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Apologies as a Private Law Remedy: Emerging on the European Continent, and Beyond?

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1. *Sorry seems to be the hardest word*, sang Elton John in his 1976 hit song. And indeed, apologizing can be incredibly difficult, even when we know we have done something wrong. It requires us to acknowledge our mistakes, take responsibility for our actions, and show genuine remorse. While apologizing can be difficult for the person who committed the wrong, it can be important for the person who has been wronged to receive apologies. One can imagine that also the victim of a civil wrong may feel the need for an apology from the wrongdoer, but that the latter is unwilling to apologize.[1] One way of addressing this desire for an apology, is to order the wrongdoer to apologize. But does the law provide the victim with a claim for apologies, allowing the court to order the wrongdoer to apologize? On this question, the Belgian *Cour de cassation* delivered a landmark decision on 26 November 2021.[2]

2. The facts underlying the decision of the Belgian *Cour de cassation*, can be summarized as follows.

A memo from a closed meeting of a parliamentary enquiry committee was leaked to the press. In this memo, the plaintiff, a baron and well-known businessman, was named and linked to extreme right organizations. The leaked memo was published in a newspaper. Consequently, the plaintiff was discredited and became known as the 'Black Baron'. As it turns out, however, these allegations were unsubstantiated and unverified. After a years-long procedural battle against the Belgian State, the baron claimed, in addition to monetary damages for moral harm, that the Belgian State should be ordered to send him a letter, co-signed by the Minister of Justice and the Administrator-General of State Security, withdrawing the accusations against him and formulating apologies, and that this letter should be published on two governmental websites.

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1 Empirical studies disclose an 'apology mismatch' in this regard: apparently, victims mainly want to receive an apology after intentional wrongs, whereas most wrongdoers want to offer an apology particularly after unintentional wrongs, see J.M. Leunissen, D. De Cremer, C.P. Reinders Folmer & M. van Dijke, 'The apology mismatch: Asymmetries between victim's need for apologies and perpetrator's willingnes to apologize', 49. *Journal of Experimental Social Psychology* 2013(3), pp 315ff, doi: 10.1016/j.jesp.2012.12.005.

2 ECLI:BE:CASS:2021:ARR.20211126.1F.5, *Journal des Tribunaux (JT)* 2022, p 206, comm. by P. Wéry, *Revue générale des assurances et des responsabilités* (*RGAR*) 2022, no. 15.851, comm. by J. Van de Voorde and *Rechtskundig Weekblad* (*RW*) 2021–2022, p 890 (comm. by S. De Rey).

The Court of Appeal ruled that there was damage to reputation of the baron. It held the Belgian State liable for this on the grounds of unlawful act, based on the general provisions on tortious liability, found in Articles 1382 and 1383 of the old Belgian Civil Code.[3] However, unlike the claim for monetary damages, the claim for the apology-letter was not granted. The baron appealed against this decision.

The *Cour de cassation* held that the judgment under appeal could not reject the claim for an apology. According to the Court, the victim of a civil wrong is entitled to non-monetary relief (*réparation en nature, Naturalrestitution, herstel in natura*[4]), even in the event of moral harm, from which it follows that, when a victim seeks non-monetary relief, the court must grant it, unless such relief is impossible or constitutes an abuse of rights. Consequently, the Court ruled that the judgment under appeal should have examined the form of non-monetary relief requested by the plaintiff, i.e., the apology-letter. It follows that, according to the *Cour de cassation*, apologies are be considered as a form of non-monetary relief for emotional harm. This decision seems to accept that the victim of a civil wrong may have a claim for apologies under Belgian tort law, even if there is no specific statutory provision providing for such a claim. According to the Court, such claim would be available under the general provisions on tortious liability and the availability of non-monetary relief for emotional harm under these provisions.[5]

3. Since the 21st century, there has been an increasing interest for the role and place of apologies in the law. For instance, recent legal and/or empirical research has analysed the effects of apologies on the psychological well-being of victims,[6] on

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3 While the heading is 'old Civil Code', these provisions are still in force. Indeed, the Act of 13 Apr. 2019 (Belgian Official Gazette 14 May 2019, p 46.353) introduced a new Civil Code, of which only a limited number of books were inserted until now. The former Civil Code of 1804 is since referred to as the 'old Civil Code', while the brand-new Civil Code has from then on simply been referred to as the 'Civil Code'. The rules on extra-contractual liability are yet to be inserted.

4 On this terminology, see e.g., H. Unberath, V° 'Reparation in kind' in J. Basedow, K.J. Hopt, R. Zimmermann & A. Stier (eds), *Max Planck Encyclopedia of European Private Law* (OUP 2012), p 1453.

5 For an overview of this Belgian approach, see S. De Rey, 'Court-Ordered Apologies under the Law of Torts? Non-Monetary Relief for Emotional Harm – A Comparative Outlook from a Western European Perspective', in N. Brutti, R. Carroll & P. Vines (eds), *Apologies in the Legal Arena* (Bonomo ed. 2021), pp 203 ff; J. Van de Voorde, 'L'excuse contrainte par justice (l'amende honorable) en droit de la responsabilité belge', *RGAR* 2019, no. 15.545; J. Van de Voorde, 'L'excuse contrainte par justice (l'amende honorable) reconnue par la Cour de cassation', *RGAR* 2022, no. 15.851.

6 For example, see H. Strang & L.W. Sherman, 'Repairing the Harm: Victims and Restorative Justice', *Utah Law Review* 2003, p 15; A. Allan, 'Apology in Civil Law: A Psycho-Legal Perspective', *Psychiatry, Psychology and Law* 2007, p 5, doi: 10.1375/pplt.14.1.5; A. Allan, 'Functional Apologies in Law', *Psychiatry, Psychology and Law* 2008, p 369, doi: 10.1080/13218710802101589; P. Desmet, *In Money we Trust? Trust Repair and the Psychology of Financial Compensations* (ERIM: 2011), pp 96-97; M.K. Dhami, 'Offer and Acceptance of Apology in Victim-Offender Mediation', *Critical Criminology* 2012, p 45, doi: 10.1037/e669802012-475.

the willingness of wrongdoers to apologize,[7] on how wrongdoers estimate the effects of apologizing[8] and how they are perceived after apologizing.[9] There is also literature on the role of apologies in negotiation,[10] mediation,[11] settlements[12] and out-of-court dispute resolution,[13] as well as on court and jury decisions[14] and on the number of claims brought before the courts.[15]

In response to the need of victims seeking an apology, apologies have also been addressed as a private law remedy.[16] The healing effect of apologies – even if

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7 For example, see J.M. Leunissen, D. De Cremer & C.P. Reinders Folmer, 'An instrumental perspective on apologizing in bargaining: The importance of forgiveness to apologize', *Journal of Economical Psychology* 2012, p 215ff, doi: 10.1016/j.joep.2011.10.004.

8 For example, see J.M. Leunissen, D. De Cremer, M. van Dijke & C.P. Reinders Folmer, 'Forecasting Errors in the Averseness of Apologizing', *Social Justice Research* 2014, pp 322ff, doi: 10.1007/s11211-014-0216-4.

9 For example, see J.K. Robbennolt, 'Apologies and Legal Settlement: An Empirical Examination', *Michigan Law Review* 2003, p 460, doi: 10.2307/3595367; A. Allen, D. McKillop & R. Carroll, 'Parties' Perceptions of Apologies in Resolving Equal Opportunity Complaints', 17. *Psychiatry, Psychology and Law* 2010(4), p 538, doi: 10.1080/13218711003739078; A. Allan & R. Carroll, 'Apologies in a Legal Setting: Insights from Research into Injured Parties' Experiences of Apologies after an Adverse Event', 24. *Psychiatry, Psychology and Law* 2017, p 10, doi: 10.1080/13218719.2016.1196511.

10 For example, J.M. Leunissen, D. De Cremer & C.P. Reinders Folmer, *Journal of Economical Psychology* 2012, pp 215ff.

11 For example, see D.L. Levi, 'The Role of Apology in Mediation', 72. *NYUL Review* 1997, p 1165; M. Bolstad, 'Learning form Japan: The Case for Increased Use of Apology in Mediation', *Cleveland State Law Review* 2000, p 545; D.L. Pavlick, 'Apology and Mediation: The Horse and Carriage of the Twenty-First Century', *Ohio St J Disp Resol* 2003, p 18; M.K. Dhami, 'Offer and Acceptance of Apology in Victim-Offender Mediation', *Critical Criminology* 2012, p 45, doi: 10.1037/e669802012-475; R. Carroll, A. Allan & M. Halsmith, 'Apologies, Mediation and the Law: Resolution of Civil Disputes', 7. *Oñati Socio-Legal Series* 2017, p 569.

12 For example, see J.K. Robbennolt, 'Apologies and Settlement Levers', 3. *Journal of Empirical Legal Studies* 2006, p 333, doi: 10.1111/j.1740-1461.2006.00072.x; C.P. Reinders Folmer, P.T.M. Desmet & W.H. van Boom, 'Beyond compensation? Examining the role of apologies in the restoration of victims' needs in simulated tort cases', 43. *Law and Human Behavior* 2019, p 329, doi: 10.1037/lhb0000335.

13 For example, see W. Vandenbussche, 'Introducing Apology Legislation in Civil Law Systems: A New Way to Encourage Out-of-Court Dispute Resolution' in L. Cadiet, B. Hess & M. Requejo Isidro (eds), *Privatizing Dispute Resolution. Trends and Limits* (Nomos 2019) pp 433ff.

14 For example, see J.J. Rachlinski, C. Guthrie & A.J. Wistrich, 'Contrition in the Courtroom: Do Apologies Affect Adjudication?', 98. *Cornell Law Review* 2013, p 1189, doi: 10.2139/ssrn.2295033.

15 For example, see R. Boothman, A.C. Blackwell, D.A. Jr Campbell, E. Comminskey & S. Anderson, 'A Better Approach to Medical Malpractice Claims? The University of Michigan Experience', 2. *Journal of Health & Life Sciences Law* 2009, p 125.

16 For example, see B.T. White, 'Say You're Sorry: Court-Ordered Apologies as a Civil Rights Remedy', 91. *Cornell Law Review* 2006, pp 1274–1275; P. Vines, 'The power of apology: mercy, forgiveness or corrective justice in the civil liability arena', 1. *Journal of Law and Social Justice* 2007, pp 1–51, doi: 10.5130/psjlsj.v1i1.535; R. Carrol, 'Beyond Compensation: Apology as a

they are presented unspontaneous, following an order of the court – is well documented by empirical studies.[17] It follows that apologies may serve purposes and have effects which cannot be attained by monetary damages. In addition to monetary damages, it is found that apologies may contribute to the psychological well-being of the victim, and therefore provide compensation for emotional harm. It is said that apologies may mitigate stress, restore victims' social reputation and provide restoration of esteem, feelings, dignity and self-respect.[18]

4. A quick journey around the globe learns that apologies have been accepted as a legal remedy in several jurisdictions, either as a general or a specific remedy.

Indeed, in some jurisdictions, court-ordered apologies are *statutory embodied* as a legal remedy. For instance, in his national report below, *Chen Lei* shows that this is the case under Chinese law. According to Article 179 of the Chinese Civil Code, 'making an apology' is one of the remedies for civil liability. Codified in Book 1 'General Provisions' of the Chinese Civil Code, Article 179 – providing an enumeration of eleven types of civil law remedies – is considered as a key provision with a broad scope of application,[19] including for example civil liability caused by breach of contract or tort.

In other legal systems, court-ordered apologies are statutory embodied not as a general remedy, but for *specific liability* cases only. An illustration is found in

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Private Law Remedy', in J. Berryman & R. Bigwood (eds), *The Law of Remedies. New directions in het common law* (Toronto: Irwin Law 2010) pp 323–385; R. Carroll, 'You can't order sorriness, so is there any value in an ordered apology?: An analysis of ordered apologies in anti-discrimination cases', 33. *University of New South Wales Law Journal* 2010, pp 360–385; R. Carrol & N. Witzleb, 'It's not just about the money' – Enhancing the vindicatory effect of private law remedies', 37. *Monash University Law Review* 2011, pp 216–240; D. Milo, 'It's Hard for Me to Say I'm Sorry: Apology as a Remedy in the South African Law of Defamation', *Journal of Media Law* 2012, p 11, doi: 10.5235/175776312802483934; R. Carrol, 'Apologies as a Legal Remedy', *Sydney Law Review* 2013, pp 317–347; A. Zwart-Hink, A.J. Akkermans & K. van Wees, 'Compelled Apologies as a Legal Remedy: Some Thoughts from a Civil Law Jurisdiction', *University of Western Australia Law Review* 2014, pp 100–122; G. van Dijck, 'The Ordered Apology', *Oxford Journal of Legal Studies* 2017, pp 562–587, doi: 10.1093/ojls/gqx004; P. Vines, 'Apologies as Corrective Justice in Tort Law: Reparation and Compensation as (Partial) Redemption in a Tort System' *UNSWLRS* 2018, no. 79; S. De Rey, in *Apologies in the Legal Arena,* pp 203–249; W. Vandenbussche, 'Rethinking non-pecuniary remedies for defamation: the case of court-ordered apologies', *Journal of Intern. Media & Entertainment Law* 2021, p 109; K.U. Schmolke, 'Anspruch auf Entschuldigung bei immateriellen Schäden?', *AcP* 2022, pp 340–371.

17 See A. Allan, *Psychiatry, Psychology and Law* 2007, p 6; A. Allan, *Psychiatry, Psychology and Law* 2008, p 375; C.P. Reinders Folmer, P. Mascini & J.M. Leunissen, 'Rethinking Apology in Tort Litigation Deficiencies in Comprehensiveness Undermine Remedial Effectiveness', *Rev L Econ* 2019, no. 20180042.

18 For an overview, see A. Allan & M.M. Allan, 'Prompted Versus Voluntary Apologies: what does psychological research tell us?' in N. Brutti, R. Carroll & P. Vines (eds), *Apologies in the Legal Arena* (Bonomo ed. 2021), pp 251–270.

19 See Yuanshi Bu, *Chinese Civil Code – The General Part* (Hart 2019), pp 201ff.

equal opportunity and anti-discrimination legislation of several Australian States.[20] For instance, according to the Anti-Discrimination Act 1977 No 48 of New South Wales, if the tribunal finds the complaint substantiated in whole or in part, it may order the defendant 'to publish an apology ... and, as part of the order, give directions concerning the time, form, extent and manner of publication of the apology or retraction (or both)' (s. 108(2) (d). Turning this to judicial practice, the New South Wales Administrative Decisions Tribunal required in *Burns* v. *Radio 2UE Sydney Pty Ltd & Orse (No 2)* two radio presenters, who made discriminatory comments about homosexuals during the radio show, to broadcast their apologies at fixed times in specific terms, while the radio station had to publish apologies in different newspapers.[21]

In other legal systems, statutory provisions do not provide for an apology order, but a *statutory provision is interpreted by the courts* as conferring the power to order an apology. An example is provided by the common law of Hong Kong. According to section 72(4)(b) of CAP 487 Disability Discrimination Ordinance of the Special Administrative Region, the court may 'order that the respondent shall perform any reasonable act or course of conduct to redress any loss or damage suffered by the claimant'. In *Ma Bik Yung* v. *Ko Chuen*, the Hong Kong Court of Final Appeal stated that:

> this loss or damage will in many cases include injury to feelings. ... The making of an apology will usually redress, at least to some extent, the loss or damage, particularly injury to feelings, suffered by the plaintiff because of the defendant's unlawful conduct ... An apology, even at this late stage after a finding of liability, could have the effect of redressing at least to some extent the plaintiff's loss and damage. So long as the making of the apology is a reasonable act for the defendant to perform, the court may order an apology. Such an order would be within the court's power under this provision.[22]

Despite the lack of an explicit statutory provision providing for such a remedy, it follows that the Hong Kong Court of Final Appeal has granted the court the power to order an apology within the scope of this legislation.

5. On the availability of apologies as a remedy within the European legal systems, the national reports below provide a mixed picture.

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20 For an overview, see R. Carroll, 33. *University of New South Wales Law Journal* 2010, p 360–385.

21 [2005] NSWADT 24 (16 Feb. 2005).

22 *Ma Bik Yung* v. *Ko Chuen* [2001] HKCFA 56 [34–35]. For apologies ordered in a defamation case, see e.g., *Shiu Hon Po* v. *Tam Siu Ping* [2013] HKCU 1079. See also *Wave Chow* v. *Liang Jing* [2021] HKDC 609.

In some legal systems, apology orders turn out to be part of judicial practice. Indeed, in a few continental legal systems, court-ordered apologies are available under *specific statutory provisions* for specific liability cases. Generally speaking, such liability cases concern situations where the victim's identity, social standing or personal integrity has been affected, within society, a community or a particular group, for example as a result of an infringement of personality rights.

Several examples of such legal systems can be identified. As demonstrated by *Jerzy Pisuliński* & *Kacper Górniak*, that is the case for Poland. The authors make clear that, under Polish law, personality rights are safeguarded by their own remedies, including an action for 'performing acts necessary to remove effects of an infringement' (Art. 24 Polish Civil Code). As shown by the authors, it is generally accepted that this may include an apology order. Hungary provides another example. Indeed, *András Koltay* reveals that under the Hungarian Civil Code, the victim of the infringement of a personality right is entitled to 'due satisfaction' (Art. 2:51, para. 1, point c). As explained by the author, this provision includes an apology order. The concept of 'satisfaction' is also found under Czech law. *Jiří Hrádek* points out that the Civil Code of the Czech Republic gives precedence to a form of compensation that adequately and appropriately compensates the injured party or provides that party with reasonable 'satisfaction'. His report reveals that this includes an apology order.

Even under English law, which in any event has clear reservations against non-monetary remedies, an order for apologies is not entirely excluded. In his report, *Simon Taylor* points out that in English tort claims, apologies can only be ordered in very narrow circumstances. Rather than imposing an obligation to apologize on defendants, English tort law seeks to encourage apologies. That is the case, for instance, in the tort of defamation, where it is found that an apology can mitigate damages. Where English law does go as far as imposing an obligation to apologize for harm caused, in the case of medical accidents, this is done not through tort law but through health care governance measures. These regulations impose an obligation on National Health Service providers to apologize in cases of 'qualifying liability', in other words where the act or omission would fulfil the conditions for liability in the tort of negligence.

6. At present, however, most European legal systems are unfamiliar with apology orders. Indeed, in most European legal systems, no explicit statutory provision in favour of apology orders is found. Consequently, the possibility of introducing such a remedy has long been without attention. However, in the reports below, several authors have shown that such remedy may be available within their jurisdiction. To do so, they rely on *general private law provisions* for civil wrongs.

For instance, *Lianne Wijntjes* reveals that under Dutch law, the possibility to award non-monetary relief for civil wrongs (laid down in Art. 6:103 of the Dutch Civil Code) has been put forward by Dutch scholarship to find a legal basis for an apology order. The author additionally identifies alternative legal bases to award

such a remedy, but equally illustrates that Dutch courts remain hesitant on this point. In the German report, *Stephan Lorenz & Aline Brießmann* similarly rely on non-monetary relief available under § 249 of the German Civil Code to embody an apology order in the German legal system, but the *Bundesgerichtshof* seems not willing to accept such claims. Under French law, there is no case law yet, nor does there appear to be any legal scholarship that has explored or advocated an apology order. However, in his report, *Patrice Jourdain* concludes that such an order is also conceivable under French tort law. He therefore refers to '*réparation en nature*' (non-monetary relief), available under the general provisions on tort (Arts 1240ff of the French Civil Code). The same conclusion is reached by *Albert Ruda* under Spanish law, referring to the broad notion of '*reparación*', used in general tort law provisions (e.g., Art. 1092 of the Spanish Civil Code) and specific legislation on defamation. Also, *Nicola Brutti* concludes that for the consequences of a civil wrong under Italian law, the wording of Article 2058 of the Italian Civil Code (on non-pecuniary damages), would not preclude an apology order.

In short, the availability of apology orders within these legal systems would basically depend on two questions: (1) the availability of compensation for non-pecuniary loss, more in particular, for emotional harm, and (2) the possibility of granting this compensation in a non-monetary form.[23] These are exactly the theoretical underpinnings used by the Belgian *Cour de cassation* to accept that the victim of a civil wrong may have a claim for apologies under Belgian tort law, even if there is no specific statutory provision providing for such a claim.[24] In other legal systems, however, no convincing similar case law has yet been found.

7. More so, in some of these legal systems, such as Germany, it seems unlikely that such a remedy could take effect, as the highest courts have clear reservations against it. This relates to another important obstacle to introduce apology orders into a legal system.[25] Indeed, if not relying on the argument that an explicit statutory provision in favour of such a remedy is lacking, the right to freedom of expression is used as another argument to reject a claim for apologies. More precisely, the argument is based on the 'negative' component protected under this freedom, namely the right not to be compelled to express oneself.[26] A decision

23 On non-monetary relief as a remedy, see e.g., S. De Rey & L. Chen, 'Non-monetary relief for breach of contract: a European perspective on Chinese contract law', 29. *Asia Pacific Law Review* 2022(2), pp 325–345, doi: 10.1080/10192557.2022.2033086.

24 See S. De Rey, in *Apologies in the Legal Arena*, pp 203ff; J. Van de Voorde,*RGAR* 2022.

25 For a recent overview of such obstacles, see R. Carroll, 'Addressing Concerns About Ordered Apologies: some recent developments' in N. Brutti, R. Carroll & P. Vines (eds), *Apologies in the Legal Arena* (Bonomo ed. 2021), pp 145–180.

26 On this 'negative' component protected under Art. 10 of the European Convention on Human Rights (ECHR), see e.g., *Semir Güzel* v. *Turkey* App no 29483/09 (ECtHR 13 Dec. 2016), para. 27; *Murat Vural* v. *Turkey* App no 9540/07 (ECtHR 21 Oct. 2014), para. 52.

of 19 July 2018 of the German *Bundesgerichtshof* provides a striking example.[27] The case concerned a German television company, which published on its website the announcement of a program, including the reference to a 'Polish extermination camp'. The applicant was a Polish citizen and former prisoner of the Auschwitz-Birkenau and Flossenbürg concentration camps. He objected to this wording and argued that his personality rights, in particular his national identity and national dignity, had been infringed. The Court of Appeal of Krakow ordered the publication of an apology on the defendant's website, to include the explanation that 'an incorrect formulation distorting the history of the Polish nation' was published earlier 'alleging that the Majdanek and Auschwitz extermination camps were built and run by Poland'. However, when it came to a procedure in Germany to obtain enforcement of this foreign decision, the German *Bundesgerichtshof* ruled that, given the freedom of expression and the German *ordre public*, the Polish order to publish an apology was not enforceable under German law.

According to case law of the European Court of Human Rights (ECtHR), however, an order for apologies does not necessarily amount to a violation of the freedom of expression, protected under Article 10 of the European Convention on Human Rights (ECHR). Indeed, in the cases brought before the ECtHR, the Court ruled that an apology order should be considered as an interference of the right to freedom of expression, but that, depending on the circumstances, such interference may be justified under Article 10(2) ECHR.[28] Accordingly, when a court would rely on general private law rules to grant an apology order, the court must take into account an additional assessment, which is not directly provided by such general private law rules. Indeed, the courts are required to assess whether an order for apologies is 'necessary' in a democratic society. Hence, the availability of court-ordered apologies, in the end, boils down to a proportionality test. Several authors have already sought to colour this proportionality test based on case law using different criteria,[29] but ultimately, this test remains a case-by-case assessment in the light of concrete circumstances, legal tradition and the spirit of the times.

8. It remains to be seen whether the decision of the Belgian *Cour de cassation* will lead the field for other jurisdictions to follow. Today, most European legal systems are not familiar with apology orders. But the most important conclusion to emerge from the national reports seems to be that the theoretical underpinnings used by the Belgian *Cour de cassation* to introduce apologies into the Belgian legal order (i.e., non-monetary relief for emotional harm), are rather readily transposable to other

27 BGH 19 Jul. 2018, IX ZB 10/18, *NJW* 2018, 3254.

28 For example, see *Aleksey Ovchinnikov* v. *Russia* App no 24061/04 (ECtHR 16 Dec. 2010); *Kania* v. *Poland* App no 35105/04 (ECtHR 21 Jun. 2011); *Błaja News Sp Z OO* v. *Poland* App no 59545/10 (ECtHR 26 Nov. 2013); *Zybertowicz* v. *Poland (no 2)* App no 65937/11 (ECtHR 17 Jan. 2017).

29 See also on the requirement of a proportionality test: G. VAN DIJCK, *Oxford Journal of Legal Studies* 2017, p (562), at 575-576; S. DE REY, in *Apologies in the Legal Arena*, p (203) at 232-235.

European legal systems. The ease by which several national reports conclude that such remedy could be accommodated based on general private law rules is indeed remarkable. Moreover, in several of these jurisdictions, the authors point out that apologies are increasingly considered as a remedy in national legal scholarship. It reflects the idea that money is not always the answer to the injured party's complaint.

In Belgium, at least, the *Cour de cassation* does not appear to be indifferent to these immaterial desires of the injured party. But that is not the only high court on the European continent that is not indifferent to the injured party's emotional needs. Indeed, the importance not to deny the injured party's emotional needs is also observed in a recent decision of the Court of Justice of the EU. In *Braathens Regional Aviation*, a case on the interpretation of Directive 2000/43 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin,[30] the Court considered that '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'.[31] The CJEU added that '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'.[32] Here it is recognized that, rather than the payment of a sum of money, the victim may have a need for acknowledgement of victimhood and the harmful consequences suffered.[33] Also the availability of court-ordered apologies relies on this idea.[34]

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30 Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L180/22.

31 Case C-30/19 *Diskrimineringsombudsmannen* v. *Braathens Regional Aviation AB*, ECLI:EU:C:2021:269, para. 47.

32 *Ibid.*, para. 49. The CJEU has decided that the Directive, read in light of Art. 47 Charter of Fundamental Rights of the European Union (the right to an effective remedy), precludes a national law that offers the defendant the possibility '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'. See A. Wallerman Ghavanini, 'Remedies for non-material damages: Striking out in a new direction?', 59. *Common Market Law Review* 2022(1), pp 151–170, doi: 10.54648/COLA2022007.

33 See C. Latzel, 'Das Recht des Diskriminierungsopfers auf Anerkennung', *JZ* 2021, pp 892ff . Whether this also means that apologies should be available as a legal remedy in the context non-discrimination cases within the scope of the Directive, is undecided, but the question has been raised by legal scholarship, see e.g., K.U. Schmolke, *AcP* 2022, p (340) at 352–353.

34 Research reveals that the injured party may have a need or desire for such an acknowledgement where his identity, social standing or personal integrity has been affected, within society, a community or particular group, see e.g., R. Carroll & N. Witzleb, 37. *Monash University Law*

Emotions in themselves are a risky driving force for legal development, but that does not mean that the law should deny the importance of emotions suffered by the victim of a civil wrong. It touches upon one of the fundamental questions of private law, which particularly concerns the objectives to be pursued by this field of law: is it about the money and thus about purely pecuniary interests, or is there more within the private law arena? A traditional question of European private law, today more topical again than ever before.

Review 2011, pp 216ff; A. Allen, D. McKillop & R. Carroll, 17. *Psychiatry, Psychology and Law* 2010(4), pp 538ff. Hence, it is no coincidence that specific statutory provisions often deal with infringements of personality rights or discrimination, see R. Carroll, 'You can't order sorriness, so is there any value in an ordered apology? An analysis of ordered apologies in anti-discrimination cases', 33. *UNSW Law Journal* 2010(2), pp 360ff; R. Carroll, 'The ordered "Apology" as a Remedy under Anti-Discrimination Legislation in Australia: an Exercise in Futility?' in R. Weaver & F. Lichere (eds), *Recognition and enforcement of judgements* (Presses Universitaires: Aix-Marseille 2010), pp 362ff; D. Milo, *Journal of Media Law* 2012, pp 11ff.