



Press and Information

Court of Justice of the European Union

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Judgment in Joined Cases C-483/09 and C-1/10  
Gueye and Salmerón Sánchez

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**European Union law does not preclude a mandatory injunction to stay away being adopted in all cases of domestic violence, even if the victim wishes to re-establish cohabitation with the offender**

*Such a measure of protection under criminal law against acts of domestic violence is intended to protect not only the interests of the victim but also the more general interests of society*

In cases of domestic violence, the Spanish courts are obliged to impose criminal penalties, and, in all cases, an order prohibiting the perpetrator of the acts of violence from being in the vicinity of his victim is mandatory. That injunction to stay away, which must be for a minimum period, is intended to protect the victim. Failure to comply with that injunction to stay away is itself a criminal offence.

Mr Gueye and Mr Salmerón Sánchez were convicted of mistreating their respective partners. Among other penalties imposed, they were prohibited from approaching their victims or having contact with them for periods of 17 and 16 months respectively. Shortly after their conviction, Mr Gueye and Mr Salmerón Sánchez resumed cohabitation with their respective partners on the initiative of those partners. Due to their failure to comply with the injunction to stay away imposed on them, they were apprehended and convicted. Both brought appeals against their convictions before the Audiencia Provincial de Tarragona (Provincial Court, Tarragona, Spain). Supported by their partners, the two offenders claimed that to resume living together with the freely given consent of their partners does not constitute a crime of failure to comply with an injunction to stay away.

In that context, the Audiencia Provincial de Tarragona asks essentially whether the Framework Decision<sup>1</sup> on the standing of victims in criminal proceedings precludes national legislation which, where violence is committed within the family, prescribes that a mandatory injunction is to be imposed by the criminal court on the perpetrator of the violence to stay away from the victim even when the victim opposes the application of such a measure and wishes to resume her relationship with the perpetrator.

**In its judgment today**, the Court states that there is no provision in the Framework Decision relating to the forms of penalties and the level of penalties which Member States must enact in their legislation in order that criminal offences should be subject to punishment. **The objective of the Framework Decision is to ensure that a victim can effectively and adequately take part in the criminal proceedings**, by recognising, to that end, that the victim has certain procedural rights (including the right to be heard and the right to supply evidence). **In the light of that objective**, the Court concludes that **the Framework Decision does not mean that a mandatory injunction to stay away such as that at issue in the main proceedings cannot be imposed contrary to the wishes of the victim**.

Next, the Court examines **the scope of the victim's right to be heard as recognised by the Framework Decision and the effects of that right on the penalties to be imposed on the perpetrator of criminal offences**.

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<sup>1</sup> Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings (OJ 2001 L 82, p. 1).

In that regard, the Court states that, while the right to be heard must give the victim – in addition to the possibility of objectively describing what happened – the opportunity to express his or her opinion, that procedural right does not confer on victims any rights in respect of the choice of form of penalties to be imposed on the offenders in accordance with the rules of national criminal law nor in respect of the level of those penalties. Where a Member State in the exercise of its powers to enforce the law ensures that the criminal law offers protection against acts of domestic violence, the objective is not only to protect the interests of the victim as he or she perceives them but also other more general interests of society. Accordingly, the Court concludes that **the victim's right to be heard as recognised by the Framework Decision does not preclude the national legislature from providing** – particularly when interests other than the specific interests of the victim must be taken into consideration – **mandatory penalties of a minimum duration.**

**Consequently, the Court concludes that the Framework Decision does not preclude the mandatory imposition of an injunction to stay away for a minimum period, provided for by the criminal law of a Member State, on persons who commit crimes of violence within the family, even when the victims of those crimes oppose the application of such a penalty.**

Finally, the Court states that the Framework Decision permits Member States, having regard to the particular category of offences committed within the family, to exclude recourse to mediation in all criminal proceedings relating to such offences.

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

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