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Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

16 July 2020 (*)

(Reference for a preliminary ruling — Directive 2004/80/EC — Article 12(2) — National schemes on compensation to victims of violent intentional crime guaranteeing fair and appropriate compensation — Scope — Victim residing in the Member State in which the violent intentional crime was committed — Obligation for the national compensation scheme to cover that victim — Concept of ‘fair and appropriate compensation’ — Liability of Member States in the event of a breach of EU law)

In Case C-129/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Corte suprema di cassazione (Supreme Court of Cassation, Italy), made by decision of 29 January 2019, received at the Court on 19 February 2019, in the proceedings

Presidenza del Consiglio dei Ministri

v

BV,

intervening parties:

Procura della Repubblica di Torino,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot, M. Vilaras (Rapporteur), E. Regan, M. Safjan, P.G. Xuereb, L.S. Rossi, and I. Jarukaitis, Presidents of Chambers, L. Bay Larsen, T. von Danwitz, C. Toader, D. Šváby, C. Lycourgos and N. Piçarra, Judges,

Advocate General: M. Bobek,

Registrar: R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 2 March 2020,

after considering the observations submitted on behalf of:

- BV, by V. Zeno-Zencovich, U. Oliva, F. Bracciani and M. Bona, avvocati,
- the Italian Government, by G. Palmieri, acting as Agent, and by G. Palatiello, avvocato dello Stato,
- the European Commission, initially by C. Ladenburger, E. Montaguti and M. Heller, subsequently by C. Ladenburger, G. Gattinara, E. Montaguti and M. Heller, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 May 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (OJ 2004 L 261, p. 15).

2 The request has been made in proceedings between the Presidenza del Consiglio dei Ministri (Presidency of the Council of Ministers, Italy) and BV concerning the claim of non-contractual liability brought by BV against the Italian Republic for loss alleged to have been caused to BV owing to the failure to transpose Directive 2004/80 into Italian law.

Legal context

European Union law

3 Recitals 1 to 3, 6 to 8 and 10 of Directive 2004/80 state:

‘(1) One of the objectives of the European [Union] is to abolish, as between Member States, obstacles to the free movement of persons and services.

(2) The Court of Justice held in the [judgment of 2 February 1989, *Cowan* (186/87, EU:C:1989:47)] that, when [European Union] law guarantees to a natural person the freedom to go to another Member State, the protection of that person from harm in the Member State in question, on the same basis as that of nationals and persons residing there, is a corollary of that freedom of movement. Measures to facilitate compensation to victims of crimes should form part of the realisation of this objective.

(3) At its meeting in Tampere [(Finland)] on 15 and 16 October 1999, the European Council called for the drawing-up of minimum standards on the protection of the victims of crime, in particular on crime victims’ access to justice and their rights to compensation for damages, including legal costs.

...

(6) 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 [Union] the crime was committed.

(7) This Directive sets up a system of cooperation to facilitate access to compensation to victims of crimes in cross-border situations, which should operate on the basis of Member States' schemes on compensation to victims of violent intentional crime, committed in their respective territories. Therefore, a compensation mechanism should be in place in all Member States.

(8) Most Member States have already established such compensation schemes, some of them in fulfilment of their obligations under the European Convention ... on the compensation of victims of violent crimes [, signed at Strasbourg on 24 November 1983].

...

(10) Crime victims will often not be able to obtain compensation from the offender, since the offender may lack the necessary means to satisfy a judgment on damages or because the offender cannot be identified or prosecuted.'

4 Directive 2004/80 is composed of three chapters. Chapter I, entitled 'Access to compensation in cross-border situations', contains Articles 1 to 11. Chapter II, entitled 'National schemes on compensation', comprises Article 12. Chapter III, entitled 'Implementing provisions', contains Articles 13 to 21.

5 Article 1 of Directive 2004/80 provides:

'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.'

6 Article 2 of that directive provides that the compensation is to be paid by the competent authority of the Member State on whose territory the crime was committed.

7 Article 12 of the VAT Directive is worded as follows:

'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.

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.'

8 Article 18 of Directive 2004/80, entitled 'Implementation', states in paragraph 1:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 2006 at the latest, with the exception of Article 12(2), in

which case the date of compliance shall be 1 July 2005. They shall forthwith inform the [European] Commission thereof.’

Italian law

9 The legge n. 122 — Disposizioni per l’adempimento degli obblighi derivanti dall’appartenenza dell’Italia all’Unione europea — Legge europea 2015-2016 (Law No 122, on provisions to comply with the obligations arising from Italy’s membership of the European Union — European Law 2015-2016), of 7 July 2016 (GURI No 158, of 8 July 2016), which entered into force on 23 July 2016, was adopted by the Italian Republic in order, inter alia, to comply with its obligation flowing from Article 12(2) of Directive 2004/80.

10 Article 11 of that law, in the version applicable to the case in the main proceedings (‘Law No 122’), recognised the right to compensation from the Italian Republic in respect of an intentional offence committed with violence to the person, including sexual violence, for the benefit of the victim and, in the event of the victim’s death as a result of the crime, for the benefit of the victim’s lawful heirs. That compensation is fixed in accordance with the scale laid down by the Ministerial Decree, adopted pursuant to Article 11(3) of Law No 122, within the limits of the budget allocated to the special funds referred to in Article 14 of that law and if certain conditions, laid down in Article 12 of that law, are satisfied.

11 The right to compensation also benefits any victim of violent intentional crime committed after 30 June 2005 and before the entry into force of Law No 122. A request for compensation by such a victim had to be submitted by 30 September 2019 at the latest, failing which it was time-barred.

12 Adopted pursuant to Article 11(3) of Law No 122, the decreto ministeriale — Determinazione degli importi dell’indennizzo alle vittime dei reati intenzionali violenti (Ministerial decree on the determination of the amounts of compensation payable to the victims of violent intentional crimes), of 31 August 2017 (GURI No 237, of 10 October 2017), in the version applicable to the case in the main proceedings (‘the Ministerial decree of 31 August 2017’) determines the amounts of compensation for victims of violent intentional crime according to the following scale:

‘(a) as regards the crime of murder, a fixed amount of EUR 7 200, and, in the case of murder committed by a spouse, including one who is separated or divorced, or by a person who is, or was, linked by emotional ties to the injured party, a fixed amount of EUR 8 200 exclusively for the victim’s children; (b) as regards the crime of sexual violence referred to in Article 609-bis of the Criminal Code, except where the attenuating circumstance of lesser gravity arises, a fixed amount of EUR 4 800; (c) as regards crimes other than those referred to in subparagraphs (a) and (b), up to a maximum of EUR 3 000 by way of reimbursement for medical and care costs)’.

The dispute in the main proceedings and the questions referred for a preliminary ruling

13 In the night of 15 to 16 October 2005, BV, an Italian citizen residing in Italy, was the victim of violent sexual crimes committed on Italian territory. The perpetrators of those crimes were convicted and received prison sentences, and ordered to pay BV the sum of EUR 50 000 by way of damages. However, since the whereabouts of those perpetrators were unknown, the latter sum could not be recovered.

14 In February 2009, BV brought a claim against the Presidency of the Council of Ministers before the Tribunale di Torino (District Court, Turin, Italy) in order to establish the non-contractual liability of the Italian Republic for failing to have implemented, correctly and fully, the obligations flowing from Directive 2004/80, in particular that laid down in Article 12(2) of that directive.

15 By judgment of 26 May 2010, the Tribunale di Torino (District Court, Turin) upheld BV's claim and ordered the Presidency of the Council of Ministers to pay BV the sum of EUR 90 000, together with statutory interest and legal costs.

16 The Presidency of the Council of Ministers lodged an appeal against that judgment before the Corte d'appello di Torino (Court of Appeal, Turin, Italy). By a decision of 23 January 2012, that court varied the judgment of the Tribunale di Torino (District Court, Turin) by reducing the amount of compensation to EUR 50 000, and, for the remainder, confirmed that judgment.

17 The Presidency of the Council of Ministers brought an appeal on a point of law before the referring court. In its appeal, it submitted inter alia that Directive 2004/80 was not a source of rights that could be relied on by a citizen of the European Union against his or her Member State of residence, since that directive concerns only cross-border situations and seeks to ensure that victims of violent intentional crime committed in the territory of a Member State other than that of their residence have access to proceedings for compensation provided in the Member State in which the crime was committed.

18 In the first place, the referring court considers that, in the judgment of 11 October 2016, *Commission v Italy* (C-601/14, EU:C:2016:759, paragraphs 45 and 48 to 50), the Court confirmed its earlier case-law to the effect that Directive 2004/80 regulates only cross-border situations, by ensuring that the victim of a violent intentional crime committed in a Member State other than that of their habitual residence will be compensated by the Member State in which the crime was committed. The referring court concluded from that case-law that Article 12(2) of Directive 2004/80 cannot be invoked, immediately and directly, against the Italian state by victims of violent intentional crime who reside in Italy.

19 However, the referring court considers that, in accordance with the general principles of equal treatment and non-discrimination on the basis of nationality, as enshrined in Article 18 TFEU and in Articles 20 and 21 of the Charter of Fundamental Rights of the European Union, it is possible to take the view that the Italian Republic could not fully implement Directive 2004/80 by limiting the application of the national compensation scheme only to victims who were in cross-border situations, because such a limitation would subject Italian citizens who reside in Italy to unjustified discriminatory treatment.

20 On the basis of those considerations, the referring court considers that, in order to avoid discrimination, victims of violent intentional crime must be able to invoke a right of access to the compensation scheme of the Member State in which the crime in question was committed, whether they are in a cross-border situation or reside in that Member State.

21 In the present case, the need to avoid such discrimination remains relevant, notwithstanding that BV could benefit from the right to compensation under Law No 122, which entered into force after her claim for non-contractual liability against the Italian Republic was commenced but applied retroactively to her. In the context of this claim, BV submitted that she had suffered loss because of the failure by the Italian Republic to comply with its obligation to transpose Article 12(2) of Directive 2004/80 within the appropriate time, and did not rely on the right to obtain, on the basis of Italian Law, the compensation provided for by Law No 122.

22 In the second place, the referring court has doubts as to whether the fixed sum of EUR 4 800, laid down by the Ministerial decree of 31 August 2017 for the compensation of victims of violent sexual crime, such as the applicant in the main proceedings, is fair and appropriate within the meaning of Article 12(2) of Directive 2004/80.

23 The referring court states, in that regard, that in recent judgments the Italian courts have fixed the compensation awarded for damage resulting from sexual violence at sums ranging from EUR 10 000 to EUR 200 000. In addition, the amounts of compensation awarded to victims who brought claims for non-contractual liability against the Italian Republic as a result of its failure to transpose Directive 2004/80 into national law range from EUR 50 000 to EUR 150 000. Having regard to those sums, the fixed sum of EUR 4 800 could be regarded as ‘unfair’, or even ‘derisory’.

24 In those circumstances, the Corte suprema di cassazione (Supreme Court of Cassation, Italy) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

(1) Where there is late (and/or incomplete) implementation into the national legal system of [Directive 2004/80], which is not directly applicable, as regards the establishment that it requires of a compensation scheme for the victims of violent crimes that gives rise — in relation to persons in cross-border situations, to whom alone the directive is addressed, — to liability on the part of the Member State to pay compensation in accordance with the principles set out in the case-law of the Court of Justice (inter alia, judgments [of 19 November 1991, *Francovich and Others*, C-6/90 and C-9/90, EU:C:1991:428, and of 5 March 1996, *Brasserie du pêcheur and Factortame*, C-46/93 and C-48/93, EU:C:1996:79], does [EU] law require that a similar liability be imposed on the Member State in relation to persons who are not in a cross-border situation (namely, residents), who are not the direct addressees of the benefits flowing from implementation of the directive but who, in order to avoid infringement of the principle of equal treatment/non-discrimination in that [EU] law should have and could have — if the directive had been fully implemented within the appropriate time — benefited, by extension, from the effectiveness of that directive (that is to say, the abovementioned compensation scheme)?

(2) If the answer to the preceding question is in the affirmative, can the compensation established for the victims of violent intentional crimes (and in particular the crime of sexual violence referred to in Article 609-bis of the [codice penale] (Italian Criminal Code)) by the Ministerial Decree of 31 August 2017, adopted pursuant to Article 11(3) of Law No 122 ..., in the fixed sum of EUR 4 800, be regarded as “fair and appropriate compensation to victims” within the meaning of Article 12(2) of Directive 2004/80?

Consideration of the questions referred

The need to adjudicate

25 As the referring court states, after the commencement of the claim for non-contractual liability against the Italian Republic, which is the subject of the main proceedings, that Member State established a compensation scheme for victims of violent intentional crime committed on Italian territory, irrespective of whether they reside in Italy or not. That scheme also covers, retroactively, criminal acts of that type committed from 1 July 2005 onwards and, therefore, the crimes of sexual violence of which BV was a victim.

26 According to the Italian Government, BV lodged a claim for compensation under that scheme and, on 14 March 2019, namely after the present order for a preliminary reference was lodged, a

decision granting BV compensation in the sum of EUR 4 800, which corresponds to the amount laid down in the Ministerial Decree of 31 August 2017 for the sexual violence that she suffered, was adopted and transmitted to the competent authority to be enforced. The Italian Government concludes from those circumstances that the case in the main proceedings has become devoid of purpose, with the result that the referring court's questions are hypothetical.

27 That argument cannot be upheld.

28 As is clear from paragraphs 16 and 17 above, the referring court is seised of an appeal on a point of law brought against a decision of the Corte d'appello di Torino (Court of Appeal, Turin), which ordered the Italian Republic to pay BV compensation in the sum of EUR 50 000.

29 Even if the referring court could, at the stage of the appeal on a point of law, take into account facts postdating the decision at issue in that appeal, namely the award to BV, under the Italian compensation scheme, of compensation in the sum of EUR 4 800 by way of reparation for the sexual violence that she suffered, it should, in any event, be recalled that the proper and complete retroactive application of measures implementing a directive serve, in principle, to remedy the harmful consequences of its belated implementation and to ensure appropriate reparation for harm suffered by the beneficiaries of that directive as a result of that late implementation, except where those beneficiaries establish that there are complementary losses that they suffered due to the fact that they were unable to benefit at the appropriate time from the financial advantages guaranteed by the directive, which thus must also be made good (see, to that effect, the judgment of 24 January 2018, *Pantuso and Others*, C-616/16 and C-617/16, EU:C:2018:32, paragraph 50 and the case-law cited).

30 As has been pointed out in paragraph 21 above, the claim by BV initiating the action in the main proceedings, which was instituted before the entry into force of Law No 122 that retroactively recognises her right to compensation, seeks an order for the Italian Republic to pay compensation for the loss that BV claims to have suffered as a result of the failure by that Member State to comply with its obligation to implement Article 12(2) of Directive 2004/80 within the appropriate time.

31 The resolution of those proceedings therefore requires it to be ascertained whether Article 12(2) confers on individuals, such as BV, a right upon which they may rely in order to invoke the liability of a Member State due to a breach of EU law and, if so, whether compensation in the sum of EUR 4 800 that the Italian authorities decided to award to the person concerned on the basis of the Ministerial Decree of 31 August 2017, represents 'fair and appropriate compensation' within the meaning of Article 12(2).

32 It follows that the referring court's questions remain of interest for the resolution of the dispute in the main proceedings and cannot be classified as 'hypothetical'. It is therefore necessary for the Court to provide an answer to the questions referred.

The first question

33 By its first question, the referring court asks, in essence, whether EU law must be interpreted as meaning that the rules on the non-contractual liability of a Member State for damage caused by the breach of that law apply, on the ground that that Member State did not transpose, within the appropriate time, Article 12(2) of Directive 2004/80 as regards victims residing in that Member State, in the territory of which the violent intentional crime was committed.

34 In that regard, it must be recalled that, according to the Court's established case-law, individuals who have been harmed have a right to reparation for damage caused by breaches of EU law attributable to a Member State when three conditions are met, namely, the rule of EU law infringed must be intended to confer rights on individuals, the breach of that rule must be sufficiently serious, and there must be a direct causal link between the breach and the loss or damage sustained by those individuals (see, to that effect, the judgments of 5 March 1996, *Brasserie du pêcheur and Factortame*, C-46/93 and C-48/93, EU:C:1996:79, paragraph 51; of 30 September 2003, *Köbler*, C-224/01, EU:C:2003:513, paragraph 51; and of 28 July 2016, *Tomášová*, C-168/15, EU:C:2016:602, paragraph 22).

35 It is, in principle, for the national courts to apply the criteria for establishing the liability of Member States for damage caused to individuals by breaches of EU law, in accordance with the guidelines laid down by the Court for the application of those criteria (judgments of 13 March 2007, *Test Claimants in the Thin Cap Group Litigation*, C-524/04, EU:C:2007:161, paragraph 116, and of 4 October 2018, *Kantarev*, C-571/16, EU:C:2018:807, paragraph 95).

36 In the present case, the examination of the first condition, which the referring court's questions in this case specifically concern, requires it to be ascertained whether Article 12(2) of Directive 2004/80 imposes an obligation on Member States to establish a compensation scheme for all victims of violent intentional crime committed in their respective territories, which guarantees fair and appropriate compensation, and whether that provision thus confers on all those victims, including those that reside in the territory of the Member State concerned, the right to obtain such compensation.

37 As is clear from the wording of the question itself, the referring court's first question is based on the premiss that Article 12(2) of Directive 2004/80 imposes an obligation on Member States to establish a compensation scheme for victims of violent intentional crime in respect of victims that are in a cross-border situation only, namely, in accordance with Article 1 of that directive, victims of a violent intentional crime committed in a Member State other than the Member State where the applicant for compensation is habitually resident. On the basis of that premiss, that court has doubts, however, as to whether, in order to avoid infringing the principle of non-discrimination, that compensation scheme must also benefit the victims of such crime who reside in the Member State concerned.

38 Therefore, in order to ascertain whether that premiss is well founded, it is necessary to interpret Article 12(2) of Directive 2004/80. In that regard, in accordance with the settled case-law of the Court, it is necessary to consider not only the wording of that provision, but also its context and the objectives of the legislation of which it forms part (judgment of 26 February 2019, *Rimšēvičs and ECB v Latvia*, C-202/18 and C-238/18, EU:C:2019:139, paragraph 45 and the case-law cited).

39 As regards, in the first place, the wording of Article 12(2) of Directive 2004/80, it must be observed that that provision sets out, in general terms, the obligation for Member States to provide for the existence of a scheme on compensation to 'victims of violent intentional crimes committed in their respective territories' and not only to victims that are in a cross-border situation.

40 In the second place, as regards the context of Article 12(2) of Directive 2004/80, it must be recalled that Article 12 of that directive is the only article in Chapter II thereof, which concerns, according to its title, 'national schemes on compensation'. Unlike that of Chapter I of the directive, the title of Chapter II of that same directive does not specifically refer to 'cross-border situations'.

41 Article 12(1) of Directive 2004/80 provides that the provisions of that directive on access to compensation in cross-border situations ‘shall operate on the basis of Member States’ schemes on compensation to victims of violent intentional crime committed in their respective territories’.

42 It follows that the EU legislature opted not for the establishment, by each Member State, of a specific compensation scheme that was restricted to those victims of violent intentional crime who were in a cross-border situation only, but for the application, in favour of those victims, of national schemes on compensation to victims of violent intentional crime committed in the respective territories of the Member States.

43 Consequently, Article 12(2) of Directive 2004/80 imposes on each Member State the obligation to provide a scheme on compensation to victims of violent intentional crimes committed in its territory.

44 In that regard, it must be observed, as is clear from recital 8 of Directive 2004/80, that on the date of adoption of that directive, such a scheme was provided for by provisions in force in most Member States. However, as the Commission stated in the observations it submitted to the Court, as at that date two Member States had not yet established a scheme of compensation to victims of violent intentional crime committed on their territory.

45 Unless it establishes such a scheme, a Member State is unable to comply with its obligations on access to compensation in cross-border situations, as laid down in Directive 2004/80, since, in accordance with Article 12(1) of that directive, the provisions on access to compensation in such situations are to ‘operate on the basis of Member States’ schemes on compensation to victims of violent intentional crime committed in their respective territories’.

46 As regards, in the third place, the objectives pursued by Directive 2004/80, it is true that recital 1 thereof refers to the EU legislature’s wish to abolish, as between Member States, obstacles to the free movement of persons.

47 Furthermore, recital 2 of that directive states, after recalling the case-law according to which, when EU law guarantees to a natural person the freedom to go to another Member State, the protection of that person from harm in the Member State in question, on the same basis as nationals and persons residing there, is a corollary of that freedom of movement (judgment of 2 February 1989, *Cowan*, 186/87, EU:C:1989:47, paragraph 17), that measures to facilitate compensation to victims of crime should contribute to the realisation of that objective.

48 However, it is necessary also to take into account recitals 3, 6, 7 and 10 of that directive.

49 Recital 3 of Directive 2004/80 states that the European Council, at its meeting in Tampere on 15 and 16 October 1999, called for the drawing-up of minimum standards on the protection of the victims of crime, in particular on crime victims’ access to justice and their rights to compensation for damage.

50 In that regard, it is clear from recital 6 of Directive 2004/80 that victims of crime in the European Union should be entitled to fair and appropriate compensation for the injuries they have suffered, regardless of where in the European Union the crime was committed. Consequently, and as stated in recital 7 of that directive, it is necessary for a mechanism of compensation for those victims to be in place in all Member States.

51 In addition, recital 10 of Directive 2004/80 indicates that the EU legislature intended to take into consideration the difficulties that victims of violent intentional crime often face in obtaining compensation from the offender, whether that is because the offender lacks the necessary means to satisfy a judgment awarding damages to the victim or because the offender cannot be identified or prosecuted. As the facts giving rise to the case in the main proceedings show, such difficulties are equally likely to be encountered by victims of that type of crime when they reside in the Member State in which the crime in question took place.

52 It follows from the considerations set out in paragraphs 39 to 51 above that Article 12(2) of Directive 2004/80 imposes the obligation on each Member State to provide for a scheme of compensation covering all victims of violent intentional crime committed on their territory and not only those victims that are in a cross-border situation.

53 That finding is not called into question by the case-law of the Court to the effect that Directive 2004/80 provides for a compensation scheme solely in circumstances in which a violent intentional crime has been committed in a Member State in which the victim finds himself or herself in exercising their right to free movement, meaning that a purely internal situation is not covered by the scope of application of that directive (see, to that effect, judgments of 28 June 2007, *Dell’Orto*, C-467/05, EU:C:2007:395, paragraph 59, and of 12 July 2012, *Giovanardi and Others*, C-79/11, EU:C:2012:448, paragraph 37, and the order of 30 January 2014, *C.*, C-122/13, EU:C:2014:59, paragraph 12).

54 By that case-law, the Court merely stated that the system of cooperation established by Chapter I of Directive 2004/80 solely concerns access to compensation in cross-border situations, without however determining the scope of application of Article 12(2), which appears in Chapter II thereof (see, to that effect, the judgment of 11 October 2016, *Commission v Italy*, C-601/14, EU:C:2016:759, paragraph 49).

55 It follows that Article 12(2) of Directive 2004/80 confers the right to obtain fair and appropriate compensation not only on victims of violent intentional crime committed in the territory of a Member State who find themselves in a cross-border situation, within the meaning of Article 1 of that directive, but also on victims who reside habitually in the territory of that Member State. Therefore, subject to the matters recalled in paragraph 29 above, and provided that the other conditions laid down in the case-law recalled in paragraph 34 above are satisfied, an individual has a right to compensation for damage caused to him or her by the breach by a Member State of its obligation flowing from Article 12(2) of Directive 2004/80, and that is so irrespective of whether that individual finds himself or herself in such a cross-border situation at the time when he or she was the victim of a crime which is a violent intentional crime.

56 Having regard to all the foregoing considerations, the answer to the first question is that EU law must be interpreted as meaning that the rules on the non-contractual liability of a Member State for damage caused by the breach of that law applies, on the ground that that Member State did not transpose, within the appropriate time, Article 12(2) of Directive 2004/80 as regards victims residing in that Member State, in the territory of which the violent intentional crime was committed.

The second question

57 By its second question, the referring court asks, in essence, whether Article 12(2) of Directive 2004/80 must be interpreted as meaning that a fixed rate of compensation of EUR 4 800 granted to victims of sexual violence under the national scheme for compensation to victims of violent intentional crime is to be classified as ‘fair and appropriate’ within the meaning of that provision.

58 In the absence of any indication in Directive 2004/80 as to the amount of compensation deemed to correspond to ‘fair and appropriate’ compensation, within the meaning of Article 12(2) of that directive, or as to the detailed arrangements for the determination of such compensation, it must be held that that provision allows Member States a discretion in that regard.

59 In that context, it must be observed that the compensation referred to in Article 12(2) of Directive 2004/80 is to be paid not by the offender who committed the violence concerned himself or herself, but by the competent authority in the Member State in the territory of which the crime was committed, in accordance with Article 2 of that directive, by means of a national scheme for compensation whose financial viability must be ensured in order to guarantee fair and appropriate compensation to any victim of violent intentional crime committed in the territory of the Member State concerned.

60 Therefore, it must be held, as the Advocate General stated in points 137 to 139 of his Opinion, that ‘fair and appropriate’ compensation, provided for in Article 12(2) of Directive 2004/80, is not necessarily required to correspond to the damages and interest that may be awarded to the victim of a crime that is a violent intentional crime, which are to be paid by the perpetrator of that crime. Consequently, that compensation is not necessarily required to ensure the complete reparation of material and non-material loss suffered by that victim.

61 In that context, it is ultimately for the national court to ensure, with regard to the national provisions establishing the compensation scheme concerned, that the sum awarded to a victim of violent intentional crime pursuant to that scheme is ‘fair and appropriate compensation’, within the meaning of Article 12(2) of Directive 2004/80.

62 Nevertheless, in the context of the procedure under Article 267 TFEU, in order to provide a useful answer to the referring court it is necessary to set out the relevant criteria for the interpretation of Article 12(2) of that directive, which must be taken into account for the purpose of the verification envisaged in the preceding paragraph.

63 Thus, it is necessary to state that a Member State would exceed its discretion under Article 12(2) of Directive 2004/80 if the national provisions provided compensation to victims of violent intentional crime that was purely symbolic or manifestly insufficient having regard to the seriousness of the consequences, for those victims, of the crime committed.

64 For the purposes of Article 12(2) of Directive 2004/80, the compensation granted to such victims represents a contribution to the reparation of material and non-material losses suffered by them. Such a contribution may be regarded as ‘fair and appropriate’ if it compensates, to an appropriate extent, the suffering to which those victims have been exposed.

65 Having made that clarification, it is also necessary to find, having regard to the characteristics of the scheme for compensation to victims of violent intentional crime established by the Italian Republic, that Article 12(2) of Directive 2004/80 cannot be interpreted as meaning that it precludes a fixed rate of compensation to such victims, with the fixed amount granted to each victim being capable of being varied in accordance with the nature of the violence suffered.

66 However, a Member State that has opted for such a compensation scheme must ensure that the compensation scale is sufficiently detailed so as to avoid the possibility that, having regard to the circumstances of a particular case, the fixed rate of compensation provided for a specific type of violence proves to be manifestly insufficient.

67 As regards, in particular, sexual violence, it must be observed that such violence is likely to give rise to the most serious consequences of violent intentional crime.

68 Consequently, subject to the verification which it is for the referring court to carry out, a fixed rate of EUR 4 800 for the compensation of a victim of sexual violence does not appear, at first sight, to correspond to ‘fair and appropriate compensation’, within the meaning of Article 12(2) of Directive 2004/80.

69 Having regard to all of the foregoing considerations, the answer to the second question is that Article 12(2) of Directive 2004/80 must be interpreted as meaning that a fixed rate of compensation awarded to victims of sexual violence under the national scheme of compensation to victims of violent intentional crime cannot be classified as ‘fair and appropriate’, within the meaning of that provision, if it is fixed without taking into account the seriousness of the consequences, for the victims, of the crime committed and does not therefore represent an appropriate contribution to the reparation of the material and non-material harm suffered.

Costs

70 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. EU law must be interpreted as meaning that the rules on the non-contractual liability of a Member State for damage caused by the breach of that law applies, on the ground that that Member State did not transpose, within the appropriate time, Article 12(2) of Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, as regards victims residing in that Member State, on the territory of which the violent intentional crime was committed.

2. Article 12(2) of Directive 2004/80 must be interpreted as meaning that a fixed rate of compensation awarded to victims of sexual violence under the national scheme of compensation to victims of violent intentional crime cannot be classified as ‘fair and appropriate’, within the meaning of that provision, if it is fixed without taking into account the seriousness of the consequences, for the victims, of the crime committed and does not therefore represent an appropriate contribution to the reparation of the material and non-material harm suffered.

[Signatures]

* Language of the case: Italian.