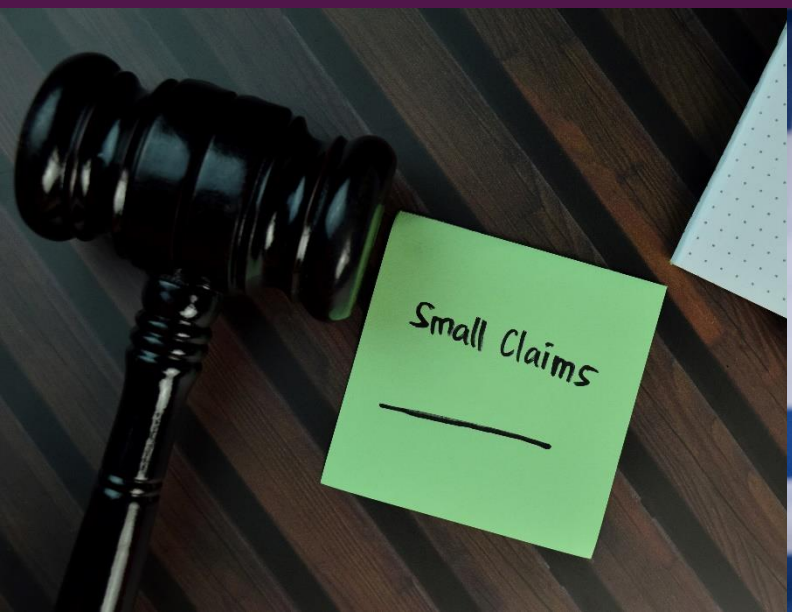
SMALL CLAIMS: COMPARATIVE ANALYSIS OF NATIONAL PROCEDURES WITH RECOMMENDATIONS FOR THE GREEK MINISTRY OF JUSTICE

Fostering transparency of judicial decisions and enhancing the national implementation of the European Convention on Human Rights



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SMALL CLAIMS: COMPARATIVE ANALYSIS OF NATIONAL PROCEDURES WITH RECOMMENDATIONS FOR THE GREEK MINISTRY OF JUSTICE

Fostering transparency of judicial decisions and enhancing the national implementation of the European Convention on Human Rights

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Contents

Introduction

The Hellenic judiciary is undergoing a comprehensive digital transformation with the objectives to expedite and modernise national judicial systems and its proceedings. In 2021 the Civil Procedure Code was amended1, and the procedure to handle small claims was revised providing for the possibility to handle them with the use of forms and of electronic means.

The project *Foster Transparency of Judicial Decisions and Enhancing the National Implementation of the ECHR* (TJENI), implemented by the Council of Europe, organised a workshop in Athens on 21 March 2024 to allow an exchange of experiences among representatives of different jurisdictions on handling contested and uncontested small claims[2]. Contributions from Austria, Portugal, Poland, Latvia, Romania, the United Kingdom, Cyprus and Greece touched upon legislative frameworks, reform efforts and technological solutions to improve the efficiency of these processes. The European Small Claims procedure[3] was also discussed. Some of the very valuable information and experiences shared by the participants are included in this document.

This report summarises different procedures which were presented during the workshop and helps to identify good practices which can support the Hellenic Judiciary and the Ministry of Justice on their reform path with the aim of establishing a Small claims procedure which is human rights compliant, transparent, innovative, and adequately supported by an electronic platform.

[1] Law 4842/2021.

[2] The agenda is in Annex 4.

[3] *Regulation (EC) No 861/2007 establishing a European Small Claims Procedure* and *Regulation (EU) 2015/2421 amending Regulation (EC) No 861/2007 establishing a European Small Claims Procedure*. Links and additional information are available on the EU e-Justice portal: https://e-justice.europa.eu/42/EN/small_claims?init=true

1. Small claims procedure

Simplified and expedited procedure for resolving disputes involving relatively small amounts of money, typically up to a certain threshold ("Small claims procedure") has been introduced in many jurisdictions for efficiency, cost-effectiveness and accessibility for litigants without legal representation.

Monetary claims of small value constitute the majority of all civil cases in the courts of lower jurisdiction. A good portion of those are claims filed by companies (typically mobile phone operators, utilities providers or loan collectors) to recover unpaid bills, invoices or overdue instalments.

However, in many jurisdictions, small claims procedure is used in a limited number of the monetary claims of small value. Unilateral summary procedures such as the one for the issuance of Order for Payment (known as "*processo monitorio*" in Italian and Spanish) or for the automated issuance of default judgements for undefended claims (as in England and Wales or Cyprus) represent one of the solutions globally used to provide cost-effective justice, as noted at the XV World Congress of Procedural Law dedicated to "Relief in Small and Simple Matters in an Age of Austerity". They provide the possibility to obtain an enforceable title without any hearing or decision on the merit, once a duly notified defendant does not object to the claim. The basic idea is that there is no need for full-fledged (or simplified) judicial proceedings if parties do not request them. If, however, the defendant objects to this procedure, her right to a fair trial will be fully respected, and a litigation case will ensue.

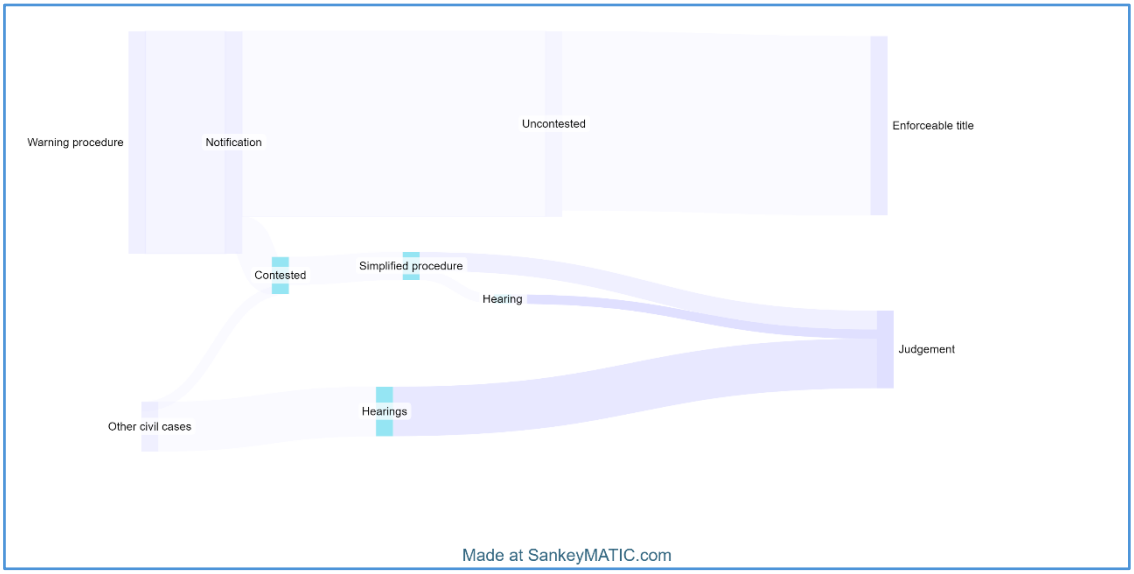
Such procedure for uncontested claims (simple to solve cases because there is no dispute to settle[4]) is applicable not only for small amounts. For such procedures the threshold is generally higher than the one for small claims, and in some jurisdictions, there is no threshold for some category of cases, for instance related to commercial transactions. At the same time such uncontested claims procedure works especially well for claims of small value. It has indeed been observed that larger is the value of the claim, higher is the propension to contest it. Data from Austria, for example, show that the contestation rate is around 8% for cases under the competence of District courts (value up to EUR 15.000), and approximately 42% for the ones handled by Regional courts (value between EUR 15.000 and EUR 75.000).

[4] See Kramer, X E and Kakiuchi, S, *Relief in Small and Simple Matters in an Age of Austerity (September 1, 2015)* in: H. Pekcanitez, N. Bolayir & C. Simil (Eds.), *XVth International Association of Procedural Law World Congress, Istanbul*: Oniki Levha Yayıncılık 2016, p. 121-225, available at https://ssrn.com/abstract=2610773 .

Such procedures are very effectively automated and are considerably faster and cheaper for the parties. In fact, the use of information technology for obtaining enforceable titles in non-contested cases was the first successful implementation of IT for justice.[5]

When such automated procedures are available, they are used in a vast majority of the cases, as this mechanism is preferred by plaintiffs. In Portugal, for example, plaintiffs have the possibility to initiate at each local court a paper-based *Procedure for special declarative action for compliance with pecuniary obligations emerging from contracts*, which is a simplified procedure allowing to obtain a default judgment in a case when no response is filed or hold a hearing if the claim is contested. Alternatively, they can file to the *National Desk for Injunctions* (BNI) requests for the automatic issuance of Orders for Payment. The procedure for special declarative actions is used only residually in comparison with the one for Orders for Payment: 6.548 cases in the last 4 years (2019 – 2023) against 100 times more (636.330 cases) received by BNI in the same period[6]. This is not difficult to explain, as the average length of BNI cases is 3 months against 12 months for special declarative action cases. Similarly, in Latvia 72% of all civil cases are Warning procedures submitted electronically, while Small claims account for 15% and other civil cases for the remaining 16% (see Figure 1 below). In Poland, almost two million of such cases are finalised every year.

Figure 1: Flow of civil cases In Latvia, average for the period 2019 – 2023[7]



Such an approach allows to dispose of the vast majority of civil claims with minimal judicial effort, as the Sankey diagram[8] which has been built for Latvia aims at showing (see Figure 1

[5] For a discussion see Reiling D, *Technology for Justice*, Amsterdam University Press (2009), Chapters 2.2 and 2.3. The whole book can be freely downloaded at https://www.academia.edu/60127178/Reiling_Technology_for_Justice

[6] The difference in scope (contracts only) can account only for a part of this difference.

[7] The underlying data, provided by the Latvian expert in her presentation, are indicative.

[8] The Portuguese Ministry of Justice proposed the use in the justice field of these diagrams, see Romão M L and Reibero Correia A L V, "New Eyes for an Old Challenge: How the Portuguese Ministry of Justice is Using Sankey Diagrams to Improve

in the following page). In the diagram, the height of the coloured bands represents the number of cases, while the intensity of the blue colour should reflect the intensity of the judicial effort required[9].

Another option for the litigation of small claims is alternative dispute resolution (ADR). In England and Wales, mediation (as a type of ADR) is carried out for free by a trained member of the court administration who engage in one hour telephone call, hearing separately but parallelly a claimant and a defendant. As the mediation success rate for small claims was about 60%, this service was changed in 2022 from an "opt in" service to a service where the parties in all small claims have to "opt out". As of summer of 2024, it will be mandatory for all parties to attend a mediation hearing before the small claim hearing with a judge takes place.

On some jurisdictions, in order to simplify the process, the obligation to attempt to resolve the dispute before going to court is lifted. In Romania, for example, the claimant is exempted from participation in a session informing him of the advantages of a mediation procedure prior to filing a small value claim with the court. These cases illustrate the importance of balancing of the effort and resources required for court and parties and the value/importance of the claim. The recourse to mediation can be efficient if carried out with a limited waste of time, and when it is performed remotely.

Knowledge on the Judicial System Dynamics", International Journal of Court Administration Volume 12, Issue 1 (2021), page 3 – freely available at https://iacajournal.org/articles/10.36745/ijca.335 .

[9] In order to keep the diagram visible, the time dimension (which could be reflected by the width of the bands) is not shown. The diagram was edited with SankeyMatic, and can be modified at this link:

2. Automated processing of uncontested claims

As mentioned in the previous section, electronic systems for automatic processing of uncontested have proven to be very effective in:

► providing plaintiffs with an enforceable title within shorter timeframes and for lower cost

► allowing defendants to limit the additional cost for judicial proceedings which would be imposed on them

► freeing lower courts from all the paperwork related to uncontested cases, whose examination requires minimal judicial work. In Portugal, for example, in relation with the automated processing of Order for Payment cases, 60 full time and 460 part time clerks in first instance courts were replaced by 30 part time clerks.

The *EU Directive on combating late payment in commercial transactions* envisages that member States, among other measures, institute "recovery procedures for unchallenged claims" and ensure that „an enforceable title can be obtained, including through an expedited procedure and irrespective of the amount of the debt, normally within 90 calendar days [excluded periods for service of documents] of the lodging of the creditor's action or application at the court or other competent authority, provided that the debt or aspects of the procedure are not disputed"[10].

These are the main steps which are common to all such procedures:

1. A plaintiff transmits electronically all the elements of his/her claim, including a description of the evidence to prove the debt, as a set of structured data, which is automatically checked from the points of view of completeness and well formatting.
The data transmission can take place from a dedicated portal where users can log in or – in the case of mass claimants that send large numbers of cases to court – via a bulk submission from server to server.

2. After a possible revision of the received claim by humans, an Order for Payment (or equivalent document asking the defendant either to pay the requested sums – comprising of fees and interest – or to contest the claim / hereinafter "Order") is automatically created by the court, using all information received from the plaintiff.
The revision of the claim can be carried out by judicial officers such as Rechtspflegers *in Austria or* Referendars *in Poland or by legal clerks in Portugal. The approach to this step*

[10] Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions, available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0007, Article 10.

varies according to the legal culture, and it can take into account in particular the necessity to ensure the protection of consumers from unfair conditions.

3. All Orders are promptly printed, enveloped and dispatched from a central facility equipped with ad-hoc printing lines able to process thousands of documents per hour.[11] *The facility may belong to the Ministry of Justice, as in Austria or the United Kingdom, or be outsourced to a contractor as in Portugal ("Print & Finish") or in Poland, or directly to a postal company. Envelopes with windows showing the address[12] are generally used to simplify the process, and neither signatures nor wet stamp are required.*

4. The outcome and date of (attempted) notification of the Orders to the defendant, or to another person legally entitled to receive it, are returned to the court and added to the Orders database. *Usually, this information is provided in electronic form, along with the scanned signatures in case of successful notification, by the postal service or by the contractor.*

5. All communications with the plaintiff, including the information about failed notification to the given address, are carried out in electronic form. *Making visible the scanned report of the postal service can provide to the plaintiff information useful to produce a new address.*

6. If the Order is contested within the given deadline by the defendant, it is revoked. *In most jurisdictions (like Austria, Latvia and Portugal) the claim is transferred to the competent local court where it is considered as a litigation claim. In Poland, a new case has to be filed to the local court, but there is no need to repay the court fee.*

7. When, instead, the Order was duly notified and the deadline to contest the claim (plus a certain time window to allow the contest to reach the court) has elapsed, the plaintiff is automatically notified that the Order has become final and enforceable. *The whole process in such case typically takes up to 10 weeks (even in countries processing hundreds of thousands of claims).*

There are two crucial preconditions for automated processing to work:

► Legal precondition – The procedure for Order for Payment does not require to attach evidence to the claim but only name it and describe it[13]. *Countries like Italy, Romania and Spain which have procedures requiring the evidence to be produced along with the request[14] are apt only to limited automation, and do not enjoy the same efficiency gains.*

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[11] See Figure 2.

[12] See Figure 3.

[13] Piero Calamandrei defined this as "monitorio puro" ('puro' meaning 'pure'), see "Il processo monitorio nella legislazione italiana", Unitas Milano, 1926.

[14] "Monitorio documentale" – documentary, in Calamandrei's definition (see previous footnote).

► Technological precondition – Availability of a high-speed printing and finishing facility able to process thousands of documents per day. Such facility can be run by the judiciary, outsourced to external contractors or offered as a service by third parties ('hybrid post' offered by postal companies, which receive in electronic form the document and/or data then print, envelope, dispatch and return notification information in electronic format).

Figure 2: Example of print & finish facility
(source: world wide web)

Figure 3: Example of envelope with window
(source: world wide web)

The Table in Annex 1 summarises the systems in use, the money cap (maximum threshold of the claim value), the seat, the scope of the initial revision of the claim, the way of Order dispatch to defendant, the approximate portion of all civil claims which is handled in this way and the claim defence rate, i.e., the percentage of cases in which the defendants contested the claims. For example, it can be seen that in Austria 90% (a percentage obtained taking into account that 10% of the claims are contested) of 80% of all civil claims (the ones submitted as request for Order for Payment) are uncontested, which means that 72% of all civil cases (90/100 x 80/100 = 0,9 x 0,8 = 0,72 = 72/100) are resolved without involving a judge.

3. Main features of small claims procedure

Small claims procedures are by nature simplified procedures. Generally, they can enhance the transparency of justice by simplifying processes, reducing costs, expediting resolutions, minimising formalities, encouraging self-representation, promoting public accessibility of information. These elements collectively contribute to a justice system that is more understandable, accessible, and accountable to the public it serves. Small claims procedures require, at the same time, attention from the point of view of the fair trial guarantees set in Article 6 of the ECHR, to make sure that the basic rights are not compressed in the specific circumstances of each case. A violation of Article 6 of the ECHR was found, for example, in the case *Ponka v. Estonia*[15] since in simplified proceedings no reasons were given for refusing the request for a hearing.

While each country follows its own approach, there are several common features.

a. **The scope of application** is limited by a maximum value of the claim, usually without including interests or other costs. The table in Annex 2 includes the respective thresholds in various jurisdictions. If during the procedure the value of the claim changes, it is possible to change procedure. For example, in Romania if the counterclaim of the defendant exceeds the threshold, it can be handled separately in an ordinary procedure, but if both the claim and the counterclaim are resulting from the same legal relation, or a related one, then they must be handled together in the ordinary procedure.

b. **No obligatory representation** by a lawyer. This is obviously relevant only for countries with mandatory representation. This choice can be motivated by the intention to keep costs as low as possible, proportionate to the value of the claim, by the idea that there is no need for special legal expertise due to the inherently simple nature of the cases and – possibly – by the underlying assumption that without lawyers involvement the resolution of the cases would be simpler and faster, without delays in some cases initiated by lawyers for their own profit[16].

c. **Lower costs –** Since court fees are usually proportional to the value of the claim, small claims entail small fees. The proportionality principle often applies also to the costs that can be awarded. In Romania the court shall not award costs to the extent they were unnecessarily incurred or disproportionate to the claim (e.g. costs incurred for being

[15] See https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-168375%22]}

[16] This was at least believed by some advocates of the introduction of Small Claims Court in the XIX century in the United States of America: see Steele E H, *The Historical Context of Small Claims Courts*, American Bar Foundation Research Journal, Vol. 6, No. 2 (Spring, 1981), pp. 293+295-376, in particular pages 332 – 333.

physically present at oral hearing, expert evidence, lawyers' fees). In England and Wales there is a fixed limit to the total costs which can be recovered by the plaintiff.

d. Special rules for evidence – Sometimes a maximum number of witnesses proposed by each party is set. In Romania, a court cannot admit evidentiary means whose acquiring for the trial would lead to disproportionate means compared to the value of the dispute.

e. Limited or no hearing – There are different approaches to the hearing phase. The common element for many jurisdictions is their flexibility. In Romania, the small claims cases are decided by default on the basis of the elements collected in the written phase, unless parties convince the judge of the necessity of a hearing. In Cyprus, a hearing is planned in all cases but if parties accept the judge's proposal it can be skipped. The allocation questionnaire (in Cyprus and England and Wales) aims at collecting the preferences of the parties about having a hearing. In these jurisdictions, the court may, giving reasons for such decision, limit cross-examination and limit the time allowed for the hearing, for giving evidence and for making submissions.
In France a decision in small claim procedure is based exclusively on oral proceedings and on the evidence presented at the only hearing, without any preliminary written phase. In Spain the verbal judgements were issued in small claim procedures until 2015[17]. Obligatory both written and oral phases seem to be a feature specific only to the Greek system.

f. Use of forms – Forms can help unrepresented claimants to present adequately all the elements of their claim. They are also necessary for a further electronic treatment, which can use structured data to automatically create new documents. Forms are defined by the European Small Claims Procedure (ESCP)[18], the EU cross-border procedure, which is still quite rarely used[19]. The ESCP (in particular the type of content of forms) was used as a model for national small claims procedure introduced in Romania in 2011.
Forms are used to submit the claim, to defend it (and possibly to make a counterclaim), to admit in whole or in part. They can also serve for parties to state their preference for having a hearing and list the evidence they intend to present, either in the same form when the claim is filed (as in Latvia, Romania), or at a later stage if the claim has been defended (allocation forms in Cyprus and England and Wales).

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[17] See Gonzales Garcìa J, *The Spanish Experience concerning Small Case Procedures in Civil Matters*, available at https://www.encj.eu/images/stories/pdf/workinggroups/Timeliness/spanish_experience_concerning_small_case_procedures_in_civil_matters.pdf

[18] See above footnote 3.

[19] See Onţanu, E A, *Cross-Border Debt Recovery in the EU. A Comparative and Empirical Study on the Use of the European Uniform Procedures*, Intersentia, Ius Commune: European and Comparative Law Series, Volume 159. The volume, which can be freely downloaded at https://www.academia.edu/44620818/Cross_Border_Debt_Recovery_in_the_EU_A_Comparative_and_Empirical_Study_on_the_Use_of_the_European_Uniform_Procedures is also rich of information about small claims procedures in England & Wales, France, Italy and Romania.

No forms are defined for the judgement, except for judgement by default in some jurisdiction.

g. **Simplified judgement –** Drawing a fully reasoned judgement can take most of judges' time. In Latvia the courts issue summary judgments under the simplified procedure, in which the descriptive part is limited to state the subject-matter of the claim, the laws and regulations on which actions of the participant of the case are based, as well as the claim, while the reasoning part indicates only the laws and regulations on the basis of which the decision was taken. The parties can, within 10 days from receiving the summary judgment, request the court to draw up a full judgment.[20]

h. **Limited or no appeal –** The main reasons to limit or exclude the possibility to appeal decisions in small claims are to limit costs and to avoid that defendants use them only as a delaying tool when the claims not involve complex legal issues. This helps to redirect the resources of the judiciary to the cases which deserve more of their attention. In Latvia the court decision in small claims can be reviewed only once, while in the ordinary procedure, the decision may be reviewed in two instances. In some countries, like Spain, it is possible to appeal only the decisions in the cases with a certain monetary threshold (still within the scope of application of the small claims procedure).[21]

The treatment of **uncontested cases** is very important, especially in systems where there is no parallel Order for Payment procedure which can single them out. In England and Wales and Cyprus a judgement by default can be issued upon request whenever the claim is not defended, i.e., no response is filed by a defendant who had been properly notified.
In Cyprus, according to the Pre-action Protocol for Claims for a Specified Sum of Money, any plaintiff before initiating a court case must write a letter informing about this intention and substantiating the claim. The defendant must respond within 14 days admitting the claim or providing detailed reasons for its contesting. The defendant must return to the court an acknowledgement of service within 14 days from receiving the claim in order to be able to defend it later; otherwise, a judgement by default can be issued.

In both jurisdictions it is also possible to issue a judgment based on admission. In England and Wales, the Admission form[22] provides the possibility to offer a date within which the debt will be settled or to repay it in instalments. In this case, a series of structured information on liabilities, obligations and dependants have to be provided.

[20] Interestingly, to avoid unnecessary communications to the parties, the note in the summary judgement informing them about the possibility to ask for a full judgement also provides already the date by which it will be possible to collect such judgement at the court.
[21] In Spain, for example, the small claims procedure applies to cases up to EUR 6.000 but cases whose value does not exceed EUR 3.000 cannot be appealed.
[22] Form N9, see https://www.gov.uk/government/publications/form-n9a-form-of-admission-specified-amount

The general trend in Europe seems to be going towards raising the threshold for small claims procedures and allowing greater flexibility for judges to switch between such simplified procedures and the regular one, based on other considerations than the mere relation of the claimed amount with the threshold.

4. Electronic platforms for Small Claims

Electronic platforms can facilitate a structured process for filing claims, responding to claims, submitting evidence, and communicating with the other party. This structured approach helps ensure that all necessary information is provided and that the process follows a standardised procedure, reducing the risk of confusion or errors.

Electronic platforms are designed to be accessible to all parties involved in the dispute, regardless of their location or time zone. They facilitate collaboration and communication between parties, mediators, and arbitrators, enabling more efficient and effective resolution of disputes.

Overall, electronic platforms offer a more comprehensive and user-friendly solution for managing small claims disputes compared to simply using electronic forms sent by email. They provide a structured, secure, and efficient process that enhances transparency, accessibility, and collaboration throughout the dispute resolution process.

All case-related information is concentrated in one place, making it easier for both parties and the court access and manage the case. They may offer enhanced security measures to protect sensitive information and documents exchanged during the dispute resolution process. This can include encryption, secure servers, and authentication protocols, providing greater peace of mind for users compared to email, which may be more susceptible to hacking or unauthorized access. Parties can monitor the progress of their case in real-time, providing greater transparency and accountability.

Electronic platforms may include integrated tools and resources to assist parties throughout the dispute resolution process. This can include guidance on filing claims, templates for drafting responses, access to legal information or resources, and options for ADR.

Online Money Claim platform for England and Wales has been recently deployed[23], and in 2023 it received 100.345 claims. Interestingly, according to a presentation made at the workshop, 95% of the parties responding to a survey carried out by agency supporting the judiciary said they found it far easier and more accessible to work digitally than on paper. To submit a case, it is sufficient to create an account and to pay the court fee; this is considered as replacing the necessity for a stricter identification, as it is supposed that there is no interest to pay for submitting a claim in favour of somebody else.

In Latvia in addition to the possibility of e-mailing a claim form signed with electronic signature to the e-mail of the court, there is a possibility to compile the same fields of the

[23] It is accessible at the page https://www1.moneyclaims.service.gov.uk/eligibility ; after having answered the eligibility questions it is possible to create an account at https://hmcts-access.service.gov.uk/login?response_type=code&state=0972b998-ede9-4e8e-91ea-b4de6a55ac5b&client_id=cmc_citizen&redirect_uri=https://www1.moneyclaims.service.gov.uk/receiver

form online on a special portal[24] which requires identification with a Latvian public electronic certificate (eParaksts) which is on the ID card or provided separately on the mobile phone or with another EU trusted electronic identification system compliant with the eIDAS Regulation[25].

[24] It is accessible from within Latvia at the address https://www.elieta.lv/web/

[25] As Electronic Identification, Authentication and Trust Services (eIDAS) Regulation is generally known the *Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC*.

5. Recommendations

The key to an efficient handling of small claims is to separate contested from uncontested cases, as the latter can be dealt with minimal judicial effort and can possibly profit from a higher degree of automation. This is achieved in several jurisdictions with procedures for the issuance of Order for Payment.

The Greek Civil Procedure Code already includes a procedure for the issuance of Order for Payment[26], which is however not used in practice. The respective provisions in the Greek Civil Procedure Code are not suitable for the automation. For instance, the claimants are required to provide along with the request of Order for Payment the evidence on which it is based. This is not conducive for high-scale automation of the process, for three main reasons. First, if evidence is produced it has to be examined, which means a human intervention or a complex process of transformation of images to text (in most cases evidence would be in a form of scanned documents) followed by a possible analysis by AI. Second, existence of attachment complicates the submission of claims in bulk by massive claimants. Third, the evidence produced should be shared also with the defendant, which makes more difficult the automated printing and enveloping and increases costs due to the higher number of pages to be printed (as claims are received electronically, the plaintiff provides no copy for the defendant) and it increases the dispatch costs due to higher weight of the documents to be sent.

Besides, since the current provisions for the Greek Order for Payment make it enforceable immediately upon being issued, the claim should be examined before sending it out to defendants – which is contrary to the logic of separating uncontested first, concentrating the scrutiny on the contested cases.

It seems to be efficient to introduce legislative amendments to the small claims' procedure allowing automated processing of uncontested claims, issuing in such cases a default judgment without hearing and evidence submission. Such approach may be more efficient than to amend the Greek Civil Procedure Code to revise the Order for Payment procedure, which would require the development of two different interfaces (or platforms) for claimants (one for the Order for Payment and another for small claims) and with the transfer of contested cases from one platform to the other.

The following two sub-sections present recommendations addressed to the Greek Ministry of Justice and (the second in particular) the Civil Procedure Workflow Support Team of the

[26] Articles 323 – 336 of the Greek Civil Procedure Code.

Project Management Team of the Integrated Civil and Criminal Justice Case Management System, which is responsible for the development and enhancement of e-Justice in Greece[27].

a. Amendments to the Small Claims procedure

The Law 420 of 2011 has introduced important simplifications (envisaging a phase of exchange of written evidence followed by the hearing), as well as measures aimed at streamlining the procedure, such as the possibility to skip the hearing if both parties give the written consent and the impossibility to postpone the set hearing. Still, even when the claim is not contested, it is necessary for the plaintiff to produce all necessary evidence. Besides, the procedure is applicable only to cases in the so-called "ordinary" procedure, excluding, for example, civil disputes arising from unpaid shared costs in apartment buildings and rents in lease contracts.

The recommendations in this sub-section concern possible legislative amendments aimed at shifting the non-contestation of the claim to the pre-trial stage of the procedure (at variance with the current solution, when this happens only at the stage of the oral hearing in court), allowing to issue a default judgment without hearing if the defendant does not contest the claim. To avoid eventual unfairness in the procedure (taking into account consumer protection or unjust enrichment provisions), it is suggested to define criteria for an *ex officio* review of the validity of the claim (e.g., capping the ratio between interests and other costs and the principal debt, defining a criterion for a maximum applicable interest rate, referring to any consumers protection standard which is quantifiable, and hence can be automatically checked). Examples from Poland and Cyprus can be relevant.

> **Recommendation 1 –** *Specify grounds on which a claim can be rejected in whole or in part.*

In order to avoid that court resources and time are used when they are not needed, an initial phase could be introduced to ascertain if the claim is contested, and in this case which are the contentious parts.

> **Recommendation 2 –** *Split the written procedure in two phases: the statement of the claim and of any response to it, followed by the presentation of evidence and of preferences about holding a hearing (or not holding it).*

[27] This team is dealing with (i) possible legislative amendments in the Small claims procedure which may be introduced prior to the finalisation of the platform, and (ii) the approach to the development of the Small claims platform and the forms.

This would allow, also, to issue judgements without waiting for the hearing whenever claims are not contested.

> **Recommendation 3 –** *Provide for the possibility to issue a judgement by default or based on admission if a duly notified defendant is not contesting the claim.*

In the contested cases, the provision of evidence should be limited only to the points which have been ascertained as contentious in the first phase (such points can be identified easier if special forms are used). The example of Italy can be considered: with the aim of simplifying procedures without impinging on the rights of the party the Civil Procedure Code was modified to the effect that the judge must base the decision on the evidence as well as on the facts not specifically contested by the defendant.[28]

> **Recommendation 4 –** *Provide that the evidence produced in the second phase of the written procedure (or proposed means to acquire it) is only related to the points which have been contested by the defendant in the first phase.*

It is also recommended to increase the threshold of the claim that falls under this procedure, but without restricting the right to appeal for the cases that can be appealed in virtu of the legislation in force. The threshold may be different for the application of the small claims procedure and for the right to appeal the decisions in such procedures.[29]

> **Recommendation 5 –** *Increase the monetary threshold of the procedure up to EUR 10.000, leaving however the possibility to appeal for decisions in disputes which amount exceed EUR 5.000.*

The small claims procedures may be extended to specific types of simple monetary claims which are currently excluded.

> **Recommendation 6 –** *Extend the small claims procedure to all simple civil disputes that do not present evidentiary difficulties, such as disputes arising from shared costs in apartment buildings and the payment of rents in the lease contract.*

b. Small Claims platform

In order to ensure that the platform is effectively used and meets the needs of its users, it should cater the different needs of different types of claimants: mass claimants (who initiate large number of cases with regularity), retuning claimants (who may from time to time send some cases to courts) and occasional claimants.

[28] Article 115 of the Italian Civil Procedure Code, as modified in 2009.
[29] See footnote 21 for an example.

Mass claimants, who extract the information necessary to file their claims (currently printing them) from their own information systems, should be put in condition to create electronic claims in bulk as structured data (typically XML or JSON) on the basis of a given format and then transmit them to the system to be used by the courts, preferably via a programmatic interface (API) or uploading them via the platform. This would be much easier if electronic evidence can be attached later and only upon need on a case-by-case basis, otherwise the platform should allow a separate uploading of evidence, linking it to the corresponding claim via a unique identifier.

Recommendation 7 – *Provide the possibility to transmit electronically groups of claims in bulk.*

The process of the advance payment of the court fee should be also suitable for mass claimants, giving the possibility to the users to select the claims for which they want to pay, calculating it automatically and receiving a unique identifier to be used for the payment. Once the proof of payment is received the system can update their fee status to "paid", which – if so regulated – could be a condition for the further case processing. The payment online via credit card could be an option, but it should not be the only one as it may not be suitable for all legal persons.

Recommendation 8 – *Provide the possibility for plaintiffs to obtain a unique identifier for paying court fees for groups of cases they select.*

Returning plaintiffs should not be penalised by the limited functions of the platform available for them. As in a paper-based system they can re-use and adjust the information contained in a claim that was previously submitted, the plaintiffs should be able to do the same in the new electronic environment. This can be achieved for example by i) allowing to save a claim as structured PDF format, which can be edited offline and when re-uploaded and/or ii) allowing to retrieve the data from any previous claim which was submitted by the same user (leaving, of course, the original claim untouched).

Recommendation 9 – *Facilitate for plaintiffs the re-use of data previously provided in other cases.*

The use of the platform as a communication mean can save considerable resources and shorten the length of the proceedings. Every communication on the platform should be accompanied by additional notifications to the other parties in the case through the communication channels they have selected on the platform (such as e-mail, SMS, social media). Care should be taken, however, to avoid the risk that defendants are formally notified but in fact are not aware that an electronic proceeding is ongoing against them. For this

reason, the initial claim should be notified in paper, unless they are already bound to receive electronic communication (e.g. fiscal).

> **Recommendation 10 –** *All communications with the parties should be carried out via the platform (with additional notifications via the preferred communication channels), with the exception of the initial claim, which should be notified on paper to any defendant who is not bound by law to possess an electronic domicile. As an exception, parties may express their (revokable) preference to be notified any possible future claim via the platform.*

The process of dispatching paper claims should be streamlined as much as possible, eliminating the need for any manual signature or wet stamp.

> **Recommendation 11 –** *The legal framework should also allow for non-signed documents to be issued by courts; for the printed documents some mechanisms should guarantee the authenticity of the document such as a unique code (possibly visually as QR code) which allows to open the original electronic version in the platform.*

The possibility of using centralised high-tech printing and finishing facilities for all paper-based communication in small claims proceeding should be considered. In particular, the availability and reliability of services of hybrid post (with the courts as customers sending the documents by providing their electronic copies for printing and posting[30]) could be explored.

> **Recommendation 12 –** *Explore the possibilities to dispatch all paper-based correspondence in small claims procedures via a centralised high-speed printing and finishing facilities.*

Plaintiffs should preferably be identified when accessing the portal via digital certificates compliant with the eIDAS Regulation, or via a unique code obtained on the first submission of their cases (in which they could be recognised by credit card information or other mechanisms). Defendants should also be able to access the platform on the basis of a unique code received together with the claim. Both parties should have access at the platform to all documents and information in their cases.

> **Recommendation 13 –** *Parties once identified by the platform should be able to search, sort and view all the documents and information in their cases, both ongoing and completed. It should be possible to delegate the handling of cases (single or in group) to lawyers (through a power of attorney) or employees.*

[30] See for example https://eltaportal.dev.ibserver.gr/ybridiko-tachudromeio

In order to make possible that all communications with defendants take place via the platform, it is necessary to ensure an adequate level of support. Chatbots can help but shall not be the only support available. Given the economy in manpower that courts can realise with the centralisation of dispatching and electronic communication, human resources shall be available to provide adequate users' support.

> **Recommendation 14 –** *Set up a national help desk line (telephone and/or online) and a chatbot to help parties to access and use the platform.*

In Sweden, some judges choose to summarise the claim and the response during the preliminary hearing in tabular form, the *Processlagesoversikt* ("process overview")[31], allowing to map the facts on which both parties agree and those which are contentious.
A similar solution is implemented by the Case Matrix Network software, developed by Norwegian experts for presenting evidence in cases at the International Criminal Court.[32]
The shared portal can facilitate the creation of a summary table with the contributions of the parties, starting with the claimant defining the claim broken into its logical constituents facts, and the response to each of them by the defendant.

> **Recommendation 15 –** *Provide on the platform a shared claim structure, visible to the parties and court, that shall be filled by the parties in different phases and allow to see at a glance the contested elements in the case.*[33]

Some elements in the claim form on the platform (such as the addressed court) should be determined automatically on the basis of the elements of the claim (as much as possible). Additional checks should be added on the format and content.

> **Recommendation 16 –** *The entries in the shared claim structure table should be automated as much as possible (for example the choice of the court based on the given rules) and checked for consistency and admissibility at the stage of the claim formulation on the platform.*

The use of a shared claim form can be of limited help if users do not follow the given structure or express themselves without sufficient clarity. It may be useful, especially having in mind the intention to test the application of AI tools to small claims, to experiment with the use of generative AI based on a Large Language Model to analyse the submissions by the parties and suggest simplifications or rephrasing if they are too complex, confusing, or

[31] See for example https://centrumforrattvisa.se/wp-content/uploads/2021/03/06-TR-Processlagesoversikt-2020-09-14.pdf

[32] See https://www.casematrixnetwork.org/icc-case-matrix

[33] An indicative example, to convey the idea of the approach, can be seen in Annex 3.

not clear enough. Users would be the ones to choose and be responsible for the final formulation, but before deciding if and how to extend it to all cases, to avoid any possible confusing interaction with the parties and to possibly fine-tune its modalities, it is suggested to pilot this approach in a limited and time-framed environment.
The principles set in the *CEPEJ Ethical Charter on the use of AI*[34] should be fully respected in the development, integration and application of such AI model: (i) respect of fundamental rights; (ii) non-discrimination; (iii) quality and security; (iv) transparency, impartiality and fairness; (v) "under user control". Also, some scepticism[35] of und user of digital solutions in justice should be kept in mind, in view also of the related risks of rejection of AI-based service or even of the whole solution that includes an AI-based model. To address this risk, transparent information about the functioning of the AI model should be provided to the users. Additionally, in the processes of development and application of the AI-based models the respective recommendations of *Opinion No. 26 (2023) of the Consultative Council of European Judges (CCJE) "Moving forward: the use of assistive technology in the judiciary"*[36] and *Recommendation CM/Rec(2020)1*[37] *of the COE Committee of Ministers to member States on the human rights impacts of algorithmic systems* should be followed.

> **Recommendation 17 –** *Pilot the application of generative AI models to review the formulations of claimants and respondents, suggesting, when necessary, improvements to enhance their clarity.*

In some cases, claims are not contested by defendants, but the latter may have no means or possibility to satisfy the court decisions. For such cases admission forms such as the ones used in England and Wales (described above) could be considered.

> **Recommendation 18 –** *Introduce forms for partial or complete admission of claim, allowing defendants to request payment in instalments, delayed execution or partial dispensation, providing in such cases comprehensive information on the financial situation for the justification.*

According to the *Guidelines on online Alternative Dispute Resolution* (ADR) of the CoE European Commission for the Efficiency and Quality of Justice (CEPEJ)[38], "providers are encouraged to include a triage phase which refers to the practice of collecting the issues

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[34] https://www.coe.int/en/web/cepej/cepej-european-ethical-charter-on-the-use-of-artificial-intelligence-ai-in-judicial-systems-and-their-environment

[35] Under the TJENI project, a survey of end-users was carried out regarding the Digital Transformation Initiative of the Greek Justice System. When asked about the areas of potential application of AI and machine learning tools in the workflow of courts or prosecutors' offices and in assisting the role of the judge under human control and protection of fundamental rights, respondents showed considerable scepticism or rejection. A significant portion of them was concerned about the impartiality and integrity of the judiciary when AI is involved. A recurring suggestion is the use of AI in non-decisional tasks and administrative aspects.

[36] See https://www.coe.int/en/web/human-rights-rule-of-law/-/the-ccje-adopts-opinion-no.-26-2023-moving-forward-the-use-of-assistive-technology-in-the-judiciary-

[37] See https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016809e1154

[38] See https://rm.coe.int/cepej-2023-19final-en-guidelines-online-alternative-dispute-resolution/1680adce33

presented by the parties, identifying the needs and problems emerging, to determine the appropriate type of service or approach in order to solve the dispute. Effective triage should include the ability to assess the factual circumstance, the supporting documents needed, and possibly the relevant legal sources". If such triaging is developed by the small claims' platform, it would be sufficient to set up a simple mechanism to propose and accept ADR, and to grant mediators the access to the platform.

> **Recommendation 19 –** *The platform could, at any stage of the proceedings, but especially after the compilation of the shared claim structure, including the part on admission and remedy, facilitate the recourse to Alternative Disputes Resolution, in particular with the intervention of an online or telephonic mediation service which could access the information exchanged by the parties on the platform.*

An introduction of a template for the judgements would simplify the work of judges, making possible its automatic compilation, and creating and saving templates for repetitive cases.

> **Recommendation 20 –** *Define templates for judgements, to be automatically filled in by the system on the basis of the meta-data provided by the parties in their submissions and allowing judges re-using basic text formulations for standard situations.*

ANNEX 1. Order for Payment procedures summary table

Jurisdiction	System	Money cap	Seat	Initial revision of the application	Dispatch to defendant	Approximate portion of all civil claims	Claim contest rate
Austria	Mahnverfahren	EUR 75.000	Every District Court	For groups of cases, by *Rechtsplegers*	From the Federal Printing Center in Vienna via postal service	81%	10%
England and Wales	MoneyClaimsOnline	GBP 100.000 (~ EUR 117.000)	Bulk Center in Nottingham in the name of all County courts	Only in case of anomaly, by clerks	From the Bulk Center via postal service	80%	19%
Latvia	Warning procedure	EUR 15.000	Every District court	By judge	By each District court	72%	
Poland	e-sud	No limit	6th Civil Division of the Lublin-West Regional Court (with possibility of remote access)	Case by case (except for bulk submissions), by *Referendars*	Via contracted postal company	80%	5%
Portugal	Balcão Nacional de Injunções (BNI)	EUR 15.000	BNI in Porto	Only in case of anomaly, by clerks	Via the outsourced "Print and finishing" facility, via postal service	39%	21%

Annex 2: Small Claims procedures summary table

Jurisdiction and name	Application scope	Initial Phases	Hearing(s)	In case of non-contestation	Forms
Cyprus Small Claims Track	EUR 10.000 (only principal, no costs or interests) BUT judge can decide to change track "at any time" based on 9 (non-exhaustive) factors	i. Pre-Action Protocol ii. Statement of Case iii. Response iv. Allocation Questionnaire v. Allocation	- Preliminary hearing *is held only if deemed necessary by the judge* - Main Hearing *can be skipped by judge's proposal if parties agree*	- Admission after filing of claim and judgment on admission (in whole or in part) - If the claim is not contested: judgment on the basis of the Statement of Case	- Claim form - Response form - Admission Form - Allocation Questionnaire
England and Wales Small Claims Track	GBP 10.000 (~ EUR 11.500)	i. Claim ii. Response iii. Allocation Questionnaire iv. Allocation	Hearing can be held *if requested by at least one party in the Allocation questionnaire and approved by the judge*	Judgement by default issued without the intervention of judicial officers if the initial claim is not defended in step ii).	- Claim form - Response / Counterclaim form - Admission Form - Allocation Questionnaire
Latvia Simplified Procedure	EUR 2.500	i. Statements of Case ii. Response (or silence)	No hearing *unless the court considers it necessary or a party's request to have one is deemed justified.*		- Claim form

Romania Cerer de valore reducta	RON 50.000 (~ EUR 10.200) excluding interest, court fees & other disbursements	i. Claim form sent to court ii. The court send it to the defendant (30 days) iii. The defendant has 30 days to respond and possibly counterclaim iv. If counterclaim, 30 days for the plaintiff to responds v. The court has 30 days from the last response to ask for clarifications, decide for a hearing or issue a decision. vi. In any case the decision has to be issued 30 days after the receipt of clarifications or the hearing.	Hearing is held exceptionally *if deemed necessary by the judge.* *Parties can request it, but their request can be refused.*		- Claim form - Claim rectification form - Answer form - [not obligatory]

ANNEX 3. Possible shared structured claim table

		CLAIMANT	DEFENDANT'S RESPONSE	Evidence claimant	Evidence defendant
1	What is at the basis of your relationship? *[examples:* *a contract [attach it],* *a purchase [attach the invoice]* *an oral agreement]*				
2	Which is the reason for you claim? *[Explain why you did not get what you expected]*				
3	What do you claim? *[One request per line, e.g. one for action required, one for compensation, one for costs, one for interest, ...]*				
4	How would you accept the satisfaction of your claim? *[examples:* *Payments in installments,* *performance within a certain deadline, ...]*				

ANNEX 4. Agenda of the workshop

21 MARCH 2024

WORKSHOP FOR EXPERIENCE SHARING ON SMALL CLAIM PROCEDURES

Venue: Ministry of Justice, 96 Mesogeion Avenue, 11527 Athens, Greece

10.00 – 10.20	**Welcoming Addresses**
	- **Ms Maria Toula**, Head of the e-Governance Directorate, Hellenic Ministry of Justice - **Ms Anastasiia Saliuk**, Programme Manager, Innovative Solutions for Human Rights and Justice Unit, Council of Europe
10.20 – 10.30	**Introduction to the workshop**
	- **Mr Simone Ginzburg**, International consultant, Council of Europ
10.30 – 12.00	**Experience Sharing – Session 1*:** **Austria, Portugal, Poland**
	- **Dr Thomas Gottwald,** Deputy Director of the Legal Informatics and ICT department at the Austrian Ministry of Justice - **Mr Manuel Brandão,** Coordinating trainer of the Training Centre (Civil Law) of the Directorate-General for the Administration of Justice at the Portuguese Ministry of Justice - **Mr Marcin Stpiczyński**, Senior Court Referendary – Chief Specialist at the International Cooperation Department of the National School of Judiciary and Public Prosecution
12.00 – 13:00	*Lunch*
13:00 – 14:30	**Experience Sharing – Session 2*:** **the United Kingdom, Latvia, Romania and European Small Claims Procedure**
	- **Mr Simon Vowles**, former Deputy Director – Civil Jurisdiction at the HMCTS - **Ms Anna Skrjabina,** former Deputy Director at the National Court Administration of Latvia - **Ms Elena Alina Ontanu,** Assistant Professor of Global and Comparative Private Law at Tilburg University (The Netherlands) and Lawyer of the Bucharest Bar Association (Romania
14:30 – 15:00	*Coffee break*
15:00 – 16:50	• **Experience Sharing – Session 3*: Cyprus and Greece** • **A possible approach to a Small Claims platform** • **Final Discussion**
	- **Ms Marina Papadopoulou**, Judge at the Court of Appeal, Member of the Cypriot Rules Committee

	- **Mr. Marcos Dracos**, Cypriot lawyer and Barrister at One Essex Court, Member of the Cypriot Rules Committee - **Mr Georgios Delis**, Judge of the District Court of Athens, Greece - **Mr Simone Ginzburg**, International consultant, Council of Europe
16:50 – 17:00	**Concluding Remarks**
	- **Ms Maria Toula**, Head of the e-Governance Directorate, Hellenic Ministry of Justice - **Ms Rafaella Hadjikyriacou**, Project Officer, Innovative Solutions for Human Rights and Justice Unit, Council of Europe