

JUDGMENT OF THE COURT (Grand Chamber)

16 June 2005 ^{*}

In Case C-105/03,

REFERENCE for a preliminary ruling under Article 35 EU by the judge in charge of preliminary enquiries at the Tribunale di Firenze (Italy), made by decision of 3 February 2003, received at the Court on 5 March 2003, in criminal proceedings against

Maria Pupino

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, R. Silva de Lapuerta and A. Borg Barthet, Presidents of Chambers, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues (Rapporteur), P. Küris, E. Juhász, G. Arestis and M. Ilešič, Judges

Advocate General: J. Kokott,
Registrar: L. Hewlett, Principal Administrator,

^{*} Language of the case: Italian.

having regard to the written procedure and further to the hearing on 26 October 2004,

after considering the observations submitted on behalf of:

- Mrs Pupino, represented by M. Guagliani and D. Tanzarella, avvocati,
- the Italian Government, represented by I.M. Braguglia, acting as Agent, assisted by P. Gentili, avvocato dello Stato,
- the Greek Government, represented by A. Samoni-Rantou and K. Boskovits, acting as Agents,
- the French Government, represented by R. Abraham, G. de Bergues and C. Isidoro, acting as Agents,
- the Netherlands Government, represented by H.G. Sevenster and C. Wissels, acting as Agents,

- the Portuguese Government, represented by L. Fernandes, acting as Agent,
- the Swedish Government, represented by A. Kruse and K. Wistrand, acting as Agents,
- the United Kingdom Government, represented by R. Caudwell and E. O'Neill, acting as Agents, assisted by M. Hoskins, Barrister,
- the Commission of the European Communities, represented by M. Condou-Durande and L. Visaggio, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 November 2004,

gives the following

Judgment

¹ The reference for a preliminary ruling concerns the interpretation of Articles 2, 3 and 8 of Council Framework Decision 2001/220/JHA of 15 March 2001 on the

standing of victims in criminal proceedings (OJ 2001 L 82, p. 1; ‘the Framework Decision’).

- 2 The reference has been made in the context of criminal proceedings against Mrs Pupino, a nursery school teacher charged with inflicting injuries on pupils aged less than five years at the time of the facts.

Legal background

European Union Law

The Treaty on European Union

- 3 Under Article 34(2) EU, in the version resulting from the Treaty of Amsterdam, which forms part of Title VI of the Treaty on European Union, headed ‘Provisions on police and judicial cooperation in criminal matters’:

‘The Council shall take measures and promote cooperation, using the appropriate form and procedures as set out in this Title, contributing to the pursuit of the

objectives of the Union. To that end, acting unanimously on the initiative of any Member State or of the Commission, the Council may:

...

- b) adopt framework decisions for the purpose of approximation of the laws and regulations of the Member States. Framework decisions shall be binding upon the Member States as to the result to be achieved but shall leave to the national authorities the choice of form and methods. They shall not entail direct effect;

...'

4 Article 35 EU provides:

'1. The Court of Justice shall have jurisdiction, subject to the conditions laid down in this Article, to give preliminary rulings on the validity and interpretation of framework decisions, and decisions on the interpretation of conventions established under this Title and on the validity and interpretation of the measures implementing them.

2. By a declaration made at the time of signature of the Treaty of Amsterdam or at any time thereafter, any Member State shall be able to accept the jurisdiction of the Court of Justice to give preliminary rulings as specified in paragraph 1.

3. A Member State making a declaration pursuant to paragraph 2 shall specify that either:

- a) any court or tribunal of that State against whose decisions there is no judicial remedy under national law may request the Court of Justice to give a preliminary ruling on a question raised in a case pending before it and concerning the validity or interpretation of an act referred to in paragraph 1 if that court or tribunal considers that a decision on the question is necessary to enable it to give judgment; or
- b) any court or tribunal of that State may request the Court of Justice to give a preliminary ruling on a question raised in a case pending before it and concerning the validity or interpretation of an act referred to in paragraph 1 if that court or tribunal considers that a decision on the question is necessary to enable it to give judgment.

...'

⁵ The information published in the *Official Journal of the European Communities* of 1 May 1999 (OJ 1999 L 114, p. 56) on the date of entry into force of the Treaty of Amsterdam shows that the Italian Republic has made a declaration under Article 35

(2) EU, whereby it has accepted the jurisdiction of the Court of Justice to rule in accordance with the arrangements under Article 35(3)(b) EU.

The Framework Decision

- 6 Under Article 2 of the Framework Decision, headed 'Respect and recognition':

'1. Each Member State shall ensure that victims have a real and appropriate role in its criminal legal system. It shall continue to make every effort to ensure that victims are treated with due respect for the dignity of the individual during proceedings and shall recognise the rights and legitimate interests of victims with particular reference to criminal proceedings.

2. Each Member State shall ensure that victims who are particularly vulnerable can benefit from specific treatment best suited to their circumstances.'

- 7 Article 3 of the Framework Decision, headed 'Hearings and provision of evidence' provides:

'Each Member State shall safeguard the possibility for victims to be heard during proceedings and to supply evidence.

Each Member State shall take appropriate measures to ensure that its authorities question victims only insofar as necessary for the purpose of criminal proceedings.’

- 8 Article 8 of the Framework Decision, headed ‘Right to protection’, provides in paragraph 4:

‘Each Member State shall ensure that, where there is a need to protect victims — particularly those most vulnerable — from the effects of giving evidence in open court, victims may, by decision taken by the court, be entitled to testify in a manner which will enable this objective to be achieved, by any appropriate means compatible with its basic legal principles.’

- 9 Under Article 17 of the Framework Decision, each Member State is required to bring into force the laws, regulations and administrative provisions necessary to comply with the Framework Decision ‘not later than 22 March 2002’.

National legislation

- 10 Article 392 of the Codice di procedura penale (Italian Code of Criminal Procedure; ‘the CPP’), which appears in Book V, Part II, Title VII, headed ‘Preliminary enquiries and preliminary hearing’, provides:

‘1. During the preliminary enquiry, the Public Prosecutor’s Office and the person being examined may ask the judge to take evidence under special arrangements:

- a) where there are reasonable grounds for believing that the witness cannot be heard in open court by reason of illness or serious impediment;

- b) where, on the basis of specific facts, there are reasonable grounds for believing that the witness is vulnerable to violence, threats, offers or promises of money or other benefits, to induce him or her not to testify or to give false testimony.

...

1a. In proceedings for offences under Articles 600a, 600b, 600d, 609a, 609b, 609c, 609d, and 609g of the criminal code [concerning sexual offences or offences with a sexual background], the Public Prosecutor's Office and the person being examined may ask for persons aged under 16 years to be heard in accordance with special arrangements even outside the cases referred to in paragraph 1.

...'

¹¹ Under Article 398(5a) of the CPP:

‘In enquiries concerning offences under Articles 600a, 600b, 600d, 609a, 609b, 609c, 609d, and 609g of the criminal code, where the evidence involves minors under 16, the judge shall determine by order the place, time and particular circumstances for hearing evidence where a minor’s situation makes it appropriate and necessary. In such cases, the hearing can be held in a place other than the court, in special facilities or, failing that, at the minor’s home. The witness statements must be fully documented by the use of sound and audiovisual recording equipment. Where recording equipment or technical personnel are not available, the judge shall use the expert report or technical advice procedures. The interview shall also be minuted. The recordings shall be transcribed only at the request of the parties.’

Factual background and the question referred

- 12 The order for reference shows that, in the criminal proceedings against Mrs Pupino, it is alleged that, in January and February 2001, she committed several offences of ‘misuse of disciplinary measures’ within the meaning of Article 571 of the Italian Criminal Code (‘the CP’) against a number of her pupils aged less than five years at the time, by such acts as regularly striking them, threatening to give them tranquillisers and to put sticking plasters over their mouths, and forbidding them from going to the toilet. She is further charged that, in February 2001, she inflicted ‘serious injuries’, as referred to in Articles 582, 585 and 576 of the CP, in conjunction with Article 61(2) and (11) thereof, by hitting a pupil in such a way as to cause a slight swelling of the forehead. The proceedings before the Tribunale di Firenze are at the preliminary enquiry stage.

- 13 The referring court states in that respect that, under Italian law, criminal procedure comprises two distinct stages. During the first stage, namely that of the preliminary enquiry, the Public Prosecutor's Office makes enquiries and, under the supervision of the judge in charge of preliminary enquiries, gathers the evidence on the basis of which it will assess whether the prosecution should be abandoned or the matter should proceed to trial. The final decision on whether to allow the prosecution to proceed or to dismiss the matter is taken by the judge in charge of preliminary enquiries at the conclusion of an informal hearing.
- 14 A decision to send the examined person for trial opens the second stage of the proceedings, namely the adversarial stage, in which the judge in charge of preliminary enquiries does not take part. The proceedings proper begin with this stage. It is only at that stage that, as a rule, evidence must be taken at the initiative of the parties and in compliance with the adversarial principle. The referring court states that it is during the trial that the parties' submissions may be accepted as evidence within the technical sense of the term. In those circumstances, the evidence gathered by the Public Prosecutor's Office during the preliminary enquiry stage, in order to enable the Office to decide whether to institute criminal proceedings by proposing committal for trial or to ask for the matter to be closed, must be subjected to cross-examination during the trial proper in order to acquire the value of 'evidence' in the full sense.
- 15 The national court states, however, that there are exceptions to that rule, laid down by Article 392 of the CPP, which allow evidence to be established early, during the preliminary enquiry period, on a decision of the judge in charge of preliminary enquiries and in compliance with the adversarial principle, by means of the Special Inquiry procedure. Evidence gathered in that way has the same probative value as that gathered during the second stage of the proceedings. Article 392(1a) of the CPP has introduced the possibility of using that special procedure when taking evidence from victims of certain restrictively listed offences (sexual offences or offences with a sexual background) aged less than 16 years, even outside the cases envisaged in

paragraph 1 of that article. Article 398(5a) of the CPP also allows the same judge to order evidence to be taken, in the case of enquiries concerning offences referred to in Article 392(1a) of the CPP, under special arrangements allowing the protection of the minors concerned. According to the national court, those additional derogations are designed to protect, first, the dignity, modesty and character of a minor witness, and, secondly, the authenticity of the evidence.

- 16 In this case, the Public Prosecutor's Office asked the judge in charge of preliminary enquiries in August 2001 to take the testimony of eight children, witnesses and victims of the offences for which Mrs Pupino is being examined, by the special procedure for taking evidence early, pursuant to Article 392(1a) of the CPP, on the ground that such evidence could not be deferred until the trial on account of the witnesses' extreme youth, inevitable alterations in their psychological state, and a possible process of repression. The Public Prosecutor's Office also requested that evidence be gathered under the special arrangements referred to in Article 398(5a) of the CPP, whereby the hearing should take place in specially designed facilities, with arrangements to protect the dignity, privacy and tranquillity of the minors concerned, possibly involving an expert in child psychology by reason of the delicate and serious nature of the facts and the difficulties caused by the victims' young age. Mrs Pupino opposed that application, arguing that it did not fall within any of the cases envisaged by Article 392(1) and (1a) of the CPP.

- 17 The referring court states that, under the national provisions in question, the application of the Public Prosecutor's Office would have to be dismissed. Those provisions do not provide for the use of the Special Inquiry procedure, or for the use of special arrangements for gathering evidence, where the facts are such as those

alleged against the defendant, even if there is no reason to preclude those provisions also covering cases other than those referred to in Article 392(1) of the CPP in which the victim is a minor. A number of offences excluded from the scope of Article 392 (1) of the CPP might well prove more serious for the victim than those referred to in that provision. That, in the view of the national court, is the case here, where, according to the Public Prosecutor's Office, Mrs Pupino maltreated several children aged less than five years, causing them psychological trauma.

- ¹⁸ Considering that, 'apart from the question of the existence or otherwise of a direct effect of Community law', the national court must 'interpret its national law in the light of the letter and the spirit of Community provisions', and having doubts as to the compatibility of Articles 392(1a) and 398(5a) of the CPP with Articles 2, 3 and 8 of the Framework Decision, inasmuch as the provisions of that code limit the ability of the judge in charge of preliminary enquiries to apply the Special Inquiry procedure for the early gathering of evidence, and the special arrangements for its gathering, to sexual offences or offences with a sexual background, the judge in charge of preliminary enquiries at the Tribunale di Firenze has decided to stay the proceedings and ask the Court of Justice to rule on the scope of Articles 2, 3 and 8 of the Framework Decision.

Jurisdiction of the Court of Justice

- ¹⁹ Under Article 46(b) EU, the provisions of the EC, EAEC and ECSC Treaties concerning the powers of the Court of Justice and the exercise of those powers, including the provisions of Article 234 EC, apply to the provisions of Title VI of the Treaty on European Union under the conditions laid down by Article 35 EU. It follows that the system under Article 234 EC is capable of being applied to the

Court's jurisdiction to give preliminary rulings by virtue of Article 35 EU, subject to the conditions laid down by that provision.

- 20 As stated in paragraph 5 of this judgment, the Italian Republic indicated by a declaration which took effect on 1 May 1999, the date on which the Treaty of Amsterdam came into force, that it accepted the jurisdiction of the Court of Justice to rule on the validity and interpretation of the acts referred to in Article 35 EU in accordance with the rules laid down in paragraph 3(b) of that article.
- 21 Concerning the acts referred to in Article 35(1) EU, Article 35(3)(b) provides, in terms identical to those of the first and second paragraphs of Article 234 EC, that 'any court or tribunal' of a Member State may 'request the Court of Justice to give a preliminary ruling' on a question raised in a case pending before it and concerning the 'validity or interpretation' of such acts, 'if it considers that a decision on the question is necessary to enable it to give judgment'.
- 22 It is undisputed, first, that the judge in charge of preliminary enquiries in criminal proceedings, such as those instituted in this case, acts in a judicial capacity, so that he must be regarded as a 'court or tribunal of a Member State' within the meaning of Article 35 EU (see to that effect, in relation to Article 234 EC, Joined Cases C-54/94 and C-74/94 *Cacchiarelli and Stanghellini* [1995] ECR I-391, and Joined Cases C-74/95 and C-129/95 *X* [1996] ECR I-6609) and, secondly, that the Framework Decision, based on Articles 31 EU and 34 EU, is one of the acts referred to in Article 35(1) EU, in respect of which the Court may give a preliminary ruling.

- 23 Whilst in principle, therefore, the Court of Justice has jurisdiction to reply to the question raised, the French and Italian Governments have nevertheless raised an objection of inadmissibility against the application that has been made, arguing that the Court's answer would not be useful in resolving the dispute in the main proceedings.
- 24 The French Government argues that the national court is seeking to apply certain provisions of the Framework Decision in place of national legislation, whereas, in accordance with the very wording of Article 34(2)(b) EU, Framework Decisions cannot have such a direct effect. It further points out that, as the national court itself acknowledges, an interpretation of national law in accordance with the Framework Decision is impossible. In accordance with the case-law of the Court of Justice, the principle that national law must be given a conforming interpretation cannot lead to an interpretation that is *contra legem*, or to a worsening of the position of an individual in criminal proceedings, on the basis of the Framework Decision alone, which is precisely what would happen in the main proceedings.
- 25 The Italian Government argues as its main argument that framework decisions and Community directives are completely different and separate sources of law, and that a framework decision cannot therefore place a national court under an obligation to interpret national law in conformity, such as the obligation which the Court of Justice has found in its case-law concerning Community directives.
- 26 Without expressly querying the admissibility of the reference, the Swedish and United Kingdom Governments generally argue in the same way as the Italian Government, insisting in particular on the inter-governmental nature of cooperation between Member States in the context of Title VI of the Treaty on European Union.

27 Finally, the Netherlands Government stresses the limits imposed on the obligation of conforming interpretation and poses the question whether, assuming that obligation applies to framework decisions, it can apply in the case in the main proceedings, have regard precisely to those limits.

28 As stated in paragraph 19 of this judgment, the system under Article 234 EC is capable of being applied to Article 35 EU, subject to the conditions laid down in Article 35.

29 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 give judgment’, so 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.

30 It follows that the presumption of relevance attaching to questions referred by national courts for a preliminary ruling may be rebutted only in exceptional cases, where it is quite obvious that the interpretation of Community law sought bears no relation to the actual facts of the main action or to its purpose, or where the problem is hypothetical and the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted. 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 (see for example, in relation to Article 234 CE, Case C-355/97 *Beck and Bergdorf* [1999] ECR I-4977, paragraph 22, and Case C-17/03 *VEMW and Others* [2005] ECR I-4983, paragraph 34).

³¹ Having regard to the arguments of the French, Italian, Swedish, Netherlands and United Kingdom Governments, it has to be examined whether, as the national court presupposes and as the French, Greek and Portuguese Governments and the Commission maintain, the obligation on the national authorities to interpret their national law as far as possible in the light of the wording and purpose of Community directives applies with the same effects and within the same limits where the act concerned is a framework decision taken on the basis of Title VI of the Treaty on European Union.

³² If so, it has to be determined whether, as the French, Italian, Swedish and United Kingdom Governments have observed, it is obvious that a reply to the question referred cannot have a concrete impact on the solution of the dispute in the main proceedings, given the inherent limits on the obligation of conforming interpretation.

³³ It should be noted at the outset that the wording of Article 34(2)(b) EU is very closely inspired by that of the third paragraph of Article 249 EC. Article 34(2)(b) EU confers a binding character on framework decisions in the sense that they 'bind' the Member States 'as to the result to be achieved but shall leave to the national authorities the choice of form and methods'.

34 The binding character of framework decisions, formulated in terms identical to those of the third paragraph of Article 249 EC, places on national authorities, and particularly national courts, an obligation to interpret national law in conformity.

35 The fact that, by virtue of Article 35 EU, the jurisdiction of the Court of Justice is less extensive under Title VI of the Treaty on European Union than it is under the EC Treaty, and the fact that there is no complete system of actions and procedures designed to ensure the legality of the acts of the institutions in the context of Title VI, does nothing to invalidate that conclusion.

36 Irrespective of the degree of integration envisaged by the Treaty of Amsterdam in the process of creating an ever closer union among the peoples of Europe within the meaning of the second paragraph of Article 1 EU, it is perfectly comprehensible that the authors of the Treaty on European Union should have considered it useful to make provision, in the context of Title VI of that treaty, for recourse to legal instruments with effects similar to those provided for by the EC Treaty, in order to contribute effectively to the pursuit of the Union's objectives.

37 The importance of the Court's jurisdiction to give preliminary rulings under Article 35 EU is confirmed by the fact that, under Article 35(4), any Member State, whether or not it has made a declaration pursuant to Article 35(2), is entitled to submit statements of case or written observations to the Court in cases which arise under Article 35(1).

38 That jurisdiction would be deprived of most of its useful effect if individuals were not entitled to invoke framework decisions in order to obtain a conforming interpretation of national law before the courts of the Member States.

39 In support of their position, the Italian and United Kingdom Governments argue that, unlike the EC Treaty, the Treaty on European Union contains no obligation similar to that laid down in Article 10 EC, on which the case-law of the Court of Justice partially relied in order to justify the obligation to interpret national law in conformity with Community law.

40 That argument must be rejected.

41 The second and third paragraphs of Article 1 of the Treaty on European Union provide that that treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe and that the task of the Union, which is founded on the European Communities, supplemented by the policies and forms of cooperation established by that treaty, shall be to organise, in a manner demonstrating consistency and solidarity, relations between the Member States and between their peoples.

42 It would be difficult for the Union to carry out its task effectively if the principle of loyal cooperation, requiring in particular that Member States take all appropriate measures, whether general or particular, to ensure fulfilment of their obligations under European Union law, were not also binding in the area of police and judicial

cooperation in criminal matters, which is moreover entirely based on cooperation between the Member States and the institutions, as the Advocate General has rightly pointed out in paragraph 26 of her Opinion.

43 In the light of all the above considerations, the Court concludes that the principle of conforming interpretation is binding in relation to framework decisions adopted in the context of Title VI of the Treaty on European Union. When applying national law, the national court that is called upon to interpret it must do so as far as possible in the light of the wording and purpose of the framework decision in order to attain the result which it pursues and thus comply with Article 34(2)(b) EU.

44 It should be noted, however, that the obligation on the national court to refer to the content of a framework decision when interpreting the relevant rules of its national law is limited by general principles of law, particularly those of legal certainty and non-retroactivity.

45 In particular, those principles prevent that obligation from leading to the criminal liability of persons who contravene the provisions of a framework decision from being determined or aggravated on the basis of such a decision alone, independently of an implementing law (see for example, in relation to Community directives, Joined Cases C-74/95 and C-129/95 *X* [1996] ECR I-6609, paragraph 24, and Joined Cases C-387/02, C-391/02 and C-403/02 *Berlusconi and Others* [2005] ECR I-3565, paragraph 74).

- 46 However, the provisions which form the subject-matter of this reference for a preliminary ruling do not concern the extent of the criminal liability of the person concerned but the conduct of the proceedings and the means of taking evidence.
- 47 The obligation on the national court to refer to the content of a framework decision when interpreting the relevant rules of its national law ceases when the latter cannot receive an application which would lead to a result compatible with that envisaged by that framework decision. In other words, the principle of conforming interpretation cannot serve as the basis for an interpretation of national law *contra legem*. That principle does, however, require that, where necessary, the national court consider the whole of national law in order to assess how far it can be applied in such a way as not to produce a result contrary to that envisaged by the framework decision.
- 48 In this case, as the Advocate General has pointed out in paragraph 40 of her Opinion, it is not obvious that an interpretation of national law in conformity with the framework decision is impossible. It is for the national court to determine whether, in this case, a conforming interpretation of national law is possible.
- 49 Subject to that reservation, the Court will answer the question referred.

The question referred for a preliminary ruling

50 By its question, the national court essentially asks whether, on a proper interpretation of Articles 2, 3 and 8(4) of the Framework Decision, a national court must be able to authorise young children, who, as in this case, claim to have been victims of maltreatment, to give their testimony in accordance with arrangements ensuring them an appropriate level of protection, outside the public trial and before it is held.

51 Article 3 of the Framework Decision requires each Member State to safeguard the possibility for victims to be heard during proceedings and to supply evidence, and to take appropriate measures to ensure that its authorities question victims only insofar as necessary for the purpose of criminal proceedings.

52 Articles 2 and 8(4) of the Framework Decision require each Member State to make every effort to ensure that victims are treated with due respect for their personal dignity during proceedings, to ensure that particularly vulnerable victims benefit from specific treatment best suited to their circumstances, and to ensure that where there is a need to protect victims, particularly those most vulnerable, from the effects of giving evidence in open court, victims may, by decision taken by the court, be entitled to testify in a manner enabling that objective to be achieved, by any appropriate means compatible with its basic legal principles.

53 The Framework Decision does not define the concept of a victim's vulnerability for the purposes of Articles 2(2) and 8(4). However, independently of whether a victim's

minority is as a general rule sufficient to classify such a victim as particularly vulnerable within the meaning of the Framework Decision, it cannot be denied that where, as in this case, young children claim to have been maltreated, and maltreated, moreover, by a teacher, those children are suitable for such classification having regard in particular to their age and to the nature and consequences of the offences of which they consider themselves to have been victims, with a view to benefiting from the specific protection required by the provisions of the Framework Decision referred to above.

- 54 None of the three provisions of the Framework Decision referred to by the national court lays down detailed rules for implementing the objectives which they state, and which consist, in particular, in ensuring that particularly vulnerable victims receive 'specific treatment best suited to their circumstances', and the benefit of special hearing arrangements that are capable of guaranteeing to all victims treatment which pays due respect to their individual dignity and gives them the opportunity to be heard and to supply evidence, and in ensuring that those victims are questioned 'only insofar as necessary for the purpose of criminal proceedings'.
- 55 Under the legislation at issue in the main proceedings, testimony given during the preliminary enquiries must generally be repeated at the trial in order to acquire full evidential value. It is, however, permissible in certain cases to give that testimony only once, during the preliminary enquiries, with the same probative value, but under different arrangements from those which apply at the trial.
- 56 In those circumstances, achievement of the aims pursued by the abovementioned provisions of the framework decision require that a national court should be able, in

respect of particularly vulnerable victims, to use a special procedure, such as the Special Inquiry for early gathering of evidence provided for in the law of a Member State, and the special arrangements for hearing testimony for which provision is also made, if that procedure best corresponds to the situation of those victims and is necessary in order to prevent the loss of evidence, to reduce the repetition of questioning to a minimum, and to prevent the damaging consequences, for those victims, of their giving testimony at the trial

57 It should be noted in that respect that, according to Article 8(4) of the Framework Decision, the conditions for giving testimony that are adopted must in any event be compatible with the basic legal principles of the Member State concerned.

58 Moreover, in accordance with Article 6(2) EU, the Union must respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 ('the Convention'), and as they result from the constitutional traditions common to the Member States, as general principles of law.

59 The Framework Decision must thus be interpreted in such a way that fundamental rights, including in particular the right to a fair trial as set out in Article 6 of the Convention and interpreted by the European Court of Human Rights, are respected.

60 It is for the national court to ensure that — assuming use of the Special Inquiry and of the special arrangements for the hearing of testimony under Italian law is possible in this case, bearing in mind the obligation to give national law a conforming interpretation — the application of those measures is not likely to make the criminal proceedings against Mrs Pupino, considered as a whole, unfair within the meaning of Article 6 of the Convention, as interpreted by the European Court of Human Rights (see, for example, ECHR judgments of 20 December 2001, *P.S. v Germany*, of 2 July 2002, *S.N. v Sweden*, *Reports of judgments and decisions* 2002-V, of 13 February 2004, *Rachdad v France*, and the decision of 20 January 2005, *Accardi and Others v Italy*, App. 30598/02).

61 In the light of all the above considerations, the answer to the question must be that Articles 2, 3 and 8(4) of the Framework Decision must be interpreted as meaning that the national court must be able to authorise young children, who, as in this case, claim to have been victims of maltreatment, to give their testimony in accordance with arrangements allowing those children to be guaranteed an appropriate level of protection, for example outside the trial and before it takes place. The national court is required to take into consideration all the rules of national law and to interpret them, so far as possible, in the light of the wording and purpose of the Framework Decision.

Costs

62 Since these proceedings are, for the parties to the main proceedings, a step in the proceedings before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than by those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

Articles 2, 3 and 8(4) of Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings must be interpreted as meaning that the national court must be able to authorise young children, who, as in this case, claim to have been victims of maltreatment, to give their testimony in accordance with arrangements allowing those children to be guaranteed an appropriate level of protection, for example outside the trial and before it takes place.

The national court is required to take into consideration all the rules of national law and to interpret them, so far as possible, in the light of the wording and purpose of the Framework Decision.

[Signatures]