Pleading 1

To the Eastern High Court 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 Transport and Housing

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

The rejoinder of 4 January 2021 by the Ministry of Transport and Housing gives the applicants cause – insofar it concerns the procedural questions raised in the case – to preliminarily remark the following.

Further consideration of the respondent's claim for dismissal and request for separating the question of legal standing from the main proceedings

The applicants understand the statement in the rejoinder to mean that the claim for dismissal now – solely – is supported by the argument that the applicants do not have legal standing in the case, including in light of how the claim submitted by the applicants has been formulated.

Regardless of this clarification, the applicants object to the request.

It should be noted that the question 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.

On this basis, it does not appear that there should be clear reasons for assuming that a separate formality procedure about this sub-question would not require a discussion and assessment of the total arguments that have also been submitted in support of the applicants' declaratory action and the respondent's claim for acquittal, and thus to a significant degree, the substance of the case.

Thus, it seems reasonable to assume that a separation of the question of legal standing from the main proceedings and the claim submitted by the applicants in light of the circumstances of the case would mean that the underlying considerations of Section 253(1) of the Administration of Justice Act do not call for separation from the main proceedings.

It follows from Report 698/1973, page 113, that the assessment must be based on concrete considerations of appropriateness as well as an assessment of the extent of evidence associated with the sub-question vis-à-vis the production of evidence in the main proceedings.

When the evidence thus must be expected to have the same extent, which is the case in the present case, a sub-question can only be separated from the main proceedings in very special cases, cf. U2019.3606V (concerning the need for expert appraisal).

In addition, it should be noted that the question in U2013.3295H, to which the respondent repeatedly refers, was tied to a specific decision made by the Danish Veterinary and Food Administration to prohibit Arla Food amba specifically from marketing one of the company's products, where a competitor that produced a similar product did not have a legitimate interest in having the legality of the prohibition directed at Arla Food amba tried. The subject-matter and the substance of the case (whether the prohibition was lawful) were thus entirely detached from the preliminary objection about legal standing and was therefore (naturally) separated from the main proceedings.

To the extent that the High Court despite the foregoing should find that it would be appropriate in the present case to separate the preliminary objection connected to – in essence – whether the applicants have the necessary legal standing from the main proceedings, the applicants request that the hearing take place as a complete oral formality hearing.

Further consideration of the respondent's claim for acquittal and request for separating the question of correct respondent from the main proceedings

Furthermore, the applicants do not find, according to Section 253(1) of the Administration of Justice Act, that the question of whether the Ministry of Transport and Housing is the correct respondent should be separated from the main proceedings.

It should be noted that the applicants object to the request independently of whether the High Court should find that the claim for dismissal connected to the applicants' legal standing ought to be separated from the main proceedings.

As stated in the applicants' reply, and as acknowledged by the respondent in the rejoinder, the argument that the ministry is not the correct respondent has now been submitted in support of the claim for acquittal.

Thus, the question directly concerns the substance of the case.

The fact that the respondent argues in the rejoinder that there must be a "strong presumption" that the ministry "ought to be acquitted already because" the ministry is not the correct respondent does in itself contain an implicit acknowledgment of the need for an ordinary production of evidence related to this question.

However, it has also been argued in the rejoinder that an assessment of the foregoing can be performed "without the need for the High Court to consider the rules in Danish law, EU law, or the ECHR about ethnic equal treatment, including whether there is basis for a preliminary referral to the CJEU."

The applicants do not agree with this.

As stated by the respondent on page 10 of the rejoinder, the respondent has submitted that they are not the correct respondent in relation to the question of whether the development plan, which has been approved by the ministry, and which contains the decision to sell the applicants' flats and tenancies, entails discrimination of the applicants and thus violates the applicants' rights under Danish law, EU law, and Denmark's obligations under international law.

Thus, there is a direct connection between the assessment of whether the Ministry of Transport and Housing is the correct respondent and the substantive rules, which the decision to approve has been alleged to violate.

The question of whether the discrimination – as the argument must be understood – appears only when a flat is actually sold and the tenancy terminated, or whether this already happens when an authority orders a landlord to terminate tenancies by approving and thus initiating the implementation of the plan, which the landlord has been obligated to submit to the authority for approval, contains an assessment of the substantive prohibitions of discrimination invoked by the applicants.

Thus, 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.

Finally, the applicants find that the statement on page 10 of the rejoinder that Ministry of Transport and Housing still does not consider itself the correct respondent in relation to "whether the development plan (and the decision to sell) in itself has discriminated against the applicants", on its own raises questions about the scope of Article 3(1) of Directive 2000/43, and about whether the liable party and thus the scope is affected by the fact that – as the argument must be understood – discrimination (only) occurs as part of the sale and thus a termination of tenancy, for which the municipality and the common housing association is responsible.

It follows from Article 3(1) that the directive applies with respect to the public sector, including public bodies, and in so far as persons' access to housing is concerned.

Thus, it does not appear clear that there should be basis for concluding that the scope is delimited in such a way that only the authority or company concretely involved in a person's access to housing is the liable party within the meaning of the directive, when the discrimination is to be assessed.

The unclarity about this created by what the Ministry of Transport and Housing has argued in the rejoinder about whether the ministry is the correct respondent gives, in the view of the applicants, independently cause to refer preliminary questions to the CJEU about the extent of the scope of the directive.

For that reason as well, it would be inappropriate to separate the part of the claim for acquittal, which is tied to the sub-question of whether the Ministry of Transport and Housing is the correct respondent, from the main proceedings under Section 254(1) of the Administration of Justice Act.

<u>The question of connecting the present case with the cases BS-26702/2020-OLR, BS-26704/2020-OLR, BS-26705/2020-OLR, and BS-26706/2020-OLR</u>

Finally, the applicants maintain their objection to the request that the present case be connected with the rent tribunal cases BS-26702/2020-OLR, BS-26704/2020-OLR, BS-26705/2020-OLR, and BS-26706/2020-OLR.

In support of the request and the appropriateness of it, the respondent merely states that the present case and the rent tribunal cases in question all concern questions relating to Sections 61a and 168a of the Common Housing Act.

The factual circumstances must be assumed to be otherwise essentially different, just as there is no identity of the parties in the cases.

Moreover, the present case contains, in light of the respondent's claims and arguments, a number of distinct factors in relation to both the claim for dismissal and the claim for acquittal, which overall makes connecting the cases inappropriate and unsuitable, just as the question of specific terminations of tenancies are unsuited for being connected with the theme of the present case.

In addition, there appears to be no procedural savings and especially not at the present time where it must be assumed that connecting the cases would, in fact, result in an unnecessary prolongation of all the cases.

Finally, the fact that two provisions in the Common Housing Act are to be interpreted in both the present case and the rent tribunal cases in question does not justify connecting the cases. Regardless of the interpretation of the law, the concrete result of the cases must be based on an assessment of the evidence in the individual cases.

If the parties to the cases BS-26702/2020-OLR, BS-26704/2020-OLR, BS-26705/2020-OLR, and BS-26706/2020-OLR do not find this to be the case, and if they find that these cases directly and solely can be affected by the present case, the most natural thing to do would be to request the High Court suspend these cases until a result has been reached in the present case.

Copenhagen, 28 January 2021

[Signed]

Eddie Omar Rosenberg Khawaja