

Case C-467/05

Criminal proceedings against Giovanni Dell’Orto

(Reference for a preliminary ruling from the judge in charge of preliminary investigations at the Tribunale di Milano)

(Police and judicial cooperation in criminal matters — Framework Decision 2001/220/JHA — Directive 2004/80/EC — Concept of ‘victim’ in criminal proceedings — Legal person — Return of property seized in the course of criminal proceedings)

Opinion of Advocate General Kokott delivered on 8 March 2007 I - 5561
Judgment of the Court (Third Chamber), 28 June 2007 I - 5585

Summary of the Judgment

1. *Preliminary rulings — Question on the interpretation of a Framework Decision adopted under Title VI of the EU Treaty*
(Art. 234 EC; Arts 35 EU and 46(b) EU)

2. *Preliminary rulings — Jurisdiction of the Court — Police and judicial cooperation in criminal matters*
(Art. 234 EC; Arts 35 EU and 46(b) EU)
3. *Acts of the institutions — Temporal application — Procedural rules*
4. *European Union — Police and judicial cooperation in criminal matters — Standing of victims in criminal proceedings — Framework Decision 2001/220*
(Council Framework Decision 2001/220, Arts 1(a), 2(1) and 8(1))

1. The fact that an order for reference concerning the interpretation of a Framework Decision adopted under Title VI of the EU Treaty does not mention Article 35 EU, but refers to Article 234 EC, cannot of itself make the reference for preliminary ruling inadmissible. That conclusion is reinforced by the fact that the EU Treaty neither expressly nor by implication lays down the form in which the national court must present its reference for a preliminary ruling.

give judgment', meaning that the case-law of the Court of Justice on the admissibility of references under Article 234 EC is, in principle, transposable to references for a preliminary ruling submitted to the Court of Justice under Article 35 EU.

(see para. 36)

2. In accordance with Article 46(b) EU, the system under Article 234 EC is capable of being applied to Article 35 EU, subject to the conditions laid down by that provision. Like Article 234 EC, Article 35 EU makes reference to the Court of Justice for a preliminary ruling subject to the condition that the national court 'considers that a decision on the question is necessary in order to enable it to

It follows that the presumption that questions referred by national courts for a preliminary ruling are relevant may be rebutted only in exceptional cases, where it is quite obvious that the interpretation which is sought of the provisions of Union law referred to in the questions bears no relation to the actual facts of the main action or to its purpose or where the problem is hypothetical or the Court does not have before it the factual or legal material

necessary to give a useful answer to the questions submitted to it. Save for such cases, the Court is, in principle, required to give a ruling on questions concerning the interpretation of the acts referred to in Article 35(1) EU.

pretation of the applicable national law in conformity with those provisions.

(see paras 48, 49)

(see paras 34, 39, 40)

3. Procedural rules are generally held to apply to all proceedings pending at the time when they enter into force, whereas substantive rules are usually interpreted as not applying to situations existing before their entry into force.
4. Framework Decision 2001/220 on the standing of victims in criminal proceedings must be interpreted as meaning that, in criminal proceedings and, in particular, in enforcement proceedings following a judgment which resulted in a final criminal conviction, the concept of 'victim' for the purposes of the Framework Decision does not include legal persons who have suffered harm directly caused by acts or omissions that are in violation of the criminal law of a Member State.

The question as to the power of the national court to take a decision concerning the return to the victim of property which has been seized in criminal proceedings relates to procedural rules, with the result that there is no obstacle deriving from the temporal application of the law which precludes the taking into account, in proceedings on that question, of the relevant provisions of Framework Decision 2001/220 on the standing of victims in criminal proceedings, with a view to the inter-

To interpret the Framework Decision as also applying to 'legal' persons who maintain that they have suffered harm directly caused by a criminal act, would contradict the very letter of Article 1(a) of that Framework Decision, which applies only to natural persons who have suffered harm directly caused by conduct which infringes the criminal law of a Member State. In addition, there is no indication in any other provision of the Framework Decision that the European Union legislature intended to extend the concept of victim for the purposes of the application of the Framework Decision

to legal persons. The converse is in fact the case, as several provisions of the Framework Decision, particularly Articles 2(1) and (2) and 8(1) confirm that the legislature's objective was to limit its scope exclusively to natural persons who are victims of harm resulting from a criminal act.

That interpretation cannot be invalidated by Directive 2004/80 relating to compensation to crime victims. Even supposing that the provisions of a directive adopted on the basis of the EC Treaty were capable of having any

effect on the interpretation of the provisions of a Framework Decision based on the Treaty on European Union and that the concept of victim for the purposes of the directive could be interpreted to include legal persons, the directive and the Framework Decision are not on any analysis linked in a manner which would call for a uniform interpretation of the concept in question.

(see paras 53-55, 57, 58, 60,
operative part)