



According to Advocate General Kokott, the question whether a victim of domestic violence must be able to choose to resume cohabitation immediately with her attacker does not fall within the scope of European Union law

However the opinion of the victim must be able to be taken into consideration in order to vary the duration of an order to stay away laid down by national law

In cases of domestic violence, the Spanish courts are obliged to issue, as one of a number of criminal sanctions, an injunction restraining the perpetrator of the acts of violence from approaching his victim. That injunction is mandatory and must be issued in all cases of domestic violence, even the least serious cases such as verbal threats. That order to stay away, intended to protect the victim, is for a minimum of 6 months. Failure to comply with that order is itself a criminal offence.

Mr Gueye and Mr Salmerón Sánchez were convicted of mistreating their respective partners. They were the subject of injunctions restraining them from approaching the victim or communicating with her for a period of 17 and 16 months respectively. Some days after their conviction, Mr Gueye and Mr Salmerón Sánchez resumed cohabitation with their partners. By reason of the failure to comply with the orders to stay away imposed on them they were both arrested and convicted. Both appealed against their conviction before the Audiencia Provincial de Tarragona (Spain) (Provincial Court, Tarragona, Spain). In those appeals, the partners of the two accused consider themselves to be indirect victims of Spanish legislation. The two women argue that they have voluntarily pursued their relationship with their partner, without being compelled to do so, in the absence of any economic necessity, and that they initiated the resumption of cohabitation.

In that context, the Audiencia Provincial de Tarragona asks essentially whether framework-decision 2001/220/JHA on the standing of victims in criminal proceedings¹ precludes national legislation which, where crimes are committed within the family, prescribe that a mandatory injunction is to be imposed on the perpetrator of the violence prohibiting him from approaching the victim without providing for the possibility to dispense with that injunction after weighing the circumstances of the case and, in particular, the victim's wish to resume her relationship with the perpetrator.

In her Opinion today, Advocate General Kokott recognises, first of all, that a mandatory injunction of that kind is at the crossroads of the requirement of effective public action against domestic violence and the victim's right to respect for her private and family life. Nonetheless, she takes the view that that difficult question of balancing the various interests does not fall within the scope of Framework Decision 2001/220.

In that connection, Ms Kokott states that **Framework Decision 2001/220 does not govern in a general manner all of the aspects of the protection of victims, but those relating to procedural guarantees in criminal proceedings** (such as the hearing, the provision of evidence, the right to receive information, etc).

¹ 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 Advocate General takes the view that **the form and duration of the penalties that the Member States may provide for in domestic violence cases is not covered by procedural guarantees or therefore the Framework Decision**. Consequently, the Advocate General concludes that the appropriateness of a penalty such as the automatic injunction under Spanish law cannot be examined in the light of Framework Decision 2001/220.

Second, the Advocate General examines the extent of the victim's right to be heard recognised by the Framework-Decision and the effects of such a right on the penalty to be adopted against the perpetrator of the crime.

In that connection, Ms Kokott states that the victim's right to be heard by the courts requires the Member States to give her the opportunity to express her opinion as to the imposition of an order to stay away where the victim maintains a close personal relationship with the perpetrator and where such an order thus produces indirect effects on her private and family life. In order to guarantee the effectiveness of the right to be heard, the Advocate General takes the view that it must be possible for the court to take account of the victim's statement in order to determine the sanction, while respecting the minimum and maximum thresholds for the penalty laid down by national law. However, that requirement does not mean that the determination of the penalty should be subject to the victim's discretion or that the court with jurisdiction should be bound by the latter's assessment.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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