Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

11 October 2016*

(Failure of a Member State to fulfil obligations — Directive 2004/80/EC — Article 12(2) — National compensation schemes for victims of violent intentional crime guaranteeing fair and appropriate compensation — National scheme not covering all violent intentional crimes committed on the national territory))

In Case C-601/14,

ACTION under Article 258 TFEU for failure to fulfil obligations, brought on 22 December 2014,

European Commission, represented by E. Traversa and F. Moro, acting as Agents, with an address for service in Luxembourg,

applicant,

supported by

Council of the European Union, represented by E. Moro, M. Chavrier and K. Pleśniak, acting as Agents,

intervener,

v

Italian Republic, represented by G. Palmieri, acting as Agent, and by G. Palatiello and E. De Bonis, avvocati dello Stato, with an address for service in Luxembourg,

defendant,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, L. Bay Larsen, T. von Danwitz, J.L. da Cruz Vilaça, E. Juhász, M. Berger (Rapporteur), A. Prechal, M. Vilaras, E. Regan, Presidents of Chambers, A. Rosas, A. Borg Barthet, J. Malenovský, D. Šváby and C. Lycourgos, Judges,

Advocate General: Y. Bot,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 29 February 2016,

after hearing the Opinion of the Advocate General at the sitting on 12 April 2016,

* Language of the case: Italian.

gives the following

Judgment

1 By its application, the European Commission asks the Court to declare that, by failing to adopt all the measures necessary to guarantee the existence of a compensation scheme for victims of all violent intentional crimes committed on its territory, the Italian Republic has failed to fulfil its obligations under Article 12(2) of Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (OJ 2004 L 261, p. 15).

Legal context

EU law

2 Recitals 1 to 3, 6 and 7 of Directive 2004/80 are worded as follows:

'(1) One of the objectives of the European [Union] is to abolish, as between Member States, obstacles to the free movement of persons and services.

(2) The Court of Justice held in the [judgment of 2 February 1989, *Cowan* (C-186/87, EU:C:1989:47)] that, when [European Union] law guarantees to a natural person the freedom to go to another Member State, the protection of that person from harm in the Member State in question, on the same basis as that of nationals and persons residing there, is a corollary of that freedom of movement. Measures to facilitate compensation to victims of crimes should form part of the realisation of this objective.

(3) At its meeting in Tampere on 15 and 16 October 1999, the European Council called for the drawing-up of minimum standards on the protection of the victims of crime, in particular on crime victims' access to justice and their rights to compensation for damages, including legal costs.

...

(6) Crime victims in the European Union should be entitled to fair and appropriate compensation for the injuries they have suffered, regardless of where in the European [Union] the crime was committed.

(7) This Directive sets up a system of cooperation to facilitate access to compensation to victims of crimes in cross-border situations, which should operate on the basis of Member States' schemes on compensation to victims of violent intentional crime, committed in their respective territories. Therefore, a compensation mechanism should be in place in all Member States.'

3 Article 1 of Directive 2004/80, which is set out in Chapter I entitled 'Access to compensation in cross-border situations', provides:

'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.'

4 Under Article 2 of that directive, entitled ‘Responsibility for paying compensation’:

‘Compensation shall be paid by the competent authority of the Member State on whose territory the crime was committed.’

5 Under Article 3 of that directive, entitled ‘Responsible authorities and administrative procedures’:

‘1. Member States shall establish or designate one or several authorities or any other bodies, hereinafter referred to as “assisting authority or authorities”, to be responsible for applying Article 1.

2. Member States shall establish or designate one or several authorities or any other bodies to be responsible for deciding upon applications for compensation, hereinafter referred to as “deciding authority or authorities”.

...’

6 Article 12 of Directive 2004/80, which is set out in Chapter II 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.’

7 Article 18(1) of Directive 2004/80 provides:

‘Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 2006 at the latest, with the exception of Article 12(2), in which case the date of compliance shall be 1 July 2005. They shall forthwith inform the Commission thereof.’

Italian law

8 Directive 2004/80 was transposed into Italian law by Decreto legislativo n. 204 — attuazione della direttiva 2004/80/CE relativa all’indennizzo delle vittime di reato (Legislative Decree No 204 on the application of Directive 2004/80/EC relating to compensation to crime victims) of 6 November 2007 (Ordinary Supplement to GURI No 261 of 9 November 2007; ‘Legislative Decree No 204/2007’), and by Decreto ministeriale n. 222 — regolamento ai sensi dell’articolo 7 del decreto legislativo n. 204/2007 (Ministerial Decree No 222 laying down rules in accordance with Article 7 of Legislative Decree No 204/2007) of 23 December 2008 (GURI No 108 of 12 May 2009).

9 Ministerial Decree No 222 of 23 December 2008 concerns, inter alia, the practical aspects of activities coming under the jurisdiction of the public prosecutors’ department at the courts of appeal.

10 Several special laws provide for the grant of compensation, under certain conditions, payable by the Italian State, to victims of certain types of violent intentional crimes, including those linked to terrorism and to organised crime. Legislative Decree No 204/2007 refers, as regards the substantive conditions governing the grant of compensation, to those special laws, which lay down the forms of compensation for victims of crimes committed on the national territory.

Pre-litigation procedure

11 Following unproductive discussions with the Italian Republic, the Commission sent it a letter of formal notice, on 25 November 2011, in which it complained that that Member State did not provide in its legislation for a general compensation scheme for victims of violent intentional crime, contrary to the requirements arising, according to that institution, from Article 12(2) of Directive 2004/80, and in which it invited the Italian Republic to submit its observations on that point.

12 In its reply of 14 May 2012, the Italian Republic submitted draft legislative measures designed to establish a general compensation scheme. As no legislative timetable was submitted for implementing those draft measures, the Commission continued the pre-litigation procedure.

13 By letter of 12 July 2013, the Italian Republic informed the Commission that the Tribunale ordinario di Firenze (District Court, Florence, Italy) had referred a question for a preliminary ruling to the Court concerning the interpretation of Article 12 of Directive 2004/80 and proposed that the Commission await the Court's decision in that case before continuing the procedure it had initiated.

14 On 18 October 2013, the Commission nevertheless sent the Italian Republic a reasoned opinion in which it called on the Italian authorities to take the measures necessary to comply with Article 12 of Directive 2004/80 within two months of that date.

15 In its reply, received by the Commission on 18 December 2013, the Italian Republic reiterated its view that it was expedient to await the Court's response to the question referred by the Tribunale ordinario di Firenze (District Court, Florence). By order of 30 January 2014, *C.* (C-122/13, EU:C:2014:59), the Court declared however that it clearly had no jurisdiction to answer that question.

16 In those circumstances, the Commission decided to bring the present action for failure to fulfil obligations before the Court under the second paragraph of Article 258 TFEU.

17 By decision of the President of the Court of 22 May 2015, the Council of the European Union was granted leave to intervene in the present case in support of the form of order sought by the Commission.

The action

Arguments of the parties

18 The Commission claims that Article 12 of Directive 2004/80 requires the Member States to introduce a national compensation scheme for victims of violent intentional crime.

19 That institution submits that Article 12(2) of that directive, although it does not define the concept of 'violent intentional crime', leaves no discretion to the Member States as to the scope of the national compensation scheme, since the scope of that scheme must cover all violent intentional crimes, defined as such in the substantive criminal law of each Member State. Consequently, Member States do not have the right to exclude some of those crimes from the scope of the national legislation intended to transpose Directive 2004/80.

20 According to the Commission, the Italian Republic transposed only the provisions of Chapter I of Directive 2004/80, which relate to access to compensation in cross-border situations. By contrast, as regards Chapter II of that directive, it is only in respect of victims of certain specific crimes, such as acts of terrorism or organised crime, that the Italian Republic has, by means of several special laws,

provided for a compensation scheme, whereas no compensation scheme has been established in respect of violent intentional crimes that are not covered by those special laws, inter alia, rape or other serious sexual assaults.

21 In those circumstances, the Commission submits that the Italian Republic failed to fulfil its obligations under Article 12(2) of Directive 2004/80.

22 The Italian Republic contends, first of all, that the action brought by the Commission does not correspond to the complaints contained in the reasoned opinion of 18 October 2013. That reasoned opinion related solely to 'crimes of homicide and serious assault and battery which are not among the cases provided for by the "special laws"' and 'rape and other serious sexual assaults'. In the present action, the Commission complains that the Italian Republic did not introduce a general compensation system for victims of any act of violent crime committed on its territory, thereby broadening the subject matter of the action for failure to fulfil obligations. The Italian Republic submits that the action is therefore inadmissible.

23 In the alternative, the Italian Republic recalls that Directive 2004/80 was adopted on the basis of Article 308 EC. It submits that the European Union is not competent to legislate on combating criminal acts of violence falling within the scope of the general law of each Member State, whether from a procedural or substantive standpoint, nor is it competent to regulate the civil consequences of those acts. In view of the legal basis of Directive 2004/80, that directive merely requires the Member States to enable Union citizens residing in another Member State to have access to the compensation systems already provided for in the legislation of each Member State for their nationals who are victims of violent intentional crime. The Italian Republic complied with that obligation by means of the procedural provisions of Legislative Decree No 204/2007 and Ministerial Decree No 222 of 23 December 2008.

24 In the further alternative, the Italian Republic contends that the Member States retain a broad discretion for the purposes of determining the various cases of 'violent intentional crime' for which a form of compensation must be provided. The Member States may therefore identify the situations that qualify for compensation.

25 Furthermore, the Italian Republic refers to the legislative procedure which led to the adoption of Directive 2004/80, in which it had initially been envisaged that specific rules would be laid down relating to, inter alia, the setting of minimum standards for compensation for victims of crime. However, that initial objective was abandoned. Consequently, Article 12 of that directive concerns only the compensation systems already provided for by the Member States at the time of the adoption of that directive, and Article 12(2) merely requires Member States which do not have such a system to make provision for one. The Italian Republic already provides for numerous forms of compensation for various types of violent intentional crime.

26 Lastly, the Italian Republic submits that if Article 12(2) of Directive 2004/80 is to be interpreted in the manner suggested by the Commission that provision is invalid, since Article 308 EC cannot, in accordance with the principle of proportionality, confer on the EU competence to adopt measures concerning, in particular, purely internal matters.

27 The Council claims that the plea of illegality raised by the Italian Republic is inadmissible. According to that institution, a Member State cannot properly plead the unlawfulness of a directive as a defence in an action for a declaration that it has failed to fulfil its obligations arising out of its failure to implement that directive, and the Italian Republic has not put forward any evidence to show that Article 12(2) of Directive 2004/80, as interpreted by the Commission, is vitiated by an irregularity the seriousness of which is so obvious that it ought to be deemed to have produced no legal effects.

28 In the alternative, the Council submits that the plea of illegality as regards Article 12(2) of Directive 2004/80 cannot be upheld. Article 308 EC makes it possible to fill the gap where no specific provisions of the Treaties confer powers to act on the institutions of the European Union in circumstances where, in order to achieve one of the objectives under those Treaties, the action envisaged is necessary. In this case, the Italian Republic has not contended that those conditions were not fulfilled.

Findings of the Court

Admissibility

29 As regards the plea of inadmissibility raised by the Italian Republic that, by the present action, the Commission has broadened the subject matter of the failure to fulfil obligations alleged in the reasoned opinion of 18 October 2013, it is clear from the wording of that reasoned opinion that the Commission complained that the Italian Republic had 'not adopted the measures necessary to comply with Article 12(1) and (2) of Directive 2004/80 ... for the purposes of guaranteeing the existence of a compensation scheme for victims of all violent intentional crimes committed on its territory'.

30 It is true that, in that reasoned opinion, the Commission also referred to the fact that the Italian legislation did not include a compensation scheme for, 'in particular', victims of the crimes of homicide and serious assault and battery which are not among the cases provided for by the special laws, or for victims of rape and other serious sexual assaults, and also to the fact that that legislation excluded certain crimes 'such as' homicide and sexual violence from any compensation scheme. However, it is clear from the express wording used by that institution in referring to that legislation that its intention was merely better to illustrate the specific consequences of the fact, not disputed by the Italian Republic, that not all violent intentional crimes were covered by a compensation scheme in force in Italy, without thereby limiting the scope of the alleged failure to fulfil obligations solely to the examples mentioned.

31 Consequently, in the present action, the Commission has not broadened the subject matter of the alleged failure to fulfil obligations in so far as it seeks a declaration from the Court that, 'by failing to adopt all the measures necessary to guarantee the existence of a compensation scheme for victims of all violent intentional crimes committed on its territory, the Italian Republic has failed to fulfil its obligations under Article 12(2) of Directive 2004/80'.

32 Therefore, the present action must be declared admissible.

Substance

33 As regards, in the first place, the Italian Republic's argument that Article 12(2) of Directive 2004/80, as interpreted by the Commission, is invalid on the ground that, in essence, the European Union is not competent to adopt, on the basis of Article 308 EC, a provision governing, in particular, purely internal situations, suffice it to recall that, according to the Court's settled case-law, in the absence of a provision of the FEU Treaty expressly permitting it to do so, a Member State cannot properly plead the unlawfulness of a directive addressed to it as a defence in an action for a declaration that it has failed to fulfil its obligations arising out of its failure to implement that directive. The position could be different only if the act in question contained such particularly serious and manifest defects that it could be categorised as a non-existent act (see, inter alia, judgments of 29 July 2010, *Commission* v *Austria*, C-189/09, not published, EU:C:2010:455, paragraphs 15 and 16 and the case-law cited, and 5 March 2015, *Commission* v *Luxembourg*, C-502/13, EU:C:2015:143, paragraph 56).

34 Without it being necessary to examine more thoroughly the arguments advanced by the Italian Republic in support of the contention that Article 12(2) of Directive 2004/80 is unlawful, it must be stated that the Italian Republic has not provided any evidence to show that that provision is vitiated by a defect such as to call into question its very existence, within the meaning of the case-law cited in paragraph 33 of this judgment.

35 It follows that it is to no avail that the Italian Republic relies on the unlawfulness of Article 12(2) of Directive 2004/80 in the present action.

36 As regards, in the second place, the obligations on Member States under Article 12(2) of Directive 2004/80, account should be taken not only of the wording of that provision, but also of the objectives pursued by that directive, and the system established by that directive of which it is part.

37 Under Article 12(2) of Directive 2004/80, '[a]ll 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'.

38 That provision does not provide that the Member States may limit the application of the compensation scheme which they are required to establish under Directive 2004/80 only to some violent intentional crimes committed in their respective territories.

39 As to the objectives pursued by Directive 2004/80, recital 1 in the preamble to that directive refers to the intention of the European Union to abolish, as between Member States, obstacles to the free movement of persons.

40 In this connection, the Court has held that, when EU law guarantees a natural person the freedom to go to another Member State, the protection of that person from harm in the Member State in question, on the same basis as that of nationals and persons residing there, is a corollary of that freedom of movement (judgment of 2 February 1989, *Cowan*, C-186/87, EU:C:1989:47, paragraph 17). In that context, recital 2 of Directive 2004/80 states that measures to facilitate compensation to victims of crimes should form part of the realisation of that objective.

41 Moreover, recital 3 of that directive states that, at its meeting in Tampere on 15 and 16 October 1999, the European Council called for the drawing-up of minimum standards on the protection of the victims of crime, in particular on crime victims' access to justice and their rights to compensation for damage.

42 Furthermore, it is clear from recital 6 of that directive that victims of crime in the European Union should be entitled to fair and appropriate compensation for the injuries they have suffered, regardless of where in the European Union the crime was committed. Lastly, recital 7 of that directive states, inter alia, that a compensation mechanism should, consequently, be in place in all Member States.

43 As regards the system established by Directive 2004/80, Article 1 of that directive, which article is part of Chapter I relating to access to compensation in cross-border situations, provides 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 Member States are to ensure that the applicant has the right to submit the application to an authority or any other body in the Member State of residence. Article 2 of that directive, entitled 'Responsibility for paying compensation', which is also in Chapter I, provides that compensation is to be paid by the competent authority of the Member State on whose territory the crime was committed.

44 Moreover, paragraph 1 of Article 12 of Directive 2004/80, which article constitutes Chapter II of that directive and relates to national compensation schemes, provides that the rules on access to compensation in cross-border situations laid down in that directive are to operate 'on the basis of Member States' schemes on compensation to victims of violent intentional crime committed in their respective territories'.

45 It is clear from the foregoing considerations that Directive 2004/80 establishes a system to facilitate access for victims of crimes to compensation in cross-border situations, which system is to operate on the basis of Member States' schemes on compensation for victims of violent intentional crime committed in their respective territories. Consequently, Article 12(2) of that directive must be interpreted as meaning that it is intended to guarantee to Union citizens the right to fair and appropriate compensation for the injuries they suffer on the territory of the Member State in which they find themselves in exercising their right to free movement, by requiring each Member State to introduce a compensation scheme for victims of any violent intentional crime committed on its territory.

46 As regards, in that context, the determination of the intentional and violent nature of a crime, as the Advocate General has stated in points 69 and 83 of his Opinion, although the Member States have, in principle, the competence to define the scope of that concept in their domestic law, that competence does not, however, permit them to limit the scope of the compensation scheme for victims to only certain violent intentional crimes, lest it render redundant Article 12(2) of Directive 2004/80.

47 That interpretation is in no way called into question by the argument advanced by the Italian Republic that, in the course of the legislative procedure which led to the adoption of Directive 2004/80, the EU legislature abandoned the initial objective of laying down specific standards on compensation for victims of crime.

48 The Italian Republic's argument that, in the judgment of 2 February 1989, *Cowan* (186/87, EU:C:1989:47), referred to in recital 2 of Directive 2004/80, the Court required that the principle of the prohibition of discrimination on the basis of nationality be observed merely as regards access to compensation for victims of crime in cross-border situations and did not set out an obligation on the Member States to provide in their domestic law for a compensation scheme for victims of all types of violent intentional crime, which it is contended was confirmed in the order of 30 January 2014, *C.* (C-122/13, EU:C:2014:59), must also be rejected.

49 It is true that the Court has held that Directive 2004/80 provides for compensation only where a violent intentional crime has been committed in a Member State in which the victim finds himself in exercising his right to free movement, so that a purely internal situation does not fall within the scope of that directive (see, to that effect, judgments of 28 June 2007, *Dell'Orto*, C-467/05, EU:C:2007:395, paragraph 59, and 12 July 2012, *Giovanardi and Others*, C-79/11, EU:C:2012:448, paragraph 37, and order of 30 January 2014, *C.*, C-122/13, EU:C:2014:59, paragraph 12). The fact remains that, in so doing, the Court merely stated that the system of cooperation established by Directive 2004/80 solely concerns access to compensation in cross-border situations, without however excluding that Article 12(2) of that directive requires each Member State, for the purposes of securing the objective pursued by it in such situations, to adopt a national scheme guaranteeing compensation for victims of any violent intentional crime on its territory.

50 Such an interpretation of Article 12(2) of Directive 2004/80 is, moreover, consistent with the objective of that directive of abolishing, as between Member States, obstacles to the free movement of persons and services for the purposes of improving the functioning of the internal market.

51 In the present case, it is apparent from the documents before the Court that not all violent intentional crimes, as defined by Italian law, are covered by the compensation scheme in force in Italy, a point which, moreover, the Italian Republic does not dispute. Since that Member State has therefore not fully implemented Article 12(2) of Directive 2004/80, it must be held that the action brought by the Commission is well founded.

52 Consequently, it must be held that, by failing to adopt all the measures necessary to guarantee the existence, in cross-border situations, of a compensation scheme for victims of all violent intentional crimes committed on its territory, the Italian Republic has failed to fulfil its obligations under Article 12(2) of Directive 2004/80.

Costs

53 Under Article 138(1) of the Rules of Procedure of the Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has asked for the Italian Republic to be ordered to pay the costs, and the latter has been unsuccessful, it must be ordered to bear its own costs and to pay those incurred by the Commission.

54 Under Article 140(1) of the Rules of Procedure, institutions which have intervened in the proceedings are to bear their own costs. The Council is, consequently, to bear its own costs.

On those grounds, the Court (Grand Chamber) hereby:

1. **Declares that, by failing to adopt all the measures necessary to guarantee the existence, in cross-border situations, of a compensation scheme for victims of all violent intentional crimes committed on its territory, the Italian Republic has failed to fulfil its obligations under Article 12(2) of Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims;**

2. **Orders the Italian Republic to bear its own costs and to pay those incurred by the European Commission;**

3. **Orders the Council of the European Union to bear its own costs.**

[Signatures]