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COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES  
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH  
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Press and Information

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Judgment of the Court of Justice in Case C-105/03

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**THE COURT OF JUSTICE CONFIRMS THAT THE PRINCIPLE THAT NATIONAL LAW MUST BE INTERPRETED IN CONFORMITY WITH COMMUNITY LAW APPLIES IN THE AREA OF POLICE AND JUDICIAL COOPERATION IN CRIMINAL MATTERS**

*Within the limits imposed by national law, a national court must be able to authorise children who claim to have been victims of maltreatment to give their testimony under appropriate protective arrangements*

Criminal procedure in Italy comprises two distinct stages, namely preliminary enquiries for gathering evidence as to whether or not the matter should proceed to trial, and the trial itself at which the evidence is formally established.

Evidence may be established early, at the preliminary enquiries stage, in respect of sexual offences where the victims are aged less than sixteen years. In such cases, the testimony given at that stage does not need to be repeated at the trial in order to acquire full evidential value. Those derogations are aimed at protecting the dignity, modesty and character of the witness, where the victim is a minor.

In criminal proceedings currently at the preliminary enquiries stage, a nursery school teacher is charged with a number of offences of abusing disciplinary procedures against a number of her pupils, who, at the time of the facts, were aged less than five years. She is accused of hitting them regularly, threatening to give them tranquillisers, putting sticking plasters over their mouths and preventing them from going to the toilet.

The Public Prosecutor's Office asked the judge in charge of preliminary enquiries to take the testimony of eight children, who were witnesses and victims, before the trial and in accordance with a special procedure, in accordance with arrangements to protect their dignity, privacy and tranquillity. The prosecution argued that evidence could not be delayed until the trial by reason of the extreme youth of the victims, inevitable changes in their psychological state and a possible process of psychological repression. The defendant argues that that application does not fall under any of the scenarios envisaged by the Code of Criminal Procedure.

The Italian court hearing the dispute has asked the Court of Justice of the European Communities whether, in view of the Council Framework Decision on the standing of victims in criminal proceedings, a national court must have the ability to authorise young children, who claim to be victims of maltreatment, to give their testimony under appropriate protective arrangements, outside the trial and before it is held.

The Court of Justice notes that the Framework Decision was adopted on the basis of the provisions of the EU Treaty on police and judicial cooperation in criminal matters. The Court's jurisdiction to give a preliminary ruling on those provisions is subject to a declaration by each Member State that it accepts that jurisdiction. Italy has made such a declaration.

The Court emphasises that, in applying national law, the Italian court is required to interpret it as far as possible in a way that conforms to the wording and the purpose of the Framework Decision, in order to attain the result which that decision envisages.

In accordance with the Framework Decision, Member States are required to guarantee to victims the opportunity to be heard during the criminal procedure, and to take appropriate measures to ensure that their authorities do not question victims more than the procedure requires. Victims are to be guaranteed respectful treatment for their personal dignity during the procedure, and particularly vulnerable victims are to benefit from specific treatment best suited to their circumstances. Member States must also ensure, when it is necessary to protect victims against the consequences of their testimony at a public trial, that they are able to benefit from conditions for giving testimony that allow that objective to be attained.

The Framework Decision does not define the concept of vulnerability, but, in the case of young children claiming to have been maltreated, the latter may be regarded as vulnerable so as to give them the benefit of specific protection.

The Court states that the conditions for giving testimony must be compatible with the fundamental principles of the law of the Member State concerned.

The European Union also respects fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and arising from the constitutional traditions common to the Member States, as general principles of law. The Framework Decision must therefore be interpreted in such a way that those fundamental rights, including the right to a fair trial, are respected.

The Court declares that the national court must be able to authorise young children who claim to have suffered maltreatment to give their testimony in accordance with arrangements allowing them to be guaranteed an appropriate level of protection, for example outside the trial and before it is held.

*Unofficial document for media use, not binding on the Court of Justice.*

*Languages available: DE, EL, EN, ES, FR, IT, HU, NL, PL, PT*

*The full text of the judgment may be found on the Court's internet site*

*<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>*

*It can usually be consulted after midday (CET) on the day judgment is delivered.*

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