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Case study

M. M. is a Moroccan worker, who has been employed for more than 10 years as a security officer in a company established in a Member state. In September 2019, he was submitted to a specific procedure, before he could be assigned to a new mission. He had to go through a series of interviews with the managers of the company, where he was asked questions on his personal life. None of his colleagues have been subjected to a similar procedure.

M. M. considered that he was the victim of a discrimination on race, which violates Directive 2000/43 prohibiting discriminations on race and ethnic origin. He decided to claim compensation in court.

However, according to national law, he was obliged to do through the dispute resolution system set up by the national body in charge of combatting discriminations (NBD). Before this administrative body, a settlement was found: the employer accepted to pay M. M. a sum of money (Euros 1 000), but did not recognize the existence of a discrimination. M. M. was not satisfied with the employer's denial of the discrimination he suffered. He felt frustrated by the fact that the administrative body did not examine the substance of the alleged discrimination, and decided to take the case to court.

Before the national court, the employer admitted the claim, once again, and accepted to pay a higher compensation (Euros 5 000), but continued to deny the existence of a discrimination. According to national civil procedure rules, a defendant can indeed decide to admit the applicant's claim for compensation, without being required to state its reasons or base the decision on a plea in law relied on by the applicant. Accordingly, it is possible for the admission not to be linked to the pleas in support of the applicant's claim. Such an admission is, in practice, intended to bring the proceedings to an end without there being any need to further examine the case. The court is compelled to allow the admission without an actual examination of the facts or point of law. It is therefore not possible to draw from such a judgment any definitive conclusion as to the merits of the applicant's arguments relating to the circumstances of the dispute. In a dispute, which involves civil rights and obligations, when the applicant's claims are admitted, examination of the substance is precluded, and the defendant acceptance to compensate is binding on courts.

I. D., a colleague of M. M., had accepted to testify, and provided elements supporting the claim of discrimination: she indicated, namely, that the company had not hired any worker of foreign origin (or supposedly foreign origin) in the last five years, and that all employees, except M. M. were nationals, of national origin. This contributed to the company preferring to compensate M. M., and settle the case, without trying to contest the existence of a discrimination.

M.M. could still appeal the first instance court's decision. However, this requires hiring a lawyer, which would be too expensive for him (and contingency fees are prohibited). In addition, since



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he is not a national, he would have to provide, in order to lodge an appeal, a security for the costs and damages arising from the proceedings which he may be ordered to pay.

Another possibility, he was explained, is to refer his case to the prosecutor, so that it is examined by a criminal court. However, that needs to be done within two years of the offence, which is already too late.

Questions:

1/ Does the obligation to take the case to an administrative body before action in court conflict with Art. 47 of the Charter of fundamental rights of the EU (CFREU)? Or is it possible to consider that it contributes to effective judicial protection?

2/ Can the payment of a sum of money alone, even where it is the sum claimed by the claimant, ensure effective judicial protection for a person who requests a finding that there was a breach of his or her right under EU law? Does it matter that the person wants to obtain a ruling on the reality of the facts alleged against the defendant and their legal classification?

3/ What other aspects of national law conflict with Art. 47 of the Charter of fundamental rights of the EU (CFREU)?

4/ Can criminal procedures remedy the failure of civil law?

5/ Soon after the first instance court's decision, I.D., M. M.'s colleague, was assigned to a mission very far from her home, and felt the decision was an adverse reaction of her employer to her testimony. Can this be considered a violation of the right to Art. 47 CFREU?

6/ Would the answers to the previous questions be different if M. M. claimed he was discriminated against on the ground on this national origin, and not his race?