

UNIT 13 - ACCESS TO JUSTICE. CRIME VICTIMS (Directive  
2004/80 and Framework Decision 15-3-01) MEDIATION  
(Directive 2008/52). LEGAL AID (Directive 2002/8).  
SELF-ASSESSMENT QUESTIONNAIRE  
(With answers)

Francisco de Paula PUIG BLANES  
Senior Judge

1.-) Council Framework Decision 2001/220/JHA, dated 15 March 2001:

- a) Offers a statute of victims in criminal proceedings in the different aspects derived from the same.

The answer is correct because the content of the Framework Decision includes all the principles and rights that correspond to the victim in criminal proceedings, guaranteeing that they have a real and appropriate role in the criminal justice system.

- b) It does not include the possibility of adopting measures to protect victims.

The answer is incorrect because Article 8 does envisage the adoption of such measures.

- c) It regulates all the civil aspects that may be related to the commission of a violent offence.

The answer is incorrect as Council Directive 2004/80/EC, of 29 April 2004 applies to those cases in which the victim can claim compensation from the state where the offence was committed.

- d) It does not cover any civil aspects related to the commission of an offence.

The answer is incorrect as the Framework Decision does contemplate the possibility of obtaining compensation from the person held criminally liable for the offence.

2.-) Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims

- a) Regulates all aspects derived from the right of crime victims to receive compensation

The answer is incorrect because it only regulates those cases in which the victim can claim compensation from the state in which the offence was committed, because when the claim is made against the person held criminally liable, the regime is the one set by Council Framework Decision 2001/220/JHA, dated 15 March 2001

- b) Obliges all states to set a general system of compensation for victims of all criminal offences

The answer is incorrect because it establishes an open regime stipulating that the national rules of the states will guarantee a compensation regime for the victims of violent intentional crimes (only this kind of offence, an open concept) committed in their respective territories, which guarantees fair and appropriate compensation to victims.

- c) Establishes a system that makes it easier to claim state compensation (in those spheres where it exists) when the victim resides in a different country to the one in which the offence was committed.

This is the correct answer as it seeks to manage the claim from the state of residence by means of its authorities without having to take recourse to the state in which the offence was committed.

- d) Establishes a mechanism for the appearance of the victim in the state from which he/she is claiming compensation.

The answer is incorrect as the mechanism is designed to facilitate claims made from the victim's state of residence to the one in which the offence was committed so that he/she can receive compensation, going so far as to establish that if a hearing is necessary, the victim will not have to appear in the state from which he/she is claiming compensation.

3.-) Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008:

- a) Regulates all aspects related to methods of alternative dispute resolution (ADR).

The answer is incorrect because it addresses mediation only.

- b) Is applicable to all cases of mediation regardless of whether they involve elements from different countries or are purely national disputes

The answer is incorrect because the Directive limits its scope to cross-border matters, although this does not mean that the Member States cannot apply its provisions to mediation procedures of a national nature (without being obliged to do so).

- c) Is applicable in all the Member States of the European Union.

The answer is incorrect as it is not applicable to Denmark; Article 1.3 of the Directive states: “3. In this Directive, the term ‘Member State’ shall mean Member States with the exception of Denmark”. In addition, the Preamble states: “(29) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom and Ireland have given notice of their wish to take part in the adoption and application of this Directive. (30) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Directive and is not bound by it or subject to its application”.

d) Does not apply to those areas which are not at the parties’ disposal:

The answer is correct because Article 1.2 of the Directive states that as mediation is a self-regulating conflict mechanism, it can only be used when the subject matter of the same is at the parties’ disposal if they are prepared to alter their stances to a greater or lesser degree.

4.-) Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters:

a) Allows the states to make participation in a mediation process obligatory when implementing it.

The answer is correct as Article 5 of the Directive states that voluntary recourse systems, information sessions and even obligatory recourse are all valid.

b) Only allows voluntary submission to mediation (with possible prior information sessions)

The answer is incorrect as it stipulates that it is legitimate for states to oblige the parties to submit to a mediation mechanism (although what is obligatory is the mediation process, not the ensuing agreement, which will always have to be agreed by the parties).

c) Does not allow the content of the debates and progress of the mediation to be used as evidence in legal proceedings under any circumstances.

The answer is incorrect because while the general rule is that use as evidence is prohibited, it would be admissible for overriding considerations of public policy, in particular when required to ensure the protection of the best interests of children or to prevent harm to the physical or psychological integrity of a person.

- d) In the event there is an agreement that is not voluntarily fulfilled, it requires that the parties open declaratory proceedings for the purposes of recognising the rights that correspond to them according to what was agreed.

The answer is incorrect because the Directive states (Article 6) that the Member States shall ensure that it is possible for the parties, or for one of them with the explicit consent of the other, to request that the content of a written agreement resulting from mediation be made enforceable. From this we can deduce that it would be possible to request the homologation of what was agreed or take direct recourse to the enforcement process, but not submission to a prior declaratory process.

5.-) Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes:

- a) Definitively does away with *cautio iudicatum solvi* in the Member States of the European Union.

The answer is incorrect as this element does not appear in the contents of the Directive and is the subject of national procedural rules and international treaties.

- b) Is applicable to all kinds of natural and legal persons that meet the requirements set out therein.

The answer is incorrect because according to Article 4, it only applies to natural persons.

- c) Is only applicable to nationals of the Member States of the European Union.

The answer is incorrect because it also applies to third-country nationals residing lawfully in a Member State of the EU with the exception of Denmark.

- d) Also applies to third-country nationals residing lawfully in the countries of the European Union (except for Denmark)

The answer is correct as Article 4 states that it applies to natural persons who are Union citizens and third-country nationals residing lawfully in a Member State with the exception of Denmark.

6.-) Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes:

- a) Sets fixed, standard rules in relation to the economic conditions for eligibility for recognition of the right to legal aid.

The answer is incorrect as Article 5 of the Directive sets the criteria to be taken into account by the states in relation to recognition of the right. The criterion is the economic situation of a person, taking into account not just earnings but a group of circumstances that includes income, capital or family situation, including an assessment of the resources of persons who are financially dependent on the applicant. In addition, it envisages the possibility for Member States to establish thresholds in excess of which it is considered that the applicants for legal aid can bear all or part of the procedural costs.

- b) With a view to the recognition of the right, it is possible to take into account the different standard of living in the state of residence of the applicant and that of the state in which the proceedings are in progress.

The answer is correct because it is possible that the lower cost of living in the state in which the proceedings are in progress could mean that the applicant's level of resources means that he/she is not entitled to aid based on the parameters established therein, even though his/her economic means in the state of residence are low in relation to the cost of living there, meaning that he/she is entitled to the recognition of the right. Article 5.4 of the Directive indicates (if quantitative thresholds are set for the recognition of the right) that this will not prevent legal aid applicants who are above the thresholds being granted legal aid if they prove that they are unable to pay the cost of the proceedings as a result of differences in the cost of living between the Member States of domicile or habitual residence and of the forum.

- c) Only envisages decisions on full recognition of the right.

The answer is incorrect because the Directive envisages the possibility of limited or restricted benefits being granted to people who surpass the minimum level of resources without exceeding a higher threshold that would enable them to bear all the costs.

- d) Obliges the states to pay the costs to the opposing party in the event the recipient of legal aid loses the case and is ordered to pay costs.

The answer is incorrect because this is conditioned upon the state in which the case is being heard having established similar cover in the event the recipient were domiciled or habitually resident in said state.