

STREAMLINING THE SMALL CLAIMS PROCEDURE IN NORTH MACEDONIA: HOW FAR ARE WE FROM DIGITALISATION AT NATIONAL AND EUROPEAN CROSS-BORDER LEVEL?

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ABSTRACT: The streamlining of small claims procedures has preoccupied national and European legislators for some time. Unfortunately, what is happening at the European level and beyond, until recently did not find an echo in the Macedonian small claims procedure. The paper will demonstrate that the overall direction of the changes in this procedure so far has been to expand the scope of application of the procedure rather than to introduce simplifications. The proposal of the new Macedonian Law on Civil Procedure is a significant step in that direction. In addition to this, the paper analyzes the operational options for ICT in the Macedonian civil procedure in general and accordingly in small claims procedure, having the phrase “Code is law” (and consequently “Code is process”) as a starting point for discussions. The author concludes that the improved legal framework alongside with further investment in ICT in the justice system will probably make small claims procedure a good candidate for complete digital justice in a near future. Furthermore, the paper aims to highlight that the ongoing process of digitalisation and e-justice in North Macedonia gains importance not only at national level but also for improving the cooperation with other justice systems, particularly those of EU member states.

KEYWORDS: small claims; simplified procedure; North Macedonia; digitalization.

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1. INTRODUCTION

Although two and a half decades have passed since a catchphrase “code is law” has been coined,¹ debates surrounding the questions of whether “Code is law” (and consequently “Code is process”)² or “Code is code, law is law”, are still vigorous.³ Nevertheless, we must admit that asjurists (here I mean particularly to those of us who were not born with a smart phone in hands) in efforts to defend the latter concept, have increasingly yielded to the former. Why? The answer is simple: we recognized far-reaching benefits of a technology-driven approach to the law. Not only did we realize that this approach could help the legal system function in a fairer and cost-effective way in some simple scenarios, but we seem to have embraced the idea that code has the potential of doing the work of legal rules⁴, and accordingly of legal procedures.

At the same time, we are fully aware of the fact that the trend of digitalisation is redefining the very fundamentals of everything it touches. In this vein, governing the dispute resolution processes through codes undeniably departs us from traditional legal avenues. Yet, we have embraced the poten-

¹ The mentioned catchphrase is coined by Lawrence Lessig in his book *Code and Other Laws of Cyberspace*, New York, 1999. See also his article “Code is Law, on liberty in cyberspace”, *Harvard Magazine*, 1.1.2000. <https://www.harvardmagazine.com/2000/01/code-is-law.html>. accessed 4 April 2024. Lessig, L. Code is Law, liberty in cyberspace. *Harvard Magazine*, 1.1.2000. <https://www.harvardmagazine.com/2000/01/code-is-law.html>.

² Although this phrase is not used that often, for those whose preoccupation is procedural law, it is the essence of the discourse.

³ I want to single out some recent exceptional papers on this topic: Oster, J. (2021). Code is code and law is law - the law of digitalization and the digitalization of law. *International Journal of Law and Information Technology*, 29, Issue 2, 101–117. <https://doi.org/10.1093/ijlit/eaab004>; Nordel, E. (2021). Code is Law – Deterritorialisation and Reterritorialisation of Law, Law is Code – Cyberspace, Personalisation Algorithms and Human Cognition. *Anthropocenes – Human, Inhuman, Posthuman*, 2(1): 10. <https://doi.org/10.16997/ahip.932>; Rubim Borges Fortes, P. (2020). Paths to Digital Justice: Judicial Robots, Algorithmic Decision-Making, and Due Process. *Asian Journal of Law and Society*, 7, 453–469; Kaeseberg, T. (2019). The Codeification of law and Its Potential Effects. *Stanford Journal of Blockchain Law & Policy*, 2. No.2, 232-239, Hassan, S. and De Filippi, P. (2017). The Expansion of Algorithmic Governance: From Code is Law to Law is Code. *Field Actions Science Reports: The Journal of Field Actions. Special issue 17: Artificial Intelligence and Robotics in the City. Open Edition Journals*. <https://ssrn.com/abstract=3117630>.

⁴ Someone will say I am old fashioned, but I am just careful, and I do not give up that easily. In that regard, on all the hindrance to the full implementation of the concept “Code is law” (and accordingly “Code is process”) I refer to Tian Ma’s brilliant analysis, which “grapples with whether technological developments have enabled code to truly embody the concept of law, and substitute the role of law in a cyberspace which increasingly simulates society”. I will single out only this relevant sequence from the conclusions: “Code is therefore incapable of replicating not just the semantic interpretation which forms a key aspect of legal rules, but also the *ex-post* application of the legal process that constitutes legal rules.” See Ma, T. (2021, November 9). Is Code Law?. *Legal Tech Blog*. <https://legal-tech.blog/is-code-law>.

tial of Information and Communication Technology (henceforth: ICT) which has become a powerful driver of change in justice system. We perceived that access to justice may be enhanced through algorithms that can provide responses to many disputes, inevitably to minor cases or small claims disputes. By accepting the substitution of physical settings for virtual ones, the building blocks for automating legal decisions, we have accepted to completely skip the courtroom, in which magical scenes of human replication take place. That's it, the end of this debate and the beginning of another - how far have we come with it?

A growing number of EU jurisdictions and beyond are speeding up justice by digitising many court processes, from filling the claims and service of documents as a starting point to introducing fully digitalized procedures, in both national and cross-border context. Additionally, many private organizations have established their own dispute resolution platforms that test innovative techniques and study results thereof to help offer alternatives to traditional justice.⁵ Many projects are launched to identify the areas of civil justice that are suitable to ICT tools or to assess the level of their readiness to shift to partial or fully digital justice in national and cross-border level. A bulk of comprehensive studies and scientific papers has been also written on these topics, masterfully expounding the different aspects of streamlining and digitalisation of civil justice, including recovering of small claims.⁶ Against this background, the author of this paper harbors a modest ambition. The author is focused on analyzing the situation regarding small claims procedure and its digitalisation in North Macedonia, a country that is not yet an EU member state, though its membership has been looming on the horizon for two decades. By presenting the current situation on a both normative and ICT level and by elaborating the efforts that have recently been made to streamline small claims procedure in North Macedonia, the author aims to give an answer to the question posed in the title of this paper.

⁵ European Bank for Reconstruction and Development. (2023). *Assessment report for readiness for the introduction of online courts*. <https://www.ebrd.com>.

⁶ See for e.g. Rijavec, V., Ivanc, T. & Keresteš, T. (eds.) (2014). Simplification of Debt Collection in the EU. *Kluwer Law International*; Harley, G., Said, A. (2017). Fast-tracking the Resolution of Minor Disputes: Experience from EU Member States. The World Bank, Washington, D.C.; Petkova, S., Gladys Senderayi, R. (2020). Two for One: How Leveraging Small Claims Procedures Can Improve Judicial Efficiency and Access to Justice. Equitable Growth, Finance and Institutions Notes, The World Bank, Washington, D.C. <http://hdl.handle.net/10986/34927>; Silvestri, E. (2018). Small Claims and Procedural Simplifications: Evidence from Selected EU Legal systems, *Access to Justice in Eastern Europe*, 1, 5-13; Gioia, G. (2022). Small Claims: Market Realities and New Possibilities. *Revista Ítalo-Española de Derecho Procesal*, 1, 1-15; Nieva-Fenoll, J. (2022). Online Dispute Resolution for small claims: Is This the Only Realistic Solution?. *Revista Ítalo-Española de Derecho Procesal*, 1, 25-36; Giacalone M., Sajadeh Salehi, S. (2022). Small Claims and the Pursuit of (Digital) Justice; A Tiered Online Dispute Resolution Perspective. *Revista Ítalo-Española de Derecho Procesal*, 1, 181-213 and many other valuable contributions published in the Special Issue "Dealing with small claims in Digital Era". (2022). *Revista Ítalo-Española de Derecho Procesal*, Vol. 1/2022.

2. A BRIEF ROUNDTRIP TO CURRENT MACEDONIAN SMALL CLAIMS PROCEDURE: FACTS, FIGURES, AND LEGAL FRAMEWORK

North Macedonia has never had stand-alone small claims courts in place.⁷ Moreover, under the influence of the socialist ideology that there is no place to distinguish between small and large value disputes, and that all cases, regardless of the monetary value at stake, should be treated the same, in North Macedonia (as well as in other countries of the former Yugoslavia) there was no specific procedural path for resolving small claims for decades. In 1972, a compromise was made between the radical application of the previously unacceptable principle of “*de minimis non curat praetor*” and the effort to provide the parties a procedure for resolving small claims in which some of the guarantees of due process will be reduced to a tolerable minimum.⁸ Several decades have passed since then, and this procedure has remained fundamentally unchanged. Some minor procedural changes that have been made over time do not affect this general finding. On the other hand, the legislator has been a true virtuoso with frequent changes to the monetary threshold for a claim to be qualified as small. It doesn’t take much backtracking to make this clear. The analysis of the applicable Macedonian Law on Civil Procedure (henceforth: MLCP) of 2005 and its subsequent amendments⁹ will be sufficient in this regard.¹⁰ For a while now —since the latest amendments of MLCP of 2015— the claim ceiling is set at MKD 600.000 which is approx. EUR 9700 for both civil and commercial disputes.¹¹ The result is that nowadays, majority of civil cases (but not commercial ones) are resolved in small claims procedure.¹² One may conclude that thereby the access to justice has been improved significantly, providing for expedite and cost-effective avenue for resolving small claims. But is it so?

It might be argued that this is not the case, as an in-depth analysis shows the opposite, considering at least the following three points: first, the threshold for civil (personal) claims is set too high, and does not reflect the eco-

⁷ In that vein, North Macedonia fits into the institutional arrangements within the EU, as in most EU Member States small claims fall under the jurisdiction of regular courts, usually district courts or other relevant courts of first instance, depending on the type of claim. Only two EU Member States (Greece and Malta) have dedicated small claim courts. See, Harley, G., Said, A. (2017). p. 18.

⁸ Triva, S., Dika, M. (2004). *Gradansko parnično procesno pravo*, Zagreb, 818- 819.

⁹ Official Gazette of RM No.79/2005, 110/2008, 83/2009, 116/2010 and 124/2015.

¹⁰ According to the MLCP of 2005, the monetary threshold for civil disputes was set at MKD 60,000, while for commercial disputes at MKD 300,000. With the amendments of 2008, the threshold was tripled in civil disputes - up to MKD 180,000, while it remained the same in commercial disputes. The largest intervention was made in 2015, when the monetary value has been increased up to MKD 600,000 for both civil and commercial disputes (approx. EUR 9700).

¹¹ Articles 430 and 473 of the MLCP as amended in 2015.

¹² It becomes obvious by simply looking at the annual reports on the work of all basic courts in North Macedonia which are available on their websites.

conomic situation, living standard and Consumer Price Index in the country,¹³ second, though the courts fees were considerably reduced in 2020 regarding natural persons,¹⁴ small claims procedure before the basic courts still costs a lot (as other costs are also involved), because, which will be a third point, this procedure does not provide for a real simplified procedural path for small claims. With modest features of a real fast track for small claims and with a touch of modernity (in terms of ICT tools), this procedure does not offer sufficiently meaningful procedural simplifications compared to the general or fully-fledged civil procedure. And that is exactly the very purpose of this procedure: to be a mechanism for expedite and inexpensive resolution of disputes involving small sum of money. Though from comparative perspective, there is no template for establishing small claims procedures in different jurisdictions, some common features can be identified. It includes basically written procedure (oral hearings being an exception), or informal hearings if any, simplified rules of evidence, more streamlined rules of proceedings, and the possibility of self-representation. Some jurisdictions go even further and offer online procedure which encompasses downloadable application forms and check-lists, e-filing, or e-payment etc.¹⁵ With this in mind, let us briefly delve into the features of small claims procedure in the current Macedonian legislation¹⁶ with passing reviews of the situation in the EU member states.

Various sources provide information that in most EU jurisdictions, only simple law cases can be resolved in small claims procedure, such as contractual claims, rent, damages, movable property disputes, consumer, and commercial disputes. Certain types of disputes are expressly exempted.¹⁷

Under the MLCP small claims procedure is provided for pecuniary or non-pecuniary claims that do not exceed MKD 600.000 in both civil and commercial cases.¹⁸ In defining what constitutes a small claim, the MLCP provides for two criteria: positive and negative.

According to the positive criterion, three types of claims are considered to be small claims: 1) claims that refer to pecuniary claim up to the said mone-

¹³ Namely, according to official statistics for December 2023, the average gross monthly wage is MKD 60.036 (approx. EUR 970), while the Consumer Price Index has been constantly increasing. See <<https://www.stat.gov.mk>> accessed 4 April 2024.

¹⁴ With the amendments to the Law on Court Fees of 2020 (Official Gazette of RNM, No. 257/2020), the court fees for natural persons have been reduced eightfold, so that instead of the previous MKD 48,000 (approx. EUR 774) the highest amount of the court fee for initiation of the proceedings (and accordingly for court judgment) is MKD 6.000 (approx. EUR 96). Court fees to be paid by legal entities remained unchanged.

¹⁵ Harley, G., Said, A. (2017). p. 11; Giacalone, M., Gioia, G., Van der Borgh, K., & Salehi, S. S. (Eds.) (2023). *Small Claims, Digitalisation, and EU Market*. Academic and Scientific Publishers nv.

¹⁶ Chapter twenty-one of the MLCP - Small Claims Procedure (Arts.429-438) and Art.473 of the same law regarding small claims in Commercial Dispute Procedure.

¹⁷ Harley, G., Said, A. (2017). p. 8.

¹⁸ It is undisputed that there is no clear pattern for monetary thresholds among EU jurisdictions and that the amount at stake varies. Yet, it is also clear that basically the amount of money at stake reflects the economic situation of a given country, which as previously mentioned, is not the case with North Macedonia.

tary threshold, 2) non-pecuniary claims where the plaintiff in the statement of claim agrees to receive a certain amount of money up to the said monetary threshold, instead of fulfillment of a certain claim (so-called *facultas alternativa*); 3) claims for handing over moveable property whose value, as stated by the plaintiff, does not exceed the said monetary threshold.¹⁹

On the other hand, according to the negative criterion, the following disputes never constitute a small claim: 1) real estate disputes, 2) labor disputes of a status nature, and 3) disputes of disturbance of possession.²⁰ In addition, under the Family Law²¹, maintenance disputes never constitute a low value dispute as well.

Moreover, small claims procedure applies to claims up to said ceiling in result of transformation, by submitting the opposition to the court payment order.²² Paradoxically, this does not apply to the cases upon an objection against a notarial payment order, when a regular civil procedure is conducted, though beyond any doubts, it should result, *mutatis mutandis*, in small claims procedure. From EU perspective it should be noted that the calculation of the value of the claim concerns only the principal claim, and excludes interests, expenses, and other disbursements at the time of submitting the claim.²³

There is a possibility to transfer a case from ordinary civil procedure to small claims procedure and *vice versa*, if the plaintiff reduces or modifies the claim so that it is above or below the prescribed ceiling, respectively.²⁴

From a purely procedural point of view, the procedure for small claims has its specificities, which actually represent deviations from the regime of the general civil procedure. If there is no specific rule on small claims procedure, general rules on civil procedure apply.²⁵ As an example, assistance and representation of attorneys is merely optional, as in general civil procedure: parties may be represented by a lawyer, but self - representation is also possible.

Deviations from the rules on general civil procedure refer to: 1) shorter deadlines for: paying the court fee²⁶, submitting an appeal, voluntary fulfillment of the obligation determined by the judgment and submitting a proposal for additional judgement (eight days instead of 15 day)²⁷; 2) non-holding

¹⁹ Arts. 430 and 473 of the MLCP.

²⁰ Art. 431 of the MLCP.

²¹ Art. 276 of the Family Law (Official Gazette of RM, No 80/1992, 9/1996, 38/2004,33/2006,84/2008, 67/10, 156/10, 39/12,44/12, 38/14, 115/14, 104/15,150/15 and 53/2021).

²² Art. 432 of the MLCP.

²³ Art. ex-Art. 28 of the MLCP.

²⁴ Art. 435 of the MLCP.

²⁵ Art. 429 of the MLCP.

²⁶ If the plaintiff does not pay the court fee within this deadline, it is deemed that the claim is withdrawn (Art. 429-1 of the MLCP).

²⁷ On the other hand, the defendant is obliged to submit a written reply to the statement of claim, according to the general civil procedure rule (within 30 days), otherwise a default judgment will be

of a preparatory hearing though the procedure is basically oral since the oral hearing is mandatory^{28,29}; 3) the obligation of the parties to assert all facts and propose evidence at the first session of the main hearing at latest³⁰ or by the same moment to notify the court if they agree to resolve the dispute by mediation³¹; 4) the consequences of the plaintiff's failure to appear at any session of main hearing-he/she is deemed to have withdrawn the claim, regardless of the defendant's conduct³²; 5) much shorter and succinct content of the minutes of the main hearing³³; 6) the announcement of the judgment immediately after the conclusion of the main hearing³⁴; 7) the exclusion of the revision (second appeal) against a decision of the second instance court³⁵.

According to the MLCP, a small claims decision (judgement and the decree by which a small claim procedure has been concluded) can be appealed. Until 2015, there was a reduced list of grounds for an appeal compared to the general civil procedure. Namely, the erroneous or incomplete determination of state of facts was not a ground for appeal. In result, the appellate court should not revoke the judgment and return the case to the first instance court for a retrial due to erroneous and incomplete factual findings. While the latter solution still exists in law³⁶ the latest amendment of the MLCP of 2015 include factual findings as the ground for appeal.³⁷ It can be assumed that this novelty followed because of the multiple increase of monetary threshold in small claims procedure, as stated above. However, this brought the small claims procedure unbearably close to the general litigation procedure and thereby takes away the meaning and purpose of this special procedure.

passed, if other requirements are also met. It is obvious that here the legislator failed to prescribe a shorter deadline, although it would have significantly accelerated the procedure.

²⁸ On the contrary, in many EU member states, court hearings are not mandatory and court may decide to resolve the dispute in written procedure. See Harley, G., Said, A. (2017). p. 19.

²⁹ However, there is a possibility to pass immediate judgment without holding a hearing under the rule of general civil procedure if the defendant admitted the relevant facts in the reply to the statement of claim (Art. 321 of the MLCP). In such a situation the case will be resolved in written procedure.

³⁰ Art. 436 of the MLCP. This provision excludes the application of the general civil procedure rule, according to which the parties are allowed to present new facts and evidence even at the latest stages of the first instance proceeding but only with a proper excuse for the belated submission.

³¹ A preliminary attempt at mediation is not mandatory in small claims procedures. Mediation remains at parties' disposal, but it is rarely used in practise.

³² Art. 436 (4) of the MLCP. Compare with Art. 280 of the MLCP which applies to general civil procedure.

³³ Art. 434 of the MLCP.

³⁴ Art. 437 of the MLCP. It means that the passing of the judgement cannot be postponed, as it is a case in general civil procedure when dealing with more complex cases (Art. 324(4) of the MLCP).

³⁵ Art. 438 (4) of the MLCP.

³⁶ Even though it is evident that this is being done by reference to the wrong article of law (Article 358 instead of Article 359 of the MLCP).

³⁷ Art. 438(1) of the MLCP.

3. THE CURRENT STATE OF ICT OPERATIONAL OPTIONS

After this brief presentation and general assessment of the legal framework, let focus *in medias res*-what are the existing ICT tools in Macedonian small claims procedure?

The electronic technology and communication have been influencing Macedonian civil procedure since 2008. Recognizing the service of documents as one of the most “neuralgic” and dysfunctional points of Macedonian civil procedure (“a black hole in which the courts are losing their efficiency”), the amendments to the MLCP of 2008 introduced the electronic service of documents via the Court’s Electronic Information System (CEIS). Service via CEIS has become mandatory for certain categories of entities and persons (state bodies, persons performing public authorizations and lawyers), who have an obligation to register an electronic mailbox at the CEIS. If electronic delivery is not possible or there are difficulties, it can be replaced by physical delivery.³⁸ These amendments also provide for the possibility to effect the service electronically also upon party’s request at the electronic address provided in the request. The rules on electronic service of documents were subject to further amendments in 2010. The amendments were twofold: first, they have expanded the entities for which e-service is mandatory (state administration bodies, local self-government unites and all legal entities), and second, they have raised standards for secure identification and transmission of documents within CEIS.³⁹ In addition, the amendments of the MLCP of 2010 introduced the mandatory digital audio recording of the hearings⁴⁰ and the possibility of e-filing.⁴¹ It should be made clear that all these ICT tools that have been introduced in general civil procedure, are equally applicable in small claims procedure, as stated above.

Although the MLCP embraced some aspects of digitalisation of civil procedure since 2008, and more intensively since 2010 (e-service, e-filing, mandatory digital audio recording), the process is still ongoing and updating with numerous hurdles. The current state of digitalization in court system could be briefly described as follows. Electronic data processing is largely used in the courts, but primarily as a tool for internal case management. The Automated Information System for Court Case Management (ACCMIS)⁴² keeps a complete record of court proceedings from receipt of claims and other submissions, through automatic distribution of cases to judges, until archiving

³⁸ Art. 125-a and 126-a of the amendment of the MLCP of 2008.

³⁹ Art. 125-a and 126-a of the MLCP as amended in 2010.

⁴⁰ Art. 119-a and 119-b of the MLCP.

⁴¹ Art. 98 (1) of the MLCP as amended in 2010.

⁴² The system itself has three-layer architecture (Database Server, Application Server, Client part), developed with DELPHI software, it works on Microsoft Windows Server 2008 R2, Microsoft SQL Server 2008 platform and is installed in each court.

of each case.⁴³ In addition to it, there is the FEMIDA system for mandatory digital audio recording of hearings. However, despite the efforts that have been made so far to digitize court services in general, official reports on the court ICT system show that the reality regarding the use of ICT tools by Macedonian courts is devastating. The lack of adequate resources, especially hardware equipment that is largely outdated, defective and does not support software solutions used in courts, are currently key problems in the digitization process.⁴⁴

On the other hand, the existing ICT tools between the court and the parties and other participants in the proceedings are limited. There is an e-service and e-filing portal⁴⁵ but it is still at the first stage of implementation: e-service from the court to the users, but not *vice versa*. It must be noted that since 2010, when the rules on service by registered electronic mailbox were first introduced until nowadays, the e-service has not become the default method of service of document, even for the entities and persons for which it is mandatory. However, in the last few years (especially since the COVID-19 pandemic), a significant increase in e-service has been noticeable, with a tendency for full and consistent application of legal provisions, which significantly affects the reduction of delivery costs and improves efficiency. Regarding the possibility to e-submissions, in contrast to some EU member states that have embraced e-filing, Macedonian civil procedure (including small claims procedure) still relies on traditional court filing in paper format. The statutory rules which provide that submissions can also be filed electronically have never been implemented in practice yet,⁴⁶ nor the Judicial Portal offer downloadable application forms. Moreover, there is no legal basis for the use of distance communication technology for conducting the oral hearings, or evidence-taking in civil procedure in general (and accordingly in small claims procedure), though there were pilot projects in some courts, resulted with fully digital courtrooms. All mentioned affects not only the preparation and timeline for filling the claim, but also protract the conducting of hearings and taking of evidence.

⁴³ In North Macedonia, the ICT has traditionally been in the domain of the Supreme Court of North Macedonia where the Center for Informatics was established. It takes care of the smooth functioning of the existing ICT systems at the state level, supported by the units located in each court.

⁴⁴ For more details on the condition of judicial ICT system see Use of Advance Electronic Tools in the Judiciary, Basic Assessment. (December, 2020). OSCE Mission in Skopje. The situation today is perhaps a shade better than 2020, but still unsatisfactory.

⁴⁵ See <https://edostava.sud.mk>.

⁴⁶ Notwithstanding that according to the rules the parties can communicate with the court basically in the context of the information portal of e-justice, parties increasingly communicate with the court by e-mail. For example, the applications with apologies or proposals to postpone a hearing are sent by e-mail to the court. This practice is not quite correct especially on the ground of identification and transmission standards that are established within CEIS.

4. COMPLIANCE WITH THE EUROPEAN SMALL CLAIMS PROCEDURE

As noted earlier, all EU member states deal with small claims in specific ways, either allocating them to special courts or relying on procedural rules that are different from the regular litigation. Besides national proceedings, the European Small Claims Procedure (henceforth: ESCP) exists for cross-border cases under certain requirements,⁴⁷ so that two parallel procedures (the national one and the European one) are available for recovering small claims at the choice of the plaintiff.⁴⁸ Nevertheless, a close look at the ESCP shows that due to many reasons (including the optional nature of the instrument), the ESCP is not a success story, being either not well-implemented into national legislation, or its actual application in many member states is being negligible.⁴⁹ The reasons to which this is most often attributed are, *inter alia*, the following: lack of awareness of the existence of the ESCP or lack of familiarity with its procedure, some unresolved procedural issues or issues reserved for internal systems and their divergent solutions, cumbersome service, language issues, costs of translation and other costs, enforcement uncertainties etc.⁵⁰

The small claims procedure, as designed by the MLCP, applies only in domestic cases, and does not touch cross-border relations, including these with the entities of EU Member States. On the other hand, Macedonian citizens, consumers, and entrepreneurs are included in European flows on daily basis, whether face-to-face or digitally. However, as North Macedonia is not an EU member state, EU rules do not directly apply to them and they cannot claim their rights in cross-border cases under the EU rules. Yet, bearing in mind that the highest strategic priority for North Macedonia is the EU membership and assuming it will happen soon, it is appropriate to compare Macedonian small claim procedure with the European one. The comparison provides an answer to the question of how suitable the Macedonian small claims procedure is for the collection of cross-border debts in the light of standards set by the ESCP⁵¹, but it is also important given that within the ESCP there are some procedural issues that the national legal system is called upon to respond. Since the structure and basic features of the ESCP have been exhaustively

⁴⁷ Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, OJ L 199, 31.7.2007, 1-22, This Regulation was further improved and modernized by the Regulation (EU) No 2015/2421 amending Regulation (EC) No 861/2007 of the European Parliament and of the Council of 16 December 2015 amending Regulation (EC) No 861/2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 creating a European order for payment procedure, OJ L 341, 24.12.2015, 1-13.

⁴⁸ Silvestri, E. (2018). p. 6.

⁴⁹ See Varregoso Mesquita, L., Marques Cebola, C., European Small Claims Procedure: An Effective Process? A Proposal for an Online Platform. *Access to Justice in Eastern Europe*, 2(14), 7-21.

⁵⁰ Ibid. Also Gioia, G. (2022). p. 3-4.

⁵¹ Of course, it should be emphasized that unlike national procedures, the ESCP is limited in cross-border cases and can only be opted in a cross-border case in line with Art. 3 of the Regulation. It is not applicable in a national case.

elaborated in numerous studies and papers, our aim here is not to explain it all again. On the contrary, referring to what has already been written about the structure, basic features, advantages, and shortcomings of the ESCP, our aim is to compare all this with the same aspects of the Macedonian small claims procedure and to draw some summary conclusions. Still, considering that this paper is focused on the process of digitalisation, it is inevitable to mention that the amendments to the ESCP (resulting from Regulation No 2015/2421) put special emphasis on this process by strengthening the use of distance communication technology, including to conduct of oral hearings, and the taking of evidence, as well as by enabling the e-service of documents and other written communications and distant payment of court fees.⁵²

The following table provides for an easy and quick comparison between two procedures on some key features,⁵³ indicating the overlaps as well as the differences between them.

Item	Macedonian small claims procedure	European small claims procedure
Scope	Civil and commercial matters	Civil and commercial matters
Monetary threshold	MKD 600.000 (approx. EUR 9.700)	EUR 5000
Type of claims	Pecuniary and non-pecuniary	Pecuniary and non-pecuniary
Standard forms	No	Yes
Distant payment of court fees	No	Yes
Representation by a lawyer	Optional	No
Further practical assistance for parties	No	Yes
Written phase	No	Yes
Oral phase	Yes	Possible, at the court discretion
Timeframe	No	Yes
E-service of documents	Yes	Yes
Distance communication technology (videoconference or teleconference)	No	Yes
Uncontested	Immediate judgement	Immediate judgement
Standard of review	Ful scale appeal	Review of the judgment in exceptional cases

⁵² See Arts. 8, 9 13 and 15a as replaced/inserted by the Regulation No 2015/2421.

⁵³ The comparison is neither complete nor detailed, as it would exceed the aims of this paper.

Summarizing what is presented in this table, it can be concluded that, if we put aside the monetary threshold that has been already discussed above, the deviations in Macedonian small claim procedure from the ESCP are in several key points: 1) lack of the principle of written form, 2) non-use of standardized forms and distance payment of court fees, 3) the absence of a legal basis for use of distance communication technology for holding hearings and evidence-taking and 4) standard of review of judgement.

5. THE PROPOSAL OF THE NEW MLCP: A STEP FORWARD TO MORE EFFICIENT AND COST EFFECTIVE RECOVERY OF SMALL CLAIMS

National lawmakers have all these in mind when they started drafting a proposal to the new MLCP. In that vein, as part of the package of changes to the litigation procedure, substantial changes have been introduced to small claims procedure, aiming to provide for a legal framework for resolving low value disputes in more efficient and a cheaper manner within the national jurisdiction.⁵⁴ The novelties refer to: 1) reducing the claim ceiling for disputes to be defined as a small claim dispute, 2) an extended list of disputes that are not considered to be small claim disputes, 3) establishment of basically written proceedings, 4) limited number of preparatory submissions, 5) more severe sanctions for the party in default; 6) abolition of the possibility to challenge the judgment to wrongly and incompletely determined factual situation; 7) setting shorter deadlines for specific procedural actions and 8) setting timeframes for completing first instance and appeal procedure.⁵⁵

To bring the monetary threshold for what is considered a small value dispute into line with the economic situation and living standard in the country, the claim ceiling has been reduced to less than EUR 1000 and 3000 (MKD 60.000 and 180.000) in civil and commercial disputes respectively. The proposed changes have also extended the negative enumeration in respect of small claims so that in addition to the existing ones (mentioned above), disputes over copyright and related rights, the industrial property rights, or the right to use a company name, as well as disputes over unfair competition and monopolistic behavior are not considered as small claims.

⁵⁴ As widely known, the ESCP leaves the implementation of the ESCP to the member states, if the regulation itself leaves things unregulated. Even though some countries took preparatory steps towards the implementation of the ESCP in the national legislation even before their official membership in the EU (e.g. Croatia), North Macedonia did not decide on it when preparing the proposal of the new MLCP. It is more than certain that a special law will not be adopted for this as in some countries (e.g. the Netherlands), which means that even the new MLCP (if adopted as proposed) will have to be amended to fill in the gaps of the ESCP.

⁵⁵ The Proposal on the new MLCP, July 2021. The ESCP leaves the implementation of the ESCP to the member states, if the regulation itself leaves things unregulated. Although some countries took preparatory steps towards the implementation of the ECHR in the national legislation even before their official membership in the EU (eg Croatia), North Macedonia did not decide on it when preparing the proposal of the new MLCP.

The new small claims procedure will be a written one: the court shall hold an oral hearing if it considers this to be necessary or if a party so requests (in the statement of claim, in the written reply to the statement of claim or in the preparatory submissions). Since the holding of a preparatory hearing is still not foreseen in this procedure, if the oral hearing is held at all, it will be the main hearing. The role of the preparatory hearing is taken over by the preparatory submissions. Namely, in addition to the statement of claim and the reply to the statement of claim (for which the deadline is shortened from 15 to eight days), each party can file one more preparatory submission (as a second written round).⁵⁶ Moreover, the filing of the statement of claim and the reply to the statement of claim are the final moments by which the plaintiff and the defendant respectively can present all facts and evidence. If, after receiving the reply to the statement of claim or after receiving the preparatory submissions, the court determines that the factual situation is not in dispute between the parties, and only written evidence has been proposed (and there are no other obstacles to pass a decision), it should render a judgment without holding a hearing.

The new provisions foresee stricter sanctions for the default party (in a case of failure to respond to the statement of claim or failure to appear at the hearing), being duly warned of the consequences of default. Sanctions are reasonably measured and range from the possibility of passing a judgment based on confession, through the withdrawal of a statement of claim to the possibility of the court to render a judgement based on the evidence at its disposal.

There is still a possibility to file an appeal against the first-instance judgment (due to the constitutional principle of two-tiered judicial proceedings), but the standard of review is limited on points of law (certain substantial violations of the provisions of the litigation procedure and a wrong application of the substantive law). No further appeal is allowed.

An essential novelty is the proposed timeframes in which the procedure should be completed: six months for the first-instance procedure and three months for the appeal procedure.

In the context of the focus of this paper, it should not be overlooked that the proposal of the new MLCP pays special attention to ICT tools in the conduct of ordinary litigation, which *mutatis mutandis* applied to small claims proceedings. The regime of e-service and e-filing as well as for the use of electronic documents in the procedure, have been updated in line with the EU standards which has already been implemented in Macedonian legislation.⁵⁷

⁵⁶ In that sense, the plaintiff can, within eight days from the day of receipt of the reply to the statement of claim, submit a preparatory submission responding to the allegations from the reply to the statement of claim, and the respondent can, within eight days from the receipt of the plaintiff's preparatory submission respond to the allegations contained in such submission.

⁵⁷ The Law on Electronic Documents, Electronic Identification and Trust Services (Official Gazette of RNM No. 101/19 and 275/19) which was adopted to comply with the Regulation (EU) No 910/2014

The use of distance communication technology for holding of hearings and taking of evidence is also included in the law.

In summary, if the provisions of the proposal of the new MLCP are analyzed in the light of the ESCP, it can be inferred that apart from the standardized forms (which have not been included) and the wider standard of revision of a judgment, the Macedonian small claims procedure will be very close to the ESCP. Given that the law is still pending in Parliament, some additional modernization and rationalization of the procedural rules might happen in the meanwhile.

6. OTHER ACTIVITIES FOR STREAMLINING THE SMALL CLAIM PROCEDURE THROUGH ICT TOOLS

Although the protracted procedure for the adoption of the new MLCP hinders the reforms of the civil justice system as a whole (including the recovery of small claims), likely in the meantime intensive work is going on regarding the digitalisation of the justice system within the framework of some other projects and in accordance with other strategic documents. They create solid assumptions for the future application of the new legal solutions, and can even lead to their further modernization. Namely, a decade after the first steps in digitizing the justice sector were taken, the Government of North Macedonia embarked in a major expansion of this process. Two strategic documents should be mentioned here: the Justice Sector IT Strategy for the period 2019-2024 and the latest Development Sector Strategy for Justice for the period 2024-2028,⁵⁸ whereas the digitalisation and e-justice is set as a key objective not only at national level but also for improving the cooperation with other justice systems, including those of EU member states. Namely, in the last strategic document it is explicitly stated that:

“By implementing ICT solutions and procedures in accordance with European and international standards, the goal is to increase timely access to justice services for all users, to improve the quality, protection and security of data and to cooperate with other justice systems, institutions of the EU, its member states and other international organizations”⁵⁹

Furthermore, the following specific objectives set in the Strategy should be pointed out: 1) establishment of an effective system for two-way exchange of documents (e-filing and e-service) and 2) establishment of a platform for on-line hearings, storage of audiovisual recordings and piloting in special

on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC.

⁵⁸ Both documents are available in Macedonian on the website of the Ministry of Justice. <https://pravda.gov.mk>. accessed 4 April 2024.

⁵⁹ Development Sector Strategy for Justice for the period 2024-2028, at p. 14.

proceedings.⁶⁰ No doubt, the realization of these two specific goals will be crucial in streamlining the small claims proceedings through ICT tools at both national and cross-level.

7. CONCLUSION

The simplified procedures for recovery of small claims help meet the modern objectives of efficiency and cost-effectiveness by providing mechanisms for quick and inexpensive resolution of civil and commercial disputes, thus building public trust and confidence in the judicial system. In the era of deep penetration of information technology in the judicial system, ICT tools can only strengthen already existing mechanisms for the collection of small claims both nationally and cross-border.

Macedonian's approach to small claims procedure is rooted in a long-standing tradition. However, for decades, the small claims procedure has never been on the agenda of more substantive changes, thus lagging behind the modern tendencies in this domain. Faced with the fact that the existing legislative framework is outdated and does not satisfy the requirements for quick resolution of real disputes of small value, the national legislators decided on more radical changes in that direction following the current European trends. Although the new solutions are still in legislative procedure, and it is uncertain in which format they will be adopted, the above analysis still gives us the freedom to conclude that: first, at national level, the new solutions (which are still far from a fully digitalised procedure), will result in more efficient and cost effective small claims procedure, and second, at EU level, the new rules have the potential to be easily adapted to cross-border cases, as required by the ESCP so far. However, not everything is within the legal framework. Even assuming that the legal framework is state-of-the-art, what we really need is further investment in ICT in the justice system, in terms of setting up the appropriate infrastructure. It mostly depends on this whether in the coming years the small claims procedure will not only be managed using certain ICT tools but will be a candidate for full digital justice.

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⁶⁰ Specific objective 1.6: Further increase in the application of digital tools by judicial institutions and e-justice, especially objectives under 1.6.1 and 1.6.9. of the Development Sector Strategy for Justice for the period 2024-2028, at pp. 29-30.

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