When Context Disappears

A Critique of the CJEU's Judgment in Slagelse Almennyttige Boligselskab, Afdeling Schackenborgvænge

Serde Atalay

05.01.2026 doi: 10.59704/0be68ccac07124e0

On 18 December 2025, the Court of Justice of the European Union (CJEU, "the Court") issued its judgment in *Slagelse Almennyttige Boligselskab, Afdeling Schackenborgvænge* (C-417/23). The case concerned whether article 2(2)(a) and (b) of Directive 2000/43 must be interpreted to mean that the criterion used for the design of a social mixing policy in Denmark's Law on Public Housing (LPH, "the law") constituted direct or indirect discrimination on grounds of ethnic origin within the meaning of that provision. According to the CJEU, the referring court must make the final determination as to the presence of discrimination because the case concerned the interpretation of Danish law. Nevertheless, the Court reasoned as to how the referring court could determine whether the LPH constituted direct or indirect discrimination in violation of Directive 2000/43.

Following Attorney General Ćapeta's opinion, lawyers and academics have rightly devoted considerable attention to issues such as the definition of ethnic origin, the existence of discrimination, the ethnic stratification of citizenship, and problematic narratives of "integration" as they pertain to European Union (EU) law in this case (see here, here, here, here, here, and here). An overview of the initial reactions to the judgment by EU law scholars on these matters can be found here. In this post, I focus instead on another dimension that lies at the heart of this case: housing.

My aim is to analyse *Slagelse Almennyttige Boligselskab, Afdeling Schackenborgvænge* as a poignant example of how the broader context of a housing policy can get abstracted away in judicial reasoning. I argue that this abstraction has had two consequences. First, it has resulted in a line of reasoning that glosses over the intertwinement of stigma and dispossession as embedded in the LPH, which is central to the harm caused by the law. The LPH is not merely about the stigmatising discourse that the Danish legislator uses in the legal design of Denmark's questionable policy of social mixing. It is equally about state-sponsored housing commodification and thus has a strong material dimension. However, the co-constitutive relation of discourse and materiality in the LPH gets lost in the CJEU's reasoning. Second, the framing adopted by the Court because of this move has opened the door for EU member states to justify the instrumentalisation of housing against minority groups under the banner of "integration" and "social cohesion".

Patching Holes in a Map

Paragraphs 168a and 168b of the LPH require that the share of non-profit family housing in so-called "transformation areas" be reduced to a maximum of 40 per cent of all housing units by 1 January 2030, based on development plans to be drawn up by authorised bodies. This reduction may be achieved through measures such as demolition or sales to private developers. Paragraph 61a(4) of the LPH defines a transformation area as a residential area which has fulfilled the definition of a "parallel society" for the preceding five years. According to paragraph 61a(2), a "parallel society" is a "residential area where the proportion of immigrants from non-Western countries and their descendants exceeds 50%" *and* where at least two of the socioeconomic criteria laid down in paragraph 61a(1) are met. These criteria relate to labour market integration, education outcomes, crime rates, and income levels (see para. 13 of the judgment).

Accordingly, the Danish legislator mandates at least a 60 per cent reduction in non-profit family hous-

ing in transformation areas. In doing so, it enables a large quantity of this housing stock to be transformed into for-profit housing based on criteria that are a) racialised – as reflected in the criterion "immigrants from non-Western countries and their descendants" which includes Danish citizens, as Hanna Eklund has emphasised – *and* b) class-based. (There is a related debate to be had about how Statistics Denmark understands the "Western/non-Western" binary in a manner that internalises certain socioeconomic indicators (pp. 859-860), but that discussion cannot be pursued here.) Importantly, both housing estates at issue before the CJEU – Schackenborgvænge and Mjølnerparken – were planned to be "transformed" through sales.

In the event of such a sale, tenants must fulfil certain conditions to remain in their homes. Pursuant to paragraph 27c(1) of the law (as referenced in paragraph 27(4)), the relevant municipal council determines those conditions. As the Schackenborgvænge housing estate exemplifies in this case, the criteria may envisage tenants to have "a certain level of income" and "that neither those tenants nor their partners have committed a criminal offence during the last six months" (para. 26 of the judgment). Tenancy contracts of those who fail to meet the criteria set by the municipal council are subject to termination. Such termination is a precondition for these units to be sold to private developers according to paragraph 27(4) of the law (para. 118 of the judgment).

Residents of so-called "vulnerable residential areas" do not face the same risk. These areas are characterised by the fulfilment of at least two of the socioeconomic criteria listed in paragraph 61a(1) of the LPH, *but* they do not qualify as "parallel societies", as the proportion of "immigrants from non-Western countries and their descendants" does *not* exceed 50 per cent. These areas are not subject to the mandatory reduction of non-profit family housing per paragraphs 168a-168b of the law. Therefore, as the Court itself observes, "the residents of transformation areas appear to face an increased risk of early termination of their leases, whereas the residents of vulnerable residential areas, characterised by the existence of a problematic socioeconomic situation which is at least similar to that prevailing in transformation areas, are not exposed to such a risk" (para. 120).

The foregoing means that the LPH (1) earmarks certain areas where "parallel societies" have sprung up based on racialised *and* class-based criteria, (2) paves the way for the eviction of tenants living in these areas unless they meet the conditions set by municipal councils to remain in their homes, and (3) subject to such evictions having been carried out, enables housing units in these areas to be sold to private developers to achieve the goal that the percentage of non-profit housing are cut down to *maximum* 40 per cent of all housing therein. All this is to patch the "holes [that] have been punched in the map of Denmark", according to the Danish legislator (para. 20).

This phrase captures perfectly how the material dimensions of the exclusion of "non-Westerners" from the welfare state in Denmark are obscured as if all this is merely part of "a post-material 'value struggle' over 'Danishness'" (p. 855). Put differently, understood in its historical context, the LPH is the epitome of how "the stigmatizing discourse unleashed a *material function* by offering political justification for commodification of non-profit housing and land" (p. 853, emphasis in the original), while failures of commodification, in turn, intensified a stigmatising and racialised discourse that portrayed the transformation of non-profit housing as necessary (p. 851).

Dangers of Abstraction

The CJEU's reasoning glosses over this dynamic, without which the LPH cannot be understood. While this is neither surprising nor unexpected, it nonetheless warrants critical scrutiny. This is because the CJEU's reasoning both forecloses the possibility of pronouncing the real harm that the LPH causes the claimants and opens a dangerous path for the future instrumentalisation of housing to the detriment of minority groups.

First, when examining the claim of direct discrimination, a key step in the Court's analysis is the determination of whether residents of transformation areas may be subject to "less favourable treatment" within the meaning of article 2(2)(a) of Directive 2000/43. The

Court does identify indications of such treatment, noting the increased risk of dispossession that these residents face (see paras. 114-123). In doing so, the Court draws attention to the importance of the right to respect for one's home as guaranteed by article 8 of the European Convention on Human Rights and article 7 of the EU Charter of Fundamental Rights (para. 121).

However, similar to the tendency of the European Court of Human Rights to detach evictions from their broader socioeconomic context, the CJEU does not account for the manner in which the mandatory eviction of the claimants functions as a means of reducing non-profit housing through stigmatisation. Consequently, the Court presents a fragmented understanding of harm. According to the Court, the increased risk of dispossession faced by residents of transformation areas is indicative of "less favourable treatment" (para. 123), *and* the referring court could "also examine whether" stigmatisation, stereotyping, and prejudice played a role in the construction of the LPH (paras. 126-127). In other words, the Court does not integrate the co-constitutive nature of stigma and dispossession into its definition of "less favourable treatment". These inextricably intertwined aspects of the LPH that serve the goal of housing commodification are handled by the Court in a disjointed and compartmentalised manner.

Second, this framing spills over into the Court's reasoning under the claim of indirect discrimination. According to the Court,

> *[i]f (...) the referring court concludes that the provision and the general criterion at issue in the main proceedings put persons of certain ethnic groups at a particular disadvantage (...) it will have to examine whether that provision and that general criterion are objectively justified by a legitimate aim and whether the means of achieving that aim are appropriate and necessary. (para. 143)*

From paragraph 147 onwards, the Court examines the aims that Denmark advanced for pursuing its policy. These are "to resolve the problems associated with the formation of 'parallel societies' which have arisen in the Danish public housing system and to ensure successful integration" (para. 147). Accordingly, the Court characterises the aims as relating to "social cohesion and the integration of third-country nationals in the context of that system, as well as reasons relating to social housing policy and the financing of that policy" (para. 148). Sarah Ganty and Karin de Vries have already drawn attention to the dangers of internalising the rationale of "integration" in the examination of the case, and I therefore do not pursue this aspect further.

As regards housing, the Court first observes that, in principle, EU Member States enjoy broad discretion in shaping their housing policies (para. 153). It then remarks that

> *in the present case, the national legislation at issue in the main proceedings, by imposing an obligation to adopt development plans designed to reduce the percentage of public family housing units in transformation areas, appears to be aimed at resolving not problems relating to the financing of public housing, but rather socioeconomic problems relating to social cohesion and integration in those areas. Consequently, having regard to the overriding reasons in the public interest relied on by the Danish Government (...), the housing policy objective must be regarded as forming part of the wider context of the objective relating to social cohesion and integration. (para. 154) (emphases added)*

It is precisely in the first half of this passage that the Court once again delinks the material dimension of the policy pursued by Denmark from its discursive dimension, thus obfuscating their co-constitutive nature as it clearly played out for the claimants. The Court's characterisation abstracts from the manner in which the law reduces non-profit housing and leads to loss of home *through* a stigmatising discourse as both *method* and *justification* (p. 851).

This abstraction is not the only issue posed by the dictum. Having detached Denmark's housing policy objectives from their material context, the Court then subsumes them under the narrative of "social cohe-

sion" and "integration". In doing so, it reproduces precisely the strategy pursued by Denmark itself, which, as noted, obscures the materiality of "non-Westerners'" exclusion from the welfare state by framing it as a matter of "Danish-ness" and "Danish values".

The implications of this move extend beyond the Danish context. By adopting this framing, the Court effectively opens the door for EU Member States to instrumentalise housing as a means of governing the lives of minority groups, provided that such measures are justified as pursuing a legitimate aim of differential treatment and are shown to be proportionate. Crucially, however, the door is opened only with respect to third-country nationals. As the Court notes in passing in paragraph 151, "social cohesion" and "integration" cannot justify policies that treat EU citizens less favourably.

Conclusion

The CJEU's judgment in *Slagelse Almennyttige Boligselskab, Afdeling Schackenborgvænge* is a striking example of how judicial reasoning can obscure the dynamics behind the instrumentalisation of law to govern racialised groups while commodifying housing. The intertwinement of discourse and materiality is concealed in the Court's construction of the harm caused by the LPH, while housing becomes susceptible to being weaponised against minority groups in a Europe that is increasingly hostile and inhospitable to its "others".

ABOUT THE AUTHOR

Serde Atalay
Serde Atalay is a PhD Candidate at Lund University, Faculty of Law.

SUGGESTED CITATION

Atalay, Serde: When Context Disappears: A Critique of the CJEU's Judgment in Slagelse Almennyttige Boligselskab, Afdeling Schackenborgvænge, Verfassungsblog, 05.01.2026, doi: 10.59704/0be68ccac07124e0.

Licensed under CC BY-SA 4.0.

Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20260106-172147-0.