

Case C-129/19

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

19 February 2019

Referring court:

Corte suprema di cassazione (Italy)

Date of the decision to refer:

29 January 2019

Appellant:

Presidenza del Consiglio dei Ministri

Respondent:

BV

Subject matter of the main proceedings

Appeal brought by the Presidenza del Consiglio dei Ministri (Office of the Italian Prime Minister) against the judgment of the Corte di appello di Torino (Appeal Court, Turin) by which the latter upheld almost in its entirety the decision at first instance of the Tribunale di Torino (District Court, Turin), which granted an Italian citizen resident in Italy, who had been the victim of a violent intentional crime, the right to compensation from the Italian State for the damage caused by its failure to implement Directive 2004/80/EC in the national legal system.

Subject matter and legal basis of the request

The request for a preliminary ruling, made pursuant to Article 267 TFEU, relates to the failure to fulfil the obligation to implement Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (hereinafter: ‘the directive’), with particular reference to Article 12(2) thereof.

Questions referred

The Court of Justice of the European Union is requested to rule [in the specific circumstances in the main proceedings concerning an action for damages, brought by an Italian citizen ordinarily resident in Italy, against the legislator State on grounds of non-fulfilment and/or incorrect fulfilment and/or incomplete fulfilment of the obligations laid down in Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, and, in particular, the obligation, set out in Article 12(2) thereof, on the Member States to introduce, by 1 July 2005 (as laid down in the subsequent Article 18(1)) a general scheme of compensatory protection capable of guaranteeing fair and appropriate compensation to the victims of any violent and intentional crimes (including the crime of sexual violence of which the party concerned was victim), in cases where such victims are unable to obtain, from those directly responsible, full compensation for the damaged sustained] on the following questions:

- (a) In relation to the situation of late (and/or incomplete) implementation in the national legal system of Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, which is non-self-executing as regards the establishment, required by it, of a scheme for compensation for the victims of violent crimes, which gives rise, in relation to cross-border persons, who are the sole addressees of the directive, to a liability on the part of the Member State to pay compensation in accordance with the principles set out in the case-law of the Court of Justice (inter alia the judgments in *Francovich* and *Brasserie du Pêcheur and Factortame III*), does [EU] law require that a similar liability be imposed on the Member State in relation to non-cross-border (and thus resident) persons, who are not the direct addressees of the benefits deriving from implementation of the directive but who, in order to avoid infringement of the principle of equal treatment/non-discrimination in that [EU] law, should have and could have — if the directive had been implemented in full and in good time — benefited, by extension, from the *effet utile* of that directive (that is to say, the abovementioned compensation scheme)?

- If the answer to the preceding question is in the affirmative:

- (b) Can the compensation established for the victims of violent intentional crimes (and in particular the crime of sexual violence referred to in Article 609-*bis* of the Italian Criminal Code) by the Decree of the Minister for the Interior of 31 August 2017 [issued pursuant to Article 11(3) of Law No 122 of 7 July 2016 on provisions to comply with the obligations arising from Italy's membership of the European Union — European Law 2015-2016)), with subsequent amendments (referred to in Article 6 of Law No 167 of 20 November 2017 and Article 1(593) to (596) of Law No 145 of 30 December 2018)] in the fixed amount of EUR 4 800 be regarded as 'fair and appropriate

compensation to victims' within the meaning of Article 12(2) of Directive 2004/80?

Provisions of EU law cited

Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (in particular recitals 2, 6 and 14 and Articles 12 and 18)

Article 18 TEU

Articles 20, 21 and 51 of the Charter of Fundamental Rights of the European Union

Provisions of national law cited

Article 609-bis of the Criminal Code — Sexual violence

Legge 7 luglio 2016, n. 122 *Disposizioni per l'adempimento degli obblighi derivanti dall'appartenenza dell'Italia all'Unione europea — Legge europea 2015-2016*, which entered into force on 23 July 2016, as amended, first, by Article 6 of legge 20 novembre 2017, n. 167 *Disposizioni per l'adempimento degli obblighi derivanti dall'appartenenza dell'Italia all'Unione europea — Legge europea 2017* (Law No 167 of 20 November 2017 on provisions to comply with the obligations arising from Italy's membership of the European Union Law — European Law 2017) and, most recently, by Article 1(593) to (596) of legge 30 dicembre 2018, n. 145 *Bilancio di previsione dello Stato per l'anno finanziario 2019 e bilancio pluriennale per il triennio 2019-2021* (Law No 145 of 30 December 2018 on the estimated State budget for the financial year 2019 and the multi-annual budget for the three-year period 2019-2021). In particular:

- Article 11, paragraph 1 of which provides for 'the right to compensation from the State for a victim of an intentional offence committed with violence to the person and in any event the crime referred to in Article 603-bis of the Criminal Code, with the exception of the crimes referred to in Articles 581 and 582, save where aggravated circumstances provided for in Article 583 of the Criminal Code arise'. Under paragraph 2, compensation for the offences of murder, sexual violence or grave personal injury is to be paid to the victim or, in the event of the victim's death as a result of the crime, the persons so entitled, to the extent determined by the ministerial decree referred to in Article 11(3). In respect of offences other than those mentioned above, compensation is to be paid instead for reimbursement of medical and care costs.

Decree of the Minister for the Interior of 31 of August 2017 determining the amounts of compensation to the victims of intentional violent crimes. This decree determines the amounts of compensation to the victims of intentional violence crimes as follows: '(a) as regards the crime of murder, in the fixed amount of

EUR 7 200, and, in the case of murder committed by a spouse, including one who is separated or divorced, or by a person who is, or was, linked by emotional ties to the injured party, in the fixed amount of EUR 8 200 exclusively for the victim's children; (b) as regards the crime of sexual violence referred to in Article 609-bis of the Criminal Code, except where the attenuating circumstance of lesser gravity raises, in the fixed amount of EUR 4 800; (c) as regards crimes other than those referred to in subparagraphs (a) and (b), up to a maximum of EUR 3 000 by way of reimbursement for medical and care costs' (Article 1).

Article 1218 of the Civil Code: 'Any party who does not properly discharge his obligations is required to make good any consequent loss unless he can show that his failure to do so was due to *force majeure*.'

Succinct presentation of the facts and the main proceedings

- 1 In October 2005 a female Italian national, of Romanian origin, ordinarily resident in Italy (hereinafter: 'BV') was the victim in Turin of a violent intentional crime (sexual violence) committed by two male Romanian nationals. For that crime the latter were sentenced finally in criminal proceedings to ten years and six months' imprisonment and ordered to pay compensation for the harm occasioned, to be paid in separate proceedings, with an award to BV of an immediately enforceable interim payment of EUR 50 000.00. However, the victim was unable to obtain that amount since the perpetrators of the crime absconded.
- 2 In February 2009 BV brought an action before Tribunale di Torino against the Presidenza del Consiglio dei Ministri (hereinafter: 'the PCM') seeking a declaration that it bears civil liability for non-fulfilment and/or incorrect fulfilment and/or incomplete fulfilment of the obligations laid down in Directive 2004/80.
- 3 The PCM contended that the action should be dismissed on the following grounds: Directive 2004/80/EC relates solely to cross-border situations; Article 12(2) has an indeterminate content such as to leave to the national legislature both the choice of the individual crimes with which to link the compensation laid down therein and the determination of the fairness of the sum to be paid to the victim; Italy already provides for a similar compensation scheme for the victims of violent intentional crimes, albeit limited to particular cases such as, inter alia, terrorism-related and mafia-type crimes, and in relation to the crimes of usury and extortion.
- 4 By judgment of 26 May 2010, the Tribunale di Torino found, as to the substance, that the PCM had failed to fulfil its obligations by not implementing Directive 2004/80 and ordered it to pay to BV the sum of EUR 90 000.00.
- 5 The PCM lodged an appeal against that judgment before the Corte di appello di Torino. By a judgment published on 23 January 2012, the Corte di appello confirmed that the Italian State had failed to fulfil its obligations by not complying with the obligation laid down in Article 12(2) of Directive 2004/80. The Corte di

appello accordingly allowed only in part the appeal brought by the PCM and merely reduced the sum due to BV to EUR 50 000.

- 6 The PCM appealed on a point of law against the judgment of the Corte di appello di Torino. The proceedings before the Corte di Cassazione (Court of Cassation) were stayed pending a ruling by the Court of Justice of the European (hereinafter: 'the Court of Justice') on the infringement proceedings brought by the European Commission on 22 December 2014 against the Italian Republic (Case C-601/14), and the reference for a preliminary ruling from the Tribunale di Roma (District Court, Rome), by an order made on 24 March 2015, on the interpretation of Article 12(2) of that directive.
- 7 Proceedings have been resumed following the completion of those two sets of proceedings (the first by judgment of the Grand Chamber of 11 October 2016 in C-601/14; the second by presidential order of 28 February 2017 following the abandonment of the reference for a preliminary ruling by the referring court).

Essential arguments of the parties to the main proceedings

- 8 The PCM contends that the legal conditions for imposing liability on the State for the damage caused by the transposition of Directive 2004/80 into domestic law are not satisfied. More specifically, the PCM contends that the directive, and in particular Article 12, is not a source of rights on which residents may rely directly vis-à-vis the home State since the directive can relate only to 'cross-border situations' as it is designed to ensure that, where a violent intentional crime is committed in a Member State other than that of the victim's residence, he or she has access to the compensation procedures laid down in the place where the offence is committed. The PCM further contends that the amount of compensation awarded to BV is excessive.
- 9 As regards the settlements made by other courts ruling on the substance which have accepted, in respect of the Italian State, the claim for compensation for the damage caused by the failure to implement Directive 2004/80 in cases of victims of the crime of sexual violence, BV recalls the orders for payment of the amount of EUR 70 000 and EUR 150 000 upheld by Corte di appello di Milano (Court of Appeal, Milan) by judgment No 1653 of 18 April 2017.

Succinct presentation of the grounds for the request for a preliminary ruling

First question referred

- 10 The Corte di Cassazione holds that, according to the settled case-law of the Court of Justice, the principle of the non-contractual liability of a State for damage caused to individuals by breaches of EU law for which the State can be held responsible is inherent in the EU legal order and individuals harmed have a right to compensation on the basis of that liability, provided that three conditions are

met, namely (1) that the rule of EU law infringed is intended to confer rights on individuals, (2) that the breach of that rule is sufficiently serious, and (3) that there is a direct causal link between the breach of the obligation on the State and the damage sustained by the individuals.

- 11 The Corte di Cassazione considers that, for the purposes of the question referred for a preliminary ruling under (a) above, it is necessary to address in particular the first of those conditions. There is no doubt that the other two conditions are met in the present case since the Court of Justice declared (in its judgment in C-601/14) that the Italian State had failed to fulfil its obligations under Article 2004/80 and because the damage, complained of by BV, resulting from the late and/or incomplete fulfilment of that obligation is causally related to that failure.
- 12 The Corte di Cassazione points that out that the Court of Justice, in its judgment in C-601/14, ruled 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’.
- 13 It did so on the premise, clarified as a result of the interpretation provided by the Court of Justice regarding the overall scope of Directive 2004/80 (see paragraphs 36 to 44 of the judgment of 11 October 2016 in Case C-601/14), that Article 12(2) 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’ (paragraph 45).
- 14 In response to the objection raised by the Italian Republic as to the restricted scope of the obligations arising from Directive 2004/80 (paragraph 48), the judgment in C-601/14 pointed out that, although the Court of Justice had ‘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’ (paragraph 49), in so doing it ‘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’ (paragraph 49; see also paragraph 50).
- 15 The Corte di Cassazione takes the view that the judgment in C-601/14 is in line with previous judgments of the Court of Justice which have always understood Directive 2004/80 as being intended to govern only ‘cross-border situations’ (see

judgment of 28 June 2007, *Dell'Orto*, C-467/05, EU:C:2007:395, paragraphs 57 and 59, and of 12 July 2012, *Giovanardi*, C-79/11, EU:C:2012:448, paragraph 37; and order of 30 January 2014, *Paola C.*, C-122/13, EU:C:2014:59, paragraphs 12 and 13).

- 16 Therefore, fulfilment by the Italian State of the obligation to set up a scheme on compensation to victims of 'any' violent intentional crimes (and thus also that of sexual violence) committed in its territory must be regarded, on the basis of Directive 2004/80 alone, as intended to govern 'cross-border situations' and not 'purely domestic situations'. Therefore, it follows that Article 12(2) of Directive 2004/80, as infringed by the Italian State, is such as to constitute an immediate and direct condition for access to compensation for damages as a result of the liability of the legislator State only with regard to 'cross-border situations' and thus not immediately and directly to the victims of violent intentional crimes who are ordinarily resident in the Italian State.
- 17 The question set out under (a) above is therefore relevant since an answer in the negative would have repercussions as to the very existence of the right to compensation claimed by BV.
- 18 The question referred also remains relevant even in the light of the recent introduction of Law No 122 of 7 July 2016, which, precisely as a result of the infringement proceedings, laid down 'the right to compensation in the case of sexual violence' and the effect of which was made retroactive by Law No 167 of 2017 and thus also applicable to violent intentional crimes committed 'after 30 June 2005 and prior to the entry into force of that law', with reopening of the time-limits for submitting an application for compensation under Law No 145 of 2018.
- 19 However, although BV can be a beneficiary of the effects of Law No 122 of 2016, the question referred is relevant since BV invokes the right to compensation for damage resulting from the failure by the State to fulfil its obligation to transpose EU law in good time and not the entitlement to obtain, under national law, the compensation now established as a result of the abovementioned law.
- 20 In particular, there is an action for damages against the legislator State on grounds of a breach of the EU-law principles of equal treatment and/or non-discrimination as a result of late and/or incorrect and/or incomplete fulfilment of the obligations laid down in Directive 2004/80.
- 21 In that regard, the Corte di Cassazione recalls the established case-law of the Court of Justice on fundamental rights (judgment of 12 December 2002, *Caballero*, C-442/00, EU:C:2002:752, paragraph 30) which 'include the general principle of equality and non-discrimination' (C-442/00, paragraph 30; judgment of 7 September 2006, *Cordero Alonso* C-81/05, EU:C:2006:529, paragraph 45; order of 16 January 2008, *Molinari and Others*, C-128/07 to C-131/07, EU:C:2008:15, paragraph 24).

- 22 The principle of equality is expressly stated in the Charter of Fundamental Rights of the European Union (hereinafter: ‘the Charter’), in Article 20 thereof. The principle of non-discrimination of grounds of nationality is to be found in Article 18 T[FEU] (ex Article 12 TEC) and Article 21(2) of the Charter.
- 23 The Corte di Cassazione recalls the legal value of the Charter and its application (judgment of 22 December 2010, *DEB*, C-279/09, EU:C:2010:811, paragraph 30; judgment of 15 November 2011, *Murat Dereci*, C-256/11, EU:C:2011:734, paragraph 71) and notes that the obligation to respect fundamental rights defined in the context of the European Union is binding upon the Member States only in respect of matters covered by EU law, whilst the concept of ‘implementing Union law’, as referred to in Article 51 of the Charter, requires a certain degree of connection (judgment of 29 May 1997, *Kremzow*, C-299/95, EU:C:1997:254, paragraph 16; judgment of 6 March 2014, *Siragusa*, C-206/13, EU:C:2014:126, paragraphs 24 and 25).
- 24 The existence of a link or connection with EU law was regarded as necessary also in the context of an action seeking to establish non-contractual liability brought against a Member State on grounds of an alleged breach of EU law, on the premise that a national of that Member State may derive rights from the fundamental freedoms provided for in Articles 49, 56 or 63 TFEU (judgment of 15 November 2016, *Ullens de Schooten*, C-268/15, EU:C:2016:874, paragraphs 52 and 53).
- 25 In that judgment the Court of Justice recalled that: ‘the interpretation of the fundamental freedoms provided for in Article 49, 56 or 63 TFEU may prove to be relevant in a case confined in all respects within a single Member State where national law requires the referring court to grant the same rights to a national of its own Member State as those which a national of another Member State in the same situation would derive from EU law’ (paragraph 52) and that ‘[t]he same applies in cases in which, although the facts of the main proceedings are outside the direct scope of EU law, the provisions of EU law have been made applicable by national legislation, which, in dealing with situations confined in all respects within a single Member State, follows the same approach as that provided for by EU law’ (paragraph 53 and judgments of 20 September 2018, *Fremoluc NV*, C-343/17, EU:C:2018:754, paragraphs 20 to 24; of 7 November 2018, *K and B*, C-380/17, EU:C:2018:877, paragraph 34; and of 7 November 2018, *C and A*, C-257/17, EU:C:2018:876, paragraph 31).
- 26 In the case here under consideration, as established by the Court of Justice in its judgment in C-601/14, the Italian State was obliged to comply with EU law which required it to fulfil, by a certain time-limit, its obligation to introduce a general compensation scheme for the victims of violent intentional crimes committed in its territory.
- 27 Although it serves immediately and directly to govern cross-border situations, to promote freedom of movement of residents in other Member States, that

obligation was nevertheless imposed in such terms as to render the general compensation scheme necessarily also applicable to persons ordinarily resident in the Italian State.

- 28 The Corte di Cassazione takes the view that such extension of effects, of an indirect nature for the purposes of Article 12(2) of Directive 2004/80 alone, could be imposed on the Italian State, immediately and directly, on the basis of the general principle of equality (in itself) and/or the principle of non-discrimination on grounds of nationality, as fundamental rights of the European Union (Articles 18 T[F]EU, and 20 and 21 of the Charter), in so far as, precisely on the basis of these principles/rights, that State could not have implemented the directive in a timely manner in such a way as to make the compensation scheme applicable to cross-border situations alone, thereby treating nationals ordinarily resident in its territory in an unjustifiably discriminatory manner.
- 29 Referring to the judgment of 2 February 1989 in *Cowan*, 186/87, EU:C:1989:47, (paragraph 19), the Corte di Cassazione considers that the Court of Justice appears to attribute an independent and specific value to the right of equal treatment (in the present case related to the principle of non-discrimination on grounds of nationality) compared with the value attributed to the fundamental freedoms of the Treaty (and, among them, freedom of movement which is relevant in the case under consideration here).
- 30 In this regard, the general principle of equality, which is an expression of the constitutional traditions of the Member States, forms the backbone of that EU law.
- 31 Therefore, the principles of equality and/or non-discrimination on grounds of nationality, as fundamental rights of the European Union, create the necessary connection between the abovementioned 'purely domestic situations' and EU law.
- 32 By virtue of that connection and on account of the combination of the infringement of the fundamental freedoms of the European Union referred to in Articles 18 T[F]EU and 20 and 21(2) of the Charter and the established failure of the Italian State to fulfil timeously its obligation under Article 12(2) of the directive, the Corte di Cassazione considers that it must refer to the Court of Justice for a preliminary ruling the question set out under (a) above.

Second question referred

- 33 If the answer to the first question is in the affirmative, the possibility that the Italian State is liable for a breach of EU law also makes relevant the question set out under (b).
- 34 According to the case-law of the Court of Justice, the loss or damage sustained can also be the subject of compensation in a specific form, by full compliance by the national legislature with the provisions of EU law with retroactive effect, where this is sufficient to remedy the harmful consequences of the breach of EU

law, subject to proof of any greater loss or damage sustained on account of the fact that it was not possible to benefit at the appropriate time from the advantages guaranteed by that law (judgment of 10 July 1997 in *Maso and Others*, C-373/95, EU:C:1997:353, paragraphs 39 to 42).

- 35 The basic criterion for the assessment and settlement of the loss or damage sustained by the person harmed by the State's failure to fulfil its obligation by implementing Directive 2004/80 is the amount of the compensation to which he or she, as the victim of the violent intentional crime, would have originally been entitled.
- 36 EU law provides that the compensation is to be fair and appropriate (see, to that effect, recital 6 and Article 12(2) of Directive 2004/80; see also the Opinion of the Advocate General in Case C-601/14, points 86 and 87).
- 37 Therefore, the interpretation referred to the Court of Justice on the 'fairness' and 'appropriateness' of the compensation referred to in Directive 2004/80 is relevant for the purpose of examining the legal correctness of the criteria used by the court ruling on the substance in settling the damage complained of by BV.
- 38 The Corte di Cassazione recalls that the Decree of the Minister for the Interior of 31 August 2017, issued pursuant to Article 11(3) of Law No 122 of 2016, establishes, in respect of the crime of sexual violence, compensation in the fixed amount of EUR 4 800. That compensation is borne by a common fund designed also to compensate victims of mafia-type crimes, extortion and usury.
- 39 More generally and, in any event, in the absence of any immediate specific information in Directive 2004/80, the Corte di Cassazione considers that it is possible to adopt general guidelines on the criteria of the fairness and appropriateness of the compensation.
- 40 The criterion of fairness appears to be aimed at ensuring that the compensation (and thus the size of the amount thereof) takes account primarily of the inherent seriousness of the crime of sexual violence, by placing the victims, by reason of their equal dignity, in a situation which results in equal treatment. This seriousness of the crime has, moreover, been recognised by the national legislature in the context of the provisions of Law No 122 of 2016, where it sought to favour, as regards access to the above common fund, precisely the 'victims of the crime of sexual violence' together with the victims of 'murder' (Article 11(3)).
- 41 The criterion of appropriateness, on the other hand, appears to require that the compensation be personalised, having regard to the relevant subjective and objective circumstances of the crime.
- 42 In that context, the Corte di Cassazione considers it relevant to take into consideration various cases of compensation borne by the abovementioned common fund. Law No 302 of 1990, for example, provided for payment of compensation 'up to EUR 200 000, in proportion to the percentage of disablement

established' to persons permanently disabled as a result of terrorist acts or organised crime.

- 43 It goes on to refer to its own case-law on the criteria which are to guide courts ruling on the substance when settling compensation, in civil proceedings, for the damage resulting from the crime of sexual violence. These criteria were identified in the intensity of the violation of the moral and physical freedom in the sexual sphere, the mental distress caused and the consequences at an individual psychological level and in terms of relationships between people, the effects over time, and the impact of the crime on the victim's personality. Purely by way of a guide, in recent cases the settlements of the courts ruling on the substance of damage arising from the crime of sexual violence have varied from an amount of EUR 10 000 (to a minor, but limited to non-material damage) to an amount of EUR 200 000 (to a minor). For a case of attempted sexual violence against an adult the amount of EUR 15 000 has been paid.
- 44 The Corte di Cassazione is aware that, unlike the level on which the legislature's broad discretion in setting up the compensation scheme referred to in Directive 2004/80 operates, the level of compensation for personal injury complies with the principle of full reparation for the harmful consequences sustained by the victim of the illegal act.
- 45 However, since the legislative discretion, although broad, must in any event necessarily be guided by the criteria of fairness and appropriateness laid down by Article 12(2) of Directive 2004/80, the Corte di cassazione considers that there must be a basic correspondence, as regards the quantum of the compensation, between those criteria and those, highlighted above, which guide the fair settlement of the non-material damage arising from the crime of sexual violence, even though it is not possible then to establish the necessary correlation between the amount owed by the person responsible for the offence and the amount paid to the victim by the State.
- 46 On the one hand, the Corte di Cassazione considers that, in shaping the compensation which can be awarded under the abovementioned laws, the Italian legislature adopted, as a guidance for settlement, criteria which are fair (in fixing amounts on the basis of the seriousness of the violent crimes for which compensation is paid) and appropriate (in focussing on a settlement based also on the specific circumstances of the crime).

On the other hand, as regards the Italian law referred to under (b) above, there is doubt as to whether or not the amount of EUR 4 800 in compensation laid down therein, because it is payment of a fixed amount (and, thus evidently 'not appropriate') and negligible (and thus a payment which is 'not fair'), runs counter to the requirements of Article 12(2) of Directive 2004/80.