

OPINION OF ADVOCATE GENERAL

KOKOTT

delivered on 8 March 2007<sup>1</sup>

**I — Introduction**

the referring court relies on the Directive, which does not contain any definition of victims.

**II — Legal framework**

1. In the present case, it is necessary to clarify whether Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings<sup>2</sup> in conjunction with Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims<sup>3</sup> requires funds embezzled from a public limited company which has suffered harm to be repaid in criminal proceedings. In particular, the question arises whether, contrary to the definition contained in Article 1(a), the concept of victim in the Framework Decision not only covers natural persons but should be extended to legal persons. In this respect

*A — The law of the European Union and of the European Communities*

2. Under Article 1(a) of Framework Decision 2001/220, victim means ‘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’.

1 — Original language: German.

2 — OJ 2001 L 82, p. 1.

3 — OJ 2004 L 261, p. 15 (language versions for the EU-15).

3. Article 2(1) describes in general terms how the interests of victims are to be taken into consideration:

‘Each Member State shall ensure that victims have a real and appropriate role in its criminal legal system. It shall continue to make every effort to ensure that victims are treated with due respect for the dignity of the individual during proceedings and shall recognise the rights and legitimate interests of victims with particular reference to criminal proceedings.’

4. Article 9 of the Framework Decision concerns the right to compensation in the course of criminal proceedings:

‘1. Each Member State shall ensure that victims of criminal acts are entitled to obtain a decision within reasonable time-limits on compensation by the offender in the course of criminal proceedings, except where, in certain cases, national law provides for compensation to be awarded in another manner.

2. ...

3. Unless urgently required for the purpose of criminal proceedings, recoverable property belonging to victims which is seized in the course of criminal proceedings shall be returned to them without delay.’

5. The seventh recital in the preamble to the Framework Decision explains the relationship to civil procedure:

‘Measures to assist victims of crime, and in particular the provisions regarding compensation and mediation, do not concern arrangements under civil procedure.’

6. Directive 2004/80 concerns compensation granted by the State to crime victims. It contains rules to facilitate compensation in cross-border situations. The main basic principles are laid down in the first two articles:

#### *‘Article 1*

Right to submit an application in the Member State of residence

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.

8. Article 12 of Directive 2004/80 provides in this regard:

## *Article 2*

Responsibility for paying compensation

'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.

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

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. In contrast to the original Commission proposal, no attempt was made to harmonise the rules on compensation. However, the sixth recital states:

'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 Community the crime was committed.'

9. Article 17(a) states that the Member States may, independently of the Directive, introduce or maintain more favourable provisions for the benefit of victims of crime or any other persons affected by crime, in so far as such provisions are compatible with the Directive.

**B — Italian law**

10. Italy does not appear to have expressly transposed the definition of victim under Article 1(a) of Framework Decision 2001/220.

11. Article 262 and Article 263 of the Italian Codice di procedura penale (Code of Criminal Procedure) govern the return of goods seized in criminal proceedings. The decision on return falls within the jurisdiction of the criminal court in principle. If, however, ownership is disputed, it must refer the dispute to the competent civil court.

12. In addition, provision is made in Article 74 et seq. and Article 538 et seq. of the Italian Codice di procedura penale for decisions on claims for damages by victims in the course of criminal proceedings.

**III — Facts of the case and questions referred for a preliminary ruling**

13. By a suspended sentence delivered in a judgment of 4 May 1999 based on a settlement with the public prosecutor's

office, a term of imprisonment of 18 months and a fine were imposed on Giovanni Dell'Orto and other defendants for the offences of giving false company information made with the intention, inter alia, of committing the offences of aggravated embezzlement and unlawful financing of political parties to the detriment of Saipem SpA. That judgment is now final.

14. While the preliminary investigations were still in progress, Mr Dell'Orto transferred a sum of EUR 1 064 069.78 which, according to the referring court, is part of the embezzled amount and is still the property of Saipem, from a foreign account to Italy. The Italian account was placed under protective sequestration.

15. In the judgment no order was made as regards the sequestered sum. Subsequently, on application by Saipem, an order of 3 December 1999 required that sum to be returned to it. That order was executed on 10 December 1999 when the amount in that current account was withdrawn and the account was closed.

16. The referring court does not make clear which court convicted Mr Dell'Orto or ruled on the return of the sequestered money, but

in both cases it appears to have been the referring court itself.

17. On 8 November 2001 the Corte di cassazione (Court of Cassation) set aside that order. The restitution of the money was not covered in the settlement with the public prosecutor's office. No order on restitution could therefore be made in the criminal proceedings.

18. Following further interlocutory decisions, the referring court, as the court responsible for enforcement, must now decide on further measures to be taken in respect of the contested sum of money. In order to prepare that decision, it asks the Court of Justice the following questions:

apply in criminal proceedings for enforcement following a judgment which resulted in a final criminal conviction (and thus also following a judgment applying a penalty as provided for in [a settlement with the public prosecutor's office])<sup>4</sup> to any party affected by crime, by virtue of Article 1 et seq. of Directive 2004/80?

19. Mr Dell'Orto, Ireland, Italy, the Netherlands, Austria, the United Kingdom and the Commission took part in the proceedings.

#### IV — Assessment

'(1) Can the rules referred to in Articles 2 and 9 of Framework Decision 2001/220/JHA apply in criminal proceedings, in general, to any party affected by crime, by virtue of Article 1 et seq. of Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims or of other provisions of Community law?

20. The referring court requests an interpretation of Framework Decision 2001/220 in the light of Directive 2004/80. In accordance with the Court's findings in *Pupino* on the principle of the conformity of interpretation in relation to framework decisions, it wishes to interpret national law so far as possible in the light of the wording and purpose of the Framework Decision in order

(2) Can the rules referred to in Articles 2 and 9 of Framework Decision 2001/220

4 — My addition.

to attain the result which it pursues and thus comply with Article 34(2)(b) EU.<sup>5</sup> In the main action it clearly expects to be required by the Framework Decision to give a ruling on the return of the seized money to Saipem.

22. As Ireland argued in the oral procedure, it is obviously not possible on the pretext of referring questions on Community law under Article 234 EC actually to submit to the Court of Justice questions on the interpretation of Union law which are admissible only subject to the additional conditions laid down in Article 35 EU. Nevertheless, the extent to which a reference on Community law may relate to Union law in respect of the mutual influence of both legal orders, which is still to be addressed, could raise practically difficult questions of definition. These do not have to be decided here, however.

*A — The admissibility of the reference for a preliminary ruling*

21. The United Kingdom considers the reference for a preliminary ruling to be inadmissible. The referring court relies on Article 234 EC, but requests an interpretation of provisions of a framework decision, a legal act under Article 34(2)(b) EU. However, a reference for a preliminary ruling on the interpretation of Union law can only be made in accordance with Article 35(1) EU. Ireland takes a similar view, but considers that the error committed by the referring court can be rectified because such a reference would be admissible under Article 35 EU.

23. The United Kingdom's argument that the present reference for a preliminary ruling is inadmissible is not convincing in any case. As the Court has found, under Article 46(b) EU the provisions of the EC, ECSC and EAEC Treaties concerning the powers of the Court of Justice and the exercise of those powers, including the provisions of Article 234 EC, apply to the provisions of Title VI of the Treaty on European Union under the conditions laid down by Article 35 EU. It follows that the system under Article 234 EC is capable of being applied to the Court's

<sup>5</sup> — Case C-105/03 *Pupino* [2005] ECR I-5285, paragraph 43. It should be noted in relation to the Court's finding that in the German and English translations of the judgment the terms 'interpretation conforming to the directive', which are not relevant to framework decisions, were wrongly used at first. This translation error has now been corrected.

jurisdiction to give preliminary rulings by virtue of Article 35 EU, subject to the conditions laid down by that provision.<sup>6</sup>

with the rules laid down in paragraph 3(b) of that article.<sup>7</sup>

24. Therefore references concerning Union law — under Article 35 EU — are in principle requests within the meaning of Article 234 EC. The admissibility of a request cannot depend on the extent to which the national court refers expressly to those provisions. Rather it is contingent on compliance with the relevant requirements under Article 35 EU in particular in the case of questions on Union law.

26. Furthermore, the relevance of the reference for a preliminary ruling to the national court's decision is challenged by various governments.

25. The most important condition under Article 35 EU, in the view of the United Kingdom and Ireland in particular, is probably that the Member State in question must accept the jurisdiction of the Court of Justice to give preliminary rulings on Union law. Neither Member State has made any declaration to that effect. As Ireland also acknowledges, however, it is beyond doubt in the present case that the referring court has the power to make a reference. Italy indicated by a declaration which took effect on 1 May 1999, the date on which the Treaty of Amsterdam came into force, that it accepted the jurisdiction of the Court of Justice to rule on the validity and interpretation of the acts referred to in Article 35 EU in accordance

27. With regard to the need for relevance to the decision, the Court has held, applying the case-law on Article 234 EC to Article 35 EU, that the presumption that questions referred by national courts for a preliminary ruling are relevant may be rebutted only in exceptional cases, where it is quite obvious that the interpretation of Union law sought bears no relation to the actual facts of the main action or to its purpose, or where the problem is hypothetical or the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted. Save for such cases, the Court is, in principle, required to give a ruling on questions concerning the interpretation of the acts referred to in Article 35(1) EU.<sup>8</sup>

6 — *Pupino* (cited in footnote 5), paragraph 19. See also Case C-354/04 *P Gestoras Pro Amnistía and Others v Council* [2007] ECR I-1579, paragraph 54, and Case C-355/04 *P Segi and Others v Council* [2007] ECR I-1657, paragraph 54.

7 — Information concerning the date of entry into force of the Treaty of Amsterdam (OJ 1999 L 114, p. 56).

8 — *Pupino* (cited in footnote 5), paragraph 29 et seq., with further references to the case-law under Article 234 EC.

28. The Netherlands Government contends that the reference for a preliminary ruling does not contain any material to indicate which provisions of Italian law are to be interpreted in conformity with the Framework Decision. Since the Framework Decision cannot be applied directly, such material is necessary.

29. According to settled case-law, an interpretation of Community law which will be of use to the national court is possible only if in the order making the reference the national court defines the factual and legal context of the questions it is asking or, at the very least, explains the factual circumstances on which those questions are based. The information must not least give the governments of the Member States and other interested parties the opportunity to submit observations pursuant to Article 23 of the Statute of the Court of Justice. In that connection it must be borne in mind that only the decisions making references are notified to the interested parties.<sup>9</sup>

30. Consequently, the referring court must define the legal context in so far as is necessary for a useful answer to the question submitted. On the other hand, it is not required to show that a desired conforming interpretation is actually possible. In *Pupino* the Court held that mere doubts as to the

possibility of an interpretation of national law in conformity with the Framework Decision do not result in the inadmissibility of the request, but that interpretation must be obviously impossible. Where this is not obvious, it is for the national court to determine whether, in this case, a conforming interpretation of national law is possible.<sup>10</sup> This position is also logical because it is not for the Court of Justice to interpret national law — including interpreting in conformity with Union law or Community law — in the context of a reference for a preliminary ruling.

31. It might therefore have been helpful to learn more about the provisions which the referring court wishes to interpret in conformity with the Framework Decision,<sup>11</sup> but the lack of relevant material does not prevent a useful answer being given to the questions submitted.

32. The Austrian Government goes even a step further than the Netherlands Government, arguing that under Italian law a ruling may not be given on a victim's claims under civil law in criminal proceedings for enforcement. The reference for a preliminary ruling is therefore hypothetical. However, that

9 — Case C-217/05 *Confederación Española de Empresarios de Estaciones de Servicio* [2006] ECR I-11987, paragraphs 26 to 28, and my Opinion in the same case, point 33, each with further references.

10 — *Pupino* (cited in footnote 5), paragraph 48.

11 — See point 79 below.



argument does not hold either because it does not give any grounds for obvious doubts as to the possibility of an interpretation of national law in conformity with the Framework Decision.

34. As stated in my Opinion in *Pupino*, however, an interpretation in conformity with a Framework Decision is not precluded by the fact that the incidents to be investigated took place at a time before the adoption of the Framework Decision. According to settled case-law, procedural rules are generally held to apply to all proceedings pending at the time when they enter into force.<sup>12</sup> The Court obviously did not regard the issue of applicability as regards time as an obstacle to interpretation in conformity with the Framework Decision either, as it did not address that point in *Pupino*. As in *Pupino*, the main proceedings concern points of procedural law, namely jurisdiction to give a ruling on whether bank balances seized in the course of criminal proceedings are to be paid to an undertaking which has suffered harm. Accordingly, Ireland waived its reservations in the oral procedure.

33. Greater importance must be attached to Ireland's doubts that Framework Decision 2001/220 may have legal effects in the main proceedings from the point of view of time. Mr Dell'Orto's conviction dates from 4 May 1999, whilst the contested money was placed under protective sequestration on 29 December 1997 and its alleged embezzlement or misappropriation occurred even earlier. However, the period within which the relevant provisions of the Framework Decision had to be implemented did not end until 22 March 2002, and the period for Directive 2004/80 did not end until 1 July 2005 or 1 January 2006. If then the Framework Decision cannot have any legal effects for the restitution of the alleged proceeds for reasons of time, an interpretation of Italian law in conformity with the Framework Decision is precluded and the reference for a preliminary ruling is irrelevant to the main proceedings.

35. In so far as rulings must still be made in the present case, the application of Framework Decision 2001/220 in the main proceedings is therefore possible *ratione temporis*.

12 — Opinion in Case C-105/03 *Pupino* [2005] ECR I-5285, point 43, with reference to the judgments in Joined Cases 212/80 to 217/80 *Salumi and Others* [1981] ECR 2735, paragraph 9; Joined Cases C-121/91 and C-122/91 *CT Control Rotterdam and JCT Benelux v Commission* [1993] ECR I-3873, paragraph 22; Case C-61/98 *De Haan* [1999] ECR I-5003, paragraphs 13 and 14; and Joined Cases C-361/02 and C-362/02 *Tsapalos* [2004] ECR I-6405, paragraph 19.

36. A final doubt regarding the relevance of the request concerns the lawfulness of Framework Decision 2001/220. If the Framework Decision is unlawful and therefore inapplicable, it cannot require interpretation in conformity with the Framework Decision either, and the questions for interpretation are irrelevant for the purposes of the main proceedings.

37. In this respect I wish to recall that in the Opinion in *Pupino* I expressed doubts as to its legal basis, but concluded that the Court does not have to consider those doubts of its own motion since in any event no serious doubts arise.<sup>13</sup> The adoption of the Framework Decision on the chosen legal basis appears at least to be defensible. Consequently, the Court did not consider this question in *Pupino*. Since neither the referring court nor the parties in the present case raise the question of the legal basis of the Framework Decision, there is no reason to give that point further detailed consideration in the present case.

38. The reference for a preliminary ruling is therefore admissible.

## B — *The questions referred for a preliminary ruling*

39. In order to give an answer to the questions asked by the referring court concerning the interpretation of Framework Decision 2001/220 in the light of Directive 2004/80, consideration must be given, first of all, to the possibilities and limits of the mutual influence of legal acts based on the EC Treaty and the Treaty on European Union (see Section 1 below). Taking those findings into account, it is then necessary to interpret the Framework Decision (see Sections 2 and 3 below).

### 1. The relationship between Union and Community law in respect of interpretation

40. Ireland and the United Kingdom in particular argue that in interpreting a Union framework decision consideration should not be given to a Community directive (adopted later). They are two distinct legal orders which must be sharply differentiated. This view is at least partially well founded. However, it cannot be fully concurred with.

<sup>13</sup> — Opinion in *Pupino* (cited in footnote 12), points 48 to 52.

41. It should be made clear, first of all, that any mutual influence in interpretation presupposes a corresponding scope for differing interpretations. An interpretation *contra legem* would not really be compatible with the principle of legal certainty.<sup>14</sup>

42. As the United Kingdom in particular argues, even where scope for differing interpretations exists, the different competences under the Treaty on European Union and the EC Treaty prevent rules of the other legal order being applied by way of interpretation for which there is no legal basis in the receiving legal order. Any interpretation must take account of the legal bases of the measure to be interpreted and may not therefore lead to a result that would no longer be compatible with the legal basis.

43. This applies in particular to the incorporation of the content of Community law into Union law, since according to Article 47 EU that Treaty does not affect the EC Treaty. It is therefore the task of the Court to ensure that acts which, according to the Council, fall within the scope of the Treaty on European Union do not encroach upon the powers

conferred by the EC Treaty on the Community.<sup>15</sup>

44. If these limits are observed, transfers between Community law and Union law are already laid down in the Treaties. The Union and the Community coexist as separate but integrated legal orders.<sup>16</sup> Under the third paragraph of Article 1 EU, the Union is founded on the European Communities. Under the first paragraph of Article 3 EU, the Union is served by a single institutional framework which ensures the consistency and the continuity of the activities carried out in order to attain its objectives while respecting and building upon the *acquis communautaire*. In addition, Article 61(a) and (e) EC provides that measures under Title IV of the EC Treaty together with measures under Title VI of the EU Treaty contribute to the establishment of an area of freedom, security and justice.

45. In *Pupino* the Court thus found that it is perfectly comprehensible that the authors of the Treaty on European Union should have considered it useful to make provision, in the context of Title VI of that Treaty, for recourse to legal instruments with effects similar to those provided for by the EC Treaty, in order to contribute effectively to the pursuit of the Union's objectives.<sup>17</sup> Of

14 — *Pupino* (cited in footnote 5), paragraphs 44 and 47.

15 — Case C-170/96 *Commission v Council* (transit visas) [1998] ECR I-2763, paragraph 16, and Case C-176/03 *Commission v Council* (protection of the environment through criminal law) [2005] ECR I-7879, paragraph 39.

16 — Case T-306/01 *Yusuf and Al Barakaat International Foundation v Council and Commission* [2005] ECR II-3533, paragraph 156.

17 — Cited in footnote 5, paragraph 36.

course, the same also applies to the Union's rule-making activity. Regulatory techniques, approaches to problems and concepts which have proven themselves in Community secondary law can also be used for Union legislation.

EC and Article 30(1)(a) and (b) EU, Article 31(a) and (b) EU and Article 34(2)(c) EU.<sup>18</sup> In accordance with their common aim, such legal acts are to be interpreted as being seamlessly interwoven. In this connection it may be particularly appropriate to give a uniform interpretation to definitions.

46. In Union law the same substance should therefore be attached to elements taken over from Community law as in Community law. However, this applies only in so far as it is not precluded by the special character of Union law, for example the exclusion of the direct effect of framework decisions. Even on the basis of a coherent interpretation, the differences laid down in the Treaties between supranational Community law and Union law, which is based more heavily on traditional international law, should not be confused.

48. In precisely these cases, contrary to the view taken by Ireland, it may be necessary to interpret the earlier legal act of one legal order in the light of a subsequently adopted legal act of the other legal order. Conversely, it may also be appropriate in this situation to interpret the subsequent legal act in the light of the earlier law which it is to supplement.

47. However, the marked separation of rule-making powers possibly even *requires* mutually complementary legal acts of Union and Community law to be adopted. For example, amendments to the Schengen Implementing Convention regarding the Schengen information system are made by parallel legal acts on the basis of Article 66

49. The interpretation of measures of Union law in the light of Community law is therefore possible, but it is necessary to observe the limits stemming from the differences between the Union and the Community — in particular regarding their competences and the forms of action available to them.

18 — See, for example, Council Decision 2004/201/JHA and Council Regulation (EC) No 378/2004 of 19 February 2004 on procedures for amending the Sirene Manual (OJ 2004 L 64, pp. 5 and 45).

## 2. The concept of victim

50. By its first question, the referring court is seeking to ascertain whether legal persons can also be victims within the meaning of Framework Decision 2001/220. This is of interest because all the relevant provisions of the Framework Decision, and above all Articles 2 and 9, are effective only vis-à-vis victims. However, I will show below that the view that legal persons could be regarded as victims within the meaning of the Framework Decision is incorrect even taking into consideration Directive 2004/80.

### (a) Framework Decision 2001/220

51. As all the parties stress, Saipem is not a victim as defined in Article 1(a) of Framework Decision 2001/220 since under that provision the concept of victim is restricted to natural persons.

52. Ireland and the Commission rightly state that the history of that definition suggests that it does not extend to legal persons. The restriction to natural persons was intended originally because it is consistent with the Portuguese initiative for the Framework Decision. The Commission points out that

its communication on crime victims,<sup>19</sup> which preceded the initiative, also related solely to natural persons. In the legislative procedure the Council did examine the inclusion of legal persons,<sup>20</sup> but that did not lead to the definition of victim being broadened accordingly.

53. This historical background also militates against the view, which Ireland believes is conceivable, that the natural persons behind a legal person should be regarded as victims of a crime against the legal person. If these indirect victims were also intended to have been protected, it would have been more logical also to regard legal persons as victims. Moreover, the main proceedings do not concern claims made by natural persons who have suffered indirect harm, but claims made by a legal person which has suffered direct harm. The question does not therefore arise whether indirect injury can give grounds for status as a victim within the meaning of Framework Decision 2001/220.

54. However, consideration of the natural persons behind a legal person refutes a further objection raised by the United Kingdom against extending the concept of victims to legal persons. The United King-

19 — The Commission refers to its communication to the Council, the European Parliament and the Economic and Social Committee — Crime victims in the European Union — Reflections on standards and action (COM(1999) 349 final).

20 — Results of the discussions of the Working Party on Cooperation in Criminal Matters of 19 and 20 June 2000 (Council document 9720/00 of 26 June 2000, p. 3, footnote 3) and report by the Working Party on Cooperation in Criminal Matters of 11 July 2000 (Council document 10387/00 of 14 July 2000, p. 7, footnote 1).

dom argues that the objective laid down in Article 29 EU of providing citizens with a high level of safety within an area of freedom, security and justice necessarily refers to natural persons. However, that cannot prevent the Union legislature offering legal persons exactly the same protection as natural persons since crime against legal persons ultimately also affects natural persons, that is their owners or their employees. Furthermore, such crime can also affect the citizens' individual feelings of safety.

had to Article 2(1). Under that provision, victims are to be treated with due respect for the dignity of the individual. Similarly, it is difficult to imagine the increased protection for victims who are particularly vulnerable under Article 2(2) in the case of legal persons. The provisions governing protection for victims and their families under Article 8 cannot be applied to legal persons either.

55. Irrespective of the general aim of Title VI of the Treaty on European Union, the restricted definition of victim under Framework Decision 2001/220 is nevertheless consistent with its other provisions and its clear objectives.

56. Whilst in principle the other provisions of the Framework Decision could also be applied partially to legal persons if they were to be regarded as victims, as Austria rightly states, some elements of the Framework Decision are effective solely vis-à-vis natural persons. The harm, physical or mental injury, emotional suffering or economic loss suffered by a victim and mentioned in Article 1(a) of Framework Decision 2001/220 by way of example affect only natural persons in the vast majority of cases. Regard should also be

57. There could be reason to include legal persons in the concept of victim at most if failure to take them into consideration were incompatible with higher-ranking law, that is to say in particular with the fundamental rights, mentioned by Ireland, which the Union observes under Article 6(2) EU. In this respect the main question that arises is whether the difference in treatment of natural and legal persons is compatible with the general principle of equality. Under that principle, comparable situations are not to be treated differently and different situations

are not to be treated alike unless such treatment is objectively justified.<sup>21</sup>

measures in so far as legal persons also require protection in criminal proceedings.<sup>22</sup>

58. However, even having regard to the principle of equality, the Union legislature was permitted only to lay down rules governing the treatment of natural persons. Legal persons can also be harmed by crimes, but the definition of victim in Article 1(a) of Framework Decision 2001/220 shows that harm to natural persons often does not stop at material losses, but can take on very different dimensions than is the case with legal persons, in the form of physical or mental injury and emotional suffering. Furthermore, natural persons are often much more heavily reliant on protection in criminal proceedings than legal persons, which generally have professional support. These are objective reasons for giving preferential treatment to natural persons who have been victims of crime.

60. Consequently, Framework Decision 2001/220 does not contain anything — even having regard to fundamental rights — to suggest that the definition of victim should be extended beyond its wording to legal persons.

(b) Directive 2004/80

59. It should also be pointed out that the Framework Decision does not prevent the Member States from taking their own

61. First of all, as the United Kingdom points out, the present case cannot result in the application of Directive 2004/80 regardless of the interpretation given to the concept of victim. The Directive provides for compensation only in the event of a violent intentional crime, whereas the money at issue comes from misappropriation or embezzlement. Furthermore, the crime took place at least mainly, if not exclusively, in the Member State in which the registered office

21 — Case 203/86 *Spain v Council* [1988] ECR 4563, paragraph 25; Joined Cases C-248/95 and C-249/95 *SAM Schiffahrt and Stapf* [1997] ECR I-4475, paragraph 50; Case C-292/97 *Karlsson and Others* [2000] ECR I-2737, paragraph 39; Joined Cases C-27/00 and C-122/00 *Omega Air and Others* [2002] ECR I-2569, paragraph 79; Case C-137/00 *Milk Marque and National Farmers' Union* [2003] ECR I-7975, paragraph 126; Case C-304/01 *Spain v Commission* [2004] ECR I-7655, paragraph 31; and Case C-210/03 *Swedish Match* [2004] ECR I-11893, paragraph 70.

22 — Nor does it contain any provisions that might legitimise discrimination against legal persons by the Member States. In this respect Framework Decision 2001/220 differs from the rule discussed in my Opinion in Case C-540/03 *Parliament v Council* (family reunification) [2006] ECR I-5769, point 99 et seq., which appeared to justify transposition that was contrary to fundamental rights.

of the victim — Saipem — was located. The Directive, on the other hand, governs compensation where the crime has been committed in another Member State. Lastly, the Directive allows the Member States to limit compensation to claimants whose injury is the result of crimes committed after 30 June 2005; in the present case, the crime was committed about a decade earlier.

form interpretation of the concept of victim is not absolutely necessary for their functioning, but is instead of systematic interest. In particular, it could facilitate implementation and practical application in the Member States. The low importance of this interest in having a coherent interpretation in itself raises doubts that Directive 2004/80 is actually capable of justifying a broader interpretation of the concept of victim in Framework Decision 2001/220, by way of analogy for example.

62. However, Directive 2004/80 should be seen in the broader context of Framework Decision 2001/220. The Directive too seeks to protect victims and makes express reference to the Framework Decision in its fifth recital. As the Commission states, both legal acts are complementary, at least as regards the aim of protecting victims.

65. However, a broader interpretation of the concept of victim in Framework Decision 2001/220 is likewise not necessary on the basis of Directive 2004/80 because it is not apparent that the latter regards legal persons as victims.

63. As the United Kingdom and the Commission rightly stress, however, the two legal acts have different objects; on the one hand the Framework Decision — in so far as it is relevant here — relates to compensation by the offender and on the other the Directive concerns compensation by the State.

66. Unlike Framework Decision 2001/220, Directive 2004/80 does not contain any express definition of victim. This can be explained by its drafting history. The Commission proposal for a directive on compensation to crime victims aimed not only to facilitate access to cross-border compensation to victims but also to introduce a common minimum standard for compensation to victims. In that connection it

64. The two legal acts are not therefore in a close complementary relationship. A uni-



contained a definition of victim restricted to natural persons and covered only personal injury.<sup>23</sup>

67. However, the Council did not harmonise compensation to victims.<sup>24</sup> The only rule on claims for compensation in the Directive is found in Article 12 of Directive 2004/80, which provides that the Member States must guarantee fair and appropriate compensation to victims of violent intentional crimes. Furthermore, it follows from Article 2 that the compensation is to be paid by State authorities.

68. According to its wording, Article 12 of Directive 2004/80 can also cover legal persons as victims because they too can suffer harm as a result of violent intentional crimes in other Member States.<sup>25</sup> It cannot therefore be ruled out that the Community legislature broadened the category of victims benefiting from protection beyond the original aims of the Commission proposal for a directive.

69. However, the Netherlands Government, the Austrian Government and the United Kingdom Government take the view that only natural persons could be victims of violent intentional crime within the meaning of Directive 2004/80. In support of that view they argue that the restriction to natural persons follows from the objective laid down in the first recital of abolishing obstacles to the free movement of persons and services, from the judgment in *Cowan*<sup>26</sup> referred to in the second recital, which calls for the protection of natural persons, and from the reference in the fifth recital to Framework Decision 2001/220, which defines only natural persons as possible victims. Moreover, in forgoing the harmonisation proposed by the Commission, the Council presumably did not intend to broaden the category of those benefiting from protection beyond the Commission proposal so as to include legal persons.

70. Thus, while the wording of Directive 2004/80 permits the concept of victim to be extended to natural and legal persons, there are a number of reasons to restrict it to natural persons. Although it is not necessary in the present case to arrive at a final definition of the scope of the concept of victim under the Directive, it cannot in any

23 — COM(2002) 562 final (OJ 2003 C 45E, p. 69 et seq.).

24 — See the Presidency option paper, Council document 7752/04 of 26 March 2004, for the Council discussions of 30 March 2004 and the resulting draft, Council document 8033/04 of 5 April 2004.

25 — See, for example, Case C-265/95 *Commission v France* [1997] ECR I-6959.

26 — Case 186/87 [1989] ECR 195, paragraph 19.

case result in the concept of victim under Framework Decision 2001/220 being extended beyond the wording of the definition.

71. Nor can Article 17 of Directive 2004/80, which is mentioned by the referring court, justify extending the concept of victim to legal persons. As Austria, Italy, the Netherlands, the United Kingdom and the Commission rightly argue, that provision gives the Member States the option to adopt more generous national rules. The Member States *may* therefore also regard legal persons as victims. That does not mean, however, that they are required to do so.

72. Only natural persons are therefore victims within the meaning of Framework Decision 2001/220, even taking into consideration Directive 2004/80.

3. The application of Article 9 of Framework Decision 2001/220 in criminal proceedings for enforcement

73. By the second question, the referring court wishes to ascertain whether the rights

of the victim under Article 2 and Article 9 of Framework Decision 2001/220 continue to exist even in the course of criminal proceedings for enforcement. Since, based on the answer to the first question, no victim within the meaning of the Framework Decision is affected in the present case, some of the parties take the view that this question is purely hypothetical.

74. However, under Article 234 EC, the Court has repeatedly held that it has jurisdiction to give preliminary rulings on questions concerning Community provisions in situations where the facts of the cases being considered by the national courts were outside the scope of Community law but where those provisions had been rendered applicable by domestic law.<sup>27</sup> This should also apply in the case of the provisions of Union law.

75. It cannot be ruled out in the present case that a broader concept of victim applies in principle in Italian law with the result that legal persons also benefit from the procedures that are used for natural persons when they wish to assert their rights as

<sup>27</sup> — Case C-28/95 *Leur-Bloem* [1997] ECR I-4161, paragraph 27, and Case C-130/95 *Giloy* [1997] ECR I-4291, paragraph 23. See also Case C-231/89 *Gmurzynska-Bscher* [1990] ECR I-4003, paragraph 24; Joined Cases C-297/88 and C-197/89 *Dzodzi* [1990] ECR I-3763, paragraph 36; Case C-1/99 *Kofisa Italia* [2001] ECR I-207, paragraph 21; Case C-170/03 *Feron* [2005] ECR I-2299, paragraph 11; and Case C-3/04 *Poseidon Chartering* [2006] ECR I-2505, paragraph 15.

victims. This is suggested by the fact that Italy has not expressly transposed the definition of victim laid down in Article 1 (a) of Framework Decision 2001/220<sup>28</sup> and the fact that the relevant Italian provisions apparently do not use any special definition of victim either.<sup>29</sup>

76. Should Italian law provide for a uniform application of those provisions irrespective of whether the victims are natural or legal persons, the requirements laid down in the Framework Decision relating to proceedings for enforcement may be of interest to the referring court. The Court should therefore also answer this question.

77. The question essentially concerns the interpretation of Article 9(1) and (3) of the Framework Decision, which governs compensation to victims and the return of their property.

28 — See Commission document SEC(2004) 102, p. 3, [http://ec.europa.eu/justice\\_home/doc\\_centre/criminal/doc/sec\\_2004\\_0102\\_fr.pdf](http://ec.europa.eu/justice_home/doc_centre/criminal/doc/sec_2004_0102_fr.pdf). This is an annex to the report from the Commission on the basis of Article 18 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings, available only in French (COM(2004) final of 16 April 2004).

29 — Article 74 et seq. and Article 538 et seq. of the Italian Codice di procedura penale seems to apply to compensation to victims in criminal proceedings and Article 262 and Article 263 of the Italian Codice di procedura penale to the return of seized property.

78. The referring court clearly assumes that restitution is a possibility in the present case. In addition, Article 9(3) provides that, unless urgently required for the purpose of criminal proceedings, recoverable property belonging to victims which is seized in the course of criminal proceedings must be returned to them without delay.

79. Since the money to be returned was presumably transferred to the offender's accounts as bank deposits, however, it would seem possible that, contrary to the description given by the referring court, the money did not remain the property of Saipem. Consequently, the possibility of compensation to the victim should not be ignored either. In this respect, under Article 9(1) of Framework Decision 2001/220, each Member State must ensure that victims of criminal acts are entitled to obtain a decision within reasonable time-limits on compensation by the offender in the course of criminal proceedings, except where, in certain cases, national law provides for compensation to be awarded in another manner. It is not necessary here to give definitive clarification of the kinds of rights that are covered by the concept of compensation. However, it is clear that pecuniary loss is covered, in particular since Article 1(a) mentions economic loss expressly as an example of harm suffered by a victim.

80. In contrast to the first question, Directive 2004/80 has no obvious bearing on interpretation. This is in keeping with its object of ensuring compensation for victims without undertaking detailed harmonisation. It does not therefore contain any rules on compensation by the offender or the return of seized property to the victim. Nor does it concern criminal proceedings since compensation granted to victims by the State is typically dealt with in separate proceedings under public law.

#### (a) Compensation

81. With regard to compensation, under Article 9(1) of Framework Decision 2001/220, each Member State must ensure that victims of criminal acts are entitled to obtain a decision within reasonable time-limits on compensation by the offender in the course of criminal proceedings, except where, in certain cases, national law provides for compensation to be awarded in another manner.

82. Accordingly, victims are to be given the right to obtain a decision on compensation by the offender in the course of criminal proceedings. There is one proviso, however. In certain cases the Member States may

provide for compensation to be awarded in another manner. However, that does not mean that the Member States are entirely free to determine the manner in which compensation is granted to victims but only that another manner may be used in certain cases. As a general rule, victims must be free to obtain a decision in the course of criminal proceedings.

83. The aim of linking the criminal proceedings with the decision on compensation is to spare victims the burden and the risks of additional court proceedings. Where the criminal proceedings clarify certain points or can clarify them without any great difficulty, the legitimate interests of victims within the meaning of Article 2(1) of Framework Decision 2001/220 are recognised if the criminal court incorporates those findings directly into the relevant decisions.

84. This aim would have been satisfied in the main proceedings if a decision had been taken on compensation for Saipem as far as possible in the criminal court judgment.

85. However, as the Commission rightly states, Framework Decision 2001/220 does

not govern classification of the decision in domestic criminal proceedings. The Framework Decision would thus permit the court first to decide on the sentence and to decide on compensation by the offender in subsequent proceedings based on the findings from the criminal proceedings. However it would have to be ensured that this subsequent decision is taken within reasonable time-limits, as laid down by Article 9(1).

not only contrary to the right to a decision within reasonable time-limits under Article 9(1) of Framework Decision 2001/220, but it would also be inappropriate. The advantages of a joint or at least concurrent decision by the same court on the sentence and on compensation would be lost.

86. In the absence of express provision in Framework Decision 2001/220, as the Netherlands in particular argues, it depends on national law whether this is actually possible. If national law — even interpreted in the light of the Framework Decision — no longer permits a decision on compensation after the offender has been convicted, the courts must take such a decision before or at the same time as the sentence, depending on the provision made by national law in this regard.

88. At the same time, this would often affect proceedings in which regard is not had to the Framework Decision either during the proceedings leading to the sentence or in the judgment. This can be seen in the present case. The sentence dates from 1999, from a time when the Framework Decision did not yet exist. It could not yet therefore require the competent court to decide on claims for compensation or to clarify any necessary facts when the sentence was delivered. Where a decision on compensation has not yet been taken in such cases, it cannot therefore be expected either that a future decision would take precedence over a decision in civil proceedings.

87. Moreover, I do not consider it possible to require a victim's right to a decision on compensation to be maintained throughout criminal proceedings for enforcement. Otherwise there would be a danger that such rights could be asserted years after the courts had dealt with offences. Irrespective of any loss of rights through lapse of time, this is

89. Consequently, Article 9(1) of Framework Decision 2001/220 does not preclude a

decision within reasonable time-limits on compensation to the victim in the course of criminal proceedings for enforcement, but does not require such a decision.

92. With their reference to the seventh recital in the preamble to Framework Decision 2001/220, the Commission and the Austrian Government fail to recognise that the recital mentions only civil procedure, but not the civil law in Government. It would be contrary to the decision on compensation by the offender provided for in Article 9(1) if the Framework Decision was without prejudice to matters of civil law. The decision on compensation by the offender is generally a matter for civil law.

(b) The return of property

90. The return of property is governed by Article 9(3) of Framework Decision 2001/220. Under that provision, unless urgently required for the purpose of criminal proceedings, recoverable property seized in the course of criminal proceedings shall be returned to the victims without delay.

93. None the less, Article 9(3) of Framework Decision 2001/220 does not provide for a decision on property. In principle, that provision therefore concerns the return of undisputed property, for example items belonging to a victim which were seized as evidence. As Ireland is perfectly correct in observing, Article 9(3) of Framework Decision 2001/220 is only a concrete expression of the fundamental right to property in this regard.

91. In contrast to Article 9(1) of Framework Decision 2001/220 concerning compensation, Article 9(3) does not make any provision regarding the decision on the victim's property. Consequently, the Commission takes the view that the provision is applicable only where ownership of the property is undisputed. Like the Austrian Government, however, the Commission takes the view that a dispute over property is a matter for civil law and is not therefore covered in accordance with the seventh recital in the preamble to the Framework Decision.

94. Furthermore, the proposed return of property cannot be prevented by just any dispute over ownership. If, for example, in criminal proceedings it has been established with legally binding effect for the purpose of those proceedings who the property belongs to, for example in the case of stolen goods in order to allow a conviction for theft, that finding must also be relevant for the purposes of the return of the property. That approach alone satisfies the requirement laid

down in Article 2(1) of Framework Decision 2001/220 that the legitimate interests of victims in criminal proceedings must be recognised. A factual finding which is sufficient to convict an offender must also be effective for the assessment of the return of the victim's property.

requires the court to make appropriate findings where these are not absolutely necessary for the conclusion of the criminal proceedings. However, this question is not of interest in the present case because any findings had already been made when Mr Dell'Orto was convicted or at least can no longer be amended retrospectively.

95. On the other hand, the victim cannot claim the return of disputed property where the criminal proceedings did not produce such findings. In this respect the Member States are free to leave the dispute over the property for the civil courts to decide. The question possibly arises as to the extent to which Framework Decision 2001/220

96. It must therefore be stated that seized property must be returned to the victim immediately pursuant to Article 9(3) of Framework Decision 2001/220 if the victim's ownership of the property is undisputed or has been established with legally binding effect in criminal proceedings.

## V — Conclusion

97. I therefore propose that the Court give the following answers to the questions referred to it for a preliminary ruling:

- (1) Only natural persons are victims within the meaning of Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings, even taking into consideration Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims.

- (2) Article 9(1) of Framework Decision 2001/220 does not preclude a decision within reasonable time-limits on compensation to the victim in the course of criminal proceedings for enforcement, but does not require such a decision.
  
- (3) Seized property must be returned to the victim immediately pursuant to Article 9(3) of Framework Decision 2001/220 if the victim's ownership of the property is undisputed or has been established with legally binding effect in criminal proceedings.