Subpoena

I hereby summon

The Housing and Planning Authority
Carsten Niebuhrs Gade 43
1577 København V

to meet as defendant in the case below, where I will submit the following

CLAIM

The Housing and Planning Authority must acknowledge that the Authority's approval of 4 January 2023 of the sale of common housing in Mjølnerparken is null and void.

STATEMENT OF FACTS

This case concerns the validity of the Housing and Planning Authority's approval of the sale of block II and III in Mjølnerparken to the real estate investment firm NREP.

In that regard, the case concerns the question of whether the approval is in accordance with, among other things, Denmark's international obligations including as transposed into national law.

This case is closely connected to another case pending before the Eastern High Court (filed under BS-27824-OLR), which has been filed by a number of the same plaintiffs against the Ministry of Interior and Housing (now, the Ministry of Social Affairs, Housing and the Elderly). That case has been referred by the District Court of Copenhagen to the Eastern High Court pursuant to Section 226(1) of the Administration of Justice Act and concerns the Ministry's approval of a development plan for Mjølnerparken.

Mjølnerparken is a common housing branch from 1986 administered by Bo-Vita, situated in Copenhagen N. The branch consists of 528 family units and 32 student units distributed across four blocks.

Mjølnerparken has been characterised as a "ghetto" since the introduction of the term in the Common Housing Act. On the "Ghetto list" from 2018 and 2019, respectively, Mjølnerparken is categorised as a "tough ghetto area".

As a consequence of the fact that Mjølnerparken was categorised as a "tough ghetto area" in December 2018, Bo-Vita and the Municipality of Copenhagen were required to draw up a development plan.

The development plan for Mjølnerparken (the Development Plan) (**annex 1**) was passed by the highest authority of Bo-Vita, the assembly of representatives, with 19 votes in favour, 10 votes against, and one abstention on 14 May 2019. The Development Plan was submitted to the Danish Transport, Construction and Housing Authority on 28 May 2019. On 20 June 2019, the Development Plan was approved by the City Council of the Municipality of Copenhagen.

The branch board of Mjølnerparken was excluded from participating in drawing up the Development Plan; and particularly motivated by the decision to sell family units rather than re-categorising existing family units to senior or student units, the board chose, on 31 May 2019, to submit an alternative development plan to the Ministry of Transport and Housing. This plan was rejected by the Ministry of Transport and Housing on 25 June 2019. On 10 September 2019, the Development Plan was approved by the Ministry of Transport and Housing. It is stated in the Development Plan that the main concept of the plan is a continuation of the so-called physical overall plan and subsequently sale of family units.

The physical overall plan for Mjølnerparken ('The Overall Plan') is an independent, comprehensive plan and an application for financial support to renovate Mjølnerparken, which was approved by 89 % of the 509 participating residents from Mjølnerparken on 14 June 2015 and by the City Council of the Municipality of Copenhagen on 10 December 2015. This plan includes, among other things, the renovation of existing units, creation of open spaces and infrastructure, establishment of a shopping street, establishment of a new community hall, and establishment of new attic flats. The purpose of the initiatives in the physical overall plan is "to ensure a well-functioning and safe housing area with attractive and good flats that will bring about a positive change and boost for Mjølnerparken".

According to what has been stated in the Development Plan, the number of common family units in Mjølnerparken will be reduced to 233 by selling entire blocks.

On 27 May 2020, the plaintiffs initiated legal proceedings against the Ministry of Transport and Housing (now the Ministry of Social Affairs, Housing, and the Elderly and hereafter referred to as the "Ministry"), claiming that the Ministry must acknowledge that its approval of 10 September 2019 of the Development Plan for Mjølnerparken is null and void. This case is currently pending before the Eastern High Court, see case BS-27824-OLR.

On 16 October 2020, three UN Special Rapporteurs submitted an urgent appeal (UA DNK 3/2020) to the Danish government with a request to halt the sale of the buildings in Mjølnerparken pending the resolution case BS-27824-OLR (**annex 2**). In the appeal the following, among other things, is stated on page 5 and 6:

> "Using the concentration of individuals of 'non-Western' nationality or heritage as the basis for determining 'ghettos' and 'tough ghettos' is inconsistent with human rights law, particularly to combat racial discrimination
>
> […]
>
> [F]orced evictions are a gross violation of the right to adequate housing and may also result in violations of other human rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions."

On 30 June 2021, the Danish Institute of Human Rights intervened as a third party in favour of the plaintiffs. On 16 December 2021, two of the UN Special Rapporteurs intervened as third parties in favour of the plaintiffs.

By order of 15 December 2021, the Eastern High Court rejected the Ministry's claim for dismissal of the case. In particular, it was stated that:

> "Although the plaintiffs are not addressees of the Ministry's decision to approve the development plan, the High Court finds on the basis of the above that the plaintiffs are concretely and individually affected by the Ministry's approval of the development plan for Mjølnerparken. The fact that the plaintiffs have not currently had their tenancies terminated is not found to lead to a different result. **The High Court stresses that the loss of a home is such an intrusion that the plaintiffs are entitled to challenge the approval of the development plan before it is implemented.** Accordingly, and because the defendant's arguments pertaining to legal standing cannot lead to a different result, the High Court finds that the plaintiffs fulfil the ordinary conditions for legal standing in the trial of the validity of the Ministry's decision of 10 September 2019 to approve the development plan, and that the Ministry of Interior and Housing is the right defendant." (emphasis added)

On 22 December 2021, it was announced that Bo-Vita had made an agreement about the sale of two blocks (block II and III) with the real estate investment firm NREP (**annex 3**).

The purchase has subsequently been approved by the City Council in the Municipality of Copenhagen at a meeting held on 2 June 2022 (**annex 4**).

On 7 November 2022, the Eastern High Court decided in case BS-27824-OLR that questions should be referred to the CJEU. A referral order has not yet been issued.

On 4 January 2023, the Housing and Planning Authority the sale of block II and III in Mjølnerparken (**annex 5**).

All 7 plaintiffs live in block II and III, which are included in the sale. Some of the plaintiffs have accepted rehousing in other parts of Mjølnerparken, remarking, however, that the see the relocation solely as a consequence of the sale of their homes under the Development Plan.

ARGUMENTS

In support of the submitted claim, it is *firstly* contended that the approval of the Development Plan by the Ministry of Transport and Housing constitutes direct discrimination on the basis of racial and ethnic origin in violation of Section 3(2), in conjunction with Subsection (1), of the Ethnic Equal Treatment Act and EU law and in violation of Article 14, in conjunction with Article 8, of the European Convention on Human Rights (ECHR), Article 2 of Protocol No. 4 to the ECHR, and Article 1 of Protocol No. 1.

In support of the submitted claim, it is *secondly* contended that the approval constitutes indirect discrimination on the basis of racial and ethnic origin in violation of Section 3(3), in conjunction with Subsection (1), of the Ethnic Equal Treatment Act and EU law and in violation of Article 14, cf. Article 8, of the ECHR, Article 2 of Protocol No. 4 to the ECHR, and Article 1 of Protocol No. 1.

In support of the submitted claim, it is *thirdly* contended that the approval constitutes discrimination on the basis of racial and ethnic origin in the form of a violation of the prohibition of instruction in Section 3 of the Ethnic Equal Treatment Act and EU law.

In support of the submitted claim, it is *fourthly* contended that the approval constitutes a direct violation of Article 8 of the ECHR, Article 2 of Protocol No. 4 to the ECHR, and Article 1 of Protocol No. 1.

1. The legal basis for the Development Plan for Mjølnerparken and the approval of the sale of common housing

1.1. "The ghetto criteria"/"the parallel society criteria"

The categorisation of a common housing estate as a "ghetto" was first introduced in the Common Housing Act by Act No. 1610 of 22 December 2010 on the basis of the then government's policy proposal "The ghetto back to society – Confronting parallel societies in Denmark" from October 2010.

The policy proposal states, among other things, the following about what characterises a "ghetto", see p. 5 of the proposal:

> "a high concentration of immigrants means that many continue to be more closely tied to the country and the culture they or their parents come from than to the Danish society they live in."

With Section 61a of the Common Housing Act, Act No. 1610 of 22 December 2010 introduced a definition of "ghetto area".

Section 61a, applicable at the time, states that a "ghetto area" is defined as a physically cohesive common housing branch with at least 1,000 residents, which fulfils two of the following criteria: 1) the share of immigrants and descendants from non-Western countries exceeds 50 %, 2) the share of residents between the age of 18 and 64 without connection to the job market or education exceeds 40 %, calculated as an average of the last four years; 3) the share of residents convicted of violations of the Criminal Code, the Weapons Act, or the Controlled Substances Act per 10,000 residents above the age of 18 exceeds 270 persons, calculated as an average of the last four years.

With the introduction of the definition of "ghetto areas" in Section 61a(1), it was also stipulated in Section 61a(2) that an annual list of "ghetto areas" should be calculated and kept.

In 2013, the definition of ghetto area in Section 61a of the Common Housing Act was changed by Act No. 1609 of 26 December 2013. In the new definition, the three original criteria were maintained, although the use of 4-year averages was changed to 2-year averages, and two new criteria about the residents' income and level of education were introduced.

In the explanatory memorandum to Act No. 1609 of 26 December 2013, the general remarks in paragraph 3.1.2 of Bill No. L45 of 31 October 2013 state, among other things, that:

> "The current criteria continue to be of decisive importance. The integration of immigrants and descendants from non-Western countries in vulnerable housing estates is a focal point. It is important that residents in the housing estates mingle across ethnic origin (...) **A high concentration of citizens with a different ethnic extraction is thus signalling that a focus should be placed on the area** (...)" [emphasis added]

With the introduction of Act No. 1609 of 26 December 2013, Section 61a of the Common Housing Act defined a "ghetto area" as a physically cohesive common housing branch with at least 1,000 residents, which fulfils three of the following criteria: 1) the share of immigrants and descendants from non-Western countries exceeds 50 %, 2) the share of residents between the ages of 18 and 64 without connection to the job market or education exceeds 40 %, calculated as an average of the last two years; 3) the share of residents convicted of violations of the Criminal Code, the Weapons Act, or the Controlled Substances Act per 10,000 residents above the age of 18 exceeds 270 per-sons, calculated as an average of the last two years; 4) the share of residents between the ages of 30 and 59 with only primary education exceeds 50 %; and 5) the average gross income for taxpayers between the ages of 15 and 64 in the area, excluding students, is less than 55 % of the average gross income for the same group in the region.

In March 2018, the then government comprising *Venstre*, *Liberal Alliance*, and *Det Konservative Folkeparti* the policy proposal "One Denmark without Parallel Societies – No Ghettos by 2030" where the government presented 22 initiatives combatting "parallel societies", including, among other things, stricter penalties in certain areas, compulsory day care to ensure Danish language skills and targeted language tests in first grade, see page 8 of the proposal.

In the policy proposal "One Denmark without Parallel Societies – No Ghettos by 2030", the following is stated on page 6:

> "The ghettos must go completely. The parallel societies must be broken down. And we must make sure that new ones do not emerge. Once and for all, we must tackle the very big task of integration, where a group of immigrants and descendants have not taken Danish values to heart and isolate themselves in parallel societies."

Furthermore, in "Box 1: facts about parallel societies" on page 7, it is stated that:

> "The strong population growth of citizens of non-Western origin has given rise to parallel societies where Danish values and norms are not the primary ones. It is impossible to put a precise figure on how many people with non-Western background actually live their lives according to other values and norms. However, it is possible to identify a number of facts about people and families with a non-Western background that indicate that a large proportion live in relative isolation from the rest of society. An analysis by the Ministry of Economy and Interior shows that 28,000 families with a non-Western background can be said to live in parallel societies. This is about **ethnic composition** in housing estates, schools and day care centres, participation in education or employment, crime rates, etc." [emphasis added]

The analysis from the Ministry of Economy and Interior (**annex 13**) contains the following definition of parallel societies, see page 1 of annex 13:

> "A parallel society is physically or mentally isolated and follows its own norms and rules, without any significant contact with Danish society and without any desire to become part of Danish society."

On 9 May 2018, the then government consisting of *Venstre*, *Liberal Alliance*, and *Det Konservative Folkeparti* entered an agreement with *Socialdemokratiet*, *Dansk Folkeparti*, and *Socialistisk Folkeparti* about "Initiatives in the housing sector that counteract parallel societies", which was based on the government's policy proposal "One Denmark without Parallel Societies – No Ghettos by 2030".

The policy proposal and the agreement contain new criteria for how to define a "ghetto area", including a further distinction in the definition between "vulnerable housing estates" and "tough ghetto areas". It is stated in the agreement that criteria for how to define a "ghetto area" must be updated and consolidated.

It is stated in the agreement of 9 May 2018 about "Initiatives in the housing sector that counteract parallel societies" that the update and consolidation serve the purpose of ensuring that the criteria that applied:

> "(...) to a higher degree are directed towards the most important problems, and that it at the same time is ensured that the initiatives target the right areas (...)"

By Act No. 1322 of 27 November 2018, the definition of a "ghetto area" in Section 61a of the Common Housing Act was amended accordingly so that it reflected the distinction between "vulnerable housing estates", "ghetto areas", and "tough ghetto areas".

Accordingly, Section 61a(1) of the Common Housing Act defines a housing estate that meets at least two of the above outlined criteria nos. 2-5 as a "vulnerable housing estate", whereas a housing estate meeting the same criteria is categorised as a "ghetto" if the share of immigrants or descendants from non-Western countries exceeds 50 %.

A "parallel society" becomes a "tough ghetto" when it for five years fulfil the conditions in Section 61a(2), in conjunction with Subsection (4).

Whereas the share of immigrants and descendants from non-Western countries previous to the introduction of Act No. 1322 of 27 November 2018 could constitute one of the criteria contributing to the characterisation of a housing estate as a "ghetto", it was not a requisite criterion to characterise a "ghetto". Following the amendment of the law, this criterion has now become the necessary and thus decisive criterion for characterising a common housing estate as a parallel society.

It is stated in the preparatory works to Act No. 1322 of 27 November 2018, see paragraph 2.1.2. of the general remarks to Bill No L38 of 3 October 2018, that the purpose of the distinction between "vulnerable housing estates" and "ghettos" is to emphasise that:

> "(…) the central challenge in the ghettos is a lack of integration of immigrants and descendants from non-Western countries (…)"

It should be noted that, by Act No. 2157 of 27 November 2021, the terminology in the law was changed from "ghetto" to "parallel society". The law implemented "The Agreement on Mixed Hous-ing Estates – Next Steps in the Fight against Parallel Societies", which was made on 15 June 2021 between the government (*Socialdemokratiet*) and *Venstre*, *Dansk Folkeparti*, *Socialistisk Folkeparti*, *Det Konservative Folkeparti*, and *Liberal Alliance*.

The definition of "ghetto" was not changed by this, and the concepts of parallel society and ghetto are thus identical in terms of content. With the same legal amendment, the term "tough ghetto" was likewise changed to "transformation area". According to the explanatory memorandum, the change is due to the fact that the previous terminology could prevent vulnerable housing estates from attracting a wider range of housing seekers, see paragraph 2.2.2 in the general remarks to Bill No. 23 of 6 October 2021 as well as section 3.1.1 below.

1.2. The requirement of drawing up and approving a development plan

It is stipulated in Section 168a of the Common Housing Act, which was introduced by Act No. 1322 of 27 November 2018, that the common housing association and the municipal council jointly must draw up a development plan for a "tough ghetto area" (now "transformation area"). The purpose of the development plan must be to reduce the share of common family units to a maximum of 40 % of the housing in the area in question before 1 January 2030.

Since the requirement of a development plan under Section 168a solely applies to "tough ghetto areas", the requirement of reducing the share of common family units only apply to those housing estates that for four years have been characterised as "vulnerable", as defined in Section 61a(1) of the Common Housing Act, and which at the same time have and continue to have a share of more than 50 % of descendants and immigrants form non-Western countries.

A development plan is a comprehensive outline and roadmap for how the housing association and the municipal council through clearly described solutions together will transform a ghetto area, so that the share of common family housing will be reduced to a maximum of 40 %. Reference is made to the reply of 6 November 2018 by the then Minister for Transport, Construction and Housing to question no. 16 by the Committee on Transport, Construction and Housing.

The finished development plan must be approved by the responsible Minister, see Section 168a(2) of the Common Housing Act. The Minister can in special cases make an exemption to the provision that the purpose of the development plan must be to reduce the number of common family units, see Subsection (3).

It follows from the explanatory memorandum to the Act, see paragraph 1 in Bill No. L38 of 10 October 2018, that one of the reasons that housing associations and municipalities are obligated to draw up a development for "tough ghetto areas", where the goal is to reduce the share of common family housing in the area to 40 % is that:

> "[i]t is the assessment that the fundamental transformation of a ghetto area to an attractive district necessitates that common family housing is mixed with other types of housing in the area (...)"

In the same paragraph, it is further stated that:

> "The reduction of the share of common family housing can be achieved through divestment, by constructing new units or establishing commercial spaces in the housing estate, by demolishing family housing, by converting family units into commercial spaces, or by recategorising family units into common housing for students or seniors."

Further, it is noted that:

> "In order to make the units in the vulnerable housing estates more marketable, it is proposed that the housing associations can evict the tenants in connection with divestment to private investors."

The exact rules for the development plans are laid down in Ministerial Order No. 1354 of 27 November 2018 (Ministerial Order on physical transformation of tough ghetto areas).

In Section 13(1) of the Ministerial Order, it is stated that the approval by the Minister must be made on the basis of a concrete assessment. Among other things, the following should be taken into account: 1) that the development will result in the required reduction of the share of common family housing in the housing estate by 2030; 2) that the initiatives are realistic and appropriate for achieving the aim; 3) that the financial aspects are realistic; 4) that the time plan contains information about the stages of the individual initiatives; and 5) that the specified time plan is realistic. This is stated in Section 13(2) of the Ministerial Order. Furthermore, it is stated in Section 14(1) of the Ministerial Order that the minister may request amendments to the plan, including of specified points.

Furthermore, it is stipulated in the Ministerial Order on the physical transformation of tough ghetto areas that the municipal council supervises the implementation of an approved development plan by the housing associations, see Section 15(1). If the development plan is not implemented in accordance with the time plan, the municipal council must report this to the Transport, Construction and Housing Authority, see Subsection (2). Once a year, the housing association must inform the Transport, Construction and Housing Authority about the status of the implementation of the development plan, which in practice is done through the municipal council, which forwards the report along with its own comments, see Section 16(1) of the Ministerial Order.

If the housing association and the municipal council do not draw up a development plan that can be approved by the Minister, the Minister can issue an order to dismantle the tough ghetto area. The Minister may also do this if an otherwise approved development plan is not being implemented in accordance with the plan. This is stipulated in Section 168b(1), which was also introduced by Act No. 1322 of 27 November 2018. In this case, the housing association and the municipal council must together draw up plan for the dismantlement, see Section 168b(2). If the housing association does not execute the ministerial order, the Minister of Transport and Housing will take the necessary steps for the expropriation of the branches in question for the purpose of dismantling them, see Section 168b(4).

Finally, Section 168a(5) and (6) of the Common Housing Act stipulate that where a housing estate is subject to the requirement to draw up and implement a development plan, the special rules applicable to such area apply until the development plan has been implemented. Subsections (5) and (6) were introduced on 8 June 2021 by Act No 1167, and entail that even if an area can no longer be considered a "ghetto", a development plan already in place must still be implemented.

1.3. Approval of sale

As mentioned above, it follows from the Development Plan that after the completion of the first stages of the Overall Plan, the Development Plan will follow up by reducing the share of family housing to 40 %, see page 3 of annex 1. It further follows from the Development Plan that, for reasons of saleability and operability, it will be endeavoured that sales will take place collectively and in whole units or blocks.

Thus, it has from the beginning been part of the Development Plan that a part of Mjølnerparken should be sold.

In connection with the approval of 10 September 2019 by the Ministry of Transport and Housing (**annex 14**), it was stated that:

> "Please note that with my approval of the development plan, no funding from the National Building Fund has been granted for the implementation of the development plan, **just as the Ministry has not approved the sale or demolition of housing in the area under Section 27(2) and Section 28(3) of the Common Housing Act.**" [emphasis added]

In this context, Section 27(2) stipulates that that the subsequent divestment of common housing properties must be approved by the Minister.

In this connection, Section 1 of Order No. 945 of 21 June 2022 on the duties and powers of the Housing and Planning Authority and the right of appeal in the housing and construction sector stipulates that the Housing and Planning Authority is responsible for the administration and regulation of the parts of the construction sector delegated in Chapter 2 of the Order.

Pursuant to Section 2(1) of the Order, the powers are exercised by the Housing and Planning Authority under Section 21(2) of the Common Housing Act.

Thus, the final approval of the specific sales agreement is delegated to the Housing and Planning Authority, which, on 4 January 2023, indeed has approved the sale of block II and III in Mjølnerparken.

2. The legal framework for the prohibition of discrimination

2.1. The Ethnic Equal Treatment Act and EU Law

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment be-tween persons irrespective of racial or ethnic origin (directive 2000/43/EC) has been transposed into Danish law by the Ethnic Equal Treatment Act, see Consolidated Act No. 438 of 16 May 2012.

The aim of the Ethnic Equal Treatment Act is to prevent discrimination and promote equal treatment irrespective of racial or ethnic origin, cf. Section 1. The Act also aims to implement parts of Directive 2000/43/EC.

The Ethnic Equal Treatment Act applies, in accordance with Directive 2000/43/EC, to all public and private enterprise in relation to social protection, including social security and healthcare, social advantages, education as well as access to and supply of goods and services which are available to the public, including housing, see Section 2.

In the case C-391/09, Runevič-Vardyn and Wardyn, the CJEU has stated that Directive 2000/43 is an expression of the principle of equality, which is one of the basic principles of EU law, as recognised in Article 21 of the Charter of Fundamental Rights of the European Union, see para. 43 of the judgment. For this reason, the scope of that directive cannot be interpreted restrictively.

Under Section 3 of the Ethnic Equal Treatment Act, it is unlawful to subject another person to direct or indirect discrimination on the basis of their own or a third person's racial or ethnic origin.

Direct discrimination shall be taken to occur where one person is treated less favourably than an-other is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin, cf. Section 3(2) of the Ethnic Equal Treatment Act. It is not possible to justify direct discrimination, for which reason it is irrelevant whether the discrimination is based on an otherwise objective reason.

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, see Section 3(3) of the Ethnic Equal Treatment Act.

Moreover, an instruction to discriminate against persons on the basis of racial or ethnic origin shall be deemed to be discrimination within the meaning of Section 3(1) of the Ethnic Equal Treatment Act. This is stated in Section 3(5).

It should be noted that whether the persons who allege the discrimination are of the racial or ethnic origin in question themselves is irrelevant to the determination of whether discrimination on grounds of racial or ethnic origin has occurred. The decisive factor is that racial or ethnic origin has been the element, on which the less favourable treatment is based, see CJEU's judgment in the case C-83/14, Nikolova v CHEZ, paras. 50-60.

Furthermore, it is also not relevant whether the discrimination was motivated by a desire to discriminate on grounds of racial or ethnic origin or not. This applies to both direct and indirect discrimination, see page 41 of Parliamentary Report No. 1422/2000 on the implementation of the Directive in Danish law.

If a person, who alleges to have been wronged under Section 3, establishes facts on the basis of which it may be presumed that direct or indirect discrimination has occurred, it shall be for the defendant to prove that there has been no breach of the principle of equal treatment.

Finally, it should be noted that the provisions in Directive 2000/43/EC, as also noted above in relation to the CJEU's judgment in case C-391/09, Runevič-Vardyn and Wardyn, must be interpreted and applied so that it respects the rights, complies with the principles, and promotes the application of the Charter of Fundamental Rights of the European Union ('the Charter'), see Article 51 of the Charter.

In addition to Article 21 of the Charter, which codifies the fundamental principle of non-discrimination, it is stated in Article 7 of the Charter that everyone has the right to respect for their private and family life, home and communications. It follows from the explanations to the Charter that Article 7 of the Charter is equivalent to the rights contained in Article 8 of the European Convention on Human Rights (ECHR). In Article 34(3), the Charter also contains a right to social support and housing assistance so as to ensure a decent existence for all those who lack sufficient resources.

2.2. The European Convention on Human Rights

Article 14 of the ECHR contains a prohibition of discrimination, as this provision ensures that the enjoyment of the rights and freedoms set forth in the ECHR shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

The list of prohibited reasons for discrimination is not exhaustive.

Article 14 of the ECHR is applicable when the case falls within the ambit of one or more of the rights in the ECHR, without it being required that a violation of the substantive provision of the ECHR has taken place.

In this case, the case falls within the ambit of the rights protected by Article 8 of the ECHR, Article 1 of Protocol No. 1, and Article 2 of Protocol No. 4.

Article 8 of the ECHR protects against arbitrary interferences in the individual's right to respect for their private and family life, their home, and their correspondence. The interference of a public authority in Article 8 of the ECHR is only permissible if it can be justified in accordance with paragraph (2), which

requires that the interference is in accordance with domestic law and is necessary in a democratic society in the interest of one of the legitimate aims listed in the provision.

Whether a locality constitutes a "home" within the meaning of Article 8 of the ECHR will depend on the factual circumstances, namely, the existence of sufficient and continuous attachment to a specific place, see judgment of 17 October 2013, Winterstein and Others v France (27013/07), para. 141 with references to other case law. An eviction order thus constitutes an interference in the individual's right to respect for their home, even if the eviction has not yet been effectuated, see judgment of 12 June 2014, Berger-Krall and Others v Slovenia (14717/04), paras. 254 and 265, and judgment of 22 October 2009, Paulic v Croatia (3572/06), para. 38.

The eviction from one's home will not only constitute interference in the individual's home, but also in the right to private and family life, insofar that the eviction could have repercussions on the individual's social and family ties, see judgment of 24 April 2012, Yordanova and Others v Bulgaria (25446/06), para. 105.

Article 1 of Protocol No. 1 entitles everyone to the peaceful enjoyment of their possessions. No one shall be deprived of their possessions except when it is in the public interest and subject to the conditions provided for by law.

The ECtHR has recognised that a rented flat may be protected by Article 1 of the Protocol, see inter alia judgment of 24 June 2003, Stretch v The United Kingdom (44277/98), paras. 32-35.

Article 2(1) of Protocol No. 4 to the ECHR states that everyone lawfully residing within the territory of a state shall, within that territory, have the right to liberty of movement and freedom to choose their residence. No restrictions shall be placed on the exercise of this right other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others, see Article 2(3). The right may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society, see Article 2(4).

3. The Housing and Planning Authority's specific approval of the sale of block II and III in Mjølnerparken on the basis of the Development Plan and discrimination

3.1. Direct discrimination

In support of the submitted claim, it is firstly contended that the Housing and Planning Authority's approval of the sale of block II and III in Mjølnerparken constitutes direct discrimination on grounds of race and ethnic origin in violation of Section 3(2), in conjunction with Subsection (1), of the Ethnic Equal Treatment Act and EU law and in violation of Article 14, in conjunction with Article 8, of the ECHR, Article 2 of Protocol No. 4 to the ECHR, and Article 1 of Protocol No. 1 to the ECHR.

The Housing and Planning Authority's approval, which is based on the Development Plan, falls within the scope of the Ethnic Equal Treatment Act, because it concerns an approval of a plan, which is tied to a public enterprise to the extent that it concerns the plaintiffs' access to and retention of a home, which is available to the public.

Pursuant to the Common Housing Act, the common housing associations are thus tasked with providing adequate flats to anyone who needs it for a reasonable rent as well as giving the residents influence on their own housing conditions, see Section 5b of the Common Housing Act.

3.1.1. Less favourable treatment

As a consequence of the sale of Mjølnerparken, which the Housing and Planning Authority has approved, all plaintiffs will be treated less favourably on grounds of racial or ethnic origin compared to other residents in common housing estates which are not classified as a "tough ghetto".

It constitutes less favourable treatment of the plaintiffs, because they are concretely threatened with eviction from their current homes as a consequence of the sale of block II and III, which is based on the Development Plan, the validity of which is currently pending before the Eastern High Court. If Mjølnerparken had not been categorised as a "tough ghetto", the plaintiffs would not be in the situation, where they have been or are being evicted from their current homes, since in that case there would not have been a requirement of a development plan with a reduction of the number of family units under Section 168a of the Common Housing Act, which has resulted in the sale of block II and III.

Moreover, the use of the designation "ghetto" for the plaintiffs' homes entails that the plaintiffs are being stigmatised as "ghetto" residents, a term which the then Minister of Housing has admitted is negative and affects the residents, see statement to Danish Broadcasting Corporation (**annex 15**).

This is supported by the change of terminology that took place with Act No. 2157 of 27 November 2021. It is stated in the preparatory works, see para. 1 of Bill No. L23 of 6 October 2021:

> "Furthermore, it is proposed to update the terminology of the parallel society legislation so that the term ghetto is no longer used. The use of the term could defeat the purpose of the parallel society efforts, which is to integrate and develop vulnerable housing estates in order to make them attractive to a wider range of house-seekers."

Moreover, it is stated in para. 2.2.2. of the Bill about the deliberations by Ministry of Interior and Hous-ng on the terminology change:

> "Experience shows that the terminology used can stand in the way of vulnerable housing estates attracting a wider range of house-seekers."

Although the terminology has been changed so that the word "ghetto" is no longer used, the terminology remains stigmatising as does the more general problematisation and stereotyping of those labelled as being of "non-Western" background. Changing governments have with various ghetto packages attributed unfavourable connotations to the term "non-Western immigrants and descendants", such as refusal to work and integrate into the Danish society. This is supported by the fact that it is stated on page 4 of the policy proposal "One Denmark without parallel societies – No ghettos by 2030":

> "Parallel societies have emerged among people with non-Western backgrounds. Too many immigrants and descendants have ended up disconnected from the surrounding society. Without education. Without a job. And without knowing sufficient Danish."

And further, on page 5 of the proposal:

> "We have a group of citizens who have not taken Danish norms and values to heart. Where women are considered less worthy than men. Where social control and lack of equality put narrow limits on the individual's free expression."

And moreover, on page 6 of the proposal:

> "There is only one way. The ghettos must go. The parallel societies must be broken up. And we must ensure that new ones do not emerge. Once and for all, we must tackle the very large integration problem where a group of immigrants and descendants have not taken Danish values to heart and isolate themselves in parallel societies."

These circumstances are likewise emphasised in the explanatory memorandum to Bill No. L38 of 3 October 2018, para. 2.6.2., where it is stated that:

> "It is necessary to change the resident composition in the vulnerable housing estates, where a high share of the residents is outside the job market, and many are receiving welfare benefits. **It is here in particular that many residents – often immigrants from non-Western countries and descendants of immigrants – live in isolated enclaves and do not adopt Danish norms and values to a sufficient extent** (..)" [emphasis added]

This negative and one-sided focus on the background of residents as "non-western immigrants and descendants" is still in force, which is supported by the Ministry of the Interior and Housing's policy proposal "Mixed housing areas – the next step in the fight against parallel societies", which states on page 7:

> "Over the past 20 years, a wedge has emerged creating a barrier to the development of the mixed city. Large vulnerable housing estates have emerged, with many immigrants of non-Western background.
> […]
> The concentration of non-Western immigrants in certain housing estates and surrounding schools and day-care centres hampers integration and increases the risk of religious and cultural parallel societies developing. This is one of the greatest structural disadvantages that underpin the Danish welfare society. Ethnic and social segregation must be combated there.
>
> In the government, we will work to ensure that no more than 30% of non-Western immigrants and descendants live in housing estates in Denmark within the next 10 years."

The UN rapporteurs' urgent appeal to the Government, see annex 2, highlights that the language used in the "Ghetto Package" must be considered to stigmatise persons belonging to or perceived to belong to Denmark's minority groups on grounds of race, ethnic origin or religion, which increases the risk of violence and hate crimes, excessive policing and the implementation of laws and policies that entrench ethnic inequality.

It should be noted that the discrimination, which occurs here, is comparable to the factual circumstances in the CJEU's judgment in case C-83/14, CHEZ Razpredelenie Bulgaria, where the CJEU found that the practice of locating electricity meters at elevated heights only in districts with a high concentration of residents of Roma ethnicity constituted less favourable treatment, because the practice in itself was offensive and stigmatising, para. 87.

This further underlines that the threat of termination, including the terminations that a number of the plaintiffs have already received, which are based on the Development Plan, constitute less favourable treatment within the meaning of the Ethnic Equal Treatment Act.

The legislation underpinning the approval of the sale and its impact on fundamental rights has already been considered by monitoring bodies such as the UN Committee on Social, Economic and Cultural Rights ("CESCR"), the Advisory Committee on the Framework Convention for the Protection of National Minorities ("ACFC"), the Committee on the Elimination of Racial Discrimination ("CERD"), the European Commission against Racism and Intolerance ("ECRI"), and, as mentioned above, three UN Special Rapporteurs.

Already in its report on Denmark from 22 May 2012, ECRI cautioned against using the term "ghetto", because it stigmatises minority groups. Similarly, both the CESCR in its concluding observations of 12 November 2019 (UN Doc. E/C.12 /DNK/CO/6) and ACFC in its report of 29 January 2020 on the fifth monitoring cycle (ACFC/OP/V(1019)003), recently raised concerns about discrimination in relation to the use of the word "non-Western background" and called for remedial action, with ACFC further noting that the inclusion of "descendants" sends a signal that may have a negative effect on these individuals' sense of belonging and being an integral part of Danish society.

3.1.2. Comparable situation

All plaintiffs are in a situation comparable to residents in other common housing estates that are not affected by the requirement of drawing up a development plan, which has resulted in the sale of block II and III, because those areas are not classified as "tough ghettos".

The plaintiffs are thus indeed in a situation identical to common housing areas that have been classified as a "vulnerable housing estate" under Section 61a(1) of the Common Housing Act. The only thing that distinguishes Mjølnerparken from a "vulnerable housing estate" under Section 61a(1) of the Common Housing Act is the share of "non-Western immigrants and descendants" residing in the area.

An example is Byparken/Skovparken in Svendborg, which in 2019 was on the government's list of "vulnerable housing estates". Here 1,422 residents live compared to 1,659 residents in Mjølnerparken. Byparken/Skovparken has 50.5 % of residents outside the labour market compared to 38 % in Mjølnerparken. Byparken/Skovparken has 1.88 % of convicted persons compared to 2.02 % in Mjølnerparken. Byparken/Skovparken has 68.9 % of residents with only primary education compared to 75.2 % in Mjølnerparken. Finally, the average gross income is 58.6 % of the average gross income for the same group in the region in the Byparken/Skovparken area, while for Mjølnerparken it is 49.6 %. Reference is made to page 6 of **annex 16**.

Thus, Byparken/Skovparken in Svendborg has had largely the same socio-economic challenges over the last four years. Byparken/Skovparken was on the government's "Ghetto List" in 2015 and 2016. The area was removed from the "Ghetto list" in 2017, as it only met two of the five criteria at that time. After the amendment of the law in 2018, the area was included on the list of "vulnerable housing estates", where it also appeared in 2019. In all these years, Byparken/Skovparken in Svendborg has had less than 50 % residents with "non-western origin".

Despite the fact that an area like Byparken/Skovparken is thus in a comparable situation in terms of socio-economic conditions etc. as Mjølnerparken, and has been for the last four years, the residents of Byparken/Skovparken do not risk losing their homes as a result of a development plan, as Byparken/Skovparken has not had more than 50 % residents of "non-western" origin in the last four years.

The approval of the sale by the Housing and Planning Authority will thus put the plaintiffs at a disadvantage compared to tenants in other – otherwise comparable – common housing estates.

Thus, the basis of the less favourable treatment of the plaintiffs compared to other residents in common housing estates, which only have been classified as "vulnerable housing estates", is tied to the concept of "racial or ethnic origin" as applied to the concept of "non-Western immigrants and descendants", see section 3.1.3. below.

The threat of eviction of the plaintiffs thus exists primarily because more than 50 % of the residents in Mjølnerparken are being defined as "non-Western immigrants and descendants", which has necessitated adopting the Development Plan.

Therefore, it is contended that the category "non-Western immigrants and descendants" is inextricably linked to racial or ethnic origin.

3.1.3. Inextricable link between "non-Western" background and racial/ethnic origin

3.1.3.1. Definitions
Although the concept of "non-Western immigrants and descendants" has not been defined in the Common Housing Act, the term has been used since 2002 by Statistics Denmark.

The category comprises immigrants and descendants from all other countries than the EU (and the UK), Andorra, Australia, Canada, Iceland, Lichtenstein, Monaco, New Zealand, Norway, San Marino, Switzerland, the USA, and the Vatican State. Australia and New Zealand are thus not considered "non-Western", which highlights that the Danish definition is not based on the geographical location of the countries. Although the countries in the "Western" category lack geographical coherence, they have one thing in common: all the countries have majority populations that are perceived as white.

An immigrant is defined as a person born abroad, each of whose parents was either a foreign citizen or born abroad. Where there is information on one parent only, an individual is classified as an immigrant if they were born abroad and the known parent was a foreign citizen or born abroad. Where there is no information on either parent, an individual is classed as an immigrant if they were born abroad.

A descendant is defined as a person born in Denmark, each of whose parents was either an immigrant or a descendant with foreign citizenship. Where there is information on one parent only, an individual is classified as a descendant if the known parent was an immigrant or descendant with foreign citizenship. If there is no available information on either parent, an individual who is born in Denmark but is a foreign citizen is defined as a descendant.

The above definition does not include persons categorised as being of "Danish origin", which includes persons where at least one of their parents was born in Denmark and has Danish citizenship. Being born in Denmark does not automatically confer Danish citizenship, and persons who have only one parent who was born in Denmark but is not a Danish citizen may therefore be included in the category of "descendant", although the person was born in Denmark and is a Danish citizen.

It should be noted that the concept of "non-western immigrants and descendants" therefore is not a nationality criterion, but also not solely a criterion based on place of birth. By contrast, it concerns a criterion that is based on individuals' origin, including their parents' place of birth and nationality. The criterion of "non-Western immigrants and descendants" is based on a clear division between "Western origin" (which refers to an arbitrary group of countries with white majority populations, rather than a well-defined area such as the EU or EFTA) and "non-Western origin". This affects not only those born outside the EU and EFTA, but also those born and raised in Denmark. A focus on origin rather than place

of birth thereby underlines that the criterion "non-Western" is based on hereditary characteristics rather than neutral factors such as country of birth.

On that basis, it should be noted that the classification as "non-Western immigrant or descendant" therefore is not comparable to the concept of "place of birth", which the CJEU in case C-668/15, Jyske Finans A/S, found not to rest directly on a specific ethnic origin, paras. 20-23.

Even if the criterion of "non-Western immigrants and descendants" according to Statistics Denmark by definition does not say anything directly about a person's racial or ethnic origin, it should be noted that it is not the definition of a concept, which is decisive for whether direct discrimination on the basis of racial or ethnic origin has occurred. The deciding factor is rather that racial or ethnic origin has been significant to the initiation of the measure – i.e. the determination of a criterion – that has subjected a person to less favourable treatment.

In that connection, the plaintiffs contend that the criterion of "non-Western immigrants and descendants" must be viewed and assessed in the context, in which it is applied. This view is supported by CJEU's judgment in the case C-54/07, Feryn, where the CJEU found that it constituted direct discrimination on the basis of racial or ethnic origin when a company had publicly declared that it was looking to recruit fitters, but that it could not employ "immigrants" because its customers were reluctant to give them access to their private residences for the period of the works. The CJEU thus performed an assessment of the concept of "immigrants", which was not further delimited, in the specific context in which it had been used, and found that it was tied to the concept of "racial and ethnic origin".

3.1.3.2. References to ethnic origin

It is apparent from the discussion etc. associated with the launch and implementation of the so-called former "Ghetto packages" and their expansion in 2021 that the term "ethnic origin" is used in relation to the term "non-Western".

In "The Government's strategy against ghettoization" from May 2002, six years before the concept of "non-Western" was added to the Common Housing Act, it is stated that the regulation of housing estates etc. was tied to the residents' ethnic origin. Thus, the concept of ethnic origin was used 36 times in the strategy paper, and the term "ethnic enclaves" is used to describe "ghetto areas" with a high proportion of unemployed, immigrants, refugees, and descendants.

In the excerpt from the Programme Board's report "From vulnerable housing estate to whole neighbourhood" from November 2008, the following is mentioned in para. 4.5.1. on the development of the resident composition in selected vulnerable housing estates:

> "With regard to the purely demographic conditions, such as the distribution of age groups, types of households, and **ethnic origin**, focus is primarily on describing the current situation in the areas, whereas the development during the later years is only discussed to a limited extent." [emphasis added]

Thus, the Programme Board unequivocally couples the concept of "immigrants and descendants from non-Western countries" directly with ethnic origin. Consequently, it should be noted that section 4.4.5., which is a subsection to a statistical description of the resident composition in the selected housing estates, is entitled "Ethnicity", and the section primarily focuses on the description of the residents' "non-Western" or "Western" origin.

In the report, it is clearly implied that "immigrants and descendants from non-Western countries" are considered one coherent ethnic origin, which moreover is considered distinct from "Danish origin", which among other things is supported by the following quote from page 61 of the report:

> "It is shown in the diagram that the share of residents without connection to the labour market in both age ranges is somewhat higher for immigrants and descendants from non-Western countries than for residents of Danish origin. For both **ethnic groups**, the share without connection to the labour market is somewhat higher for the older residents than for the younger ones." [emphasis added]

This usage and the interpretation of the connection between the concepts are also found in Act No. 1609 of 26 December 2013 where, accordingly, it is stated that the criterion was significant for ensuring focus on areas with a high concentration of residents with a different ethnic extraction.

In the explanatory memorandum to Bill No. L45 of 31 October 2013, para. 3.1.2, the importance of having the residents in the housing estates in question interacting with each other "across ethnic origin" is emphasised.

That the criterion of "non-Western immigrants and descendants", as it is being used in the Common Housing Act, is directly and inextricably linked to racial and ethnic origin is further supported by the fact that the former government, which took initiative to amending the Common Housing Act in 2018, explicitly refers to ethnic origin as a deciding criterion in the policy proposal "One Denmark without parallel societies – no ghettos by 2030".

Thus, on page 14 of the proposal "One Denmark without parallel societies – no ghettos by 2030", it is stated that:

> "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]

It should further be noted that the then Minister of Housing in the radio programme P1 Orientering on 27 May 2020, following the filing of case with the Eastern High Court in BS-27824-OLR, in response to a question about whether the difference between a vulnerable housing estate such as Byparken/Skovparken in Svendborg not having to reduce the number of homes, while this is the case for Mjølnerparken, is not due to an excessive focus on where people come from, answered:

> "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 back-ground live in another neighbourhood. We want that people meet each other across **ethnic divides** (…)" [emphasis added]

It further follows from the government's proposal "Mixed housing estates - the next steps in the fight against parallel societies", para. 1.1, from March 2021, reference is made to "ethnic and social segregation" to be combated and that the government will continue the work to bolster integration with new initiatives that can create mixed cities where people live together across "economic, social and ethnic divides."

In several places in the proposal, statistical data for "ethnic Danes" is compared with "non-Western immigrants and descendants" concerning for example unemployment and education. The category "immigrants and descendants from non-Western countries" is consistently described and viewed as one coherent ethnic group, irrespective of the fact that the grouping by definition potentially can be considered to contain ethnic groups from many different countries. That the category is regarded as one coherent ethnic group is further illustrated by the fact that a rising number of laws, provisions etc. specifically address and seek to affect this group (including but not limited to the measures in the "Ghetto Package").

3.1.3.3. Stereotyping and presumed racial or ethnic origin

It should be noted that discrimination on the basis of presumed racial or ethnic origin tied to individuals or groups of residents is likewise prohibited under the Ethnic Equal Treatment Act, see Parliamentary Report No. 1422/2002, pp. 292 and 294, and the Commission's Proposal for a Council Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (COM/99/0566 final), p. 6.

The CJEU also appears to recognise in its case law that the inclusion of stereotypical and generalis-ing views linked to ethnic origin is problematic, cf. Case C-83/14, CHEZ Razpredelenie Bulgaria, para. 82.

Even if the criterion of "non-Western immigrants and descendants" is not by definition directly and inextricably linked to racial or ethnic origin, it is contended that the use of this criterion in the characterisation of a ghetto area in Section 61a based on the former government's presumption of the ethnic origin of the residents in common housing estates with "non-Western" background, which were the targeted by the regulation, constitutes discrimination. This is. Among other things, supported by the fact that the former government in the proposal "One Denmark without parallel societies – no ghettos by 2030" links the concept of "non-Western" to factors concerning ethnic origin, such as culture and religion.

In the policy proposal "One Denmark without parallel societies – no ghettos by 2030" it is thus made clear that the initiatives in the Ghetto Package, including tabling and passing Bill No. L38 of 10 October 2018, are targeting those who are perceived to have different "norms" and religious values than the majority in Denmark – who are white and Christian. This is reiterated in the explanatory memorandum to Act No. L38 of 3 October 2018, paragraph 2.6.2. Comparing the definition of "non-Western origin" with the associations that this term has been given in Denmark shows a practice whereby non-Christians are perceived in a racial context.

By using the criterion of "non-western immigrants and descendants" as the decisive criterion for a housing estate to be classified as a "ghetto" (now parallel society) and after four years as a "hard ghetto" (now transformation area), the Development Plan and the less favourable treatment resulting from the approval of the Development Plan thus directly rest on racial and ethnic origin. The plaintiffs are therefore treated less favourably on the basis of a measure based on and implemented according to the criteria of "racial and ethnic origin". This is the case irrespective of whether the Development Plan also affects persons of a particular racial or ethnic origin or also affects persons who do not possess such characteristics, for example, like plaintiffs 5 and 7, see case C-83/14 CHEZ Razpredelenie Bulgaria, para. 95.

Therefore, it is contended that facts have been established, from which it may be presumed that there has been discrimination in violation of Section 3 of the Ethnic Equal Treatment Act and EU law. Once facts have been established, it is then on the Housing and Planning Authority to prove that the approval of the

sale of block II and III on the basis of the Development Plan is based on objective circumstances unrelated to the criteria of race and ethnic origin.

In summary, it is on that basis contended that the Housing and Planning Authority's approval of the sale of block II and III in Mjølnerparken on the basis of the Development Plan constitutes direct discrimination in violation of Section 3 of the Ethnic Equal Treatment Act and EU law.

It is worth noting that, in its latest Concluding Observations on Denmark from 12 November 2019, the Committee on Economic, Social and Cultural Rights stated the following in relation to Act No. 1322 of 27 November 2018 in para. 51 on page 7:

> "The Committee is also concerned that the law is discriminatory as it introduces the categorization of areas as "ghettos", defined by the proportion of residents from "non-Western" countries. Thus it not only results in discrimination based on ethnic origin and nationality, but also further marginalizes those residents (…)"

On that basis, the CESCR recommends abolishing the criterion of "non-Western" in para. 52(a) on page 8:

> "Remove the definitional element of a "ghetto" with reference to residents from "non-Western" countries, a discriminator on the basis of ethnic origin and nationality (…)"

In its Fifth Opinion on Denmark of 7 November 2019, the Advisory Committee on the Framework Convention for the Protection of National Minorities expressed serious concern over the use of the terms "Western" and "non-Western" immigrants and descendants. Especially the use of the criterion of "non-Western immigrants and descendants" when determining when an area as a "ghetto area" and the enforcement of special rules in these areas, such as the reduction of the share of common family housing, led to the following recommendation from the Advisory Committee, see para. 46:

> "The Advisory Committee urges the authorities to reconsider the concepts of 'immi-grants and descendants of immigrants of Western origin' and 'immigrants and descend-ants of immigrants of non-Western origin', both based on the arbitrary aggregation of statistics related to place of birth or citizenship, and their subsequent application in the framework of the so-called "Ghetto law" leading to possible discrimination on the grounds of citizenship, ethnic affiliation and place of residence."

CERD, opinion of February 2022, and ECRI, opinion of June 2022, also state that the implemented legislation is problematic.

3.2. Indirect discrimination

In support of the submitted claim, it is secondly contended that the approval of the sale of block II and III stemming from the Development Plan constitutes indirect discrimination on the basis of race and ethnic origin in violation of Section 3(3), in conjunction with Subsection (1), of the Ethnic Equal Treatment Act and EU law and in violation of Article 14, in conjunction with Article 8, of the ECHR, Article 2 of Protocol No. 4 to the ECHR, and Article 1 of Protocol No. 1.

To the extent that the criterion "non-Western immigrants and descendants" is considered to be a neutral criterion, which in its application through the Common Housing Act is not directly and inextricably linked to racial and ethnic origin, it is contende that the Housing and Planning Authority's approval of the sale of

block II and III indeed puts persons of a racial or ethnic minority origin at a particular disadvantage compared to other persons.

Building on that, it is contended that the approval of the sale of block II and III is not objectively justified by a legitimate aim. Even if is assumed that a legitimate aim is being pursued, it is contended that the means (sale) of achieving this aim is not appropriate and necessary.

3.2.1. Persons of a racial or ethnic origin as compared with other persons

As set out above, it is contended that those classified as being of "non-Western" origin are themselves persons of a particular racial or ethnic origin. 80.5 % of Mjølnerparken's residents have "non-Western" background.

To the extent that the category, as it appears and is used in the Common Housing Act, cannot in itself be assumed to be linked to persons and groups with a specific racial or ethnic origin, the category appears to affect persons from Turkey, Syria, Iraq, Libya, Pakistan, Bosnia and Herzegovina, Iran, Somalia, Afghanistan and Vietnam in particular, where persons with a connection to these countries together account for more than half of all "non-western immigrants and descendants", see the report "INTEGRATION: STATUS AND DEVELOPMENT 2019 – Focus on non-Western countries", figure 1.3 on page 8 (excerpts attached as **annex 17**).

This is further supported by the fact that in an analysis from the Ministry of Economy and Interior from February 2018, it is noted that out of the 74,000 persons with non-Western background, who according to the analysis can be considered belonging to a "parallel society", 40 % lives in a common housing estate, where many of the residents have non-Western background. Furthermore, on page 2 of annex 14, it is stated that:

> "Persons with Turkish origin in terms of absolute numbers make up the largest **ethnic group**. In terms of relative numbers, persons with Somali or Lebanese origin are among the **ethnic groups** encompassing the most people. 44 % of all persons with Somali origin and 41 % of all persons with Lebanese origin are part of the group." [emphasis added]

With regard to Mjølnerparken in particular, 44 % of the Mjølnerparken residents originate from Libya (28 %) and Somalia (16.4 %), respectively. In the case of Libya, 95 % of the population is of the same ethnic group, while in Somalia, 85 % belong to the same ethnic group.

Thus, factual circumstances have been demonstrated, from which it may be presumed that the Development Plan constitutes indirect discrimination, since persons of Arab ethnic origin and Somali ethnic origin are put at a particular disadvantage compared to others.

According to the explanatory memorandum to the Ethnic Equal Treatment Act, it is not required that the criterion only affects persons of a single specific ethnic origin. A criterion, which in practice leads to a less favourable treatment of persons with a different ethnic origin than other persons, can also constitute a violation of the prohibition of indirect discrimination, see page 296 of Parliamentary Report No. 1422/2002.

3.2.2. Less favourable treatment

As described in detail above in the section on direct discrimination, the plaintiffs are subject to less favourable treatment in form of stigmatisation and the risk of eviction from their homes.

3.2.3. Objective justification and legitimate aim

Building on this and with reference to the factual circumstances, from which it may be presumed that the apparently neutral criterion of "non-Western immigrants and descendants" subjects persons with one or more particular racial or ethnic origins to a less favourable treatment than other persons, this discrimination – as it is expressed by the Housing and Planning Authority's approval of the sale stemming from the Development Plan – can only be lawful, if the use of the criterion is objectively justified by a legitimate aim, and the means to achieve this aim are appropriate and necessary, see Section 3(3) of the Ethnic Equal Treatment Act.

According to CJEU case law, the concept of objective justification must be interpreted must also be subject to a restrictive interpretation when the discrimination is linked to racial or ethnic origin, see case C-83/14, Nikolova v CHEZ, para. 112.

In the general remarks to Act No. 1619 of 22 December 2010, where the criterion of "immigrants and descendants from non-Western countries" for the first time was introduced in the Common Housing Act, the following is stated in paragraph 1 of Bill No. 60 of 17 November:

> "Today there is a number of housing estates that have so great challenges that they fall under the designation ghetto areas. These are areas where a large part of the residents is without job. Where relatively many are criminals, and where many people with immigrant background live. In such areas, it may be more difficult for foreigners to be integrated into the Danish society."

It follows from the explanatory memorandum to Bill No. L 38 of 3 October 2018 that the purpose of a development plan is to reduce the number of family units in order to make it a – so-called – attractive neighbourhood. Coupled with the fact that the underlying purpose of the legislation is to eliminate "ghettos," which are defined by having more than 50 % "non-western immigrants and descendants", it is argued that the real purpose of approving the Development Plan and reducing the proportion of family housing to 40 % is to ensure the displacement of residents with non-western backgrounds. Such a purpose is not legitimate. This is particularly so where the purpose and the Development Plan have led to the sale of the plaintiffs' homes.

Moreover, in 2019, CESCR highlighted Denmark's lack of affordable housing and rising rents exacerbated by private investment and recommended on this basis that Denmark increase the number of affordable flats. Common family housing is a particularly Danish form of housing based on principles of democracy, egalitarianism and affordable housing for all. Selling it goes against both the recommendation of CESCR and any other purported justifications for the legislation such as the protection of "Danish values" and better socio-economic conditions.

This lack of legitimacy is underlined by contrasting with the CJEU judgment in case C-668/15, Jyske Finans, in which the requirement of presenting a passport was limited to those born outside the EU and justified by an attempt to comply with EU money laundering legislation. In the present case, the amendments to the Common Housing Act in 2018 and the Ministry's approval of the Development Plan, which have resulted in the sale, are actions of the state's own initiative, to proactively and specifically target a group of people and to move them out of the area. This therefore does not fulfil an integration purpose.

Building on this, it is contended that even if the Housing and Planning Authority's approval, which is based on the Development Plan, should be considered justified by a legitimate aim – which is tied to a

transformation of the resident composition in a housing estate – it follows from the proportionality assessment, which must be performed under the Ethnic Equal Treatment Act and EU law, that the means – in this case the approval of the sale of the plaintiffs' homes – is not an appropriate and necessary means to achieve the stated aim.

Thus, it follows from the CJEU judgment in case C-83/14, Nikolova v CHEZ, paras. 118-123, that the means are only appropriate and necessary if other appropriate and less restrictive measures would not achieve the aims in question, if the disadvantages caused by the practice at issue are proportionate to the aims pursued, and if the practice does not unduly prejudice the legitimate interests of the persons affected.

On this basis, it is contended that even if the reduction of family units in accordance with the Development Plan, which has resulted in the sale, should be considered an appropriate means to achieve the aim of successfully integrating the residents in the area, there are other and less intrusive arrangements available. These include for example re-categorising family units to other types of housing to the extent that the natural vacation takes places and thus not through sale and evictions.

Such less intrusive means are, among other things, described in the draft to an alternative development plan, which the branch board in Mjølnerparken drew up and submitted to the Ministry of Transport and Housing on 31 May 2020, but which the Ministry of Transport and Housing rejected. Moreover, it should be noted that actions initiated before drawing up the Development Plan, including the comprehensive Overall Plan, should according to Bo-Vita's expectations by themselves lead to Mjølnerparken no longer being categorised as a "ghetto" within a reasonable time frame.

Building on this, it is contended that the Housing and Planning Authority's approval of the sale on the basis of the disputed Development Plan in any case unduly prejudices the plaintiffs' and other residents' legitimate interests, including their fundamental rights under the Charter, in particular Article 7 on the individual's right to respect for their private life and home, as well as the residents' legitimate interest in having access to common housing in the form of their homes under conditions that do not appear offensive and stigmatising.

It is contended that this is supported by the CJEU judgment in case C-83/14, Nikolova v CHEZ, where the CJEU stated that the final consumers of electricity have a legitimate interest in having access to the supply of electricity under conditions, which do not have an offensive or stigmatising effect, see para. 124.

On this basis, it is submitted that the Housing and Planning Authority's approval of the sale on the basis of the disputed Development Plan does not sufficiently respect the essence of the rights and freedoms recognised by the Charter, including Article 21 (non-discrimination), Article 24 (rights of the child), Article 25 (rights of the elderly), Article 26 (integration of persons with disabilities), Article 34 (social and housing assistance), and Article 35 (adequate supply of housing; special provision for vulnerable family groups).

In that connection, it is noted that the CJEU has further stated that the loss of a family home places the family concerned in a particularly vulnerable position and that the right to accommodation is a fundamental right guaranteed under Article 7 of the Charter, see case C-34/13, Kusinova v SMART Capital a.s., paras. 63-65, and the CJEU order of 5 June 2014 in case C-169/14, Sanchez Morcillo og Maria del Carmen Abril Garcia v Banco Bilbao Vizcaya Argentaria SA, para. 11.

In summary and on the basis of the stated reasons, it is contended that the Housing and Planning Authority's approval of the sale constitutes indirect discrimination in violation of Section 3 of the Ethnic Equal Treatment Act and EU law.

It is further submitted – with reference to the fact that the ECtHR is not seen to distinguish between direct and indirect discrimination in relation to Article 14 of the ECHR – that the approval, as stated in section 3.1, also constitutes indirect discrimination under Article 14 of the ECHR, in conjunction with Article 8, Article 4 of Additional Protocol No. 4 to the ECHR, and Article 1 of Additional Protocol No. 1 to the ECHR.

3.3. Instruction to discriminate

In support of the submitted claim, it is thirdly contended that the Housing and Planning Authority's recommendation and the approval to the sale by the Ministry of Interior and Housing constitutes discrimination on the basis of racial and ethnic origin in the form of a violation of the prohibition of instruction under Section 3 of the Ethnic Equal Treatment Act and EU law.

In Section 168a(2) of the Common Housing Act, in conjunction with Section 168c(1), it is stated that a development plan for a housing estate, which has been categorised as a "tough ghetto area", is only valid when it has been approved by the Ministry of Transport and Housing.

The housing association administering Mjølnerparken, Bo-Vita, is together with the Municipality of Copenhagen obligated to respect and implement the Development Plan approved by the Ministry of Transport and Housing.

If the Development Plan is not implemented in accordance with its content, the Ministry of Transport and Housing has the power to issue an order for the dismantling of Mjølnerparken. This is stipulated by Section 168b of the Common Housing Act. If the order is not followed, the Ministry has the power to expropriate the relevant branches of Bo-Vita for the purpose of dismantling the housing estate.

On this basis, it is submitted that the approval of the Development Plan by the Ministry and the approval of the sale constitutes an instruction to Bo-Vita to discriminate against the plaintiffs by selling the plaintiffs' flats, which will result in the eviction from their homes. The instruction is moreover tied to the share of residents of a particular racial or ethnic origin in the area as stated above.

The prohibition of instruction in Section 3 of the Ethnic Equal Treatment Act must be interpreted in accordance with CJEU case law on Directive 2000/43/EC. In case C-83/14, Nikolova v CHEZ, the CJEU appears to include the International Convention on the Elimination of all Forms of Racial Discrimination (CERD) as an interpretative aid.

Article 4(c) of the CERD states that State Parties shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination. "Promote" has a broad meaning and includes all efforts in favour of discrimination even without the element of moral coercion, see General Assembly, 20th session, official records, 3rd Committee, 1318th meeting, held on Monday, 25 October 1965, New York, UN Doc. A/C.3/SR.1318, paras. 14 and 27.

Article 2(c) of the CERD also contains a relevant interpretative aid, as this provision stipulates that each State Party shall take effective measures to review governmental, national, and local policies, and to amend, rescind, or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists. From this it follows that the Ministry of Transport and Housing

cannot approve a Development Plan, which entails that a housing association, in fact, must discriminate against residents in a housing estate.

On this basis, it is contended that the approval of the Development Plan by the Ministry of Transport and Housing overall is a violation of the prohibition of discrimination on the basis of racial or ethnic origin in Section 3 of the Ethnic Equal Treatment Act and EU law, because the approval in reality entails an instruction to discriminate.

3.4. Article 14 of the European Convention on Human Rights

Furthermore, it is contended that the Housing and Planning Authority's approval of the sale of block II and III in Mjølnerparken is a violation of the prohibition of discrimination contained in Article 14 of the ECHR in the form of direct and indirect discrimination under Article 14 of the ECHR in conjunction with Article 8, Article 2 of Protocol No. 4, and Article 1 of Protocol No. 1.

Article 14 of the ECHR stipulates that the enjoyment of the rights and freedoms set forth in the ECHR shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin.

Article 14 of the ECHR is applicable when a concrete situation falls within the ambit of one or more of the rights in the ECHR.

In so far as the plaintiffs are concerned, the approval of the sale of block II and III, where their homes are located, falls within the ambit of Article 8 of the ECHR (private life), Article 1 of Protocol No. 1 (right to property), and Article 2 of Protocol No. 4 (the freedom to choose one's residence).

It is contended that, because of the approval of the sale, which is based on the Development Plan, the plaintiffs are being discriminated against because of their status as residents of a "vulnerable housing estate" and thus "other status" within the meaning of Article 14 ECHR.

Moreover, as stated above, the plaintiffs' status as residents of a transformation area is inextricably and directly linked to the fact that more than 50 % of the residents in the housing estate are of "non-Western origin".

It follows in this context – as stated – that the criterion of "non-Western origin" in the Common Housing Act is directly linked to race, skin colour, religion, national and ethnic origin.

The fact that plaintiffs 5 and 7 may not be covered by the definition of "non-Western immigrants and descendants" is in itself irrelevant, since they are covered as a result of their status as residents in a transformation area. It should be noted that the Grand Chamber of the ECtHR in its judgment of 19 December 2018, Molla Sali v Greece (20452/14) has confirmed that "discrimination by association", where a person is discriminated against on the basis of another person's circumstances, is covered by Article 14 of the ECHR, see para. 134 of the judgment.

The plaintiffs, as residents of a transformation area, are all in a comparable situation, as stated above, to residents of so-called areas with "parallel societies", which have faced the same socio-economic challenges for four years or more, but which are not required to reduce the number of family units under a development plan.

Building on that, it is contended that there are and have been established circumstances which support that the plaintiffs are being discriminated against on the basis of the proportion of ethnic origin of the residents of Mjølnerparken.

The onus is then on the Housing and Planning Authority to show that the discrimination is justified and there appears to be no evidence to support such justification of the discrimination, see inter alia judgment of 13 November 2007, D.H. and Others v Czech Republic (57325/00), para. 177.

In any case, it is contended that the discrimination against the plaintiffs can be justified only if it can be shown that the discrimination pursues an legitimate aim and that this aim is sought achieved with the least invasive means.

In addition, it should be noted that the justification for the discrimination must not be linked to facts directly concerning ethnic origin, see judgment of 19 December 2018, Molla Sali v Greece (20452/14), para. 135.

In that connection, it follows from ECtHR case law that discrimination, which is based exclusively or to a to a decisive extent on a person's ethnic origin cannot be objectively justified in a contemporary democratic society, see judgment of 13 November 2007, D.H. and Others v The Czech Republic (57325/00), para. 176.

Even if the criterion of "non-Western immigrants and descendants" should not be viewed as directly and inextricably linked to ethnic origin, the criterion does by definition entail discrimination on the basis of nationality and national origin, which according to the ECtHR can be justified only when very weighty reasons speak for it, see judgment of 16 September 1999, Gaygusuz v Austria (17371/90), para. 42.

It is stated in a memorandum from 10 December 2018 prepared by the Transport, Construction and Housing Authority with a contribution from the Ministry of Justice that it is acknowledged that it is not legitimate to use the criterion of "non-Western origin" when allocating common housing, even when the purpose of the use of the criterion is to change the resident composition in a housing estate and prevent it from becoming a "ghetto", since it would violate Article 14 of the ECHR.

In the view of the plaintiffs, this also supports the fact that it cannot be justified to use the criterion of "non-Western origin" when deciding that the number of family units must be reduced with the consequence that the plaintiffs will lose their home.

It is further submitted that the approval of the sale, which is directly linked to the approved development plan and Section 61a of the Common Housing Act, as amended by Act No 1322 of 27 November 2018, must be considered to be based on undocumented assumptions about the "origin" of persons and the difficulties this origin creates for the integration.

On this basis, it is contended that the Housing and Planning Authority's approval of the sale, which is based on the contested development plan, is linked to such general assumptions, which cannot lawfully be included in the justification of restrictions on ECHR rights.

It follows from the judgment of the ECtHR of 24 May 2016 in Biao v. Denmark (38590/10), that aspirations to improve the integration of "both resident foreigners and resident Danish nationals of foreign extraction" by making family reunification more difficult for persons with less than 28 years of Danish nationality were based on, as the ECtHR states, "rather speculative arguments, in particular as to the time when, in general, it can be said that a Danish national has created such strong ties with

Denmark that family reunion with a foreign spouse has a prospect of being successful from an integration point of view", para. 125 of the judgment.

The ECtHR further found that some of the arguments advanced by the government in the explanatory memorandum to the provisions in question reflected negatively on the lifestyle of Danish nationals of non-Danish ethnic extraction, for example in relation to their "marriage pattern". Accordingly, the ECtHR found that the Danish government had not sufficiently justified that the discrimination resulting from the law in question had been based on objective criteria without relation to ethnic origin, see para. 127 of the judgment, why the ECtHR ultimately found that there had been a violation of the plaintiffs' rights under Article 14 of the ECHR read in conjunction with Article 8. General and preconceived assumptions or social prejudices prevailing in a country cannot therefore constitute sufficient justification for discrimination, see also the judgment of the ECtHR of 22 March 2012 in Konstantin Markin v Russia (30078/06), paras. 142-143.

It is contended that Section 61a of the Common Housing Act, which is tied to the approval of the Development Plan by the then Ministry of Transport and Housing, which has resulted in the sale of block II and III, likewise contains speculative arguments about integration and the lifestyle of "non-Western immigrants and descendants" as well as general preconceived assumptions, for which reason the sale, which is based on the Development Plan, is not justified by objective criteria without connection to ethnic origin.

To that it should be noted that the ECtHR in Biao v Denmark in its assessment also stressed that multiple independent bodies had expressed concern over the discriminatory effect of the 28-years rule, see para. 136 of the judgment, and there thus existed clear indications of ethnic origin being a motivating factor for the specific rule.

The plaintiffs contend that this is also the case with regard to the use of the terms "ghetto" and "non-Western" in relation to the rules of the Common Housing Act.

In the light of the above stated, it is contended in summary that there has been a violation of the plaintiffs' rights under Article 14 ECHR, in conjunction with Article 8 ECHR, Article 1 of Protocol No. 1 and Article 2 of Protocol No. 4.

4. The Housing and Planning Authority's specific approval of the sale of Mjølnerparken and the European Convention on Human Rights

In support of the submitted claim, it is fourthly contended that the Housing and Planning Authority's approval of the sale on the basis of the disputed Development Plan constitutes a direct violation of Article 4 of Protocol No. 4 to the ECHR, Article 8 of the ECHR, and Article 1 of Protocol No. 1.

4.1. Article 2(1) of Protocol No. 4 to the European Convention on Human Rights and the right to choose one's residence

Article 2(1) of Protocol No. 4 to the ECHR stipulates that everyone lawfully within the territory of a state shall, within that territory, have the right to liberty of movement and freedom to choose their residence.

The exercise of the right to choose one's residence may be restricted only where this is in accordance with law and is necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others, see Article 2(3). The right may also be subject, in

particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society, see Article 2(4).

It is thus submitted that the plaintiffs, who are all Danish citizens (except plaintiff 6) and reside lawfully in Denmark, as a consequence of the sale, will have their right to freely choose their residence restricted, since they no longer have access to housing in the housing estate of Mjølnerparken.

It is contended that this constitutes an interference in the plaintiffs' rights under Article 2(1) of Protocol No. 4 to the ECHR.

The Housing and Planning Authority's approval of the sale on the basis of the disputed Development Plan does not reveal circumstances, which demonstrate the existence of public interests or any oth-er interests enumerated in Article 2(3).

In its judgment in Garib v The Netherlands (43494/09), the ECtHR considered restrictions in the access to reside in a housing estate in Rotterdam and found the concrete restrictions, which had been introduced in so-called "hot spot areas", in non-violation of Article 2(1) of Protocol No. 4 to ECHR.

However, the circumstances in Garib v The Netherlands are essentially different from the factors tied to the Housing and Planning Authority's approval of the sale on the basis of the disputed Development Plan, which are tied to Mjølnerparken and the rights of the plaintiffs.

Garib v The Netherlands concerned a Dutch allocation scheme, which aimed to prevent citizens who receive certain forms of welfare benefits from taking up residence in housing estates that had been designated as socially vulnerable. The ECtHR found no violation of Article 2(1) of Protocol No. 4, and in doing so, it accepted that restricting certain groups of individuals from moving to an area in order to reverse the decline of impoverished inner-city areas and improve the quality of life generally was a legitimate aim and served the public interest.

In Garib v The Netherlands, the ECtHR stated that the margin of appreciation available to the state in implementing social and economic policies is a wide one, see para. 139 of the judgment. A significant difference between the Dutch legislation in Garib v The Netherlands and the rules implemented by the Common Housing Act and forming the basis of the Development Plan in the present case is, however, that the Common Housing Act is based on a distinction between "Western" and "non-Western" residents. In addition, the aim of changing the resident composition in vulnerable housing estates does not constitute the actual aim of the approval of the Development Plan, since the requirement of reducing the share of family units to a maximum of 40 % only applies to "tough ghetto areas" and not "vulnerable housing estates", which have the exact same socio-economic conditions, the only difference being the residents' "background".

With respect to proportionality, it should be noted that the ECtHR in Garib v The Netherlands observed that the Dutch scheme did not deprive any person of housing or force any person to leave their home, see para. 144 of the judgment, since it concerned the regulation of new potential tenants' and newcomers' access to housing. For the plaintiffs, the opposite is the case, since they indeed are under a real and actual threat of coerced eviction.

During its proportionality assessment in Garib v The Netherlands, the ECtHR further observed that the Dutch scheme only affected relative new residents in the metropolitan area of Rotterdam, who had lived in the area for less than six years, and that others with residence in the area for more than six years therefore had access to move to the area covered by the restrictions, see para. 144.

Furthermore, it is submitted that the concrete procedural safeguards that formed part of the Dutch scheme are not present in the regulation tied to the Development Plan or in the plan itself, for example that the Dutch Minister reports to the parliament on the effectiveness of the law every five years. In relation to the Development Plan, which has been approved by the Ministry of Transport and Housing, no review mechanism has been envisaged, because it is presumed that implementation of the plan alone, i.e. sale, can change the conditions in the area, just as failure to implement the plan will entail a complete dismantlement of the housing estate, cf. Section 168b(1) the Common Housing Act, irrespective of whether it is necessary to dismantle etc.

On that basis, it is contended that the Housing and Planning Authority's approval of the sale on the basis of the disputed Development Plan overall constitutes a violation of the plaintiffs' right choose their residence under Article 2(1) of Protocol No. 4 to the ECHR, and that the interference with this right neither is nor can be justified under Articles 2(3) or 2(4).

4.2. Article 8 of the European Convention on Human Rights and the right to respect for private and family life and home

Article 8 of the ECHR protects against arbitrary interferences in the individual's right to respect for their private and family life, their home and their correspondence. The interference of a public authority in Article 8 of the ECHR is only permissible if it can be justified in accordance with Paragraph (2), which requires that the interference is in accordance with domestic law and is necessary in a democratic society in the interest of one of the legitimate aims listed in the provision.

It is submitted that an interference in the plaintiffs' access to remain living in their rented flats constitutes not only an interference in their private and family life, but in their home as well, see judgment of 17 October 2013, Winterstein and Others v France (27013/07), para. 141, judgment of 12 June 2014, Berger-Krall and Others v Slovenia (14717/04), paras. 254 and 265, judgment of 22 October 2009, Paulic v Croatia (3572/06), para. 38, and judgment of 24 April 2012, Yordanova and Others v Bulgaria (25446/06), para. 105.

Thus, it is submitted that all the plaintiffs and their family members in the household have lived in their respective flats in Mjølnerparken for many years, and that they have entered permanent tenancy agreements with the housing association.

The plaintiffs are thus considered to have a sufficient and sustained attachment to their flats, so that these undoubtedly constitute a home within the meaning of Article 8. This equally applies to those members of the plaintiffs' families and households, who are not written directly into the tenancy agreement, see in that direction the ECtHR's judgment of 21 April 2016 in Ivanova and Cherkezoy v Bulgaria (46577/15), para. 49.

It is contended that, as a result of the sale, the plaintiffs are effectively required to vacate their homes, as their landlord thereby loses the right to dispose of their tenancy, which is not transferred to the new owner of blocks II and III.

It is therefore contended that the Housing and Planning Authority's approval of the sale on the basis of the contested Development Plan constitutes an interference with the plaintiffs' right to respect for their homes under Article 8(1) of the ECHR.

Moreover, it is submitted that the plaintiffs by an eviction from their flats will also lose the network and community that they have built up in Mjølnerparken through their long-standing residency. Thus, the Housing and Planning Authority's approval of the sale on the basis of the disputed Development Plan also constitutes an interference in their right to respect for private and family life.

It is stated in Article 8(2) of the ECHR that interferences in the private life, which also affects a perfson's home, may be justified, but according to ECtHR case law, very weighty reasons must exist in order for the interference to be justified, see ECtHR's judgment of 13 May 2005, McCann v The United Kingdom (19009/04), para. 4. Furthermore, it follows from ECtHR case law that when performing this assessment, attention must be paid to the consequences of the interference on the individual's identity, self-determination, physical and moral integrity, maintenance of relationships with others, and a settled and secure place in the community, see judgment of 24 April 2012, Yordanova and Others v Bulgaria (25446/06), para. 118.

As stated above, the real purpose of the Development Plan - and the sales carried out on the basis of it - is to enforce the relocation of residents with a "non-Western" background, which cannot be considered a justifiable purpose. Thus, the Development Plan, the sale and the eviction of the plaintiffs do not pursue the interests of national security, public safety or the economic well-being of the country, the prevention of disorder or crime, the protection of health or morals, or the protection of the rights or freedoms of others, and are thus not in themselves compatible with Article 8 ECHR.

Even if it is considered that the approval of the Development Plan and the subsequent sale pursue a legitimate aim, the sale and thus the eviction of the plaintiffs from their home is not a necessary and proportionate means. This in turn is supported by the fact that the Development Plan already shows that, prior to drawing up the Development Plan etc., measures have been taken which could have achieved the aim and which do not require the sale and transfer of the plaintiffs' homes.

The Housing and Planning Authority's approval of the sale on the basis of the disputed Development Plan contains no special consideration of how seriously the sale concretely may affect the residents (including the plaintiffs), including consideration of health or age or other issues of vulnerability that concretely could cause irreparable damage.

Those plaintiffs, who have young children at home will as a consequence of the Housing and Planning Authority's approval of the sale on the basis of the disputed Development Plan likewise be seriously affected by the forced removal, since the children in case of eviction and forced removal to another area away from their current housing estate will have to change school and experience a break in their everyday lives. Furthermore, the evictions will mean that all the plaintiffs will be cut off from the network and community they have built up through their sustained residence in Mjølnerparken.

Thus, the plaintiffs' individual circumstances – in conjunction with the general failure to consider relevant circumstances ahead of the approval of the Development Plan – support that the Housing and Planning Authority's approval of the sale on the basis of the disputed Development Plan is not proportionate.

The Housing and Planning Authority's approval of the sale on the basis of the disputed Development Plan thus constitutes a violation of plaintiffs' rights under Article 8 ECHR.

4.3. Article 1 of Protocol No. 1 to the European Convention on Human Rights and the right to protection of property

Under Article 1 of Protocol No. 1 to the ECHR, every natural or legal person is entitled to the peaceful enjoyment of his possessions. It is stated in the provision that no one shall be deprived of their possessions except in the public interest and subject to the conditions provided for by law.

The ECtHR has recognised that a person's access to a rented flat may be protected by Article 1 of Protocol No. 1, see the ECtHR's judgment of 24 June 2003, Stretch v The United Kingdom (44277/98), paras. 32-35.

Thus, it is contended that the plaintiffs, who have entered permanent tenancy agreements with the housing association, have the right to peacefully enjoy their property, and that this right is being unduly prejudiced by the Housing and Planning Authority's approval of the sale.

Although the Protocol does not contain explicit procedural rights for a person, against whom an interference in the right to property is aimed, it follows from ECtHR case law that the person must be given a reasonable opportunity to effectively challenge the measures interfering with their rights, see judgment of 21 May 2020, Jokela v Finland (28856/95), para. 45.

At the same time, it follows from ECtHR case law that the assessment must strike a fair balance between the right of the individual in question and the general interest, which will require consideration of whether the person has had to bear a disproportionate burden, see ECtHR's judgment of 29 April 1999, Chassagnou and Others v France (25088/94, 28331/95, and 28443/95), para. 85.

While the margin of appreciation available to the state in implementing social and economic policies is a wide one, even a wide margin in the sphere of economic or social policy does not justify the adoption of laws or practices that would violate the prohibition of discrimination (J.D. and A v the United Kingdom, Judgment of 24 October 2019, 32949/17).

In any event, it is contended that the approval of the sale on the basis of the Development Plan has not given the plaintiffs a reasonable opportunity to challenge the measures interfering with their right to property tied to the permanent leases of their flats, just as there does not seem to be a sufficiently weighty general interest in the interference. To this, it should be noted – with reference made to the above-stated – that the interference cannot in any case be deemed proportionate.

On this basis, it is submitted that with the Housing and Planning Authority's approval of the sale on the basis of the disputed Development Plan, a violation of the plaintiffs' right to respect for the enjoyment of their property under Article 1 of Protocol No. 1 to the ECHR has occurred.

PROCEDURAL MATTERS

The case has been brought before the District Court of Copenhagen, which is the jurisdiction of the defendant's domicile, pursuant to Article 235(2) of the Administration of Justice Act.

With reference to Article 250 of the Administration of Justice Act, and since all the plaintiffs are submitting the same claim against the Housing and Planning Authority, the case is being filed as a single action.

It should also be noted that all the plaintiffs' tenancies are located in block II and III, which are the subject of the sale, and that the plaintiffs therefore have a sufficient legal interest in the proceedings. Separate reference is hereby made to the decision of the Eastern High Court of 15 December 2021 in case BS-27824/2020-OLR.

Procedural notices etc. can be given to attorney Eddie Omar Rosenberg Khawaja via the courts' case portal.

1. Request for referral to the Eastern High Court and request for joint proceedings with the case (27824/2020-OLR)

With reference to Section 348(2)(6) of the Administration of Justice Act, the plaintiffs request that the case be referred to the Eastern High Court under Section 226(1) of the Administration of Justice Act.

In support of the request for referral, it is generally submitted that the request is based in particular on the fact that the case is closely connected with a case, which is already pending before the Eastern High Court in the first instance. The parties are the same, although the present action is also directed against the Danish Housing and Planning Authority.

The District Court of Copenhagen has thus previously considered that the case already referred concerns issues of a certain complexity and of a principled nature, which have a general significance for the application and development of the law, which is why the case in question was referred to the Eastern High Court in first instance. Reference is made to the decision by the District Court of Copenhagen of 9 July 2020 in case BS-21068/2020-KBH.

Furthermore, the plaintiffs request that the case be referred so that it can be considered *jointly* with the already pending case, BS-27824/2020-OLR, pursuant to Section 254(1) of the Administration of Justice Act, given the close link between the cases, the course of the proceedings, and the legal basis.

Thus, if the Eastern High Court in case BS-27824-OLR finds that the Development Plan is null and void, the basis for the Housing and Planning Authority's approval at issue in the present case will lapse.

The plaintiffs therefore consider it most appropriate and most economical for the present case to be considered jointly with the case already pending.

2. Application for a stay of execution

It is requested that the present action be granted a *stay of execution* so that the sale of block II and III is not definitively completed until a decision has been taken on the validity of the Authority's approval of the sale.

The question of validity is thus specifically linked to the question of whether the Development Plan underlying the sale is valid or not, and thus also to the questions currently being examined by the Eastern High Court in case BS-27824/2020-OLR.

In support of their request that the present action be granted a stay of execution, the plaintiffs submit that it follows from the case-law of the Supreme Court that the assessment of whether an action challenging an administrative decision or procedure is to be brought before the courts under Section 63(1) of the Basic Law must be granted a stay of execution without any specific statutory provision, depends on a balancing of the interest of the public in not delaying the implementation of the decision, on the one hand, against the nature and extent of the damage which may be caused to the plaintiff, on the other hand, as well as on whether, after a preliminary assessment, there is a reasonable basis for the claim of invalidity, see U 1994.823 H, U 2000.1203 H, U 2012.2572 H, U 2018.790 H and U 2022.2449 H.

According to the publicly available information on the sale of Mjølnerparken's block II and III (annex 1), the blocks in question, which are currently being renovated under the overall plan for Mjølnerparken, are to be taken over in 2023, once the current renovation project has been completed.

It is also stated in the latest information from Bovita sent to the Mjølnerparken Board (**annex 18**) that the current renovation plan for blocks II and III is expected to be finally completed at the beginning of 2024.

The plaintiffs therefore submit that there are grounds for granting a stay of execution with respect to the approval by the Housing and Planning Authority of the sale agreement for block II and III of Mjølnerparken.

It is submitted in that regard that the sale of the plaintiffs' common rental housing, which has been occupied by the plaintiffs for between 15 and 30 years, is extremely grave and intrusive in nature and that the sale would entail the compulsory permanent vacating of the rental housing, just as the plaintiffs would not be able, if they were to succeed in the present action or in the action pending before the Eastern High Court in Case BS-27824/2020-OLR.

It is submitted that final approval of the sale of block II and III, where the plaintiffs' rental units are located, would not imply that the development plan adopted for Mjølnerparken could not be effectively implemented, since the requirement to reduce the number of common housing family units, as provided for in the Common Housing Act, must not be implemented until 2030.

It is further contended that the renovation of block II and III can otherwise proceed in accordance with the overall plan adopted for Mjølnerparken, regardless of the context in which the renovation work may otherwise be included in the contractual basis between Bovita and NREP for the purchase of block II and III.

The plaintiffs thus contend that the approval of the sale by the Housing and Planning Authority's decision of 4 January 2023 would irreparably damage the plaintiffs' rights under the Common Housing Act and that, on the other hand, there do not appear to be any particular urgent and significant interests in not postponing approval.

The plaintiffs further submit, with reference to the above arguments, that in assessing whether the action should be granted stay of execution, account must be taken of the principle of effective judicial protection of the prohibition of discrimination and the rights, which the plaintiffs enjoy under EU law, see the CJEU's judgment in LCL Le Crédit Lyonnais, C 565/12, para. 44.

It must also be taken into account that the sale of family homes and the protection thereof following from Article 7 of the Charter of Fundamental Rights of the European Union, which, following the case-law of the CJEU, entails that the possibility of granting stay of execution may constitute a relevant step ensuring the effective protection of such rights, see case C-34/13 Kusionova v SMART, paras. 60 to 67, and case C-415/11 Mohamed Aziz v Catalunyacaixa.

3. Request for registration of notice of court proceedings on title deed

In so far as the Court does not find grounds for granting stay of execution to the present proceedings, the plaintiffs request that an order be made that notice of the present proceedings be recorded on deeds for the acquisition and sale of blocks II and III.

The plaintiffs refer in this regard to Section 12(3) of the Land Registration Act.

INVITATIONS

The Housing and Planning Authority is **invited (1)** to provide a copy of the sale agreement concluded between Bovita and NREP, which forms the basis for the Authority's approval of 4 January 2023.

INFORMATION ON TRIAL NOTIFICATION

Finally, the plaintiffs note that Bovita, NREP, and the Municipality of Copenhagen have been notified of the filing of the present action and invited, to the extent they consider it appropriate, to request to intervene in the proceedings in order to defend any interests.

VAT REGISTRATION

For the purposes of the calculation of legal costs, it should be noted that the applicants are not registered for VAT.

ANNEXES AND EVIDENCE

A number of the plaintiffs will make statements in the course of the proceedings.

In addition, the following annexes are cited provisionally:

Annex 1:	Development plan for Mjølnerparken, May 2019
Annex 2:	Urgent appeal of 16 October 2020 by UN Special Rapporteurs
Annex 3:	Press release of 22 December 2021 from NREP on the acquisition of Mjølnerparken
Annex 4:	Minutes from meeting in the city council on 2 June 2022 (para. 53)
Annex 5:	Decision of 4 January 2023 to approve the sale of common housing etc. in Mjølnerparken
Annex 6:	Tenancy agreement, plaintiff 1
Annex 7:	Tenancy agreement, plaintiff 2
Annex 8:	Tenancy agreement, plaintiff 3
Annex 9:	Tenancy agreement, plaintiff 4
Annex 10:	Tenancy agreement, plaintiff 5
Annex 11:	Tenancy agreement, plaintiff 6
Annex 12:	Tenancy agreement, plaintiff 7
Annex 13:	Excerpt of economic analysis, February 2018, the Ministry of Economy and Interior
Annex 14:	Approval by the Ministry of Transport and Housing of the Development Plan of 10 September 2019
Annex 15:	Article from 8 July 2019, Danish Broadcasting Corporation
Annex 16:	Report from Centre for Alcohol and Drug Research, Department of Psychology and Behavioural Sciences – Aarhus University "The demographic development in Mjølnerparken compared to three vulnerable housing estates in the period 2013-2019", 2020
Annex 17:	Excerpt from report by the Ministry of Immigration and Integration "INTEGRATION: STATUS AND DEVELOPMENT 2019 – Focus on non-Western countries"
Annex 18:	Revised time plan for the renovation etc. of Mjølnerparken of 3 January 2022

Copenhagen, 21 April 2023

[SIGNED]

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