Compensation for Victims of Violent Crimes

Narrowing the Member States' Discretion under Directive 2004/80/EC

Julia Burchett

28.11.2024 doi: 10.59704/bed0d57b58961e7b

On 7 November 2024, the Court of Justice of the European Union (CJEU) provided essential clarifications for building a cohesive and protective EU-wide framework for compensating crime victims. This is not the first instance in which the Court has been called upon to address the legislative ambiguities surrounding Article 12(2) of Directive 2004/80/EC relating to compensation to crime victims (the Compensation Directive). The ruling not only curtails Member States' discretion in interpreting key concepts that are critical to defining eligibility for compensation, but it also strengthens the interplay between the Compensation Directive and Directive 2012/29/EU (the Victims' Rights Directive). The links forged between these two instruments are especially praiseworthy. They foster a consistent interpretation of the autonomous notion of "victim" throughout EU instruments, thereby reducing risks of legal uncertainty and mitigating the lack of statutory definitions in the Compensation Directive. By extension, this judgment reinforces the significance of the harmonized definition of victim established in Article 2 of the Victims' Rights Directive, solidifying its status as a key legal norm for determining those entitled to victim's rights under EU law.

Personal scope of application: who qualifies for state compensation?

Attempting to exclude indirect victims from the scope of the Compensation Directive, and consequently from the jurisdiction of the CJEU, is not a surprising strategy. Particularly in matters as sensitive as these with significant budgetary implications. However, this approach proved unsuccessful in the present case. The Court begins by resolving uncertainties regarding the categories of persons eligible for the national compensation schemes that Member States are required to establish under Article 12(2). These clarifications are particularly welcome, as although the Court of Justice has previously specified that the notion of a victim excludes legal persons in relation to the Victims' Rights Directive, the concept of victim is not defined by the Compensation Directive. This leaves national courts with a critical notion in their hands, as it determines the scope of beneficiaries entitled to compensation by the Member States.

In line with the Advocate General's opinion, the Court held that the concept of victim must be regarded as an autonomous concept of EU law, requiring uniform interpretation in line with its ordinary meaning in everyday language and taking into account the objectives of the Compensation Directive and other EU legal instruments governing the rights of victims. From this analysis, the Court concludes that the term victim under the Compensation Directive encompasses both direct victims of violent intentional crime who have suffered physical harm and close relatives who, as indirect victims, suffer by extension from the consequences of such crime.

This interpretation is guided by the need to uphold the *effet utile* of Article 12(2). While Member States, as the Court recalled, have some latitude in interpreting certain key concepts, an overly too restrictive interpretation of the concept of victim would exceed their margin of discretion. This is especially relevant in the present case, where the Italian government argued that the personal scope of the Compensation Directive covers only direct victims, even in the event of their death. Such an interpretation would result in a situation where only surviving victims of violent intentional crime could claim compensation, leaving the close relatives of deceased victims without compensation despite the harm they have suffered.

To support its inclusive and protective interpretation of the term victim, the Court relied not only on the legislator's intent, as inferred from the preparatory works of the Compensation Directive, but also on the Victims' Rights Directive, which serves as a guiding norm for clarifying the scope of victim under the Compensation Directive. This approach leads the Court to dismiss the Italian government's claim that the concept of victim should not be interpreted in light of the Victims' Rights Directive but instead by the older 2001 Framework Decision, which assigns a much more restrictive meaning of victim.

The link established by the Court between the Compensation Directive and the Victims' Rights Directive is particularly commendable, partially addressing criticisms regarding the problematic disconnection between these two instruments. Given that the Victims' Rights Directive sets a horizontal framework applicable to all crime victims, whose scope overlaps with that of the Compensation Directive, alignment between these two texts regarding the concept of victim must be sought. Thus, the concept of victim under the Compensation Directive should be interpreted in light of Article 2 of the Victims' Rights Directive, which defines a victim as including not only direct victims of a criminal offense but also indirect victims – i.e. close family members of a deceased direct victim.

Clarifications on the requirement of fair and appropriate compensation

After clarifying the scope of beneficiaries under the compensation scheme mandated by the Compensation Directive, it remains to be determined if, and to what extent, establishing a hierarchy of priority in compensating indirect victims can ensure "fair and appropriate" compensation. This is not the first time the Court has been tasked to clarify this requirement, which carries significant financial implications for Member States. In fact, this vague benchmark represents the only minimum standard on which Member States were able to reach a compromise, marking a significant retreat compared to the initial proposal, which sought to establish comprehensive minimum standards for compensation, including regarding its type and calculation. Here again, Member States have a margin of discretion in defining what constitutes fair and appropriate compensation for victims of violent intentional crime, as well as the methods for determining it.

However, this discretion is not without limits. Relying on its prior case law, the Court recalled that compensation provided to victims of violent intentional crime can only be considered fair and appropriate if it compensates, to an appropriate extent, the suffering to which they have been subjected.

Applying these principles to the present case, the Court recognized that Member States may establish a priority order among victims entitled to compensation under the Compensation Directive, within their margin of discretion. This "tiered" approach is further permitted under Article 2 of the Victims' Rights Directive, which allows Member States to limit the number of indirect victims eligible for rights in the interest of sound administration of justice. However, this prioritization cannot result in the automatic exclusion of certain family members from any compensation, without considering the extent of their suffering and the severity of the harm they have endured as a consequence of the offense committed against the direct victim.

The Court found that this requirement is not met in the present case, as Italian legislation applies a predefined compensation hierarchy for indirect victims, based solely on the nature of their familial relationship to the direct victim, without regard for the extent of their harm. Such an approach cannot be seen as adequately contributing to the redress of harm suffered in accordance with the criteria set out by the Court.

Beyond the Court's clarifications, what lessons can be drawn for the protection of victims?

The Court's clarifications in this ruling seem to support the rights of indirect victims of violent intentional crime. This stance is evident both in the Court's interpretation of the term victim and in the benchmarks it establishes to fulfill the requirement of fair and appropriate compensation. These parameters limit

the discretion granted to Member States in interpreting key concepts from being used in an overly restrictive manner that could compromise the interests of indirect victims.

Moreover, the connections drawn between the Compensation Directive and the Victims' Rights Directive ensure greater coherence across the EU's toolbox of victims' rights instruments. This is especially commendable given that the complementarity between the Member State compensation mechanism established by the Compensation Directive and the provisions of the Victims' Rights Directive regarding offender-based compensation is expected to be strengthened as part of the ongoing revision of the Victims' Rights Directive. It is thus essential to ensure alignment between the two instruments, especially on such a fundamental issue as the definition of a victim.

More broadly, this ruling underscores the crucial significance of the definition of victim provided in Article 2 of the Victims' Rights Directive. This definition not only determines who is entitled to the procedural rights enshrined in the Victims' Rights Directive, but also delineates who qualifies for fair and appropriate compensation under the Compensation Directive, whether in cross-border situations or in purely domestic cases. While the definition is drafted in relatively clear terms and is only designed as a minimum standard, it is not exempt of any criticism. Consultations conducted as part of the ongoing revision of the Victims' Rights Directive have revealed several shortcomings, particularly concerning the broad discretion afforded to national authorities in interpreting key elements of this definition. Such flexibility has been criticized by some stakeholders for potentially undermining victims' access to the rights protected under EU law, in some cases contributing to discriminatory outcomes that run counter to the Victims' Rights Directive's objectives. Moreover, persistent disparities in national definitions suggest that the level of harmonization achieved remains so far limited. Despite these concerns, no revisions to this definition are currently foreseen in the ongoing legislative negotiations.

ABOUT THE AUTHOR

Julia Burchett

Julia Burchett is a Postdoctoral Researcher at the Centre for European Law (CDE), Université libre de Bruxelles.

SUGGESTED CITATION

Burchett, Julia: Compensation for Victims of Violent Crimes: Narrowing the Member States' Discretion under Directive 2004/80/EC, Verfassungsblog, 28.11.2024, doi: 10.59704/bed0d57b58961e7b.

Licensed under CC BY-SA 4.0.

Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20241129-000321-0.