



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-129/19,
Presidenza del Consiglio dei Ministri v BV

Advocate General Bobek: Member States must grant compensation to any victim of a violent intentional crime, regardless of his or her residence

Even if compensation does not mean full reparation of the damages, its amount cannot be merely symbolic

In October 2005, Ms. BV was the victim of sexual violence. This crime was committed in Italy, her country of residence. The offenders were sentenced to imprisonment and ordered to pay immediately €50,000 in her favour. Nevertheless, she was unable to obtain any of this amount, as the offenders absconded.

In 2009, BV brought an action before the Italian courts against the Italian State, seeking damages for Italy's failure to transpose the Directive 2004/80/EC relating to compensation to crime victims¹.

In 2016, a judgment of the Court of Justice found Italy to have infringed the Directive². The same year, Italy introduced a law establishing, retroactively from 30 June 2005, a national scheme on compensation covering both internal and cross-border situations. For victims of sexual violence, a fixed amount of €4,800 was provided as a compensation due by the Italian State when the victim is unable to obtain reparation from the offender.

The referring Corte Suprema di Cassazione (Court of Cassation, Italy), which must decide on BV's case in the last instance, asks the Court whether the Directive requires each Member State to introduce a national scheme on compensation covering just victims in cross-border situations or *all* victims of violent intentional crimes committed in its territory. Furthermore, the referring court asks whether compensation fixed by the Italian law at €4,800 to victims of sexual violence is 'fair and appropriate', in accordance with the Directive.

In today's Opinion, Advocate General Michal Bobek considers that the Court should reply to the first question in the sense that the Directive **requires Member states to establish national schemes on compensation for any victim of a violent intentional crime committed on their territories, regardless of his or her residence.**

The Advocate General interprets the Directive **as setting two different obligations for the Member States: 1) creating a system of cooperation to facilitate access to compensation in cross-border situations and 2) establishing a national scheme on compensation triggered by any violent intentional crime committed on their respective territories.**

The Advocate general notes that this interpretation explains why two different deadlines for transposition into national laws were provided: one (earlier) for the compensation scheme and one (later) for the cooperation system.

Despite the ambiguity of the Directive, the Advocate General identifies three arguments that support this interpretation.

¹ Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (OJ 2004 L 261 p. 15).

² Case [C-601/14](#), Commission v Italy see also Press Release No. [109/16](#). The Court stated, in particular, that, by omitting to guarantee fair and appropriate compensation for victims of all violent intentional crimes committed in cross-border situations, Italy had failed to fulfil its obligations under the Directive.

First, the rights enshrined in **Article 1 (Human dignity) and Article 6 (Right to liberty and security) of the Charter of Fundamental Rights of the European Union** (the Charter) are guaranteed to *everyone*.

Second, **Article 21 of the Charter (prohibition of discrimination) does not allow a different treatment of two types of situations that both involve cross-border elements.**

According to the text of the Directive, a cross-border situation arises when a violent intentional crime has been committed in a Member State other than the one where the victim is resident (**travelling victim**). However, there are situations not overtly mentioned in the Directive, where the offender, not the victim, made use of his or her freedom of movement (**travelling offender**). It is precisely in these situations that the offender can easily abscond by simply going back to his or her country. Therefore, it would be unjustified to exclude such cases from the scope of the Directive.

Finally, the Advocate General puts forward the argument of the **separation of powers between the legislator and the judiciary.**

The Commission maintains that the Council wished to keep the rules on compensation to victims in internal (non-cross-border) situations outside the scope of the Directive. However, such a clear intent is not discernible, in the Advocate General's view, from the text of the Directive or its preparatory works. At any rate, **the subjective will of the historical legislature which is not clearly expressed anywhere in the legislation finally adopted cannot be considered determinant and thus binding for the Court.**

Regarding the second question referred by the Corte Suprema di Cassazione, Advocate General Bobek suggests that the Court should find that **a compensation to a victim is 'fair and appropriate'** within the meaning of the Directive when it gives a **meaningful contribution to the reparation of the damage** suffered by the victim. In particular, the amount of compensation granted **cannot be so low that it becomes purely symbolic**, or that its usefulness for the victim is, in practice, negligible or marginal.

The Advocate General considers that Member States, enjoying wide discretion in this matter, **can determine the compensation as a lump sum or a standardized amount.**

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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