

Brussels, 6 May 1999

7989/99

LIMITE

JUSTCIV 77

NOTE

from : the United Kingdom Delegation

to : Working Group Committee on Civil Law

Subject : Improving access to justice across European Borders

SEMDOC
Statewatch European Documentation &
Monitoring Centre on justice and home
affairs in the European Union
PO Box 1516, London N16 0EW, UK
tel: 0181 802 1882 (00 44 181 802 1882)
fax: 0181 880 1727 (00 44 181 880 1727)

IMPROVING ACCESS TO JUSTICE ACROSS EUROPEAN BORDERS

A "NON-PAPER" FROM THE UNITED KINGDOM

Adding a cross border element increases the cost of litigation. Yet the inability economically to obtain redress in other countries discourages trade and consumer confidence and represents a serious obstacle to the functioning of the internal market. Article 65 of the Treaty of Rome, introduced by the Treaty of Amsterdam, presents a new opportunity for the European Union to take action to enable all its citizens to obtain effective access to justice outside their own country.

Some examples illustrate the problems:

- A tourist buys an expensive camera whilst on holiday, only to find it faulty when he arrives home. At home he could take it back to a local shop. It is not easy if this would mean travelling to another country.
- A holidaymaker books a holiday cottage, only to discover there is no electricity when he arrives there and the owner refuses to do anything. There is little that the tourist can do to obtain compensation if he does not understand the legal procedures of another country.
- A student takes a holiday job in a café or bar in another country - but the bar owner refuses to pay his wages, knowing that the student cannot recover his lost pay without travelling back for a lengthy and expensive legal battle.

The Brussels Convention helps consumers as a matter of law by enabling them to sue in their own countries. But even in the cases in which that applies, problems of expense and delay can arise when the judgment has to be enforced in another country. The Convention does not assist those who have to sue in defendant's country. At a practical level, small claims, and even some medium sized claims, are uneconomic to bring, and legal right is rendered worthless.

There is clear evidence (for example a Eurobarometer survey dating from 1993) that this difficulty in obtaining redress is a major deterrent to consumers buying goods abroad. It therefore represents a significant obstacle to the proper functioning of the internal market.

That is why the United Kingdom proposes that the Special European Council at Tampere should launch a rolling programme of work within the field of civil judicial co-operation aimed at making its easier, quicker and cheaper for citizens in one country to bring claims in another. The outcome of such work could be conventions, directives or recommendations, whichever is most appropriate for a particular measure.

The conference in June 1998 at Down Hall, Hertfordshire, raised various ideas which might contribute to this aim:

Better information: In the short-term, guidance on how to make use of Member States small claims procedures should be made widely available in all the official languages.

Greater efficiency: Member States should be encouraged to introduce measures to improve the efficiency of their procedures and reduce delay.

Better use of technology: Ways could be explored of allowing litigation to be launched without the claimant - whether he is represented or acting in person - being physically present: for example better use of information technology including the Internet, and allowing evidence to be given by telephone or video link. Moreover, improvements in information technology may soon help break down barriers caused by language, and the justice systems of the EU should be ready to take full advantage of such improvements as they become available.

Better access to justice: In considering how to facilitate citizens' access to justice, lessons might be learned from other jurisdictions.

There is a clear need for a work in this field, which would be worthwhile, directly relevant to European citizens in their day-to-day lives and understood by them as being directed to their needs and interests. Rights of redress which exist in theory are being rendered non-existent in practice because it is too difficult, slow and expensive to have recourse to them. This is a clear gap in the European Union's protection of citizens' rights. There are solutions if Member States are willing to address the problem, and the Down Hall conference demonstrated their willingness to do so.
