

# OPEN SOCIETY JUSTICE INITIATIVE

## COPENHAGEN RESIDENTS CHALLENGE APPROVAL OF “GHETTO PACKAGE” EVICTION PLAN

Fact Sheet (Updated August 2022)

### OVERVIEW

A group of residents who are under threat of eviction from their homes in Mjølnerparken, Copenhagen, are taking legal action against the Danish Ministry of Interior and Housing (“Ministry”).

The case is significant because the residents are challenging the Ministry’s approval of a development plan made under Denmark’s “Ghetto Package” of legislation. The “Ghetto Package” is based on a State-made distinction between those of so-called “Western” and “non-Western” background – a categorisation that has already been condemned by international bodies.

The residents are seeking a declaration that the Ministry’s approval of the plan is unlawful because it is discriminatory (under domestic law, European Union (“EU”) law and the European Convention on Human Rights (“ECHR”)) and violates their fundamental rights, including the right to respect for their homes.<sup>1</sup>

### WHAT IS THE “GHETTO PACKAGE”?

The “Ghetto Package” was announced by the Danish Government in March 2018 as a bundle of over 20 different legislative proposals affecting spheres of life as diverse as housing, education and criminal justice, with the stated aim of “eradicating” areas designated by the State as “ghettos.”<sup>2</sup>

#### “Non-Western” background

The determining factor in the designation of an area as a “ghetto,” as compared with other areas with the same socio-economic factors, is whether the majority of residents are classed as being of “non-Western” background.<sup>3</sup> This is a tag that can cover generations of individuals, including “descendants” born in Denmark.<sup>4</sup> Australia and New Zealand are excluded from the concept of

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<sup>1</sup> For further details and filings, please see OSJI’s case page, available at:

<https://www.justiceinitiative.org/litigation/tenants-of-mjolnerparken-v-danish-ministry-of-transport-and-housing>.

<sup>2</sup> Danish Ministry of Economic Affairs and the Interior, *Ét Danmark uden parallelsamfund – Ingen ghettoer i 2030* [English: “One Denmark Without Parallel Societies – No Ghettos by 2030”], March 2018 (“Policy Paper”), available at: [https://www.regeringen.dk/media/4937/publikation\\_%C3%A9t-danmark-uden-parallelsamfund.pdf](https://www.regeringen.dk/media/4937/publikation_%C3%A9t-danmark-uden-parallelsamfund.pdf) See page 7 of the Policy Paper for the stated aim.

<sup>3</sup> The “Ghetto Package” introduced amendments to the Common Housing Act (“CHA”). Section 6 1a(1) of the CHA (as amended) defines a “vulnerable housing estate” as an area of “common housing” inhabited by over 1000 residents where at least two of four socio-economic criteria are met. Section 6 1a(2) of the CHA (as amended) provides that an area that would otherwise be a “vulnerable housing estate” is defined as a “ghetto” where the share of residents of “non-Western background” exceeds 50%. “Ghettos” have been renamed as “parallel societies” areas under the 2021 expansion of the law, as set out below.

<sup>4</sup> “Non-Western” background covers “immigrants” and “descendants.” An “immigrant” is defined as a person born abroad, whose parents were foreign citizens or born abroad. A “descendant” is defined as a person born in Denmark, whose parents were immigrants or descendants with foreign citizenship. The above definitions do not apply to an individual categorised as being of “Danish origin” however this

“non-Western,” demonstrating that the definition formulated by Denmark is not based on the geographical location of countries.<sup>5</sup>

### **Reduction of “common family housing”**

The residents’ case concerns a legal requirement introduced by the “Ghetto Package” to reduce “common family housing” in “tough ghettos” to a maximum of 40% by the year 2030.<sup>6</sup> “Tough ghetto” areas are those which have satisfied the “ghetto” criteria for five or more years.<sup>7</sup> Such a reduction can be made through means such as sale or demolition. This has led to the threat of evictions across Denmark including in Mjølnerparken, where residents face the sale of two buildings containing over 200 homes – some of which have been family homes for decades.

“Common family housing” is a particularly Danish form of housing based on principles of democracy, egalitarianism and affordable housing for all. It is a form of non-profit housing run by housing associations that are intended to be self-governing and independent. The residents pay rent and the housing associations pay annual contributions to the National Building Foundation. The funds are used for matters such as the construction, renovation or demolition of buildings, as well as for social projects such as activities for children and crime prevention programmes.

### **THE RIGHT TO NON-DISCRIMINATION**

Discrimination on any ground is prohibited by the European Convention on Human Rights where a substantive right, such as the right to respect for home, is engaged.<sup>8</sup> This includes on grounds of racial or ethnic origin, which is also unlawful under the EU’s Race Equality Directive.

### **THE RIGHT TO RESPECT FOR HOME**

Both the Court of Justice of the European Union and the European Court of Human Rights have held that the loss of one’s home is an extreme form of interference with fundamental rights.<sup>9</sup> It has been further recognised that the loss of a family home places the family concerned in a particularly vulnerable position.<sup>10</sup>

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designation is only applied if at least one parent was born in Denmark and has Danish citizenship. See Statistics Denmark, “Indvandring i Danmark 2021” available at: <https://www.dst.dk/Site/Dst/Udgivelser/GetPubFile.aspx?id=34714&sid=indv2021> Being born in Denmark does not automatically lead to Danish citizenship.

<sup>5</sup> The definition of “Western” by Statistics Denmark is: The Member States of the European Union (including the United Kingdom); Andorra; Iceland; Liechtenstein; Monaco; Norway; San Marino; Switzerland; Vatican State; Canada; The United States of America; Australia; and New Zealand.

<sup>6</sup> Section 168a(1) of the CHA (as amended).

<sup>7</sup> Section 61a(5) of the CHA (as amended) provided for a transitional period in the years 2018 to 2020. During this time, “tough ghettos” were defined as areas which have fulfilled the criteria for being a “ghetto” for the previous five years. This transition provision became permanent under the 2021 expansion of the law.

<sup>8</sup> Article 14, European Convention on Human Rights.

<sup>9</sup> CJEU Case C-34-13, *Kušionová v. SMART Capital, a.s.*, Judgment of 10 September 2014, ECLI:EU:C:2014:2189 (“*Kušionová*”), paras. 63 to 65 available at:

<https://curia.europa.eu/juris/document/document.jsf?jsessionid=4ED0F9D4AC2CD8EFC1C1576B27ED7005?text=&docid=157486&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=417381>;

*McCann v. United Kingdom* ECtHR, Judgment of 13 May 2008, para. 50, available at:

<https://hudoc.echr.coe.int/eng?i=001-86233>

<sup>10</sup> See *Kušionová*, para. 63.

## FINDINGS BY INTERNATIONAL MONITORING BODIES

The “Ghetto Package” 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 three United Nations Special Rapporteurs (human rights experts).

CESCR and ACFC raised discrimination concerns in relation to the use of “non-Western background” and called for remedial action, with ACFC further noting that Denmark’s inclusion of ‘descendants’ “sends a message that may have a counter-effect on their feeling of belonging and forming an integral part of Danish society.”<sup>11</sup> This is supported by CESCR’s unambiguous conclusion that the categorisation of “ghettos” results not only in discrimination based on ethnic origin and nationality but also in further marginalisation.

In October 2020, three UN Special Rapporteurs joined forces on an emergency application to Denmark, asking for the sale in Mjølnerparken to be halted pending the resolution of the residents’ case, highlighting that the legislation introduced distinctions which are inconsistent with Denmark’s international human rights obligations, particularly to combat racial discrimination.<sup>12</sup> They found that “in effect, ‘non-Western’ is a term that disproportionately attaches to Denmark’s mainly non-European racial, ethnic, religious and non-White populations, including persons descended or originating from Muslim-majority countries.”<sup>13</sup> In February of this year, the CERD recommended that the Danish Government “discontinue the use of the terms ‘Western’ and ‘non-Western’ in its policy and law,” with ECRI noting in June 2022 that the legislation brought “discrimination against persons with migration backgrounds in a number of areas, notably through targeted evictions.”<sup>14</sup>

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<sup>11</sup> See Committee on Economic, Social and Cultural Rights, Concluding observations on sixth periodic report of Denmark, UN Doc. E/C.12/DNK/CO/6, 12 November 2019 (“CESCR”), paras. 51 and 52, available at:

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slO6OSmIBEDzFEovLCuW7I1MtEjVgFzjOTx%2Bv7mTUvkKWW%2FrijBRu8HNz0B1%2Bzb87gtYimVL5%2BjFD6fIL76xMZCYMwTzITb2Jpme6cOwejXBwB%2Bnoj%2FiM2aq3gz1%2BR9>; and Secretariat of the Framework Convention for the

Protection of National Minorities, Fifth Opinion on Denmark, Advisory Committee on the Framework Convention for the Protection of National Minorities, ACFC/OP/V(2019)003, 29 January 2020, paras. 14 and 44, available at: <https://m.coe.int/5th-op-denmark-en/1680996202>

<sup>12</sup> Mandates of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; and the Special Rapporteur on minority issues, UA/DNK/3/2020, 16 October 2020 (“Urgent Appeal”), available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25636>

<sup>13</sup> Urgent Appeal, page 2.

<sup>14</sup> See Committee on the Elimination of Racial Discrimination, Concluding observations on the combined twenty-second to twenty-fourth periodic reports of Denmark, UN Doc. CERD/C/DNK/CO/22-24, 1 February 2022, para. 11, available at:

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6OkG1d%2fPPRiCAqhKb7yhstNvdqJswU%2fbIKYXnDigeHpVR7vhfmtq2zJgCh0Oh6pZb%2f2pJ2OvOexajJOHSx0KvS9jWnPmXM0m4sGBFnnGcDxjRhObEqWpbbrjdB5%2bl4I0BxoBmprjgm11GG01NjiXPw%3d%3d>; and European Commission against Racism and Intolerance, ECRI Report on Denmark (sixth monitoring cycle), 9 June 2022, page 6, available at: <https://m.coe.int/6th-ecri-report-on-denmark-/1680a6d5e4>

## **WHAT IS THE CURRENT STATE OF THE LEGAL PROCEEDINGS?**

In December 2021, the Eastern High Court delivered a judgment in favour of the residents in relation to preliminary issues, rejecting an argument by the Ministry that they are not directly impacted by the approval of the development plan.

The residents, together with third party intervenors the Danish Institute of Human Rights and two UN Special Rapporteurs, have asked the Eastern High Court to refer the case to the Court of Justice of the European Union (“CJEU”) in Luxembourg. In particular, they are seeking a ruling from the CJEU on the correct interpretation of the Race Equality Directive including in relation to “non-Western” background.

A ruling from the CJEU could be relevant not just in Denmark but across Europe. The UN Special Rapporteurs have noted that this type of wording has been used or proposed in multiple national contexts in Europe.<sup>15</sup> In addition, cases of ‘area-based discrimination’ including in the realm of housing are growing.<sup>16</sup>

## **ROLE OF THE OPEN SOCIETY JUSTICE INITIATIVE**

Open Society Justice Initiative uses the law to promote justice and human rights as part of Open Society Foundations’ commitment to building vibrant and inclusive democracies whose governments are accountable to their citizens. This includes supporting those who find themselves pushed to the edge of society, such as racialised communities affected by structural racism and economic injustice.

The residents are represented by Eddie Omar Rosenberg Khawaja from Jacobsen & Khawaja. Eddie Omar Rosenberg Khawaja and Open Society Justice Initiative work together closely on the case, along with local partners including the housing movement, Almen Modstand, and the Centre for Muslim Rights in Denmark. Open Society Justice Initiative has also contributed to civil society submissions on the “Ghetto Package” to international monitoring bodies.

## **LEGISLATIVE EXPANSION OF THE “GHETTO PACKAGE”**

In March 2021, the Ministry announced a legislative proposal to expand the housing element of the “Ghetto Package,” with the stated aim of reducing the percentage of residents of “non-Western” background in any “housing estate” in Denmark to a maximum of 30% within the next ten years.<sup>17</sup>

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<sup>15</sup> Third-party Intervention of 22 April 2022 by the U.N. Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance and the U.N. Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Nondiscrimination in this Context, available at: <https://www.justiceinitiative.org/uploads/922f0548-e0df-4002-aa78-369271b05997/third-party-intervention-unrs-en-04222022.pdf>

<sup>16</sup> See, for example, Collective Complaint 191/2020 *FEANTSA v Czech Republic*, available at: <https://rm.coe.int/cc191casedoc1-en/16809cdf24>

<sup>17</sup> Danish Ministry of the Interior and Housing, “Aftale om blandede boligområder - næste skridt i kampen mod parallelsamfund” [English: Agreement on Mixed Housing Estates – next steps in the fight against parallel societies], March 2021, available at: [https://im.dk/Media/637593535640548234/Aftale%20om%20Blandede%20boligomr%C3%A5der%20-%20n%C3%A6ste%20skridt%20i%20kampen%20mod%20parallelsamfund%20\(forebyggelsesomr%C3%A5der\)%20-%2015.%20juni%202021.pdf](https://im.dk/Media/637593535640548234/Aftale%20om%20Blandede%20boligomr%C3%A5der%20-%20n%C3%A6ste%20skridt%20i%20kampen%20mod%20parallelsamfund%20(forebyggelsesomr%C3%A5der)%20-%2015.%20juni%202021.pdf) See Page 1 for the stated aim.

The law was passed in November 2021 and added a new category of designated areas known as “prevention areas,” again using “non-Western background” as the determining criterion.<sup>18</sup> The newly designated areas are subject to various provisions including restrictions on housing allocation and the option of demolishing common family housing.<sup>19</sup> The law also changed some of the terminology of the “Ghetto Package” but not the definition of “non-Western” background and the effect of the provisions remains the same. The Danish Government explained that the changes were prompted because of a concern that the language used in the “Ghetto Package” can be an obstacle to attracting a wider group of home-seekers.<sup>20</sup> As such, “ghetto” was replaced with “parallel society” area and “tough ghetto” with “transformation area.” The original terminology remains in regular use in common discourse.

## COMPARISON WITH TREATMENT OF UKRAINIAN REFUGEES

In May 2022, the Danish Parliament passed a raft of amendments to various laws in order to welcome Ukrainian refugees, providing them with “security, stability and the best possible conditions.”<sup>21</sup> One of the key provisions concerns the removal of a ban on refugees moving into certain areas regulated by the “Ghetto Package.”<sup>22</sup> As Ukraine is not currently defined as a “Western” country, there have been discussions about the impact of Ukrainian refugees into these areas, and whether the definition of “Western” will need to be changed to prevent the influx of Ukrainian refugees from triggering new “ghetto” type designations.<sup>23</sup>

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<sup>18</sup> Act amending the Act on Common Housing etc., new section 61 b, available at: <https://www.retsinformation.dk/eli/ta/2021/2157>. Specifically, as stated in the Proposal paper above “prevention areas” are “[c]ommon housing estates with at least 1,000 residents *where the share of immigrants and descendants of non-Western origin exceeds 30%*. Moreover, the area must fulfil at least two out of the following four criteria concerning education, employment, income, and crime.” (emphasis added)

<sup>19</sup> See Box 2: Measures and Box 3: Municipal allocation of private rental units in Danish Ministry of the Interior and Housing, “Aftale om blandede boligområder – næste skridt i kampen mod parallelsamfund” [English: Agreement on Mixed Housing Estates – next steps in the fight against parallel societies], March 2021.

<sup>20</sup> Explanatory Memorandum to Bill no. L23, page 6, available at: [https://www.folketingstidende.dk/samling/20211/lovforslag/L23/20211\\_L23\\_som\\_fremsat.pdf](https://www.folketingstidende.dk/samling/20211/lovforslag/L23/20211_L23_som_fremsat.pdf)

<sup>21</sup> Act No. 546 of 3 May 2022.

<sup>22</sup> Section 1(4) of Act No. 546 of 3 May 2022.

<sup>23</sup> See, for example, Mikkel Fyhn Christensen, “I Danmark er ukrainere »ikkevestlige«, og det giver problemer ude i kommunerne,” Berlingske, 17 March 2022, available at: <https://www.berlingske.dk/samfund/i-danmark-er-ukrainere-ikkevestlige-og-det-giver-problemer-ude-i>