

European Small Claims Procedure in Slovakia

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Abstract: *The paper focuses on the peculiarities of the European Small Claims Procedure and the application of this mechanism in the Slovak Republic. The main provisions of the European Union Regulation (EC) No. 861/2007 (in full Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure), which introduces this procedure, are investigated, in particular the stages of consideration of the case from the submission of the application by the applicant to the execution of the court judgment and the possibility of appeal. Particular attention is paid to the provisions of the Contentious Civil Procedure Code of the Slovak Republic, which regulates the procedural actions during consideration of small cases, which are not regulated by the above-mentioned European Union Regulation (EC) No. 861/2007. The practical component is analysed on the basis of court cases considered by courts of the first instance in Slovakia. The problematic issues that arise during the application of the European Small Claims Procedure are highlighted.*

Key Words: *Civil Law; European Small Claims Procedure; Small Claims; Simplified Proceedings; the European Union Regulation (EC) No. 861/2007; Cross-border Cases; the Contentious Civil Procedure Code; Consideration of the Case within a Reasonable Time; Access to Justice; Principle of Proportionality; Principle of Equality of Arms; the Slovak Republic.*

Introduction

The Resolution No. (78) 8 on Legal Aid and Advice, adopted by the Committee of Ministers of the Council of Europe on 2 March 1978, states in the Article 1 that “no one should be prevented by economic obstacles from pursuing or defending his/her right before any court determining civil, commercial, administrative, social, or fiscal matters.”¹ Indeed, in small and simple cases with a low cost of the claim, it was previously un-

¹ See *Resolution No. (78) 8 on Legal Aid and Advice* [adopted by the Committee of Ministers of the Council of Europe on 2 March 1978].

profitable for the claimant to initiate legal proceedings, due to the court costs which actually eliminate the possibility of an effective legal protection of the claimant. In international disputes, the costs of the proceedings (court fees, costs of moving to another country, costs of translation of documents) more than double. This affects such important principles of justice as the right of access to justice, the principle of proportionality, consideration of the case within a reasonable time.² Delay in judicial proceedings, in addition to creating uncertainty and prolonged stress before a court decision, also means denying justice. Inefficiency and injustice in such cases are related.³ To remedy this situation, on 11 July 2007, the Regulation (EC) No. 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure (hereinafter referred to as the “Regulation (EC) No. 861/2007”) introduced the European Small Claims Procedure, which has been in force since 1 January 2009 in all the European Union Member States except Denmark.⁴ This procedure is an alternative as a unified procedure in the field of small claims at the European level for litigation in courts of the European Union Member States, because there are two more unified procedures at the European level – the European Enforcement Order for Uncontested Claims (adopted by the Regulation (EC) No. 805/2004 of the European Parliament and of the Council of 21 April 2004) and the European Order for Payment Procedure (created by the Regulation (EC) No. 1896/2006 of the European Parliament and of the Council of 12 December 2006). As these two above-mentioned procedures apply to undisputed claims, it can be said that the Regulation (EC) No. 861/2007 is unique and progressive. However, due to the specifics of the national legislations of the European Union Member States, the Regulation (EC) No. 861/2007 cannot cover all issues and accordingly leaves the right to the European Union Member

² The right to a trial within a reasonable time is enshrined in the European Convention on Human Rights (the Convention for the Protection of Human Rights and Fundamental Freedoms). The Article 6 of the mentioned Convention states that everyone has the right to a fair and public hearing within a reasonable time.

³ See BLOEMINK, R., S. P. W. van DOOREN, L. I. M. ENTJES, S. A. H. van GOMPEL and F. FERNHOOUT. Immediate Judgments in Civil Proceedings in the Netherlands – An Experiment. In: C. H. van RHEE and A. UZELAC, eds. *Truth and Efficiency in Civil Litigation: Fundamental Aspects of Fact-finding and Evidence-taking in a Comparative Context*. 1st ed. Cambridge: Intersentia, 2012, pp. 391-400. *Ius Commune Europaeum*, no. 111. ISBN 978-1-78068-133-7.

⁴ See *Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure*. OJ EU L 199, 2007-07-31, pp. 1-32.

States, including Slovakia, to use their domestic legislations in matters not covered by the Regulation (EC) No. 861/2007.

1 Features of the European Small Claims Procedure

The purpose of the Regulation (EC) No. 861/2007 is to simplify and to expedite the consideration of small claims in cross-border disputes, to reduce costs as well as to eliminate the judicial procedures necessary for the recognition and enforcement of judgments.⁵ The procedure in question can be used under the following conditions:

- ✚ in cross-border cases, which are those in which at least one of the parties is domiciled or habitually resident in a European Union Member State other than the Member State of the court seized;
- ✚ it may apply only to civil and commercial matters, but there are some exceptions;⁶
- ✚ the value of the claim may not exceed EUR 5,000.

The European Small Claims Procedure does not apply, in particular, to revenue, customs, or administrative matters or to the liability of the State for acts and omissions in the exercise of a State authority (“*acta jure imperii*”).

The peculiarities of the European Small Claims Procedure are the alternative procedure (the claimant has a choice to initiate the European Small Claims Procedure or to file a lawsuit under national rules), optional participation of a lawyer, emphasis on writing procedure, availability of special forms, limited appeal, automatic execution of the judgment without the need to go through the exequatur procedure, truncation of certain procedural actions that are not necessary for small cases to resolve the case properly.

⁵ See Article 1 of the *Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure*. OJ EU L 199, 2007-07-31, pp. 1-32.

⁶ Due to the national peculiarities in material and procedural aspects, it is more advisable to consider some categories of cases in court under the national legislation of the respective country. According to the Article 2 of the *Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure*. OJ EU L 199, 2007-07-31, pp. 1-32, this Regulation shall not apply to matters concerning: legal capacity of a natural person; property rights arising from matrimonial relationship; maintenance obligations; wills and succession; bankruptcy; social security; arbitration; employment law; tenancies of immovable property, with the exception of actions on monetary claims; violations of privacy and of rights relating to personality.

The purpose of simplified proceedings, compared to general proceedings, is to save time and costs,⁷ which should go with the real purpose of litigation not only to resolve the dispute, but also the real protection of individual rights and interests.⁸ In a simplified procedure, the main thing is to maintain a balance between a timely resolution of the case, simplification of procedural actions and proper consideration of the case, and a fair judgment.

During its existence, since 2007 the European Small Claims Procedure has reduced the term of consideration of small cases with a foreign element from 2.5 years to 5 months, which shows the true effectiveness and important value of this mechanism.⁹

2 Jurisdiction

For the purpose of applying the Regulation (EC) No. 861/2007, the jurisdiction of the court is determined in accordance with the Article 25 (1). It is up to the European Union Member State to determine which courts in the country have jurisdiction to conduct proceedings under the European Small Claims Procedure. In the Slovak Republic, these are the courts of the first instance – the district courts (in Slovak okresné sudy).¹⁰

The Regulation (EC) No. 861/2007 does not contain a provision on the jurisdiction, i.e. determination to which court the claim should be filed. However, Item 4 in Annex 1 states that the court has jurisdiction under the Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on Jurisdiction and the Recogni-

⁷ See FERRARI, F. The Judgment on Facts in Italian Summary Proceedings. In: C. H. van RHEE and A. UZELAC, eds. *Truth and Efficiency in Civil Litigation: Fundamental Aspects of Fact-finding and Evidence-taking in a Comparative Context*. 1st ed. Cambridge: Intersentia, 2012, pp. 59-80. *Ius Commune Europaeum*, no. 111. ISBN 978-1-78068-133-7.

⁸ See LAVICKÝ, P., E. DOBROVOLNÁ, R. DÁVID, M. HRDLIČKA, R. CHALUPA and T. PONDIKASOVÁ. *Moderní civilní proces*. 1. vyd. Brno: Masarykova univerzita v Brně, 2014. 268 p. *Acta Universitatis Brunensis: Iuridica*, no. 499. ISBN 978-80-210-7601-3.

⁹ See *Európske konanie vo veciach s nízkou hodnotou sporu*. In: *SlovenskyExporter.sk* [online]. 2017-07-14 [cit. 2021-04-22]. Available at: <https://www.slovenskyexporter.sk/2017/07/14/europske-konanie-vo-veciach-s-nizkou-hodnotou-sporu/>.

¹⁰ See *Informácia Slovenskej republiky podľa článku 25 nariadenia Rady (ES) č. 861/2007 z 11. 07. 2007, ktorým sa ustanovuje európske konanie vo veciach s nízkou hodnotou sporu*. In: *Ministerstvo spravodlivosti Slovenskej republiky* [online]. 2021 [cit. 2021-04-22]. Available at: <https://www.justice.gov.sk/Stranky/Nase-služby/Medzinarodne-pravo/Justicna%20spolupraca%20v%20obcianskych%20a%20obchodnych%20veciach/Prame-ne%20prava/Pravne%20predpisy%20Európskej%20unie/Notifikacia-ku-konaniu-vo-veci-s-nizkou-hodnotou.aspx>.

tion and Enforcement of Judgments in Civil and Commercial Matters. Subject to this Regulation, persons domiciled in a European Union Member State shall, whatever their nationality, be sued in the courts of that Member State. Persons who are not nationals of the European Union Member State in which they are domiciled shall be governed by the rules of jurisdiction applicable to the nationals of that Member State.¹¹ As a general rule, the principle of “*actor sequitur forum rei*” applies. An important exception applies to consumers who in many cases are given the choice to sue their national courts.¹²

Determining the correct jurisdiction is one element of a speedy resolution of a case and, therefore, the international element complicates the issue. It can be problematic for an ordinary citizen without legal knowledge. For instance, in the Slovak Republic, if the dispute or the case does not fall within the jurisdiction of the court of the Slovak Republic, the court shall immediately stop the proceedings.¹³ This situation was present in the Decision of the District Court of Bratislava I of 23 September 2020 in the case No. 32Cb/80/2019. In this small case, the court stayed the proceedings due to the lack of jurisdiction, as a fact which gave rise to the right to compensation for an unjust enrichment that occurred in the Czech Republic.¹⁴

3 Filing a claim

In accordance with the Article 19 of the Regulation (EC) No. 861/2007, subject to the provisions of this Regulation, the European Small Claims Procedure shall be governed by the procedural law of the European Union Member State in which the procedure is conducted. In the Slovak Republic, procedural issues not covered by the Regulation (EC) No. 861/2007 are governed by the Contentious Civil Procedure Code of the Slovak

¹¹ See *Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters*. OJ EU L 351, 2012-12-20, pp. 1-32.

¹² See CORTÉS, P. The Need for Synergies in Judicial Cooperation and Dispute Resolution: Changes in the European Small Claims Procedure. In: B. HESS and X. E. KRAMER, eds. *From Common Rules to Best Practices in European Civil Procedure* [online]. 1st ed. Baden-Baden: Nomos, 2017, pp. 379-402 [cit. 2021-04-22]. Studies of the Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law, no. 8. ISBN 978-3-8452-8521-4. Available at: <https://doi.org/10.5771/9783845285214-379>.

¹³ See *Act No. 160/2015 Coll. on the Contentious Civil Procedure Code, as amended* [Zákon č. 160/2015 Z.z. Civilný sporový poriadok v znení neskorších predpisov].

¹⁴ See *Decision of the District Court of Bratislava I Ref. No. 32Cb/80/2019* [2020-09-23].

Republic (in Slovak Civilný sporový poriadok).¹⁵ However, the Regulation (EC) No. 861/2007 does not specify the limits of the application of the national law. It may have been done on purpose, as each country has its own unique judicial system and procedure. It is quite difficult to adapt one regulation to the peculiarities of the judicial processes of each European Union Member State.

The Regulation (EC) No. 861/2007 clearly states the procedure for submitting documents in the appropriate forms and the deadlines for their submissions. The procedure is initiated by the claimant who fills in the relevant form A of Annex I of the Regulation (EC) No. 861/2007 and sends it to the competent court by the means of communication available in the relevant European Union Member State. The Slovak Republic, like other European Union Member States, notified the European Union Commission by 1 January 2008 of the means of communication. According to § 125 of the Contentious Civil Procedure Code of the Slovak Republic, the application can be submitted in writing, electronically, or on paper (i.e. the application can be submitted electronically, in person, or by mail).¹⁶ The forms are available in all the official European Union languages at the European Judicial Atlas and may be filled out online.¹⁷ Such forms are available also on the official websites of the European Union Member States. In Slovakia, in particular, the electronic form can be filled directly from the website of the Ministry of Justice of the Slovak Republic or the Central Government Portal. However, these forms can only be completed in Slovak and the person must log into the system and use an electronic signature or an electronic seal.¹⁸

The claim form should contain a description of the evidence supporting the claim and, where appropriate, the claimant should attach to the

¹⁵ See JÚDOVÁ, E. and M. TYROLOVÁ. New Types of European Civil Proceedings in the Slovak Republic. In: R. DÁVID, J. NECKÁŘ, M. ORGONÍK, D. SEHNÁLEK, J. TAUCHEN and J. VALDHANS, eds. *Europeanization of the National Law, the Lisbon Treaty and Some Other Legal Issues* [CD-ROM]. 1. vyd. Brno: Masarykova univerzita v Brně, Právnická fakulta, 2008, pp. 53-60. Acta Universitatis Brunensis: Iuridica, no. 331. ISBN 978-80-210-4630-6.

¹⁶ See *Act No. 160/2015 Coll. on the Contentious Civil Procedure Code, as amended* [Zákon č. 160/2015 Z.z. Civilný sporový poriadok v znení neskorších predpisov].

¹⁷ See KRAMER, X. E. Small Claim, Simple Recovery? The European Small Claims Procedure and Its Implementation in the Member States. *ERA Forum* [online]. 2011, vol. 12, no. 1, p. 121 [cit. 2021-04-22]. ISSN 1863-9038. Available at: <https://doi.org/10.1007/s12027-011-0190-3>.

¹⁸ See Starting the Small Claim Procedure from the Civil Perspective. In: *Slovensko.sk* [online]. 2021-02-22 [cit. 2021-04-22]. Available at: https://www.slovensko.sk/en/life-situation/life-situation/_starting-the-small-claim-proce/.

application any relevant supporting documents, which will significantly expedite the court's consideration of the case. However, as the participation of a lawyer is not mandatory in the European Small Claims Procedure, a claimant who does not have the relevant legal knowledge and skills may not provide all the important details of the subject matter of the dispute. If the court deems it necessary to obtain more information, it will ask the claimant to fill in form B. Within 14 days of receiving the filled form by the court from the claimant, the court sends a copy of these documents with the answer form C¹⁹ to the defendant. The defendant has 30 days to complete and to submit to the court a response form C. After the court receives the defendant's answer, it sends the answer to the claimant within 14 days. The claimant shall have 30 days to respond to any counterclaim.²⁰

The introduction of time limits for the submission of forms in the Regulation (EC) No. 861/2007 is an important measure to ensure that the case is actually dealt with in a short period of time. In this situation, the short period of consideration of the case due to the insignificance of the case will comply with the principle of consideration of the case within a reasonable time. However, as an exception, the Regulation (EC) No. 861/2007 gives the court the right in an exceptional situation to extend the relevant time limits for the protection of the rights of a party to the dispute.

4 Language of the proceedings

The form of the claim, the response, any counterclaim, any response to the counterclaim, and any description of the relevant supporting documents shall be submitted in the language or one of the languages of the court.²¹ Accordingly, the acceptable language of the proceedings under the European Small Claims Procedure in Slovakia is Slovak. However, due to the presence of a cross-border element, such a rule may violate the principle of equality of arms, as the Slovak language may not be under-

¹⁹ See Annex III of the *Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure*. OJ EU L 199, 2007-07-31, pp. 1-32.

²⁰ See Article 5 of the *Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure*. OJ EU L 199, 2007-07-31, pp. 1-32.

²¹ See Article 6 of the *Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure*. OJ EU L 199, 2007-07-31, pp. 1-32.

stood by one party to the dispute. According to § 155 of the Contentious Civil Procedure Code of the Slovak Republic, everyone has the right to be heard in court in his/her native language or in a language that the person understands. The court must provide equal opportunities for the parties to the realization of their rights.

If a party to the proceedings does not understand some aspects of the proceedings due to the lack of knowledge of the language of the court, that party will suffer from the disproportionate principle of equality of arms. Each party has equal opportunities to present its case and evidence on equal terms. This should not put the party in a losing or unequal position.²² The Regulation (EC) No. 861/2007 protects a party in court in this matter only by refusing to obtain procedural documents. The party to the dispute shall have the right to refuse to receive documents sent by the court if it does not understand the language of the documents or the document is written in a non-official language of the European Union Member State to which the document is addressed. In such a situation, the court informs one of the parties (who submitted the relevant document to the court) that it is necessary to translate this document.²³ Under such conditions, the time duration of the proceedings in small cases increases. This violates the purpose of the simplified procedure, which is intended to consider the case without undue delay.

Elena Alina Ontanu and Ekaterina Pannebakker stated in their work that it was more appropriate to state in the Regulation (EC) No. 861/2007 that the document sent to the court must be written or translated into the language of the court proceedings and the document sent to the party must be in a language understood by the receiving party or in an official language of the European Union Member State to where the document is sent.²⁴ This will reduce the time of the procedure and the possi-

²² See SILVESTRI, E. Lost in Translation? Language Differences and Their Impact on Evidence-taking in Litigation. In: C. H. van RHEE and A. UZELAC, eds. *Evidence in Contemporary Civil Procedure: Fundamental Issues in a Comparative Perspective* [online]. 1st ed. Cambridge: Intersentia, 2015, pp. 125-135 [cit. 2021-04-22]. Ius Commune Europaeum, no. 139. ISBN 978-1-78068-525-0. Available at: <https://doi.org/10.1017/9781780685250.008>.

²³ See Article 6 of the *Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure*. OJ EU L 199, 2007-07-31, pp. 1-32.

²⁴ See ONTANU, E. A. and E. PANNEBAKKER. Tackling Language Obstacles in Cross-border Litigation: The European Order for Payment and the European Small Claims Procedure

ble manipulation of one of the parties, which may intentionally delay the case by refusing to receive the documents. In contrast, the court costs are rising due to the translation of the documents. Perhaps, more attention should be paid to the development of electronic forms. Electronic versions of the forms of the Regulation (EC) No. 861/2007 (statement, answer) could contain the function of simultaneous translation of the relevant document into the desired language of the court or the language of the opposing party.²⁵

5 Parties to the European Small Claims Procedure

The Regulation (EC) No. 861/2007 does not disclose the notion of the parties to these proceedings, but only covers the notion of the claimant and the defendant. A special feature of the parties to the European Small Claims Procedure is that at least one of the parties is domiciled or habitually resident in a European Union Member State other than the Member State of the court. Otherwise (if the parties reside in the court district), the case should be dealt with under the national judicial mechanism.

Uncertainty of the parties may cause some misunderstandings. For example, in the case of *ZSE Energia vs. RG*, *ZSE Energia*,²⁶ established in Bratislava (the Slovak Republic), filed a lawsuit as Claimant 1 under the European Small Claims Procedure. However, in this form, *ZSE Energia CZ*, established in the Czech Republic, was indicated as Claimant 2, but subsequently changed its status to an Intervener in accordance with § 81 of the Contentious Civil Procedure Code of the Slovak Republic. Thus, it is not a question of a plurality of claimants with a claim against one defendant, which is allowed in small cases, such as the case of reimbursement of the plaintiffs in the amount of 500 EUR due to the flight delay.²⁷

In the Article 60 of the Contentious Civil Procedure Code of the Slovak Republic, the term “parties to the proceedings” refers to the claimant

Approach. *Erasmus Law Review* [online]. 2012, vol. 5, no. 3, pp. 169-186 [cit. 2021-04-22]. ISSN 2210-2671. Available at: <https://doi.org/10.5553/elr221026712012005003004>.

²⁵ See TULIBACKA, M., M. SANZ and R. BLOMEYER. *Common Minimum Standards of Civil Procedure: European Added Value Assessment: Annex I* [online]. 1st ed. Brussels: European Parliament, European Parliamentary Research Service, 2016. 107 p. [cit. 2021-04-22]. ISBN 978-92-823-9335-2. Available at: https://www.europarl.europa.eu/cmsdata/105660/EPRS_CIVIL_PROCEDURE.pdf.

²⁶ See *Case of ZSE Energia, a.s. v. RG* [2018-11-22]. Judgement of the Court of Justice of the European Union, 2018, C-627/17.

²⁷ See *Decision of the District Court of Bratislava I Ref. No. 6Csp/106/2018* [2019-04-05].

(in Slovak žalobca) and the defendant (in Slovak žalovaný). However, if a third party interferes in the European Small Claims Procedure, what should the court do in such a situation? After all, the Contentious Civil Procedure Code of the Slovak Republic in § 81 stipulates that a person who has a legitimate interest in a result of resolving the case participates in the case together with the claimant or the defendant. In the case of ZSE Energia vs. RG, the competent district court decided to stay the proceedings and to refer the resulting questions to the Court of Justice of the European Union for a preliminary ruling. The Court of Justice of the European Union answered quite reasonably that the concept of “parties” covers solely the applicant and the defendant in the main proceedings, in which the claimant and the defendant have their domicile or their habitual residence in the same European Union Member State as the court or tribunal seized, which does not come within the scope of the Regulation (EC) No. 861/2007.²⁸ This assessment is confirmed by the purpose of the Regulation (EC) No. 861/2007. The Article 1 of the Regulation (EC) No. 861/2007 emphasizes the fact that the purpose of the European Small Claims Procedure, which is optional, is threefold. Its purpose is to make resolving small claims in cross-border cases easier and faster while reducing costs. However, such a goal cannot be achieved if the established procedure involves the participation of a third party, for example, an intervener.

In fact, in the case of ZSE Energia vs. RG, the interference was made with the aim of using the European procedure, not the national one. However, such actions run counter to the purpose of simplified proceedings in small cases. For example, from the point of view of the German law, an arbitrary trial is inadmissible if it is conducted only in order to use the European Small Claims Procedure.²⁹

However, in another case, which was considered under the European Small Claims Procedure, the court granted leave to the Consumer Protection Association (in Slovak Spolok právnej ochrany spotrebiteľa) to intervene on the defendant’s side. In an explanatory note, the court noted that the European Small Claims Procedure is governed by the Regulation (EC) No. 861/2007, while what is not provided for by the Regulation (EC)

²⁸ See *Case of ZSE Energia, a.s. v. RG* [2018-11-22]. Judgement of the Court of Justice of the European Union, 2018, C-627/17.

²⁹ See EICHEL, F. Zur Rolle des Streithelfers bei der Begründung grenzüberschreitender Sachverhalte als Voraussetzung Europäischen Zivilverfahrensrechts. *IPRax – Praxis des internationalen Privat- und Verfahrensrechts*. 2020, Jg. 40, Nr. 1, pp. 7-12, ISSN 0720-6585.

No. 861/2007 is governed by the procedural law of the European Union Member State in which the proceedings are taking place.³⁰ Thus, the two cases with an intervener have different consequences. It is possible that the court made a decision and decided for what purpose the intervention was made. However, interference may complicate proceedings, which, in turn, may undermine the real purpose of the European Small Claims Procedure – simple and expeditious trial without undue procedural steps and costs.

6 Consideration of the case

According to the Regulation (EC) No. 861/2007, within 30 days when the court has received a response from the defendant or the claimant, the court may take the following actions: make a judgment; request from the parties the necessary information; take evidence in accordance with the Article 9 of the Regulation (EC) No. 861/2007; summon the parties to an oral hearing, which must take place within 30 days of the summons.

The easier the case, the less procedural action should be taken by the court and by the parties and the sooner the court will make a judgment. Courts need to resolve a small case quickly, but within a reasonable time if the case is easy to resolve – it is considered in writing, based on the available materials in the case.³¹ Most cases are indeed insignificant and simple due to their claims and the claims are supported by relevant evidence – for example, in such cases as a lawsuit in the amount of 500 EUR for a delayed flight,³² a claim for 580 EUR of loss of luggage,³³ or a lawsuit in the amount of 321 EUR for undelivered goods (an undelivered mobile phone).³⁴

If the defendant does not protest the claimant's application and is passive in the trial, the court applies the national law and bases its decision on the facts alleged by the claimant. According to § 151 of the Contentious Civil Procedure Code of the Slovak Republic, party's facts that

³⁰ See *Decision of the Supreme Court of the Slovak Republic Ref. No. 4XObdo/21/2017* [2017-09-29].

³¹ See NIEMI-KIESILÄINEN, J. Efficiency and Justice in Procedural Reforms: The Rise and Fall of the Oral Hearing. In: C. H. van RHEE and A. UZELAC, eds. *Civil Justice between Efficiency and Quality: From Ius Commune to the CEPEJ*. 1st ed. Antwerp: Intersentia, 2008, pp. 29-45. *Ius Commune Europaeum*, no. 74. ISBN 978-90-5095-802-8.

³² See *Decision of the District Court of Bratislava I Ref. No. 6Csp/106/2018* [2019-04-05].

³³ See *Decision of the District Court of Bratislava V Ref. No. 56C/71/2017* [2019-03-13].

³⁴ See *Decision of the District Court of Bratislava III Ref. No. 60C/40/2019* [2019-11-20].

are not protested by the opposing party are considered indisputable. The court also examines whether the applicant's arguments are substantiated. It should be noted that defendants in small cases do not always respond to the court's proposal and instructions to comment on the claim. In this situation, the court is guided by the Regulation (EC) No. 861/2007, Article 7, and the national law, in accordance with § 273 of the Contentious Civil Procedure Code of the Slovak Republic. The court may, even without appointing a hearing in court, make a judgment if the defendant without good reason did not provide written explanations, arguments, facts at the request of the court within a certain period and the defendant was warned of the consequences of non-performance of these actions. Thus, the court makes judgment by default, as it took place in the decision of the District Court of Bratislava 1 from 19 September 2019³⁵ and in the decision of the District Court of Bratislava 1 from 5 April 2019.³⁶

The court shall appoint an oral hearing if it deems it necessary for consideration of the case or if one of the parties so requests. At the same time, it ensures the principle of being heard in court. The court may reject such a request of a party if it considers that in the circumstances of the case an oral hearing is clearly not necessary for a fair trial. If the court has appointed an oral hearing, priority is given to hearing the case via video conference, with minimal time and money losses for the parties. In considering the case, the court will use the simplest and least burdensome methods of obtaining the evidence.

In the European Small Claims Procedure, representation by lawyers is not mandatory, which saves money and increases access to justice in small cases. However, in consumer disputes, where consumers are mostly not represented by lawyers and sellers or companies hire legal professionals, this can lead to a violation of the principle of equality of arms if appropriate precautions are not put in place.³⁷ Such a balance provides for an active participation of the judge in the case. In addition, in such

³⁵ See *Decision of the District Court of Bratislava I Ref. No. 18Csp/58/2018* [2019-09-19].

³⁶ See *Decision of the District Court of Bratislava I Ref. No. 6Csp/106/2018* [2019-04-05].

³⁷ See CORTÉS, P. The Need for Synergies in Judicial Cooperation and Dispute Resolution: Changes in the European Small Claims Procedure. In: B. HESS and X. E. KRAMER, eds. *From Common Rules to Best Practices in European Civil Procedure* [online]. 1st ed. Baden-Baden: Nomos, 2017, pp. 379-402 [cit. 2021-04-22]. Studies of the Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law, no. 8. ISBN 978-3-8452-8521-4. Available at: <https://doi.org/10.5771/9783845285214-379>.

proceedings, the court must play a key role in achieving the objectives of simplified proceedings and properly apply the national law. The court gives a wide range of control over the case, including the right to decide whether to hold an oral hearing, and the means of gathering evidence. In general, the judge becomes responsible not only for the formal course of the process, but also for the content of the process, in order to find the material truth; the judge ceases to be passive, giving questions and instructions.

As noted earlier, what is not regulated by the European Union Regulation (EC) No. 861/2007 is governed by the national law. For example, the Regulation (EC) No. 861/2007 does not specify the possibility of withdrawing the claim by the claimant, as it was in the decision of the District Court of Bratislava II from 30 July 2020.³⁸ In the above-stated case, the claimant first initiated proceedings under the European Small Claims Procedure and later filed an application for withdrawal of the claim and asked the court to stay the proceedings and did not demand costs from the one party. The claimant justified the rejection of the claim on the grounds that a settlement agreement had been concluded between the claimant and the defendants. Thus, the court was guided by § 144 and § 145 of the Contentious Civil Procedure Code of the Slovak Republic, on the basis of which the claimant may withdraw the claim and if the claim is withdrawn in full, the court suspends the proceedings.

7 Judgment and costs of the proceedings

The court makes a judgment within 30 days from the date of oral hearing or receipt by the court of all necessary information (if the case was considered in writing). According to § 219 of the Contentious Civil Procedure Code of the Slovak Republic, if the case was considered in writing proceedings, the court must announce the place and time of the public announcement of the judgment on the court's official notice board and on the website of the competent court at least five days in advance.

In the judgment, in addition to resolving the case on the merits, the court decides on the costs of the proceedings. According to the Article 16 of the Regulation (EC) No. 861/2007, the losing party bears the legal costs, but the court should not award the winning party costs that are unnecessary or incompatible with the claim. This question is a matter for the national law of the European Union Member State whose court heard

³⁸ See *Decision of the District Court of Bratislava II Ref. No. 18Csp/121/2018* [2020-07-30].

the case. Pursuant to § 255 of the Contentious Civil Procedure Code of the Slovak Republic, the court decides to pay the legal costs of the party depending on the success of the case. Simplified proceedings serve the purpose of maintaining a balance of costs. If it is not apparent from the case file that the successful applicant has not incurred any costs, the defendant's reimbursed costs are EUR 0. "*Impossibilium nulla obligatio est*" – the impossible cannot be imputed as an obligation.³⁹ The decision of the Supreme Court of the Slovak Republic No. 6 Cdo 5/2017 of 25 January 2017 states that "the principle of the reasonableness of the law (the principle of a "common sense"), which protects the value of rationality, is derived from the idea of the rule of law within the meaning of the Article 1 (1) of the Constitution of the Slovak Republic, and the principle of efficiency, such interpretation, and application of the provisions of § 262 of the Contentious Civil Procedure Code of the Slovak Republic (when the court accepts the right to reimbursement of the court costs)."⁴⁰ Excessive legal costs are an imbalance that undermines the effectiveness of the European Small Claims Procedure and lowers the credibility of national justice and the efficiency of justice in general.

8 Review of the judgment

There are two ways to appeal against a judgment taken under the European Small Claims Procedure.

The first way is to review it in accordance with the Regulation (EC) No. 861/2007, which still leaves the elements of protection for the party. Pursuant to the Article 18 of the Regulation (EC) No. 861/2007, a defendant who did not enter an appearance shall be entitled to apply for a review of the judgment to the court that gave the judgment if the defendant has not been served with the claim form or summoned to a court hearing or he/she did not have enough time to protect himself/herself. In addition, the Regulation (EC) No. 861/2007 provides for the right to appeal if the defendant was prevented from contesting the claim by reason of force majeure or due to the extraordinary circumstances, without any fault on his/her part. The application for a review can be submitted within 30 days from the moment when the defendant has read the content of the court's decision.

³⁹ See Formula of the Roman civil law – "Digests" L, 17, 185.

⁴⁰ See *Decision of the Supreme Court of the Slovak Republic Ref. No. 6 Cdo 5/2017* [2017-01-25].

The second way is to appeal in accordance with the national law of the court that has given the judgment. The law of the Slovak Republic allows for the possibility of appealing a judgment rendered under the European Small Claims Procedure. Pursuant to § 362 of the Contentious Civil Procedure Code of the Slovak Republic, an appeal may be filed within 15 days of the moment the judgment was given. In addition to the general filing requirements (§ 127 of the Contentious Civil Procedure Code of the Slovak Republic), the appeal must state against which judgment it is directed, to what extent it is appealed, for what reasons the decision is considered incorrect (grounds of appeal), and what the claimant requires. The Article 365 of the Contentious Civil Procedure Code of the Slovak Republic provides much broader grounds for lodging an appeal than the Regulation (EC) No. 861/2007, including:

- ✚ a non-compliance with procedural conditions;
- ✚ due to an incorrect procedure, the court did not allow the party to exercise its procedural rights to the extent that the right to a fair trial was violated;
- ✚ the court decision was given by a dismissed judge or a wrong composition of the court;
- ✚ a defect in the procedure occurred that led to an incorrect resolution of the case;
- ✚ the court of the first instance did not present the proposed evidence, which is necessary to establish the facts;
- ✚ the court of the first instance made incorrect conclusions on the basis of the presented evidence;
- ✚ the established facts are not confirmed, because other means of procedural protection or other means of procedural attack, which were not used, are admissible;
- ✚ the judgment of the court of the first instance is based on an incorrect assessment of the case.

The Contentious Civil Procedure Code of the Slovak Republic prohibits the use of procedural objections that were not used in the court of the first instance, except for objections concerning: procedural time limits; incorrect composition of the court or removal of a judge; it must be proved by them that during the trial, there were defects that could lead to an incorrect decision; the appellant could not refer to the objection in

the court of the first instance without his/her fault.⁴¹ Thus, the possibility of appealing a court decision in the European Small Claims Procedure under two mechanisms – enshrined in the Regulation (EC) No. 861/2007 and the national law, which guarantees the protection of the defendant from an unfair decision, if any, seems positive.

9 Execution of the judgment

A decision taken under the European Small Claims Procedure is recognized and enforced in other European Union countries (except Denmark) without the need for a declaration of enforcement. The enforcement procedure will be governed by the law and procedures of the country in which the decision is to be enforced.⁴²

The issue of execution of a judgment is regulated in the Slovak Republic by the Act No. 233/1995 Coll. on Bailiffs and Execution Activities (Execution Rules) and on Amendments to Certain Laws.⁴³ If the debtor voluntarily fails to comply with the decision to be enforced, the creditor may file a request for enforcement in accordance with special legal regulations.

Although enforcement of a judgment in the European Small Claims Procedure was left to the national rules of the European Union Member States, the Regulation (EC) No. 861/2007 established some minimum rules for enforcement, due to the different legislations of the European Union Member States. The person requesting enforcement of a decision must provide the competent authorities with a copy of the judgment and a certificate issued by the court that issued the judgment, using form D, in accordance with Annex 4.⁴⁴ This certificate must be translated into the language of execution, if necessary. The content of form D shall be trans-

⁴¹ See Article 366 of the Act No. 160/2015 Coll. on the Contentious Civil Procedure Code, as amended [Zákon č. 160/2015 Z.z. Civilný sporový poriadok v znení neskorších predpisov].

⁴² See IATRIDOU, D. European Union: European Small Claims Procedure. In: *Mondaq* [online]. 2020-02-24 [cit. 2021-04-22]. Available at: <https://www.mondaq.com/cyprus/trials-appeals-compensation/896972/european-small-claims-procedure>.

⁴³ See Act No. 233/1995 Coll. on Bailiffs and Execution Activities (Execution Rules) and on Amendments to Certain Laws, as amended [Zákon č. 233/1995 Z.z. o súdnych exekútoroch a exekučnej činnosti (Exekučný poriadok) a o zmene a doplnení ďalších zákonov v znení neskorších predpisov].

⁴⁴ See Article 21 of the Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure. OJ EU L 199, 2007-07-31, pp. 1-32.

lated by a qualified person in one of the European Union Member States. Within the Slovak legal system, an official translation may be made only by a natural person or a legal entity authorized by the State to carry out this activity, in accordance with the Act No. 382/2004 Coll. on Experts, Translators, and Interpreters and on Amendments to Certain Laws.⁴⁵

Conclusions

The European Small Claims Procedure has indeed proved to be the best, with achieving significant and rapid success in small cases with an international element. The adoption of the Regulation (EC) No. 861/2007 is a major step in the development of the civil process in the European Union. Slovakia has taken a significant step in the use of the mentioned procedure by the local courts and the national legislation is well suited to issues not covered by the Regulation (EC) No. 861/2007, including some procedural aspects, such as suspension of proceedings, passivity of the respondent to a court request, and national appeal procedure.

However, there are language problems present. It is advisable to amend the Regulation (EC) No. 861/2007 with a provision which would oblige a party to immediately translate the court documents into the language of the court and the language of the other party, which would significantly save time as the key element of the European Small Claims Procedure.

In addition, in our opinion, the participation of third parties in small proceedings is impractical, except in cases where such persons can assist to resolve the case more quickly and more easily. Interventions usually complicate the proceedings, as such persons may also take procedural steps, submit their written opinions or petitions. Such actions of an intervener may delay and complicate the consideration of the case, which is an obstacle to the realization of the purpose of simplified proceedings.

It is important to emphasize the active participation of the court in the case, which should be welcomed in simplified proceedings, because in such cases representation by lawyers is not mandatory and the parties, especially consumers who oppose certain companies (usually working only with lawyers), are less protected.

⁴⁵ See *Act No. 382/2004 Coll. on Experts, Translators, and Interpreters and on Amendments to Certain Laws, as amended* [Zákon č. 382/2004 Z.z. o znalcoch, tlmočníkoch a prekladateľoch a o zmene a doplnení niektorých zákonov v znení neskorších predpisov].

A positive aspect presents also the possibility of appealing against a court decision rendered in the European Small Claims Procedure, which is allowed by the Contentious Civil Procedure Code of the Slovak Republic. The national legislation of Slovakia contains more grounds for reviewing such court decisions. This means a double protection for the party, including the rules of the Regulation (EC) No. 861/2007.

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