



EU law precludes a national law that prevents a court hearing an action for compensation based on an allegation of discrimination from making a finding on the existence of that discrimination where the defendant agrees to pay the compensation claimed without recognising that discrimination

The payment of the monetary amount alone is not capable of ensuring effective judicial protection for a person who seeks to obtain a ruling that he or she has been the victim of such discrimination.

In 2015, the captain on board an internal Swedish flight operated by the airline Braathens Regional Aviation AB ('Braathens') decided to subject a passenger of Chilean origin resident in Stockholm (Sweden) to an additional security check.

Acting on behalf of the passenger, who considered that he had been the subject of discrimination for reasons connected his physical appearance and ethnicity, the Diskrimineringsombudsmannen (Equality Ombudsman) asked the Stockholms tingsrätt (District Court, Stockholm, Sweden) to order Braathens to pay that passenger compensation for discrimination.

Braathens agreed to pay the sum claimed without however recognising the existence of any discrimination. The first instance court therefore ordered the payment of that sum but declared inadmissible the Equality Ombudsman's claims seeking a declaratory judgment making a finding of the existence of discrimination. That court considered that, under Swedish procedural law, it was bound by Braathens' acquiescence and was thus required to dispose of the litigation without examining whether there had been any discrimination. After having unsuccessfully appealed against the judgment of the first instance court, the Equality Ombudsman brought an appeal before the referring court, the Högsta domstolen (Supreme Court, Sweden).

Having doubts as to whether the Swedish legislation complies with the requirements of Directive 2000/43¹ implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), which guarantees every person the right to an effective judicial remedy, the Supreme Court decided to refer a question to the Court of Justice as to whether, where a defendant acquiesces to a claimant's claim for compensation, the court seized must nevertheless be able to examine the question of the existence of discrimination upon the request of the party who considers that he or she was subject to it.

Findings of the Court

At the outset, the Court recalls that the purpose of Directive 2000/43 is to lay down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in the Member States the principle of equal treatment. Compliance with that principle requires the effective judicial protection of the right to equal treatment of persons who consider themselves victims of such discrimination, whether those persons act directly or through the intermediary of an association, organisation or other legal entity. In addition, the sanctions put in place in order to transpose that directive into the national legal order of a Member State must ensure real and

¹ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ 2000 L 180, p. 22).

effective judicial protection of the rights that are derived from it. The severity of the sanctions must be commensurate to the seriousness of the breaches for which they are imposed, in particular by ensuring a genuinely dissuasive effect, while complying with the general principle of proportionality.

In that regard, the Court holds that Articles 7 and 15 of Directive 2000/43, read in the light of Article 47 of the Charter, **precludes a national law which prevents a court that is seised of an action for compensation based on an allegation of discrimination prohibited by that directive from examining the claim seeking a declaration of the existence of that discrimination where the defendant agrees to pay the compensation claimed without however recognising the existence of that discrimination.**

In the first place, it follows from Article 7 of Directive 2000/43 that any person who considers himself or herself to have been the victim of discrimination based on racial or ethnic origin must be able, in the context of proceedings to assert rights derived from the principle of equal treatment, to obtain a ruling from the court on the possible breach of those rights, if the defendant does not recognise the discrimination alleged. **Therefore, the payment of the monetary amount alone is not capable of ensuring effective judicial protection for a person who seeks to obtain a ruling of the existence of such a breach.**

In the second place, such a national law is contrary to both the compensatory function and the dissuasive function required of the sanctions laid down by the Member States in accordance with Article 15 of Directive 2000/43. **The payment of a sum of money is insufficient to meet the claims of a person who seeks primarily to obtain recognition, by way of compensation for the non-material damage suffered, of the fact that he or she has been the victim of discrimination. Similarly, the requirement to pay a sum of money cannot ensure a truly deterrent effect as regards the author of the discrimination** where, as in the present case, the defendant contests the existence of any discrimination but considers it more advantageous, in terms of cost and reputation, to pay the compensation claimed by the claimant. The Court also states that the option of bringing criminal proceedings does not make it possible, due to the specific purposes that such proceedings pursue and the constraints inherent therein, to remedy the failure of civil law remedies to comply with the requirements of that directive.

In the third place, the Court emphasises that that interpretation is not called into question by procedural law principles or considerations, such as the principle that the subject matter of an action is defined by the parties, the principle of procedural economy, and the concern to promote the amicable settlement of disputes. First, a national law such as that at issue in the main proceedings has the effect of transferring the control of the dispute to the defendant, since the claimant may no longer, where the defendant acquiesces to pay the compensation claimed, obtain from the court hearing the case a ruling on the cause on which the claim is based, nor may the claimant prevent the termination of the case brought on his or her initiative. Second, a national court would not in any way infringe the principle that the subject matter of an action is defined by the parties if, despite the defendant's acquiescence to pay the compensation claimed by the claimant, it examined the existence or otherwise of the discrimination alleged by the latter, since that examination would consider the cause on which the claimant's claim for compensation is based, which is the subject matter of the dispute.

Finally, in the fourth place, the Court recalls that EU law does not as a general rule require Member States to create before their national courts remedies to ensure the protection of rights that parties derive from EU law other than those established by national law. However, it observes that, in the present case, **compliance with EU law does not require the creation of a new right of action, but merely that the referring court refuse to apply a procedural rule which prevents it from ruling on the existence of the discrimination alleged;** and that this is so owing to the incompatibility of that rule not only with Articles 7 and 15 of Directive 2000/43 but also with Article 47 of the Charter. Those articles of the directive merely give specific expression to the right to effective judicial protection, as guaranteed by Article 47 of the Charter, which is sufficient in itself to confer on individuals a right which they may rely on as such in a dispute between private persons.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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