Pleading A

To the Eastern High Court, 14th department

In case BS-27824/2020-0LR:

1. Applicant 1
2. Applicant 2
3. Applicant 3
4. Applicant 4
5. Applicant 5
6. Applicant 6
7. Applicant 7
8. Applicant 8
9. Applicant 9
10. Applicant 10
11. Applicant 11
12. Applicant 12

(*all represented by attorney Eddie Omar Rosenberg Khawaja)*

versus

The Ministry of Interior and Housing

(*attorney Peter Biering and attorney Emil Wetendorff Nørgaard*)

The applicants' Pleading 1 of 28 January 2021 gives the Ministry of Interior and Housing cause to note the following.

1. PRELIMINARY REMARKS

By way of introduction, the respondent notes that by royal decree of 21 January 2021, the portfolio of the ministry has been changed so that the portfolio of the ministry of housing has been combined with the responsibilities pertaining to the interior, zoning, and cases concerning regional and rural districts. The portfolios have been combined under a new ministry called the Ministry of Interior and Housing.

Thus, the respondent in the present case is no longer the Ministry of Transport and Housing, but rather the Ministry of Interior and Housing.

2. REQUEST FOR SEPARATION FROM THE MAIN PROCEEDINGS UNDER SECTION 253(1) AND (2) OF THE ADMINISTRATION OF JUSTICE ACT

In Pleading 1, the applicants have objected to having the claim for dismissal and the question of whether the ministry is the correct respondent separated from the main proceedings under section 253(1) and (2) of the Administration of Justice Act.

To this, the ministry notes the following:

2.1 Separating the claim for dismissal from the main proceedings

The reason stated by the applicants for objecting is that the question of legal standing *"is directly tied to the substance of the case, including the rights granted to the applicants by Danish law, EU law, and*

Denmark's obligations under international law to not be discriminated against as well as access to the courts to have it tried whether the rights have been violated by a specific decision or exercise of authority." (Pleading 1, page 2, first section).

On this basis, the applicants argue that it does not appear that there should be clear reasons for assuming that a separate formality procedure could be completed without a discussion and assessment of the arguments that have also been submitted in support of the applicants' declaratory action and the respondent's claim for acquittal and, to a significant degree, the substance of the case. For that reason, the applicants do not find that the underlying considerations of Section 253(1) of the Administration of Justice Act call for a separation from the main proceedings.

The Ministry of Interior and Housing does not agree with this.

Firstly, the ministry notes that it appears on page 4 of the rejoinder that the claim for dismissal is supported, in part, by the fact that the applicants' claim (still) is unclear and unsuited for a ruling and, in part, by the fact that the applicants (still) lack legal standing. For that reason, it is not accurate that the claim for dismissal is only supported by the fact that the applicants do not have legal standing.

Secondly, it is wrong that the content of the claim for dismissal should be closely tied to the substance of the case, including the rights granted to the applicants under Danish law, EU law, and Denmark's obligations under international law.

According to case law, the question of whether the applicants have legal standing is a narrowly delimited one, which is not tied to the substantive content of the applicants' fundamental rights. On the contrary, this case concerns, indeed, the relevance of the ministry's approval of the development plan, and the question of who is the addressee for the approval, and who may file a complaint, respectively.

The question of the unclarity of the applicants' claim is also not a question that is closely tied to the substance of the case.

For that reason, it is the opinion of the Ministry of Interior and Housing that the claim for dismissal can be decided by the High Court without the need for the High Court to consider the substantive content of the rules on ethnic equal treatment under Danish law, EU law, and the ECHR, including whether there should be basis for reference to the CJEU.

Moreover, it is the ministry's view that there, in line with what has been argued in the rejoinder, is a strong assumption that there would be procedural savings for both the parties and the High Court connected with separating the claim for dismissal from the main proceedings. This is true both for the necessary production of evidence and the prospect that it could conclude the case.

For those reasons, the Ministry of Interior and Housing maintains the request for the High Court to separate the claim for dismissal from the main proceedings in accordance with Section 253(1) and (2) of the Administration of Justice Act.

2.2 Separation of the question of whether the ministry is the correct respondent from the main proceedings

In Pleading 1, the applicants object to having the question of whether the Ministry of Interior and Housing is the correct respondent separated from the main proceedings.

The applicants note that the question of the correct respondent is directly tied to the facts of the case and that there is a direct connection between the assessment of whether the Ministry of Interior and

Housing is the correct respondent and the substantive rules, which the decision to approve has been alleged to violate. On this basis, the applicants are of the view that *"the question of the correct respondent cannot be addressed without, at the same time, considering the scope of the prohibition of discrimination invoked by the applicants"* (Pleading 1, page 3, eighth section).

The Ministry of Interior and Housing does not agree with this.

The Ministry of Interior and Housing notes that it is wrong that the rejoinder should contain any acknowledgement of the need for ordinary production of evidence in order to assess whether the ministry is the correct respondent.

In the rejoinder, the ministry has argued that the ministry would probably be the correct respondent in a case concerning the ministry's approval of the development plan for Mjølnerparken. However, the way that the applicants' claim is formulated, the applicants seek to have tried whether the development plan and, as part of the plan, the possibility of deciding to sell the applicants' units constitute discrimination against the applicants on the basis of their ethnicity and/or race.

The ministry does not have the authority to make such an assessment and, thus, such a decision.

It is the ministry's view that the High Court can consider the question of the correct respondent without taking into account the content of Danish law, EU law, and Denmark's obligations under international law, as alleged by the applicants. The question can, indeed, be resolved on the basis of the formulation of the applicants' claim.

Moreover, in the view of the Ministry of Interior and Housing, the High Court, when separating this question from the main proceedings, need not consider the applicants' arguments about violation of their fundamental rights. It is also not necessary to produce substantial evidence for the applicants' alleged violation of their fundamental rights.

On this basis, the Ministry of Interior and Housing maintains the request for the High Court to separate the question from the main proceedings in accordance with Section 253(1) and (2) of the Administration of Justice Act.

3. PROCEDURAL REQUESTS

The Ministry of Interior and Housing requests the High Court to fix an exact deadline for the third-party intervener, the Danish Institute for Human Rights, to submit its intervention, so that this deadline expires before a preparatory hearing, cf. below.

Finally, the Ministry of Interior and Housing reiterates the request for the High Court to convene a preparatory hearing, cf. Section 353 of the Administration of Justice Act, where the question of separating the ministry's claim for dismissal, the question of correct respondent, the question of reference to the CJEU as well as the question of combining the present case with the Eastern High Court cases BS-26702/2020-0LR, BS-26704/2020-0LR, BS-26705/2020-0LR, and BS-26706/2020-0LR from the main proceedings may be discussed.

Copenhagen, 15 February 2021

[signed]

Peter Biering

Partner, attorney