JUDGMENT OF THE COURT (Fourth Chamber)

15 September 2011 *

In Joined Cases C-483/09 and C-1/10,

REFERENCES for a preliminary ruling under Article 35 EU from the Audiencia Provincial de Tarragona (Spain), made by a decision of 15 September 2009, amended by decision of 8 October 2009, and a decision of 18 December 2009, received at the Court on 30 November 2009 and 4 January 2010 respectively, in criminal proceedings against

Magatte Gueye (C-483/09),

intervener:

X,

and

Valentín Salmerón Sánchez (C-1/10),

* Language of the case: Spanish.

intervener:

Y,

THE COURT (Fourth Chamber),

composed of J.-C. Bonichot, President of the Chamber, K. Schiemann, L. Bay Larsen (Rapporteur), A. Prechal and E. Jarašiūnas, Judges,

Advocate General: J. Kokott,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 3 March 2011,

after considering the observations submitted on behalf of:

— the Spanish Government, by N. Díaz Abad, acting as Agent,

— the German Government, by T. Henze, J. Möller and S. Unzeitig, acting as Agents,

— the Italian Government, by G. Palmieri, acting as Agent, and by P. Gentili and L. Ventrella, avvocati dello Stato,

— the Netherlands Government, by C. Wissels and M. de Ree, acting as Agents,

— the Austrian Government, by E. Riedl, acting as Agent,

— the Polish Government, by M. Szpunar, acting as Agent,

— the Swedish Government, by C. Meyer-Seitz and S. Johannesson, acting as Agents,

— the United Kingdom Government, by H. Walker and J. Stratford, acting as Agents,

— the European Commission, by R. Troosters and S. Pardo Quintillán, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 May 2011,

gives the following

Judgment

1 These references for preliminary rulings concern the interpretation of Articles 2, 8 and 10 of Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings (OJ 2001 L 82, p. 1, 'the Framework Decision').

2 The references were made in criminal proceedings against Mr Gueye and Mr Salmerón Sánchez respectively, who were charged with failing to comply with the prohibition, imposed as an ancillary penalty, on approaching the women who were the victims of their offences, domestic violence in respect of which primary penalties were also imposed on them.

Legal context

European Union legislation

3 The Framework Decision was adopted on the basis, in particular, of Article 31(1) EU, paragraph (c) of which provides that common action on judicial cooperation in criminal matters is to include, as may be necessary to improve such cooperation, ensuring compatibility in rules applicable in the Member States.

4 It is clear from recital 3 of the preamble to the Framework Decision that the European Council meeting in Tampere on 15 and 16 October 1999 stipulated that minimum standards should be drawn up on the protection of the victims of crimes, in particular on their access to justice and their right to compensation.

5 Recitals 4, 8 and 9 of the preamble to the Framework Decision are worded as follows:

'(4) Member States should approximate their laws and regulations to the extent necessary to attain the objective of affording victims of crime a high level of protection, irrespective of the Member State in which they are present.

…

(8) The rules and practices as regards the standing and main rights of victims need to be approximated, with particular regard to the right to be treated with respect for their dignity, the right to provide and receive information, the right to understand and be understood, the right to be protected at the various stages of procedure …

(9) The provisions of this Framework Decision do not, however, impose an obligation on Member States to ensure that victims will be treated in a manner equivalent to that of a party to proceedings.'

6 Article 1 of the Framework Decision states that, for its purposes:

'(a) "victim" shall mean a natural person who has suffered harm … directly caused by acts or omissions that are in violation of the criminal law of a Member State;

…

(c) "criminal proceedings" shall be understood in accordance with the national law applicable;

…

(e) "mediation in criminal cases" shall be understood as the search, prior to or during criminal proceedings, for a negotiated solution between the victim and the author of the offence, mediated by a competent person.'

7 Article 2(1) of the Framework Decision, headed Respect and recognition, provides:

'Each Member State shall ensure that victims have a real and appropriate role in its criminal legal system. It shall continue to make every effort to ensure that victims are treated with due respect for the dignity of the individual during proceedings and shall recognise the rights and legitimate interests of victims with particular reference to criminal proceedings.'

8 The first paragraph of Article 3 of the Framework Decision, headed 'Hearings and provision of evidence', provides that '[e]ach Member State shall safeguard the possibility for victims to be heard during proceedings and to supply evidence'.

9 Article 8 of the Framework Decision, headed 'Right to protection', provides:

'1. Each Member State shall ensure a suitable level of protection for victims and, where appropriate, their families …, particularly as regards their safety and protection of their privacy, where the competent authorities consider that there is a serious risk of reprisals or firm evidence of serious intent to intrude upon their privacy.

2. To that end, and without prejudice to paragraph 4, each Member State shall guarantee that it is possible to adopt, if necessary, as part of the court proceedings, appropriate measures to protect the privacy and photographic image of victims and their families or persons in a similar position.

3. Each Member State shall further ensure that contact between victims and offenders within court premises may be avoided, unless criminal proceedings require such contact. Where appropriate for that purpose, each Member State shall progressively provide that court premises have special waiting areas for victims.

4. Each Member State shall ensure that, where there is a need to protect victims – particularly those most vulnerable – from the effects of giving evidence in open court, victims may, by decision taken by the court, be entitled to testify in a manner which will enable this objective to be achieved, by any appropriate means compatible with its basic legal principles.'

10 Lastly, under Article 10(1) of the Framework Decision, '[e]ach Member State shall seek to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure'.

National legislation

11 The Criminal Code (Código Penal), in the version resulting from Organic Law 15/2003 amending Organic Law 10/1995 (Ley Orgánica 15/2003 por la que se modifica la Ley Orgánica 10/1995) of 25 November 2003 (BOE No 283 of 26 November 2003, p. 41842, 'the Criminal Code'), contains an Article 48, which sets out, in Article 48(2), the effects of an ancillary penalty requiring the offender to stay away and prohibiting him from approaching, in particular, his victim.

12 Article 57 of the Criminal Code sets out as follows the circumstances and conditions under which one or more of the injunctions provided for in Article 48 either may (Article 57(1)), or must (Article 57(2)), be imposed:

'1. In respect of the crimes of homicide, abortion, assault causing injury, deprivation of liberty and torture, and crimes infringing moral integrity, sexual liberty, privacy, the right to protection of personal image and the inviolability of the home …, the courts or tribunals may, having regard to the gravity of the offences or the danger which the offender represents, impose when sentencing one or more of the injunctions referred to in Article 48 …

…

2. In respect of those crimes referred to in the first subparagraph of paragraph 1 which were committed against a person who is, or was, the spouse, or against a person who is, or was, connected to the offender, even when there is no cohabitation, by a comparable emotional relationship, … there shall be imposed, in all cases, the penalty laid down in Article 48(2) [namely the prohibition on approaching the victim of the offence] and that for a period which should not exceed 10 years, in the case of a serious crime, and 5 years, in the case of a less serious crime …'

13 It is stated in the order for reference that that prohibition is imposed as a mandatory penalty for a period of between one and five years greater than the period of imprisonment imposed, or for a period with a minimum duration of six months and a maximum duration of five years if the penalty imposed is other than imprisonment.

14 The prescribed minimum period of six months may, in certain situations, be reduced to one month in accordance with Article 40(3) of the Criminal Code, read together with Article 33(6) thereof.

15 Article 468(2) of the Criminal Code, in the version amended by Organic Law 1/2004 on measures for comprehensive protection against gender-based violence (Ley Orgánica 1/2004 de Medidas de Protección Integral contra la Violencia de Género) of 28 December 2004 (BOE No 313 of 29 December 2004, p. 42166, 'Organic Law 1/2004'), provides for a sentence of imprisonment of six months to one year for any person who does not comply with one of the penalties laid down in Article 48 of the Criminal Code, imposed for a criminal offence the victim of which is one of the persons specified in Article 173(2) of the Criminal Code. The latter provision specifies, inter alia, a spouse or an individual related by comparable emotional bonds, even when there is no cohabitation.

16 Article 82(1) of Organic Law 6/1985 on the judiciary (Ley Orgánica 6/1985 del Poder Judicial), in the version amended by Organic Law 1/2004 ('Organic Law 6/1985'), provides that the Audiencias Provinciales are to have criminal jurisdiction, inter alia to hear '[a]ppeals in accordance with law against decisions made in criminal proceedings by the provincial Juzgados de Violencia sobre la Mujer [the courts with jurisdiction in relation to violence against women]'.

17 Article 87b(5) of Organic Law 6/1985, inserted by Organic Law 1/2004, prohibits mediation in all cases of offences committed within the family.

18 In accordance with Article 792(3) of the Code of Criminal Procedure (Ley de Enjuiciamento Criminal), no appeal through the ordinary courts can be brought against decisions such as those which the referring court will have to deliver as the appellate court in the cases before it.

The main proceedings and the questions referred for a preliminary ruling

19 Mr Gueye and Mr Salmerón Sánchez were separately convicted of crimes of domestic violence – by two judgments delivered in 2008 by the Juzgado de lo Penal No 23 de Barcelona (Criminal Court No 23 of Barcelona) and in 2006 by the Juzgado de Instrucción No 7 de Violencia sobre la Mujer de El Vendrell (Court of First Instance and Preliminary Investigations No 7 of El Vendrell, with special jurisdiction over crimes of violence against women) – and the sentences imposed on them included, among other penalties, an ancillary penalty consisting of a prohibition on being within 1 000 metres (Mr Gueye) and 500 metres (Mr Salmerón Sánchez) of their victims or having any contact with them, for a period of 17 months in the case of the former and 16 months in the case of the latter.

20 Although they were aware of those injunctions, imposed under Article 57(2) of the Criminal Code, within a relatively short time after the imposition of those ancillary penalties the two offenders resumed living together with their respective victims at the request of those victims. The offenders continued to cohabit with them until they were apprehended, on 3 February 2009 in the case of Mr Gueye and 5 December 2007 in the case of Mr Salmerón Sánchez.

21 By judgments delivered on 11 February 2009 and 27 March 2008 respectively, the Juzgado de lo Penal No 1 de Tarragona (Criminal Court No 1 of Tarragona) found Mr Gueye and Mr Salmerón Sánchez guilty of failure to comply with the ancillary penalty, namely the prohibition on approaching their victims, under Article 468(2) of the Criminal Code.

22 In the course of the appeals brought against those judgments, the referring court heard the testimony of the individuals whose relationships with Mr Gueye and Mr Salmerón Sánchez had existed for several years before the penalties were imposed on them and were continuing when the two men were apprehended.

23 In that testimony the women concerned declared that they had themselves, consciously and voluntarily, decided to resume cohabitation with the offenders, notwithstanding the fact that the two men had been convicted of having previously assaulted them and were consequently the subjects of criminal penalties.

24 According to those individuals, their cohabitation with Mr Gueye and Mr Salmerón Sánchez had continued normally for several months, until the date when the two men were apprehended.

25 By their appeals brought before the referring court against the judgments of the Juzgado de lo Penal No 1 de Tarragona, the offenders seek a declaration that to resume living together with the freely given consent of their partners does not constitute the offence of failure to comply with an ancillary penalty consisting of an order to stay away.

26 The referring court considers that the decision whether the penalties imposed at first instance should be upheld depends on whether the fact that the adoption of measures such as injunctions to stay away in cases of crimes of domestic violence is mandatory, even when the victims oppose such measures, is compatible with the Framework Decision.

27 In the opinion of that court, it appears indisputable that, in certain situations, such injunctions to stay away can be imposed even when that is against the wishes of the victims. That court nevertheless considers that the appropriate level of protection which should, in practice, be afforded to victims of crimes committed within the family cannot, particularly in cases of minor infringements, result in the imposition, without any exceptions, of an injunction to stay away without any prior assessment of the circumstances of each specific case.

28 In those circumstances, the Audiencia Provincial de Tarragona decided to stay proceedings and to refer to the Court for a preliminary ruling the following questions, which are drafted in identical terms in both Case C-483/09 and Case C-1/10:

‘(1) Should the right of the victim to be understood, referred to in recital 8 of the preamble to the Framework Decision, be interpreted as meaning that the State authorities responsible for the prosecution and punishment of criminal conduct have a positive obligation to allow the victim to express her assessment, thoughts

and opinion on the direct effects on her life which may be caused by the imposition of penalties on the offender with whom she has a family relationship or a strong emotional relationship?

(2) Should Article 2 of the Framework Decision … be interpreted as meaning that the duty of [Member] States to recognise the rights and legitimate interests of victims creates the obligation to take into account their opinions when the penalties arising from proceedings may jeopardise fundamentally and directly the development of their right to freedom of personal development and the right to private and family life?

(3) Should Article 2 of the Framework Decision … be interpreted as meaning that the State authorities may not disregard the freely expressed wishes of victims where the imposition or maintenance in force of an injunction to stay away from the victim when the offender is a member of their family are opposed by the victim and where no objective circumstances indicating a risk of re-offending are established, where it is possible to identify a level of personal, social, cultural and emotional competence which precludes any possibility of subservience to the offender or, rather, as meaning that such an order should be held appropriate in every case in the light of the specific characteristics of such crimes?

(4) Should Article 8 of the Framework Decision … providing that [Member] States are to guarantee a suitable level of protection for victims be interpreted as permitting the general and mandatory imposition of injunctions to stay away from the victim or orders prohibiting communication as ancillary penalties in all cases in which a person is a victim of crimes committed within the family, in the light of the specific characteristics of those offences, or, on the other hand, does Article 8 require that an assessment of each individual case be undertaken to allow the identification, on a case by case basis, of the suitable level of protection having regard to the competing interests?

(5) Should Article 10 of the Framework Decision … be interpreted as permitting a general exclusion of mediation in criminal proceedings relating to crimes committed within the family, in the light of the specific characteristics of those crimes or, on the other hand, should mediation also be permitted in proceedings of that kind, assessing the competing interests on a case by case basis?'

29 By order of the President of the Court of 24 September 2010, Cases C-483/09 and C-1/10 were joined for the purposes of the oral procedure and judgment.

The jurisdiction of the Court

30 It is apparent from the Information concerning the date of entry into force of the Treaty of Amsterdam, published in the *Official Journal of the European Communities* of 1 May 1999 (OJ 1999 L 114, p. 56) that the Kingdom of Spain made a declaration on the basis of Article 35(2) EU by which it accepted the jurisdiction of the Court to give preliminary rulings, in accordance with Article 35(3)(a) EU, at the request of any national court or tribunal of that Member State against whose decisions there is no judicial remedy under national law.

31 Under Article 792(3) of the Code of Criminal Procedure, the decisions which must be made by the referring court in the main proceedings are decisions against which there is no judicial remedy, within the ordinary courts, under domestic law.

32 In accordance with Article 10(1) of Protocol No 36 on transitional provisions, annexed to the FEU Treaty, the powers of the Court under Title VI of the EU Treaty, in the version applicable before the entry into force of the Treaty of Lisbon, are to remain

the same in respect of a measure such as the Framework Decision which was adopted before that date, including where they have been accepted under Article 35(2) EU.

33 In those circumstances, the Court has jurisdiction, under Article 35(1) EU, to give a preliminary ruling, as requested by the referring court, on the interpretation of the Framework Decision.

Admissibility of the questions referred for a preliminary ruling

34 The Spanish and Italian Governments claim, primarily, that the references for preliminary rulings are inadmissible.

35 The Spanish Government states that the imposition of an injunction to stay away pursuant to Article 57(2) of the Criminal Code is not at issue in the main proceedings and maintains, first, that there is no need to inquire whether the Framework Decision precludes the mandatory adoption of such a measure. Since the main proceedings concern the imposition of a penalty pursuant to Article 468(2) of the Criminal Code, in respect of a contravention of a previously imposed injunction to stay away, the questions referred for a preliminary ruling are purely hypothetical.

36 Secondly, if those questions refer to Article 468(2) of the Criminal Code, the Spanish Government states that the problem which arises in the main proceedings is not the result of that provision in itself, but of the interpretation made of that provision by the Sala de lo Penal del Tribunal Supremo (the criminal chamber of the Supreme Court) in a 'non-binding resolution' of 25 November 2008 from which it is clear that 'the consent of the woman does not exclude liability to punishment under Article 468

of the Criminal Code'. Accordingly, the questions referred for a preliminary ruling actually concern the interpretation of national law, on which it is not for the Court to rule within the preliminary ruling procedure.

37 The Italian Government observes further that any interpretation of the Framework Decision which would result in a conflict between the Framework Decision and the national law cannot be resolved by an interpretation of national law in such a way as to conform with the objectives of the Framework Decision. Such a conforming interpretation could, at best, be made *contra legem*, which is not permissible under European Union ('EU') law. Consequently, the questions referred for a preliminary ruling are deprived of any purpose and are hypothetical.

38 It should be observed that, like Article 267 TFEU, Article 35(3)(a) EU makes a reference to the Court of Justice for a preliminary ruling subject to the condition that the national court 'considers that a decision on the question is necessary in order to enable it to give judgment', and accordingly the case-law of the Court on the admissibility of references under Article 267 TFEU is, in principle, transposable to references for a preliminary ruling submitted to the Court under Article 35 EU (see, to that effect, Case C-105/03 *Pupino* [2005] ECR I-5285, paragraph 29).

39 Within the framework of the cooperation between the Court and national courts and tribunals established by Article 267 TFEU, it is solely for the national court before which the dispute has been brought and which must assume responsibility for the subsequent judicial decision to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in

principle bound to give a ruling (see, inter alia, Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 59, and Case C-391/09 *Runevič-Vardyn and Wardyn* [2011] ECR I-3787, paragraph 30).

40 However, in the light of the task conferred on the Court by Article 267 TFEU, the Court may refuse to give a ruling on questions submitted by a national court or tribunal where it is quite obvious that the interpretation which is sought of the provisions of EU law referred to in the questions bears no relation to the actual facts of the main action or to its purpose or where the problem is hypothetical (see, to that effect, Case C-404/07 *Katz* [2008] ECR I-7607, paragraph 31 and case-law cited).

41 In the present case, the purpose of the questions submitted by the referring court is to determine whether the mandatory imposition of the injunction to stay away as an ancillary penalty is as such compatible with the Framework Decision. That court considers that it is necessary, in the criminal proceedings relating to failure to comply with the previously imposed injunctions to stay away, to determine whether those penalties, which are mandatory and which are fundamental to the convictions of the offenders, do not as such infringe the Framework Decision. In the light of those considerations, the questions submitted are not obviously hypothetical.

42 Further, it must be made clear that, in order to answer the questions referred, the Court relies on the interpretation provided by the referring court of the provisions of national law at issue, and is not entitled to question or verify the correctness of that interpretation.

43 Lastly, in its written observations, the Spanish Government stated that the interpretation of Article 468(2) of the Criminal Code arrived at by the Supreme Court in its resolution of 25 November 2008 does not, in principle, preclude the courts and tribunals from being able to depart from that interpretation provided that reasons for doing so are stated. Accordingly, in the event that the Court's answer to the questions referred were that the Framework Decision precludes a national measure such as that

at issue in the main proceedings, it is not obvious that, in the main proceedings, an interpretation of national law in conformity with the Framework Decision would, contrary to what is claimed by the Italian Government, necessarily be impossible.

44 In those circumstances, it is not obvious that the interpretation of the Framework Decision requested by the referring court bears no relation to the actual facts of the main proceedings or to their purpose, or that the problem raised is hypothetical.

45 Consequently, the references for a preliminary ruling are admissible.

The questions referred for a preliminary ruling

Questions 1 to 4

46 Before examining the first four questions, it must be observed that recital 8 of the preamble to the Framework Decision, which is the subject of the first question, does not in itself have any binding legal force (see Case C-562/08 *Müller Fleisch* [2010] ECR I-1391, paragraph 40).

47 Moreover, it should be noted that, formally, the referring court has limited its second, third and fourth questions to the interpretation of Articles 2 and 8 of the Framework Decision. Such a situation does not however prevent the Court from providing the

referring court with all the elements of interpretation of EU law, including, in the present case, those which may relate to another provision of the Framework Decision, which may be of assistance in adjudicating on the case before it, whether or not that court has specifically referred to them in the questions (see, to that effect, Case C-434/09 *McCarthy* [2011] ECR I-3375, paragraph 24).

48 In that regard, it must be observed that, while Member States are obliged to recognise the rights and legitimate interests of victims under Article 2 of the Framework Decision, it is however the first paragraph of Article 3 thereof, read in the light of recital 8, which lays down that Member States must safeguard the possibility for victims to be heard during the criminal proceedings.

49 Accordingly, it must be held that, by the first four questions, which should be examined together, the referring court seeks to ascertain, in essence, whether Articles 2, 3 or 8 of the Framework Decision must be interpreted as precluding the mandatory imposition of an injunction to stay away for a minimum period, as prescribed as an ancillary penalty by the criminal law of a Member State, on persons who commit crimes of violence within the family, even when the victims of those persons oppose the application of such a penalty.

50 It must be stated that there is no provision in the Framework Decision relating to the forms of penalties and the level of penalties which Member States must enact in their legislation in order that criminal offences should be subject to punishment.

51 Moreover, the Framework Decision contains no indication that the EU legislature, within the limits of the powers conferred on it by the EU Treaty, intended to harmonise or, at the least, approximate the legislation of Member States in respect of the forms and levels of criminal penalties.

52 As is clear from recitals 3 and 4 of its preamble, the aim of the Framework Decision is only that, within criminal proceedings as defined in Article 1(c) thereof, minimum standards should be drawn up for the protection of victims of crimes and victims should be afforded a high level of protection, particularly in respect of their access to justice.

53 Recital 9 of the preamble to the Framework Decision states moreover that its provisions do not impose an obligation on Member States to ensure that victims will be treated in a manner equivalent to that of a party to proceedings.

54 The Framework Decision, as regards its structure and content, takes the form of a general declaration, in Article 2, of the main objectives which are to be achieved for the protection of victims and the specification, in the following articles, of various rights which are principally procedural and which victims must be able to exercise during the criminal proceedings.

55 The provisions of the Framework Decision must be interpreted in such a way that fundamental rights, including in particular the right to respect for family and private life, as stated in Article 7 of the Charter of Fundamental Rights of the European Union, are respected (see, inter alia, *Pupino*, paragraph 59, and *Katz*, paragraph 48).

56 The obligations laid down in Article 2(1) of the Framework Decision are intended to ensure that a victim can effectively and adequately take part in the criminal proceedings, which does not imply that a mandatory injunction to stay away such as that at issue in the main proceedings cannot be imposed contrary to the wishes of the victim.

57 Article 3 of the Framework Decision, while imposing on Member States the obligation to safeguard the possibility for victims to be heard during proceedings and to supply evidence, leaves to the national authorities a large measure of discretion with regard to the specific means by which they implement that objective (see, to that effect, *Katz*, paragraph 46).

58 However, in order not to deprive the first paragraph of Article 3 of the Framework Decision of much of its practical effect or to infringe the obligations stated in Article 2(1) thereof, those provisions imply, in any event, that the victim is to be able to give testimony in the course of the criminal proceedings which can be taken into account as evidence (*Katz*, paragraph 47).

59 Thus, to guarantee that the victim can effectively and adequately take part in the criminal proceedings, his or her right to be heard must permit not only the possibility of objectively describing what happened, but also the opportunity to express his or her opinion.

60 That procedural right to be heard under the first paragraph of Article 3 of the Framework Decision does not confer on victims any rights in respect of the choice of form of penalties to be imposed on the offenders in accordance with the rules of national criminal law nor in respect of the level of those penalties.

61 In that regard, it must be borne in mind that where a Member State in the exercise of its powers to enforce the law ensures that the criminal law offers protection against acts of domestic violence, the objective is not only to protect the interests of the victim as he or she perceives them but also other more general interests of society.

62 It follows that Article 3 of the Framework Decision does not preclude the national legislature from enacting laws imposing mandatory penalties of a minimum duration, particularly where interests other than the specific interests of the victim must be taken into consideration.

63 As regards, lastly, Article 8 of the Framework Decision, it is clear from Article 8(1) that the aim is to ensure a 'suitable level of protection for victims', particularly as regards their safety and protection of their privacy, where the competent authorities consider that there is a 'serious risk of reprisals or firm evidence of serious intent to intrude upon their privacy'.

64 For that purpose, the preventive and practical measures of protection stated in Article 8(2) to (4) are intended to ensure that the ability of victims adequately to take part in the criminal proceedings is not jeopardised by the possibility that their safety and privacy is placed at risk.

65 No more than Articles 2 and 3 of the Framework Decision does Article 8 thereof impose any obligation on Member States to enact provisions of national criminal law enabling the victim to influence the penalties which national courts may impose on the offender.

66 The protection which is the subject of Article 8 of the Framework Decision is intended in particular to offer protection which is 'suitable' to the victim or persons connected with her from the offender during the criminal proceedings.

67 On the other hand, Article 8 of the Framework Decision cannot be understood as meaning that Member States are also obliged to protect victims from indirect consequences which may, at a later stage, arise as a result of the penalties imposed by the national courts on offenders.

68 Consequently, Article 8 of the Framework Decision cannot be interpreted in such a way that it restricts the choice by Member States of the criminal penalties they establish in their domestic legal systems.

69 Lastly, it is clear that the fact that it is mandatory to impose an injunction to stay away in accordance with the substantive law at issue in the main proceedings does not, per se, fall within the scope of the Framework Decision and, accordingly, it cannot, in any event, be assessed in the light of the provisions of the Charter of Fundamental Rights of the European Union.

70 In the light of all the foregoing, the answer to the first four questions is that Articles 2, 3 and 8 of the Framework Decision must be interpreted as not precluding the mandatory imposition of an injunction to stay away for a minimum period, provided for as an ancillary penalty by the criminal law of a Member State, on persons who commit crimes of violence within the family, even when the victims of those crimes oppose the application of such a penalty.

The fifth question

71 By the fifth question in each of the two cases, the referring court seeks to ascertain, in essence, whether Article 10 of the Framework Decision must be interpreted as enabling Member States, having regard to the particular category of offences committed within the family, to exclude recourse to mediation in all criminal proceedings relating to such offences.

72 In that regard, it must be observed that, in addition to the fact that Article 34(2) EU leaves to national authorities the choice of form and methods necessary to achieve

the desired result of Framework Decisions, Article 10(1) of the Framework Decision does no more than require Member States to seek to promote mediation in criminal cases for offences which they 'consider … appropriate', and consequently the choice of the offences for which mediation is to be available is for the Member States to determine (see Case C-205/09 *Eredics and Sápi* [2010] ECR I-10231, paragraph 37).

73 Consequently, Article 10(1) of the Framework Decision permits Member States to exclude recourse to mediation in respect of all offences committed within the family, as provided by Article 87b(5) of Organic Law 6/1985.

74 It follows from the very wording of Article 10(1) and from the large measure of discretion which the Framework Decision leaves to national authorities with regard to the specific means by which they implement its objectives that, in deciding to exclude the application of the mediation procedure for a particular type of offence, a choice to be made on criminal justice policy grounds, the national legislature has not exceeded its discretion (see, by analogy, *Eredics and Sápi*, paragraph 38).

75 It should be added that the Member States' decisions may be restricted by the obligation to use objective criteria in order to determine the types of offences for which they consider mediation not to be suitable. There is however no indication that the exclusion of mediation provided for by Organic Law 6/1985 is based on criteria which are not objective.

76 In the light of the foregoing, the answer to the fifth question is that Article 10(1) of the Framework Decision must be interpreted as permitting Member States, having regard to the particular category of offences committed within the family, to exclude recourse to mediation in all criminal proceedings relating to such offences.

Costs

77 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 (Fourth Chamber) hereby rules:

1. **Articles 2, 3 and 8 of Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings must be interpreted as not precluding the mandatory imposition of an injunction to stay away for a minimum period, provided for as an ancillary penalty by the criminal law of a Member State, on persons who commit crimes of violence within the family, even when the victims of those crimes oppose the application of such a penalty.**

2. **Article 10(1) of Framework Decision 2001/220 must be interpreted as permitting Member States, having regard to the particular category of offences committed within the family, to exclude recourse to mediation in all criminal proceedings relating to such offences.**

[Signatures]