

ECJ: Compensation to Victims of Violent Intentional Crime Must Be Available to All Family Members

Thomas Wahl

On 7 November 2024, the ECJ ruled in the preliminary ruling procedure in case *C-126/23 (Burdene)* that a national scheme that automatically excludes certain family members from a compensation claim as a result of a homicide due to the presence of other family members, without taking into account the circumstances of the individual case, cannot guarantee “fair and appropriate compensation” within the meaning of [Directive 2004/80/EC](#) relating to compensation to crime victims.

Background of the case and legal question

The case in question is from Italy: A man had killed his former partner and was ordered to pay compensation to the victim's family members. However, he was insolvent, so the Italian state stepped in – but only partially. Under Italian law, a “tiered” compensation scheme was provided for according to the order of succession. For example, under Italian law, in the event of the victim's homicide, the parents would only receive compensation if there was neither a surviving spouse nor children.

The victim's parents, children and siblings then filed a lawsuit, arguing that Italian law no. 122/2016 was incompatible with Art. 12(2) of Directive 2004/80/EC, because the latter stipulates that the amounts of compensation to be paid to victims of violent intentional crime are to be determined “in a fair and appropriate” manner.

ECJ on the applicability of Directive 2004/80

In its [judgment](#), the ECJ found first that the concept of “victims” pursuant to the Directive must be understood as covering both persons who have themselves been subjected to violent intentional crime, as direct victims, and their close family members where those family members suffer, in turn, the consequences of that crime, as indirect victims.

ECJ on “fair and appropriate compensation” for family members

Second, the ECJ ruled that the Italian compensation scheme at issue is incompatible with the material concept of Art. 12(2) of Directive 2004/80, which guarantees to Union citizens the right to fair and appropriate compensation for the injuries they suffer on the territory of the Member State in which they find themselves. The ECJ justifies its decision by stating that “a contribution can be regarded as ‘fair and appropriate’ only if it compensates, to an appropriate extent, the suffering to which [the family members] have been exposed.”

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Regulations that automatically exclude certain family members from compensation solely on the basis of the presence of other family members, without taking other aspects into account, are to be criticised. In particular, the material consequences for the family members resulting from the death are to be taken into account. The fact that the deceased was responsible for their maintenance or that they lived with them in the same household is also to be considered.

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