

# EUROPEAN PARLIAMENT

2004



2009

---

*Committee on Legal Affairs*

**PROVISIONAL  
2006/2014(INI)**

11.5.2006

## **DRAFT REPORT**

with recommendations to the Commission on limitation periods in cross-border disputes involving injuries and fatal accidents  
(2006/2014(INI))

Committee on Legal Affairs

Rapporteur: Diana Wallis

(Initiative – Rule 39 of the Rules of Procedure)

## CONTENTS

	<b>Page</b>
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION .....	3
ANNEX TO THE MOTION FOR A RESOLUTION: .....	5
DETAILED RECOMMENDATION ON THE CONTENT OF THE PROPOSAL REQUESTED .....	5

## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### **with recommendations to the Commission on limitation periods in cross-border disputes involving injuries and fatal accidents (2006/2014(INI))**

*The European Parliament,*

- having regard to the second paragraph of Article 192 of the EC Treaty,
  - having regard to Rules 39 and 45 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs (A6-0000/2006),
- A. whereas in Europe there is a clear and significant divergence in respect of limitation periods: national limitation time-limits vary considerably between Member States. In 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,
- B. whereas there are also significant differences concerning:
- commencement of the running of time;
  - the concept of the “date of knowledge” of the person injured;
  - the discretionary power of the courts to extend the commencement of the running of time beyond the date on which the accident occurred 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 to stop or interrupt the running of time, and the ways of doing so;
  - the burden of proof and evidential requirements governing the defence of expiry of the limitation period,
- C. whereas the extent of such divergence may give rise to undesirable consequences for the victims of accidents in cross-border litigation, placing obstacles in the way of injured individuals when they are exercising their rights in Member States other than their own, and in some cases potentially also their own State, and are required to rely upon foreign law,
- D. whereas, in particular, the following issues arise in relation to trans-national accidents: in some countries minors and persons under a disability are not afforded any special protection in respect of the running of time for limitation purposes, and may thus 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 time for limitation purposes is to issue or serve proceedings: in cross-border litigation such an approach may give rise to problems since negotiations will necessarily take longer and an inability to prevent the limitation clock from continuing to tick may place the victim in the disadvantageous position of having to incur considerable costs at an early stage by issuing and serving proceedings before it becomes possible to conclude negotiations,

- E. whereas given the current divergences in relation to limitation periods and the types of problems that are directly related to the disparate national provisions governing transnational personal injury cases, 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,
- F. whereas such a legislative initiative should strike a balance of fairness between litigants in respect of limitation law issues; introduce special rules protecting minors and persons under a disability in respect of limitation law issues; facilitate the interruption and/or suspension of the running of time in order to avoid the need for the issue and service of formal proceedings for limitation purposes only; and 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,
- G. whereas no proposal within the meaning of Rule 39(2) of the Rules of Procedure is in preparation,
  - 1. Requests the Commission to submit to Parliament on the basis of Article 65(c) and the second indent of Article 67(5) of the EC Treaty, a legislative proposal on limitation in respect of personal injury and fatal accident claims in cross-border litigation, following the detailed recommendations below;
  - 2. Confirms that the recommendations respect the principle of subsidiarity and the fundamental rights of citizens;
  - 3. Considers that the proposal requested will not have any financial implications;
  - 4. Instructs its President to forward this resolution and the accompanying detailed recommendations to the Commission and the Council and to the Parliaments and Governments of the Member States.

## **ANNEX TO THE MOTION FOR A RESOLUTION:**

### **DETAILED RECOMMENDATION ON THE CONTENT OF THE PROPOSAL REQUESTED**

#### ***Recommendation 1 (as to the form and scope of the instrument to be adopted)***

Parliament considers that the legislative instrument on limitation periods should take the form of a regulation and harmonise the rules on limitation periods in civil proceedings for damages claims:

- arising from or a result of personal injury,
- brought by the victim's heirs, or
- brought by another person where the victim suffered personal injuries or had a fatal accident

where the proceedings involve parties residing or domiciled in different Member States, or a party residing or domiciled in a non-Community State, or a choice between the laws of different countries.

#### ***Recommendation 2 (as to the minimum content of the instrument to be adopted)***

##### *Length, computation, starting date, suspension and interruption of the limitation period*

- The general limitation period should be 4 years irrespective of the nature of the obligation, the cause of action, or the identity of the defendant, except where the proper law of the claim provides for a longer period, in which case the burden of proving the existence of that longer period is to be discharged by the complainant. The limitation period for enforcing a damages claim established by final judgment or arbitral award should be 10 years. No limitation should apply to damages arising out of terrorist acts, torture or slavery.
- The limitation period should expire upon expiry of the last moment of its last day; it should be computed in accordance with the regular calendar of the Member State in which the claimant issues proceedings; and the day on which the cause of action arises should not be counted. If a limitation period is extended, the new limitation period should be computed from the date of the expiry of the preceding limitation period.
- The limitation period should start:
  1. from the date on which the cause of action for personal injury accrued or from the date of (actual or constructive) knowledge (if later) of the person injured;
  2. in the case of claims by heirs, from the date of death or the date of (actual or constructive) knowledge (if later) of the heirs or the estate;
  3. in the case of claims by secondary victims, the date of death or the date of (actual or constructive) knowledge (if later) of the secondary victim (fatal accidents) or the date on which the cause of action accrued or the date of (actual or constructive) knowledge (if later) of the person injured (non-fatal accidents).

- The running of the limitation period should be suspended where the defendant has deliberately, dishonestly, unreasonably or as a result of a mistake concealed the existence of facts or matters giving rise to the liability of the defendant and, in cases of domestic violence, during any period of cohabitation of the victim and the defendant. It should also be suspended during related criminal proceedings/investigations and where there is an outstanding request/claim under the Fourth Motor Insurance Directive.
- The limitation period should be interrupted by the commencement of judicial proceedings; any act of the claimant notified to the defendant having the purpose of commencing extra-judicial proceedings; any act of the claimant notified to the defendant having the purpose of initiating negotiations; any other act of the claimant notified to the defendant informing the defendant of the fact of the claimant's claim for damages.

*Rules in respect of minors and persons under a disability*

In the case of minors, the limitation period should in principle be treated as expiring no earlier 4 years from the date on which the claimant attains the age of 18; in the case of persons under a disability, the limitation period should start on the date on which the person ceases to be under the disability, except where he or she is still under a disability 10 years after the accident and there is a person having responsibility for him/her.

Appropriate provisions should be included on *pleading limitation, discretion of the court in applying the limitation period, the effects of successfully pleading limitation and multiple claimants/defendants.*

In addition, Member States should be required to set up *national information centres* for keeping a register of all criminal investigations or pending proceedings involving foreign victims and for providing written answers to reasoned requests for information made by or on behalf of foreign victims.