



24.6.2010

## NOTICE TO MEMBERS

Subject: **Petition 1667/2009 by Walter Grytzik (German), on behalf of Günter Modlinger, on breach of Council Directive 2003/8/EC (legal aid in cross-border disputes)**

### 1. Summary of petition

The lawyer representing his client, involved in a legal dispute over property on Ibiza, claims that Spain is in breach of the Council Directive 2003/8/EC to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes. An application for legal aid to travel in order to appear in court was denied, incorrectly as the lawyer maintains.

### 2. Admissibility

Declared admissible on 24 February 2010. Information requested from Commission under Rule 202(6).

### 3. Commission reply, received on 24 June 2010.

#### *The petition*

The petitioner, a German lawyer, describes a legal dispute in Ibiza. He had requested, on behalf of his client, that the court of first instance of Ibiza should grant him legal aid for a claim concerning compensation for an investment in real estate.

The court of first instance had ordered a court hearing in Ibiza on this request and pointed out with the subpoena that if the party did not attend the hearing this would be seen as a

withdrawal of action. The petitioner appealed against this and requested to refund his client's travel expenses in advance or to release the client from having to appear in person. The progress of this appeal has not been added to the petition. The plaintiff did not appear in court for the hearing. By decision of 10 April 2007 the court declared that the legal action was considered as withdrawn.

The petitioner claims that the decision of the Spanish court does not comply with the Council Directive 2003/8/EC (legal aid in cross-border disputes).

#### *The Commission's observations*

The Commission has no power to intervene in individual cases of violation of rights unless there is a manifest breach of Union law by a Member State or State body.

The European Union has adopted special rules to promote the application of legal aid in cross-border disputes for persons who lack sufficient resources where aid is necessary to secure effective access to justice. These are laid down in Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes. However, the Directive is only laying down certain minimum common standards relating to legal aid in such disputes. Where the Directive does not provide specific regulations, the civil procedures concerning legal aid are left to the national authorities.

The Directive does not provide detailed rules for the processing of a legal aid application. The Directive solely governs those situations that are specific to cross-border situations, e.g. it does provide rules about the introduction and transmission of legal aid applications (Article 13 of the Directive) or about the Competent authorities and language (Article 14). Article 15 of the Directive does provide some minimum rules about the processing of legal aid applications. Nevertheless, the Article does not provide detailed regulations on the processing of legal aid applications.

Furthermore, Article 7 of the Directive does not apply for the processing of applications. The procedure for granting legal aid is regulated exclusively in Chapter IV (Articles 12 et seqq.) of the directive. Thus, Article 7 of the Directive refers solely to the costs that need to be covered *when* legal aid is granted, not when the court is processing legal procedures to decide on a request concerning legal aid. Hence, for the civil procedures concerning the granting of legal aid, national law does apply (cf. *MüKo-Rauscher*, ZPO, § 1076\_margin number 3; *Zöller-Geimer*, ZPO, § 1976 margin number 4).

Recital (19) of the Directive states that "when considering if the physical presence of a person in court is required, the courts of a Member State should take into consideration the full advantage of the possibilities offered by Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters". However, neither Article 12 et seqq. nor Article 7 of the Directive provide regulations about releasing a party from the appearance in person at a court hearing. Finally, neither of these Articles provide regulations on the necessity of an advance payment for the applicant.

If the petitioner believes that his rights have been violated in the case in question, he should be advised to seek redress at national level through the Spanish courts.

*Conclusion*

As the issue raised in the petition does not fall under Council Directive 2003/8/EC, the European Commission cannot intervene on behalf of the petitioner.