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Provisional text

JUDGMENT OF THE COURT (Fifth Chamber)

7 November 2024 (\*)

( Reference for a preliminary ruling – Judicial cooperation in criminal matters – Directive 2004/80/EC – Article 12(2) – National schemes on compensation to victims of violent intentional crime – Homicide – Compensation for close family members of the deceased – Concept of ‘victim’ – ‘Tiered’ compensation scheme according to the order of succession – National legislation excluding the payment of compensation to other family members of the deceased when there are children or a surviving spouse – Parents and siblings of the deceased – ‘Fair and appropriate’ compensation )

In Case C126/23 [Burdene], (i)

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale Ordinario di Venezia (District Court of Venice, Italy), made by decision of 15 February 2023, received at the Court on 2 March 2023, in the proceedings

**UD,**

**QO,**

**VU,**

**LO,**

**CA**

v

**Presidenza del Consiglio dei Ministri,**

**Ministero dell’Interno,**

THE COURT (Fifth Chamber),

composed of I. Jarukaitis, President of the Fourth Chamber, acting as President of the Fifth Chamber, D. Gratsias and E. Regan (rapporteur), judges,

Advocate General: J. Richard de la Tour,

Registrar: C. Di Bella, Administrator,

having regard to the written procedure and further to the hearing on 21 February 2024,

after considering the observations submitted on behalf of:

- QO and UD, by G. Sicchiero, avvocato,
- LO and VU, by M.G. Bergamo, F. Sicchiero and G. Sicchiero, avvocati,
- CA, by E. Pertile and G. Sicchiero, avvocati,
- the Italian Government, by G. Palmieri, acting as Agent, and by E. De Bonis, S. Fiorentino and G. Palatiello, avvocati dello Stato,
- the European Commission, by E. Montaguti and S. Noë, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 May 2024,

gives the following

### **Judgment**

1 This request for a preliminary ruling concerns the interpretation of 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) and Articles 20 and 21, Article 33(1) and Article 47 of the Charter of Fundamental Rights of the European Union.

2 The request has been made in proceedings brought by the parents, sister and children of a victim of homicide against the Presidenza del Consiglio dei Ministri (Presidency of the Council of Ministers, Italy) and the Ministero dell'Interno (Ministry of the Interior, Italy) concerning the compensation granted by the Italian State, due to the insolvency of the perpetrator of the homicide, for the harm they suffered as a result of that homicide.

### **Legal context**

#### ***European Union law***

##### *Framework Decision 2001/220/JHA*

3 Under Article 1 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), headed 'Definitions':

'For the purposes of this Framework 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;

...'

##### *Directive 2004/80/EC*

4 Recitals 5 and 10 of Directive 2004/80 are worded as follows:

'(5) On 15 March 2001 the Council adopted Framework Decision 2001/220/JHA ... This Decision, based on Title VI of the Treaty on the European Union, allows crime victims to claim compensation from the offender in the course of criminal proceedings.

...

(10) Crime victims will often not be able to obtain compensation from the offender, since the offender may lack the necessary means to satisfy a judgment on damages or because the offender cannot be identified or prosecuted.'

5 Chapter II of that directive, entitled 'National schemes on compensation', contains Article 12, which reads as follows:

'(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.'

6 In Chapter III of that directive, headed 'Implementing Provisions', Article 17 thereof, headed 'More favourable provisions', provides:

'This Directive shall not prevent Member States, in so far as such provisions are compatible with this Directive, from:

- (a) introducing or maintaining more favourable provisions for the benefit of victims of crime or any other persons affected by crime;
- (b) introducing or retaining provisions for the purpose of compensating victims of crime committed outside their territory, or any other person affected by such a crime, subject to any conditions that Member States may specify for that purpose.'

#### *Directive 2012/29/EU*

7 Article 2 of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, stipulates:

'1. For the purposes of this Directive the following definitions shall apply:

(a) "victim" means:

(i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;

(ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death;

(b) "family members" means the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim;

...

2. Member States may establish procedures:

(a) to limit the number of family members who may benefit from the rights set out in this Directive taking into account the individual circumstances of each case; and

(b) in relation to paragraph (1)(a)(ii), to determine which family members have priority in relation to the exercise of the rights set out in this Directive.’

### **Italian law**

8 Article 11 of legge n. 122 – Disposizioni per l’adempimento degli obblighi derivanti dall’appartenenza dell’Italia all’Unione europea – Legge europea 2015-2016 (Law No 122 laying down provisions to comply with the obligations arising from Italy’s membership of the European Union – European Law 2015-2016), of 7 July 2016 (GURI No 158 of 8 July 2016, p.1), as amended by Article 6 of Law No 167 of 20 November 2017 and Article 1(593) to (596) of Law No 145 of 30 December 2018 (‘Law No 122/2016’), provides:

‘1. Without prejudice to more favourable benefits in favour of the victims of crimes provided for by other provisions of law, the right to compensation provided by the State is recognised for the victim of a violent intentional crime and in any case of the crime referred to in Article 603-*bis* of the codice penale [(Criminal Code)], with the exception of the crimes referred to in Articles 581 and 582, unless the aggravating circumstances provided for in Article 583 of the Criminal Code apply.

2. Compensation for crimes of homicide, sexual assault or grievous bodily harm, in accordance with the second subparagraph of Article 583 of the Criminal Code ... shall be awarded to the victim or the beneficiaries listed in paragraph 2*bis*, to the extent determined by the decree referred to in paragraph 3. For offences other than those referred to in the first sentence, compensation shall be paid for the reimbursement of medical and welfare expenses.

2*bis* In the event of the death of the victim as a consequence of the crime, compensation is paid to the surviving spouse and children; in the absence of the spouse and children, compensation is paid to the parents and, in the absence of the parents, to the siblings who were cohabiting and dependants at the time the crime was committed. ...

2*ter* In the event of several rightful claimants, the compensation shall be apportioned according to the quotas provided for in the provisions of Title II of Book Two of the codice civile [(Civil Code)].

3. The amounts of compensation shall be determined by decree of the Ministro dell’interno [(Minister for the Interior, Italy)] and Ministro della giustizia [(Minister for Justice, Italy)], in agreement with the Ministro dell’economia e delle finanze [(Minister for the Economy and Finance, Italy)], to be issued within six months from the date of entry into force of this law, in any event within the limits of the availability of the [Fondo di rotazione per la solidarietà alle vittime dei reati di tipo mafioso, delle richieste estorsive, dell’usura e dei reati intenzionali violenti (Revolving fund for the support of victims of mafia-style crime, extortion, usury and violent intentional crime, Italy – ‘Solidarity Fund’)] referred to in Article 14, ensuring greater compensation to the victims of sexual violence and homicide and, in particular, to the victim’s children in the event of homicide committed by the spouse, including a separated or divorced spouse, or by a person who is or was linked by emotional ties to the victim.’

9 Adopted to implement Article 11(3) of Law No 122/2016, Article 1(1)(b) of decreto ministeriale – Determinazione degli importi dell’indennizzo alle vittime dei reati intenzionali violenti (Ministerial Decree on the determination of the amounts of compensation payable to the victims of violent intentional crimes) of 22 November 2019 (GURI No 18 of 23 January 2020, p. 9; ‘the Implementing Ministerial Decree’) provides:

‘in the case of homicide committed by a spouse, including a separated or divorced spouse, or by a person who is or was linked by emotional ties to the victim: the fixed amount of EUR 60 000 exclusively for the victim’s children.’

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

10 On 18 September 2018, the Tribunale di Padova (District Court, Padua, Italy) sentenced the perpetrator of the homicide of his ex-partner, in Italy, to a term of imprisonment of 30 years, and ordered that he should pay a provisional sum of compensation to the members of the victim's family, who were civil parties to the proceedings. As such, EUR 400 000 was awarded to each of the victim's two children, EUR 120 000 to her father, mother and sister, and EUR 30 000 to her husband, from whom she was separated, but not divorced.

11 In accordance with the national legislation, as the perpetrator of the homicide had no assets or income and had been granted free legal aid, the Italian State paid, to the two children only, EUR 20 000 each in compensation, while the separated husband was granted compensation of EUR 16 666.66.

12 On 1 February 2022, the applicants in the main proceedings, namely the victim's parents, sister and children, believing that Law No 122/2016 had introduced significant limitations on the provision of compensation to the victims of violent intentional crime, in breach of Directive 2004/80, brought proceedings before the Tribunale Ordinario di Venezia (District Court, Venice, Italy), the referring court.

13 By their applications, the applicants in the main proceedings claim that the referring court should, after disapplying the Implementing Ministerial Decree as unlawful, determine the 'fair and appropriate' amount of compensation to be paid to them in view of the degree of their relationship to the homicide victim, in accordance with Article 12(2) of Directive 2004/80, taking into account – after deduction, in the case of the victim's children, of the amount already paid to them – the amount of harm determined by the judgment convicting the perpetrator of the homicide, even if the Solidarity Fund does not have the necessary financial resources available. In the alternative, the applicants in the main proceedings claim that the Presidency of the Council of Ministers, representing the Italian State, should be ordered to pay the same amounts by way of compensation for the harm suffered as a result of the incorrect implementation of Directive 2004/80 and, in particular, Article 12 thereof.

14 In the first place, the applicants in the main proceedings claim that the limit established in Article 11(2-*bis*), of Law No 122/2016 – which grants the right to compensation to the victim's parents only in the absence of a surviving spouse and children of the victim, while siblings are entitled to compensation only in the absence of all of the aforementioned persons – infringes the obligation to provide compensation laid down in Article 12 of Directive 2004/80, since it arbitrarily determines those who must actually be compensated, from amongst the injured persons to whom a right to compensation is recognised in the abstract, without reference to criteria that are fair and appropriate to the case in question. Furthermore, in the present case, compensation was also awarded to the victim's surviving husband, from whom she had been separated since 2006, almost 11 years before her death. The right to compensation is thus recognised even where the emotional bond has clearly weakened, perhaps almost to the point of being non-existent.

15 In the second place, the applicants in the main proceedings submit that the amount of EUR 20 000 awarded to the victim's children pursuant to the Implementing Ministerial Decree, which corresponds to 5% of the provisional amount awarded by court order, does not seem to be in line with the position of the Court in paragraph 69 of the judgment of 16 July 2020, *Presidenza del Consiglio dei Ministri* (C129/19, EU:C:2020:566), according to which a fixed rate of compensation awarded under the national scheme of compensation to victims of violent intentional crime must, in order to be 'fair and appropriate' within the meaning of Article 12(2) of Directive 2004/80, represent an appropriate contribution to the reparation of the material and non-material harm suffered.

16 In the third place, the applicants in the main proceedings believe that the national provisions are also unlawful in that they make the payment of compensation conditional on the State having set aside sufficient funds to award the compensation, in breach of recital 10 of Directive 2004/80.

17 The Italian authorities have pointed out, as regards the children, that the determination of the compensation was made in full compliance with the provisions in force, taking into account the surviving spouse's source of income. They also note that the Court, after having stated in paragraph 58 of the judgment of 16 July 2020, *Presidenza del Consiglio dei Ministri* (C129/19, EU:C:2020:566) that Member States have a wide margin of discretion when determining the amount of compensation referred to in Article 12(2) of Directive 2004/80, found in paragraphs 65 and 69 of that judgment that that provision does not preclude a fixed rate of compensation to victims, but instead requires only that this compensation be 'fair and appropriate', which implies that it represents an appropriate contribution to the reparation of the material and non-material harm suffered by the victim.

18 The referring court considers that in order to assess the merits of the request for damages in the case before it, which is based on the incorrect implementation of Directive 2004/80, it must be first established whether the national provisions, as set out in Article 11(2-*bis*), (2-*ter*) and (3) of Law No 122/2016, comply with EU law.

19 That court points out that those national provisions – which make the payment of compensation, even where a final judgment establishes, in favour of certain members of the family, a right to compensation for the harm they have suffered and the amount of that compensation, conditional, as regards the victim's parents, on the absence of a surviving spouse and children of the victim, and, as regards the victim's siblings, on the absence of the parents, in so far as the siblings were cohabiting with and dependant on the victim at the time when the crime was committed – do not take into account the non-material aspect of the harm linked to the violent loss of the victim.

20 Furthermore, as regards the surviving spouse and children, that court notes that the extent of the harm suffered is not taken into account. Consequently, in the present case, no significance was attached to the fact that the surviving spouse had been separated from the victim for some time, with provision only for compensation to be awarded in accordance with inheritance rules, subject to the Solidarity Fund's resources. It does not therefore take into account, in disregard of the judgment of 16 July 2020, *Presidenza del Consiglio dei Ministri* (C129/19, EU:C:2020:566), the seriousness of the consequences of the act for the victims. Furthermore, compensation for the children was set at an amount broadly comparable to that awarded to the husband, which was completely disproportionate to the amount of the provisional compensation established in the criminal proceedings, and did not take into account any of the criteria commonly applied to the loss of the parental relationship, such as the age of the victim, the age of the survivor, the familial relationship and the extent of cohabitation, with the possibility of adjusting the final amount according to the specific features of the case. The amount awarded to the children in the present case cannot therefore be considered 'fair and appropriate' within the meaning of Article 12(2) of Directive 2004/80.

21 In those circumstances the Tribunale Ordinario di Venezia (District Court, Venice) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Regarding the provision of Article 11, paragraph 2-*bis*, of [Law No 122/2016], which makes the payment of compensation to the parents and sister of a [homicide] victim subject to the victim having no spouse and children, even in the presence of a final judgment quantifying in their favour the right to compensation for the damage suffered and making the perpetrator liable to pay such compensation:

In the case of [homicide], does the fact that the payment of compensation laid down for the parents and sister of a victim of violent intentional crimes by Article 11, paragraph 2-*bis* of [Law No 122/2016] is subject to the victim having no children or spouse (as regards the parents) and no parents (as regards siblings), comply with the requirements laid down by Article 12(2) of Directive 2004/80, as well as with Articles 20 (equality), 21 (non-discrimination), 33(1) (protection of the family) and 47 (right to an effective remedy and

to a fair trial) of the Charter of Fundamental Rights of the European Union and Article 1, Protocol 12 of the ECHR [signed in Rome on 4 November 1950] (non-discrimination)?

(2) Regarding the limitation on the payment of compensation:

Can the condition attached to the payment of the compensation provided for in [Article 11(3)] of Law No 122/2016, which states “in any event within the limits of the availability of the [Solidarity Fund]”, without any provision requiring the Italian State to make specific provision for the compensation, even if determined on a statistical basis and in any event which is actually capable of providing compensation to those entitled within a reasonable period of time, be deemed to be “fair and appropriate compensation to victims” pursuant to the provisions of Article 12(2) of Directive 2004/80?”

### **The Court’s jurisdiction and the admissibility of the questions referred for a preliminary ruling**

22 The Italian Government questions the jurisdiction of the Court and the admissibility of the questions referred for a preliminary ruling, since the dispute in the main proceedings concerns a situation that does not fall within the scope of Directive 2004/80. The referring court did not examine whether the applicants in the main proceedings were ‘victims’ within the meaning of Directive 2004/80. However, in the context of that directive, the concept of ‘victims’ must be interpreted as meaning only the person directly injured by the violent intentional crime. As such, the national legislation at issue in the main proceedings, in so far as it extends the concept of ‘victims’ to include certain close family members of the victim of homicide, falls within the sole competence of the Member States.

23 Furthermore, the Italian government and the European Commission submit that the second question is inadmissible. The order for reference does not contain any information from which it can be determined whether the condition relating to the financial capacity of the Solidarity Fund provided for by national law had any effect on the determination of the amount of fixed rate compensation set by the Solidarity Fund. Moreover, although the referring court considers that the amount of compensation granted, in this case, to the children of the homicide victim, is insufficient, it has not provided any information in support of that assessment nor asked the Court to rule on that point.

24 As regards, in the first place, the jurisdiction of the Court to answer the questions referred for a preliminary ruling, it must be recalled that, in accordance with Article 267 TFEU, the Court has jurisdiction to interpret acts of the institutions, bodies, offices or agencies of the European Union.

25 In those circumstances, since the two questions referred for a preliminary ruling by the referring court concern the interpretation of Directive 2004/80, in particular Article 12(2) thereof, the Court has jurisdiction to answer those questions.

26 As regards, in the second place, the admissibility of those questions, it should be borne in mind that, according to settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 11 April 2024, *Sozialministeriumservice*, C116/23, EU:C:2024:292, paragraph 29 and the case-law cited).

27 As regards the first question, it is sufficient to note that the question whether, in the case of homicide, the concept of ‘victims’, within the meaning of Article 12(2) of Directive 2004/80, must be capable of including the close family members of the person who died as a result of the violent intentional crime concerns the substance of the question referred and not its admissibility.

28 As regards the second question, it should be recalled that, by that question, the referring court seeks, in essence, to ascertain whether Article 12(2) of Directive 2004/80 must be interpreted as precluding legislation of a Member State which provides that the compensation granted by that Member State to a victim of violent intentional crime is to be paid to that victim within the limits of a ceiling resulting from the budget allocated by that Member State to a special fund established for that purpose.

29 It should be noted that there is nothing in the order for reference or the observations submitted to the Court to show that that ceiling had any effect on the amount of compensation awarded in the main proceedings by the Italian State. Furthermore, although, as is apparent from paragraph 20 above, the referring court stated in that decision that the amount of the compensation granted, in the present case, to the children of the deceased person is not, in its view, sufficient to constitute 'fair and appropriate' compensation within the meaning of Article 12(2) of Directive 2004/80, it did not refer to the Court, as the Commission has rightly observed, any question for a preliminary ruling in that regard. Moreover, that court has not provided any element of national law that would allow a further understanding of the detailed rules for the operation of the special fund provided for by that law.

30 In those circumstances, it must be held that the second question is hypothetical and, therefore, inadmissible.

31 It is therefore necessary to answer only the first question.

#### **The first question**

32 By its first question, the referring court asks, in essence, whether Article 12(2) of Directive 2004/80 must be interpreted as precluding legislation of a Member State which provides for a scheme on compensation for violent intentional crimes that, in the case of homicide, makes the right to compensation of the parents of the deceased person subject to the absence of a surviving spouse and children of that deceased person, and the right to compensation of the victim's siblings subject to the absence of those parents.

33 It should be borne in mind that, under Article 12(2) of Directive 2004/80, all Member States are required to 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 those victims.

34 As is apparent from the judgment of 16 July 2020, *Presidenza del Consiglio dei Ministri* (C129/19, EU:C:2020:566, paragraphs 41 to 45 and 52), that provision therefore imposes on each Member State the obligation to provide a scheme on compensation to victims of violent intentional crimes committed in its territory, whether or not those victims are in a cross-border situation, so that the Member States may comply with their obligations on access to compensation in cross-border situations, as laid down in that directive, since, in accordance with Article 12(1) thereof, the provisions on access to compensation in a cross-border situation 'shall operate on the basis of Member States' schemes on compensation to victims of violent intentional crime committed in their respective territories'.

35 In order to answer the question referred, it is necessary, first of all, to determine whether, in the event of homicide, the 'victims' of the violent intentional crime for whose benefit the Member States must establish, pursuant to Article 12(2) of Directive 2004/80, a national scheme on compensation, include, in addition to the person who died as a result of that crime, the close family members of that person, such as his or her parents and siblings, and then, if so, whether a 'tiered' national scheme on compensation according to the order succession, such as that referred to in paragraph 32 above, may be regarded as guaranteeing those victims 'fair and appropriate' compensation within the meaning of that provision.



36 As regards, in the first place, the concept of ‘victims’, within the meaning of Article 12(2) of Directive 2004/80, since neither that provision nor that directive contains a definition of that concept and that provision makes no reference to national law as regards the meaning to be given to it, that concept, which is intended to determine the beneficiaries of national schemes on compensation for victims of intentional crime, must be regarded as an autonomous concept of EU law, which must be interpreted in a uniform manner in the territory of the European Union in accordance with the usual meaning of the term in question in everyday language, taking into account the objectives pursued by the legislation of which it forms part and the context in which it is used (see, to that effect, judgment of 7 September 2023, *KRI*, C323/22, EU:C:2023:641, paragraph 46 and the case-law cited).

37 As regards, first, the usual meaning of the term ‘victims’ in everyday language, it must be stated that it may be understood as covering both persons who have themselves been subjected to violent intentional crime, as direct victims, and their close family members where those family members suffer, in turn, the consequences of that crime, as indirect victims.

38 As regards, second, the objective pursued by Article 12(2) of Directive 2004/80, it must be borne in mind that that provision 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, by requiring each Member State to introduce a compensation scheme for victims of any violent intentional crime committed on its territory (see, to that effect, judgment of 11 October 2016, *Commission v Italy*, C601/14, EU:C:2016:759, paragraph 45).

39 Although the Member States have, in principle, the competence to define the scope of the concept of violent intentional crime in their domestic law, that competence does not, however, permit them to limit the scope of the compensation scheme for victims, which the Member States must introduce in accordance with that directive, to only certain violent offences falling within that concept, lest it render redundant Article 12(2) of Directive 2004/80 (see, to that effect, judgment of 11 October 2016, *Commission v Italy*, C601/14, EU:C:2016:759, paragraph 46).

40 It must be held that, if the concept of ‘victims’, within the meaning of Article 12(2) of Directive 2004/80, were to be interpreted, as the Italian Government submits, as including exclusively within the scope *ratione personae* of that provision direct victims of violent intentional crime, the offences constituting such crime which led to the death of the direct victim would fall outside the scope *ratione materiae* of that provision, in disregard of its objective.

41 According to the interpretation of Article 12(2) of Directive 2004/80 advocated by the Italian Government, in the event of homicide, the Member State concerned is not required to pay any compensation under the national scheme on compensation which that provision requires it to establish, since, in such a case, as the only ‘victim’ of the violent intentional crime has died, no other person, such as, *inter alia*, the surviving spouse or the children, should, in principle, be compensated in that same capacity.

42 Such an interpretation would deprive Article 12(2) of Directive 2004/80 of much of its practical effect, since it would require the Member States to establish a national scheme of compensation for violent intentional crime only where the direct victim of that crime survives his or her injuries, but not when that person dies as a result of those injuries.

43 In that regard, it should also be noted that the Proposal for a Council Directive relating to compensation to crime victims (COM(2002) 562 final) (OJ 2003 C 45 E, p. 69), which sought not only to facilitate access to such compensation in situations where the crime was committed in a Member State other than that in which the victim resides, but also to establish minimum standards of compensation for victims of crime, expressly provided, in Article 2(1)(b), in the part of the directive establishing those

minimum standards, for the obligation of Member States to compensate ‘close relatives’ and ‘dependants’ of victims who died as a result of their injuries.

44 Although that clarification does not appear in Directive 2004/80, it is apparent, however, from the *travaux préparatoires* for that directive, in particular the compromise proposal submitted by the Presidency of the Council on 26 March 2004 (Document 7752/04), that this is due solely to the fact that the EU legislature did not follow the proposal relating to that second objective, namely to establish minimum standards on compensation to crime victims. That fact does not therefore in any way mean that the EU legislature wished to exclude entirely from the scope *ratione personae* of that directive the close family members of the person who died because of an act of violent intentional crime and thereby deprive persons who have nevertheless been adversely affected by such an act of all protection.

45 Third, that interpretation is consistent with the context of Article 12(2) of Directive 2004/80.

46 It should be noted that Directive 2012/29, which concerns, inter alia, the protection of victims of crime, defines the concept of ‘victims’ in Article 2(1)(a) as including, in addition to persons who have themselves suffered harm directly caused by a criminal offence, family members of a person whose death was directly caused by that criminal offence and who have suffered harm as a result of that person’s death, the concept of ‘family members’, including, in accordance with Article 2(1)(b), the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim.

47 According to the *travaux préparatoires* relating to Directive 2012/29, as set out in the explanatory memorandum concerning the proposal of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime (COM/2011/275 final, p. 7), that definition of the concept of ‘victims’ is justified by the consideration that family members are also harmed as a result of the crime and, in the event of the death of the victim, are often recognised as representatives of that victim.

48 It must be held that the definition of the concept of ‘victims’ set out in Article 2(1)(a) of Directive 2012/29 clarifies the scope of that concept as it appears in Article 12(2) of Directive 2004/80. As the Commission pointed out on page 3 of the explanatory memorandum cited in the preceding paragraph, Directive 2012/29 is intended to set out the ‘horizontal framework for addressing the needs of all victims of crime’. Since both Directive 2004/80 and Directive 2012/29 concern the protection of victims of crime, they thus have overlapping fields of application, as is apparent from recital 5 of Directive 2004/80.

49 However, at the hearing, the Italian Government argued that recital 5 of Directive 2004/80 refers not to Directive 2012/29, which was adopted after Directive 2004/80, but to Framework Decision 2001/220, which, although replaced by Directive 2012/29, was the act in force when Directive 2004/80 was adopted. According to the Italian Government, Article 1(a) of that framework decision defines the concept of ‘victim’ as referring only to direct victims of a criminal offence. Since Directive 2012/29 was adopted on the basis of Article 82(2) TFEU in accordance with the ordinary legislative procedure by qualified majority, it cannot have the effect of amending Directive 2004/80, which was adopted on the basis of Article 352 TFEU in accordance with the unanimity rule. The reference made in recital 5 of Directive 2004/80 to Framework Decision 2001/220 should therefore be regarded as precluding the taking into account of subsequent legislative developments which have affected that framework decision.

50 First, it must be observed that that line of argument is based on the incorrect premiss that the definition of the concept of ‘victim’ in Article 1(a) of Framework Decision 2001/220 already necessarily excluded indirect victims of a criminal offence. While it is true that that provision required, for a person to be regarded as having the status of ‘victim’ of a criminal offence, that the harm suffered by that person be

directly caused by that offence, it did not in any way require that person to be directly subject to that offence.

51 Second, as the Advocate General stated in point 40 of his Opinion, that line of argument, in so far as it concerns the legal basis of Directive 2012/29, is irrelevant, since, as noted in paragraph 48 above, that directive is intended to lay down the general framework of EU law applicable to victims of crime.

52 To that extent, the definition of 'victim' in Article 2(1)(a) of Directive 2012/29 must be understood as being intended solely to clarify the scope of the definition set out in Article 1(a) of Framework Decision 2001/220, to which Directive 2004/80 referred. That definition does not therefore alter the scope of the concept of 'victim', as set out in Article 12(2) of Directive 2004/80.

53 Nor can the interpretation set out in paragraphs 38 to 48 above be called into question, contrary to what the Italian Government claims, by Article 17 of Directive 2004/80, according to which Member States may introduce or maintain more favourable provisions, not only for 'victims' of crime but also for 'any other persons affected' by those crimes. The latter category should not be understood as necessarily overlapping with the close family members of the person who died as a result of an intentional violent crime, since those close family members are themselves likely to be 'victims' covered by that directive.

54 Article 17 of Directive 2004/80, which forms part of Chapter III of that directive relating to the implementing provisions, thus allows Member States, when implementing their national scheme on compensation for victims of violent intentional crime, to extend the category of beneficiaries of that scheme to persons other than 'victims', within the meaning of Article 12(2) of that directive.

55 It must therefore be held that the concept of 'victims', within the meaning of that provision, for the benefit of whom the Member States must establish, under that provision, a national scheme on compensation, must be understood as being capable of including indirect victims of a violent intentional crime, such as the close family members of the person who died as a result of that crime, where they suffer, indirectly, the consequences of that crime.

56 In those circumstances, it is necessary, in the second place, to examine whether national legislation which, in the event of homicide, makes the right to compensation of the parents of the deceased person as a result of an act constituting violent intentional crime conditional upon the absence of a surviving spouse and children of that victim and that of the siblings of that victim subject to the absence of those parents may be regarded as guaranteeing those victims 'fair and appropriate' compensation within the meaning of Article 12(2) of Directive 2004/80.

57 In that regard, it should be recalled that, having regard, first, to the margin of discretion conferred on the Member States by that provision as regards both the 'fair and appropriate' nature of the amount of compensation to victims of violent intentional crime and the detailed rules for determining such compensation and, second, the need to ensure the financial viability of national compensation schemes, the compensation referred to in that provision need not necessarily correspond to the damages which may be awarded, against the perpetrator of an offence falling within the scope of violent intentional crime, to the victim of that offence. Consequently, that compensation is not necessarily required to ensure the complete reparation of material and non-material loss suffered by that victim (see, to that effect, judgment of 16 July 2020, *Presidenza del Consiglio dei Ministri*, C129/19, EU:C:2020:566, paragraphs 58 to 60).

58 In that context, it is ultimately for the national court to ensure, with regard to the national provisions establishing the compensation scheme concerned, that the sum awarded to a victim of violent intentional crime pursuant to that scheme is 'fair and appropriate compensation', within the meaning of Article 12(2) of Directive 2004/80 (judgment of 16 July 2020, *Presidenza del Consiglio dei Ministri*, C129/19, EU:C:2020:566, paragraph 61).

59 However, a Member State would exceed its discretion under that provision if the national provisions provided compensation to victims of violent intentional crime that was purely symbolic or manifestly insufficient having regard to the seriousness of the consequences, for those victims, of the crime committed (judgment of 16 July 2020, *Presidenza del Consiglio dei Ministri*, C129/19, EU:C:2020:566, paragraph 63).

60 Since the compensation granted to such victims represents a contribution to the reparation of material and non-material losses suffered by them, such a contribution may be regarded as ‘fair and appropriate’ only if it compensates, to an appropriate extent, the suffering to which those victims have been exposed (see, to that effect, judgment of 16 July 2020, *Presidenza del Consiglio dei Ministri*, C129/19, EU:C:2020:566, paragraph 64).

61 Consequently, although that contribution may result from a national scheme providing for fixed rate compensation to victims of violent intentional crime capable of being varied in accordance with the nature of the violence suffered, the compensation scale must nevertheless be sufficiently detailed, so as to avoid the possibility that, having regard to the circumstances of a particular case, the fixed rate of compensation provided for a specific type of violence proves to be manifestly insufficient (see, to that effect, judgment of 16 July 2020, *Presidenza del Consiglio dei Ministri*, C129/19, EU:C:2020:566, paragraphs 65 and 66).

62 Accordingly, in order to be classified as ‘fair and appropriate’, within the meaning of Article 12(2) of Directive 2004/80, a fixed rate of compensation awarded under the national scheme of compensation to victims of violent intentional crime must be fixed taking into account the seriousness of the consequences, for the victims, of the crime committed and therefore represent an appropriate contribution to the reparation of the material and non-material harm suffered (see, to that effect, judgment of 16 July 2020, *Presidenza del Consiglio dei Ministri*, C129/19, EU:C:2020:566, paragraph 69).

63 In the light of those considerations, it must be held that the Member States may, in the exercise of their discretion, decide, as the Italian Republic has done in the present case, to establish a national scheme on compensation for victims of violent intentional crime which limits the benefit of that scheme to the close family members of the deceased, while giving priority, moreover, to some of those family members, such as the surviving spouse and children, over other family members, such as parents and siblings.

64 Such a ‘tiered’ approach corresponds, moreover, to that expressly referred to in Article 2(2) of Directive 2012/29, which allows Member States to establish procedures to limit the number of family members who may benefit from the rights set out in that directive taking into account the individual circumstances of each case.

65 However, a national scheme on compensation for victims of violent intentional crime cannot, in accordance with the logic of succession, automatically exclude certain family members from entitlement to all compensation solely because of the presence of other family members, without it being possible to take into account considerations other than that order of succession, such as, inter alia, the material consequences for those family members of the homicide of the person concerned, or the fact that those family members were the dependants of the deceased person or lived with him or her. Such a national scheme on compensation does not, in breach of the requirements set out in paragraphs 60 and 62 above, take account of the suffering and seriousness of the consequences of the offence for those persons and, therefore, does not adequately contribute to the reparation of the material and non-material damage suffered by them.

66 In particular, depriving certain family members, as a rule, of any compensation must be regarded as irreconcilable with such requirements where, as in the case in the main proceedings, a criminal court has awarded those family members compensation, which is, moreover, not insignificant, for the harm suffered

as a result of the death of the direct victim of the violent intentional crime, but where the perpetrator is unable, on account of his or her insolvency, to pay those damages himself or herself.

67 It follows that, as the Advocate General stated in point 47 of his Opinion, a national scheme on compensation for victims of violent intentional crime, such as that at issue in the main proceedings, under which victims are excluded without any regard for the extent of the harm they have suffered, on account of a predefined order of priority among the various victims who are eligible to be compensated and based solely on the nature of the family ties, from which mere presumptions are drawn regarding the existence or significance of that harm, cannot result in ‘fair and appropriate compensation’ within the meaning of Article 12(2) of Directive 2004/80.

68 Consequently, the answer to the first question referred is that Article 12(2) of Directive 2004/80 must be interpreted as precluding legislation of a Member State which provides for a scheme on compensation for violent intentional crimes that, in the case of homicide, makes the right to compensation of the parents of the deceased person subject to the absence of a surviving spouse and children of that deceased person and the right to compensation of the victim’s siblings subject to the absence of those parents.

### **Costs**

69 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Fifth Chamber) hereby rules:

**Article 12(2) of Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims must be interpreted as precluding legislation of a Member State which provides for a scheme on compensation for violent intentional crimes that, in the case of homicide, makes the right to compensation of the parents of the deceased person subject to the absence of a surviving spouse and children of that deceased person and the right to compensation of the victim’s siblings subject to the absence of those parents.**

[Signatures]

\* Language of the case: Italian.

i The name of the present case is a fictitious name. It does not correspond to the real name of any of the parties to the proceedings.