

Question referred

Is the reference to the Court of Justice of the European Communities for a ruling on whether Article 8a of Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, ⁽¹⁾ as amended by Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002, ⁽²⁾ which provides, in paragraph 1 thereof, that when an undertaking with activities in the territories of at least two Member States is in a state of insolvency, the institution responsible for meeting employees' outstanding claims is to be that in the Member State in whose territory they work or habitually work and, in paragraph 2 thereof, that the extent of employees' rights is to be determined by the law governing the competent guarantee institution, is to be interpreted as designating the competent institution to the exclusion of any other, or whether, having regard to the purpose of the Directive, which is to strengthen the rights of workers exercising their right to freedom of movement, and to the first paragraph of Article 9 of the Directive, under which the Directive is not to affect the option of Member States to apply or introduce laws, regulations or administrative provisions which are more favourable to employees, it is to be interpreted as not depriving the employee of the right to take advantage, in the place of that institution's guarantee, of a more favourable guarantee from the institution with which his employer is insured and to which it makes contributions under national law?

⁽¹⁾ OJ L 283, p. 23.

⁽²⁾ OJ L 270, p. 10.

Reference for a preliminary ruling from the Audiencia Provincial de Tarragona (Spain) lodged on 30 November 2009 — Criminal proceedings against Magatte Gueye

(Case C-483/09)

(2010/C 37/20)

Language of the case: Spanish

Referring court

Audiencia Provincial de Tarragona

Parties to the main proceedings

Defendant: Magatte Gueye

Other parties: Ministerio Fiscal and Eva Caldes

Questions referred

1. Should the right of the victim to be understood, referred to in recital (8) of the preamble to the Framework Decision, ⁽¹⁾

be interpreted as meaning that the State authorities responsible for the prosecution and punishment of conduct which has an identifiable victim have a positive obligation to allow the victim to express her assessment, thoughts and opinion on the direct effects on her life which may be caused by the imposition of penalties on the offender with whom she has a family relationship or a strong emotional relationship?

2. Should Article 2 of the Framework Decision 2001/220/JHA be interpreted as meaning that the duty of States to recognise the rights and legitimate interests of victims creates the obligation to take into account their opinions when the penalties arising from proceedings may jeopardise fundamentally and directly the development of their right to freedom of personal development and the right to private and family life?
3. Should Article 2 of the Framework Decision 2001/220/JHA be interpreted as meaning that the State authorities may not disregard the freely expressed wishes of victims where the imposition or maintenance in force of an injunction to stay away from the victim when the offender is a member of their family are opposed by the victim and where no objective circumstances indicating a risk of re-offending are established, where it is possible to identify a level of personal, social, cultural and emotional competence which precludes any possibility of subservience to the offender or, rather, as meaning that such an order should be held appropriate in every case in the light of the specific characteristics of such crimes?
4. Should Article 8 of the Framework Decision 2001/220/JHA providing that States are to guarantee a suitable level of protection for victims be interpreted as permitting the general and mandatory imposition of injunctions to stay away from the victim or orders prohibiting communication as ancillary penalties in all cases in which a person is a victim of crimes committed within the family, in the light of the specific characteristics of those offences, or, on the other hand, does Article 8 require that an assessment of each individual case be undertaken to allow the identification, on a case-by-case basis, of the suitable level of protection having regard to the competing interests?
5. Should Article 10 of the Framework Decision 2001/220/JHA be interpreted as permitting a general exclusion of mediation in criminal proceedings relating to crimes committed within the family, in the light of the specific characteristics of those crimes or, on the other hand, should mediation also be permitted in proceedings of that kind, assessing the competing interests on a case-by-case basis?

⁽¹⁾ Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings (OJ 2001, L 82, p. 1)