

# CJEU: Member States Must Sufficiently Compensate Victims



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**News**

The Italian Supreme Court of Cassation referred questions on the applicability of Directive 2004/80/EC as regards compensation to crime victims and the amount of compensation provided therein. On 16 July 2020, the Grand Chamber of the CJEU delivered its [judgment](#) on the case (*C-129/19, Presidenza del Consiglio dei Ministri v BV*)

## *Facts of the case:*

In the case at issue, Ms *BV* is struggling to obtain State compensation from the Italian authorities because she felt victim of crime. In 2005, Ms *BV*, a resident of Italy, was the victim of sexual violence committed by two Romanian nationals in Turin. Although the perpetrators were sentenced to imprisonment and immediately ordered to pay €50,000 in her favour for the harm caused, she was unable to obtain the amount, as the perpetrators had absconded. After the CJEU found that Italy had infringed Directive 2004/80 for failure of transposition, Italy adopted a law in 2016 establishing a national compensation scheme for victims who are unable to obtain reparation from the offender. The law applied retroactively from 30 June 2005 but operates with fixed compensation rates, depending on the type of crime committed. For victims of sexual violence, the fixed amount is €4800.

## *First question*

The referring court must decide on Ms *BV*'s claim to obtain State compensation from Italy for not having transposed EU law correctly and in time (non-contractual liability). Since the Directive aims at protecting victims in cross-border situations, i.e., to support victims of a crime committed in an EU country other than the one in which they usually live, the first question was essentially whether the Directive also applies to purely internal situations. In other words: Are Member States required to introduce a national compensation scheme that covers *all* victims of violent intentional crimes committed in their respective territories (which also covers non-cross-border situations), taking into consideration that the crime at issue was committed on Italian soil against an Italian citizen? For the referring court, this is a prejudicial question, namely whether Ms *BV* may claim non-contractual liability from the Italian state because the Italian law prohibits reverse discrimination.

## *The CJEU's Answer*

The CJEU calls to mind that non-contractual liability of Member States is established under three conditions:

- The rule of EU law infringed must be intended to confer rights on individuals;
- The breach of that rule must be sufficiently serious; and

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- There must be a direct causal link between the breach and the loss or damage sustained by those individuals.

The CJEU found that the first condition must be examined in the present case. Taking into account not only the wording, but also the context and objectives of EU legislation, the CJEU concluded that Art. 12(2) of Directive 2004/80 imposes an obligation on each Member State to provide a scheme of compensation covering all victims of violent intentional crime committed on their territory and not only victims that are in a cross-border situation. As a result, any victim – regardless of his/her residence – is entitled to obtain fair and appropriate compensation when a crime has been committed against him/her.

#### *Second Question*

In its second question, the Italian Supreme Court of Cassation essentially asks whether compensation fixed at €4800 for victims of sexual violence may be regarded as “fair and appropriate” within the meaning of Art. 12(2) of Directive 2004/80.

#### *The CJEU's Answer*

The CJEU acknowledges that Art. 12(2) of the Directive allows Member States discretion as to the amount of compensation. Therefore, the judges follow the [opinion of Advocate General Bobek](#) that “fair and appropriate” compensation is not necessarily required to correspond to the damages and interest that may be awarded to the victim of a (violent intentional) crime, which are to be paid by the perpetrator of that crime. Consequently, this compensation is not necessarily required to ensure the complete reparation of material and non-material loss suffered by that victim. Nevertheless, Member States would exceed their discretion if they only provide purely symbolic or manifestly insufficient compensation. In conclusion, Art. 12(2) of Directive 2004/80 does not *per se* preclude fixed rates for a compensation, but the compensation scale must be sufficiently detailed. In this context, the compensation scheme must take into account the consequences of the crime.

Although it is up to the Italian Supreme Court of Cassation to ultimately decide whether the established requirements have been fulfilled, the CJEU doubts that the fixed rate of € 4800 is “not manifestly insufficient,” because “sexual violence...gives rise to the most serious consequences of violent intentional crime.”

#### *Put in focus:*

In essence, the judges in Luxembourg follow the opinion of the Advocate General. AG *Bobek* favoured a broad interpretation of the scope of the Directive to all victims of crime as well. He also advocated that compensation cannot only be purely symbolic but must be meaningful. Nonetheless, it seems that the AG deemed the offered lump sum or standardised amounts to still be in line with EU law. He focused less on the consequences of the crime but instead on the criterion that there be some correlation between the injury and loss caused by the crime and the compensation provided under the scheme. He ultimately suggested that the EU legislator remove existing diversities in the compensation regimes, procedures, and amounts awarded in the individual Member States.

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