Influence of Art 47 CFR in European Small Claims Procedure

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An example from Slovakia

ReJUS
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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 institutions, 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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