

Abstract

Faculty of Law, Charles University in Prague, Department of Commercial Law

Dissertation topic: European Order for Payment and European Small Claims Procedure

Author: Mgr. Ing. Jakub E. Chmelík, LL.M.

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1 General Overview

The topic of my dissertation work is European Order for Payment and European Small Claims Procedure. In particular, I examine two European regulations relating to European private international law: (i) Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure and (ii) Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure. An older Czech translation of the term “European Small Claims Procedure” (*Evropské řízení o drobných pohledávkách*) essentially corresponds to the current official Czech translation (*Evropské řízení o drobných nárocích*).

2 Aim, Structure and Content

The aim of my research is to analyze the legal provision of the European order for payment and the European small claims procedure. As a part of this analysis, I also attempt to describe the key correlations between these two regulations and Czech civil procedure regulations. Another aim of my research is to compare European regulation with corresponding Czech regulation, especially in the case of the European order for payment where a parallel provision in Czech procedural law exists.

I endeavor to place the analysis of both regulations within the wider context of the harmonization of civil procedure regulations in the EU member states. Consequently, the aim of this research is also to assess how the regulations contribute to the harmonization of civil procedure regulations in Europe and to suggest any potential development in this direction.

My dissertation is divided into five main parts: Introduction (Part 1); Harmonization of Civil Procedure Regulations in Europe (Part 2); Regulation creating a European Order for Payment Procedure (Part 3); Regulation establishing a European Small Claims Procedure (Part 4); and Conclusions (Part 5).

In Part 1, the topic of my work is defined, and the aims of my research are laid out.

Part 2 explores the legal basis for adopting the regulations of European private international law in the primary legislation of the European Union and the process of harmonizing the civil procedure regulations of the EU member states, including the prospects for future development.

Part 3 contains an analysis of Regulation 1896/2006 and a comparison of the legal regulation of the European order for payment and the order for payment under Czech law.

Part 4 provides an analysis of Regulation 861/2007, including an analysis of the correlations between this regulation and Czech procedural law.

Part 5 offers conclusions relating to my research work, in particular, a more general assessment of the legal provision contained in the regulations and how it contributes to harmonization of civil procedure regulations in EU member states.

3 Primary Resources

Four primary sources of information were used in my research work: (i) legal regulations, (ii) case law, (iii) professional publications and articles, and (iv) available on-line resources relating to the topic.

3.1 Legal Regulations

The key legal regulations relating to my dissertation topic are the two European regulations governing the European order for payment procedure and the European small claims procedure, i.e. Regulation 1896/2006 and Regulation 861/2007. Hence, my dissertation most frequently draws on these regulations.

Of the various legal regulations of the European Union, my research also works with Article 65 of the Treaty establishing the European Community and Article 81 of the Treaty on the Functioning of the European Union, which is the legal basis for the European Union's competence in issuing regulations relating to European private international law.

Since I frequently comment on the correlation between both key regulations and Czech procedural law and in light of the fact that European regulation is compared with Czech procedural law, my research works very closely with Act no. 99/1963 Coll., the Czech Civil Procedure Code.

3.2 Case law

As both of the European regulations are relatively new, no case law of the European Court of Justice is available thus far dealing with these particular regulations. However, reference is occasionally made to case law relating to other European instruments when relevant to the issue at hand.

In addition, reference is made in my research to case law of the European Court of Human Rights and current Czech case law when relevant to the analysis of the specific regulations.

3.3 Professional Publications and Articles

Considering the relatively new nature of the subject matter, only a small quantity of professional literature on the European order for payment and the European small claims procedure is available. Most of the references in my research are to German sources (commentaries and professional articles), although Czech literature has been cited to a lesser extent.

3.4 On-line resources

The on-line resources used in my research work include, in particular, information published by the European Commission on the web pages of the European Judicial Atlas in Civil Matters as well as materials of the European Commission relating to the adoption of both regulations. Specifically, this concerns the Green Paper on a European Order for Payment Procedure and on Measures to Simplify and Speed Up Small

Claims Litigation and the Proposal for a Regulation of the European Parliament and of the Council establishing a European Small Claims Procedure COM/2005/0087 final.

4 Methodology

My research attempts, first and foremost, to provide an analysis of the provisions relating to the European order for payment and the European small claims procedure. To this end, standard methods of interpretation of the legal regulations are employed (an analysis of language, logic, methodology, teleology, etc.) and the relevant case law.

Moreover, a method of comparison is employed for the legal regulations where the European provision is compared with the Czech provision.

5 Conclusions

The results and conclusions relating to my dissertation work include the following:

- The adoption of Regulation 1896/2006 and Regulation 861/2007 had opened up a new era in the unification of civil procedure regulations for the EU member states. The unification of civil procedure regulations had progressed from harmonizing the rules for court competence and recognition and enforcement of decisions in civil and commercial matters up to launching the relatively independent procedures on issuing a European order for payment and a European small claims procedure, which co-exist with the relevant provisions governed by legal regulations on a national level.
- Article 81 of the Treaty on the Functioning of the European Union provides a sufficient legal basis for adopting additional legal regulations in the area of European private and procedural international law, including regulations for supporting the compatibility of the regulation of civil procedure in the EU member states.
- On the whole, the provision regarding the European order for payment (Regulation 1896/2006) can be assessed favorably, even though certain issues were not handled in the most propitious fashion. This concerns, in

particular, regulation of the review of the European order for payment in exceptional cases. One shortcoming, in particular, relating to the adaptation of the European order for payment into Czech law is that a European order for payment must be delivered to the defendant personally, the same as with the Czech order for payment.

- The provision of the European order for payment refers to certain characteristics that correspond to the provision of the order for payment under Czech law (e.g. the non-evidential model of procedures), as well as substantial differences (especially the possibility of delivering a European order for payment abroad).
- Regulation 861/2007 provides only minimum harmonization of the rules for the European small claims procedure, since most of the issues (in particular, the option to lodge appeals) have been left to the member states.
- Under Regulation 861/2007, simplifying the European small claims procedure, especially the written procedure, simplifying the course of evidence, and setting the deadlines for issuing decisions are stated as the principal means for speeding up cross-border small claims litigation and reducing the costs thereof. The relevant rules set out in Regulation 861/2007 are just barely acceptable from the standpoint of securing the right to a fair trial and the right to an adversarial process. Therefore, the role of the judge in securing these rights in the European small claims procedure is increasing.
- The rather concise provision contained in Regulation 1896/2006 and especially in Regulation 861/2007 evokes many questions of interpretation that the courts will need to resolve. In many cases, it may be disputable whether this issue can be resolved through interpretation of the provision contained in the relevant regulation or whether it will be necessary to use national procedural regulations.
- The stance of the majority of the EU member states will apparently be decisive for any additional harmonization or unification of the civil procedure regulations of the member states. In this respect, the current

stance of the member states has been rather conservative. Most of the member states have thus far refused to accept that the measures adopted under Article 81 of the Treaty on the Functioning of the European Union would govern purely national matters.

- Even the Stockholm Programme adopted at the meeting of the European Council in Brussels on 10 and 11 December 2009 does not indicate any interest from the member states in stepping up the harmonization or unification of civil procedure regulations. Although the Stockholm Programme suggests the option of introducing unified minimum norms or standard rules for civil procedures, it does this in relation to the need to increase the procedural guarantees with respect to the planned abolition of the exequatur during recognition and enforcement of court decisions within the European Union.