



General Principles in Small Claims Procedures

How far can reductions go?

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1. Overview of the European Small Claims Procedure



- **Historic development**
 - 1999: Tampere European Council
 - 2002: „**Green Paper** on a European order for payment procedure and on measures to simplify and speed up small claims litigation“
 - 2005: „**Proposal** for a regulation of the European Parliament and of the Council establishing a European Small Claims Procedure“
 - 2007: Small Claims Regulation enters **into force**
 - 01.01.2009: Small Claims Regulation is **applicable**
- **Purpose**
 - Simplification and speeding up of **litigation**
 - Facilitation of **recognition and enforcement**

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1.1. Scope of the Regulation



- **Cross-border case:** At least one of the parties is domiciled or habitually resident in a MS other than the MS of the seized court
- **Civil and commercial matters:** Generally applicable, except for
 - the **status or legal capacity** of natural persons;
 - **rights in property** arising out of a matrimonial relationship, maintenance obligations, wills and succession;
 - **bankruptcy**, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
 - **social security**;
 - **arbitration**;
 - **employment law**;
 - **tenancies of immovable property**, with the exception of actions on monetary claims; or
 - **violations of privacy and of rights relating to personality**, including defamation.
- Claim **doesn't exceed € 2.000.-**
 - Interest, expenses and disbursements are not taken into consideration

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1.2. Simplifications for Small Claims



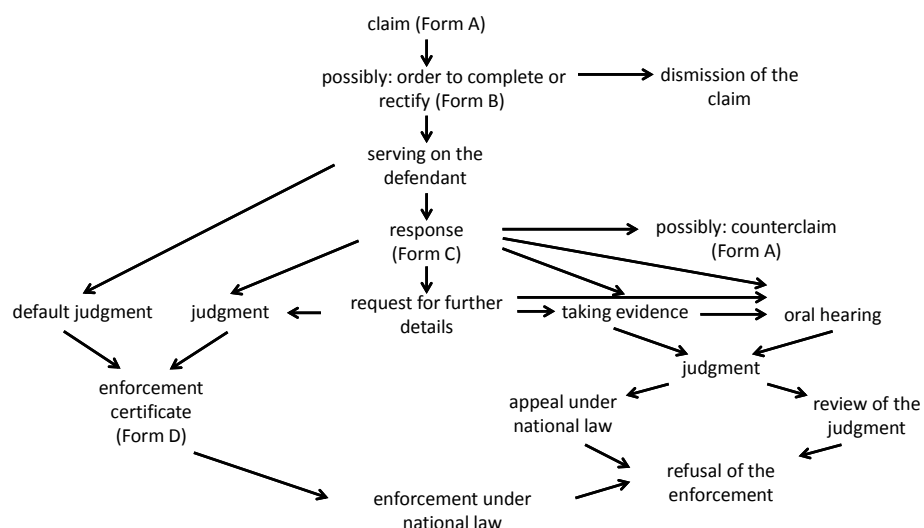
- Use of **standard forms**
- Generally a **written procedure**
 - An oral proceeding shall only be held
 - if the **court considers** this to be **necessary**, or
 - according to a **party's request**
 - the court may refuse
 - An oral hearing can be held though **video conference or other communication technology**
- **Limited taking of evidence**
- Legal representation is **not mandatory**

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1.3. Conduct of the Procedure



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1.4. Enforcement in other Member States I



- **Recognition** without any possibility of opposing
- **Enforcement** without the need for a declaration of enforceability (no exequatur necessary)
 - Enforcement **requires**:
 - Copy of the **judgment**
 - Copy of the **certificate concerning the judgment** (translated if necessary)

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1.4. Enforcement in other Member States II



- **Refusal** of enforcement upon application, if
 - judgment is **irreconcilable** with an earlier judgment**AND**
 - **same cause of action** - between the **same parties**;
 - the earlier **judgment was given in the MS of enforcement** or fulfills the conditions necessary for its recognition in the MS of enforcement; and
 - the irreconcilability was **not** and could not have **been raised** as an objection
- **Review** of the judgment as to its substance **inadmissible**

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2. The principles of public and oral proceedings I

- **European Convention for the Protection of Human Rights**
 - Austria: constitutional status
 - EU: Incorporated in the third pillar of the „EU fundamental right protection system“ as **general principle of European Union law**
- **European Charter of Fundamental Rights**
 - One of the three pillars of the EU fundamental right protection system

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2. The principles of public and oral proceedings II

- Art 6 ECHR: *„in the determination of his civil rights and obligations [...], everyone is entitled to a fair and public hearing [...] by an independent and impartial tribunal“*
 - Principle of **public proceedings**
 - Principle of **oral proceedings**
 - **Exceptions:**
 - **Social security** issues that only raise legal or technical questions
 - Issues related to the **custody of a child**
 - Parties **wave** their right to a public and oral procedure
- Art 47 para 2 CFR guarantees the same procedural rights

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3. Compliance of the Regulation with Art 6 ECHR and Art 47 (2) CFR I



- Court conducts an oral hearing *ex officio* or upon party initiative → **no problem**
- Nobody applies for an oral hearing → **no problem**
- A party applies for an oral hearing but the court rejects it → **questionable:**
 - Can the necessity for efficient proceedings justify the abstaining from an oral hearing as broadly as the SCR does?
 - Are written proceedings always faster and cheaper?
 - Can the hearing through video conference solve the problem?
 - What if only the claimant asks for an oral procedure? Did he waive his right by choosing the Small Claims Procedure for his legal action?

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3. Compliance of the Regulation with Art 6 ECHR and Art 47 (2) CFR II



- **Result**
 - Even though the court is authorized to reject an application for an oral hearing, it **generally has to sustain** such a **motion**
 - Interpretation in **constitutional accordance**
 - In **exceptional cases** (such as the ones that have been approved by the European Court of Human Rights) the **rejection** can be in **accordance with the law**
 - But: **sharp boundaries**

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4. Conclusion



- Since 01.01.2009: Claimant can chose European Small Claims Procedure for **cross-border enforcement of minor claims**
- **Reduced conduct of the procedure**
 - written procedure, reduced taking of evidence, no exequatur
- **Possible conflict with human rights**
 - Rejection of an application for an oral hearing only within strict boundaries

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**Thank you very much
for your attention!**