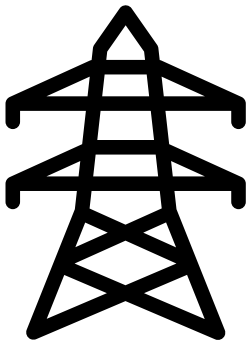
- he wished to recruit a fitter; but that
- “Alloctonen” could not be recruited.

Findings

- Public statements by an employer that it will not recruit employees of a certain ethnic or racial origin constitutes direct discrimination.
- This is not dependent on the identification of a complainant who claims to have been the victim.
- Burden of proof: employer would need to show that the actual practice did not correspond to the statements.



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Case C-83/14 *CHEZ*

Judgment of the Court (Grand Chamber) of 16 July 2015, *CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia*

Facts

Electricity company installed electricity meters at a higher height for all consumers in a district in Bulgaria mainly inhabited by persons of Roma origin, as compared with other districts.

Findings

Less favourable treatment/particular disadvantage

- Difficulty in accessing meters.
- Offensive and stigmatising nature: suggestion that Bulgarian nationals of Roma origin were as a whole considered to be potential perpetrators of unlawful conduct.

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Case C-83/14 CHEZ

Judgment of the Court (Grand Chamber) of 16 July 2015, *CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia*

Racial or ethnic origin

- Directive cannot be defined restrictively to apply only to a category of persons: protection is to benefit “all” persons who suffer less favourable treatment or particular disadvantage on grounds of racial or ethnic origin.
- Differences in language versions irrelevant.
- As such, the protection was held to cover Ms Nikolova (who was not Roma) because the fact remained that it was Roma origin that constituted the basis for less favourable treatment or particular disadvantage.

Direct discrimination

- A measure such as the practice at issue constitutes direct discrimination if it proves to have been introduced and/or maintained for reasons relating to the ethnic origin common to most of the inhabitants of the district concerned.

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Case C-83/14 CHEZ

Judgment of the Court (Grand Chamber) of 16 July 2015, *CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia*

Objective justification

- strict interpretation;
- legitimate aims;
- effective means;
- no other less intrusive measures available for achieving aims;
- proportionate; and
- must not unduly prejudice legitimate interests (including, in this case, having access to the supply of electricity in conditions which do not have an *offensive or stigmatising effect*) (emphasis added).

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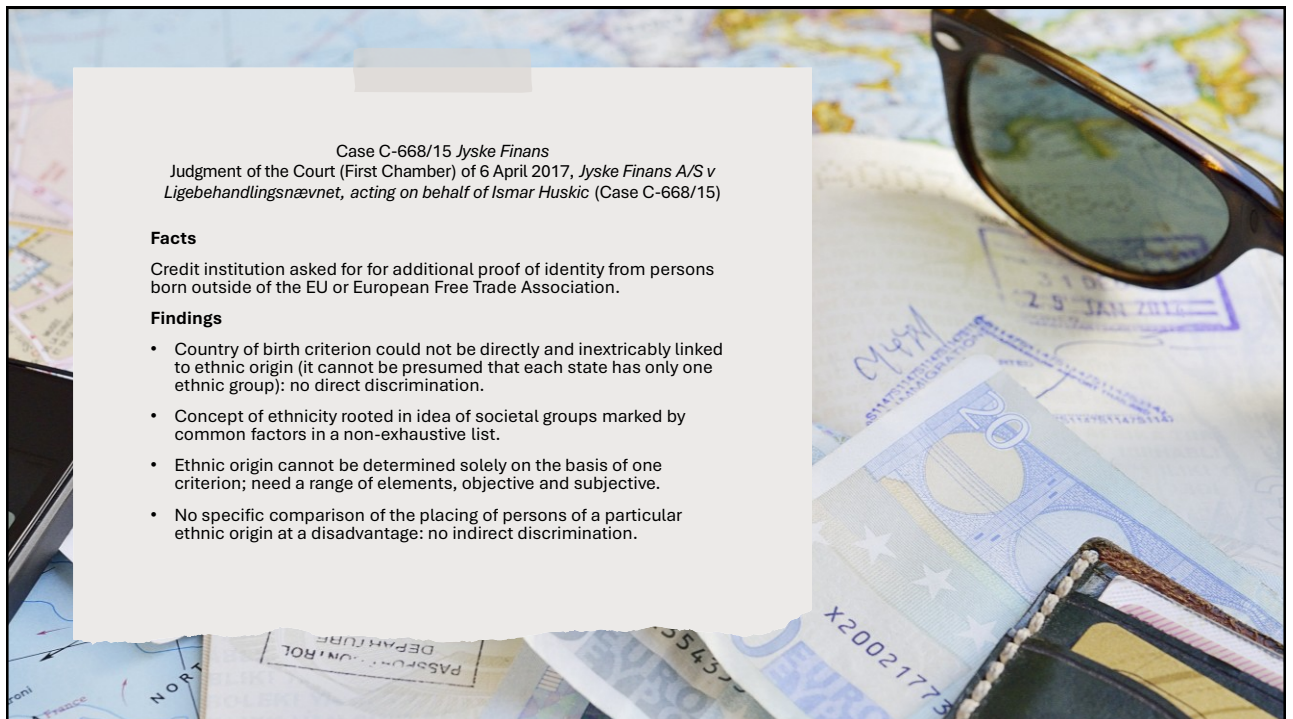
Case C-83/14 CHEZ

Judgment of the Court (Grand Chamber) of 16 July 2015, *CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia*

Burden of proof

- Assertions suggesting that the practice in question is based on ethnic stereotypes or prejudices may be taken into account in assessing presumption of discrimination.
- To rebut presumption, company would need to show that the practice was not in any way founded on the fact that the districts concerned were inhabited mainly by Bulgarian nationals of Roma origin.

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

Facts
Credit institution asked for for additional proof of identity from persons born outside of the EU or European Free Trade Association.

Findings

- Country of birth criterion could not be directly and inextricably linked to ethnic origin (it cannot be presumed that each state has only one ethnic group): no direct discrimination.
- Concept of ethnicity rooted in idea of societal groups marked by common factors in a non-exhaustive list.
- Ethnic origin cannot be determined solely on the basis of one criterion; need a range of elements, objective and subjective.
- No specific comparison of the placing of persons of a particular ethnic origin at a disadvantage: no indirect discrimination.

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The “Ghetto Package”

- “Double-punishment” zones
- Refusal or withdrawal of passports/fine/imprisonment in respect of certain trips abroad
- Mandatory daycare from age of one
- Restricted access to housing, and...

The New York Times

In Denmark, Harsh New Laws for Immigrant ‘Ghettos’



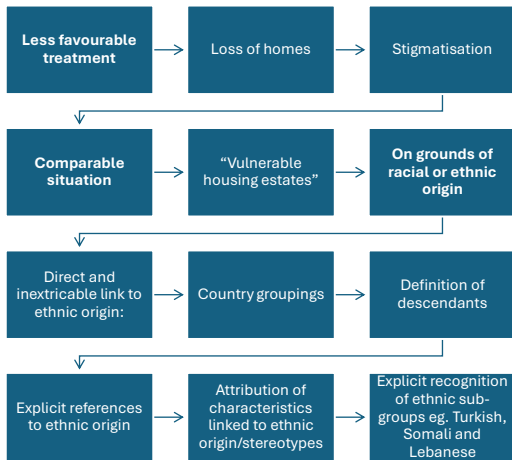
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Amendments to housing law

- Key factor of a “ghetto:” the share of immigrants and descendants from “non-Western” countries exceeds 50%.
- “Western” = countries inside the EU, UK, Andorra, Iceland, Liechtenstein, Monaco, Norway, San Marino, Switzerland, the Vatican, Canada, USA, Australia and New Zealand.
- Those who are covered by “non-Western” criterion include Danish citizens and Danish children born and raised in Denmark.
- “Common family housing” in “tough ghettos” to be reduced to 40% by 2030.
- Can include by way of sale or demolition.

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Residents' arguments: Direct discrimination



"The strong population growth of citizens of non-Western origin has provided a breeding ground for parallel societies where Danish values and norms are not the primary ones."

"Where women are considered less worthy than men."

"The efforts up until now have primarily focused on social initiatives, which have turned out to be inadequate to significantly changing the characteristics of the resident composition. It has not changed the area sufficiently in relation to the criteria of the ghetto list concerning connection to the labour market, education, **ethnic origin**, or income level." (emphasis added)

Excerpts from policy proposals preceding legislation

"Well, my party has been of the opinion, since we made the first Clearance Act in 1938, that it is a problem if **you place all the social problems – whether they are ethnic, social or crime-related** – in the same neighbourhood in the city. And that's why Adelgade and Borgergade [streets in central Copenhagen] were cleared, that's why Den Sorte Firkant [area in Nørrebro, Copenhagen] was cleared back then. Now we take a step further and say: since 1993, we've discussed **how to stop that an ethnic and a social concentration forms in certain areas**. Since 1993, we haven't been able to solve it in some areas. So now we have passed a piece of legislation, where we get the opportunity to fundamentally change among other places, **Ålgsbjerg and Vollsmose, and Mjølnerparken** for that matter." (emphasis added)

Statement by Minister on radio on the day of the filing of the case

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Residents' arguments: indirect discrimination

Persons of a [particular] ethnic origin

Over 80% are of "non-Western" background

Majority sub-groups are of Somali and Lebanese origin

Particular disadvantage

Loss of homes

Stigmatisation

No objective justification

The aim of reducing the percentage of those of "non-Western" background in residential areas is not a legitimate aim nor integration

Reducing common family housing is neither necessary nor appropriate

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Key counter-arguments as put forward by Denmark

1. No connection 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;
 - 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;
 - scheme was not intended to select persons based on their ethnic origin.
2. There is objective justification on the basis of integration.

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Referral questions

“Must the term ‘ethnic origin’ in Article 2(2)(a) and (b) of Directive 2000/43 be interpreted as meaning that that term, in circumstances such as those in the present case – where, under the Danish Law on common housing, there must be a reduction in the proportion of common family housing in ‘transformation areas’, and where it is a condition for categorisation as a transformation area that more than 50% of residents in a housing area are ‘immigrants and their descendants from non-Western countries’ – covers a group of persons defined as ‘immigrants and their descendants from non-Western countries’?”

If the answer to the first question is wholly or partly in the affirmative, must Article 2(2)(a) and (b) be interpreted as meaning that the scheme described in this case constitutes direct or indirect discrimination?”

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Case C-417/23 *Slagelse*

Judgment of the Court (Grand Chamber) of 18 December 2025, *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*

*“discrimination based on a person’s ethnic origin is a form of **racial discrimination** and ...such discrimination is a **particularly invidious kind of discrimination** which, in view of its **perilous consequences**, requires from the authorities **special vigilance and a vigorous reaction**. The authorities **must use all available means to combat racism**, thereby reinforcing democracy’s vision of society.”*

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

(para. 152 of Advocate General’s Opinion of 13 February 2025 (referred to at para. 127 of Judgment))

Findings: direct discrimination

Less favourable treatment can arise from:

- Increased risk of loss of homes
- Stigmatisation
 - terminology of the areas
 - statements suggesting national law is based on or perpetuates stereotypes or prejudices

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Findings: direct discrimination

Comparable situation

- Relevant vulnerable housing estates

“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%.”

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In the absence of a definition of ‘ethnic origin’ in the Directive, regard must be had to the objective of ensuring a common high level of protection against discrimination on the grounds of racial or ethnic origin throughout the EU and the obligation on authorities to use all available means to combat racism.

Findings: direct discrimination

On grounds of racial or ethnic origin:

- Ethnic origin cannot be determined on the basis of a single criterion such as country of birth however the “non-Western” category is **not** such a criterion (emphasis added).
- While eg. country of birth/nationality alone is insufficient, these are relevant factors in a non-exhaustive list.

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Findings: direct discrimination

On grounds of racial or ethnic origin

- Irrelevant if “non-Western” background may be considered to refer to several ethnic origins.
- The Court has not ruled 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.

“[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.”

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Findings: direct discrimination

On grounds of racial or ethnic origin

- It is sufficient, in order for there to be direct discrimination, that a consideration relating to ethnic origin determined the decision to introduce difference in treatment.
- Legislative context likely to contain relevant information in order to determine this.

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

“Over the past 40 years, Denmark’s ethnic composition has changed significantly. In 1980, Denmark had a population of 5.1 million. Today, that is close to 5.8 million. The population growth comes from outside. From both immigrants and their descendants. The majority of new Danes are of non-Western origin.

...

A parallel society has emerged among people of non-Western origin.”

Example excerpts from preparatory works, as referred to in the Judgment.

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Findings: direct discrimination

On grounds of racial or ethnic origin

Irrelevant that evictions also affect 'ethnic Danes.'

"the principle of equal treatment which Directive 2000/43 seeks to implement applies not to a particular category of person but by reference to the grounds mentioned in Article 1 of that directive, so that that principle is intended to benefit also persons who, although not themselves belonging to the race or ethnic group concerned, nevertheless suffer less favourable treatment or a particular disadvantage on one of those grounds."

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Findings: direct discrimination

Direct discrimination arises insofar as domestic courts determine less favourable treatment on the basis of racial or ethnic origin.

Burden of proof

- To discharge burden of proof, government must prove adoption of law is **not in any way based on the ethnic origins of the majority of the residents of affected areas.**
- Instead, must be based exclusively on unrelated objective factors.

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Findings: indirect discrimination

Persons of a [particular] ethnic origin

- Indirect discrimination can be established by any means including statistical evidence.
- No need for the neutral provision, criterion or practice to result in people of a single particular origin being placed at a disadvantage.
- Inconsistency of different language versions of the Directive is irrelevant.



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“In the present case, it must be stated that, in vulnerable residential areas, characterised by the existence of socioeconomic problems which are at least similar to those existing in transformation areas, the Law on Public Housing does not require the adoption of development plans such as those at issue in the main proceedings. It follows that, in vulnerable residential areas, such problems are, where appropriate, addressed by other means designed to ensure social cohesion.”

Objective justification

- Must be construed narrowly.
- While social cohesion and integration can be a legitimate aim, government would need to demonstrate reduction of common family housing is actually capable of achieving what is meant by those objectives.
- Must be consistent application of measures.
- Must not be based on prevailing social prejudice.
- Appropriate and necessary test: loss of home is a fundamental intrusion of rights; State’s discretion is lower in such circumstances.
- Full extent of caselaw under Article 7 of the EU Charter/Article 8 of the ECHR must be taken into account.

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Findings: scope

“The provision of housing in exchange for rent, under a scheme such as the Danish public family housing system, must be regarded as constituting a supply of ‘services’, within the meaning of Article 57 TFEU and, by extension, within the meaning of Article 4(1) of Directive 2006/123, since it is a service provided for remuneration.”

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Next steps:
determination
by the Danish
courts

Advocate General's opinion: direct discrimination

- *“a division on the ground of ‘ethnic origin’ can be understood as a division between ‘us’ and ‘them’; the dividing line being dependent on certain physical and socio-cultural characteristics or, at least, on the perception that differences in those characteristics exist.”*
- several factors pointed *“to the fact that the perceived ethnic origin was a reason for distinguishing between the two: nationality, place of birth and descent”* and that *“the Danish legislature seemed to understand [the]... division as one that is established on the grounds of ethnicity.”*

European Parliament (2022):

- ‘Race’ is a social construction.
- ‘Racialisation’ can aid understanding of racial discrimination: 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.”

Advocate General's opinion: indirect discrimination

- Advocate General “sceptical” law could be justified by aim of integration:
- *“[b]y perpetuating stigmatisation on ethnic grounds, [the legislation] makes it more difficult for the members of the group of ‘non-Western immigrants and their descendants’ to find a job, acquire respect and participate on equal footing in Danish society.”*
- If a structural inequality does exist, this *“cannot be resolved by discriminating against the ethnic group that already finds itself in a more difficult position.”*

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Takeaways

The Directive guarantees broad protection against a particularly odious form of discrimination with dangerous consequences.

Protections and undefined concepts within the Directive must not be interpreted restrictively.

It is not necessary that only one racial/ethnic group is covered/targeted/put at a particular disadvantage or impacted by the criterion or practice in question.

Direct discrimination exists where less favourable treatment is based on a consideration relating to ethnic origin: the surrounding context can demonstrate this.

Stigmatisation is a form of less favourable treatment/particular disadvantage and can arise from political rhetoric.

Once the burden of proof shifts, a respondent can rebut this only by showing that the difference in treatment was in **no way** related to racial/ethnic origin.

A critical lens must be applied to seemingly neutral justifications such as integration.

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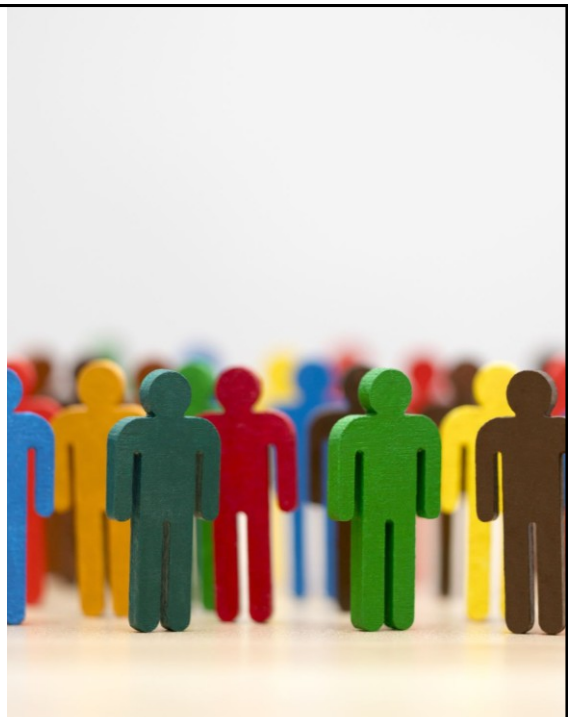
Implications

- Rise of toxic rhetoric problematising and stereotyping racial and ethnic minorities.
- Increase in traditional and contemporary forms of racism throughout Europe.
- Courts can provide the last check and balance.

The CJEU has provided the tools to:

- keep pace with the evolution of racial discrimination; and
- finally make the EU's promise of a common high level of protection a reality.

This includes by guarding against any use of proxy wording for race/ethnic origin or integration as an excuse to discriminate.



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"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

Photo credits:

Britta My Thomsen/Open Society Foundations

Nina Ippolito/Open Society Foundations
(residents outside the CJEU)

