

Personal Injury Awards in EU and EFTA Countries

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Kluwer Law International

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PREFACE

When in 1989 we began planning the first edition of this comparative report we quickly appreciated we were attempting to fill a vacuum. We were unable to lean on other publications and we approached the launch of the first edition with trepidation in the belief that there would be national practitioners capable of correcting any misunderstandings on our part and on the part of our individual country by country collaborators. This concern proved justified but to a lesser extent than we had anticipated. We are grateful to our reviewers and others who volunteered constructive criticism. This has proved of immense help as we have tried to improve as well as expand our efforts towards our second edition (1994) and this our third edition.

Our first edition was the first comparative study of personal injury compensation awards covering all EU countries. It generated calls for a wider European survey and thus our decision to extend the second survey to embrace the formerly seven European Free Trading Area (EFTA) countries as well as the European Union jurisdictions previously included. In 1995, Austria, Finland and Sweden became members of the European Union, leaving only four members in the EFTA: Iceland, Liechtenstein, Norway and Switzerland.

As at the date of going to print there are 13 countries which have applied to join the EU, including countries as diverse as Poland and Turkey and enlargement is possibly the greatest challenge faced by the EU. This is bound to show up further anomalies in the levels of personal injury compensation and will add to the burden of preparing a Fourth Edition in due course!

A significant development since our second edition is monetary union and the introduction of a common currency, the EURO, in all but 3 of the Member States surveyed (Denmark, England and Wales and Sweden). The Euro has made it easier for us to compare awards and monetary union and may, by making the disparities easier to identify aid our plea for greater uniformity in levels of awards across Europe.

Our first edition generated interest throughout Europe and also in North America, Australia and Japan. This has no doubt encouraged our contributing lawyers whom we identify, country by country, enthusiastically to contribute their knowledge and

experience. The value of this publication is enhanced by the quality of our co-authors' experience. Please see below section "contributors" for more details.

Please note that this book, as the previous two editions in 1991 and 1994 deals with civil compensation awards only. It should be noted that criminal compensation awards are generally much lower than the level of civil awards throughout Europe. It is, however, worth noting that there have been a few exceptionally high criminal awards in England and Wales. Recently, a teenager won compensation of GBP 4.75 million¹, from the Criminal Injuries Compensation Board: one of the biggest payouts to a British crime victim. This sum contrasts with the much smaller amounts usually awarded by the Board which are in the range of GBP 30,000 to 70,000.

We are pleased that our earlier editions have received judicial notice and have been referred to by parliamentary committees, including the UK Law Commission, when some of the countries we have surveyed have considered levels of damages in personal injury claims. This pleasure is, however, negated by the EU despite our lobbying for more than ten years, refusing to apply the non-discriminatory principal of Article 12 of the Treaty of Rome to the need for fairness throughout the European community in personal injury compensation. At the date of going to print we understand that the Commission is funding a research project which will compare EU legal systems and personal injury awards. We have already established that wide discrepancies exist.

We are not calling for a general increase in awards. Access to the justice of uniformly fair compensation for personal injuries is something which any one of us could need if unfortunate enough to become involved in an accident. This is not somebody else's problem: it is potentially a problem for all of us. And it is a problem which can only be solved by a European wide approach. It is a need which should be addressed by the European Institutions supported by the individual Members of the European Parliament.

Without wishing to add fuel to an increasing compensation culture, given the ingenuity of claimant lawyers and the liberal approach of many courts we pose, but do not seek to answer, the question as to whether continued reluctance to grasp the nettle of unfairness amounts to an actionable breach of Article 12.

In striving for improvement we have added:

1. Exchange rate analysis and inflation comparisons across Europe.

¹ Lloyd's List, Lloyd's Information Casualty Report 07/12/2001

2. Further categories of common injuries, namely, deafness and the concept of repetitive strain for several EU and EFTA countries and a schedule for stress (for England and Wales only)
3. Bloc graphs to cover more injuries rather than the limited selection produced in the first edition.
4. An analysis on the changes which have taken place since the surveys for our first (1991) and second (1994) editions (1994) were completed.

It was impossible to complete the survey of all 20 countries on one day. However, all reports of the EU Member States and EFTA countries for the third edition were completed between the end of the year 1999 and beginning of the year 2001.

We thank Tokio Marine and Fire Insurance Company for their continued interest and support. We also thank Isabel Sylvestre who has assisted in co-ordinating with the European lawyers' editing, and publication of this third edition throughout. We finally thank our colleagues at Davies Arnold Cooper, Fiona Gill and Andrew Higgs, Gail Sanderson, Caroline Donovan, Cheryl Salters, John Franssen and Jacqueline Cook from the Information Centre, also Sharon Kyberd, Joanne Sandiford and Leo Holmes.

We are sad to report the death of Alan K Brown, one of our Scottish correspondent co-authors for this third edition, who died tragically in December 2000.

July 2002

DAVID MCINTOSH

MARJORIE HOLMES

FOREWORD

Judge Nicholas Forwood, Court of First Instance of the EC

In its 1999 conclusions following the Tampere Summit, the European Council resolved to work towards the creation of a common judicial area across the whole of the European Union, within which European citizens should be able to achieve effective protection of their rights, irrespective of where their cause of action arises and of where it has to be enforced.

Title IV of the EC Treaty, as amended by the Treaties of Amsterdam and Nice, provides for a variety of measures improving judicial co-operation in civil cases with cross-border implications. These include measures for the mutual recognition and enforcement of judgements (already implemented in the so-called "Brussels I" and "Brussels II" regulations) and other measures promoting the compatibility of rules of civil procedure and of national rules concerning conflict of laws.

The very real problems that arise for individuals as a result of differences between the substantive laws in different Member States of the EU are, by contrast, a matter that has yet to be seriously addressed at the Community level. In the field of tort law, in particular, variations in the overall levels of awards of damages for personal injuries, depending on the states in which proceedings are brought, must inevitably give rise to both real and perceived inequalities and differences of treatment that will undermine the objectives of the common judicial area, and create a very real feeling of injustice. In the last resort, such differences may even attack the common assumptions that underlie the principles of mutual recognition and enforcement.

This book, now in its third edition, is for this reason particularly valuable in drawing attention to the enormous disparities that exist in the levels of such awards. By combining the expertise of personal injury lawyers in all the EU Member States and other western European jurisdictions, the authors have produced a unique and invaluable work for any personal injury practitioner faced with an international personal injuries claim. Moreover, by relating the awards to differences in general levels of earnings in different countries, the authors have tried to ensure that their comparisons are realistic.

For the same reasons, it will also provide an authoritative source of information valuable for judges and legislators, at national and Community level.

Luxembourg, December 2002

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Wells v Wells [1999] IAC 345

COUNTRIES COVERED

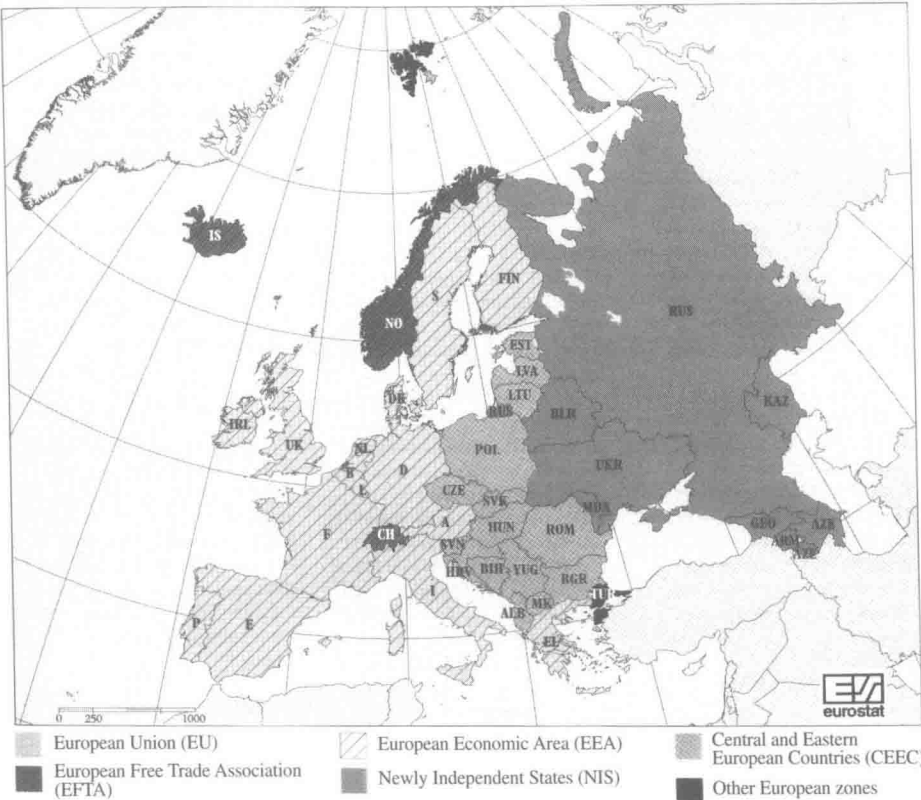
EU

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Greece
Ireland
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Luxembourg
The Netherlands
Portugal
Scotland
Spain
Sweden

EFTA

Iceland
Liechtenstein
Norway
Switzerland

The Countries of Europe, 1998



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Dr Ivo Greiter was born in Innsbruck on November 7, 1940. After completion of his law studies at the University of Innsbruck, he received his training in a law firm in Vienna and with Booz, Allen & Hamilton Management Consultants, London, New York, Dusseldorf as well as in law firms in Innsbruck and Brussels. Dr Greiter is a Partner in the law firm of Pegger, Kofler & Partners in Innsbruck. He is a speaker at seminars on domestic and foreign law. Since 1976 he has been the Austrian Chairman of the international legal organisation, World Jurist Association, Washington DC. Since 1980 he has served on the committee of the Tyrolean Bar Association. He is a member of the Austrian National Committee of the International Chamber of Commerce, Paris, and a member of several international legal organisations.

He is a member of the editorial board of the Washington based publication *Law and Technology*, an Austrian correspondent for *European Competition Law Review*, London, and the *International Company and Commercial Law Review*, London. In addition to his legal practice, he is active as an arbitrator in international business disputes in and outside Austria.

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Daniel de Callatay has practised as a lawyer at the Brussels Bar since 1983. Former assistant at the University of Louvain in Insurance and liability law, he teaches the award of corporal damage. Author (in 1990 and in 1998) of Chronicle of case law relating to road accidents.

Denmark

Jørgen Rasch graduated in law from the University of Copenhagen in 1975 and subsequently qualified as a lawyer with the law firm Poul Hjermand, specialising in litigation, corporate law, financing and international tax law. Since 1981 he has been counsel of Assuranceforeningen SKULD and the Danish Shipowners' Defence Association, dealing mainly with international maritime law and marine cargo claims. He is a member of the Danish CMI and admitted to the Bar of the Supreme Court of Denmark. He has published articles in international magazines, given papers and participated at international conferences on ro-ro safety and on international maritime arbitration.

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Marjorie Holmes, BSc (London School of Economics) and LLB (Cambridge University) qualified as a barrister in 1980, transferred to become a solicitor in 1988 and was made a partner in the law firm of Davies Arnold Cooper in 1990. Shortly afterwards she spent three months on secondment to Tokio Marine and Fire Insurance at their head office in Tokyo, lecturing on marine and European issues. She is an associate of the Institute of Arbitrators a member of the International Bar Association and has had various articles published on a wide range of European related topics, including *Civil Procedures in EC Countries* published by Lloyd's of London Press. She is currently head of the International Transport European & Competition Department (ITEC) of Davies Arnold Cooper, London.

David McIntosh has been senior partner of Davies Arnold Cooper since 1978 and is currently the President of the Law Society of England and Wales. He is a non-executive director of Markel Underwriting Agency and has considerable experience in commercial litigation including fraud investigation with international dimensions. He has a background in product liability and media orchestrated group actions. David regularly advises multinationals and UK corporations, insurers and reinsurers on liability, risk exposure and control. He has experience in professional negligence and directors and officers' litigation in the financial services sector.

He was Chairman of the International Bar Association's Consumer Affairs, Advertising; Unfair Competition and product Liability Committee 1995-1999; Member Executive Committee of the International Association of Defence Counsel 1995-1998; Member Court of Appeal Users Committee; Former member Arson Bureau Committees

He has written numerous papers on compensation, insurance and product liability, as well co-authoring *Civil Procedures in EC Countries* with Majorie Holmes.

Malcolm Henké started his career in personal injury litigation in 1976 handling both Employers liability and motor claims. He worked initially as an assistant to several high profile litigation lawyers and benefited from an early grounding in high value complex injury litigation. As he gained experience he formed a team of specialist motor litigators dealing with both high volume low value litigation and complex catastrophic claims concerning spinal cord/brain injury.

He now concentrates exclusively on high value litigation and has dealt with many high profile cases within the UK and across Europe and the USA. He had written extensively on his subject and has lectured on catastrophic claims and associated matters to lawyers, insurers and re-insurers. He sits on both the clinical

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Isabel Sylvestre qualified as a lawyer in Germany in 1999 after studying at Mannheim/Heidelberg University and joined DAC in London shortly after. Since Isabel joined Davies Arnold Cooper she has been involved in regulatory European and domestic work, mainly in the field of maritime and free movement of goods/services law.

Finland

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