Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

15 April 2021 *

(Reference for a preliminary ruling – Equal treatment between persons irrespective of racial or ethnic origin – Directive 2000/43/EC – Article 7 – Protection of rights – Article 15 – Sanctions – Action for compensation based on an allegation of discrimination – Defendant acquiescing to claim for compensation without recognition on its part of the discrimination alleged – Connection between the compensation paid and the discrimination alleged – Article 47 of the Charter of Fundamental Rights of the European Union – Right to effective judicial protection – National procedural rules preventing the court seised from ruling on whether there was discrimination as alleged, despite the express request of the claimant)

In Case C-30/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Högsta domstolen (Supreme Court, Sweden), made by decision of 20 December 2018, received at the Court on 10 January 2019, in the proceedings

Diskrimineringsombudsmannen

v

Braathens Regional Aviation AB,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, A. Prechal, M. Vilaras, E. Regan and N. Piçarra, Presidents of Chambers, T. von Danwitz (Rapporteur), C. Toader, M. Safjan, D. Šváby, K. Jürimäe, C. Lycourgos, P.G. Xuereb, L.S. Rossi and I. Jarukaitis, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 11 February 2020,

after considering the observations submitted on behalf of:

– the Diskrimineringsombudsmannen, by M. Mörk, T.A. Qureshi and A. Rosenmüller Nordlander,

– Braathens Regional Aviation AB, by J. Josjö and C. Gullikson Dock, advokater, and by J. Hettne,

– the Swedish Government, initially by H. Eklinder, C. Meyer-Seitz, H. Shev and J. Lundberg, and subsequently by H. Eklinder, C. Meyer-Seitz and H. Shev, acting as Agents,

* Language of the case: Swedish.

– the Finnish Government, by M. Pere, acting as Agent,

– the European Commission, by K. Simonsson, E. Ljung Rasmussen, G. Tolstoy and C. Valero, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 May 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 7 and 15 of 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) read in the light of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in the context of an action brought by the Diskrimineringsombudsmannen (Equality Ombudsman, Sweden), acting on behalf of an air passenger who considered himself to have been a victim of discrimination, against Braathens Regional Aviation AB ('Braathens'), a Swedish airline, which acquiesced to that passenger's claim for compensation without, however, recognising the existence of the discrimination alleged.

Legal context

European Union law

3 Recitals 19 and 26 of Directive 2000/43 state:

'(19) Persons who have been subject to discrimination based on racial and ethnic origin should have adequate means of legal protection. To provide a more effective level of protection, associations or legal entities should also be empowered to engage, as the Member States so determine, either on behalf or in support of any victim, in proceedings, without prejudice to national rules of procedure concerning representation and defence before the courts.

…

(26) Member States should provide for effective, proportionate and dissuasive sanctions in case of breaches of the obligations under this Directive.'

4 Under Article 1 of that directive, entitled 'Purpose':

'The purpose of this Directive 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.'

5 Article 2 of that directive, entitled 'Concept of discrimination', provides, in paragraph 1 thereof:

'For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin.'

6 Under the heading, 'Scope', Article 3(1)(h) of the same directive provides:

'Within the limits of the powers conferred upon the [European Union], this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

…

(h) access to and supply of goods and services which are available to the public, including housing.'

7 Article 7 of Directive 2000/43, headed 'Defence of rights', states:

'1. Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.

2. Member States shall ensure that associations, organisations or other legal entities, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.

…'

8 Article 8 of that directive, entitled 'Burden of proof', provides:

'1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

…

3. Paragraph 1 shall not apply to criminal procedures.

…'

9 Article 15 of that directive, entitled 'Sanctions', provides:

'Member States shall lay down the rules on sanctions applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are applied. The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive. …'

Swedish law

10 Paragraph 4(1) of Chapter 1 of the diskrimineringslagen (2008:567) (Law on discrimination (2008:567)), provides that discrimination includes, inter alia, a situation in which a person is placed at a disadvantage because he or she is treated less favourably than another person is or would be treated in a comparable situation, where the difference in treatment is based on sex, gender identity or expression, ethnicity, religion or opinions, disability, sexual orientation or age.

11 Paragraph 12 of Chapter 2 of that law prohibits discrimination, inter alia, by a person who, outside his or her own private or family circle, supplies goods, services or housing to the general public.

12 Chapter 5 of that law lays down the sanctions incurred by a person who discriminates, namely compensation to the victim, by payment of 'compensation for discrimination', the revision and annulment of contracts and other legal measures.

13 It is apparent from the second subparagraph of Paragraph 1 of Chapter 6 of the Law on discrimination that disputes concerning the application of Paragraph 12 of Chapter 2 of that law are to be examined by the ordinary courts in accordance with the provisions of the rättegångsbalken (Code of Judicial Procedure) relating to civil proceedings in which an amicable settlement of the dispute is permitted.

14 Under Paragraph 1 of Chapter 13 of that code, a claimant may, in the circumstances set out in that provision, bring an action for enforcement to obtain an order requiring a defendant to fulfil an obligation to act, such as the obligation to pay him or her a sum of money.

15 Paragraph 2 of the same chapter of that code governs actions for a declaration. The first subparagraph of that paragraph provides, in that regard, that such an action for a declaration of whether or not a particular legal relationship exists may be examined by the court if, as to the legal relationship, there is uncertainty which is prejudicial to the claimant.

16 Paragraph 7 of Chapter 42 of that code provides that a defendant must, at the hearing, immediately set out his or her defence. Failing that, a defendant may, at that stage, decide to acquiesce to the claimant's claim.

17 In accordance with Paragraph 18 of that Chapter 42 of the Code of Judicial Procedure, following acquiescence by the defendant to the claimant's claims, the court may deliver a judgment on the basis of that acquiescence.

The dispute in the main proceedings and the question referred for a preliminary ruling

18 In July 2015, a passenger of Chilean origin residing in Stockholm (Sweden), who held a reservation on an internal Swedish flight ('the passenger concerned in the main proceedings') operated by the Braathens airline, was subjected, by decision of the captain on board, to an additional security check.

19 The Equality Ombudsman brought a case before the Stockholms tingsrätt (District Court, Stockholm, Sweden) seeking an order that Braathens pay the passenger concerned in the main proceedings compensation for discrimination in the amount of 10 000 Swedish kronor (SEK) (approximately EUR 1 000) owing to the discriminatory conduct of the airline in respect of that passenger.

20 In support of his action, the Equality Ombudsman submitted, in essence, that the passenger concerned had been the subject of direct discrimination in breach of Paragraph 12 of Chapter 2 and Paragraph 4 of Chapter 1 of the Law on discrimination by Braathens, which associated him with an Arabic person and therefore subjected him to an additional security check on that ground. Braathens thus subjected the passenger concerned in the main proceedings to a disadvantage for reasons connected with his physical appearance and ethnicity, by treating him less favourably than other passengers in a comparable situation.

21 Before the Stockholms tingsrätt (District Court, Stockholm), Braathens agreed to pay the sum claimed by way of compensation for discrimination without however recognising the existence of any discrimination whatsoever. The Equality Ombudsman objected, before that court, to a ruling being given on the basis of Braathens' agreement, without the merits of the alleged discrimination being examined.

22 In its ruling, that court ordered Braathens to pay the sum claimed, together with interest, and to bear the costs. It considers that litigation concerning civil obligations and rights, which the parties may freely dispose of, such as the litigation at issue in the main proceedings, must, where liability for the claimant's claim for compensation is accepted, be decided without an examination of the merits and that it was bound by Braathens' acquiescence. Furthermore, that court, owing to that acquiescence, declared inadmissible the forms of order sought by the Equality Ombudsman seeking a declaration, principally, that that airline was required to pay the said sum owing to its discriminatory conduct or, in the alternative, that the passenger concerned in the main proceedings had been subject to discrimination by Braathens.

23 After having unsuccessfully appealed against the judgment of the Stockholms tingsrätt (District Court, Stockholm) before the Svea hovrätt (Svea Court of Appeal, Stockholm, Sweden), the Equality Ombudsman brought an appeal against the judgment of the latter court before the referring court, the Högsta domstolen (Supreme Court, Sweden). In that appeal, it asks that court to set aside the judgment appealed, and also the judgment of the Stockholms tingsrätt (District Court, Stockholm), and refer the case back to that court for an examination of the merits of at least one of the two forms of order sought, which seek a declaratory judgment. Braathens contended that the Equality Ombudsman's claims should be dismissed.

24 The referring court states that the law on discrimination has the objective, in particular, of transposing various EU acts, including Directive 2000/43, and aims to permit, as is clear from the legislative history, the imposition of robust and dissuasive penalties in the event of discrimination. In particular, compensation for discrimination constitutes a sanction, within the meaning of Article 15 of that directive, and should, in each individual case, be determined in such a way as to constitute reasonable compensation for the victim and to help combat discrimination in society. It serves a dual function of compensation and prevention.

25 The referring court adds that, under the provisions of the Code of Judicial Procedure, the defendant may decide to acquiesce to the claim for compensation made by the applicant, without being required to give the reasons for that acquiescence or to base its decision on a ground relied on by the latter, or recognise the existence of the discrimination alleged. Such acquiescence has the intention, in practice, of bringing about the end of the proceedings, without it being necessary to proceed with the examination of the case, as the court is required to deliver a judgment with that acquiescence as its sole reasoning. As to a declaratory action, it may cover only whether or not there is a legal relationship between the parties to the litigation, to the exclusion, inter alia, of purely factual matters. It is, moreover, for the court to assess whether it is appropriate to examine that relationship.

26 The referring court states that, in the case in the main proceedings, the courts at first instance and on appeal delivered decisions ordering Braathens to pay the compensation claimed by the passenger concerned in the main proceedings on the basis of Braathens' acquiescence to that passenger's claim. As a result of that acquiescence, the question of whether there was discrimination as alleged could no longer, according to those courts, be examined in the context of claims seeking a declaratory judgment.

27 The Högsta domstolen (Supreme Court) questions whether the national legislation at issue in the main proceedings complies with the requirements of Article 15 of Directive 2000/43 read in the light of Article 47 of the Charter which guarantees every person the right to an effective judicial remedy. That court questions, in that regard, whether, where a defendant acquiesces to a claimant's claim for compensation, the court must nevertheless be able to examine – in order to ensure, in accordance with Article 7 of that directive, the protection of rights derived from it – the question of the existence of discrimination upon the request of the party who considers that he or she was subject to it, and whether the answer to that question depends on the recognition, or not, on the part of the alleged discriminator of the existence of that discrimination.

28 In those circumstances, the Högsta domstolen (Supreme Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'In a case concerning an infringement of a prohibition laid down in [Directive 2000/43] where the person wronged claims compensation for discrimination, must a Member State, if so requested by the person wronged, always examine whether discrimination has occurred – and where appropriate conclude that that was the case – regardless of whether the person accused of discrimination has or has not admitted that discrimination has occurred, in order for the requirement in Article 15 [of that directive] for effective, proportionate and dissuasive sanctions to be regarded as satisfied?'

Consideration of the question referred

29 By its question, the referring court asks, in essence, whether Articles 7 and 15 of Directive 2000/43, read in the light of Article 47 of the Charter, must be interpreted as precluding a national law which prevents a court hearing an action for compensation based on an allegation of discrimination prohibited by that directive from examining the claim for a declaration of the existence of discrimination, where the defendant agrees to pay the compensation claimed without however recognising the existence of that discrimination.

30 As a preliminary observation, it should be noted that the purpose of Directive 2000/43, as stated in Article 1 thereof, 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. That directive gives specific expression, in its field of application, to the principle of non-discrimination on grounds of race and ethnic origin which is enshrined in Article 21 of the Charter (judgment of 16 July 2015, *CHEZ Razpredelenie Bulgaria*, C-83/14, EU:C:2015:480, paragraph 72 and the case-law cited).

31 It is common ground that the dispute in the main proceedings falls within the material scope of Directive 2000/43, since it concerns conduct alleged to be discriminatory, on the grounds of racial or ethnic origin, adopted in the context of access to a service made available to the public, within the meaning of Article 3(1)(h) of that directive.

32 As is clear from the recital 19 of Directive 2000/43, persons who have been subject to discrimination based on racial and ethnic origin should have adequate means of legal protection and, to provide a more effective level of protection, associations or legal entities should also be empowered to engage, as the Member States so determine, either on behalf or in support of any victim, in proceedings. In addition, according to recital 26 of that directive, Member States should provide for effective, proportionate and dissuasive sanctions in the event of breaches of the obligations under that directive.

33 In that regard, Article 7(1) of Directive 2000/43 provides that Member States are to ensure that judicial and/or administrative procedures for the enforcement of obligations under this Directive are available to all persons who consider themselves to have been wronged by a failure to apply the principle of equal treatment to them. In that way, that provision reaffirms the right to an effective remedy enshrined in Article 47 of the Charter.

34 Furthermore, Article 7(2) of Directive 2000/43 provides that associations, organisations or other legal entities, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of that directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under the directive. Article 7(2) constitutes, therefore, a specific expression, in the field in question, of the right to effective judicial protection guaranteed by Article 47 of the Charter.

35 Compliance with the principle of equality therefore requires, so far as concerns persons who consider that they have been the subject of discrimination on grounds of racial or ethnic origin, that effective judicial protection of their right to equal treatment be guaranteed, whether those persons act directly or through the intermediary of an association, organisation or other legal entity, as referred to in the preceding paragraph (see, by analogy, judgment of 8 May 2019, *Leitner*, C-396/17, EU:C:2019:375, paragraph 62).

36 Article 15 of Directive 2000/43 provides that Member States are to lay down the rules on sanctions applicable to infringements of the national provisions adopted pursuant to that directive, and are to take all measures necessary to ensure that they are applied. Without requiring specific sanctions, that article provides that the sanctions laid down, which may include the payment of compensation to the victim, must be effective, proportionate and dissuasive.

37 Article 15 thus imposes on Member States the obligation to introduce into their national legal systems measures which are sufficiently effective to achieve the aim of that directive and to ensure that they may be effectively relied upon before the national courts, including by an association, organisation or legal entity, as referred to in Article 7(2) of that directive, so that judicial protection is real and effective, while leaving Member States free to choose between the different solutions suitable for achieving that objective (see, to that effect, judgment of 10 July 2008, *Feryn*, C-54/07, EU:C:2008:397, paragraphs 37 and 38).

38 In that regard, the rules on sanctions put in place in order to transpose Article 15 of Directive 2000/43 into the national legal order of a Member State must in particular ensure, in parallel with measures taken to implement Article 7 of that directive, real and 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 (see, by analogy, judgment of 25 April 2013, *Asociația Accept*, C-81/12, EU:C:2013:275, paragraph 63).

39 If financial compensation is the measure chosen in cases where there is a finding that discrimination has occurred, it must be adequate, in that it must enable the loss and damage actually sustained as a result of the discrimination in question to be made good in full in accordance with the applicable national rules (see, by analogy, judgment of 17 December 2015, *Arjona Camacho*, C-407/14, EU:C:2015:831, paragraph 33 and the case-law cited). By contrast, a purely symbolic sanction cannot be regarded as being compatible with the correct and effective implementation of Directive 2000/43 (see, by analogy, judgment of 25 April 2013, *Asociația Accept*, C-81/12, EU:C:2013:275, paragraph 64).

40 In the present case it is clear from the order for reference that, under national law transposing, inter alia, Directive 2000/43, any person who considers that he or she is a victim of discrimination on the grounds of racial or ethnic origin may bring an action for enforcement of the sanction constituted by 'compensation for discrimination'. The national law at issue in the main proceedings provides that, where the defendant acquiesces to the claimant's claim for compensation, the court hearing that action orders the defendant to pay the sum claimed by the applicant by way of compensation.

41 It is, nevertheless, also clear from the order for reference that such acquiescence – which under that national law, is legally binding on the court and results in the termination of the proceedings – may be given where the defendant does not however recognise the existence of the alleged discrimination, or even, as in the case in the main proceedings, where he or she explicitly contests it. In such a situation, the national court delivers a judgment on the basis of that acquiescence without, however, it's being possible for any conclusion to be drawn from that judgment as to the existence of the discrimination alleged.

42 It follows that, in such a situation, the defendant's acquiescence has the effect that the obligation for the latter to pay the compensation claimed by the claimant is not linked to recognition, by the defendant, of the existence of the alleged discrimination or to a finding thereof by the competent court. In addition, and in particular, such acquiescence has the consequence of preventing the court hearing the action from ruling on the reality of the discrimination alleged, even though that was the cause on which the claim for compensation was based and is, for that reason, an integral element of that action.

43 As regards the declaratory action provided for in the national law at issue in the main proceedings, it is clear from the order for reference that it does not ensure, for the person who considers himself or herself to have been a victim of discrimination prohibited by Directive 2000/43, the right to have the existence of the alleged discrimination examined and, if appropriate, upheld by a court. In accordance with that law, the action for a declaration cannot address purely factual elements, and its admissibility is subject to the court hearing the case deciding that it is appropriate to proceed, which depends on the balance of interests at issue, namely, inter alia, the claimant's interest in bringing proceedings and the inconvenience that the action might cause to the defendant.

44 It follows that, under the national law at issue in the main proceedings, in the event of the defendant's acquiescing to pay the compensation claimed by the claimant, without however recognising the discrimination alleged, the claimant is unable to obtain a ruling by a civil court on the existence of that discrimination.

45 It must be held that such a national law infringes the requirements imposed by Articles 7 and 15 of Directive 2000/43, read in the light of Article 47 of the Charter.

46 In the first place, as is clear from paragraphs 33 to 35 of this judgment, the procedures referred to in Article 7 of that directive have the aim of permitting the enforcement of rights derived from the principle of equal treatment of any person who considers himself or herself to be the victim of discrimination based on racial or ethnic origin and to ensure compliance. It therefore follows necessarily that where the defendant does not recognise the discrimination alleged that person must be able to obtain from the court a ruling on the possible breach of the rights that such procedures are intended to enforce.

47 Consequently, the payment of a sum of money alone, even where it is the sum claimed by the claimant, 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.

48 In the second place, a national law such as that at issue in the main proceedings is contrary to both the compensatory function and the dissuasive function of sanctions laid down by the Member States in accordance with Article 15 of Directive 2000/43 where there is a breach of national provisions transposing that directive.

49 In that regard, as the Advocate General observed, in essence, in points 83 and 84 of his Opinion, 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, meaning that the payment cannot, for that purpose, be regarded as having a satisfactory compensatory function. Similarly, the requirement to pay a sum of money cannot ensure a truly deterrent effect as regards the author of the discrimination by inducing him or her not to repeat the discriminatory behaviour and thereby preventing further discrimination on his or her part where, as in the present case, he or she 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, while also thereby avoiding a finding by a national court that there had been discrimination.

50 The preceding analysis cannot be called into question by the possibility, relied on by the Swedish Government, of bringing criminal proceedings, which would permit the person who considers himself or herself to have been a victim of discrimination prohibited by Directive 2000/43 to have that discrimination found and punished by a criminal court. Such criminal proceedings, due to the specific purposes that they pursue and the constraints inherent therein, do not make it possible to remedy the failure of civil law remedies to comply with the requirements of that directive.

51 In particular, it should be observed, as the Advocate General notes in points 118 to 120 of his opinion, such criminal proceedings are based on rules regarding the burden of proof and the taking of evidence which do not correspond to those, more favourable to that person, that are laid down in Article 8 of Directive 2000/43. That Article 8 provides, in paragraph 1, that, when the said person establishes, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it is to be for the defendant to prove that there has been no breach of the principle of equal treatment. By contrast, in paragraph 3, that same Article 8 provides that its paragraph 1 is not to apply to criminal procedures.

52 In the third place, and contrary to Braathens' submissions, 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, are also not capable of justifying a different interpretation from that given in the preceding paragraphs.

53 First, unlike the amicable settlement of a dispute, as referred to in Article 7(1) of Directive 2000/43, which permits each party to retain the freedom to define its arguments, 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 by permitting that defendant to acquiesce to the claim for compensation made by the claimant, without however recognising the existence of the discrimination alleged or even despite the fact that the defendant contests it explicitly, in which case the claimant may no longer 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.

54 Second, a court hearing such an action 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, having regard to the allegation of the latter on the basis of which the action is brought, the existence or otherwise of that discrimination, where that defendant does not recognise it or even contests it. Such an examination would then consider the cause on which the claimant's claim for compensation is based, which relates to the subject matter of the proceedings as defined by that action, all the more so where, as in the present case, that claimant has expressly submitted, in the context of that action, a request for a finding of such discrimination.

55 In the fourth place, it should be recalled that it is true, as Braathens submits, 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 (see, to that effect, judgments of 13 March 2007, *Unibet*, C-432/05, EU:C:2007:163, paragraph 40, and of 24 October 2018, *XC and Others*, C-234/17, EU:C:2018:853, paragraph 51).

56 However, it suffices to observe that, in the present case, compliance with EU law does not go so far as requiring the creation of a new right of action, but merely that the referring court refuse to apply a procedural rule according to which the court seised, in accordance with domestic law, of a claim for compensation brought by a person considering himself or herself to be a victim of discrimination, cannot rule on the issue of whether there had been discrimination on the sole ground that the

defendant agreed to pay the claimant the amount of compensation claimed, without however recognising the existence of the said discrimination; 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.

57 In that regard, it must be recalled, first, that, as has been established in paragraph 38 of this judgment, Articles 7 and 15 of Directive 2000/43 seek to ensure the real and effective judicial protection of the right to equal treatment between persons irrespective of racial or ethnic origin derived from that directive. It follows that those articles merely give specific expression to the right to effective judicial protection, as guaranteed by Article 47 of the Charter, which is sufficient in itself and does not need to be made more specific by provisions of EU or national law to confer on individuals a right which they may rely on as such (judgment of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraphs 76 to 78).

58 Second, by virtue of the principle of the primacy of EU law, if it is impossible for national law to be interpreted consistently with the requirements of EU law, any national court hearing a case within its jurisdiction is, as an organ of a Member State, under an obligation to disapply any provision of national law which is contrary to a provision of EU law with direct effect in the case pending before it (see, to that effect, judgment of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraphs 53 and 61 and the case-law cited).

59 Having regard to all the foregoing considerations, the answer to the question referred is that Articles 7 and 15 of Directive 2000/43, read in the light of Article 47 of the Charter, must be interpreted as precluding 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. It is for the national court hearing a dispute between private persons to ensure, within its jurisdiction, the judicial protection for litigants flowing from Article 47 of the Charter by disapplying as necessary any contrary provision of national law.

Costs

60 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

Articles 7 and 15 of Council Directive 2000/43/EC of 29 June 2000 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, must be interpreted as precluding 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. It is for the national court hearing a dispute between private persons to ensure, within its jurisdiction, the judicial protection for litigants flowing from Article 47 of the Charter of Fundamental Rights by disapplying as necessary any contrary provision of national law.

[Signatures]