

## A Comparison of National and EU Options for Summary Procedures in Slovakia

- European Payment Procedure
- Small Claims Procedure

- Both instruments are considered as optional instruments under Slovak law
- They have not replaced any national rules
- They are part of the national law and considered as national rules
- They are reflected in the Code of Civil Procedure (of 1963 with 71 amendments only 5 adopted before 1989)

## European Payment Order

- Regulation (EC) No. 1896/2006 of the European Parliament and of the Council creating a European order for payment procedure
- Reflected by § 174a of Slovak CCP specifying the specific requirements in addition to the domestic payment order procedure
- Specific requirements related to service:
  - only personal service is allowed
  - exemption when EPO is served to the representative of the defendant
  - EPO is served abroad

## European Payment Order

- Review Procedure:
  - With reference to Article 29(1)(b) of the Regulation and pursuant to § 228 et seq. of the Slovak CCP, an application for an extraordinary legal remedy may be lodged with the competent court which ruled at first instance (i.e. district court for the defendant)

## European Payment Order

- Means of communication with the Slovak courts  
(art 29(1)(c) of the Regulation):

- assimilated with the general requirements for any submission to the court stipulated in 42 of the CCP („A submission may be made in writing, by means of a minuted oral statement, electronically or by fax. An electronic submission containing an application relating to the merits of the case or an application for an interim measure must be followed up within three days in writing or by a minuted oral statement; a submission which has been signed by means of a guaranteed electronic signature need not be followed up. Where the application is submitted by fax, the original must be provided within three days. Submissions not followed up in this way within three days will be disregarded)
- from January 2012 forms for domestic PO (together with other forms for court submissions) are on MoJ website (in addition to their usual publication in the secondary legislation) and can be sent electronically

## European Payment Order

- Competent court is the general court of the defendant (district court; appeal - regional court)
- Article 29(1)(d) and Article 21(2)(b) of the Regulation: the accepted **language** for completion of the certificate should be Slovak
- very low use of EPO in Slovak courts – estimation: less than 1% in comparison to the value of domestic PO (66.476 in 2010; 50.700 in 2011)
- low use of EPO by Slovak baillifs – aprox. 12%

## European Payment Order

- Disadvantages identified by practitioners (review in 2010):
  - limited possibilities of using this instrument
  - misgivings about procedural delays due to the lack of knowledge
  - lacking knowledge of professionals and public about EPO

## European Payment Order

- Summary procedure for fulfilment (other than pecuniary) applicable as of 15th October 2008 – new form of PO
- examples of fullfilments imposed by court:
  - obligation to render a thing
  - obligation to apologize
  - obligation to refrain from acting
  - obligation to conclude contract
  - obligation to leave from immovable property

## European Small Claims Procedure

- Regulation (EC) No 861/2007 of the European Parliament and Council establishing a European Small Claims Procedure
- Large amendment of CCP in 2008 (applicable of 15th October 2008) introduced into the Slovak legal system the „internal“ small claims procedure/petty claims procedure
- Difference: definition of small claim: 500.- eur versus 2000.- eur

## European Small Claims Procedure

- Competent is the general court of the defendant  
(district court; appeal is decided by the regional court)
- Means of communication with the Slovak court:  
(Article 4(1) of the Regulation)  
- assimilated with the general requirements for any submission to the court stipulated in 42 of the CCP („A submission may be made in writing, by means of a minuted oral statement, electronically or by fax. An electronic submission containing an application relating to the merits of the case or an application for an interim measure must be followed up within three days in writing or by a minuted oral statement; a submission which has been signed by means of a guaranteed electronic signature need not be followed up. Where the application is submitted by fax, the original must be provided within three days. Submissions not followed up in this way within three days will be disregarded“)
- The acceptable language (Article 21(2)(b) of the Regulation) is Slovak

## European Small Claims Procedure

- very low use of SCP at Slovak courts – estimation: less than 1% in comparison to the value of domestic small claims procedures
- In 2009: 38.726 cases decided using domestic small claims procedure (petty claims under 500.-eur) (comp.: overall 1.105.997 all civil cases decided by courts)

## European Small Claims Procedure

- Disadvantages identified by practitioners (review in 2010):
  - small number of cross border disputes
  - avoiding jurisdiction of Slovak courts by choosing foreign court or arbitration
  - misgivings about procedural delays due to the lack of knowledge
  - estimated costs of procedure may exceed the claim to be enforced or disproportionate
  - if foreign courts have jurisdiction, it is difficult for professionals to find out the estimated amount of procedure costs, including costs of legal representation abroad
  - lacking knowledge of professionals
  - presumed complexity
  - distrust towards instrument different from national ones

## European Small Claims Procedure

- Typical features of small claims/petty procedure:

### 1. decision taken without oral hearing

- recent amendment of the CCP effective from 1st January 2012 following from the practice deleting the obligatory requirement to conduct hearing in the appellate court, if the first instance court decided without hearing
- in the Czech Republic there is no appeal possible against the decision of the district court in the small claims (petty) procedure, the Czech Constitutional Court will probably address this issue from the point of view of the right to fair trial

## European Small Claims Procedure

### 2. costs of the proceedings and legal representation

- recent practice in some Slovak courts deciding petty cases of travelling without ticket in city transport (around 40 eur) not awarding any costs of legal representation
- similar situation in Czech courts resulted to hundreds of complaints for infringement the access to court before Czech Constitutional Court, which decided that in petty cases having standard and massive character it does not constitute infringement

- Thank you very much for your attention.

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