



# **First Appellate Ruling on Denmark's 1964 Subsidy Declaration Buy-Out Regime Clarifies Housing Associations' Right to Exit**

## Introduction

Certain Danish housing associations built with public support are subject to subsidy declarations restricting pricing and transfers, but may, under a statutory regime introduced in 1964, obtain a buy-out of those restrictions.

In Copenhagen, the municipality is the beneficiary of such declarations and administers the buy-out mechanism, including the determination of the property's market value as a key component of the buy-out price.

In practice, the municipality has relied on valuations obtained from the Danish tax authorities (SKAT) - but the present case raised a fundamental question:

*What happens when the municipality disagrees with the valuation it has itself obtained?*

Is the municipality bound by that valuation, can it be challenged administratively, or must the municipality - if departing from it - put forward a correct alternative valuation and proceed with a buy-out offer on that basis?

The Eastern High Court has now addressed these questions in what is the first appellate-level interpretation of the 1964 regime, thereby clarifying the legal framework for such associations.

The case marks Act III in a long-running litigation complex between the Municipality of Copenhagen and the housing association concerned, and the third time issues arising within this complex have been brought before the High Court.

# Background

## **The Subsidy Declaration Regime**

Certain housing associations received public funding subject to subsidy declarations (early 20th century).

The declarations impose restrictions on pricing and transfers and ensure that the properties remain subject to a controlled pricing regime.

As a result, pricing not only departs from general market dynamics, but also deviates from the statutory pricing framework otherwise applicable to housing co-operatives.

Under the regime, any “overprice” paid in connection with a transfer - as calculated under the declaration - may be claimed by the municipality.

## **The Statutory Buy-Out Regime (1964)**

Under the statutory regime, an association may demand release from the declaration upon payment of:

- The originally granted subsidy, and
- An amount corresponding to the difference between:
  - the approved acquisition cost, and
  - The property's value at the time the buy-out is requested

The rules further allow for adjustments, including deductions for value-enhancing improvements.

In practice, however, the determination of the property's value constitutes the central and decisive element in the calculation of the buy-out amount.

## The Specific Case

In 2017, the association requested a buy-out.

The municipality subsequently obtained a valuation from the Danish tax authorities (SKAT) (approx. DKK 116 million), which was issued in 2018. The municipality, however, considered the valuation to be inaccurate. Rather than proceeding on that basis or putting forward a correct alternative valuation and a corresponding buy-out offer, the municipality sought to have the SKAT valuation set aside.

To that end, the municipality brought the valuation before the National Tax Tribunal (Landsskatteretten).

The Tribunal, however, refused to examine the case on the merits, holding that the valuation did not constitute an “administrative decision” and therefore could not be subject to administrative review.

At the same time, the statutory buy-out regime itself contains no provisions providing for administrative appeal in relation to valuations obtained by the municipality.

## Core Legal Questions

The case raised three central questions:

- Is the municipality bound by a valuation it has itself obtained?
- Can such valuation be challenged through administrative review?
- If not binding, what obligations does this place on the municipality?

## The City Court Judgment

The Copenhagen City Court (extended bench) delivered the first judicial interpretation of the statutory regime.

The Court held that the buy-out framework could not be understood as requiring the municipality to be bound by a valuation obtained from the Danish tax authorities (SKAT), noting that valuation regimes in other areas pursue different purposes.

On the evidence - in particular the court-appointed expert reports - the Court found that the SKAT valuation did not reflect the property's market value. The municipality was therefore not bound by that valuation.

The Court further held that the municipality was under no obligation to provide a buy-out offer on an alternative and correct basis, despite having set aside the original valuation.

## The City Court Judgment

Accordingly, the Court dismissed the claim against the municipality.

The municipality had also brought third-party proceedings against SKAT, claiming that SKAT should be required to have the valuation reviewed administratively.

The Court rejected this claim and dismissed the claim against SKAT, finding that the valuation did not constitute an administrative decision and therefore could not be subject to administrative review.

## The High Court Judgment

Both the housing association and the Municipality of Copenhagen appealed the City Court's judgment.

The appeals were heard together and concerned two distinct issues: (i) the Municipality's third-party claim against the Danish tax authorities (SKAT), and (ii) the substantive dispute between the association and the Municipality regarding the buy-out.

As regards the Municipality's third-party claim, the High Court upheld the City Court's judgment. The Court agreed that the valuation issued by SKAT does not constitute an administrative decision and therefore cannot be subject to administrative review. The claim against SKAT was accordingly dismissed.

In relation to the dispute between the association and the Municipality, however, the High Court set aside the City Court's judgment in part and held that the Municipality was obliged to put forward a buy-out offer based on a property value of DKK 130 million.

The Court held that the relevant provision of the statutory buy-out regime could not be interpreted as a finality clause binding the Municipality to the valuation obtained from SKAT. The Municipality was therefore not bound by that valuation, notwithstanding that it had been required to obtain it under the applicable rules.

At the same time, the High Court found - on the basis of the evidence, including the expert reports - that the SKAT valuation did not reflect the property's market value.

On that basis, the High Court held that the Municipality was obliged to proceed on the basis of a correct alternative valuation, once the original valuation had been set aside.

Having regard to the expert evidence produced in the proceedings, the High Court determined the property's market value at DKK 130 million, corresponding to the association's subsidiary claim.

# Our Comments

The High Court's judgment provides long-awaited clarity on a statutory regime that has remained largely untested since its introduction in 1964.

Importantly, the Court confirms that the buy-out mechanism is operational in practice and that housing associations subject to subsidy declarations have a genuine and enforceable right to obtain release, provided that the statutory conditions are met.

The judgment further establishes that valuations - including those obtained from public authorities - are not binding, and that disputes concerning valuation and the calculation of the buy-out amount cannot be resolved within the administrative system. As there is no statutory basis for administrative appeal, such disputes must be resolved exclusively before the courts.

At the same time, the Court makes clear that municipalities cannot refrain from acting. Where a valuation is lawfully set aside, the municipality must proceed on the basis of a correct alternative valuation and issue a buy-out offer accordingly.

The outcome of such disputes will depend on the evidence, in particular expert valuations, meaning that results may vary from case to case - but within a now clarified legal framework.

## Contacts



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If you have any questions or require further information regarding any of the above, please do not hesitate to contact us.

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