

ASSOCIATION DES MAGISTRATS DE L'UNION EUROPÉENNE



REPORT on Public hearing

« *Towards a coherent European approach to collective redress* »

5 April 2011

The Directorate-General Justice (EC), Directorate A – Civil Justice invited European Judges and Prosecutors Association (AMUE-EJPA¹), as stakeholder of the Justice Forum, to a public hearing on “*a coherent European approach to collective redress*”.

Judge Vitor Hugo Pardal, from Portugal, currently working as criminal judge for EULEX Mission, has attended the public hearing on behalf of AMUE- EJPA.

You will find below his report while I take the opportunity to thank him for his great contribution.

Sincerely,

Caroline Charpentier
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¹ AMUE-EJPA website: www.amue-ejpa.org

REPORT

Public hearing

“Towards a coherent European approach to collective redress”

Brussels, 5 April 2011, 10:00 to 17:00

Topics:

1) Added value of collective redress for improving the enforcement of EU law

Moderator: Paraskevi, Michou

Statements: Monique Goyens (European consumers) and Jérôme Chauvin (BusinessEurope)

All previous considerations stated on the detailed SEC (2011) 173, dated 4th February 2011, were considered as a starting point for this public hearing. Based on them, both presenters defended their own arguments (respectively, consumers and business) pointing the desirable direction of final conclusions that should be followed on this field by the commission working group, but in a very generic way. No basic common points were settled.

Successively, the following issues were raised:

- Lack of protection (for consumers) for small damages resulting from massive cross-border business;
- The role of collective claims on solving this problem; the difference of current juridical devices all over the EU (only 14 state members have them);
- The need to define a scope, a procedure, the criteria of admissibility, the court fees, the legitimacy of representation before the court, as issues to be commonly defined.
- The way to conciliate public and private enforcement systems: the American system as not to be imported;

- The role of ADR systems (alternative resolution of conflicts) and their position before a regular claim before the court (possible conciliating systems): consumers use to be favourable to primacy of ADR; business are favourable to strength public enforcement.
- The possibility to extend this issue to some parallel fields, beyond business/consumers matters (suggestion from one of the attendants)

No conclusions were reached, except there is a long and difficult way to overcome. The discussion was based on defending the pros, rather than solving the cons by both of the antagonists (consumers versus business).

2) Effective and efficient redress with safeguards against abusive litigation

Moderator: Carles Esteva Mosso

Statements: Graham Jones (UK formerly senior civil judge) and Benedicte Federspiel (consumer counsel, Denmark)

Mr. Graham Jones revealed his knowledge and experience on civil litigation regarding mass actions referring to the differences between the American system and the European redress “system”.

The following ideas were transmitted:

- Public as well as private enforcement systems are needed as complementary;
- Public enforcement tends to reinforce the punishment but uses to lack civil compensation issues;
- ADR systems as complementary should be independent from regular public enforcement;
- Public redress as a system should be implemented through collective court actions;
- Any collective claim must be formally certified by the court as such;
- Only a court shall verify and certify the identity of claims to be tried as such;

Mrs. Federspiel referred to Danish ADR system introduced 6 years ago as well as explained the advantages and inconveniences of both possible sub-systems (Opt-in as in Sweden and Opt-out as in Finland): alternative system but not mandatory. Conclusion reached: it helps but, in so far, it has not solved the main problems still raised and above mentioned.

3) Other general principles

Moderator: Jacqueline Minor (DG Health and Consumers)

Statements: Daniel Zimmer (professor of law) and Pawel Pietkiewicz (lawyer)

Some accurate juridical issues were raised by both presenters. Not a single specific solution was suggested.

Those were the raised juridical issues:

- Regarding the competition field and considering some existing penal programs of self-denouncement offering penal clemency, they don't include parallel civil suits for compensation.
- How to identify claimants? How to qualify a claim as collective? How to share the costs between the parties? How to deal with representation especially regarding possible future settlements? How to define such representation? How to vote amongst the claimants? How to respect minorities? How to allow partial settlements? An Opt-out system in a further procedural stage before the court?

Some attendants remarked a long way already taken by the EU in this field without any visible results. The Commission working group promised to issue a new report on this issue with all developments achieved in the nearly future. Also the first statements (Mrs. Goyens and Mr. Jérôme Chauvin) were promised to be entirely available in the website.

Personal remarks:

- 1) The Commission encouraged all attendants to participate in this program, giving suggestions according to the above mentioned (2011) 173, dated 4th February 2011, which can be found in the respective website.
- 2) As a personal opinion, at the current stage, problems, solutions and particular interests are still mixed in the same package and a huge analysis and a systematic approach is still to be taken. Judicial experience may be helpful on this activity as strongly needed.

Vitor Hugo Pardal,
Judge, attending on behalf of the AMUE association.