

Case C-105/03

Criminal proceedings against Maria Pupino

(Reference for a preliminary ruling by the judge in charge of preliminary enquiries at the Tribunale di Firenze)

(Police and judicial cooperation in criminal matters — Articles 34 EU and 35 EU — Framework Decision 2001/220/JHA — Standing of victims in criminal proceedings — Protection of vulnerable persons — Hearing of minors as witnesses — Effects of a framework decision)

Opinion of Advocate General Kokott delivered on 11 November 2004 I - 5289

Judgment of the Court (Grand Chamber), 16 June 2005 I - 5309

Summary of the Judgment

1. *Preliminary rulings — Reference to the Court of Justice — National court or tribunal for the purposes of Article 35 EU — Definition — Judge in charge of preliminary enquiries — Included*
(Art. 35 EU)

2. *Preliminary rulings — Jurisdiction of the Court of Justice — Police and judicial cooperation in criminal matters — Framework decision for the approximation of laws — Request for interpretation involving the principle of interpretation in conformity with national law — Jurisdiction to provide that interpretation*
(Art. 234 EC; Arts 35 EU and 46(b) EU)
3. *European Union — Police and judicial cooperation in criminal matters — Member States — Obligations — Duty of loyal cooperation with the institutions*
4. *European Union — Police and judicial cooperation in criminal matters — Framework decisions for the approximation of national laws — Implementation by Member States — Duty to interpret in conformity with national law — Limits — Compliance with general principles of law — Interpretation of national law contra legem — Not permissible*
(Art. 249(3) EC; Art. 34(2)(b) EU)
5. *European Union — Police and judicial cooperation in criminal matters — Status of victims in criminal proceedings — Framework Decision 2001/220 — Protection of particularly vulnerable victims — Arrangements — Conditions for hearing evidence of young children — Hearing outside the trial and before it takes place — Whether permissible — Limits*
(Council Framework Decision 2001/220/JHA, Arts 2, 3 and 8(4))

1. Where a Member State has indicated that it accepts the jurisdiction of the Court of Justice to rule on the validity and interpretation of the acts referred to in Article 35 EU, the Court of Justice has jurisdiction to give a preliminary ruling on a question from a judge in charge of preliminary enquiries. Where acting in criminal proceedings, that judge acts in a judicial capacity, so that he must be regarded as a 'court or tribunal of a Member State' within the meaning of Article 35 EU.
2. Under Article 46(b) EU, the system under Article 234 EC is capable of being applied to Article 35 EU, subject to the conditions laid down by that provision. Like Article 234 EC, Article 35 EU makes reference to the Court of Justice for a preliminary ruling subject to the condition that the national court 'considers that a decision on the question is necessary in order to enable it to give judgment', so that the case-law of the Court of Justice on the admissibility of references under Article 234 EC is, in principle, transposable to references for a preliminary ruling submitted to the Court of Justice under Article 35 EU.

(see paras 20, 22)

It follows that the presumption of relevance attaching to questions referred by national courts for a preliminary ruling may be rebutted only in exceptional cases, where it is quite obvious that the interpretation of Community law sought bears no relation to the actual facts of the main action or to its purpose, or where the problem is hypothetical and 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.

In that context, irrespective of the degree of integration envisaged by the Treaty of Amsterdam in the process of creating an ever closer union among the peoples of Europe within the meaning of the second paragraph of Article 1 EU, 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, dealing with police and judicial cooperation in criminal matters, 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. The jurisdiction of the Court of Justice to give preliminary rulings under Article 35 EU would be deprived of most of its useful effect if individuals were not entitled to invoke framework

decisions in order to obtain a conforming interpretation of national law before the courts of the Member States.

(see paras 19, 28-30, 36, 38)

3. It would be difficult for the Union to carry out its task effectively if the principle of loyal cooperation, requiring in particular that Member States take all appropriate measures, whether general or particular, to ensure fulfilment of their obligations under European Union law, were not also binding in the area of police and judicial cooperation in criminal matters under Title VI of the EU Treaty, which is moreover entirely based on cooperation between the Member States and the institutions.

(see para. 42)

4. The binding nature of framework decisions adopted on the basis of Title VI of the Treaty on European Union, dealing with police and judicial cooperation in criminal matters, is formulated in terms identical with those in the third paragraph of Article 249 EC, concerning directives. It involves an obligation on

the part of the national authorities to interpret in conformity with national law. Thus, when applying national law, the national court that is called upon to interpret it must do so as far as possible in the light of the wording and purpose of the framework decision in order to attain the result which it pursues and thus comply with Article 34(2)(b) EU.

can be applied in such a way as not to produce a result contrary to that envisaged by the framework decision.

(see paras 34, 43-45, 47, 61,
operative part)

The obligation on the national court to refer to the content of a framework decision when interpreting the relevant rules of its national law is, however, limited by general principles of law, particularly those of legal certainty and non-retroactivity. In particular, those principles prevent that obligation from leading to the criminal liability of persons who contravene the provisions of a framework decision from being determined or aggravated on the basis of such a decision alone, independently of an implementing law.

Similarly, the principle of conforming interpretation cannot serve as the basis for an interpretation of national law *contra legem*. That principle does, however, require that, where necessary, the national court consider the whole of national law in order to assess how far it

5. Articles 2, 3 and 8(4) of Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings set out a number of objectives, including ensuring that particularly vulnerable victims receive specific treatment best suited to their circumstances. Those provisions must be interpreted as allowing the competent national court to authorise young children, who claim to have been victims of maltreatment, to give their testimony in accordance with arrangements allowing those children to be guaranteed an appropriate level of protection, for example outside the trial and before it takes place. The arrangements for taking evidence used must not, however, be incompatible with the basic legal principles of the Member State concerned, as Article 8(4) of that framework decision provides. Nor may they deprive the accused person of the right to a fair trial under Article 6 of the European Convention on Human Rights.

(see paras 54, 57, 59, 61,
operative part)