



Opinion 229 (2001)¹

Draft additional Protocol to the European Agreement on the transmission of applications for legal aid

Parliamentary Assembly

1. People in a financially weak position may only be able to exercise their legal rights at home and abroad if an effective way of granting them legal aid is provided.
2. Legal aid or legal assistance consists of a state or other subsidy to persons whose income is insufficient to enable them to pay the costs of defending their interests before the courts. It is considered essential for ensuring equal access to justice for all.
3. The Assembly notes that under the European Convention on Human Rights legal aid in criminal matters is considered a fundamental right. According to Article 6, paragraph 3.c: "3. Everyone charged with a criminal offence has the following minimum rights: (...) to defend himself in person or through legal assistance of his own choosing, or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require."
4. It is therefore somewhat surprising that the Council of Europe has not taken any action to further implement Article 6, paragraph 3.c of the European Convention on Human Rights on legal aid in criminal matters, leaving this only to the case-law of the European Court of Human Rights.
5. Many Council of Europe member states have set up a satisfactory legal aid system. Practically all of these states have become parties to the Council of Europe's European Agreement on the Transmission of Applications for Legal Aid
6. This European agreement concerns the transmission of applications for legal aid in civil, commercial and administrative matters. It has been ratified by twenty-three member states and signed by an additional five member states, and entered into force on 28 February 1977.
7. The Committee of Ministers is now proposing an additional protocol to this agreement. It aims to:
 - 7.1. facilitate, accelerate and improve the procedures for the transmission of requests for legal aid in civil, commercial and administrative matters;
 - 7.2. improve communication between applicants and lawyers.
8. The Assembly:
 - 8.1. approves this draft protocol, subject to the following amendments to its Article 4:
 - 8.1.1. after sub-paragraph a, add the following new sub-paragraph: "inform transmitting authorities of the decisions taken on the application.";
 - 8.1.2. inverse the order of sub-paragraphs b and c;
 - 8.2. recommends, subject to the above amendments, that the Committee of Ministers open the draft protocol for signature and ratification;

1. Text adopted by the Standing Committee, acting on behalf of the Assembly, on 23 May 2001 (see [Doc. 9071](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Hunault).



8.3. recommends that the Committee of Ministers invite those member states which have not yet done so, to set up an adequate legal aid system and to ratify the European Agreement on the Transmission of Applications for Legal Aid;

8.4. recommends that the Committee of Ministers instruct its European Steering Committee on Crime Problems (CDPC), in co-operation with the Committee of Experts on the Efficiency of Justice (CJ-EJ), to study international co-operation concerning the transmission of applications for legal aid, both for victims and for persons suspected or accused of criminal acts.