Reports of Cases

ORDER OF THE COURT (Sixth Chamber)

30 January 2014*

(Request for a preliminary ruling — Judicial cooperation in criminal matters — Directive 2004/80/EC — Article 12 — Compensation of victims of violent intentional crime — Purely internal situation — Clear lack of jurisdiction of the Court)

In Case C-122/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale ordinario di Firenze (Italy), made by decision of 20 February 2013, received at the Court on 15 March 2013, in the proceedings

Paola C.

v

Presidenza del Consiglio dei Ministri,

THE COURT (Sixth Chamber),

composed of A. Borg Barthet, President of the Chamber, M. Berger (Rapporteur) and F. Biltgen, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Ms C, by P. Pellegrini, avvocato,

— the Kingdom of Spain, by S. Centeno Huerta, acting as Agent,

— the Italian Republic, by G. Palmieri and G. Palatiello, acting as Agents,

— the Kingdom of the Netherlands, by M.K. Bulterman, acting as Agent,

— the European Commission, by A.-M. Rouchaud-Joët and F. Moro, acting as Agents,

having decided, after hearing the Advocate General, to give a decision by reasoned order, pursuant to Article 53(2) of the Rules of Procedure of the Court of Justice,

* Language of the case: Italian.

makes the following

Order

1 This request for a preliminary ruling concerns the interpretation of Article 12 of Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (OJ 2006 L 261, p. 15).

2 The request has been made in proceedings between Ms C and the Presidenza del Consiglio dei Ministri (Presidency of the Council of Ministers), concerning responsibility of the latter for the non-transposition by the Italian Republic of Directive 2004/80 and the harm suffered by Ms C as a result.

Legal context

European Union legislation

3 Recitals 7 and 11 to Directive 2004/80 state as follows:

'(7) This Directive sets up a system of cooperation to facilitate access to compensation to victims of crimes in cross-border situations; …

…

(11) A system of cooperation between the authorities of the Member States should be introduced to facilitate access to compensation in cases where the crime was committed in a Member State other than that of the victim's residence.'

4 Article 12 of that directive, which is part of Chapter II of the same directive, entitled 'National schemes on compensation', provides:

'(1) The rules on access to compensation in cross-border situations drawn up by this Directive shall operate on the basis of Member States' schemes on compensation to victims of violent intentional crime committed in their respective territories.

(2) All Member States shall ensure that their national rules provide for the existence of a scheme on compensation to victims of violent intentional crimes committed in their respective territories, which guarantees fair and appropriate compensation to victims.'

Italian law

5 Directive 2004/80 was transposed into Italian law, inter alia, by Legislative Decree No 204 on the application of Directive 2004/80/EC relating to compensation to crime victims (Decreto legislativo n. 204 attuazione della direttiva 2004/80/CE relativa all'indennizzo delle vittime di reato) of 9 November 2007 (ordinary supplement to GURI No 261 of 9 November 2007). That decree refers, as regards the material conditions for the grant of compensation for which the Italian State is responsible, to the specific laws that out the forms of compensation for victims of crimes committed in the national territory.

The order for reference and the question referred for preliminary ruling

6 Ms C brought an action before the referring court seeking an order that the Presidenza del Consiglio dei Ministri was liable in respect of a failure to implement Directive 2004/80 and that it pay her damages of EUR 150 000 as a result.

7 In support of her application, the applicant in the main proceedings alleges that she was the victim of sexual assault committed by one Mr M. The latter individual, inter alia, was ordered to pay her the sum of EUR 20 000 by way of provisional damages. Mr M, however, did not make the payment. When the order was made, Mr M was detained in custody, destitute and without employment or residence. According to Ms C, when he is released from prison, Mr M will be insolvent and deported from Italy, so that she will lose all opportunity of gaining fair and appropriate compensation from him. However, the Italian Republic did not adopt the measures necessary to guarantee her compensation that was nevertheless fair and appropriate, in breach of the obligation incumbent on that Member State by virtue of Article 12 of Directive 2004/80.

8 Before the referring court, the Presidenza del Consiglio dei Ministri claims that the application should be dismissed as inadmissible and unfounded. It claims inter alia that Directive 2004/80 seeks to govern only compensation for victims of violent intentional crimes in cross-border situations, whereas the criminal act at issue was committed on Italian territory and the victim is an Italian national.

9 The referring court considers, in that respect, that, if the purpose of Directive 2004/80 is to create measures aimed at facilitating the compensation of victims of crimes in cross-border situations and to allow that the victim of a crime may always contact an authority of the Member State in which he resides, Article 12(2) of that directive could nevertheless be interpreted as meaning that it requires all Member States to adopt instruments likely to guarantee compensation for victims of every violent and intentional crime. If that were so, the Italian Republic would fail to comply with its obligations in so far as its national legislation provides for a compensation regime limited to certain offences, excluding those perpetrated by way of sexual violence.

10 In those circumstances, the Tribunale ordinario di Firenze decided to stay proceedings and refer the following question to the Court for a preliminary ruling:

‘Must Article 12 of Directive 2004/80/EC be interpreted as permitting Member States to make provision for compensation only for the victims of certain categories of violent or intentional crime or, instead, as imposing an obligation on Member States, for the purposes of the implementation of the directive, to adopt a compensation scheme for victims of all violent or intentional crime?’

Jurisdiction of the Court

11 It should be recalled, first, that Directive 2004/80, as is clear from Recital 7, ‘sets up a system of cooperation to facilitate access to compensation to victims of crimes in cross-border situations’. Recital 11 to that directive specifies in that respect that ‘[a] system of cooperation between the authorities of the Member States should be introduced to facilitate access to compensation in cases where the crime was committed in a Member State other than that of the victim’s residence’.

12 The Court has already stated that Directive 2004/80 provides for compensation only where a violent intentional crime has been committed in a Member State other than that in which the victim is habitually resident (Case C-467/05 *Dell’Orto* [2007] ECR I-5557, paragraph 59).

13 However, in the context of the main proceedings, it is clear from the order for reference that Ms C was the victim of a violent intentional crime committed in the territory of the Member State in which she resides, namely the Italian Republic. The situation at issue in the main proceedings thus does not fall within the scope of Directive 2004/80, but national law alone.

14 In a purely internal situation the Court does not, in principle, have jurisdiction to rule on the question referred by the national court.

15 It is true that, according to settled case-law, even in such a situation, the Court may carry out the requested interpretation where national law requires the referring court, in cases such as those at issue in the main proceedings, to grant the same rights to a national as those which a national of another Member State in the same situation would derive from European Union law (see, inter alia, Case C-111/12 *Ordine degli Ingegneri di Verona e Provincia and Others* [2013] ECR, paragraph 35 and the case-law cited). However, it is not for the Court to take such an initiative if it is not apparent from the order for reference that the national court is actually under such an obligation (see, to that effect, Case C-245/09 *Omalet* [2010] ECR I-13771, paragraphs 17 and 18).

16 The Court must take account, under the division of jurisdiction between the European Union courts and the national courts, of the factual and legislative context in which the questions put to it are set, as described in the order for reference (Joined Cases C-378/07 to C-380/07 *Angelidaki and Others* [2009] ECR I-3071, paragraph 48 and the case-law cited).

17 In the present case, it suffices to state that, even though the European Commission, in its written observations, has argued that such an obligation does stem from Italian constitutional law, it is not apparent from the order for reference itself that Italian law requires the national court to grant C the same rights as those which a national of another Member State would derive from European Union law in the same situation.

18 It follows that, on the basis of Article 53(2) of its Rules of Procedure, the Court clearly has no jurisdiction to rule on the question referred by the Tribunal ordinario di Firenze.

Costs

19 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 (Sixth Chamber) hereby orders:

The European Court of Justice clearly has no jurisdiction to answer the question put by the Tribunale ordinario di Firenze (Italy).

[Signatures]