

PEOPIL

The Pan-European Organisation of Personal Injury Lawyers

www.peopil.com



PEOPIL CONTRIBUTION TO THE PUBLIC CONSULTATION «FUTURE OF JUSTICE AND HOME AFFAIRS», COM (2004) 4002 final: CROSS-BORDER LITIGATION AND PERSONAL INJURY LIMITATION LAW

August 2004

PEOPIL, as an organisation of personal injury lawyers including academics with representatives in all E.U. Member States as well as other European countries, has been carrying on for several years a wide-open research into the divergences/points in common between Member States in relation to redress protection of the victims and the prospects of harmonisation in this field of law. In particular, this study has been carried out by the so called «**PEOPIL Research Group**», which in October 2003 presented to the European Council, the European Commission and the European Parliament a detailed survey on personal injury compensation in Europe and harmonisation perspectives, *Personal Injury Compensation in Europe*, edited by BONA, M. & MEAD, P., Kluwer, Deventer, 2003, supported by Grotius programme for 2001/2002.

This research project, covering 18 European jurisdictions, also focused on limitation law issues and the PEOPIL Research Group came to the following conclusions.

In Europe there is a **clear and significant divergence** in respect of limitation periods: national limitation time limits vary considerably between Member States. It should also be noted that within some Member States limitation periods differ depending upon whether the action is based in tort or in contract, or upon the type of accident. Moreover, in some Member States there are separate limitation periods for criminal cases.

There are also significant differences concerning the following:

- ?? commencement of the running of time;
- ?? concept of the “date of knowledge” of the person injured;
- ?? the discretionary power of the courts to extend the commencement of the running of the limitation period beyond the date on which the accident accrued or the “date of knowledge” of the injured person (extension of the limitation period);
- ?? commencement of the running of time in the case of disabled persons and minors;
- ?? the ability and way to stop or interrupt the running of limitation.

The extent of such a divergence may give rise to **undesirable consequences for the victims of accidents in cross-border litigation**, creating obstacles for injured individuals when exercising their rights in Member States other than their own, and in some cases potentially also their own State, when required to apply foreign law.

In particular, the following issues arise in relation to transnational accidents:

- ?? in some countries minors and persons under a disability are not subject to any special protection in respect of the running of limitation, thus minors and persons under a disability may lose rights to claim compensation which they would otherwise retain, when injured in a Member State other than their own;
- ?? in some countries the only way to stop the running of limitation is to issue or serve proceedings: in cross-border litigation such an approach can generate problems since negotiations will by necessity take longer and an inability to prevent the limitation clock from continuing to run may place the victim in the disadvantageous position of having to

incur considerable costs at an early stage by issuing and serving proceedings before the possibility of concluding negotiations.

Given the current divergences in relation to limitation periods and the sort of problems that are directly related to the disparate national provision for transnational personal injury cases, we suggest that there is sufficient justification for the setting of common minimum requirements at a European level through legislation, at least in relation to cross-border litigation cases.

Such legislative initiative should take into account the following needs:

- ~~to~~ strike a balance of fairness between litigants in respect of limitation law issues;
- ~~to~~ introduce special rules protecting minors and persons under a disability in respect of limitation law issues;
- ~~to~~ facilitate the interruption and/or suspension of limitation periods in order to avoid the need for the issue and service of formal proceedings for limitation purposes only;
- ~~to~~ introduce a discretionary power permitting the courts to extend the time limit taking into account the reasons for the delay on the part of the foreign injured person, and any prejudice suffered by the Defendant by reason of the failure to issue proceedings within the original limitation period.

We therefore suggest that:

- a) **A process of Consultation for the establishment of minimum European requirements for the law of limitation in relation to personal injuries should be launched by the European Commission.**
- b) **Given the significant divergence between Member States, there is little scope for the adoption of European-wide unified limitation periods in relation to personal injury cases, but the following minimum measures should be introduced in order to protect injured victims involved in cross-border litigation:**

- ~~special rules protecting minors and persons under a disability in cross-border litigation in respect of limitation law issues;~~

~~to~~ particular provision permitting the interruption or suspension of the limitation period in cross-border litigation in order to avoid the need for the issue and service of formal proceedings for limitation purposes only;
~~to~~ to introduce a discretionary power permitting the courts to extend the time limit taking into account the reasons for the delay on the part of the foreign injured person, and any prejudice to the defendant by the failure to issue proceedings within the original limitation period.

- c) interruption or suspension of the limitation period may be achieved by providing for alternative mechanisms of interruption or suspension:
- 1) by service of the statement or pleading by which judicial proceedings are commenced; or, at the choice of the plaintiff,
 - 2) by a registered letter with return receipt containing a formal request to settle the whole of the claim,
 - 3) alternatively some other act capable of formally putting the defendant on notice of the claim.

Birmingham, 27 August 2004

Dr. Wolfgang Resch

Executive Director

on behalf of PEOPIL