QUESTIONNAIRE:

SIMPLIFICATION OF DEBT COLLECTION IN THE EU

(European Order for Payment Procedure and European Small Claims Procedure)

Questionnaire for national reports

I. Introduction - main features of the national summary procedures for recovery of monetary claims (general overview)

The main source of Slovenian procedural law is Civil Procedure Act (CPA) from 1998, which has been amended several times, most notably in 2008. Slovenian civil procedure is closely related to Austrian. Namely, until 1918 the territory of what is nowadays Slovenia was part of Austria-Hungary (i.e. the Habsburg monarchy). Although Slovenia was part of Yugoslavia (1918-1941, 1945-1991) it retained the main characteristics of the Austrian civil procedure. The underlying principles of Slovenian civil procedure are principle of party initiative (principle of free disposition) and adversial principle. The later is supplemented with the rules on active case management (substantive procedural guidance) of a judge.[1]

The enforcement procedures are regulated by the Enforcement and Securing of Civil Claims Act (ESCCA) from 1998, amended several times. The non-contentious procedures are regulated by the Non-litigious Civil Procedure Act (NCPA) from 1986.

There are courts of general jurisdiction and specialised courts (labour and social security courts and administrative courts). Courts of general jurisdiction render decisions in civil and commercial matters.

[1] Cf. Galič 2008, .

In the first instance of general jurisdiction, district and circuit courts have competence to render a decision. Generally, district courts shall have power to hear and determine disputes involving pecuniary claims where the amount in dispute does not exceed 20.000,00 EUR, and where the amount in dispute exceeds 20.000,0 EUR circuit courts are vested with the competence (Articles 30(1) and 32(1) CPA).

High courts have power to decide upon appeals against the decisions of district and circuit courts (Article 35/1 CPA). In the third instance, the Supreme Court has power to decide upon extraordinary legal remedies, such as revisions and petitions for protection of legality (Article 37 CPA).

1.1. Types of litigation: overview of the different possibilities of obtaining a judgment in judicial proceedings. Briefly describe the summary procedures in your country (simplified and accelerated procedures) and other possibilities for judicial collection of debts. Present any special rules for certain type of claims (e.g. consumer disputes, bills of exchange etc.).

There are ordinary proceedings and summary proceedings, such as national order for payment procedure and national small claims procedure. In commercial disputes courts have to apply special rules for these proceedings, which are suited to the demands of commercial disputes (faster and more flexible proceedings).

Basically there are three types of summary procedures for recovery of money claims in Slovenia:

a) General Order for Payment (regulated in CPA);

b) Order for Payment and Enforcement on Basis of a Credible Instrument (regulated in ESCCA);

c) Order for Payment and Enforcement on Basis of Produced Bills of Exchange or Promissory Notes (regulated in ESCCA); and

d) National Small Claims Procedure (regulated in CPA).

All three Order for Payment procedures are applicable to contractual monetary claims only. National small claims procedure applies to all types of claims with value up to 2000,00 EUR.

The Order for payment and enforcement on basis of a credible (authentic) instrument (slov. verodostojna listina, e.g. invoice, cheque, bill of exchange) and Order for payment and enforcement on basis of produced bills of exchange or promissory notes are hybrid procedures combining a regular summary procedure for recovery of money claims (order for payment) and enforcement procedure. In these combined procedure the creditor who files an application obtains in ex parte procedure a decree with which the court:
- orders the debtor to pay the due amount (order for payment), and
- authorizes an execution on debtors assets in a case the debtor does not file an objection against the decree.

An application for this kind of procedure can be filed electronically with the District Court of Ljubljana, which has an exclusive jurisdiction to decide in these cases. The decree is rendered automatically by computer.[2]

1.2. Explain the current state of IT operational options in judicial procedures for recovery of monetary debts. Can the actions in general be filed electronically (please explain under points II. and IV. below the details of potential electronic submission of the application for national order for payment or small claims procedure)? Is e-service of judicial documents available? Is electronic communication between parties and the court mandatory or optional? How often do parties use e-tools in judicial proceedings?

Slovenia is rapidly introducing IT in judicial procedures. A goal is to achieve a state of fully dematerialized procedures with electronic court files and electronic communication with parties and their representatives (for now it is mandatory for advocates only). However, the goal is not yet achieved and different procedures are in different states of IT support.

As explained above, a procedure with Order for payment and enforcement on basis of a credible instrument is fully computerized and IT supported and can be filed in electronic form only.

The General Order for Payment is not yet IT supported, though there are ideas to integrate it in the same system with the Order for payment and enforcement on basis of an authentic

[2] Galič: 2008, 189.

instrument. The Order for Payment and Enforcement on Basis of Produced Bills of Exchange or Promissory Notes is however not IT supported.

In Slovenia, parties generally cannot file pleadings in electronic form. But there are some exemptions. In insolvency, business register, land register and (newly) in enforcement proceedings parties qualified users (notaries and lawyers) can or even must submit motions electronically. E-service of judicial documents is possible in insolvency, business register, land register, but only to parties, which have loded e-application.

1.3. Is your legal order familiar with the concept of provisional enforceability? If so, please describe the circumstances under which it is available and the procedures for obtaining it.

Slovenian legal system is not familiar with the feature of provisional enforceability. A judicial decision cannot become enforceable before its finality (Rijavec: 2003, 106; Galič: 2008, 185). The only exemption is provisional order (*začasna odredba*, Article 266 ff EJPMA). However, Slovenian procedural law is familiar with feature that is similar to provisional enforceability. That is preliminary order (predhodna odredba, Article 256-265 EJPMA), which is a kind of protective measure available to the creditor, who has obtained a non-final first instance judicial decision. Such a creditor can file a motion to a court to garnish movable property or real estate or to attach bank accounts (Article 260 EJPMA). Preliminary order has in rem effect, i.e. a creditor obtains a lien (a mortgage) on debtor’s property and priority over other creditors of a debtor (Galič: 2008, 185).

1.4. Briefly describe any procedures available to obtain information about a debtor’s assets before and after a creditor obtains an enforceable judgment, e.g. the debtor’s declaration, information from registers, the third debtor’s (garnishee’s) declaration.

Any creditor with the enforceable title can obtain information about a debtor’s assets from any database …

II. National order for payment procedure

2.1. Scope of the procedure

a) What types of claims are eligible (e.g. only monetary claims, only contractual claims etc.)?

b) Is there an upper limit on the value of the claim (e.g. in Austria up to 75.000 EUR)?

c) Is the use of order for payment procedure optional or mandatory?

d) Is the procedure available if the defendant lives in another Member State or in a third country - is the national order for payment procedure possible in cross-border cases?

e) Is it a one-step procedure (like according to Regulation 1896/2006) or two-step procedure (like in Germany having *Zahlungsbefehl* und *Vollstreckungsbescheid)?*

f) Rules on representation by a lawyer.

2.2. Competent court. Are there applicable general rules on subject matter and local jurisdiction, or is there only one court or body authorized to issue national order for payment? Discuss the advantages and disadvantages of your national rules on jurisdiction.

2.3. Application for an order for payment - formal requirements:

a) Are any standardised forms for application for an order for payment available? If so, is the use of a standardised form mandatory and where can that form be obtained? Please describe the content of the standardised form.

b) Is it necessary to be represented by a lawyer?

c) Must the reasons for the claim be described in detail?

d) Must written evidence be presented in regard to the claims asserted? If so, which documents are admissible as proof (e.g. invoice, bill of exchange etc.) and in what kind of form (written, online, other)?

e) Can the application be filed electronically? If so, please describe the procedure.

2.4. Issue of the order for payment

a) Describe any rules for dealing with the submitted application for order for payment and issuing the court decision.

b) Is there a prima facie examination of a claim? Describe the extent of any examination of the claim by the court.

c) Describe any special rules regarding service of the order for payment on the defendant. Describe the information given to the defendant on his procedural rights and obligations along with the decision: are there any legal instructions or guidelines to submit an objection against order for payment? If so please explain the content of the legal instructions (*Rechtsbelehrung*) on the order for payment.

2.5. Rejection of the application. Does the creditor have an appeal against it?

2.6. Opposition by the defendant (objection against order for payment) – prerequisites and procedure, especially:

a) Procedural rules: e.g. form (paper or electronic form), representation by a lawyer, deadline, court fees etc.? As to the deadline for the objection against the order for payment, please discuss arguments for shorter or longer term.

b) Does the objection against order for payment have to be substantiated or not (e.g. Article 16 (3) Regulation No. 1896/2006)? If so, which are the most frequent reasons for successful objection?

c) Effect of notice of opposition. If the objection is allowed, does the court revoke (annul) the order for payment, does the order for payment lose its effect automatically by law, or does the court provisionally uphold the order for payment and decide its validity with its judgment in the subsequent litigation?

d) What are the legal remedies against the court decision on statement of opposition?

e) Describe the nature and structure of the procedure following the successful objection filed against order for payment.

2.7. Effects of the absence of timely opposition.

a) What is the consequence if no objection is filed? Does that mean that defendant only admits facts or recognizes the justification of the claim?

b) What needs to be done in order to obtain an enforceable judgment? Does the court issue a certificate or declaration of enforceability (*Vollstreckbarkeitsbestätigung*), similar to one that is foreseen in Article 18 Regulation 1896/2006? If so, does it do this on application or on its own motion? Do there exist any legal remedies against the certificate or declaration of enforceability?

c) Effects of order for payment - is it merely enforceable or also final (*rechtskräftig*)? Is it still possible to appeal against this decision?

2.8. Describe the costs of procedure.

2.9. Enforcement of the national order for payment domestically and abroad. Describe the main difficulties of cross-border enforcement on the basis of your national payment order.

2.10. Compare the national and EU order for payment procedures (differences and similarities) and provide your final evaluation of the national order for payment procedure.

III. Implementation of Order for Payment Procedure Regulation (1896/2006) in Member States

3.1 Competent court (subject matter, local jurisdiction). Which courts have jurisdiction to issue a European order for payment? Is only one court competent (centralised system like in Austria and Germany: *das Bezirksgericht für Handelssachen Wien; das Amtsgericht Berlin-Wedding*) or is there a decentralised system in force?

3.2 Application for a European order for payment:
a) Describe the means of communication accepted for the purposes of the European order for payment procedure and available to the courts (Article 7(5)). Can the application be submitted electronically? Does there exist alternative electronic communications system in the courts of the Member State of origin pursuant to Article 7(8)?
b) Which languages of the application are admissible?
c) How many copies of the application are required?
d) What are the penalties under the law of the Member State of origin in case of the debtor’s deliberate false statement (Article 7(3))?

3.3. Issue of the European order for payment:
a) Recital 16 states: “The court should examine the application, including the issue of jurisdiction and the description of evidence, on the basis of the information provided in the application form. This would allow the court to examine prima facie the merits of the claim and inter alia to exclude clearly unfounded claims or inadmissible applications. The examination should not need to be carried out by a judge.”

Describe the examination of the application. Who issues the order for payment – judge, *Rechtspfleger*, clerk or computer?

b) Describe the service of the European order for payment on the defendant pursuant to Article 13 and 14.

3.4. Opposition to the European order for payment:

a) Describe the form of the statement of opposition. Must the form be on paper or by any other means of communication, including electronic (Article 16(4))?

b) Pursuant to Article 17 (1) where a statement of opposition is lodged, the proceedings shall continue before the competent courts of the Member State of origin. Does the court revoke (annul) the European order for payment (e.g. by decree) or does it cease to be in force by law?

c) What are the legal remedies against the court decision on statement of opposition?

3.5. Absence of timely opposition:

a) Describe the certificate procedure (declaration of the European order for payment for enforceable pursuant to Article 18).

b) Explain the formal requirements for enforceability according to Article 18 (2).

c) Describe the effects of the absence of timely opposition: does the European order for payment become final (*rechtskräftig*) or is it only enforceable?

3.6. Safeguarding the debtor's rights.

a) Problems with the certificate may arise. On the one hand, the certificate will be rectified when, due to a material error, there is a discrepancy between the European order for payment and the certificate. On the other hand, the certificate may have been wrongly granted (e.g. the certificate was issued without duly waiting for the statement of opposition to arrive at the court). Describe the procedures for rectification and withdrawal of the declaration of enforceability referred to in Article 18.

b) Explain the review procedure and the competent courts for the purposes of the application of Article 20.

3.7. Estimate the costs of procedure.

3.8. Enforcement in the Member State of enforcement:

a) Which authorities have competence with respect to enforcement?

b) What should be done for the European enforcement order to be executed in the Member State of enforcement? Are any court proceedings, administrative proceedings or activities of an execution body required? How long will it take from issue of the order to the beginning of the execution? Which languages are accepted pursuant to Article 21(2)(b)?
c) Legal remedies in the Member State of enforcement: Which authorities have competence for the purposes of the application of Article 22 (1) and (2) and Article 23? Describe the procedures for those legal remedies.

IV. National small claims procedure

4.1. Describe the scope of the procedure and the threshold amount. Is the small claims procedure applicable only for monetary claims or reserved to certain types of disputes (e.g. consumer disputes)? Is a small claims procedure an option or an obligation for the plaintiff?

A small claim dispute covers disputes on a pecuniary claims where the amount of dispute does not exceed 2.000,00 EUR (Article 443/1 CPA). In commercial disputes this amount is 4.000,00 EUR (Article 495/1 CPA). A small claim dispute covers also disputes on non-pecuniary claims in respect of which the plaintiff has declared his willingness to accept, instead of satisfaction of the claim, a sum of money not exceeding 2.000,00 EUR (or 4.000,00 EUR in commercial disputes respectively). A small claim dispute covers also disputes on claims for delivery of movable property where the stated amount in dispute does not exceed 2.000,00 EUR (or 4.000,00 EUR in commercial disputes respectively).[3] Small claims procedures shall also be conducted upon a plea against a payment order if the contested of the payment order does not exceed 2.000,00 EUR (Article 445 CPA). In such a situations the provisions on small claims procedure apply obligatory.[4]

The provisions on small claims procedure, however, do not apply for disputes relating to immovable property, disputes arising out of copyright, disputes relating to the protection and use of inventions and marks of distinctiveness or to the right to use a company title, disputes

[3] Cf. Article 443 Slovenian Civil Procedure Act (hereinafter referred to as CPA).
[4] Cf. Article 442 CPA.

relating to the protection of competition, and disputes for disturbance of possession (Article 444 CPA).[5]

4.2. Identify the competent court (subject matter and local competence).

At the first instance generally the district courts have jurisdiction (Article 446 CPA).[6] However, in commercial matters, circuit courts have competence to decide upon the case (Article 32/2 CPA). In each case, a single judge has power to hear and determine small claims disputes (Article 31 CPA),[7] but some preparations until the main hearing may be performed also by a law clerk (Article 270 CPA).

4.3. Commencement of the procedure.

a) Describe the forms of the action and how they are provided by the parties (orally, paper form, electronically)? Are any standard forms available?

b) Is representation by a lawyer mandatory?

c) Assistance: is there any support by a court clerk or help desk for the commencement of a procedure?

The litigation begins upon the action of the claimant, which can be lodged with the court only in paper form. In (small claims) litigation parties cannot submit pleadings electronically, so far. However, courts accept motions and legal remedies of parties, which are sent by fax.[8]

Each action shall contain a specified relief or remedy claimed in respect of the cause of action, the lateral claims, the statement of facts constituting the cause of action, the statement of evidence proving these facts, and other particulars required in every pleading (Article 180 CPA). The action shall be submitted in a sufficient number of copies for the court and for the opposing party, and in such form as enables the court to serve the action on the defendant. The same shall apply to written enclosures (Article 106 CPA).

There are no specific forms used in the Small Claims procedure. In addition, there is also no assistance in procedural issues (e.g. by the court clerk or the judge) for litigants not represented by a lawyer.

[5] Cf. Article 444 CPA.
[6] Cf. Article 30 CPA.
[7] Article 31 CPA.
[8] Cf. VSL Sklep II Ip 3698/2007.

Representation by the lawyer is not obligatory, however each party may perform acts of procedure through agency of an attorney (Article 86/1 CPA). In the proceedings before a district court, any person of full legal capacity may act as an attorney. If the court finds that an attorney who is not a practicing lawyer lacks the representative capacity, it shall warn the party on the possible detrimental consequences of a false representation. In the proceedings conducted by circuit and high courts and by the Supreme Court only a practicing lawyer or other person who has passed the state judicial examination may act as an attorney. A professional law firm may also be empowered for representation in the court proceedings (Article 87 CPA).

4.4. Describe the peculiarities of the small claims procedure compared to regular procedure, including:

a) The relaxation of any rules concerning the taking of evidence.

b) The use of oral or written procedure. Is there a possibility of a purely written procedure?

c) Any limitations concerning *ius novorum*.

d) The use of shorter deadlines (e.g. for answer to an action).

e) The relaxation of rules concerning the content of the judgment or the time limit for the delivery of the judgment. Is there any time frame for the court resolving the case?

Certain rules of small claims procedure are relaxed compared with the ordinary procedure.

Small claims procedures shall be conducted on the basis of acts of procedure executed in writing (Article 450/1 CPA). Oral hearing is possible, but not mandatory. If, after the receipt of the defence plea and the preparatory pleadings of the parties, the court finds that no dispute exists on the matter the facts and that no other obstacles hinder the rendition of a decision, it shall decide the case without a hearing (Article 454/1 CPA). What is more, the oral hearing can also be omitted if the court asses that the disputed facts can be established on the basis of written evidence and neither party requested to schedule an oral hearing (Article 454/2 CPA).

Whereas ordinary civil proceeding may be stayed for 3 to 4 months if both parties have agreed thereupon before the completion of the main hearing (Articles 209 and 210 CPA), small claims procedures cannot be stayed (Article 450/2 CPA).

In the ordinary civil proceedings the deadline to file the defence plea takes 30 days, but in small claims procedure only 8 days (Article 452/1 CPA).

In ordinary proceedings parties are bound to state all facts upon which their motions are based, adduce evidence required to establish the truth of their statements, to produce declarations regarding the statements and evidence adduced by the opposing party, at latest at the opening hearing session. In the later stages of the proceeding, the parties shall be allowed to present new facts and new evidence only if at the opening session they were prevented from presenting them by reasons beyond their control. Delayed statements of facts and adduced evidences shall be ignored (Article 286 CPA). However, in the small claims procedures, the plaintiff shall generally state all facts and adduce all evidences in the action, while the defendant shall do so in his defence plea (Article 451 CPA). In addition, each party may file only one preparatory pleading (written submission). The plaintiff may file a preparatory pleading within eight days after receipt of the defence plea in which he shall reply to the assertions contained therein. The defendant may file a preparatory pleading within eight days after receipt of preparatory of the plaintiff in which he shall in turn reply to the assertions contained therein (Article 452 CPA). Facts and evidence presented in later stages of the procedure shall be ignored (Article 453 CPA). Parties are thus prevented from asserting new facts and evidences at the oral hearing (Galič, 2008: 180).

Certain rules regarding evidence procedure are relaxed as well compared with the ordinary procedure. In order to comply with objectives of acceleration and cost-effectiveness of proceedings the court may restrict the means of evidence and time available for taking it (Article 450/2 CPA).

There are strict sanctions for inactivity of parties. The rendering of a judgment on basis of acknowledgment is the sanction for inactivity of the defendant. This happens, firstly, if the action has been duly served to the defendant and he does not file a defence plea within 8 days, (Article 453.a CPA), and secondly, if the defendant requested to schedule an oral hearing but did not enter it (Article 454/3 CPA). Compared with ordinary proceeding this sanction is very harsh, because the defendant is deemed to acknowledge the claim although the action may not be well founded (Galič, 2008: 180). If the plaintiff requested to schedule an oral hearing but did not enter it the court renders a judgment on basis of relinquishment. If both parties

requested to schedule a hearing but neither appears, it is deemed that the plaintiff withdrew the action (Article 454/3 CPA).

In small claims procedures, each party may file only one preparatory pleading.
If, after the receipt of the defence plea and the preparatory pleadings of the parties, the court finds that no dispute exists on the matter the facts and that no other obstacles hinder the rendition of a decision, it shall decide the case without a hearing. In such a situation, a purely written procedure is possible (instead of oral hearings).
The rules concerning the content of the judgment are relaxed compared with the ordinary procedure.
The written judgment shall include an introductory part, an ordering part and a statement of ground. The statement of ground shall consist only of a brief description of factual considerations and the indication of provisions of the substantive and procedural law which have been applied in determination of the case.

4.5. Is there any exclusion or restriction of the possibility of appeal against the judgment? If so, on which grounds can the appeal be based and within which time should it be lodged?

A small claims decision can be appealed. The judgment and the decree by which a small claim procedure has been concluded may be appealed against only on the ground of severe violation of civil procedure provisions referred to in the Article 339/2 CPA and of violation of substantive law. Erroneous or incomplete determination of state of facts in the small claims judgment is not a ground for appeal (Article 338/2 CPA).

Revision, which is the most common extraordinary legal remedy, cannot be filed in small claims proceedings (Article 458/8 CPA). But the State Prosecutor of the Republic of Slovenia may submit a petition for protection of legality against a final judicial decision within three months (Article 385/1 CPA). Another extraordinary legal remedy is possible as well. This is reopening of proceedings (Article 394 CPA), which cannot be filed if a party has come to know about new facts or has obtained new evidence (point 10 Article 394 CPA). This is because the small claims judgment cannot be appealed on ground of erroneous or incomplete determination of state of facts (Galič/Betetto: 2011, 249).

4.6. Describe the reimbursement of costs.

There are no peculiarities as to the reimbursement of costs. It applies the same rule as in ordinary civil proceeding, i.e. the success principle (Galič/Betetto: 2011, 247). The party losing the litigation shall refund the costs incurred by the winning party and their intervener. If one party wins the litigation only in part, the court may decide, with respect to the outcome of litigation, that each party cover their own costs of proceedings, or may, considering the circumstances of the case, order one party to refund the other party and their intervener an appropriate amount of costs.[9] In deciding which costs are to be refunded to a party, the court shall take into account only the expenses, which were indispensable for the litigation. Such costs shall be determined following a careful examination of circumstances of relevance (Article 155/1 CPA).

4.7. Describe the enforcement of the judgment domestically and abroad.

Small claims judgment becomes enforceable when the time limit of 8 days for voluntary fulfilment of claim has elapsed (Article 458/4 CPA) and no party lodged an appeal. The time limit for voluntary fulfilment of claim begins running when the judgment is served to the defendant (Article 313/2 CPA). If the appeal against the judgment was filed, the small claims judgment becomes enforceable 8 days after the decision of the court of appeals was served to the defendant (Rijavec: 2003, 109). Thus, according to Slovenian law a finality of a judgment is generally a prerequisite for its enforceability (Rijavec, 2003: 106; Galič: 2008, 188).

Judgments rendered in small claims procedure are subject of ordinary enforcement proceeding which is governed by the Enforcement of Judgments and Protective Measures Act (EJPMA) from 1998 and has been amended several times. Slovenian law of enforcement has its roots in Austrian Enforcement of Judgments Act (Exekutionsordung), which was written by famous Austrian lawyer Franz Klein and adopted in 1896 (Rechberger: 2008, 102). That is why the basic structure of both enforcement proceedings is the same.

The enforcement proceeding has two phases. The first one is authorisation of execution (dovolitev izvršbe). The creditor must file a motion for enforcement (Article 40 EJPMA) with the enforcement court. The court verifies the enforceable title and issues a warrant of execution by which it orders the enforcement measures (Rijavec: 2003, 171; Galič: 2008,

[9] Article 154 CPA.

187). A second phase of enforcement present so called physical measures of enforcement (oprava izvršbe). The competence to act in the second phase is decentralised. The bailiff is competent to garnish movable property, banks are obliged to attach bank accounts of debtor, employers are obliged to garnish debtor’s salary and the court has competence over the garnishment of debts and the enforcement against real estate (Rijavec: 2003, 174; Galič: 2008, 187).

Subject matter jurisdiction is vested with the local court. Territorial jurisdiction depends on a method of enforcement. Generally, the court on the territory of which the defendant has his permanent residence (natural person) or its seat (company) has competence in enforcement proceeding (cf. Articles 78 and 100 EJPMA). However, in real estate enforcement the court on the territory of which the immovable property is located has jurisdiction (Article 166 EJPMA).

The debtor can file an objection against warrant of execution with the enforcement court (Article 53 EJPMA), which does not suspend enforcement measures (Article 46/1 EJPMA). However, the debtor’s property cannot be sold and the creditor generally cannot be satisfied before the warrant of execution becomes final (Article 46/2 EJPMA), except in enforcement on debtor’s bank accounts (Article 46/3 EJPMA).

It shall be noted that form 1. March 2012 the creditor, which is represented by a lawyer, can file a motion for enforcement and all other pleadings during the enforcement proceeding in electronic form.[10]

Slovenian small claims judgment can be enforced in EU according to Regulations (EC) No. 44/2001 or 805/2004.

4.8. Compare the national and EU small claims procedure, including their differences and similarities.

There are many differences between Slovenian and European small claims procedure:

- whereas ESCR provides for application of standard forms to ease filling out of the action (recital 11 ESCR), there are no standard forms provided according to Slovenian small claims procedure;

[10] Cf. Rules amending the Rules on forms, types of enforcement of civil claims and the course of automated enforcement proceedings (Pravilnik o obrazcih, vrstah izvršb in poteku avtomatiziranega izvršilnega postopka), Official Gazette of Republic of Slovenia, No. 104/2011.

− whereas ESCR determines deadlines for courts to act in certain stages of procedure (e.g. to appoint a hearing, to take evidence, to render a judgment) in order to speed up the procedure (Article 7 ESCR), CPA does not provide for such a deadlines;

− whereas a judgment given in the European Small Claims Procedure is enforceable notwithstanding any possible appeal (Article 15 ESCP), an appeal against a judgment rendered in domestic small claims procedure hinders its enforceability. In Slovenian civil procedure law a judgment becomes enforceable when it is final (no ordinary legal remedy is possible against it) and the time-limit for voluntary fulfilment of claim has elapsed (Article 313/2 CPA);

- Regarding costs of procedure, the principle of success is underlying principle of both procedures. The party losing the litigation shall refund the costs incurred by the winning party (Article 16 ESCP, Article 154 CPA). This principle is corrected in both procedures with the rule that irrespective of the outcome of litigation, the party shall refund the opposing party the unnecessarily incurred costs (Article 156/1 CPA). But ESCR goes even further. The court or tribunal shall not award costs to the successful party to the extent that they are disproportionate to the claim (Article 16 ESCP).

V. Implementation of Small Claims Regulation (861/2007) in Member States

Applicable procedural law:

ESCR applies in Member States automatically. However, the regulation does not regulate all legal aspects of the European Small Claims Procedure. Thus, issues not governed by the ESCR shall be governed by the procedural law of the Member State in which the procedure is conducted (Article 20 ESCR). In Slovenia, courts shall in the first place apply rules of the CPA on national small claims procedure in order to fill gaps not covered by the ESCR. If rules on national small claims procedure do not provide such answer rules of the ordinary civil procedure shall be applied (Article 442 CPA, Galič/Betetto, 2011: 212).

5.1. Competent court: Which courts or tribunals have subject matter and local jurisdiction to render a judgment in the European Small Claims Procedure?

In European small claims procedure, in Slovenia, in the first instance generally the district courts have jurisdiction (Article 446 CPA), but in commercial matters, circuit courts are vested with competence to decide upon the case (Article 32/2 CPA). According to Article

47/1 CPA the local (territorial) jurisdiction is in principle vested in the court on the territory of which the defendant has his permanent residence (natural person) or its seat (company). There are also other special local jurisdictions (e.g. place of performance, prorogation of jurisdiction etc.).

First instance proceedings shall be conducted by a single judge (recital 27 ESCR, Article 15/1 CPA). The same generally applies for appellate proceedings (Article 458/5 CPA). However the certificate concerning a judgment in the European Small Claims Procedure (Article 20/2 ESCR) can be issued also by a law clerk (Galič/Betetto: 2011, 216).

5.2. Formal prerequisites for the introduction of the procedure:

a) Which means of communication are accepted for the purposes of the European Small Claims Procedure and available to the courts or tribunals in accordance with Article 4(1)?

b) Which languages are accepted pursuant to Article 6 (1)?

In Slovenia, the claimant commences a European small claims procedure by lodging an action in paper form, which is the only form acceptable so far in civil procedure. However, in enforcement procedure there has been newly (on 1.3.2012) introduced an option for parties represented by a lawyer. They can file pleadings electronically.

The action shall be filed in Slovenian language. The parties and other persons involved in the proceedings shall file actions, appeals and other pleadings in the Slovenian language or in the languages of national communities (Hungarian and Italian), which are officially used by the court on territories, where those minorities live (Article 104/1 CPA). This option is only available for members of those national communities.

5.3. Conclusion of the procedure:

a) Describe how the judgment is issued.

b) Describe the certificate procedure (certificate concerning a judgment referred to in Article 20 (2)).

Single judge can fix an oral hearing if he finds appropriate. However, he can also decide upon written evidences without a hearing.

When the case is ripe for decision, the presiding judge shall announce the judgment immediately after completion of the main hearing. Upon announcement of the judgment, the

court shall instruct the parties present on the conditions in which they may appeal against it (Article 457 CPA). Judgments shall be rendered and announced in the name of the people (Article 321 CPA). Judgments shall be reduced to writing within thirty days after they have been rendered. The original of the judgment shall be signed by the presiding judge. The parties shall be served a certified copy of the judgment (Article 323 CPA). When reduced to writing, the judgment shall include an introductory part, an ordering part and a statement of ground. The statement of ground shall consist only of a brief description of factual considerations and the indication of provisions of the substantive and procedural law which have been applied in determination of the case (Article 457/3 CPA).

Any party can file a request to a court of origin to issue a certificate concerning a judgment rendered in European Small Claims Procedure. Such a certificate is issued by the clerk of the court of origin, when the judgment becomes enforceable. In any judgment ordering the performance of a certain obligation the Slovenian court shall also determine a time period in which the defendant can voluntary perform the obligation (Article 313 CPA). In small claims procedure such a deadline is 8 days (Article 458/5 CPA) and starts to run when the judgment is served to the defendant. Thus, the certificate according to Article 20(2) ESCR confirms among others that the judgment has been served to the defendant and that the time-limit for voluntary fulfilment of the claim has elapsed (Article 42 EJPMA, Galič, 2008: 188).

5.4. Appeal against judgment:

a) Is an appeal available under the national procedural law against a judgment in accordance with Article 17, and with which court or tribunal may this appeal be lodged?

b) If so, within what time limit shall such appeal be lodged and on which grounds?

Parties can appeal against judgment within 8 days (Article 458/3 CPA). The appeal shall be lodged with the court of first instance in sufficient number of copies for the court and the opposing party (Article 342 CPA). The court of first instance dismisses by decree belated, incomplete or inadmissible appeals (Article 343/1 CPA). The court of first instance serves a copy of a timely, complete and admissible appeal on the opposing party who may submit a replication within eight days (Article 344/1 CPA). After the receipt of a replication or after expiration of the time period to submit replication, the court of first instance shall send the appeal and the replication, if submitted, up to the court of second instance, which decides upon appeal (Article 345/1 CPA).

However, the grounds for appeal are limited. The judgment and the decree by which a small claim procedure has been concluded may be appealed against only on the ground of violation of substantive law and on ground of so called “absolute violations of procedure” (Article 458/1 CPA), which are exclusively listed in the Article 339/2 CPA (e.g. violations of right to be heard, violations regarding the jurisdiction, violations regarding disqualification of judges etc.). These violations always cause a nullity of a judgment, regardless of the question whether these violations resulted or could have resulted in the erroneous final decision on the substance (Article 339/2 CPA, Galič: 2008, 127). Thus, errors in the finding of the facts are not a ground to appeal against the judgment rendered in the European small claims procedure. However, the panel of the court of second instance shall set aside the judgment and/or of the court of first instance and remand the case for rehearing when it establishes that the due to violation of substantive law the determination of state of facts is erroneous and/or incomplete (Article 458/2 CPA).

In small claims procedure parties are not allowed to file a revision against a final judgment. A revision is an extraordinary legal remedy, which shall be decided upon by the Supreme Court (Article 368 CPA). However, a final judgment in European small claims procedure can be attacked a petition for protection of legality (Galič/Betetto: 2011, 249). This extraordinary legal remedy may be submitted by the State Prosecutor of the Republic of Slovenia (Articles 385/1, 386 CPA). The Supreme Court decides upon petition for protection of legality only if it raises legal issue, which is of great importance for the evolution and unification of case law (Galič/Betetto: 2011, 249). Also the reopening of proceedings in possible extraordinary legal remedy.[11]

5.5. Safeguarding the debtor's rights.

a) Problems with the certificate referred to in Article 20 (2) may arise. On one hand, the certificate will be rectified when, due to a material error, there is a discrepancy between the judgment and the certificate. On the other hand, the certificate may have been wrongly granted (e.g. the judgment does not fall within the scope of Small Claims Regulation).

Describe the procedures for rectification and withdrawal of the certificate concerning a judgment referred to in Article 20 (2).

b) Explain the procedures for review referred to in Article 18.

[11] Cf. point 4.5. supra.

When implementing Regulations 805/2004, 1896/2006 and 861/2007, Slovenian legislator did not introduce any new legal remedy for situation described in Article 19 Regulation 805/2004, Article 20 EOPR or Article 18 ESCR. This, so called minimalistic approach of legislator, which adopts only lapidary provisions to implement of EU Regulations on civil procedure in Slovenian law, has been heavily criticised by scholars (cf. Galič/Betetto: 2011, 205, 211; Ekart/Rijavec: 2010, 315). Thus scholars plead to apply existing legal remedies, which have characteristics referred to in those provisions.

There are two such legal remedies of national procedural law. The first one is reinstatement (Article 116 CPA; Ekart/Rijavec: 2010, 308; Galič/Betetto, 2011, 250). According to that provision the court shall permit the party, upon their motion, to perform the missed act at a later stage (reinstatement), if a party fails to appear at the hearing, or to perform an act of procedure within the prescribed time period, thus losing the right to perform such act, when the court establishes that the default was due to justified reasons. By passing of the decree on reinstatement, the litigation shall be restored to the state existing prior to default and all decisions adopted on the basis of default shall be set aside (Article 116 CPA). The motion for reinstatement shall be filed within 15 days after cessation of the reason for which the party missed the hearing or the time period; if the party has come to know about the default only after the lapse of the above stated term, the motion shall be allowable within 15 days after the party’s coming to know about the default. Reinstatement may no longer be moved when six months have lapsed since the day of default (Article 117/2,3 CPA).

The second national legal remedy, which suits the requirements of Article 18 ESCR, is reopening of proceedings (Article 394 Point 3 CPA, cf. Ekart/Rijavec: 2010, 308). This provision applies if the service of judicial documents has been effected in accordance with Article 141 CPA by deposit of the document at a post office and the placing in the debtor's mailbox of written notification of that deposit (i.e. service without proof of receipt by the debtor). The written notification of that deposit shall indicate the place where the documents are left and a 15 days’ term in which they are to be collected. If the recipient fails to collect the documents within 15 days, the service shall deem to be made on the day when the deadline of 15 days has elapsed (Article 142/4 CPA). After that moment the post officer leaves the document in the parties’ mailbox (Article 142/4 CPA). According Article 394 Point 3 CPA the proceedings finally concluded by a judicial decision may be reopened upon a motion by a party, if judicial document has been served upon a party in accordance with Article 141 CPA owing to the party’s continuing absence for a period longer than six months

(reopening of proceedings). The decree permitting the reopening of proceedings sets aside the decision passed in the earlier proceedings (Article 400/2 CPA).

The decree on reinstatement (Article 116 CPA) and the decree permitting the reopening of proceedings (Article 400 CPA), which set aside the final judgment, are grounds to declare the judgment given in the European Small Claims Procedure null and void according to Article 18/2 ESCR.

5.6. Describe the costs of procedure.

Article 16 ESCR governs which party shall bear the costs of the proceedings. However, the Regulation does not provide for a rule, which party shall pay an adequate deposit or advance for taking of evidence (e.g. if the opinion of an expert is required). This issue is governed by the national law (Galič/Betteto, 2011, 247). In Slovenia, each party shall advance the payment for costs incurred by procedural acts performed or caused to be performed by them (Article 152 CPA). The party moving for the production of a piece of evidence shall pay in advance, upon a court order, the amount necessary to cover the costs which are envisaged to be incurred in the production of such evidence (Article 153 CPA). This rule applies also if the taking of evidence is made abroad because Article 18/2 Regulation 1206/2000 refers to the law of the Member State of the requesting court (Galič/Betteto, 2011, 247).

In Slovenia, the claimant has to pay fee for lodging an action. This fee depends on value of the dispute.

Generally, the fees are divided in 21 classes according to the value of the claim. Here we give just some examples for small claims procedure. The lowest fee would be for claims up to 300 euro – 20,40 euro. For claims between 1.500 and 2.000 euro it would be 60,00 euro.

5.7. Enforcement of the judgment in the Member State of enforcement – procedure and requirements:

a) Which authorities have competence with respect to enforcement?

b) Describe the methods and procedures of enforcement in the Member State.

c) Which languages are accepted pursuant to Article 21(2)(b)?

d) Describe available legal remedies in the Member State of enforcement. Which authorities have competence for the purposes of the application of Articles 22 and 23? Describe the procedure.

Is Slovenia a Member State of enforcement the enforcement procedure upon judgment given in the European small claims procedure is governed by the same rules as domestic enforcement procedure (Article 21 Paragraph 1 ESCR),[12] which can be found in Slovenian Enforcement of Judgments and Protective Measures Act (EJPMA).

The enforcement proceeding begins when a creditor lodges a motion for enforcement (Article 40 EJPMA) with the enforcement court.[13] This court is competent not only to authorise enforcement but also to decide on legal remedies against the warrant of execution issued upon judgment given in the European small claims procedure (Ekart/Rijavec, 2010, 293; Galič/Betetto, 2011, 254). In such situation the debtor can lodge those legal remedies, which indicate a close link to the execution procedure in accordance with Article 22 (5) of the Brussels I Regulation (Ekart/Zangl, 2011, 317). These legal remedies are: objection against warrant of execution (Article 55 EJPMA), action on the ascertainment of the inadmissibility of the enforcement (Article 59 EJPMA), motion for the suspension of the enforcement (Article 71 EJPMA), objection or action of a third party, if his/her goods have been seized (Articles 64 and 65 EJPMA) or the petition to abolish irregularities in execution (Article 52 ZIZ), if the execution is not implemented correctly (Ekart/Rijavec, 2010, 293; Galič/Betetto, 2011, 254).

The most common ground for objection against the substantive claim in cross-border enforcement is payment of the debt after the rendering of the judgment. In Slovenia discharge of debt is primarily implemented with an objection against warrant of execution at the court where the enforcement procedure is pending. If the court of enforcement based its decision on facts in dispute between the parties, the debtor can, within 30 days from the decision's effective date, start an action on the ascertainment of the inadmissibility of the enforcement (Ekart/Zangl, 2011, 313).

The language of the court is Slovenian. However, on territories, where Hungarian and Italian national communities live, members of those minorities can use their own language (Article 104/1 CPA and Article 15 EJPMA).

[12] See more supra 4.7.
[13] Cf. supra 4.7.

VI. Final critical evaluation of EU Regulations on Simplifying Cross-Border Debt Collection

6.1. Do Regulations 1896/2006 and 861/2007 in your opinion simplify, speed up and reduce the costs of litigation in cross-border cases concerning pecuniary claims and ease cross-border enforcement of judgments?

6.2. Are the national procedures frequently impracticable in cross-border cases (recital 7 Regulation 1896/2006), especially having in mind that some of the classical features of cross border litigation constitute direct or indirect discrimination on grounds of nationality and are thus prohibited, for instance the security for the costs of judicial proceedings (*cautio iudicatom solvi*) as an example of direct discrimination (see ECJ case of 26 September 1996, Data Delecta v MSL Dynamics, C-43/95, ECR 1996, p. I-04661). Do the advantages of Regulations 1896/2006 and 861/2007 outweigh potential obstacles in national procedures involving a party from another Member State (e.g. address for service within local jurisdiction (*Wahldomizil*) or representative ad litem (*Zustellungsbevollmächtigter* etc.)?

6.3. From the creditor’s point of view, which is the most convenient alternative in your country in case of cross-border collection of debts in EU?

6.4. What other improvements, if any, do you suggest in the procedures of simplified and accelerated cross-border disputes?

Instructions for contributors

1 References

As a rule, specific references should be avoided in the main text and, preferably, should be placed in the footnotes. Footnote numbers are placed after the final punctuation mark when referring to the sentence and directly after a word when referring to that word only. We humbly invite our authors to carefully examine our sample references which are preceded by

[•]. These sample references put the theory of our authors' guidelines into practice and we believe that they may serve to further clarify the preferred style of reference.

1.1 Reference to judicial decisions

When citing national judicial authorities, the national style of reference should be respected. References to decisions of European courts should present the following form:

[Court] [Date], [Case number], [Party 1] [v] [Party 2] (NB: the "v" is not italicised)

- ECJ 9 April 1989, Case C-34/89, Smith v EC Commission.
- ECtHR 4 May 2000, Case No. 51 891/9, Naletilic v Croatia.

1.2 Reference to legislation and treaties

When first referring to legislation or treaties, please include the article to which reference is made as well as the (unabbreviated) official name of the document containing that article. The name of a piece of legislation in a language other than English, French or German should be followed by an italicised English translation between brackets. In combination with an article number, the abbreviations TEU, TFEU, ECHR and UN Charter may always be used instead of the full title of the document to which the abbreviation refers. If the title of a piece of legislation constitutes a noun phrase, it may, after proper introduction, be abbreviated by omission of its complement. Thus:

- Art. 2 Protocol on Environmental Protection to the Antarctic Treaty (henceforth: the Protocol)
- Art. 267 TFEU
- Art. 5 Uitleveringswet [Extradition Act]

1.3 Reference to books

1.3.1 First reference

Any first reference to a book should present the following form: [Initial(s) and surname(s) of the author(s)], [Title] [(Publisher Year)] [Page(s) referred to]

• J.E.S. Fawcett, The Law of Nations (Penguin Press 1968) p. 11.

If a book is written by two co-authors, the surname and initials of both authors are given. If a book has been written by three or more co-authors, 'et al.' will follow the name of the first author and the other authors will be omitted. Book titles in a language other than English,

French or German are to be followed by an italicised English translation between brackets. Thus:

- L. Erades and W.L. Gould, The Relation Between International Law and Municipal Law in the Netherlands and the United States (Sijthoff 1961) p. 10 – 13.
- D. Chalmers et al., European Union Law: cases and materials (Cambridge University Press 2010) p. 171.
- F.B. Verwayen, Recht en rechtvaardigheid in Japan [Law and Justice in Japan] (Amsterdam University Press 2004) p. 11.

1.3.2 Subsequent references

Any subsequent reference to a book should present the following form (NB: if more than one work by the same author is cited in the same footnote, the name of the author should be followed by the year in which each book was published):

[Surname of the author], [supra] [n.] [Footnote in which first reference is made], [Page(s) referred to] • Fawcett, supra n. 16, p. 88.

- Fawcett 1968, supra n. 16, p. 127; Fawcett 1981, supra n. 24, p. 17 – 19.

1.4 Reference to contributions in edited collections

For references to contributions in edited collections please abide by the following form (NB: analogous to the style of reference for books, if a collection is edited by three or more co-editors only the name and initials of the first editor are given, followed by 'et al.'):

[Author's initial(s) and surname(s)], ['Title of contribution'], [in] [Editor's initial(s) and surname(s)] [(ed.) or (eds.)], [Title of the collection] [(Publisher Year)] [Starting page of the article] [at] [Page(s) referred to]

- M. Pollack, 'The Growth and Retreat of Federal Competence in the EU', in R. Howse and K. Nicolaidis (eds.), The Federal Vision (Oxford University Press 2001) p. 40 at p. 46.

Subsequent references follow the rules of 1.3.2 supra.

1.5 Reference to an article in a periodical

References to an article in a periodical should present the following form (NB: titles of well-known journals must be abbreviated according to each journal's preferred style of citation):

[Author's initial(s) and surname(s)], ['Title of article'], [Volume] [Title of periodical] [(Year)] [Starting page of the article] [at] [Page(s) referred to]

- R. Joseph, ‘Re-Creating Legal Space for the First Law of Aotearoa-New Zealand’, 17 Waikato Law Review (2009) p. 74 at p. 80 – 82.
- S. Hagemann and B. Høyland, ‘Bicameral Politics in the European Union’, 48 JCMS (2010) p. 811 at p. 822.

Subsequent references follow the rules of 1.3.2 supra.

1.6 Reference to an article in a newspaper

When referring to an article in a newspaper, please abide by the following form (NB: if the title of an article is not written in English, French or German, an italicised English translation should be provided between brackets):

[Author’s initial(s) and surname(s)], [‘Title of article’], [Title of newspaper], [Date], [Page(s)]: • T. Padoa-Schioppa, ‘Il carattere dell’ Europa’ [The Character of Europe], Corriere della Serra, 22 June 2004, p. 1.

1.7 Reference to the internet

Reference to documents published on the internet should present the following form: [Author’s initial(s) and surname(s)], [‘Title of document’], [<www.example.com/[...]>], [Date of visit]

- M. Benlolo Carabot, ‘Les Roms sont aussi des citoyens européens’, <www.lemonde.fr/idees/article/2010/09/09/les-roms-sont-aussi-des-citoyens-europeens_1409065_3232.html>, visited 24 October 2010. (NB: ‘http://’ is always omitted when citing websites)

1.8 Cross-references

In referring to other chapters and sections of the text, as well as to other footnotes, supra is used to refer to previous sections of the contribution, whereas infra is used to refer to subsequent sections. Cross-references should never refer to specific page numbers. Thus:

- See text to n. 10 supra.
- See text between n. 10 and n. 12 infra.
- Compare n. 10 supra.

2 Spelling, style and quotation

In this section of the authors’ guidelines sheet, we would like to set out some general principles of spelling, style and quotation. We would like emphasise that all principles in this section are governed by another principle – the principle of consistency. Authors might, for instance, disagree as to whether a particular Latin abbreviation is to be considered as ‘common’ and, as a consequence, as to whether or not that abbreviation should be italicised. However, we do humbly ask our authors to apply the principle of consistency, so that the same expression is either always italicised or never italicised throughout the article.

2.1 General principles of spelling

- Aim for consistency in spelling and use of English throughout the article.
- Only the use of British English is allowed.
- If words such as member states, directives, regulations, etc., are used to refer to a concept in general, such words are to be spelled in lower case. If, however, the word is intended to designate a specific entity which is the manifestation of a general concept, the first letter of the word should be capitalised (NB: this rule does not apply to quotations). Thus:
  - [...] the Court’s case-law concerning direct effect of directives [...]
  - The Court ruled on the applicability of Directive2004/38. The Directive was to be implemented in the national law of the member states by 29 April 2006.
  - There is no requirement that the spouse, in the words of the Court,‘has previously been lawfully resident in another Member State before arriving in the host Member State’.
- Avoid the use of contractions.
- Non-English words should be italicised, except for common Latin abbreviations.

2.2 General principles of style

- Subdivisions with headings are required, but these should not be numbered.
- Use abbreviations in footnotes, but avoid abbreviations in the main text as much as possible.
- If abbreviations in the main text improve its legibility, they may, nevertheless, be used. Acronyms are to be avoided as much as possible. Instead, noun phrases are to be reduced to the noun only (e.g., ‘the Court’ for ‘the European Court of Human Rights’). If this should prove to be problematic, for instance because several courts are mentioned in the text (e.g., the Court of Justice and the European Court of Human Rights), we ask our authors to use adjectives to complement the noun in order to render clear the distinction between the designated objects (e.g., the Luxembourg Court/the European Court and the Strasbourg

Court/the Human Rights Court). As much will depend on context, we offer considerable liberty to our authors in their use of abbreviations, insofar as these are not confusing and ameliorate the legibility of the article.

- In English titles, use Title Case; in non-English titles, use the national style.

2.3 General principles of quotation

- Quotations are to be placed between single quotation marks, both in the main text and in the footnotes (thus: ‘aaaaa’).
- When a quotation forms part of another quotation, it is to be placed between double quotation marks (thus: ‘aaaaa “bbbbb” aaaaa’).
- Should a contributor wish to insert his own words into a quotation, such words are to be placed between square brackets.
- When a quotation includes italics supplied by the contributor, state: [emphasis added].