

PUBLIC CONSULTATION
ON
LIMITATION PERIODS FOR COMPENSATION CLAIMS OF VICTIMS OF
CROSS-BORDER ROAD TRAFFIC ACCIDENTS IN THE EUROPEAN UNION

Response by the European Federation of Road Traffic Victims

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INTRODUCTION

The European Federation of Road Traffic Victims (FEVR) welcomes the intention of the Commission to adopt measures that will ensure minimum standards in respect of rights and treatment of victims of crime, and the opportunity to contribute from their knowledge over many years of the situation of road crash victims in the various European countries of their member organisations.

FEVR was established in 1991 and is an umbrella organisation of now 24 national associations advocating for road victims and safer roads.

The aims of FEVR and its members are:

- 1 to ensure the provision of emotional and practical help and support to road crash victims, and assistance with legal procedures and access to justice
- 2 to contribute to road safety by highlighting road danger and the causes and impact of crashes in order to influence institutions and authorities to enforce road safety measures more effectively

FEVR has UN consultative status and attends relevant working parties and meetings, in particular the UNECE Working Party¹ and is a permanent member of UN/WHO Road Safety Collaboration Forum. FEVR is also a Main Council Member of ETSC, European Traffic Safety Council. FEVR is also a member of the newly created Global Alliance of NGO's working for road safety and victims with our Vice-president being a member of the board.

FEVR which represents the interests of bereaved and injured road crash victims, advocate for their rights and for a more fitting and serious response by governments and the general public to road death and injury.

Furthermore, the FEVR organizations are seeking to bring about an improvement in the post-crash response, including better treatment of the bereaved and injured, better medical care and justice, which would alleviate the severity of the impact on the lives of road crash victims and improve their ability to cope more successfully in the aftermath of a road crash.

FEVR conducted a first-ever study, co-funded by the European Commission: “Impact of Road Death and Injury – research into the principal causes of the decline in quality of life and living standard suffered by road crash victims and victim families; Proposals for Improvements”, the findings of which were that the impact was profound and long-lasting, often forever, compounded by victims’ experiences of injustice. <http://www.fevr.org/new/wp-content/uploads/2009/09/FEVR-impact1001.pdf>

In order to offer road victims the recognition so often denied them, FEVR established and promoted – from 1993 onwards - a common Remembrance Day for Road Traffic Victims (European Day of Remembrance), which has become World Day of Remembrance for Road Traffic Victims, recognized in 2005 by the United Nations and now observed throughout the globe.

FEVR and many of its member organisations attended the Global NGO meeting hosted by the World Health Organisation in May 2009 in Brussels, and former FEVR president Brigitte Chaudhry was the coordinator of the NGO ‘Brussels Declaration’, which contains 33 recommendations to governments – the 7 relates to the post crash stage)

In the wake of the recent European Directive establishing “minimum standards on the rights, support and protection of victims of crime” adopted on 4th October 2012 and the previous 2011 Communication "Strengthening victims' rights in the EU" in which the Commission highlighted problematic issues encountered by road traffic victims in respect of investigation and access to compensation, we welcome this consultation on limitation periods for compensation claims of victims of cross-border road traffic crashes in the European Union.

We thank the European Commission for taking again a strong interest in road victim issues. There has been a long history of discrimination against road victims but we may begin to see gradually a cultural shift not only in the justice sector but also the transport sector.

We shall stress that road deaths and injuries are highly traumatic and violent events with a devastating long term impact. People bereaved or injured through road crashes are often permanently harmed as are the families of other victims of violence and manslaughter. Yet there is no systematic official support structure in general available in the case of road traffic victims.

The extreme suffering of road victims and their families make it difficult even impossible to deal with the legal aftermath when such events happen in their own countries let alone in foreign countries. Compensation systems tend to be largely inadequate with lengthy proceedings which add to the distress and financial difficulties when their purpose should be to make good to victims. The issue of time limitations is another negative aspect.

1. PRACTICAL DIMENSION OF THE PROBLEM

Question 1: *Have you experienced not receiving any compensation for damage suffered due to the expiry of time-limits for bringing a claim or are you aware of such a situation which affected a victim of a cross-border traffic accident? Please provide details of such case or cases.*

FEVR is not in a position to fund an extensive survey to research the scale of the problem. However, we know of a number of cases where bereaved and injured victims found out about time limitations just on time before the deadline expired or too late or suffer others costs and delays to get compensation as a result of having to deal with the issue of time limitation.

Delays and problems had been incurred not just because of conflict of law and legal definitions as described in specific legal cases by legal specialists (see for instance, Michael McParland, Philip Mead, Marco Bona in Journal of Personal Injury Law , Peopil papers...) but a combination of factors which cause massive delays in dealing with the compensation claim. The fact is that claiming compensation may not be perceived as a priority in the immediate aftermath of a road death or injury as so many issues have to be dealt with. Furthermore, even when a claim has been initiated, delays are incurred for many other procedural reasons which are not the fault of victims but due to a slow process, inadequate and inconsistent rules as well as expensive system and poor legal advice.

We note: lack of investigation or problems with investigation, lengthy criminal proceedings, defendant perverting the course of justice, issues of liability raised even when there was none (e.g. French pedestrians run over on the pavement in London!), lack of access to police reports (French passenger injured in Scotland), lack of response from the insurance companies delaying the claim process, problems with the medical report, no medical representation, communication difficulties due to foreign language, no access to interpreter or translator for victims who cannot afford these to deal with their civil claim adequately, financial difficulties and having to pay for translation and investigation reports, trips etc., loss of jobs and income, ignorance of time limitation and relevant rules to interrupt the time limitation to protect one's right such as issuing court proceedings within three years from the date of the crash in the UK, reluctance of victims to take on professional advice by fear of legal costs, victims trying to claim without professional legal advice, wrong legal advice given by lawyer, ignorance of non specialist lawyer even in their own domestic setting, etc.

This calls for a system which allows for road victims to have their right to claim compensation protected right from the outset and their access to claim made readily available.

Question 2: Would the position have been different if the accident had not happened abroad? If yes, please explain why.

Even if in your country you better know where to find appropriate information and you can speak in your own language it is not necessarily easier to claim in your own country, we know of specific cases where people have missed out on the time limitation for similar reasons as described above.

Even if a time limitation was truly needed from a business perspective (which is hard to believe given the EU variations), it should not be called as a defence by insurance companies to deny a claim altogether ever on the ground of expiry of limitation periods due to conflicting rules across Europe. This denial of a claim as such is simply unfair and completely wrong.

When such defence is used, it follows that this will cause additional distress, distrust in the legal system and insurance companies, increase legal costs with court proceedings, impossibility to access health care but worse will damage the health of injured and bereaved families affected further. It can only serve to a certain extent the interests of legal practitioners, and insurance companies by making access to compensation more complicated than it should.

Compensation should be about making good to victims not causing them unnecessary

distress and financial hardship in seeking redress.

2. POSSIBLE REMEDIES TO THE PROBLEM RELATED TO TIME-LIMITS FOR 'ACCIDENT-ABROAD VICTIMS'

There should be indeed mandatory information on the claim process and rights of victims accessible through a systematic referral to an official specialist victim support network with international contacts. Such support network should include access to a psychologist, interpreter, translator, social worker and legally trained person able to explain the first steps of the claim process face to face if required and signpost to a similar network in the domestic countries as required. Referral to such a network should be mandatory by the police or/and rescue services.

If optional as proposed under option 1 it has little chance to really work in practice. completely.

However it is very doubtful that in cross border claims given the short time to initiate a claim in some countries, the complexity of legal rules and conflict of laws which create so much legal uncertainty that provision of information is enough.

One must also bear in mind that given the immediate and long term trauma suffered by the injured and the bereaved the onus should not be on them to find out about all the legalities and possible barriers but on their governments together with EU commission to create the necessary and best provisions to assist them in the same way as other types of victims of violence or manslaughter.

Furthermore the right to institute civil proceedings along criminal proceedings through legal representation which is available in France should perhaps be explored as an option in some other countries to improve access to compensation?.

NB:

FEVR already carried out a project with the help of the EU Commission on this topic (Grotius project) where through information on the WEB victims learn about specific procedures in civil and criminal laws. We are conscious that this remains a small and limited instrument to help in the present context.

FEVR has also signed an agreement of mutual assistance for victims who have a collision abroad where the Association of the country where the crash happened should give advice and assistance, (first signed in 1996 and renewed in 2006). Again, we are conscious that given the lack of resources of all member organisations, only limited support can be provided though it is much appreciated by victims. More cooperation is required between all NGOs and government funded victim support organisations to maximise all the resources available, share the information, experience and knowledge gained by road victim associations.

The existence of conflicting rules in cross border claims undermine the fundamental rights of the bereaved and injured road victims and make it impossible for them to exercise them in many cases. So information provision will not be enough.

Any European regulation or European I has to ensure that road victim's rights are protected and includes the necessary clauses to make realistic procedures in respect of the length, commencement, suspension, bearing in mind always that they are dealing with vulnerable people. People who, as a result of traumatic bereavement or traumatic

injuries/disabilities or both following a road crash can no longer cope or function properly to deal with a whole set of legal circumstances. Their status should be approached possibly as 'protected victims'.

Harmonization of time limitation rules may be helpful to provide legal certainty on a procedural front in the present context as a first step but their potential use as a defence by an insurance company to deny compensation to a victim should not apply without a very thorough investigation of all circumstances by a judge if that is the path taken.

3. TWO LEGAL REGIMES FOR CLAIMS ARISING FROM CROSS-BORDER ROAD TRAFFIC ACCIDENTS

We support the view that to pursue their claim in their own countries, when it comes to the assessment of damages, road victims should rely upon the law of the country where they live. It will be far more realistic and fairer when assessing the quantum in respect of the type of health care, the cost of living, the impact on professional loss, tax issues and social welfare etc, that such complex issues should be settled in their own language in a system they understand and which apply to their conditions.

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