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Influence of Art 47 CFR in European Small Claims Procedure

An example from Slovakia

ReJUS

Scandicci, March 5-6, 2018

Art 47 CFR in European Small Claims Procedure

- **Promissory notes for debts under loan contracts**
 - Including unfair penalties, usurious interest...
 - Awarded to creditors by arbitration tribunal
- **Courts refusal to enforce arbitral awards =>**
 - Promissory notes massively endorsed to Czech entity

Art 47 CFR in European Small Claims Procedure

- **Claims made afresh in European Small Claims Procedure**
- **Regulation 861/2007**
 - **Art 2 – within the scope**
 - **Art 3 – cross-border case**
 - **=>**
 - **Art 5 – claim form forwarded to defendant – NO ANSWER**

Art 47 CFR in European Small Claims Procedure

• Regulation 861/2007

1. Within 30 days of receipt of the response from the defendant, the court... shall give a judgment, **or**

- a) demand further details...,
- b) take evidence...,
- c) summon the parties to an oral hearing...

3. If the court... has not received an answer..., it **shall give a judgment...**

1. Entro trenta giorni dalla ricezione della replica del convenuto... l'organo giurisdizionale emette una sentenza **oppure:**

- a) Richiede dettagli in merito...,
- b) assume le prove...,
- c) ordina la comparizione

3. In mancanza di replica..., l'organo giurisdizionale **emette una sentenza...**

1. Dans un délai de trente jours à compter de la réception... la juridiction rend une décision, **ou:**

- a) demande... de fournir des renseignements complémentaires...,
- b) obtient des preuves...,
- c) convoque les parties à comparaître à une audience...

3. Si la juridiction n'a pas reçu de réponse..., elle **rend une décision...**

Consumer Protection in European Small Claims Procedure

- **Regulation 861/2007**
 - **Art 7 (1)** – after receipt of answer => judgment OR further details / taking evidence / oral hearing
 - **Art 7 (3)** – no answer => JUDGMENT
- **What is court to do, if no answer arrives but doubts exist, as to whether unfair terms are present?**
 - **How to treat abstract promissory note?**

Art 47 CFR in European Small Claims Procedure

- **1st instance**
 - Took evidence ex officio
 - Concluded that defendant is a consumer
 - Scrutinized the underlying agreement
 - Dismissed the claim
- **Appeal**
 - In the absence of answer – taking of evidence not admissible (Art 7(1) vs. (3) of Regulation)

Art 47 CFR in European Small Claims Procedure

- **Preliminary Reference?**
- **Applying „acte-claire-doctrine“**
 - **Recital 8 – regulation „seeks to promote fundamental rights and takes into account... the principles recognised by the Charter“**
 - **Art 38 and 47 CFR – right to effective remedy**
 - **effectiveness of the rights under Directive 93/13 implies requirement of judicial protection (Sánchez Morcillo (par. 35))**
 - **duty to investigate ex officio, whether a terms fall under Directive and to assess such term (Banif Plus (par. 24))**

Art 47 CFR in European Small Claims Procedure

- **Art 51 (1) – CFR addressed to all institution, bodies, offices and agencies of EU**
 - **No obvious reasons why the above interpretation should not apply to Small Claims Procedure under Reg. 861/2007**
- **Art 7 of Reg. 861/2007 to be interpreted as not precluding court from making investigations as to**
 - **Whether defendant is consumer**
 - **Terms of the underlying contracts are unfair (also C-154/15)**



THANK YOU!

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