

30 May 2000

VIA FACSIMILE: 0032-2-2967481 & Post

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The Director General
Directorate General Justice and Home Affairs
European Commission
Rue de la Loi 2000
B-1049 Brussels

Dear Sir,

Green Paper: Legal aid in civil matters: The problems confronting the cross-border litigant

The Commission has asked the Pan-European Organisation of Personal Injury Lawyers (PEOPIL) as an interested party to comment on the Green Paper: "Legal aid in civil matters: The problems confronting the cross-border litigant".

PEOPIL's main objectives are to promote access to the legal system for consumers suffering personal injury, to promote higher standards of care and safety for consumers and to promote proper and fair compensation for all personal injury cases.

Representatives of PEOPIL in various countries in Europe commented on the green paper. In this letter you find a summary. We note that we only comment or give suggestions on subjects concerning our field of practice.

PEOPIL agrees with the Commission that any discrimination against community nationals on the ground of residence or nationality should be removed. Also impediments engendered by the extra costs of cross-border litigation and by differences in the national system as regards financial thresholds and examination of the merits of the application should at least be minimised.

A. Eligibility *ratione personae* (pages 10-11)

We adhere the policy of harmonisation of legal aid systems. We however realise that this will be a difficult task. The proposition of legislation setting out clearly the Member State's obligation not to discriminate directly or indirectly against nationals of the other Member State's can be a first step towards harmonisation.

These principles should, in our view, be extended to third country nationals habitually resident in a member state. The same applies to consumer associations with financial problems when acting as "qualified entities".

B. Substantive eligibility (page 12)

1. PEOPIL is in favour of a more targeted solution to apply the criteria of the country of litigation, but adjust by means of a "corrective factor" / "weighing" and take at least into account the applicants disposable income and the likely costs of the lawsuit.
2. In order to bring about a greater transparency and uniformity in legal aid systems all over Europe we suggest that in cross border cases applications for legal aid should be judged by a central institute/organisation in Brussels.
If that is impracticable, the competent authorities must, in our view be placed under an obligation to specify and publish procedures and reasons for a refusal to grant legal aid on the grounds the merits test has not been satisfied.

C. The problem of extra costs engendered by the fact that the litigation is cross-border (page 13)

One of the main obstacles to effective access to justice in cross-border personal injury cases are the extra costs of two lawyers, translations, interpretations, experts, witnesses, travel costs etc. We strongly urge the commission to take measures on this particular point.

We think that a personal injury victim, who is eligible for legal aid, should apply only once in one country and should not be confronted with extra costs of translations, two lawyers etc.

Costs of legal aid, and all the above mentioned extra costs should be paid for by the country in which litigation takes place.

D, E, F. Effective access to an appropriately qualified lawyer; Technical procedures; Information and training. (Pages 14 - 17)

Most European Bar associations own databases, with information about lawyers and their field of practice. The same applies to organisation as PEOPIL, APIL (association of personal injury lawyers for victims only in England), LSA association of personal injury lawyers, The Netherlands, ASP.Organisation of Personal Injury Lawyers for victims only, The Netherlands)

The Commission can most certainly use these databases and create a European database, which can also be published on the Internet in all of the European languages.

Information about lawyers should at least be divided into:

- ?? Name lawyer
- ?? Name of firm, address, Email
- ?? Member state
- ?? Field of practice
- ?? Accepts legal aid cases or not
- ?? Languages spoken and written

We agree in combining the database with a manual like the Guide to Legal Aid.

Relevant contact addresses and information about procedures should be included.

As concerning the layman version in the Netherlands we suggest to ask the ANWB to help spread information.

G. Reform of the national legal aid systems and alternative means of ensuring access to justice

It is our opinion that the best way to ensure that reforms of member state's legal aid systems do not jeopardises the aim of ensuring an adequate level of legal aid in cross border cases is to harmonise legal aid legislation.

Dutch personal injury lawyers working for victims only (members of "ASP") are advocates for introducing conditional and contingency fees as an alternative means of ensuring access to justices for victims who are not eligible for legal aid.

In Denmark an alternative means of ensuring access to justice is a non-compulsory legal expenses insurance. The insurance is individual and mostly part of another insurance. It contains an own risk of 10% and a maximum of app. DKK 75.000, -. The same applies to Sweden.

Yours faithfully,

Dr. Wolfgang Resch
Executive Director
A.F. Collignon-Smit Sibinga
Member of the General Board of PEOPIL