

# **Area of freedom, security and justice: strengthen judicial protection, adaptation of the special provisions concerning the jurisdiction of the Court of Justice, title IV of the EC Treaty**

2006/0808(CNS) - 28/06/2006 - Legislative proposal

**PURPOSE:** to adapt the provisions of Title IV of the Treaty establishing the European Community relating to the jurisdiction of the Court of Justice with a view to ensuring more effective judicial protection.

**CONTEXT:** in taking stock of the implementation of the Hague programme, the Commission concludes that the time has come to improve the judicial protection offered by the Court of Justice of the European Communities in matters concerning asylum, immigration, visas, the free movement of persons and civil law.

In particular, by way of exception from the standard regime, the jurisdiction of the Court of Justice in matters covered by Title IV is currently more limited than in other areas where Community law applies. It is not possible, for example, for a national court or tribunal of first instance or an ordinary appeal court to refer questions of the interpretation of Community law in these matters to the Court of Justice for a preliminary ruling. The claimant must first exhaust all national remedies before the Community courts can be asked to interpret the relevant law.

The current derogation applies in an area that is particularly sensitive in terms of fundamental rights. Persons concerned include asylum-seekers, applicants for family reunification and third-country nationals challenging expulsion orders or discriminatory treatment, but also minors affected by disputes covering maintenance responsibilities or, in particular, parental responsibility. Often, people do not have the financial resources needed to exhaust all national redress procedures, and/or they need rapid legal guidance. In addition, in civil and commercial matters litigation can easily become illusory or too expensive for small- and medium-sized enterprises if they have to go right up to the national supreme court before the Court of Justice can rule on their rights.

**CONTENT:** the Commission is accordingly proposing that the Court of Justice be given full jurisdiction in matters covered by Title IV. Under the Amsterdam Treaty, the Council should have taken a decision to adapt the derogations after a five-year transitional period, which has already expired. A draft Council Decision to that end is attached. The decision will require unanimity in the Council.

In particular, alignment of the rules concerning the jurisdiction of the Court in Title IV on the ordinary law will:

- ensure the uniform application and interpretation of Community law in this area as in all others;
- make it possible to strengthen judicial protection, in fields that are particularly sensitive in terms of fundamental rights;
- remedy a paradoxical retrograde step in judicial protection as a result of the Amsterdam Treaty in civil matters covered by Article 65 of the EC Treaty;

- enable the Community judicial system to perform normally without any fear of operating problems in this area.

In its communication the Commission, irrespective of the ongoing debate on the future of the Constitutional Treaty, proposes that the proposal be examined by the Council and the European Parliament during the Finnish Presidency and that the necessary amendments be launched for the full application of the existing provisions in the Treaties as they stand.