# Eastern High Court
# Decision
**delivered on 15 December 2021**

**Case BS-27824/2020-OLR**
(14th Chamber)

Plaintiff 1)-12) [redacted] (represented by attorney Eddie Khawaja)

v.

The Ministry of Interior and Housing (formerly the Ministry of Transport and Housing) (represented by attorney Peter Biering)

Third-party intervener: The Danish Institute for Human Rights

The High Court justices Inge Neergaard Jessen, Benedikte Holberg, and Jesper Jarnit have taken part in the disposal of the case.

The action was brought before the City Court of Copenhagen on 27 May 2020 and by order of the court on 9 July 2020, it was referred to the High Court under Section 226(1) of the Administration of Justice Act. On 28 September 2020, the High Court decided to endorse the referral under Section 226(5), in conjunction with subsection (1), of the Administration of Justice Act.

During the proceedings, the plaintiffs have submitted the following claims of equal rank:

1. The Ministry of Transport and Housing must acknowledge that the Ministry's approval on 10 September 2019 of the Development Plan for Mjølnerparken is in violation of the plaintiffs' right to not be directly or indirectly discriminated against under Section 3 of the Ethnic Equal Treatment Act, and Denmark's obligations under international law as expressed in Article 14 of the European Convention on Human Rights, in conjunction with Article 8 of the ECHR on the right to respect for their private and family life, Article 1 of Protocol No. 1 on the right to protection of property, and Article 2 of Protocol No. 4 on the freedom to choose one's residence, and that the decision, as a result thereof, is null and void.

2. The Ministry of Transport and Housing must acknowledge that the Ministry's approval on 10 September 2019 of the Development Plan for Mjølnerparken is in violation of the plaintiffs' rights according to Denmark's obligations under international law as expressed in Article 8 of the European Convention on Human Rights on the right to respect for their private and family life, Article 1 of Protocol No. 1 on the right to protection of property, and Article 2 of Protocol No. 4 on the freedom to choose one's residence, and that the decision, as a result thereof, is null and void.

The Ministry of Interior and Housing has submitted a claim for dismissal, alternatively for acquittal.

During the proceedings, the High Court has on 25 May 2021 separated the claim for dismissal by the Ministry of Interior and Housing from the main proceedings under Section 253(1) and (2) of the Administration of Justice Act.

The question has been pleaded orally by the parties alone and not the third-party intervener, the Danish Institute for Human Rights.

The main question of the case is whether the defendant, the Ministry of Interior and Housing, through the Housing Minister's approval on 10 September 2019 of a development plan for the housing estate Mjølnerparken has discriminated against the plaintiffs, [redacted], on the basis of racial or ethnic origin or violated their rights under the European Convention on Human Rights.

**Claims**
During the separate trial hearing, the Ministry of Interior and Housing has submitted a claim for dismissal, alternatively for acquittal.

It has been stated during the separate trial hearing that the claim for acquittal concerns the question of the right defendant and has been submitted in the event that High Court should find that a decision that the Ministry is not the right defendant should result in the acquittal of the Ministry rather than the dismissal of the case.

The plaintiffs have submitted the claim that the claim for dismissal by the Ministry of Interior and Housing shall not be upheld and that the claim for acquittal shall be rejected.

**Factual circumstances**
On 8 May 2019, the housing association Bo-Vita drew up a development plan for Mjølnerparken, which is categorised as a "tough ghetto area" on the ghetto lists from 2018 and 2019 kept by the Ministry of Interior and Housing (at that time: The Ministry of Transport and Housing, formerly the Ministry of Transport, Construction, and Housing).

In the development plan, the following is stated:

> **"4. Factual description**
> Mjølnerparken is a common housing branch from 1986 under Bo-Vita (formerly Lejerbo København).
>
> The branch today consists of 528 family units and 32 student units – 560 units in total. There are no other types of housing or non-residential leases. The units are divided into four blocks, …
>
> **5. Presentation of the measures**
> …
> *The Development Plan*
> The development plan will upon conclusion of the first phases of the overall plan follow up by reducing the share of family housing to 40%. Likely in 2021 and 2022.
>
> In the interest of saleability and operability, it is advisable that entire blocks are sold as a whole.
> …

| | Current situation | % | According to overall plan | % | The development plan | % |
|---|---|---|---|---|---|---|
| Student units | 32 | 6 | 73 | 13 | 45 | 8 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Family units | 528 | 94 | 463 | 79 | 233 | 39.9 |
| Senior units | 0 | 0 | 0 | 0 | 0 | 0 |
| Non-residential | 0 | 0 | 25 | 4 | 7 | 1 |
| **Housing total** | **560** | **100** | **561** | **96** | **285** | **49** |
| Demolished | 0 | 0 | 23 | 4 | 23 | 4 |
| Sale, family units | 0 | 0 | 0 | 0 | 221 | 38 |
| Sale, student units | 0 | 0 | 0 | 0 | 28 | 5 |
| Non-residential sold | 0 | 0 | 0 | 0 | 27 | 5 |
| Total/ denominator | 560 | 100 | 584 | 100 | 584 | 100 |

…

**6. Roadmap**

There is the following roadmap for which blocks are to be sold, renovated first[:]

1 June 2019: Development plan submitted.

Early 2020: Works under the overall plan commenced.

Early 2021 (milestone): The first block, which is to be sold, has been vacated and completely renovated, sale can be executed. Works will commence in the block, which is to be sold.

Early 2022 (milestone): The second block, which is to be sold, has been vacated and completely renovated, sale can be executed.

Early 2022: The rest of the overall plan is commenced.

2024 (milestone): The overall plan has been implemented."

On 20 June 2019, the plan was approved by the City Council of Copenhagen.

In the minutes from the city council meeting on 20 June 2019, the following excerpt from the administration's recommendation is included:

"**11. Development plan for Mjølnerparken, Nørrebro …**

…

**Presentation**

**Recommendation**

Recommendation to

1. approve the development plan for Mjølnerparken …

(The Technical and Environmental Committee and the Economy Committee)

**Statement of the problem**

The common housing branch Mjølnerparken has been categorised as a tough ghetto area under the new legislation from 2018 about parallel societies. For that reason, the Municipality of Copenhagen together with the common housing association Bo-Vita has been obliged to submit a development plan to the Ministry of Transport, Construction, and Housing that shows how the share of common family housing in Mjølnerparken will be reduced to a maximum of 40% by 2030 the latest.

Against this background, the city council must decide on a development plan for Mjølnerparken.

**Solution**

…

Expectations to a sale scenario

Mjølnerparken consists of four blocks (I, II, III and IV …). The 221 family units, which are to be sold under the development plan in Mjølnerparken, are expected to be sold in block II and III. After the implementation of the overall plan, the two blocks contain 228 family units and is the combination of blocks that comes closest to the legal requirement of reducing with 221 units. After this, there will be 226 common family units in Mjølnerparken.

…"

By letter from the Ministry of Transport and Housing on 10 September 2019 to Bo-Vita and the Municipality of Copenhagen, the Housing Minister approved the development plan for the housing estate Mjølnerparken. In the letter, it is written:

"In accordance with Section 168a(1) of the Common Housing Act, the Municipality of Copenhagen and Bo-Vita has drawn up a joint development plan for the housing estate Mjølnerparken … The goal of the development plan is to reduce the share of common family housing in the housing estate to a maximum of 40% by 2030.

In accordance with Ministerial Order No. 1354 of 27 November 2018, the Housing Minister performs a concrete assessment of the development plan. The plan must include details on how the share of common family housing will be reduced as well as a roadmap with milestones for the reduction.

It is the assessment of the Ministry of Transport and Housing that the development plan for Mjølnerparken lives up to the requirement of reducing the share of common family housing to a maximum of 40% by 2030. …

Since the development plan for the housing estate Mjølnerparken fulfils the reduction requirement of 40% according to the above calculation, and since the presented roadmap and the milestones specify the overall development towards the realisation of the plan, I approve the development plan.

…"

It has been declared that all plaintiffs are residing in either block II or III in Mjølnerparken.

**Arguments**

In their case summary of 27 October 2021, the plaintiffs have argued as follows in support of the claim that the case shall not be dismissed:

"In support of the submitted claim, it is contended that the plaintiffs' claims as clarified in the pleading of 30 September 2021 have a such clarity that they can be adjudicated and are suitable for a ruling, and that the plaintiffs, who all reside in tenancies located in the affected blocks in Mjølnerparken, are sufficiently individually and concretely affected by the

defendant's approval of the development plan for Mjølnerparken, so that there is no basis for dismissing the case.

1. Clarity of the claims

The claims submitted in the main proceedings, according to which … have been worded in a way that makes them sufficiently clear and suitable for a ruling.

Thus, the assessment does not depend decisively on whether a concrete action can be derived from the claim, which the plaintiffs request to have imposed on the defendant, and which is directly tied to the legal relations between the parties.

Rather, the assessment of whether a claim is unsuited for a ruling does in this context depend on whether the claim would entail a legal effect, which, if the claim is upheld, cannot be achieved anyway, cf. inter alia U2016.3929Ø and U2006.910Ø.

This is not the case.

In addition, the assessment depends on the specific clarity of the claim in relation to what the party who submitted the claim seeks to achieve, cf. inter alia U2017.630H, U2009.2752H, and U2005.2134H.

The plaintiffs have submitted the claim that the Ministry must acknowledge that the approval of the Development Plan for Mjølnerparken violates the plaintiffs' rights under the mentioned instruments of EU law and international law.

Thus, the claims are tied to the unlawfulness of the Ministry's approval. An instance of unlawfulness that directly concerns the plaintiffs.

The fact that the plaintiffs' claims do not state what the operative consequence of the adjudication ought to be does not imply that the claim is of no consequence to the legal position of the plaintiffs, and that it thereby becomes unclear in such a way that it is unsuited for a ruling.

In the case U2010.1942H, the plaintiff inter alia submitted the claim that
"1. The defendant, the Ministry of Science, Technology, and Development, must acknowledge that Act No. 598 of 24 June 2005 on internet domains that are specifically allocated to Denmark (the Internet Domain Act) is in violation of Section 3 of the Basic Law, because Sections 2, 6, 11, and 28 have introduced measures affecting a pending court case between the plaintiffs and a third party, and that the law, for that reason, is null and void.

2. The Ministry of Science, Technology, and Development must acknowledge that the provisions in Sections 2, 6, 11, and 28 of the Internet Domain Act, which regulates the relationship between the plaintiffs and a third party in a pending court case, is in violation of Article 6(1) of the European Convention of Human Rights, and that the law, for that reason, is null and void."

In response to these two claims, the Ministry of Science submitted a claim for dismissal before the High Court and stated that both claims contained an element of an argument, and that the claims, for that reason, were not suitable for a ruling in the form, in which they had been submitted.

The High Court did not dismiss the claims. Before the Supreme Court, there was submitted no claim for dismissal in relation to the claims in question.

Thus, the claims in question did not, in reality, contain an operational effect directed at the legal relations between the parties. Moreover, the court did not find that the part of the claims concerning nullity should result in the other parts being considered arguments in support of this.

The clarity of the claims was not questioned.

Furthermore, it follows from case law that claims for declaratory relief of the type submitted in the present case have been adjudicated by the courts.

In the case U2002.1789H, which concerned a requirement of citizenship as a condition for a licence for passenger transport, the plaintiff had submitted the claim that the Ministry of Transport had to acknowledge that the application of the citizenship requirement in the Taxi Act in relation to him was in violation of Article 14 of the ECHR, in conjunction with Article 1 of Protocol No. 1 to the ECHR.

Before the Supreme Court, it was clarified that the claim for declaratory relief referred to the fact that the plaintiff had not been given a new taxi licence after the new Taxi Act had taken effect, because he did not fulfil the citizenship requirement.

The Supreme Court stated that the claim for declaratory relief had been worded sufficiently clear to be adjudicated. The Supreme Court found that although a decision on the claim for declaratory relief did not have any significance for the plaintiff in other regards than concerning the demand for damages (which had been submitted as a separate claim for payment), the claim had been worded sufficiently clear to be adjudicated.

Finally, the Supreme Court did not find that the claim for declaratory relief could be seen (solely) as an argument in support of the submitted claim for payment.

In case U2021.1073Ø (pending appeal), which concerned blood transfusion performed on an unconscious patient who was a Jehovah's Witness, the plaintiff (who was the spouse to the patient) submitted several claims.

Among other claims, two claims for declaratory relief (claims 4.a and 4.b of the case) had been submitted to the effect that the Danish Agency for Patient Complaints should acknowledge that the specific hospital had performed an unauthorised blood transfusion, which constituted an intervention in violation of Article 8 and Article 9 of the ECHR.

The High Court found that the claims had been worded sufficiently clear to be adjudicated.

Thus, the High Court stated that:

"Following the case law of the European Court of Human Rights (ECtHR), a violation of the ECHR may, depending on the circumstances, be redressed ("just satisfaction") by a juridical statement of the fact that the violation has taken place without awarding damages or compensation. Since the defendant has been acquitted concerning the demand for compensation for emotional distress, because the agency is not the correct defendant, it is assumed that such a statement must be found in the ruling. Furthermore, it should be noted that claim 4.a and 4.b are worded sufficiently clear to have been adjudicated."

Thus, the conclusion would have been the same, had there not been submitted a claim for compensation for emotional distress.

Furthermore, the plaintiffs contend that the wording of the claims in the present case do not otherwise raise any doubt as to what the subject-matter of the present case and the claims is, and that the case for that reason should be dismissed.

It is the provisions of the Common Housing Act that oblige the housing associations and municipalities to draw up development plans, and it is the Ministry of Interior and Housing that is responsible not only for the law, but also for the final concrete approval of the development plans stemming from the rules, and which are submitted to the Ministry.

The housing associations and municipalities draw up a development plan, because the Ministry of Interior and Housing through the Common Housing Act instructs them to do so, and the Ministry's approval is decisive for whether a development plan can take effect and be implemented with subsequent consequences for the plaintiffs.

If the housing association and city council had not drawn up a development plan, which the Ministry of Interior and Housing would approve, this would have resulted in an order to dismantle Mjølnerparken. This is stated in the provisions in Sections 168a and 168b of the Common Housing Act.

The presented development plan for Mjølnerparken contains complete details about the measures that will be taken in the housing estate in question, including the sale of the two blocks where the plaintiffs live.

Like all other public authorities, the Ministry of Interior and Housing is obliged to comply with the ECHR and EU law, including as the latter has been expressed in the Ethnic Equal Treatment Act. This is mandatory for all exercise of the Ministry's administrative authority.

Thus, this also applies to the approval of development plans.

Thus, the subject-matter of the case is clear. It is directly tied to the exercise of administrative authority by the Ministry of Interior and Housing under the approval procedure prescribed by the Common Housing Act and the related ministerial order.

Regardless of whether it is stated in the ministerial order on the physical transformation of tough ghettos, the Ministry of Interior and Housing is obliged to ensure that a development

plan does not entail rights violations stemming from other rules, EU law, or international obligations.

*Claims for declaratory relief and the ECHR*
Furthermore, it is contended that the access to take declaratory action before a national court concerning the violation of rights in the ECHR follows from the ECHR itself.

It is stated in Article 1 of the ECHR that the high contracting parties shall secure to everyone within their jurisdiction the rights and freedoms defined in the Convention.

If a person claims that the state has violated their rights under the ECHR, it is possible to bring an application to the European Court of Human Rights (ECtHR). This is stated in Article 34 of the ECHR.

However, the ECtHR may only deal with the matter after all domestic remedies have been exhausted. This is stated in Article 35 of the ECHR.

The purpose of this is that the state must be given the chance to redress a potential violation, before the state is held accountable internationally. Moreover, Article 35 of the ECHR is closely connected to Article 13 of the ECHR, which states that there must exist effective national remedies to enforce the rights in the convention.

Thus, the control mechanism of the ECHR is based on the assumption that alleged violations of rights in the ECHR can be handled on the national level.

This entails that national courts must be able to examine whether a person's rights under the ECHR have been violated.

This applies regardless of whether there may be an operative legal consequence as such, which for example could be expressed through a claim for compensation, cf. also U2021.1073Ø, since a juridical statement that a violation has taken place may constitute just satisfaction under the ECHR.

When no claim for compensation has been submitted, it must be assumed that this statement can be expressed in the court's ruling.

Moreover, reference is made by the plaintiffs to the overview of case law by the Danish Institute for Human Rights, see page 3 of the institute's intervention of 30 June 2021, as well as judgment of 6 July 2005, *Nachova v. Bulgaria*, para. 145, judgment of 24 July 2012, *BS v. Spain*, paras. 62 and 63, and judgment of 16 April 2019, *Lingurar v. Romania*, paras. 79-81, with respect to the obligation of the authorities to use any available means to fight racism.

*Claim for declaratory relief and EU law*
Furthermore, it is contended that the rules in the Ethnic Equal Treatment Act invoked by the plaintiffs implement the Council Directive of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Directive 2000/43).

Therefore, the Danish law must be understood and interpreted in accordance with EU law, including the case law of the CJEU, which, in turn, must be viewed and interpreted in light of the Charter of Fundamental Rights of the European Union (the Charter).

Thus, Article 47 of the Charter prescribes the rights to effective legal protection of the rights enshrined in EU law. It is based on Article 13 of the ECHR, but it gives a more comprehensive protection, since it is not limited to the rights in the Charter, but is applicable to all rights and freedoms that can be derived from EU law.

Article 7 of Directive 2000/43 likewise prescribes that the member states shall ensure that judicial and/or administrative procedures are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them.

In recital no. 19 to the Directive, it is likewise stated that persons who have been subject to discrimination based on racial and ethnic origin should have adequate means of legal protection.

Finally, it is stated in Article 19 of the Treaty on European Union (Treaty of Lisbon) that the member states shall provide remedies sufficient to ensure effective legal protection in the fields covered by EU law.

Thus, national procedural rules on judicial review must be interpreted in this light.

In the decision *Braathens Regional Aviation AB* (case C-30/19), the CJEU has stated that the payment of a sum of money alone is not such as to ensure effective judicial protection for a person who requests a finding that there was a breach of his or her right to equal treatment derived from that directive, in particular where the primary interest of that person is not economic but rather to obtain a ruling on the reality of the facts alleged against the defendant and their legal classification, cf. para. 47 of the judgment.

In order to ensure an effective legal protection under Article 7 of Directive 2000/43 and Article 47 of the Charter, it cannot be required that the plaintiffs must submit a claim for compensation that can be enforced or a claim with another operational legal consequence, since the plaintiffs are entitled to have an examination of whether their rights under the Ethnic Equal Treatment Act have been violated, regardless of whether there is a specific legal consequence derived from such a ruling.

The operationalisation may – if so desired by one of the parties – be requested subsequently.

2. The plaintiffs are individually and concretely affected by the Ministry's approval

Moreover, the plaintiffs find that they all are individually and concretely affected by the Ministry's approval of the development plan for Mjølnerparken and thus the administrative authority that the Ministry has exercised in this connection.

Whether the plaintiffs can initiate proceedings to try whether the approval by the Ministry of Interior and Housing of the development plan for Mjølnerparken constitutes unlawful discrimination and rights violations of the plaintiffs thus depends on how the development

plan, which is the core of the Ministry's approval and administrative practice, affects the plaintiffs' affairs.

The development plan for Mjølnerparken, which the Ministry under the Common Housing Act and the Ministerial Order on the Physical Transformation of Tough Ghetto Areas has approved and thus given effect, entails the specific approval of sale of flats in Mjølnerparken.

A sale that directly affects all plaintiffs who occupy tenancies in the affected blocks II and III.

It is clearly stated in the development plan that this entails that the plaintiffs will be terminated and evicted from their homes, cf. the Development Plan (appendix 3) (page 197 and 199 of the trial bundle), and less clearly how they will be offered another flat, cf. the letter of 20 April 2020 from the Ministry of Interior and Housing (appendix I) (page 216ff of the trial bundle).

For all the plaintiffs, this means that they face eviction from the flats that have been their family homes for decades.

The plaintiffs are already on this basis, regardless of whether there is uncertainty about the time of the sale and eviction, individually and concretely affected by the approval by the Ministry of Interior and Housing of the development plan.

Therefore, the fact that the plaintiffs have not yet had their tenancies terminated is without importance with respect to the subject-matter of the present case.

Thus, the subject-matter of the case is not the termination, but rather the exercise of administrative authority by the Ministry of Interior and Housing when approving the development plan, which results in different consequences, including the sale of the plaintiffs' tenancies with their subsequent eviction.

Furthermore, this subject-matter cannot be tried subsequently in for example a rent tribunal case concerning a specific termination against a landlord who is bound by a development plan approved by the Ministry of Interior and Housing.

The concrete and individual effect on the plaintiffs thus appears to be identical to the circumstances in the judgment reported in U2012.2572H where a number of residents filed a lawsuit against the Ministry of Environment with the claim, inter alia, that the ministry should acknowledge that a new law about a test centre for large windmills at Østerild (the Test Centre Act) was null and void in relation to the plaintiffs.

The plaintiffs' claim was in particular based on the argument that the Test Centre Act had been passed in violation of the EU Habitats Directive.

The Test Centre Act made it possible to construct windmills 250 meter tall in order to construct pylons, road access etc.

The High Court found that those plaintiffs, who owned real estate (and thus had their addresses) so close to the test centre that they would be affected by this visually, in terms of

noise or so that their property could be expropriated in part or in total, had a legitimate interest in having the basis for the decision to place the test centre specifically at Østerild tried.

This also at a time when the details about the effects in terms of for example noise and shade were not present, neither were detailed construction plans, and the date of construction had not been settled.

Moreover, it should be noted in this connection that the case in U2012.2572H differs from the present case in that it is not the provisions of the Common Housing Act as such that the plaintiffs wish to have examined in the present case, but rather the specific approval by the Ministry of Interior and Housing of the development plan for Mjølnerparken.

This further underlines the fact that the plaintiffs, who are residents in Mjølnerparken in the blocks, which according to the development plan are to be sold, are concretely and individually affected by the Ministry's decision.

In addition, the plaintiffs note that the reference by the Ministry of Interior and Housing to U2013.3295H, where an interest group could neither for itself nor as an agent for a business, D, file a lawsuit against the Danish Veterinary and Food Administration concerning the Administration's decision on a competing business, A, regarding the latter's marketing, does not appear to be relevant to the assessment of the present case.

The Supreme Court found that neither the business D nor the interest group was so concretely affected by the Danish Veterinary and Food Administration's decision concerning business A's marketing that they had a legitimate interest in having the validity of the decision tried by the courts. The Supreme Court noted that it is not the purpose of the food legislation to safeguard the interests of competing manufacturers of the product in question. Finally, the Supreme Court noted that a recognition of the interest group's legal standing in the lawsuit about the Danish Veterinary and Food Administration's decision on business A's marketing would entail that the question of the legality of business A's marketing could be tried without the inclusion of business A.

The case is – as it appears – in no way comparable to the present case.

In U2013.2395H, the case concerned an interest group, which on behalf of a member, business D, wished to safeguard the business' economic interest vis-à-vis a competing business by making a public authority change a decision, which had been made in accordance with a law that has the purpose of protecting the consumers. At the same time, it is clear that if the lawsuit had been entertained, the business, whose marketing was the subject-matter of the case, would not have had the opportunity to safeguard its own interests. Finally, the interest group and business D had the opportunity to safeguard their own (economic) interests by filing a civil lawsuit against business A concerning a violation of the Marketing Act.

Finally, it also follows from ECtHR case law that the plaintiffs must be considered sufficiently individually and concretely affected, regardless of whether their flats have not yet been sold.

A victim within the meaning of the ECHR would thus, in accordance with Articles 34 and 35 about the access to lodge a complaint with the ECtHR, according to ECtHR case law have to be

reviewed separately and independently from the definition in national law in the Contracting State, cf. *inter alia* judgment of 27 April 2004, *Gorraiz Lizarrage and Others v. Spain*, para. 35, judgment of 4 December 2015, *Roman Zakharov v. Russia*, para. 164.

Moreover, it follows from ECtHR case law that a person or group of persons may also be considered a victim within the meaning of the Convention if their rights could be affected moving forward, cf. judgment of 10 March 1978, *Marckx v. Belgium*, judgment of 6 September 1978, *Klass and Others v. Germany*, paras. 30-38, judgment of 29 October 1992, *Open Door and Dublin Well Woman v. Ireland*, paras. 41-44, judgment of 15 March 2012, *Aksi v. Turkey*, paras. 50-54.

3. Conclusion

In conclusion, it is contended that the plaintiffs' claims are suitable for a ruling, because they are sufficiently clear and precise, and because the plaintiffs under Danish law, the ECHR, and EU law are entitled to have an examination of whether the rights that they have been granted have been violated.

Furthermore, it is contended that the plaintiffs have a legitimate interest in having the approval by the Ministry of Interior and Housing of the development plan for Mjølnerparken tried, because they are individually and concretely affected by it."

During the separate trial hearing, the plaintiffs have pleaded in line with the above.

Moreover, the plaintiffs have argued that the objection that the Ministry of Interior and Housing is not the right defendant concerns the merits of the case and should in accordance with established Supreme Court case law lead to the acquittal of the Ministry and not the dismissal of the case. This has also been acknowledged by the Ministry in its rejoinder of 4 January 2021, p. 10. By decision of 25 May 2021 by the High Court, only the claim for dismissal submitted by the Ministry of Interior and Housing has been separated from the main proceedings. For that reason, the claim for acquittal now submitted by the Ministry concerning the question of the right defendant should be rejected.

In its case summary of 28 October 2021, the **Ministry of Interior and Housing** has argued as follows in support of its claims:

"…

**4.1 Dismissal**

In support of the claim for dismissal, the Ministry of Interior and Housing contends:

- that the clarified claims continue to be unsuited for an operative ruling. It is the view of the Ministry of Interior and Housing that the first part of the plaintiffs' first claim and the entire second claim, as a result of their wording, ought to be rejected, cf. section 4.1.1.
- that the plaintiffs do not fulfil the ordinary requirements for legal standing, for which reason the case must be dismissed in its entirety, cf. section 4.1.2.
- that the Ministry is not the correct defendant, since the subject-matter of the case is, in reality, a dispute between the plaintiffs and Bo-Vita as well as the Municipality of Copenhagen, for which reason the case must also be dismissed in its entirety, cf. section 4.1.3.

*4.1.1 The plaintiffs' claims continue to be unsuited for a ruling*

In their reply on page 2-3 (trial bundle, page 95-96), the plaintiffs have expressed that they do not want a review of the compatibility of the Common Housing Act with EU law and the plaintiffs' rights under the ECHR, but rather a concrete review of the decision of 10 September 2019 by the Ministry of Interior and Housing to approve the development plan.

After the latest clarification, cf. page 4-5 of the plaintiffs' Pleading 2 (trial bundle, page 153-154), the plaintiffs have simultaneously claimed that the Ministry of Interior and Housing must acknowledge that the Ministry's decision on approval of 10 September 2019 is in violation of Section 3 of the Ethnic Equal Treatment Act and the plaintiffs' rights under Article 14 of the ECHR, in conjunction with Article 8, Article 1 of Protocol No. 1, and Article 2 of Protocol No. 4, respectively, and *"that the decision, as a result, is null and void,"* (claim 1) and that the approval is in violation of with Article 8 of the ECHR, Article 1 of Protocol No. 1, and Article 2 of Protocol No. 4, and *"that the decision, as a result, is null and void"* (claim 2).

The Ministry of Interior and Housing contends that the plaintiffs' claims are unsuited for an operative ruling, even with the latest clarification in Pleading 2 that the legal consequence is nullity.

With the two simultaneous claims, the plaintiffs want that the Ministry in one ruling shall be ordered to acknowledge both that the Ministry's approval of 10 September 2019 is in violation of Section 3 of the Ethnic Equal Treatment Act and the plaintiffs' rights under Article 14 of the ECHR, in conjunction with Article 8, Article 1 of Protocol No. 1, and Article 2 of Protocol No. 4, respectively, and *"that the decision, as a result, is null and void,"* (plaintiffs' claim 1) and that the approval is in violation of with Article 8 of the ECHR, Article 1 of Protocol No. 1, and Article 2 of Protocol No. 4, and *"that the decision, as a result, is null and void"* (plaintiffs' claim 2).

The plaintiffs' claims are worded as two different justifications for the same legal consequence, namely nullity. Such simultaneous claims are unsuited for an operative ruling.

There are two reasons for this:
First, the first part of the plaintiffs' claims is worded as an argument in support of the legal consequence in the second part. Moreover, the first part of the plaintiffs' claims 1 and 2 has no independent bearing on the mutual legal relations between the parties. This appears also from the phrase *"as a result, is null and void"*. For this reason, the plaintiffs do not have legal standing with respect to this part (the first part) of the submitted claims, which for that reason should be rejected.

It follows from established case law that claims, which in reality are to be seen as arguments in support of a claim for declaratory relief or payment, are dismissed on the basis of lack of legal standing.

This was seen in for example the case U.1998.1322H, in which a claim for declaration that a fund was part of the public administration was dismissed as argument for a simultaneous claim for nullity.

Also in the case U.2011.2695H, a claim for declaratory relief concerning a violation of *inter alia* Article 8 of ECHR was rejected as an argument for a simultaneous claim for nullity.

In U.2022.679H, a claim about a violation of Article 2 of the ECHR was rejected as an argument for a simultaneous claim for payment, and in U2017.2469H, the Supreme Court rejected a claim for declaratory relief to the effect that a rejection of an application for naturalisation was *"in violation of"* Article 14 of the ECHR, in conjunction with Article 8, since the claim, in reality, was considered to be an argument for a simultaneous claim for payment.

The main rule to reject also applies when – as in the present case – a part of a claim, in reality, constitutes an argument, cf. U.2013.3328H, where the Supreme Court rejected the plaintiff's principal claim as an argument for the second part of the claim for payment.

An inference *a contrario* from the High Court's judgment in U.2010.1942H cannot lead to a result contrary to established Supreme Court case law. Furthermore, it is disputed that the judgments in U.2013.128H, U.2010.1035H, and U.2018.1460H, supports that the plaintiffs' claim should be suited for a ruling as argued by the Danish Institute for Human Rights on page 3 of the third-party intervention (trial bundle, page 139).

Second, disregarding the first part of the claims, which as stated, in reality, constitutes and argument, the two simultaneous claims are identical. It is evident that the plaintiffs do not have legal standing with respect to two identical claims for nullity, why one of these must be rejected in any case.

On the basis of the wording of the claims alone, the first part of the first claim and the entire second claim should be rejected.

*4.1.1.1 The ECHR cannot lead to a different result*

The fact that the case allegedly concerns the plaintiffs' rights under the ECHR cannot in itself justify a deviation from the ordinary procedural rules about the wording of claims and legal standing.

The plaintiffs are not precluded from a judicial review of whether a violation of their rights has occurred as arguments in support of the simultaneous claim for nullity, cf. for example U.1998.1322H, U.2012.679H, and U.2017.2469H, where the Supreme Court noted that the rejected claims for declaratory relief would be considered as arguments. In U.2012.679H, the Eastern High Court specifically stated:

*"The circumstance that the present cases concern alleged violations of the ECHR cannot result in the plaintiffs having an independent interest in having the claims examined, since they would be considered as arguments in the court's adjudication of the claims 9-14."* (emphasis added)

In the scholarly literature (see Kjølbo, *Den Europæiske Menneskerettighedskonvention – For Praktikere*, 5th ed., Jurist- og Økonomforbundets forlag, page 572), it is assumed that the access to the court may be conditional on legal standing without being in violation with the right to access to justice under Article 6 of the ECHR:

*"Member States may regulate the access to judicial review by stipulating procedural rules. As a main rule, it would not violate the access to justice that appeal in civil cases is conditional on the appellant being represented by a lawyer. This applies even if the party has not been granted free legal aid. Legal action may be conditional on legal standing. Dismissal on the basis of a*

*lack of legal standing does not mean that the party has been precluded from judicial review if the party's claims have been sufficiently reviewed, which would be the case if the courts upon sufficient review establish that the party has no legal standing."* (emphasis added)

This applies all the more to Article 13 of the ECHR on the access to effective remedies, which implies less strict requirements than Article 6, cf. Kjølbo, *Den Europæiske Menneskerettighedskonvention – For Praktikere*, 5th ed., Jurist- og Økonomforbundets forlag, page 1253 and pages 1256-1257, and for example the European Court of Human Rights judgment of 9 October 1979 in case no. 6289/73, *Airey v. Ireland*, para. 35, and judgment of 26 October 2000 in case no. 30210/96, *Kudła v. Poland*, paras. 146 and 151.

The judgment in U.2002.1789H cannot lead to another result.

First, the case is not comparable to the present case, since that case concerned the rejection of a permit for which the plaintiff had applied for and thus the addressee of. The plaintiffs clarified specifically before the Supreme Court that the claim for declaratory relief solely concerned the specific rejection that he had received in October 1998, just as the Supreme Court stressed that the plaintiff for this reason had a specific interest in an adjudication of whether this was in violation of his rights under the ECHR.

The present case, on the contrary, concerns a decision of which the plaintiffs are not the addressees, and which does not affect them in the same direct and concrete manner as a rejection of an application issued to a plaintiff, cf. section 4.1.2 below.

Second, the judgment must be viewed in light of the later Supreme Court judgments in *inter alia* U.2012.679H and U.2017.2469H where the claims for declaratory relief were rejected although they concerned the plaintiffs' rights under the ECHR.

As to the judgment in U.2021.1073Ø, it should be noted that the case has been appealed and is now pending before the Supreme Court. In its reasons, the Eastern High Court found that a violation under the given circumstances may be remedied under Article 41 of the ECHR on "just satisfaction" by a juridical declaration without payment of compensation.

So far, the Ministry of Interior and Housing agrees. However, the Ministry does not agree with the High Court's statement that such declaration must be found in the ruling in order to constitute just satisfaction within the meaning of Article 41 of the ECHR.

Such declaration may be made in the reasons of the judgment as the basis of a ruling on for example nullity. This follows from the Supreme Court's judgment in U.2017.2929H, in conjunction with U.2012.2874H.

In the judgment in U.2012.2874H, the Supreme Court established that the decision by the immigration authorities to require the plaintiff to report and reside at Center Sandholm constituted a disproportionate intervention in his rights in violation of Article 2 of Protocol No. 4, and that the decisions should be annulled. This finding was expressed in the reasons, rather than the ruling.

In the judgment U.2017.2929H, the Supreme Court acquitted the immigration authorities on the same occasion, since the legal finding in the reasons of U.2012.2874H was deemed to be just satisfaction within the meaning of Article 13 of the ECHR, conjunction with Article 41:

*"The Supreme Court finds that it follows from Article 13 in conjunction with the principle in Section 26 of the Civil Liability Act that A must be granted compensation if he pursuant to the case law of the Court of Human Rights would be entitled to compensation under Article 41.*
*[…]*
*Regardless of the fact that the intervention in A's freedom of movement for a short period of time before the judgment of 1 June 2012 did no longer fulfil the proportionality criterion, we find on the stated basis that it constituted effective remedies within the meaning of Article 13 that the Supreme Court established the violation and brought it to an end."* (emphasis added)

*4.1.1.2 EU law cannot lead to a different result*
It can also not lead to a different result that the plaintiffs have invoked Article 7 of the Racial Equality Directive … and Article 47 of the Charter of Fundamental Rights of the European Union (the Charter).

The procedural rules of the member states are compatible with EU law when they respect the principle of equivalence, the principle of effectiveness, and the principle of effective judicial protection, cf. Article 47 of the Charter.

This entails,
- that a legal action pertaining to rights under EU law must be treated the same way as equivalent actions on the basis of national law,
- that it is not made impossible or disproportionately difficult to enforce the citizens' rights under EU law, and
- that restrictions on the access to judicial review must be legitimate and not entail a disproportionate intervention in the core of the right to judicial review.

Reference is made to the CJEU judgment of 13 March 2007, *Unibet*, C-432/05, paras. 39-43 and para. 64.

The Danish procedural rules on the wording of claims and legal standing are undoubtedly in accordance with these principles. That is indeed why the Supreme Court has denied to refer questions about this to the CJEU for a preliminary ruling, since it has not given rise to reasonable doubt, cf. for example the minutes of 4 January 2005 from the Supreme Court Appeals Committee in case no. 63/04, where the judgment has been reported in U.2007.219H.

It is neither impossible nor disproportionately difficult for the plaintiffs to exercise their rights under EU law. As argued in section 4.1.1.1, the plaintiffs are not prevented from having it adjudicated whether their rights under EU law have been disregarded, since courts could review the question of violation of these rights as an argument in support of the claim for nullity.

No distinction is made between proceedings on the basis of EU law and other proceedings.

The fact that the plaintiffs on page 11-13 of the reply (trial bundle, page 104-106) have requested the High Court to refer questions to the CJEU for a preliminary ruling cannot in itself justify a deviation from the ordinary requirements for the wording of claims and legal standing, cf. for example U.2004.3051H where the case was dismissed although the plaintiffs had requested a referral of questions to the CJEU for a preliminary ruling on the merits of the case, and U.2021.3052H where the case was dismissed despite the plaintiff's wish for a review of the compliance of a provision with EU law.

As for the CJEU judgment of 15 April 2021 in *Braathens Regional Aviation*, C-30/19, as referred to by both the plaintiffs and the third-party intervener, it is contended that the factual circumstances in that case are not comparable to the present case.

The case concerned national procedural rules, according to which the defendant by accepting a claim for compensation without acknowledging the basis for the claim could prevent the court from reviewing whether discrimination, in reality, had occurred, see para. 59 of the judgment.

A decisive factor was that the defendant by the unilateral decision to accept could put the plaintiff in a situation where he was precluded from an adjudication of whether the discrimination had occurred, see paras. 44, 49, 53, 56, and 59 of the judgment.

Thus, in a sense, the situation was comparable to the circumstances in U.2007.2161H where ex gratia payment without acknowledging the presence of liability resulted in the plaintiffs not having legal standing.

In the present case, however, the circumstances are quite different.

First, it is due to the plaintiffs themselves that they lack legal standing in this case. This holds both for the wording of the submitted claims and that they have decided to take legal action against the Ministry of Interior and Housing, although they are not sufficiently concretely and individually affected by the Ministry's decision, cf. section 4.1.2, and although the case, in reality, is a dispute between the plaintiffs and Bo-Vita and the Municipality of Copenhagen, respectively, cf. section 4.1.3.

Thus, contrary to the situation in the *Braathens*-judgment, it is not because the Danish procedural rules *"prevent"* the High Court from reviewing whether the plaintiffs have been discriminated against in violation of EU law, cf. *a contrario* para. 59.

Second, the plaintiffs are not prevented from an adjudication of whether they have been subjected to discrimination, since, as contended, this could be considered as an argument for the claim for nullity, just as the question could be tried in a case against Bo-Vita and/or the Municipality of Copenhagen.

*4.1.2 The plaintiffs do not fulfil the ordinary requirements for legal standing*

The Ministry of Interior and Housing contends that the plaintiffs in any case do not have legal standing in the review of the validity of the Ministry's decision of 10 September 2019 to approve the development plan.

According to established case law, legal standing presupposes that the plaintiffs are concretely and individually affected by the decision of 10 September 2019 by the Ministry of Interior and Housing, cf. for example U.2005.451Ø, U.2013.3295H, U.2016.1526H, and U.2020.3989Ø (appeal pending).

Moreover, the question under adjudication must be topical, cf. U.2000.97Ø, U.2004.3051H, and U.2007.219H.

The plaintiffs fulfil none of these requirements.

There are five reasons for this:

First, the plaintiffs are not the *addressees* of the decision by the Ministry of Interior and Housing. The development plan has been drawn up and presented jointly by Bo-Vita and the Municipality of Copenhagen in accordance with Section 168a(1) of the Common Housing Act. Thus, the addressees of the Ministry's decision are Bo-Vita and the Municipality of Copenhagen.

This is supported by the fact that the Transport, Construction and Housing Authority, as described on page 13-14 of the response (trial bundle, page 53-54), cf. section 3.3., on 25 June 2019 (appendix 8) (trial bundle, page 213) declined to consider the alternative development plan (appendix 7) (trial bundle, page 188-193), which had been drawn up by the branch board in Mjølnerparken and submitted on 31 May 2019 (appendix 6) (trial bundle, page 202).

This was done with the justification that development plans under Sections 168a and 168b of the Common Housing Act must be submitted jointly by the municipality and the housing association, or alternatively by the municipality alone, and the alternative development plan had not been approved by Bo-Vita and the municipality.

Second, the plaintiffs' interest in a review of the decision by the Ministry of Interior and Housing depends on the *secondary and indirect effect* on their tenancy agreement with Bo-Vita.

The plaintiffs are of the opinion that they as tenants in Mjølnerparken are treated less favourably than tenants in other common housing estates, since the development plan for Mjølnerparken entails that exactly their flats are to be *sold*. As argued in section 3.2. above, the decision about sale has not been made by the Ministry of Interior and Housing, but rather by Bo-Vita and the Municipality of Copenhagen.

Section 168a(1) of the Common Housing Act obliges Bo-Vita and the Municipality of Copenhagen to draw up a joint development plan with the aim of reducing the share of common family housing to maximum of 40% by 1 January 2030.

However, the Common Housing Act does not prescribe *how* this development specifically and concretely must be drawn up, or *how* the aim of reducing the number common family units is to be achieved. On the contrary, as argued in section 3.1 above, the preparatory works to the Common Housing Act contain a number of different ways to achieve this aim of reduction.

In other words, it is indeed possible within the framework of the rules in the Common Housing Act to draw up a development plan for Mjølnerparken that does not entail for example the sale of common family housing. This is best illustrated by the alternative development plan (appendix 7) (trial bundle, page 188-193), which the branch board in Mjølnerparken submitted to the Ministry of Transport and Housing on 31 May 2019, see further above.

It has no bearing on the question of legal standing that the Ministry of Interior and Housing has approved the development plan drawn up by Bo-Vita and the Municipality of Copenhagen.

As stated in the description of the legal basis for the Ministry's approval above in section 3.1, in accordance with the ministerial order, the Ministry only ensures that the development plan lives up to the formal criteria in the Common Housing Act, which is clearly stated in the approval (appendix 9) (trial bundle, page 214-216). Thus, with its approval, the Ministry has not examined the substance of the development plan with respect to the plaintiffs concretely and individually.

Under Section 168a(2) of the Common Housing Act, the Ministry of Transport and Housing has been given a *specifically defined* task of approving development plans. The Minister of Transport and Housing ought not to interfere in the *specific* choices made by the housing associations and municipal council when drawing up the development plans, unless it is clear that the choices in question are not realistic with respect to achieving the aim in the legislation of reducing the share of common family housing.

Since the development plan has been drawn up within the boundaries of the Common Housing Act and the Ministerial Order on the Physical Transformation of Tough Ghetto Areas, there is no basis for asserting that the Ministry should have rejected the development plan – or should have indicated other solutions for the reduction of the number of common family units than those presented in the development plan.

Thus, the plaintiffs' request for a review of the Ministry's approval stems from the fact the content of the development plan drawn up by Bo-Vita and the Municipality of Copenhagen entails that the approval may have an indirect and secondary effect on the plaintiffs' tenancy agreements with Bo-Vita, if Bo-Vita terminates their tenancies, and/or that the plaintiffs are offered rehousing under Section 86(1) of the Common Housing Act.

Third, a recognition of the legal standing would entail that the question of the lawfulness of the decision by Bo-Vita and the Municipality of Copenhagen on the content of the development plan could be tried without the involvement of Bo-Vita and the Municipality of Copenhagen. For this reason as well, the plaintiffs lack legal standing in a case against the Ministry of Interior and Housing alone, cf. U.2013.3295H.

Fourth, the claims by the plaintiffs are not topical. As stated in section 3.3, it remains unclear whether the plaintiffs will be concretely affected by the development plan at all, and if so, when the effect will set in. Naturally this fact does not change when the plaintiffs in Pleading 2 without further documentation contend that *"although they have not been terminated from their tenancies yet,"* this will only be *"a question of time"*, cf. page 8 of the pleading (trial bundle, page 157).

Today – more than one and a half years after the initiation of the proceedings – it remains unclear whether the tenancy agreement between the plaintiffs and Bo-Vita will be terminated on the basis of the development plan, and/or *whether* Bo-Vita will offer the plaintiffs rehousing in Mjølnerparken or outside. Therefore, the plaintiffs' claims do not pertain to a topical dispute between them and the Ministry of Interior and Housing, cf. for example U.2000.97Ø, U.2004.3051H, and U.2007.219H.

Moreover, it is noted that a consequence of the lack of topicality is also that there has not occurred an effect that could constitute a violation of their rights under the ECHR, cf. what has been stated in section 3.3 above.

That these facts remain undetermined supports the fact that the adjudication should not take place without the involvement of Bo-Vita and the Municipality of Copenhagen, which could contribute to the illumination of these points in the case, cf. above, and that the case, in reality is a dispute between the plaintiffs and them, cf. section 4.1.3.

Fifth, the plaintiffs are in no way left in a legal vacuum. If they are of the view that they have been discriminated against on the basis of the development plan for Mjølnerparken, they have the option of making their claims to Bo-Vita and/or the Municipality of Copenhagen, cf. section 4.1.3 below.

A still uncertain, indirect and secondary effect on the plaintiffs' tenancy agreement with Bo-Vita does not fulfil the ordinary requirements for legal standing in relation to the Ministry of Interior and Housing.

Thus, the present case is comparable to the circumstances of U.2013.3295H. In the case, the interest group Margarineforeningen had taken legal action against the Danish Veterinary and Food Administration to have a review of a decision by which the Administration had reversed an order from the regional food authorities to Arla Foods to desist from selling the company's composite product "Lurpak Smørbar".

The Supreme Court found that Margarineforeningen did not have legal standing in a review of the decision by the Danish Veterinary and Food Administration – neither in its own right or as an agent for Dragsbæk, a member of the interest group, which produced a competing product.

The Supreme Court reasoned that neither Margarineforeningen nor Dragsbæk was the addressee of the decision by the Danish Veterinary and Food Administration, or otherwise affected by the decision in a way that it could justify legal standing.

The Supreme Court stressed that neither the Food Act nor the Designation Regulation nor the Food Regulation aimed to safeguard the interests of the plaintiffs as competing manufacturer.

Moreover, the Supreme Court emphasised that Dragsbæk could have its claims that Arla Foods' marketing of its composite product was misleading adjudicated by bringing legal action directly against Arla Foods. Thus, there was no legal vacuum.

Finally, the Supreme Court underlined the (untenable) circumstance that a case between Margarineforeningen and the Danish Veterinary and Food Administration would entail a

review of the decision in question without the inlcusion of the addressee of the decision, Arla Foods.

The same applies in the present case.

In the same way as in that case, the plaintiffs in the present case are not addressees for the Ministry's approval of the development plan for Mjølnerparken, and the approval has no independent effect on the plaintiffs. If the plaintiffs wish a review of whether the development plan is in violation of the Ethnic Equal Treatment Act, they must take legal action against Bo-Vita and/or the Municipality of Copenhagen.

Just as in the case about Lurpak Smørbar, the recognition of legal standing would entail that the question of the lawfulness of the content of the development plan could be tried without the involvement of Bo-Vita and the Municipality of Copenhagen, although it is Bo-Vita and the Municipality of Copenhagen, which are the addressees of the Ministry's approval.

As mentioned, the plaintiffs are also not left in a legal vacuum, since they can request a review of the lawfulness of the development plan by taking legal action against Bo-Vita and/or the Municipality of Copenhagen, cf. section 4.1.3 below. This also corresponds to the circumstances in U.2013.3295H.

By contrast, the present case is <u>not</u> comparable to the circumstances in the High Court's decision U.2012.2572H about the validity of the Test Centre Act… As acknowledged by the plaintiffs on page 8 of their Pleading 2 (trial bundle, page 157), U.2012.2572H concerned the validity of a law, whereas the present case concerns the plaintiffs' request for a review of a concrete administrative act addressed to a third party. Moreover, the cases differ in a number of other ways.

The Test Centre Act prescribed in detail, in which area and what way the test centre for large windmills should be constructed and used, cf. Section 1 of the law, cf. appendices 1-2, and chapter 2-3 of the law. This resulted directly in the depreciation of the plaintiffs' properties due to the visual impact and in terms of noise from the test centre, just as the establishment would entail expropriation in whole or in part of the plaintiffs' properties.

Decisions on expropriation could with legal basis in Section 15 of the Test Centre Act be made by the Ministry of Environment, which was also a defendant concerning the validity of the law.

The establishment of the test centre was imminent, which is apparent from the fact that the question of suspensory effect was a central theme during the proceedings. The clearing of the forest had commenced during the proceedings before the High Court, just as parts of the project and the expropriations had already been implemented when the case reached the Supreme Court.

As contended, the Ministry's approval of 10 September 2019, by contrast, does not consider *how* the required reduction of common family housing is to be achieved through the development plan, including whether it happens by sale or not. The approval solely has an uncertain and indirect impact on the plaintiffs due to the arrangements that Bo-Vita may make

in their mutual tenancy relationship on the basis of the material content of the development plan.

The connection between the validity of the Test Centre Act and the affairs of the plaintiffs in U.2012.2572H thus was much closer and more topical than the uncertain and indirect impact on the plaintiffs' tenancies, which could result from the Ministry's decision in this case.

*4.1.2.1 Neither the ECHR nor EU law can lead to a different result*
The fact that the case allegedly pertains to the plaintiffs' rights under the ECHR and EU law cannot in itself justify that the plaintiffs have legal standing.

In addition to what has been contended in section 4.1.1.1-4.1.1.2 about the influence of the European Convention on Human Rights and EU law on national procedural rules, which also applies to the question of legal standing, it should be noted that the Supreme Court in U.2013.3295H found that the European principle of effectiveness was not an obstacle to the dismissal, since the subject-matter of the case could be adjudicated as a case of marketing law against the addressee.

In the same case, the Supreme Court refused to refer questions to the CJEU for a preliminary ruling, since it did not give rise to reasonable doubt, cf. the minutes of 22 December 2011 from the Supreme Court Appeals Committee in case no. 85/2010.

In the judgment in U.2010.1547H, the Supreme Court noted that Article 6 of the ECHR *"does not entitle a party legal standing to the adjudication of the merits of a case."* Thus, the provision was not an obstacle to dismissal considering that the appellants did not fulfil the ordinary requirements to legal standing, including being sufficiently, concretely affected.

As contended, the plaintiffs are in no way left in a legal vacuum, since the question of whether the content of the development plan violates their rights under the ECHR and EU law can be adjudicated through legal action against Bo-Vita and/or the Municipality of Copenhagen.

*4.1.3 The Ministry of Interior and Housing is not the right defendant*

Finally, the Ministry of Interior and Housing contends that Ministry is not the right defendant.

The plaintiffs, in reality, wish a review of whether the development plan for Mjølnerparken and thus a possible decision on selling the plaintiffs' flats is in accordance with the Ethnic Equal Treatment Act, EU law, and the ECHR.

As stated in section 4.1.2, the plaintiffs' request for a trial on the Ministry's decision stems from its still uncertain and indirect impact on their tenancies with Bo-Vita, and such a trial would, in reality, entail an adjudication of the lawfulness of the material content of the development plan in relation to the plaintiffs without the involvement of Bo-Vita and the Municipality of Copenhagen.

This is a matter between the plaintiffs and Bo-Vita and/or the Municipality of Copenhagen, which have drawn up the plan jointly and decided on its content, and which have direct legal relations to the plaintiffs, cf. for example the judgment in U.2003.71H where the Supreme

Court dismissed a case against the Press Complaints Commission, because the subject-matter of the case, in reality, was a dispute between the complainant and the mass medium.

This is supported by the fact that the compatibility of the development plan with EU law and the ECHR in other cases is treated as a dispute between the common housing association and the tenants, cf. the City Court of Elsinore judgment of 20 November 2020 in case no. BS-13867/2020-HEL, and the pending cases before the Eastern High Court in no. BS-26702/2020-OLR, BS-26704/2020-OLR, BS-26705/2020-OLR, and BS-26706/2020-OLR.

For that reason, the Ministry of Interior and Housing is not the right defendant.

**4.2 Acquittal**

In support of the claim for acquittal, the Ministry of Interior and Housing submits the same arguments as in section 4.1.3 above about the right defendant.

During the separate trial hearing, the Ministry of Interior and Housing has pleaded in line with the above.

Furthermore, the Ministry of Interior and Housing has contended that case law exists to support that an objection about the right defendant may lead to the dismissal of the case, but also that it may lead to acquittal if the objection is entertained. Since the questions of legal standing and the right defendant are connected, the claim has been submitted in the event that the High Court should find that the Ministry is not the right defendant, and that the right instrument is acquittal.

**Legal basis**
In the Consolidated Common Housing Act No. 1877 of 27 September 2021, the following is stated:

"**Section 61 a**. Vulnerable housing estate shall be taken to mean an area where at least two of the following four criteria are met:

1) The share of residents between the age of 18 and 64 years without connection to the job market or the educational system exceeds 40%, calculated as an average of the last two years.
2) The share of residents convicted of violations of the Criminal Code, the Weapons Act, or the Controlled Substances Act exceeds three times the national average, calculated as an average of the last two years.
3) The share of residents between the age of 30 and 59 years with only primary education exceeds 60%.
4) The average gross income for taxpayers between the age of 15 and 64 years in the area, excluding students, is less than 55% of the average gross income for the same group in the region.

*Subsection (2)*. Ghetto area shall be taken to mean a housing estate where the share of immigrants and descendants from non-Western countries exceeds 50%, and where two of the criteria in subsection (1) are met.

*Subsection (3)*. Housing estate as mentioned in subsections (1) and (2) shall be taken to mean physically adjoining title numbers, which in 2010 were owned by common housing associations and had at least 1,000 residents in total. The Minister for Transport, Building, and Housing can

approve that a housing estate is divided, and that other title numbers, which physically adjoin the title numbers in subsection (1), are included in the housing estate.
*Subsection (4)*. Tough ghetto area shall be taken to mean a housing estate, which for the last four years has fulfilled the conditions in subsection (2), without prejudice to subsection (5).
*Subsection (5)*. For the years 2018, 2019, and 2020, the conditions in subsection (2) shall have been fulfilled for the last five years.
*Subsection (6)*. On 1 December every year, the Minister for Transport, Building, and Housing announces, which areas fulfil the conditions in subsections (1), (2), (4), and (5).
…

"**Section 168 a**. The common housing association and the municipal council must draw up a joint development plan for a tough ghetto area, as defined in Section 61a(4). The joint development plan shall aim at reducing share of common family housing to a maximum of 40% of the housing stock in the ghetto area in question by 1 January 2030, cf. section 61a(4). When calculating the total housing stock in the area in question, units, which have been demolished since 2010 and not replaced by other common family units, can be included. Commercial areas are included in the calculation of the housing stock, so that every 75 square metres of commercial area count as one residential unit.
*Subsection (2)*. Development plans as defined in subsection (1) are subject to approval by the Minister for Transport, Building, and Housing.
*Subsection (3)*. The Minister for Transport, Building, and Housing can upon application in special cases derogate from the rule in the 2nd sentence of subsection (1) when

1) the application for exemption contains a full explanation of, which steps the housing association will take to ensure that the housing estate no longer is a tough ghetto area, as defined in Section 61a(4), by 2030,
2) the share of common family housing in ghetto areas, as defined in Section 61a(2), exceeds 12% of the common family housing stock in the municipality,
3) new housing development cannot significantly contribute to the reduction of the share of common family housing to 40%, and
4) sale, according to a current market valuation by a licensed real estate agent, can only be made at a loss.

*Subsection (4)*. The Minister for Transport, Building, and Housing can in special cases in connection with the drafting of a joint development plan according to the 1st sentence of subsection (1), upon application derogate from the requirement in the 2nd sentence of subsection (1), when it concerns a tough ghetto area, as defined in Section 61a(4), which has fewer than 2,100 residents, and which does not meet the criterion concerning the share of convicted residents found in section 61a(1)(2).
*Subsection (5)*. Section 4(1)(11), Section 20(6), Section 27(3)(3), Section 27(4), Section 27b(2), Section 27c, Section 28(3)(3), 2nd sentence of Section 28(6), 1st and 2nd sentence of Section 91(4), 2nd sentence of Section 91a(2), 1st sentence of Section 91b, 2nd sentence of Section 92(2), Section 96(3), and Section 165a apply to a housing estate covered by a joint development plan, as described in subsection (1), which does no longer fulfil the criteria in Section 61a(1), (2), or (4), until the development plan has been implemented, but not later than 1 January 2030.
*Subsection (6)*. Section 51c and Section 59(6) and (7) apply to a housing estate covered by a joint development plan, as described in subsection (1), which does no longer fulfil the criteria in Section 61a(1) or (4), until the development plan has been implemented or the housing estate for four consecutive years do not fulfil the criteria in Section 61a(1) or (4), but not later than 1 January 2030."

The provisions in Section 168a(1)-(4) of the Common Housing Act were introduced by Act No. 1322 of 27 November 2018. In the explanatory memorandum to the bill, the following is stated (Section 1 of Bill No. L38 of 3 October 2018):

> "*2. Content of the Bill*
> …
> *2.2 Initiatives to develop ghetto areas*
> …
> *2.2.2 Deliberations and proposed solution by the Ministry of Transport, Building, and Housing*
> …
> Pursuant to the proposed section 168a, a development plan must be drawn up for all tough ghetto areas with the aim of reducing the share of common family housing to a maximum of 40% by 2030. The period prior to the entry into force of the proposed new ghetto criteria is also included in the calculation of the four years.
>
> It is proposed that the Minister for Transport, Building, and Housing in exceptional cases may approve a development plan for a tough ghetto area, where the share of common family housing will be reduced to a number higher than 40% before 2030. …
>
> The requirement to draw up a development plan applies to the housing associations and municipal councils that are responsible for the relevant ghetto areas. Therefore, when a housing estate becomes covered by the requirement to draw up a development plan, the municipal council and the housing association must draw up this plan jointly. With concrete action points, the plan must describe how the housing estate will be developed and how mixed types of housing will be ensured; contributing to reducing the share of common family housing by 2030. The requirement to reduce the share of common family housing to a maximum of 40% would not be changed by the fact that the housing estate no longer figures on the ghetto list. Thus, the requirement applies until it is fulfilled.
>
> The reduction of the share of common family housing can be achieved in different ways. It can be done by building new units that are not common family units. That can for example be terrace houses or attic flats, which are then sold as owner-occupied units. Furthermore, existing common family housing can be divested to be used as private rentals, co-operative housing, or owner-occupied housing. Furthermore, undeveloped plots can be divested for the purpose of further condensation through the construction of private owner-occupied housing. It is also possible to reduce the share of common family housing by establishing commercial spaces or by moving municipal jobs to the area. 75 square metres of commercial space count as one residential unit, a commercial space of 150 square metres counts as two residential units and so on.
>
> Furthermore, a reduction of the share of common family housing can be achieved by demolishing common family housing, so that they no longer form part of the housing estate. Units, which are being demolished, or which have been demolished since 2010, can be included in the calculation of the share of common family housing. When including already demolished units in the calculation, it is a condition that they have not been replaced by new units in the housing estate.

Finally, the share of common family housing may be reduced by converting common family housing into common senior housing or common student housing, if the conditions are met.
…

The development plan must expound how the share of common family housing will be reduced to 40% by 2030 by means of divestment of units or plots, condensation, commercial rentals, demolition and conversion of family units etc. Furthermore, the development plan must contain a financial plan as well as a description of the organisation and cooperation between the municipal council and the housing association.
…

Based on a concrete assessment, the Minister for Transport, Building, and Housing approves the development plan. The Minister for Transport, Building, and Housing may prescribe conditions in relation to the approval of the municipal development plan, including that environmental approval and other permits must be obtained.

If the development plan can be approved, and the housing association applies for financial support from the National Building Foundation, the plan is converted into an actual overall plan, in which the physical transformations that follow from the development plan as well as the social efforts to transform the ghetto area into a well-functioning district will be included. In the overall plan, the housing association together with the municipal council must indicate milestones for the progression of the overall plan. The milestones must be designed in such a way that it is possible to halt the plan and deny further funding, if it is believed that the plan cannot be realised satisfactorily or that it will not lead to the desired result.
…

*Comments on the individual provisions of the Bill*

On Section 1
…

On no. 39
…

Pursuant to the 1st sentence of the proposed Section 168a(1), the common housing association together with the municipal council must draw up a development plan for a housing estate located in a tough ghetto area, as defined in the proposed section 61a(4). The proposal will have the effect that the development plan will contribute to transforming the vulnerable housing estates into open and well-integrated districts and prevent the emergence of parallel societies.

Pursuant to the 2nd sentence of the proposed Section 168a(1), the development plan must aim at reducing the share of common family housing to a maximum of 40% of all units in the tough ghetto area in question, as defined in the proposed section 61a(4), by 1 January 2030. The proposal will contribute to that the share of common family housing will be reduced to a maximum of 40% and thereby contribute to more varied forms of housing and ownership in the areas covered by the requirement for development plans.
…

Based on an ambitious but realistic assessment, the development plan shall set forth the concrete steps, which the housing association intends to take, including which units the housing association intends to demolish or sell. Moreover, the development plan must contain a roadmap for the transformation of the housing estate, so that it will take place within a reasonable timeframe, a draft of the financial plan for the transformation, as well as milestones for it. In a ministerial order, the deadline for submission of development plans will be laid down. This deadline is expected to be six months.

With section 168a(2), it is proposed that development plans as described in subsection (1) shall be subject to approval by the Minister for Transport, Building, and Housing.

Before submitting the development plan for the Minister's approval, it must have been decided by the housing association's highest authority and approved by the municipal council. …

The requirement that the development plan shall be subject to the Minister's approval means that the Minister must assess, whether the plan is realistic and adequate in relation to reversing the development of the housing estate, including whether the transformation is planned to be finalised by 2030. Thus, that the plan aims to reduce the share of common family housing to a maximum of 40% of the housing stock in the housing estate will not in itself mean that the conditions for the Minister's approval are fulfilled.

The approved development plan shall provide the point of departure for an actual overall plan in accordance with the roadmap. If the housing association has obtained the Minister's approval of a development plan, but it is not being implemented in accordance with the plan, the municipal council could as a result of the ordinary supervisory powers under Section 165 of the Common Housing Act appoint a manager to ensure the further development in accordance with the plan."

In Ministerial Order No. 1354 of 27 November 2018 on the Physical Transformation of Tough Ghetto Areas, the following is stated:

"**Approval of the development plan**
**Section 13**. When approving a joint or municipal development plan, the Minister for Transport, Construction, and Housing performs a concrete assessment of the plan.
*Subsection (2)*. When approving, it will be taken into consideration,

1) that the development plan will result in the required reduction of the share of common family housing in the housing estate by 2030,
2) that the measures prescribed by the development plan are realistic and appropriate for achieving the stated aim,
3) that the expected funding is realistic,
4) that the roadmap includes information about the expected timing of the individual measures, including conversion, transformation, sale or demolition of housing, and
5) that the provided roadmap is realistic.

**Section 14.** If the Minister for Transport, Construction, and Housing cannot approve the development plan, the Minister may stipulate amendments to the plan, including on specific points.
*Subsection (2)*. If the development plan is not amended in accordance with the stipulation by the Minister under subsection (1) within a deadline for submission of an amended plan fixed by the Minister, the Minister makes a decision on the available basis."

**The High Court's reasoning and result**

The claims by the plaintiffs

The first part of the plaintiffs' first claim is that the Ministry of Interior and Housing must acknowledge that the Ministry's approval of the development plan is in violation of the plaintiffs' right to not be discriminated against under the Ethnic Equal Treatment Act and the European Convention on Human Rights. The plaintiffs invoke this part of the claim in support of the second part of the claim that the decision to approve the development plan is null and void. Similarly, the first part of the second claim is that the Ministry of Interior and Housing must acknowledge that the Ministry's approval of the development plan is in violation of the plaintiffs' rights to respect for their private and family life as well as their right to freely choose their residence under the European Convention on Human Rights. The plaintiffs invoke this part of the claim in support of the second part of the claim that the decision to approve the development plan is null and void. Thus, in reality, both claims are arguments in support of the claims for nullity. The High Court will – such as the case has been presented to the High Court – consider these arguments in the adjudication of the question of nullity.

As a consequence, the first part of the plaintiffs' first claim and the first part of the plaintiffs' second claim will be rejected. Accordingly, the first claim and the second claim contain identical, simultaneous claims for nullity. Since the plaintiffs do not have legal standing pertaining to the adjudication of two identical claims for nullity, the second part of the second claim is likewise rejected.

Legal standing

The development plan for Mjølnerparken, which has been decided by Bo-Vita and the Municipality of Copenhagen, and which on 10 September 2019 was approved by the Ministry of Transport and Housing, entails among other things that 221 family units and 28 student units will be sold. It is stated in the plan that it is advisable to sell entire blocks. Under point 6 of the development plan about the roadmap, it is stated that two blocks will be sold. The development plan does not contain information about, which blocks will be sold, but in the minutes from the decision by the Municipal Council of Copenhagen and on the website of Bo-Vita, it is stated that approximately 260 units in block II and III in Mjølnerparken will be sold. It is indisputable that all plaintiffs are residents in Mjølnerparken and rent family units in block II and II in Mjølnerparken on open-ended tenancies.

In 2018, Mjølnerparken was categorised as a tough ghetto area. As a result, Bo-Vita and the Municipality of Copenhagen were in accordance with the Common Housing Act obliged to draw up a development plan for the purpose of reducing the share of common family housing in Mjølnerparken to a maximum of 40%. This development was likewise in accordance with Common Housing Act subject to the approval by the Ministry of Interior and Housing.

As stated in the cited preparatory works to the provision in Section 168a(1)-(4) of the Common Housing Act, the reduction of the share of common family housing could be achieved in several ways, including by building new units, which are not common family units, by divesting for the purpose of creating private rentals, or by establishing commercial spaces in the housing estate. It is stated in Section 13(1) of the Ministerial Order No. 1354 of 27 November 2018 on the Physical Transformation of Tough Ghetto Areas that when approving, the Ministry shall make a concrete assessment of the development plan. In Section 13(2), it is prescribed what to take into account when approving, namely whether the development plan will result in the required reduction of the share of common family housing in the area, whether the measures in the development plan are realistic and appropriate for achieving the stated aims, whether the roadmap includes information about the expected timing of the individual measures, including sale of units, and whether the stated roadmap is realistic. Furthermore, it is stated in Section 14 of the Ministerial Order that the Ministry may stipulate amendments to the plan, including of specific points, if the Ministry cannot approve the plan.

Regardless of the fact that 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 stated 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.

**IT IS ORDERED:**

The first part of the plaintiffs' first claim as well as the entire second claim are rejected.

The claim for dismissal of the case in its entirety and the alternative claim for acquittal by the Ministry of Interior and Housing are not upheld.