

New types of European Civil Proceedings in the Slovak Republic

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Resumé:

In order to provide the parties of the cross-border disputes better access to justice with regard to cross-border claims, two regulations have been recently adopted: Regulation (EC) No. 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (hereinafter referred to as “Regulation on order for payment”) and Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (hereinafter referred to as “Regulation on Small Claims Procedure”, together hereinafter referred to as “Regulations”).

The regulation provided by the given Regulations does not mean the harmonization of the national procedural orders of the Member States, but the special procedure available for the parties of the cross-border disputes. The benefit of such procedure shall consist in smooth recognition and enforcement of the judgment in any other EU Member State without exequatur. The Regulations include only basic framework of the procedure. The questions not stipulated in the Regulations shall be governed by the national procedural law of the Member States.

I.

The cross-border dispute (case) is defined identically in both Regulations, as the one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court seised. Therefore, it is sufficient if the claimant has his/her residence in one Member State and the defendant has his/her property in different Member State.

The court jurisdiction shall be determined in accordance with the Council Regulation (EC) No. 44/2001 of 22 December 2000, so-called Regulation Brussels I. However, in Regulation on Small Claims Procedure, there is no explicit reference to the Regulation Brussels I. Therefore, the judgments under Regulation on Small Claims Procedure could be rendered also by the court of the Member State which established its jurisdiction under its national law in cases not covered by Regulation Brussels I. (Art. 4 of Regulation Brussels I.)

Both Regulations in question pay attention to the transparent method of service of documents. If the European order for payment or claim form in small claims procedure have been served by a method without proof of receipt by the defendant personally, both Regulations explicitly provide the possibility for the defendant to apply for a review of the judgments rendered in such proceedings. In case of European order for payment, this is possible even after the expiry of the time limit for lodging a statement of opposition to European order for payment. In case of small claims procedure, the provision of Art. 18 of Regulation on Small Claims Procedure raises question, whether the remedy stated in Art. 17 thereof shall be admissible for the parties only in cases where service has not been provided by a method with proof of receipt in situations described in Art. 18. From preparatory works leading to the adoption of Regulation on Small Claims Procedure it is obvious that such an interpretation shall not apply and the given provision shall provide the observance of certain minimum standards of serving documents. However, Member States will have to amend their national law accordingly.

II.

The Regulation on Small Claims Procedure has also become the source of newly proposed legal regulation in the Slovak Republic – draft amendment of Slovak Code of Civil Procedure. Whereas Regulation on Small Claim Procedure applies to cases with cross-border implications, draft amendment of Slovak Code of Civil Procedure introduces also to Slovak procedural law (i.e. to strictly domestic cases) the concept of small claims, definition of which is not known today and it does not necessarily need to be the same as the definition provided by Regulation on Small Claims Procedure. The aim of this new institute in Slovak civil procedure is to strengthen the principle of promptitude and efficiency of the civil proceedings and to provide the prompt administration of justice and smooth enforcement of law. Nevertheless, this will happen to the detriment of principle of oral and immediate procedure.

By the draft amendment, the rules similar to those stated in Regulation on Small Claims Procedure for cross-border cases are being introduced for domestic small claims procedure.

According to the draft amendment of the Slovak Code of Civil Procedure, in small claims procedure the appeal shall not be admissible. It is, indeed, questionable whether the total exclusion of an appeal in small claims procedure will not be contrary to the recommendation on minimum standards for review stated in Preamble to the Regulation on Small Claims Procedure, or to the right for effective remedy.

Conclusion

Two recent European Regulations, Regulation on order for payment and Regulation on Small Claims procedure keep number of issues open. Eventually, the Regulations in question enable considerable divergence due to the discrepancies in national procedural orders. Moreover, the Regulations contain several provisions which may lead in the future to the breach of the equality or legal certainty of the parties of the given proceedings. Since today approximately half a year remain to the start of the application of Regulations, we will see how their application will look like in practice of particular Member States and how this application will be influenced by national procedural orders and *vice-versa*.

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