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CASE C-129/19 & DIRECTIVE 2004/80/EC: A LANDMARK JUDGMENT BY THE COURT OF JUSTICE ON STATE COMPENSATION FOR VICTIMS OF VIOLENT INTENTIONAL CRIMES

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ABSTRACT

In the Italian Presidency of the Council of Ministers v. BV breakthrough judgment of 16 July 2020 (Case C-129/19; ECLI:EU:C:2020:566) the Grand Chamber of the Court of Justice addressed the interpretation of Article 12 (2) of Council Directive 2004/80/EC relating to compensation to crime victims. The Court's position is unequivocal: Member States must guarantee "fair and appropriate" compensation not only to "cross-border victims", but also to "resident victims". Moreover, the Court has concluded that Article 12 (2) of the Directive must be interpreted as meaning that fixed rates of compensation awarded under the national scheme of compensation to victims of violent intentional crime cannot be classified as 'fair and appropriate', within the meaning of that provision, if the awards are fixed without taking into account the seriousness of the consequences, for the victims, of the crime committed and do not therefore represent an appropriate contribution to the reparation of the material and non-material harm suffered. Accordingly, Member States are bound to provide compensation for non-pecuniary losses including moral damages too. This judgment is extremely relevant and will be the basis for further harmonization of the State redress protection of victims of violent intentional crimes through European Union. The Author of this short note was among the lawyers representing the victim BV (the Respondent) and discussed the case at the Grand Chamber's hearing on 2 March 2020. In 2002 he took part to the consultation that followed the European Commission's Green Paper on compensation to crime victims COM (2001) 536 Final.

SUMMARY. - 1. Introduction to *Italian Presidency of the Council of Ministers v. BV*. - 2. The BV's "pilot case": the main proceedings in Italy and the questions raised by the referring Supreme Court. - 3. The scope of Article 12 (2): "resident victims" are entitled to State compensation. - 4. The notion of "fair and appropriate" compensation and *quantum*: meaningful contribution to the reparation, non-material damages and "personalization". - 5. The future impact of the judgment on the Italian national compensation scheme.

1. Introduction to *Italian Presidency of the Council of Ministers v. BV*.

If one wants to summarize the key features of the extremely important judgment dated 16 July 2020 with a short string of words, it can be said that the **Grand Chamber** of the **Court of Justice of the European Union** has come to the conclusion that both "**resident victims**" and "**cross-border victims**" shall be protected with "**fair and appropriate compensation**" including **moral damages**.

This is a landmark precedent for all victims of intentional violent crimes across the European Union, unfortunately deprived of the United Kingdom. The Court of Justice has expressed itself in this case with a ruling that addresses at least two important issues, namely *(i)* the identification of the victims protected by the national compensation systems provided by **Article 12 (2)** of **Council Directive 2004/80/EC** of **29 April 2004 relating to compensation to crime victims**, and *(ii)* the limits and discretion of States in setting compensation.

In particular, the Court of Justice was called to interpret Article 12 (2) providing for the following obligation: «*All Member States shall ensure that their national rules provide for the existence of a scheme on compensation to victims of violent intentional crimes committed in their respective territories, which guarantees fair and appropriate compensation to victims*».

The Case C-129/19 concerned the victim of a brutal rape, but the scope of this judgment is much broader and covers intentional personal injuries and homicides too. It affects the whole system of State compensation for victims of violent intentional crimes.

2. The BV's "pilot case": the main proceedings in Italy and the questions raised by the referring Supreme Court.

For BV and his lawyers[1] as well as for other victims and attorneys engaged in similar proceedings it has truly been a hard endless fight which unfortunately is still going on. This is not the end of BV's case[2].

As to the **main proceedings**, the case, which has been decided by the Court of Justice on 16 July 2020, is considered to be the "**pilot lawsuit**" in Italy, since it was in relation to it that the Italian Executive was first sentenced under the **"Francovich liability" model**[3] for breach of Article 12 (2) of Directive 2004/80/EC[4] and that the Italian Supreme Court,

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[1] I am thankful to my partner Umberto Oliva, Francesco Bracciani, Vincenzo Zeno-Zencovich, Luca Viola and all MB.O members for the support in the proceedings. I dedicate this article to BV, who believed in our advices, whishing her the happy life she fully deserves.

[2] BV's path is still a long way to go and after the Court of Justice's judgment of 16 July, the case will be resumed before the Supreme Court for the final decision on the Italian State's non-fulfilment and on compensation. Hopefully, that will be the last step, but nothing excludes that the Supreme Court will remit part of the decision to the Court of Appeal.

[3] On "Francovich Liability" see *ex plurimis*: See C. VAN DAM, *European Tort Law*, Oxford, 2nd ed., 2013, 559-568; V. SCIARRINO, *La responsabilità civile dello Stato per violazione del diritto dell'Unione*, Ipsoa, Milano, 2012; A. BIONDI & M. FARLEY, *The Right to Damages in European Law*, Wolters Kluwer, Alphen aan den Rijn, 2009; F. FERRARO, *La responsabilità risarcitoria degli Stati membri per violazione del diritto comunitario*, Giuffrè Editore, Milano, 2008; A. WARD, *Judicial Review and the Rights of Private Parties in EU Law*, 2nd ed., Oxford, 2007; S. PRECHAL, *Directives in EC law*, 2nd ed., Oxford, 2005, 271-304.

[4] Following the judgment rendered by Turin Court in 2010 (see below), other courts have concluded for the "Francovich liability" of the Italian State in relation to Article 12 (2). Among these judgments see: Milan Court of Appeal, 18 April 2017, no. 1653, in *www.pluris-cedam.utetgiuridica.it* (rape); Bologna Court, Third Division, 7 June 2016 (feminicide), in *www.pluris-cedam.utetgiuridica.it*; Milan Court, First Division, 26 August 2014, no. 10441 (rape), in *www.ridare.it*; Rome Court, Second Division, 8 November 2013, no. 22327 (feminicide), in *Responsabilità civile e previdenza*, 2014, 1, 212.

after referring it to Luxembourg, will get to a final decision on this matter both in relation to the seriousness of the breach[5] and the "*quantum* issue".

The judicial case for "Francovich compensation" was issued against the Italian Presidency of the Council of Ministers (the body representing the Executive in court proceedings) by BV, a young girl, originally from Romania but resident in Turin for many years, who in 2005, soon after her 18th birthday was brutally kidnapped, taken to the countryside, beaten and repeatedly raped for an entire endless night by two aggressors, both resident in Romania and without any fixed place of abode in Italy. She feared that the night would have ended with her killing. These men, according to accurate police investigations, had been criminally convicted and sentenced to prison in Italy by Turin Criminal Court; nevertheless, BV never received any compensation from her offenders as they both became untraceable during the course of the criminal proceedings. Anyway, they did not have any financial means to cover the compensation deserved by the victim according to Italian compensation standards (the Criminal court awarded provisional damages for Euro 50.000,00, to be further assessed in separate civil court proceedings; under the Italian tort system and case-law the girl would have been entitled to an award for non-pecuniary damages of approximately Euro 100.00,00).

In the lack of transposition of Article 12 (2) and following the firm denial of any state compensation by the Presidency of the Council of Ministers, in 2009 BV sued this body for breach of the said provision before the Turin Court under both Article 1218[6] and Article 2043[7] of the Italian Civil Code.

According to BV's position, pursuant to 2004 Directive, from the 1st July 2005[8], the Italian State should have granted a "fair and adequate" compensation (at least an

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[5] As also recalled by the Court of Justice at para. 34 of the judgment *Italian Presidency of the Council of Ministers v. BV*, «*according to the Court's established case-law, individuals who have been harmed have a right to reparation for damage caused by breaches of EU law attributable to a Member State when three conditions are met, namely, the rule of EU law infringed must be intended to confer rights on individuals, the breach of that rule must be sufficiently serious, and there must be a direct causal link between the breach and the loss or damage sustained by those individuals (see, to that effect, the judgments of 5 March 1996, Brasserie du pêcheur and Factortame, C-46/93 and C-48/93, EU:C:1996:79, paragraph 51; of 30 September 2003, Köbler, C-224/01, EU:C:2003:513, paragraph 51; and of 28 July 2016, Tomášová, C-168/15, EU:C:2016:602, paragraph 22)*». As to the seriousness of the Italian breach of Directive 2004/80/EC see M. BONA, *La tutela risarcitoria statale delle vittime di reati violenti ed intenzionali: la responsabilità dell'Italia per la mancata attuazione della direttiva 2004/80/CE*, in *Responsabilità civile e previdenza*, 2009, no. 3, 647-657. This publication illustrated various elements supporting the Italian legislature's conscious breach of the Directive. The Italian State was first sentenced by the Court of Justice for breach of the Directive in 2007: see *Commission of the European Communities v. Italian Republic*, Court of Justice, Fifth Chamber, 29 November 2007, Case C-112/07 (ECLI:EU:C:2007:742): «*Declares that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, the Italian Republic has failed to fulfil its obligations under that directive*».

[6] Article 1218 («*Liability of the debtor*»): «*The debtor who does not render due performance exactly is liable for the damage unless he proves that the non-performance or delay was due to impossibility of performance for a cause not imputable to him*». This liability regime, which constitutes the ground for action in contract, applies also in relation to non-contractual obligations arising from pre-existing relationship among the parties like, for example, the one established by law between the State and the citizens in relation to the transposition of directives ("*obbligazione ex lege*"). Accordingly, under Italian law the claimant is entitled to sue the Executive for breach of a Directive both under Article 1218 C.C. and in tort (Article 29043 C.C.).

[7] Article 2043 («*Compensation for Unlawful Acts*»): «*A deliberate or negligent event of any sort, which causes unjust harm to another, imposes on the person who committed it an obligation to compensate for the harm done*».

[8] See Article 18 (1) and (2) of the Directive: «*1.Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 2006 at the latest, with the exception of Article 12(2), in which case the date of compliance shall be 1 July 2005. They shall*

indemnity[9]) to all victims of violent intentional crimes (murders, personal injuries, rape) committed on the Italian territory and including "resident victims", whenever unable to obtain full compensation from the offender lacking the necessary means to satisfy a judgment on damages or because unknown.
The Italian Presidency of the Council of Ministers, instead, opposed BV's claim by alleging, at first, that the Directive would not cover rape and sexual assault cases, but only the crimes already contemplated by existing Italian laws (that did not extend to intentional murders and personal injuries too, unless committed by mafia organizations or terrorists, or sustained by members of the police, of military forces or other similar bodies while performing their duties); it was only at a later stage that, following the failure of the first argument before the Turin Court[10] and a publication criticizing this pioneering judgment on the ground of the "resident victims" issue[11], the defendant changed its strategy and argued that the Directive could only apply to foreign victims transiting on the Italian territory, but not to the ones residing in Italy and injured in this country.
In 2010 Turin Court, with a daring judgment[12], recognized for the first time the "Francovich liability" of the Italian State for late and incomplete transposition into national legal system of Directive 2004/80/EC and, in particular, of Article 12 (2). It also awarded Euro 100.000,00 for pecuniary and non-pecuniary damages by way of equitable assessment.
This judgment was immediately appealed by the Presidency of the Council of Ministers. In the course of the proceedings before the Court of Appeal of Turin the Turin Public

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forthwith inform the Commission thereof. 2. Member States may provide that the measures necessary to comply with this Directive shall apply only to applicants whose injuries result from crimes committed after 30 June 2005».

[9] Under Italian law there is a distinction between **compensation** ("***risarcimento***") and **indemnity** ("***indennizzo***"); whilst the former term is strictly linked with the notion of "full reparation", the latter, as also noted by the Advocate General in the Case C-129/19, «*is often associated with a fixed or flat-rate type of compensation, or in any event with a form of reparation that does not necessarily correspond with (full) damages in private law*» (see the AG's Opinion, point 142). It should be noted that it remains fully unknown the reason why the Italian version of the Directive 2004/80/EC got to employ the expression "*indennizzo*" instead of the term "*risarcimento*". Was it simply an accidental choice by the Italian translators of the Directive? Surely, one may be surprised by the fact that all previous Italian versions of official documents concerning compensation of crime victims employed the expression "*risarcimento*". See, for example, the following documents: *Risoluzione (77) 27 sul risarcimento delle vittime di crimini* (the European Parliament's Resolution on Compensation for Victims of Acts of Violence); *Convenzione Europea relativa al risarcimento delle vittime di reati violenti* (the 1983 European Convention on the Compensation of Victims of Violent Crimes, *Convention européenne relative au dédommagement des victimes d'infractions violentes* in the French version); *Libro Verde* sul *Risarcimento alle vittime di reati*, COM (2001) 536 definitivo (the European Commission's Green paper on compensation to crime victims). It was only in relation to the Directive that someone within the Italian entourage opted for changing the traditional term by adopting the expression "indennizzo" allowing the Italian legislature to reduce the victims' redress protection. National versions employing concepts that may apply in similar ways to the Italian "*indennizzo*" are the French ("*indemnisation*"), German ("*Entschädigung*"), Portuguese ("*indemnização*"), Slovak ("*odškodnenie*") and Spanish ('*indemnización*') versions.

[10] The final failure of the first defence raised by *Presidenza del Consiglio* was definitively certified by *European Commission v. Italian Republic*, Court of Justice, Grand Chamber, 11 October 2016, Case C-601/14 (ECLI:EU:C:2016:759), that adopted the following conclusion: «*As regards* […] *the determination of the intentional and violent nature of a crime,* […] *although the Member States have, in principle, the competence to define the scope of that concept in their domestic law, that competence does not, however, permit them to limit the scope of the compensation scheme for victims to only certain violent intentional crimes, lest it render redundant Article 12(2) of Directive 2004/80*» (para. 46).

[11] See R. CONTI, *Vittima di reato e obbligo di indennizzo a carico dello Stato:* really*?*, in *Corriere giuridico*, 2011, 249.

[12] Turin Court, Fourth Civil Division, 26 May 2010, no. 3145, Judge Mrs. Roberta Dotta, in *Guida al Diritto*, 2010, 28, 16.

Prosecutor Office (Procura della Repubblica di Torino), in the person of Mr Fulvio Rossi, voluntary intervened in order to support BV in her claim that the Italian Republic had breached the Directive, although at the last court hearing Mr Rossi, with a moving final harangue, announced that he was leaving the judiciary after the pressures received to drop this fight in favour of victims State compensation and modify his conclusions in the proceedings[13].

In 2012 the Court of Appeal of Turin, in turn with a courageous judgment[14], confirmed the previous ruling and condemned the Italian Executive: «*It is certain that Italy has not established any compensation system for victims of sexual violence and is therefore in breach* [of the Directive]».

The Court of Appeal reduced the award to Euro 50,000.00 (plus legal fees). This reduction was motivated on the ground that compensation in this case concerned the breach of the 2004 Directive (not the tortious act committed by the aggressors) and the duty of the State to provide an "indemnity" ("*indennizzo*") which could have resulted in a form of reparation not necessarily corresponding with full compensation according to private law standards[15].

In 2012, the case was then brought by the Presidency of the Council of Ministers before the Supreme Court of Cassation.

The Supreme Court first suspended these proceedings due to the pending of the case ***Commission v. Italy*** (**Case C-601/14**).

Following the judgment of the Court of Justice of 11 October 2016[16], the Italian legislature tried to remedy the non-transposition of Article 12 (2) first with law no. 122/2016 and then with law no. 167/2017. These laws, expressly designed to address the infringement proceedings that resulted in Case C-601/14, applied to "resident victims" too, but, as outlined also in the course of the proceedings before the Supreme Court, they did not provide the victims with indemnities complying with the principle of "full and appropriate" compensation provided by Article 12 (2); moreover, these laws did not provide for any appropriate compensation for the damages sustained by those victims, like BV, who, in the meantime, have suffered for years the breach of the Directive[17] and

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[13] In the subsequent steps of the proceedings before the Supreme Court and the EU Court of Justice the Turin Public Prosecutor Office remained inactive. This story within the story emerged in local newspapers, although there was not any scandal. See for example R. ZANOTTI, *Stupro senza colpevoli, paga lo Stato. Sentenza storica a Torino. Tensione tra le toghe: si dimette anche un magistrato*, in *La Stampa*, 11 February 2012, 25: «*Il sostituto procuratore è* […] *intervenuto nella causa civile affiancando nelle richieste i legali della vittima* […]. *Ha richiesto la condanna della Presidenza del Consiglio in tutte le fasi del processo tranne che all'ultima udienza quando, con un inaspettato intervento, ha fatto retromarcia: niente condanna, ma invio delle carte alla Corte di Giustizia europea* […] *Una nuova linea che, a detta del magistrato, sarebbe stata dettata dalla Procura generale. Si è trattato dell'ultimo processo seguito da Rossi che si è poi dimesso con una considerazione amara: "Lascio la magistratura perché mi rendo conto che non ci sono gli spazi per tutelare le vittime". Il caso della ragazza da risarcire ha anche prodotto un cambiamento nelle procedure di intervento della Procura generale nelle cause civili, oggi più restrittive*».

[14] Turin Court of Appeal, Third Civil Division, 23 January 2012, no. 106, President and Rapporteur Judge Mr. Paolo Pratt, in *Corriere giuridico*, 2012, 663.

[15] Unfortunately, BV is still waiting for this payment as the Court of Appeal, with a different composition of judges, subsequently suspended the enforceability of the 2012 judgment by alleging the risk for the State of not recovering the award in the case of the overturn of the decision and the relevance of such risk in consideration of public financial resources.

[16] *European Commission v. Italian Republic*, Court of Justice, Grand Chamber, 11 October 2016, Case C-601/14 (ECLI:EU:C:2016:759). See footnote no. 10 above.

[17] For example, there was not any provision for the award of interest on indemnities due to the victims exposed to the delay of the State in the transposition of the Directive. Obviously, full compensation for the loss and damage sustained as a result of the breach of Directive 2004/80 cannot leave out of account factors such as the effluxion of time. The award of interest is as an essential component of compensation.

have been forced to issue judicial proceedings against the Presidency of the Council of Ministers[18].

The **Supreme court**, after resuming the case following the Court of Justice's judgment in *Commission v. Italy* and after addressing the new laws (the "*jus superveniens*") with the parties to the proceedings[19] published, in January 2019, its **request for a preliminary ruling**[20] (lodged on 19 February 2019), which has raised the following **two questions**:

> «*The Court of Justice of the European Union is requested to rule [in the specific circumstances in the main proceedings concerning an action for damages, brought by an Italian citizen ordinarily resident in Italy, against the legislator State on grounds of non-fulfilment and/or incorrect fulfilment and/or incomplete fulfilment of the obligations laid down in Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, 1 and, in particular, the obligation, set out in Article 12(2) thereof, on the Member States to introduce, by 1 July 2005 (as laid down in the subsequent Article 18(1)) a general scheme of compensatory protection capable of guaranteeing fair and appropriate compensation to the victims of any violent and intentional crimes (including the crime of sexual violence of which the party concerned was victim), in cases where such victims are unable to obtain, from those directly responsible, full compensation for the damaged sustained] on the following questions: In relation to the situation of late (and/or incomplete) implementation in the national legal system of Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, which is non-self-executing as regards the establishment, required by it, of a scheme for compensation for the victims of violent crimes, which gives rise, in relation to cross-border persons, who are the sole addressees of the directive, to a liability on the part of the Member State to pay compensation in accordance with the principles set out in the case-law of the Court of Justice (inter alia the judgments in Francovich and Brasserie du Pêcheur and Factortame III), does [EU] law require that a similar liability be imposed on the Member State in relation to non-cross-border (and thus resident) persons, who are not the direct addressees of the benefits deriving from implementation of the directive but who, in order to avoid infringement of the principle of equal treatment/non-discrimination in that [EU] law, should have and could have — if the directive had been implemented in full and in good time — benefited, by extension, from the effect utile of that directive (that is to say, the abovementioned compensation scheme)? If the answer to the preceding question is in the affirmative: Can the compensation established for the victims of violent intentional crimes (and in particular the crime of sexual violence referred to in Article 609-bis of the Italian Criminal Code) by the Decree of the Minister for the Interior of 31 August 2017 [issued pursuant to Article 11(3) of Law No 122 of 7 July 2016 on provisions to comply with the obligations arising from Italy's membership of the European Union — European Law 2015-2016, with subsequent amendments (referred to in Article 6 of Law No 167 of 20 November 2017 and Article 1(593) to (596) of Law No 145 of 30 December 2018)] in the fixed amount of EUR 4 800 be regarded as 'fair and appropriate compensation to victims' within the meaning of Article 12(2) of Directive 2004/80?*».

The request for a preliminary ruling occurred upon insistent pleadings by the victim's lawyers, who even though had suggested a different question as to the first issue. In

[18] For a negative note on these laws see *amplius* M. BONA, *Vittime di reati violenti intenzionali: gli interventi del legislatore cancellano l'inadempimento italiano?*, in *Responsabilità civile e previdenza*, 2018, no. 4, 1407-1430.

[19] The Presidency of the Council of Ministers argued that these laws were as such as terminating the dispute before the Supreme Court.

[20] Supreme Court, Third Civil Division, interlocutory order 31 January 2019, no. 2964, President Judge Mr. Giacomo Travaglino, Rapporteur Judge Mr. Enzo Vincenti, in *Responsabilità civile previdenza*, 2019, no. 3, 822, with comment by C. CERLON, *Vittime di reati violenti intenzionali: il rinvio pregiudiziale della Cassazione alla Corte di giustizia*.

particular, whilst the Supreme Court opted for a question which assumed the exclusion of "purely internal situations" from the scope of the obligation provided by Article 12 (2) and focused instead on the, indeed fascinating, perspective of "**reverse discrimination**" as a potential new scenario for "Francovich Liability", BV's lawyers insisted for a question enabling the Court to address the issue of the scope of Article 12 (2) as a matter still to be solved as to the inclusion of "internal situations" along "cross-border cases"; under the theory pursued by BV's lawyers the "reverse discrimination" scenario - one to be avoided first under both the Italian Constitution and the Charter of the Fundamental Rights of the European Union besides the Directive's aim to provide crime victims in the European Union with fair and appropriate compensation for the injuries they have suffered «*regardless of where in the European Community the crime was committed*» (Recital 6 of the Directive) - constituted the litmus test that imposed the application of the Directive to "resident victims" too, this also according to the text, the preamble and the internal system of the Directive, as well as its genesis. As to this last point, in particular, BV's lawyers pointed out that, at the end of the proceedings that led to the Directive, the Presidency of the Council put forward a "compromise proposal"[21] that kept the obligation for Member States to establish national compensation schemes without limiting them in any way to just cross-border situations.

The Supreme Court opted for the above first question by mainly relying on the Court of Justice's precedents in Case C-122/13[22] and in Case C-601/14 in spite of the fact that such interventions could have been interpreted in a way that did not prevent the application of Article 12 (2) to "resident victims" too[23], as now confirmed by the judgment of 16 July 2002[24].

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[21] Council Document no. 7752/04.

[22] *Paola C. v. Presidenza del Consiglio dei Ministri*, Court of Justice, Sixth Chamber, order 30 January 2014, Case C-122/13 (ECLI:EU:C:2014:59). For critical notes on this order see following contributions: S. PEERS, *Reverse discrimination against rape victims: a disappointing ruling of the CJEU*, 24 March 2014, in *http://eulawanalysis.blogspot.it/2014/03/compensation-for-crime-victims.htm*, who also argued that, «*While the main focus of the Directive is certainly compensation in cross-border cases, Article 12(1) of the Directive makes clear that this takes place on the basis of each national system for compensation. Therefore Article 12(2) - quoted above - requires each Member State to set up a national system covering crimes like this one. So a failure by Italy to provide for state compensation for its residents who are victims of such crimes will complicate any attempt by visitors from other Member States to collect compensation from the state in such case*»; M. BONA, *Vittime di reati violenti intenzionali: la Corte di Giustizia dichiara l'inadempimento dell'Italia*, in *Responsabilità civile previdenza*, 2017, no. 2, 470-505.

[23] See in particular para. 49 of the judgment Case C-601/14: «*It is true that the Court has held that Directive 2004/80 provides for compensation only where a violent intentional crime has been committed in a Member State in which the victim finds himself in exercising his right to free movement, so that a purely internal situation does not fall within the scope of that directive (see, to that effect, judgments of 28 June 2007, Dell'Orto, C-467/05, EU:C:2007:395, paragraph 59, and 12 July 2012, Giovanardi and Others, C-79/11, EU:C:2012:448, paragraph 37, and order of 30 January 2014, C., C-122/13, EU:C:2014:59, paragraph 12). The fact remains that, in so doing, the Court merely stated that the system of cooperation established by Directive 2004/80 solely concerns access to compensation in cross-border situations, without however excluding that Article 12(2) of that directive requires each Member State, for the purposes of securing the objective pursued by it in such situations, to adopt a national scheme guaranteeing compensation for victims of any violent intentional crime on its territory*». For the interpretation of the 2016 judgment in the terms of not preventing the inclusion of "purely internal situations" among the scope of the obligation provided by Article 12 (2) see M. BONA, *Vittime di reati violenti intenzionali: la Corte di Giustizia dichiara l'inadempimento dell'Italia*, in *Responsabilità civile previdenza*, 2017, no. 2, 470-505.

[24] See paragraphs 52-54: «*52. It follows from the considerations set out in paragraphs 39 to 51 above that Article 12(2) of Directive 2004/80 imposes the obligation on each Member State to provide for a scheme of compensation covering all victims of violent intentional crime committed on their territory and not only those victims that are in a cross-border situation. 53. That finding is not called into question by the case-law of the Court to the effect that Directive 2004/80 provides for a compensation scheme solely in circumstances in which a violent intentional crime has been committed in a Member State in which the*

3. The scope of Article 12 (2): "resident victims" are entitled to State compensation. The Court of Justice, as also suggested by BV's lawyers and by the Advocate General in his Opinion[25], did not feel bounded by the first question posed by the Supreme Court and held that the solution of the main proceedings required «*it to be ascertained whether Article 12(2) confers on individuals, such as BV, a right upon which they may rely in order to invoke the liability of a Member State due to a breach of EU law and, if so, whether compensation in the sum of EUR 4 800 that the Italian authorities decided to award to the person concerned on the basis of the Ministerial Decree of 31 August 2017, represents 'fair and appropriate compensation' within the meaning of Article 12(2)*». Accordingly, the Court reformulated the first question: «*By its first question, the referring court asks, in essence, whether EU law must be interpreted as meaning that the rules on the non-contractual liability of a Member State for damage caused by the breach of that law apply, on the ground that that Member State did not transpose, within the appropriate time, Article 12(2) of Directive 2004/80 as regards victims residing in that Member State, in the territory of which the violent intentional crime was committed*» (para. 33).
By answering the first question in its revised form, the judgment of 16 July has provided for the following **clear principles**:

- the right to obtain the "fair and appropriate" compensation, as established by Directive 2004/80/EC at Article 12 (2), applies not only to victims of violent intentional crimes who, at the time of crime occurrence, were in "cross-border situations" (the "**cross-border victims**", "**visiting victims**" or "**foreign victims**"), but also to the victims who habitually reside in the territory of the Member State where the crime has taken place (the "**resident victims**" or "**internal victims**");
- under the **"Francovich liability" model** both "resident" and "cross-border" victims (as well as, in homicide cases, their relatives[26]) have in principle the **right to claim compensation for the damages caused by a Member State's breach of its own obligation flowing from Article 12 (2) of the Directive 2004/80/EC**; this right occurs irrespectively of whether the victim was in a "cross-border situation" at the time when he or she was the victim of a violent intentional crime (hence, a girl like BV, resident and raped in Italy, was fully entitled to issue a "Francovich claim" against the Italian State on the grounds of the Republic's delay and non-fulfilment of the obligations laid down in Directive 2004/80/EC).

Practically, according to this judgment, which delivers full rightfulness to BV's thesis, Italy can no longer object the lack of its "Francovich liability", towards "internal victims", because of the serious delay (nearly 15 years!) in the implementation of the Directive and for the unfair awards provided by the late application of the Directive; in particular, as a

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victim finds himself or herself in exercising their right to free movement, meaning that a purely internal situation is not covered by the scope of application of that directive (see, to that effect, judgments of 28 June 2007, Dell'Orto, C-467/05, EU:C:2007:395, paragraph 59, and of 12 July 2012, Giovanardi and Others, C-79/11, EU:C:2012:448, paragraph 37, and the order of 30 January 2014, C., C-122/13, EU:C:2014:59, paragraph 12). 54. By that case-law, the Court merely stated that the system of cooperation established by Chapter I of Directive 2004/80 solely concerns access to compensation in cross-border situations, without however determining the scope of application of Article 12(2), which appears in Chapter II thereof (see, to that effect, the judgment of 11 October 2016, Commission v Italy, C-601/14, EU:C:2016:759, paragraph 49)».

[25] See point 24: «*I take the view that this question should be reformulated as follows: does Directive 2004/80, and in particular Article 12(2) thereof, require Member States to introduce a national compensation scheme that covers all victims of violent intentional crimes committed in their respective territories, which also covers non-cross-border situations?*».

[26] The judgment concerns victims of sexual assaults, but these principles are clearly applicable to any other crime covered by the Directive.

result of the judgment of the 16 July 2020, the denial of any liability raised so far by the Italian Presidency of the Council of Ministers towards the Italian victims is manifestly unfounded (the defence adopted by the Executive in the main proceedings and other similar lawsuits may be seen as a further breach of the Directive).
In support of this interpretation of the Directive as meaning that it protects, first of all, the victims residing in the Member State where the crime was committed, the Court of Justice has referred both to the wording of the Directive and to the Recitals 3, 6, 7 and 10. According to the Court, it cannot be doubted that «***Article 12(2) of Directive 2004/80 imposes the obligation on each Member State to provide for a scheme of compensation covering all victims of violent intentional crime committed on their territory and not only those victims that are in a cross-border situation***» (para. 52 of the decision).
The same conclusion had been already reached by the Advocate General Mr Michal Bobek in his Opinion delivered on 14 May 2020, who, in line with the BV's position, argued that the Directive imposes, on all Member States, the establishment of national compensation systems for any victim of violent intentional crime committed in their respective territories «*regardless of the victim's place of residence*»[27].
To support this solution, the Advocate General, by introducing **the innovative mean of interpretation of the directives based on the standard of "reasonable man in the street"**, interestingly added that «*legislation must be interpreted from the point of view of a normal addressee, who is unlikely to start searching various documents (not always publicly accessible) pertaining to the legislative history of an instrument, to find out whether what is written in the text reflects the subjective will of the historical legislator*» (point 123).
Moreover, the Advocate General also invoked the **Charter of Fundamental Rights of the European Union**; in particular, he found that, like the rights to human dignity and health, laid down in Articles 1 and 6 of the Charter, are to be guaranteed to everyone, such is also the right to compensation under the contested provision (point 107)[28].
The Advocate General relied on these arguments as "tiebreakers" in favour of the victim's interpretation of the Directive, this by representing the situation as a sort of "play-off scenario" (a «*death heat*»[29]) between, on one hand, the Respondent's position and, on the other hand, in line with the referring Court's interpretation, the thesis pursued by the Italian Executive and (surprisingly[30]) by the European Commission too (both, as to the

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[27] See point 145 (1) of the Opinion: «*Article 12(2) of Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims requires Member states to establish national schemes on compensation that provide for compensation to any victim of a violent intentional crime, regardless of his or her place of residence*».
[28] On this specific point see A. ARENA, *AG Bobek's Opinion in Case C-129/19: protecting crime victims in purely internal situations through the Charter of Fundamental Rights without encroaching on national regulatory autonomy*, 2 June 2020, *www.eulawlive.com*.
[29] See point 102 of the Opinion.
[30] Firstly, the initial position taken by the European Commission should be recalled. In its original Proposal for a Council Directive on compensation to crime victims - COM (2002) 562 final, the Commission pursued two distinct objectives, closely intertwined. The first objective was to ensure that all EU citizens and all legal residents in the Union could receive adequate compensation for any losses suffered as a result of falling victim to a crime anywhere in the European Union; by this objective the Commission pursued the creation of a minimum standard for State compensation to crime victims. The second objective was to facilitate access to compensation in situations where the crime took place in another Member State than that of the victim's residence. This objective was to be pursued through the creation of a system of cooperation between authorities of the Member States, allowing the victim to submit an application to an authority in the Member State of residence. This double objective was reflected, first of all, in Article 1 of the Proposal: «*The objective of this Directive is to establish a minimum standard for compensation of victims of crime and to facilitate access to such compensation in cross-border situations*». Moreover, the Commission subsequently launched, against the Italian Republic, the infringement proceedings - NIF

scope of para. 2 of Article 12, argued that the right to compensation was only applicable to cross-border situations, the "cross-border applicability thesis").
For the Advocate General «*the text and internal system of Directive 2004/80 considered on their own would rather argue in favour of the interpretation proposed by the Respondent*» (point 47), whilst the preamble «*does not settle the interpretative issues*» (point 66) and the genesis does not provide any clear answer concerning the precise objectives that the EU legislature intended to pursue with Article 12 (2) (point 84)[31].
However, the Court of Justice was correct by ignoring the genesis and the *travaux préparatoires* of the Directive: the preamble, the text and the internal system of the

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(2011) 4147 - that resulted in Case C-601/14. The infringement proceedings arose from several complaints concerning "purely internal situations" about the country's implementation of EU rules on compensation for victims of crime. In the course of such proceedings, the Commission firmly pursued the thesis that «*EU rules mean Member States must ensure that their national compensation scheme guarantees fair and appropriate compensation to victims of 'violent intentional crimes' committed on their own territory. Italy does not have any general compensation scheme for such crimes. Instead, Italian legislation provides merely for compensation to victims of certain violent intentional crimes, such as terrorism or organised crime, but not for others. To date, Italy has not taken the necessary steps to amend its legislation in order to comply with the requirements of EU legislation, meaning that certain victims of violent intentional crimes may not have access to the compensation they should be due*» (see MEMO/13/907, 17 October 2013, «*October infringements package: main decisions*»). See also the European Commission's application to the Court of Justice in the action brought on 22 December 2014, *European Commission v. Italian Republic* (Case C-601/14: «*The applicant claims that the Court should: declare that, by failing to adopt all the necessary measures to guarantee the existence of a scheme on compensation to victims of all violent intentional crimes committed in its territory, the Italian Republic has failed to fulfil its obligations under Article 12(2) of Directive 2004/80/EC*». In particular, as to the application's pleas in law and main arguments: «*Directive 2004/80/EC institutes a system of cooperation between the authorities of the Member States to facilitate the access of victims of crime throughout the European Union to appropriate compensation in cross-border situations. The system operates on the basis of Member States' schemes on compensation to victims of violent intentional crimes committed in their respective territories. To ensure that system of cooperation is fully operational, Article 12(2) of that directive requires the Member States to have or to introduce a scheme on compensation to victims of violent intentional crimes committed in their respective territories which guarantees fair and appropriate compensation to victims. That obligation must be understood as referring to all violent intentional crimes and not as referring to only some of them. Italian law makes provision for a national scheme on compensation to crime victims which consists of a series of special laws on compensation for certain violent intentional crimes, but does not make provision for a general compensation scheme which covers victims of all crimes identified and categorised by the Italian Penal Code as violent intentional crimes. In particular, Italian law does not provide a scheme on compensation for violent intentional crimes which are forms of 'common crime' not covered by those special laws. Consequently, it must be stated that the Italian Republic has failed to fulfil its obligations under Article 12(2) of Directive 2004/80/EC*».

[31] As to the genesis of Article 12 (2) one may object to the Advocate General's description of the legislative process, leading to the adoption of Directive 2004/80, that the introduction of this provision consisted of a "compromise" between, on one hand, the "zero harmonization" approach, according to which even the rule introduced by this Article was not accettable and should have not been contemplated, and, on the other hand, the pursuit of a high level of uniform law, sponsored by the Commission and some Member States. Therefore, Article 12 (2) - the "compromise" introduced by Council Document 7752/04 - cannot be construed as implying the first rule (that was indeed rejected) but as rule in middle, hence a provision imposing "minimum harmonization" on Member States. This minimum level consisted of the obligation for national legislatures to provide "fair and appropriate" compensation for the victims (any victims) of crimes committed in their respective territories. As a consequence, in contrast with the above Advocate General's reading of the *travaux préparatoires*, it should be concluded that even the genesis of Article 12 (2) leads to the extension of this provision to "resident victims" too. Such conclusion is further supported by the minutes of two meetings of the Council that followed the "compromise": Council Document 7209/04, p. 9, and Council Document 8694/04, p. II, both suggesting, as put by the same Advocate General at point 83 of the Opinion, the «*'survival' of this second objective pursued by the directive: to enhance the protection of all victims of violent intentional crimes, by ensuring their access to a fair and appropriate compensation regardless of where in the European Union the crime is committed*».

Directive are so clear on the scope and operation of Article 12 (2), until the point that there should not have been any need to go through the dilemmas and political negotiations faced by the EC lawmakers in the course of the drafting of the Directive[32].
What matters as to the judgment of 16 July is that, whilst the Advocate General attributed a victory to the thesis of the victim, but in the represented "playoff situation" (hence presenting the scope of Article 12, para. 2, as being nearly uncertain), on the contrary, the Court of Justice had no hesitation in stating the extension of the Directive to the victim residing in the territory where the crime was committed.
Logically, this clear conclusion by the Court of Justice about the exact scope of Article 12 (2) confirms the objectivity and seriousness of the liability of the Italian State under the "Francovich model" in BV's case and similar lawsuits, this not only due to the considerable delay in the transposition of such provision and the non-fulfilment of the obligation arising from the above provision, but also for the extremely strenuous defence raised by the Italian Presidency of the Council of Ministers in the main proceedings and other comparable lawsuits.
In addition, the defensive strategy pursued by the Italian Executive implied and relied upon **unreasonable discrimination** among victims of same crimes, this even though such discriminatory result was expressly prevented by Italian legislation imposing, even before the 1st of July 2005, same treatments of individuals in "internal situations" and "cross-border situations".
In particular, as to this last regard Article 2 («*Principles and general guiding criteria for the legislative delegation*») (1) (h) of law 18 April 2005, no. 62 («*Community law 2004*»), which was already in force at the time the Italian legislature was expected to implement Article 12 (2), contained the following general principle for the transposition of directives including Directive 2004/80/EC: «*the legislative decrees* [transposing the directives] *ensure that Italian citizens enjoy an effective treatment equal to the one granted to the citizens of other EU Member States, by granting the highest possible level of harmonization between the internal laws of the various Member States and avoiding the emergence of discriminatory situations to the detriment of Italian citizens* […]».
In spite of any possible doubt concerning the interpretation of the Directive, the Italian legislature perfectly knew that it could not make any distinction among "resident victims" and "cross-border victims" as to their right to claim State compensation under Article 12 (2): obviously this renders totally manifest above any imaginable limit the absolute seriousness of the Italian Republic's "Francovich liability" towards BV and similar victims.

4. The notion of "fair and appropriate" compensation and *quantum*: meaningful contribution to the reparation, non-material damages and "personalization".

In the perspective of future harmonization of crime victims' state compensation throughout the European Union, the judgment of 16 July is surely fundamental also as to its statements regarding the **scope and meaning of the expression "fair and appropriate" compensation** provided by **Article 12 (2)**, as well as in relation to the legitimacy of the measures eventually adopted by national legislatures in order to limit victims' state redress protection.

[32] It should also be noted that there is not any article or recital in the Directive that provides for an exclusion of "resident victims" from the right granted by Article 12 (2), an exclusion which, given its manifest relevance, had to be expressly and unequivocally disposed by the EC legislature in the same article or elsewhere in the Directive (*ubi lex voluit dixit, ubi noluit tacuit*), but it had not been. Moreover, there is not any provision in the Directive which bears indications of any kind expressly supporting the restriction of the obligation under Article 12 (2) to "cross-border victims" only.

This second part of the judgment is of great interest not only for Italy, but for all Member States: its statements are applicable to all jurisdictions and shall constitute the basis for legislatures and national judges as to the assessment of internal laws' conformity to Article 12 (2).
Moreover, this precedent affects both the state compensation of victims of sexual assaults and the redress protection imposed by the Directive in favour of either the relatives of persons intentionally killed as well as the victims of deliberate personal injuries.
The issue concerning the scope of compensation under Article 12 (2) has arisen in BV's case since the beginning of the main proceedings as the judges on the merit had to explore, under the "Francovich liability" model, which was the award which BV would have been entitled to if the national legislature had timely and properly fulfilled the obligation to provide her with "fair and appropriate" compensation[33].
However, it was in 2017 that the question of the exact meaning of the expression "fair and appropriate" compensation became absolutely relevant for BV's main proceedings and all similar pending lawsuits. As a matter of fact, that year (indeed with extreme delay) the Italian Executive, in order to avoid further lawsuits of the kind of the one pursued by BV, as to the compensation of victims of rapes and other sexual assaults finally determined the «*fixed award*» of Euro 4.800,00[34]. Moreover, the same law (the "*jus superveniens*") provided for the following awards in relation to the other crimes covered by the 2004 Directive's protection: -) homicide: the «*fixed award*» of Euro 7.200,00 (to be shared among all the family members entitled to get compensation according to national law), and, in the case of murder committed by a spouse, or by a person who was linked by emotional ties to the injured party, the fixed amount of Euro 8.200,00; -) personal injury: «*up to a maximum of Euro 3.000,00*» awarded as reimbursement for medical and care costs.
Following the introduction of the afore-mentioned monetary parameters, in the main proceedings, pending before the Supreme Court, the Presidency of the Council of Ministers relied on the award of Euro 4.800,00 in order to argue that such sum was as such as to satisfy the rape victims' claims, BV included, under Directive 2004/80/EC. For the Presidency the "*jus superveniens*" was as such as to put an end to the main proceedings.
On the contrary, according to BV's lawyers on the ground of Italian case-law (both on liability compensation and public indemnities), as well as statutory law providing for state compensation in other comparable areas (mainly in relation to mafia victims and victims of terrorism), the sum of Euro 4.800,00 could not relieve the Italian Republic from the breach of the Directive: simply, it did not amount to "fair and appropriate" compensation; anyway this award did not address the additional damage caused by the State's delay in transposing the Directive at all.
In particular, BV's thesis, as also subsequently pursued in the proceedings before the Court of Justice, was based on the following arguments:

- the condition under Article 12 (2) that state compensation has to be "fair and appropriate" puts a **limit to the Member States' wide discretion** with regard to the choice of the heads of compensation covered, the criteria that are relevant to

[33] BV's theory was that under the "Francovich liability" model she was entitled to claim for full compensation of material and non-material damages since the Italian State, by deciding not to transpose the Directive and eventually make use of its discretionary power to limit the scope of compensation, could not rely on the difference between compensation (or "*restitutio in integrum*") according to private law and "indemnity". On this distinction see footnote no. 9 above.
[34] See the Interministerial decree of 31 August 2017 providing for the «*Determination of the awards for victims of violent intentional crimes*», entered into force on 11 October 2017.

determine the awards, and the amount of compensation itself; this Article is not limited to requiring States to guarantee any compensation, but "fair and appropriate" compensation[35];

- the requirements of fairness and appropriateness - in the absence of uniform rules at EU level - should be construed **only in the light of the principles, criteria and monetary values applying within each national system**;
- as a consequence, state compensation to victims of violent intentional crimes should be **adequate to the national standards** and adjudicated accordingly; in particular, the implementation of the Directive's two requirements into a Member State imposes that its national compensation scheme should not give rise to any abysmal monetary gap between, on one hand, the awards granted under Article 12 (2) and, on the other hand, the levels of the awards provided according to national private law ("liability compensation"[36]) and, even more, of state indemnities awarded in comparable cases;
- in addition, under the principle of non-discrimination and equality before the law, **there cannot be disproportionate and unreasonable disparities in relation to the state compensation granted to victims who have faced similar situations** (in terms of crimes and damages); this, together with the **principle of effectiveness of EU law**, legitimizes national judges to verify, in relation to the awards provided by national law transposing Directive 2004/80, that they are above all in line with the internal levels of state compensation awarded in similar cases (nevertheless, also full compensation standards in actions in tort or in contract for damages caused by conducts of the same kind should be taken into account since Article 12 provides for a state reparation substituting the original obligation of the criminal offender, hence it must be somehow related to this one);
- moreover, "fair and appropriate" compensation requires that the particular circumstances of each single case are taken into account; in other words, awards should be, at least to a certain extent, **adaptable to the victim's case** (the so called **"personalization" of basic awards**)[37], as also arguable on the ground of *Marshall v. Southampton and South-West Hampshire Area Health Authority (No. 2)*[38];

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[35] See also the Advocate General Bot's Opinion delivered on 12 April 2016 in Case C-601/14 (ECLI:EU:C:2016:249): «*86. The setting of the amount of compensation in the light of the injury suffered - permanent disability, total incapacity for work for one month or more, temporary incapacity for work for less than one month - or indeed the setting of any ceilings therefore remain within the exclusive competence of the Member States. 87. Compensation, however, must be fair and appropriate, as required by Article 12(2) of Directive 2004/80, and the national courts may refer questions to the Court in this connection in the event of doubt*».

[36] This compensation is sometimes referred to as the "tort compensation", however it is much more accurate to adopt the wider term "liability compensation" since liability can be either contractual or tortious or otherwise qualified on the ground of the specific regimes or theories applied.

[37] The Aristotelian model consisting of "fairness" as "tailoring" belongs to the "DNA" of Western law (and not only of this). This model, referred to in the Nicomachean Ethics (Book V) and the Rhetoric, according to which the principle of the "*epiéikeia*" (equity/fairness) - in its differentiation from the law ("*nomos*") - indicates the need for a margin, in the application of the law, for corrective interventions, that is adaptation to the specific case, given that the law cannot concern the peculiarities of each and every case.

[38] Court of Justice, 2 August 1993, Case C-271/91, ECLI:EU:C:1993:335. In particular, in this case the Court addressed the issue of "appropriate compensation" by noting that, «*Where financial compensation is the measure adopted in order to achieve the objective* [pursued by a Directive], *it must be adequate, in that it must enable the loss and damage actually sustained* […] *to be made good in full in accordance with the applicable national rules*» (para. 26). For the Court «*It also follows* […] *that the fixing of an upper limit* […] *cannot, by definition, constitute proper implementation* […], *since it limits the amount of compensation a priori* …» (para. 30).

- last but not least, as also pointed out at the 2 March 2020 hearing before the Court of Justice, **immaterial damages** should be taken into consideration for an award to be "fair and appropriate".

On these grounds BV challenged the sum of Euro 4.800,00 by noting that:

- this sum was markedly much lower not only than the compensation generally awarded for non-pecuniary damages by Italian courts to rape victims on the ground of tort law standards (according to most recent case-law in the region between Euro 50.000,00 and Euro 300.000,00, these sums not including awards for psychiatric damages[39]), but also in comparison with the protection granted by Article 4 of the law of 20 October 1990, no. 302 («*Provisions in favour of the victims of terrorism and organized crime*»)[40], awarding, by way of state indemnisation, the basic sum of Euro 2,000.00 for each percentage point of permanent disability; in particular, law no. 302/1990 provides a victim affected by 2% of permanent disability with a sum equal to the one awarded to a victim of rape by the law implementing Directive 2004/80 (in Italy this percentage is generally assessed in relation to minor impairments like the one arising from a whiplash injury), being this outcome a manifest evidence of the unfairness of the Euro 4.800,00 award;
- moreover, the fixed award of Euro 4.800,00 did not allow any distinction among victims of sexual assaults on the ground of the seriousness of the aggression (whether a rape or another kind of violence; involvement of more perpetrators; etc.) nor according to the entity of the consequences; on the contrary, indemnities under law no. 302/1990 are adaptable case by case also in consideration of the mental distress, the moral suffering and the violation of human dignity sustained by the victim up to a maximum of 2/3 of the basic value.

The Supreme Court of Cassation, in its referring judgment for the Court of Justice's preliminary ruling dated 31 January 2019[41], stated that the sum of Euro 4.800,00 for the victims of rape was well within a «*derisory area*» and constituted an award «*blatantly not fair*». More in general, the Supreme Court endorsed all above BV's arguments.

For a large part BV's thesis has succeeded before the Court of Justice.

In his Opinion, the Advocate General Mr Michal Bobek, even if with an approach defined by the same as being "minimalist", stated that the compensation to crime victims is «*fair and appropriate*» within the meaning of the Directive only when it makes a **meaningful contribution to the reparation of the damage suffered by the victim**. In particular, according to the Advocate General, at the discretion of the Member States in the implementation of the Directive, the award granted according to Article 12 (2) may consist of a standardised award: «*nothing in Directive 2004/80 prevents national laws and procedures from including provisions, which in the determination of the amount of compensation to be granted, allow for ranges, maximum and/or minimum ceilings, and*

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[39] See the following judgments: Euro 100.000,00 to a girl aged 14 years old forced to sexual assaults by his father (Padua Court, Criminal Division, 23 January 2015, in *www.pluris-cedam.utetgiuridica.it*); Euro 300.000,00 to a minor sexually abused by her stepfather (Modena Court, First Civil Division, 12 December 2003, in *Sito Giuraemilia.it*, 2003, in *Banca dati Utet*); Euro 70.000,00 to an adolescent victim of child pornography (Rome Court of Appeal, Third Criminal Division, 3 November 2017, in *www.pluris-cedam.utetgiuridica.it*); Euro 50.000,00 as provisional damages to a woman repeatedly sexually assaulted (Rome Court of Appeal, Third Criminal Division, 20 July 2017, in *www.pluris-cedam.utetgiuridica.it*); Euro 50.000,00 as provisional damages to a minor forced to oral sex (Ascoli Piceno Court, 16 February 2016, in *www.pluris-cedam.utetgiuridica.it*); Euro 70.000,00 to a nephew forced to undergo sexual acts (Trento Court, Criminal Division, 2 February 2015, in *www.pluris-cedam.utetgiuridica.it*).

[40] This compensation scheme also applies to certain categories of public officials and citizens who are killed or injured in the line of duty.

[41] Supreme Court, Third Civil Division, interlocutory order 31 January 2019, no. 2964, quoted.

standard or fixed financial values for each type of loss or injury suffered by the victim, or type of crime committed». Nevertheless, there is a limit to the provision of fixed awards: «*the amount must give a meaningful contribution to the reparation of the material and immaterial damage suffered by the victim, and provide some satisfaction to him or her for the harm suffered. In particular,* ***the amount of compensation cannot be so low that it becomes purely symbolic, or that the usefulness and comfort that the victim derives from it is, in practice, negligible or marginal***» (point 142).

Logically, only comparison with national standards of compensation in similar cases enables judges to assess an award as "purely symbolic".

The judgment of 16 July 2020 is similar to the position undertaken by the Advocate General, even though one may notice some differences (this, as further illustrated below, in particular in relation to the limits within which national legislatures may approach the "fixed awards" system).

As a matter of fact, as to the second question, the Court of Justice has concluded for the following unequivocal **principle**: «*Article 12(2) of Directive 2004/80 must be interpreted as meaning that a fixed rate of compensation awarded to victims of sexual violence under the national scheme of compensation to victims of violent intentional crime cannot be classified as 'fair and appropriate', within the meaning of that provision, if it is fixed without taking into account the seriousness of the consequences, for the victims, of the crime committed and does not therefore represent an* ***appropriate contribution to the reparation of the material and non-material harm suffered***».

First of all, it should be noted that for the Court of Justice - this in full line with both the BV's lawyers, who have supported this point in the course of the proceedings, and the Advocate General - not only material damages, but also **non-material/moral damages** must be taken into consideration within the fixed award in order to give rise to a satisfactory compensation according to Article 12 (2). The award must also give a meaningful contribution to the reparation of the "**immaterial damages**" suffered by the victim; hence it should provide satisfaction to the victim not only for the financial harm suffered, but for the non-pecuniary losses sustained[42].

This explicit reference by the Court of Justice to the **non-material damages and the moral damages** is an important novelty by itself, considering that the Directive does not mention them, although in the course of the drafting of the Directive the European Commission[43] and some stakeholders suggested the inclusion of such head of damages within the state compensation due to crime victims[44]. Also the European Convention of

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[42] See, in particular, para. 64 of the judgment stating that: «*For the purposes of Article 12(2) of Directive 2004/80, the compensation granted to such victims represents a contribution to the reparation of material and non-material losses suffered by them. Such a contribution may be regarded as 'fair and appropriate' if it compensates, to an appropriate extent, the suffering to which those victims have been exposed*».

[43] See para. 1 of Article 4 («*Principles for determining the amount of compensation*») of the Commission's Proposal for a Council Directive on compensation to crime victims, COM/2002/0562 final: «*Compensation shall cover pecuniary and non-pecuniary losses that have resulted as a direct consequence of the personal injury the victim has sustained, or, as concerns close relatives or dependants, of the death of the victim*».

[44] This was also the position of Peopil (The Pan-European Organization of Personal Injury Lawyers) in the position paper «*PEOPIL's 2nd RESPONSE TO THE GREEN PAPER BY THE EUROPEAN COMMISSION ON COMPENSATION TO CRIME VICTIMS COM (2001) 536 FINAL*» (2002) that followed the hearing that took place on the 21st of March 2002 in the context of the European Commission's consultations on the Green Paper: «*In our previous response we already pointed out the risks of a detailed European legislation on compensation of non-pecuniary losses at this stage. PEOPIL would prefer that a future directive on State compensation for crime victims would only refer to damages for non-pecuniary losses, without any definitions. This also applies to the definition of permanent disability. It is not so easy to give a proper definition of permanent disability, especially in the case of psychiatric illness and other kinds of diseases. It should be made clear that if the offender remains unknown or cannot be successfully prosecuted*

24 November 1983 on the compensation of victims of violent crimes (ETS No.116), quoted by Recital 8 of the Directive, does not provide for the compensation of moral damages: only its Explanatory Report, at para. 28, includes «*pain and suffering (pretium doloris)*» among the «*possible items*» of state compensation, but this award is «*subject to the provisions of national legislation*».

Furthermore, the fact that immaterial damages must be taken into consideration by national legislatures when determining the awards for the purposes of transposing Article 12 (2) is a fundamental statement by the Court also considering that this result was far away from being for granted in relation to state compensation.

Clearly, according to the 16 July judgment, it is not a successful argument against the inclusion of "immaterial damages" among those losses, to be awarded under Article 12 (2), that it is the state who has to provide compensation and not the author of the criminal conduct: for the Court of Justice non-material damages should be taken into consideration and fairly/appropriately awarded even though within state compensation.

Indeed, it does make full sense that, as stated by the Court of Justice, such damages must be taken into account by national legislators and judges for the purposes of "fair and appropriate" compensation.

Firstly, the need to consider non-pecuniary losses also in the scenario of state compensation dedicated to victims of violent intentional crimes is obvious by considering that in most cases "immaterial damages" are the main damages, if not the only ones, sustained by persons affected by such crimes: simply, there would not be any "fair and appropriate" compensation, even though by way of a state indemnity, if the core of the damages sustained by the victim were left out of the scope of such compensation.

Furthermore, compensation for "moral damages" to victims of violent intentional crimes is entirely consistent with the case-law of the Court of Justice as well as with the EU legislation.

Immaterial damages, as confirmed by several precedents of the Court of Justice in relation to provisions not expressly mentioning the inclusion of awards for non-pecuniary losses[45],

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or the offender lacks the means to compensate the victim, the victim should be entitled to receive full and fair compensation from the State. This should also be the case for non-pecuniary losses in the same way non-pecuniary losses would be awarded under the tort system of the Member State concerned».

[45] There are many examples confirming this point. As to the compensation due by insurance undertakers in relation to road traffic accident victims according to the Motor Insurance Directives see: *Haasová*, C-22/12, ECLI:EU:C:2013:692 with reference to the right to compensation of the partner and of the child for the loss of their beloved: «*Article 3(1) of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability, Article 1(1) and (2) of Second Council Directive 84/5/EEC of 30 December 1983* […], *as amended by Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005, and Article 1(1) of Third Council Directive 90/232/EEC of 14 May 1990* […] *must be interpreted as meaning that compulsory insurance against civil liability in respect of the use of motor vehicles must cover compensation for non-material damage suffered by the next of kin of the deceased victims of a road traffic accident, in so far as such compensation is provided for as part of the civil liability of the insured party under the national law applicable in the dispute in the main proceedings*»; *Drozdovs*, C-277/12, ECLI:EU:C:2013:685 in relation to the right to compensation of a child for the death of the parents: «*Article 3(1) of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability and Article 1(1) and (2) of Second Council Directive 84/5/EEC of 30 December 1983* […] *must be interpreted as meaning that compulsory insurance against civil liability in respect of the use of motor vehicles must cover compensation for non-material damage suffered by the next of kin of the deceased victims of a road traffic accident, in so far as such compensation is provided for as part of the civil liability of the insured party under the national law applicable in the dispute in the main proceedings*»; *Petillo*, C-371/12, ECLI:EU:C:2014:26, concerning a personal injury case: «*34 The notion of 'personal injuries' covers any type of damage, in so far as compensation for such damage is provided for as part of*

are nowadays an essential key feature of compensation in a wide range of cases, from road traffic accidents to distress for disrupted holidays, transportation delays and loss of baggage (hence, as to these latter two cases even when compensation is provided by way of capped or fixed indemnities). If the mental well-being of a passenger losing his baggage or suffering from a delay of the airplane deserves redress protection by means of an award for non-pecuniary loss such as distress and frustration (we all agree on this), then, even more, compensation to victims of violent intentional crimes must consider this side of the damage too.

Moreover, the inclusion of moral damages among the items, which must substantiate the award according to Article 12 (2), is consistent with the protection of immaterial rights, goods and values to be granted by EU law under the **Charter of Fundamental Rights of the European Union**.

In particular, since breaches of fundamental rights - like dignity, personality, health, physical and mental integrity, as well as the right to family relationships - firstly affect the "moral sphere" of the victims and compensation, like it or not, is a concrete essential mean of protection for individuals (sometimes the only one available), it follows that under Article 12 (2) the said rights must be protected by way of awarding victims for their moral suffering. Otherwise there would not be any effectiveness of above rights in relation to individuals affected by violent intentional crimes and unable to obtain compensation from the offenders. Although there would not be any need for an explicit link between the Directive 2004/80/EC and the Charter[46], **Recital 14** confirms that state compensation under Article 12 (2) should be interpreted by taking into account the protection of above fundamental rights: «*This Directive respects the fundamental rights and observes the principles reaffirmed in particular by the Charter of Fundamental Rights of the European Union as general principles of Community law*».

Lastly, the awarding of non-pecuniary losses is not incompatible with state compensation procedures since moral damages are supported to a large extent by substantial presumptive evidence not requiring detailed assessments like in court proceedings.

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the civil liability of the insured under the national law applicable in the dispute, resulting from an injury to physical integrity, which includes both physical and psychological suffering (Haasová, paragraph 47, and Drozdovs, paragraph 38). 35 Consequently, non-material damage, compensation for which is provided for as part of the civil liability of the insured person under the national law applicable in the dispute, features among the types of damage in respect of which compensation must be provided in accordance with, inter alia, the First and Second Directives (Haasová, paragraph 50, and Drozdovs, paragraph 41)». As to "ruined holidays" see *Simone Leitner*, C-168/00, ECLI:EU:C:2002:163: «*in connection with tourist holidays, compensation for non-material damage arising from the loss of enjoyment of the holiday is of particular importance to consumers*» (para. 22:). In relation with air disasters see *Walz*, C-63/09, ECLI:EU:C:2010:251, stating that (para. 29) «*the term 'damage', referred to in Chapter III of the Montreal Convention, must be construed as including both material and non-material damage*» (like the Directive 2004/80/EC neither the Montreal Convention expressly provides for the compensation of non-pecuniary losses). As a further example, in *Sousa Rodríguez*, C-83/10, ECLI:EU:C:2011:652, the Court of Justice, in relation to the compensation of passengers in the event of denied boarding, cancellation or long delay of flights, stated that «*the meaning of 'further compensation', used in Article 12 of Regulation No 261/2004, allows the national court to award compensation, under the conditions provided for by the Montreal Convention or national law, for damage, including non-material damage, arising from breach of a contract of carriage by air*» (para. 46). Finally, the EU Courts have consistently interpreted Article 340 TFEU, para. 2, which states that «*in the case of non-contractual liability, the Union shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties*», as covering, as a matter of principle, not only pecuniary losses, but also non-pecuniary losses: see, as to the scenario under Article 340, the Opinion of Advocate General Wahl in *European Union v. Kendrion* (C-150/17 P, EU:C:2018:612, point 103).

[46] See Articles 51 (1) and Article 52 (5) of the Charter.

Obviously, this part of the judgment imposing immaterial damages among the heads of damage relevant for the purposes of Article 12 (2) will affect the national systems that limit compensation of crime victims to pecuniary losses only. Following the judgment of 16 July, Member States denying state compensation for "immaterial damages" to victims of violent intentional crimes will have to face the **critical choice** between paying damages under the "*Francovich liability*" model or improving their national compensation scheme arising from the transposition of Directive 2004/80/EC, as first desirable for the well-being of the victims.

As to such internal schemes, there is another important point made clear by the Court of Justice: Member States do not enjoy full discretion as to the ***quantum* of compensation**. The judgment states: «*a Member State would exceed its discretion under Article 12(2) of Directive 2004/80 if the national provisions provided compensation to victims of violent intentional crime that was purely symbolic or manifestly insufficient having regard to the seriousness of the consequences, for those victims, of the crime committed*» (para. 63).

In particular, according to the Court of Justice, «*Article 12(2) of Directive 2004/80 cannot be interpreted as meaning that it precludes a fixed rate of compensation to such victims, with the fixed amount granted to each victim being capable of being varied in accordance with the nature of the violence suffered. However, a Member State that has opted for such a compensation scheme must ensure that the compensation scale is sufficiently detailed so as to avoid the possibility that, having regard to the circumstances of a particular case, the fixed rate of compensation provided for a specific type of violence proves to be manifestly insufficient*» (para. 65 and para. 66).

The latter part - **the further requirement, in the case of compensation by means of fixed awards, of a scale sufficiently detailed** - adds a new element not present in the Advocate General's suggestions.

As previously anticipated, there are indeed some differences between the Advocate General's position as to the legitimacy of fixed amounts and the Court of Justice's approach: the former, «*provided the amount set out in national law for a given type of crime is reasonable*», did «*not share the Respondent's view that the requirement of 'appropriateness' laid down in Article 12(2) of Directive 2004/80 inevitably requires the deciding authority to be able to adapt the amount provided for in national law to the specific circumstances of each case*» (point 143); differently, the Court, as reported above, has indicated that the national compensation scheme should be «*sufficiently detailed so as to avoid the possibility that, having regard to the circumstances of a particular case, the fixed rate of compensation provided for a specific type of violence proves to be manifestly insufficient*». Therefore, for the Court of Justice **even under the cap of a fixed award a "minimum" («*sufficiently detailed*») consideration of the circumstances of the concrete case** should be granted by the national scheme under Article 12 (2) of the Directive.

Even though the Court could have adopted a broader approach to the "personalization" of state compensation, the above statement appreciably goes in the right direction of the requirement that national compensation schemes must grant a certain level of proportionality between the awards and the gravity of the violation, the need of such proportionality for the purpose of "fair compensation" being common to most European jurisdictions, Italy surely included (in some jurisdictions the seriousness is assessed in the light of its social perception, in some others on the ground of its criminal relevance, or both).

The Court has left the door at least partially open to the "personalization" of awards under Article 12 (2).

The Court of Justice's approach being not as "minimalist" as the Advocate General's position, is also confirmed by paragraphs 67 and 68 of the judgment where the Court has

added the following: «*As regards, in particular, sexual violence, it must be observed that such violence is likely to give rise to the most serious consequences of violent intentional crime. Consequently, subject to the verification which it is for the referring court to carry out,* ***a fixed rate of EUR 4 800 for the compensation of a victim of sexual violence does not appear, at first sight, to correspond to 'fair and appropriate compensation'****, within the meaning of Article 12(2) of Directive 2004/80*».
It should be noted that the Court usually does not express its views on the adequacy of the amounts awarded by national systems; in this case, however, it has made a clear exception, which may have its effects on future developments not only in Italy, but in all Member States, which will not be able to ignore an indication of this kind.
In the judgment there is only one **missing point** (being it also a **missed opportunity** for the drafting of guidelines as to the application of the "fair and appropriate" compensation standard): this point corresponds to the above argument raised by BV's lawyers under which, since there are not any uniform rules and monetary standards in European systems (neither in relation to "liability compensation" nor as to state indemnities), the conformity of national systems to the "fair and appropriate" standard should be addressed by taking into consideration not only the levels of other comparable state compensation schemes, but also the sums that victims would be entitled to according to private law in their hypothetical claims against the offenders.
Indeed, as also systematically acknowledged by the Italian judges on the merit that sentenced the Presidency of the Council of Ministers for breach of Directive 2004/80 according to "Francovich liability" model, there should be a **link** between, on one hand, the *quantum* granted by the national compensation scheme under Article 12 (2) and, on the other hand, the *quantum* of the tortfeasor's original obligation.
The ground for such link can be firstly found in the objective pursued by the Directive at **Recital 10**, which makes it clear that Article 12 (2) aims at granting compensation to those crime victims who are «*not able to obtain compensation from the offender, since the offender may lack the necessary means to satisfy a judgment on damages or because the offender cannot be identified or prosecuted*». Accordingly, under the Directive's system State Members are called to intervene in favour of the victims whenever they are not able to obtain compensation from their offenders. To sum up, there is not any doubt that States' obligation under Article 12 is to provide those victims with a redress protection substituting the initial one of the offenders. If a Member State chooses not to substitute such obligation in full (the directive does not prevent national legislatures from providing such complete level of protection), they should do it at least in part.
Anyway, the very concept of "fair and appropriate" compensation for "immaterial damages" is based on social conventions about monetary values that are deemed to give rise to "just satisfaction" in a certain period; awards for non-pecuniary losses are conceived at a social level as they are the outcome of individuals' (first of all judges and lawyers) perceptions of what is "fair" and "adequate" for compensating certain sufferings; inevitably, this perceptions are strictly linked with the compensation generally awarded under tort or contractual liability.
Consequently, if one may accept that state compensation is somehow limited to a certain extent, any significant departure from "liability compensation" should be deemed as contrary to the principle laid out in Article 12 (2): an award much lower than "liability compensation" would fail, first of all at a social level and in both the individual view and collective opinion, to substitute the offender's obligation to remedy the damage done by way of monetary reparation.
This failure would be inconsistent with objectives of the Directive, having in mind that among the policies of law pursued by the European Convention of 24 November 1983 on the compensation of victims of violent crimes (quoted by Recital 8 of the Directive) there

was «*the need to compensate the victim, not only to alleviate as far as possible the injury and distress suffered by him, but also to quell the social conflict caused by the offence*» (para. 7 of the Explanatory Report to the Convention).
Moreover, it is absolutely true, as noted by the Advocate General, that «*the logic of the compensation provided pursuant to Directive 2004/80 is rather one of a (generalised) public (monetary) assistance to crime victims*»[47]. However, this statement critically overshadows the objective pursued by the Directive to replace the offender's obligation with "fair and appropriate" compensation (not just any compensation).
It is also true that, as outlined by the judgment at para. 59, «*the compensation referred to in Article 12(2) of Directive 2004/80 is to be paid not by the offender who committed the violence concerned himself or herself, but by the competent authority in the Member State in the territory of which the crime was committed*». Nevertheless, one may disagree with the Advocate General's firm assertion at para. 139 of the Opinion that «*the basis for the intervention of the national scheme cannot be found in some form of fault committed by the Member States' authorities, such as, for example, in identifying or prosecuting the offenders*». In fact, State involvement in compensation of crime victims has historically relied upon various arguments and theories among which the Explanatory Report to the European Convention of 24 November 1983 on the compensation of victims of violent crimes at para. 9 lists the following ones: *a)* the State is bound to compensate the victim because: - it has failed to prevent the crime by means of effective criminal policy; - it introduced criminal policy measures which have failed; - having prohibited personal vengeance, it is bound to appease the victim, or his dependants (principle of State responsibility for crime); *b)* State intervention is justified on grounds of social solidarity and equity: since some citizens are more vulnerable or less lucky than others, they must be compensated by the whole community for any injury sustained; *c)* by removing the victim's sense of injustice, State compensation makes it easier to apply a less punitive criminal policy, but one which is more effective.
Exact is that, among the above theories, equity and social solidarity have been adopted by both the European Council[48] and the European Community[49] as the basic principles of state compensation to crime victims. Nevertheless, the other theories are not totally out of the picture. Consequently, leaving aside that the said link may well be founded on the equity and social solidarity principles too, one may find, in the above other theories, further support for the keeping of a non-marginal connection between "liability compensation" and "state compensation".

5. The future impact of the judgment on the Italian national compensation scheme.
This being said, as to the case of BV and, more in general, in relation to the Italian national compensation scheme, the above second part of the judgement on *quantum* issues seriously undermines both the state awards provided by the Italian legislature in 2017 and the ones increased by the Italian Government in 2020 with the ministerial decree of 22 November 2019 («*Determination of compensation to victims of intentional violent crimes*»), which, entered into force on 23 January 2020[50].

[47] Para. 139 of the Advocate General's Opinion.
[48] In this case expressly, as confirmed by Recital 2: «*Considering that for reasons of equity and social solidarity it is necessary to deal with the situation of victims of intentional crimes of violence who have suffered bodily injury or impairment of health and of dependants of persons who have died as a result of such crimes*».
[49] See in particular Recital 10, although the Directive does not contain any provision comparable to Recital 2 of the European Convention.
[50] These new awards did not emerge at the hearing of 2 March 2020 before the Court of Justice, thus they have not been taken into consideration by the judgment.

In particular, the decision of the Court of Justice shall enable the victims like BV, who are already litigating "Francovich claims" and are potentially subject to the above 2020 "*jus superveniens*", as well as future victims of violent intentional crimes committed in Italy to challenge the new awards on the ground of the following objections:

- homicide, fixed award of Euro 50.000,00: this sum is to be shared among all the relatives of the deceased irrespectively of their number and the extent of moral damages, non-pecuniary damage for the family relationship as well as of psychiatric damages and pecuniary losses; in other words, this "fixed sum" does not consent having regard, at least to a minimum degree, to the circumstances of a particular case; it is fully inconsistent with the approach, common to most European jurisdictions, based on the proportionality between the awards and both the seriousness of the violation and the degree of the love and affection among the deceased and the secondary victim; this sum being clearly inadequate also emerges from the comparison with the amount of Euro 200.000,00 provided by the State - the law of 20 October 1990, no. 302 - for indemnifying the victims of terrorism, mafia, usury, and victims injured in the course of duty;
- homicide committed by a spouse, or by a person who was at the time of the killing or in the past linked by emotional ties to the injured party, fixed sum of Euro 60.000,00: this award is destined to the victim's children only, hence with the exclusion of parents, siblings or the possible new partner of the deceased; in addition to this restriction of the category of claimants, such award is subject to the same above objections;
- sexual crimes, fixed award of Euro 25.000,00: this amount does not take into account the actual circumstances and seriousness of the damaging conduct/s, as well as the extent of the consequent biological-psychological impacts or effects on the work activities; even though higher than the previous one (Euro 4.800,00), this award remains much lower than both the indemnities awarded by law no. 302/1990 to victims affected by minor injuries and the ones compensated for by the courts in tort cases[51] and "Francovich claims", including the judgment provided by the Court of Appeal of Turin which has awarded B.V. with Euro 50.000,00; it should also be noted that, according to Istanbul Convention on preventing and combating violence against women and domestic violence of 11 May 2011 – ratified by Italy with law 27 June 2013 n. 77 and entered into force on 1 August 2014 – an adequate compensation, instead of an appropriate indemnity, shall be awarded;
- extremely severe personal injuries and disfiguration by means of permanent facial injury, fixed award of Euro 25.000,00: this award does not take into account the differences concerning the extent of the physical and/or mental injuries sustained by the victims or their different ages; all victims are treated with the same award in spite of the diverse features of individual cases; this is totally inconsistent with the position, common to most Member States, according to which "fair compensation", along with the equal treatment principle, calls for the proportionality between the awards and the seriousness - (medical) degree - of the bodily and/or psychiatric injuries sustained by the victims; moreover, the amount is much lower than the compensation awarded to the victims of terrorism, mafia, usury as well as the victims injured while performing a public duty, since for these victims the State provides for a "maximum cap" of Euro 200.000,00; furthermore, under this latter more generous ceiling, compensation differs from case to case depending on the kind of personal injury and the extent of the moral suffering; in addition, the restriction of redress

[51] See footnote no. 39 above.

protection to the sole category of extremely severe personal injuries does not seem to comply with the Directive; if one may accept that under the Directive Member States should be entitled to exclude from state compensation minor injuries without permanent consequences, any further denial of protection would amount to a breach of Article 12;

- with regard to all the afore-mentioned crimes, the fixed amounts of indemnity may be increased by an award corresponding to the documented medical and care expenses within the maximum limit of Euro 10.000,00; this limit is ridiculous in relation to victims affected by extremely severe personal injuries as well as to victims of sexual abuses who develop severe psychiatric damages;
- minor personal injuries and (not extremely) serious personal injuries: an indemnity for the reimbursement of the documented medical and care expenses, up to a maximum of Euro 15.000,00; apart from the fact that this award may result to be insufficient to cover such expenses, it is clear that, as to these victims, there is not any compensation for non-material damages, namely non-pecuniary/moral damages; this may be in contrast with the Court of Justice's judgment.

Finally, the Italian national compensation scheme does singularly not grant that above awards shall be paid in the future: in fact, under Italian law implementing the Directive 2004/80 victims are entitled to state compensation according to Article 12 (2) only within the limits of the financial resources made available by the legislation in force (see Articles 2 and 3 of the ministerial decree of 22 November 2019). Accordingly, in particular after the financial crisis arising from the Covid-19 pandemic, the risk is that in the future victims will not be able to receive the above awards or will have to wait for considerable periods of time. These scenarios would manifestly be in contrast with the Directive.

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