Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

12 July 2012*

(Police and judicial cooperation in criminal matters — Framework Decision 2001/220/JHA — Standing of victims in criminal proceedings — Directive 2004/80/EC — Compensation to victims of crime — Liability of a legal person — Compensation in criminal proceedings)

In Case C-79/11,

REFERENCE for a preliminary ruling under Articles 267 TFEU and 35 EU from the judge in charge of preliminary investigations at the Tribunale di Firenze (Italy), made by decision of 9 February 2011, received at the Court on 22 February 2011, in the criminal proceedings against

Maurizio Giovanardi and Others,

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues (Rapporteur), President of the Chamber, U. Lõhmus, A. Ó Caoimh, A. Arabadjiev and C.G. Fernlund, Judges,

Advocate General: E. Sharpston,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 15 March 2012,

after considering the observations submitted on behalf of:

— Mrs Giunti and Others, by A. Conti and S. Grisenti, avvocati,

— the Italian Government, by G. Palmieri, acting as Agent, and L. D'Ascia, avvocato dello Stato,

— the German Government, by T. Henze, J. Kemper and F. Wannek, acting as Agents,

— the Netherlands Government, by C. Wissels and B. Koopman, acting as Agents,

— the Austrian Government, by A. Posch, acting as Agent,

— the European Commission, by F. Moro and R. Troosters, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 May 2012,

gives the following

* Language of the case: Italian.

Judgment

1 This reference for a preliminary ruling concerns the interpretation 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') and of Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (OJ 2004 L 261, p. 15).

2 The reference was made in criminal proceedings against Mr Giovanardi and a number of other persons following an accident at their workplace.

Legal context

European Union law

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

4 Recital 4 in the preamble to the Framework Decision provides as follows:

'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.'

5 Article 1 of the Framework Decision provides that, for the purposes of that decision:

'(a) "victim" shall mean a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, 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;

…'

6 Article 9 of the Framework Decision (entitled 'Right to compensation in the course of criminal proceedings') provides in Article 1 thereof as follows:

'Each Member State shall ensure that victims of criminal acts are entitled to obtain a decision within reasonable time-limits on compensation by the offender in the course of criminal proceedings, except where, in certain cases, national law provides for compensation to be awarded in another manner.'

7 Article 1 of Directive 2004/80 is worded as follows:

'Member States shall ensure that where a violent intentional crime has been committed in a Member State other than the Member State where the applicant for compensation is habitually resident, the applicant shall have the right to submit the application to an authority or any other body in the latter Member State.'

National legislation

8 It is apparent from Article 1 of Legislative Decree No 231 of 8 June 2001 (*Gazzetta Ufficiale della Repubblica italiana* No 140 of 19 June 2001, p. 4) ('Legislative Decree No 231/2001') that that decree governs the liability of bodies for administrative offences entailed by criminal acts, that it applies to both companies and bodies constituted in the form of a legal person as well as to associations, including those not possessing legal personality, but that it does not apply to the State or local authorities or to other public bodies not exercising any economic functions or to entities having a constitutional function.

9 Article 5 of Legislative Decree No 231/2001, which specifies the natural persons who, as material perpetrators of the offence, incur liability on the part of the body or legal person concerned, provides as follows:

'1. The body shall be liable for offences committed in the interests of the body or for its benefit by:

(a) persons acting in a representative, administrative or managerial capacity for the body or for an organisational entity having financial and operational autonomy within the body and persons acting as the de facto managers and supervisors of the body;

(b) persons acting under the direction and control of one of the persons referred to in subparagraph (a).

2. The body shall not incur liability if the persons referred to in paragraph 1 acted solely in their own interest or in the interest of a third party.'

10 Articles 6 and 7 of Legislative Decree No 231/2001 set out the circumstances in which liability may be imputed to a legal person.

11 Article 6(1) of Legislative Decree No 231/2001 provides as follows:

'If the offence is committed by the persons referred to in Article 5(1)(a), the body shall not incur liability if it establishes that:

(a) the management body adopted, and effectively applied, before the offence was committed organisational and managerial systems capable of preventing offences of the kind established occurring;

(b) the task of monitoring the proper functioning of and compliance with the systems and of ensuring that they are updated has been entrusted to a unit within the body which has independent powers of initiative and supervision;

(c) the persons in question committed the offence by improperly overriding the organisational and managerial systems;

(d) the unit referred to in subparagraph (b) did not fail to discharge its duty of supervision or that its supervision was inadequate.'

12 Article 7 of Legislative Decree No 231/2001 is worded as follows:

'1. In the case envisaged in Article 5(1)(b), the body shall be held liable if commission of the offence was made possible as a result of any failure to fulfil managerial and supervisory duties.

2. In all cases, there can be no failure to fulfil managerial and supervisory duties if, before the offence was committed, the body adopted, and effectively applied, an organisational, managerial and supervisory system capable of preventing the occurrence of offences of the kind established;

3. Having regard to the nature and size of the organisation and the type of activity carried out, the system shall provide for appropriate measures to ensure that the activity is carried out in accordance with the law and that situations involving risk are identified and eliminated in due time.

4. In order for the system to be implemented effectively, there must be:

(a) regular checks and, if appropriate, modification of the system if significant instances of non-compliance with the requirements are established or if there are changes in the organisation or in the activities carried out;

(b) a set of disciplinary rules under which penalties may be imposed for failure to comply with the measures laid down by the system.'

13 Article 25f of Legislative Decree No 231/2001, in the version resulting from Legislative Decree No 81 of 9 April 2008 implementing Article 1 of Law No 123 of 3 August 2007 on the protection of health and safety at the workplace (Ordinary Supplement No 108 to GURI No 101 of 30 April 2008), entitled 'Manslaughter or assault causing severe, or very severe, injury, committed in breach of the provisions on the protection of health and safety at the workplace', provides as follows:

'1. Where the offence set out in Article 589 of the Criminal Code is committed, in breach of Article 55(2) of the Legislative Decree implementing the authorisation contained in Law No 123 of 3 August 2007 concerning health and safety at the workplace, it shall be punishable by a fine of 1 000 quotas. Where a person is convicted of the offence referred to in the previous sentence, the prohibitory sanctions laid down in Article 9(2) shall be applicable for a period of between three months and one year.

2. Without prejudice to Article 25f(1), the offence set out in Article 589 of the Criminal Code shall be punishable by a fine of no less than 250 quotas and no more than 500 quotas where it is committed in breach of the provisions on the protection of health and safety at the workplace. Where a person is convicted of the offence referred to in the previous sentence, the prohibitory sanctions laid down in Article 9(2) shall be applicable for a period of between three months and one year.

3. Where the offence set out in Article 590(3) of the Criminal Code is committed in breach of the provisions on the protection of health and safety at the workplace, it shall be punishable by a fine of no more than 250 quotas. Where a person is convicted of the offence referred to in the previous sentence, the prohibitory sanctions laid down in Article 9(2) shall be applicable for a period of no more than six months.'

14 Article 34 of Legislative Decree No 231/2001 provides as follows:

'The provisions of this Chapter and, in so far as they are applicable, the provisions laid down in the Criminal Code of Procedure and in Legislative Decree No 271 of 28 July 1989, shall be applicable to proceedings concerning administrative offences constituted by criminal acts.'

15 Article 35 of Legislative Decree No 231/2001 is worded as follows:

'The provisions concerning the accused person shall apply to the body, in so far as applicable.'

16 By virtue of Article 36 of Legislative Decree No 231/2001, jurisdiction in respect of the administrative offences of the body in question lies with the criminal court having jurisdiction in respect of the criminal acts that form the basis of the administrative charges.

17 Under Article 185 of the Criminal Code, the perpetrator of a criminal act and the persons who, in civil law, are liable for the perpetrator's acts are required to compensate the victim in respect of any offence which gives rise to pecuniary or non-material damage.

18 Article 74 of the Criminal Code of Procedure states that a civil claim for restitution and damages, provided for in Article 185 of the Criminal Code, may be brought in criminal proceedings by the person who suffered harm as a result of the criminal acts, or by his next of kin, against the person accused and the person liable in civil law.

19 Article 83(1) of the Criminal Code of Procedure provides as follows:

'A person who is liable in civil law for the acts of an accused person may be cited in criminal proceedings by the civil party claiming damages and, in the case envisaged in Article 77(4), by the prosecuting authority. The accused may be cited in respect of any liability he may have in civil law for the acts of his co-accused in the event of his being acquitted or a decision of no case to answer being adopted in relation to him. …'

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

20 On 28 July 2010, the Public Prosecutor's Office at the Tribunale di Firenze (District Court, Florence) requested the indictment of Mr Giovanardi and a number of other persons, who were accused of having negligently contributed, within the terms of Articles 41, 113 and 589(II) and (IV) of the Criminal Code, to causing the death of one person and the very serious injuries suffered by other persons. The accident occurred on 2 October 2008 in the course of works being carried out by the accused in their capacity as employees of Rete Ferroviaria Italiana SpA (the Italian railway company) to remove certain security devices from the points on a railway junction.

21 The public prosecutor's detailed preliminary charge also seeks the indictment of two legal persons, Elettri Fer Srl and Rete Ferroviaria Italiana SpA, called to answer the charge of an 'administrative offence', as provided for in Article 25f(2) and (3) of Legislative Decree No 231/2001, in accordance with the provisions governing the 'administrative' liability arising from criminal acts under Italian law of the legal persons on whose behalf the accused were acting when performing their duties.

22 The Tribunale di Firenze states that the natural persons charged are held directly liable for the accident which caused the death of a worker and the injuries suffered by two other workers who were carrying out work on the railway junction in question, on the basis that they failed to implement the measures required by law to ensure the workers' safety, whereas the legal persons held 'administratively' liable as a result of the criminal acts are charged with failing to adopt more sophisticated modes of organisation, which exposes them to the penalties laid down in Legislative Decree No 231/2001.

23 During a preliminary hearing held on 30 November 2010 before the referring court, which is called upon to rule on the Public Prosecutor's request for an indictment, the victims sought leave, pursuant to Article 74 et seq. of the Criminal Code of Procedure, to intervene as civil parties not only in respect of the natural persons accused but also the two legal persons cited by the Public Prosecutor.

24 The legal persons objected to that request on the ground that Italian law does not permit victims to claim directly against such persons — even if they are being prosecuted — compensation in respect of damage resulting from the criminal acts committed by their employees.

25 The referring court states that Article 185 of the Criminal Code provides that the person who committed a criminal offence and natural or legal persons who are held liable in civil law for the actions of the former are required to pay compensation. To that effect, the Criminal Code of Procedure permits victims of criminal acts to join criminal proceedings against the accused as a civil party and to request leave to sue natural or legal persons who are liable in civil law for the conduct of the accused, in so far as such actions were carried out in the context of an employer-employee relationship or in pursuit of the direct interest and on behalf of those persons.

26 Legislative Decree No 231/2001 introduced into Italian law the particular legal concept of 'administrative' liability on the part of legal persons that may be incurred as a result of criminal acts. Article 25f of the legislative decree includes manslaughter among the various types of offence in respect of which this form of liability may be incurred, when committed in breach of Article 55(5) of Legislative Decree No 81 of 9 April 2008, which is one of the various charges in the main proceedings.

27 Legislative Decree No 231/2001 does not expressly provide for the possibility of becoming a civil party in proceedings against legal persons charged with the 'administrative' offences covered by that decree. According to the majority view expressed in the case-law of the Corte suprema di Cassazione (Supreme Court of Cassation) and the lower courts, such applications for leave to become a civil party must be declared inadmissible.

28 The Tribunale di Firenze observes that, while it shares that interpretation of Italian law, the consequences which ensue are not compatible with European Union law, since Italian law thus limits the opportunity available to the victim to obtain full compensation for the harm suffered and obliges him to bring a fresh claim for damages outside the criminal proceedings, which, even if it were allowed, would be heard at a later date, negating the effectiveness of such a claim.

29 In those circumstances, the judge in charge of preliminary investigations at the Tribunale di Firenze decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Are the provisions of Italian law on the administrative liability of legal bodies/persons set out in Legislative Decree No 231/2001, as subsequently amended, compatible with the provisions of Community law on the protection, in criminal proceedings, of victims of crime in so far as those national provisions do not "expressly" provide that those legal bodies/persons may be held liable, in criminal proceedings, for the damage caused to the victims of crime?'

The Court's jurisdiction

30 In accordance with Article 9 of Protocol No 36 on transitional provisions, annexed to the FEU Treaty, the legal effects of the Framework Decision, which was adopted on the basis of Title VI of the EU Treaty before the entry into force of the Treaty of Lisbon, are to be preserved until the Framework Decision has been repealed, annulled or amended in implementation of the Treaties.

31 Further, Article 10(1) of that protocol provides that the powers of the Court of Justice with respect of acts of the Union in the field of police cooperation and judicial cooperation in criminal matters which have been adopted before the entry into force of the Treaty of Lisbon under Title VI of the EU treaty, are to remain the same, including where they have been accepted under Article 35(2) EU. Pursuant to Article 10(3) of that protocol, the transitional measure mentioned in Article 10(1) is to cease to have effect five years after 1 December 2009, the date of the entry into force of the Treaty of Lisbon.

32 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 Italian Republic made a declaration on the basis of Article 35(2) EU by which it accepted the jurisdiction of the Court to rule on the validity and interpretation of acts referred to in Article 35 EU in accordance with the arrangements laid down in Article 35(3)(b) EU.

33 It is also undisputed that the Framework Decision, based on Articles 31 EU and 34 EU, is one of the acts referred to in Article 35(1) EU on which the Court may rule in a reference for a preliminary ruling and it is accepted that the referring court, acting in proceedings such as those in the main action, must be regarded as a court or tribunal of a Member State for the purposes of Article 35 EU (see, inter alia, Case C-507/10 *X* [2011] ECR I-14241, paragraph 21).

34 In those circumstances, the Court has jurisdiction to answer the question referred.

Consideration of the question referred

35 By its question, the Tribunale di Firenze asks whether, in so far as the provisions of Legislative Decree No 231/2001 concerning the administrative liability of legal persons do not provide that such persons may be held liable, in criminal proceedings, for the damage caused by such persons to the victims of criminal acts, those provisions are incompatible with Directive 2004/80 and Article 9 of the Framework Decision.

36 Although, in accordance with the Court's settled case-law, the Court cannot in a reference for a preliminary ruling give a ruling either on questions which fall within the national law of the Member States or on the compatibility of national provisions with European Union law, it can, nevertheless, provide a ruling on the interpretation of European Union law so as to enable the national court to decide the case before it (see, inter alia, Case C-60/05 *WWF Italia and Others* [2006] ECR I-5083, paragraph 18).

37 Directive 2004/80 must be dismissed at the outset as irrelevant to this case. As is apparent from Article 1 thereof, the directive is intended to facilitate access to compensation by victims of violent intentional crime in cross-border situations, whereas it is not disputed that the proceedings before the referring court concern offences committed as a result of negligence and, what is more, in a purely national context.

38 As regards the Framework Decision, Article 9(1) thereof provides that each Member State is to ensure that victims of criminal acts are entitled to obtain a decision within reasonable time-limits on compensation by the offender in the course of criminal proceedings, except where, in certain cases, national law provides for compensation to be awarded in another manner.

39 In accordance with Article 1(a) of the Framework Decision, a 'victim' is defined, for the purposes of that decision, as 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'.

40 It is common ground that the victims concerned in the main proceedings are permitted under Italian law to seek compensation from the natural persons who committed the criminal acts to which Legislative Decree No 231/2001 refers in respect of the damage caused directly by those acts by becoming a civil party for this purpose in the criminal proceedings.

41 Such a situation is consistent with the objective pursued by Article 9(1) of the Framework Decision, which is to ensure that the victim is entitled to obtain a decision on compensation by the offender in the course of criminal proceedings within reasonable time-limits.

42 The Tribunale di Firenze is unsure whether that provision should not be interpreted as meaning that it must also be possible for the victim to seek compensation in respect of such damage in the very same criminal proceedings from the legal persons who are charged under Article 25f of Legislative Decree No 231/2001.

43 Such an interpretation cannot be accepted.

44 First of all, while, as stated in recital 4 in the preamble to the Framework Decision, the victims of crime should be afforded a high level of protection (see, inter alia, Case C-404/07 *Katz* [2008] ECR I-7607, paragraphs 42 and 46), the aim of the Framework Decision is simply to ensure that, within criminal proceedings as defined in Article 1(c) thereof, minimum standards are drawn up for the protection of victims of crime (Joined Cases C-483/09 and C-1/10 *Gueye and Salmerón Sánchz* [2011] ECR I-8263, paragraph 52).

45 Next, the Framework Decision, which is solely concerned with the standing of victims in criminal proceedings, contains no indication that the European Union legislature intended to oblige Member States to provide that legal persons are to be liable in criminal law.

46 Lastly, it is apparent from the very wording of Article 1(a) of the Framework Decision that that decision ensures, in principle, that the victim is entitled to compensation in criminal proceedings in respect of 'acts or omissions that are in violation of the criminal law of a Member State' and are the 'direct' cause of the harm (see Case C-467/05 *Dell'Orto* [2007] ECR I-5557, paragraphs 53 and 57).

47 It is clear from the order for reference that an 'administrative' offence, such as that which lead to an action being brought on the basis of Legislative Decree No 231/2001, is a separate offence which has no direct causal link with the harm that was caused by the criminal act committed by a natural person and is the subject of a claim for compensation. According to the Tribunale di Firenze, under a system such as that established by Legislative Decree No 231/2001, a legal person's liability is categorised as 'administrative', 'indirect' and 'subsidiary' and is different from the liability in criminal law of a natural person who committed the unlawful acts which directly caused the harm suffered and from whom, as stated at paragraph 40 above, compensation may be sought in the course of criminal proceedings.

48 Consequently, persons harmed as a result of an administrative offence committed by a legal person, such as the person charged under the system established by Legislative Decree No 231/2001, cannot be regarded, for the purposes of the application of Article 9(1) of the Framework Decision, as the victims of a criminal act who are entitled to obtain a decision, in criminal proceedings, on compensation by that legal person.

49 It follows from the foregoing considerations that the answer to the question referred is that Article 9(1) of the Framework Decision must be interpreted as meaning that, under a system governing the liability of legal persons such as that at issue in the main proceedings, that provision does not preclude a situation in which the victim of a criminal act is not entitled to seek compensation for the harm directly caused by that act in the course of criminal proceedings from the legal person who committed an administrative offence.

Costs

50 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 (Second Chamber) hereby rules:

Article 9(1) of Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings must be interpreted as meaning that, under a system governing the liability of legal persons such as that at issue in the main proceedings, that provision does not preclude a situation in which the victim of a criminal act is not entitled to seek compensation for the harm directly caused by that act in the course of criminal proceedings from the legal person who committed an administrative offence.

[Signatures]