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WEBINAR

THE EUROPEAN SMALL CLAIMS PROCEDURE & THE EUROPEAN ORDER FOR PAYMENT PROCEDURE



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SMALL CLAIMS PROCEDURE BETWEEN THE LEGAL PROTECTION REQUIREMENT AND JUDICIAL EFFICIENCY



**Zrinka Tironi, M.Sc.
Municipal Court of Split, Croatia**

INTRODUCTION

The concept and determination of small claims disputes

The Croatian Civil Procedure Act (CPA) does not contain an exact definition on what small claims procedure include.

The CPA does prescribe positive and negative criteria for determining small claims procedures.



INTRODUCTION

The concept and determination of small claims disputes

Three positive criteria:

1. In small claims disputes the claim refers to pecuniary claims which do not exceed HRK 10 000 i.e. HRK 50 000 in commercial procedures,

2. Small claims disputes also refers non-pecuniary disputes where the claimant stated that instead of granting the claim he agrees to receive up to said amounts of HRK 10 000 i.e. HRK 50 000 (*facultas alternativa*),

3. Small claims disputes include the disputes where a pecuniary sum is not the subject matter, but the handing over movable property whose value, as stated by the claimant, does not exceed HRK 10 000, i.e. HRK 50 000 in commercial disputes.

HRK 10 000 (≈ EUR 1 330), i.e. **HRK 50 000** (≈ EUR 6 660)

INTRODUCTION

The concept and determination of small claims disputes

Negative criteria determine which disputes are never considered small claims.



INTRODUCTION

The concept and determination of small claims disputes

The procedure in small claims disputes also conducts in the lodging of an objection against order for payment if the value of the disputed part of the order for payment does not exceed the amount of HRK 10 000.

The legislator prescribed such criteria to emphasize the importance of property rights that are being decided upon.



INTRODUCTION

Change in the value of the subject matter of the dispute

If the claimant reduces the claim that it no longer exceeds the amount of HRK 10 000 further proceeding will be conducted according to the provisions governing small claims proceedings.



If the claimant modifies claim so that the value of the subject matter of the dispute exceeds the amount of HRK 10 000, the proceedings will be completed in accordance with the provisions of the CPA on regular proceedings.

INTRODUCTION

Separate procedural rules



The procedure in small claims disputes is regulated by Chapter Thirty of the CPA, the provisions of Art. 457. - 467.a CPA.

It is carried out before municipal and commercial courts of first instance.

Other provisions of the CPA apply directly if there are no special provisions in the Chapter Thirty regulating the procedure in small claims.

Special provisions make the procedure in small claims specific, more summary and shorty.

INTRODUCTION

Principle of proportionality

Legal regulation of small claims disputes should primarily consider **two requirements - criteria.**

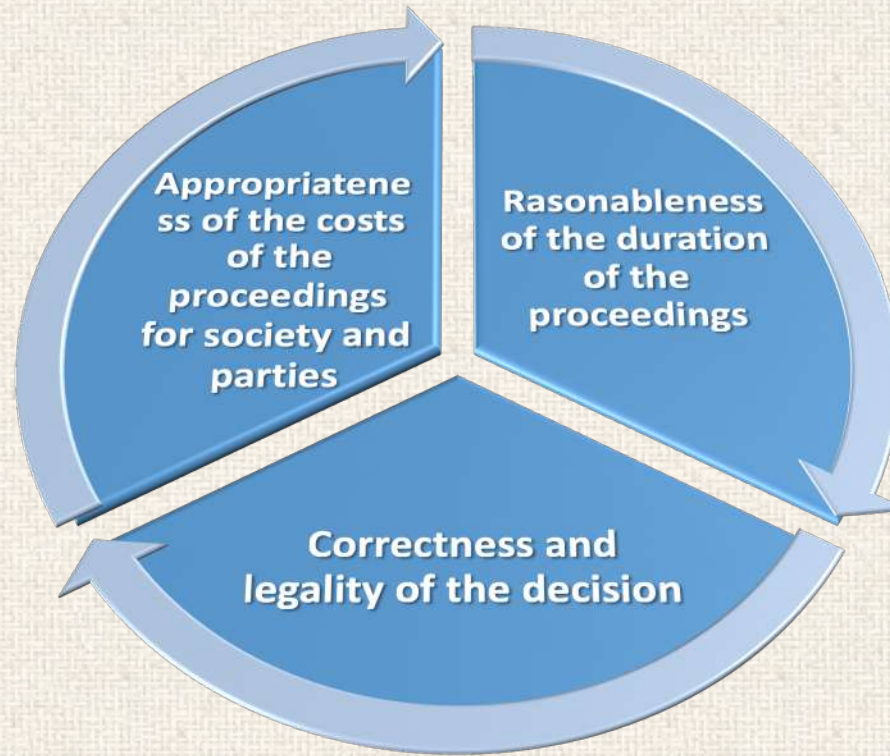


Legal solutions always extended between those two extremes - **principle of proportionality.**

These two opposing requirements - criteria are the cause of the **three - dimensional model of proceedings in small claims.**

INTRODUCTION

Principle of proportionality



Three - dimensional model of proceedings in small claims.

A LOOK INTO THE PAST

Different types of proceedings in small claims in Croatian countries were introduced during the last quarter of the 19th century. Since 1933, small claims proceedings have been conducted by regular courts.

The idea of specialized courts for small claims in Croatia was abandoned.

In the last twenty years, Croatian legislator has altered and amended the provisions of the CPA related to small claims disputes for five times by amendments to the **Croatian Civil Procedure Act of 2003., 2008., 2011., 2013. and 2019.**

A LOOK INTO THE PAST

The Act on Amendments to the Civil Procedure Act of 2003:

- 1) regulated the issue of labor disputes regarding to small claims disputes
- 2) changed the value criterion for determining small claims disputes in proceedings before commercial courts
- 3) limited the list of absolutely essential violations of civil procedure due to which a judgment delivered in a small claims dispute can be challenged
- 4) introduced the principle of monocratic trial in appellate proceedings

A LOOK INTO THE PAST

The Act on Amendments to the Civil Procedure Act of 2008:

- 1) changed the value criterion for determining small claims in municipal courts
- 2) - introduced so-called preliminary procedure
- prescribed the duty of the parties to present the facts on which they base their claims and to propose evidence for establishing the facts no later than the conclusion of the preliminary procedure
- 3) limited the possibility of filing a counterclaim, objective amendment of action, subjective amendment of action, defense of setoff and the objection of prescription limitation.

A LOOK INTO THE PAST

The Act on Amendments to the Civil Procedure Act of **2011**:

1) allowed extraordinary second appeal (appeal on points of law) in small claims disputes with the permission of the appellate court

The Act on Amendments to the Civil Procedure Act of **2013**:

1) reduced the number of provisions governing the procedure and narrowed the period in which facts can be presented and evidence proposed

2) introduced a provision according to which the parties are obliged to state all the facts on which they base their claims at the **latest in the lawsuit, i.e. to respond to the lawsuit**, and to propose evidence necessary to establish the stated facts.

A LOOK INTO THE PAST

The Act on Amendments to the Civil Procedure Act of 2019:

- 1)** still stipulates that in small claims proceedings the lawsuit is always submitted to the defendant for a response and that the parties are obliged at the latest in the lawsuit or response to the lawsuit to state all the facts on which they base their requests and propose the evidence necessary to establish the facts presented
- 2)** the claimant is obliged to state all the facts in the submission submitted to the court no later than within 15 days of receiving the decision revoking the writ of execution in the part ordering enforcement and revoking the actions taken, and the procedure continued as in the case of an objection against order for payment, on which to base his claims and propose the evidence necessary to establish the facts presented
- 3)** the defendant is obliged to state all the facts on which he bases his claims and to present the evidence necessary to establish the stated facts no later than 15 days from the receipt of the claimant's submission
- 4)** the parties may present new facts and propose new evidence at the preliminary hearing only if they could not present or propose them in their submissions through no fault of their own

A LOOK INTO THE PAST

The Act on Amendments to the Civil Procedure Act of 2019:

5) the restriction on the presentation of facts and evidence at an early stage of the proceedings is preclusion

6) because of that in the summons for filing a written response to the lawsuit, i.e. in the decision overturning the order for payment, the court is obliged to warn the parties that they are obliged to state all the facts on which they base their claims and propose evidence necessary to establish fact:

a) no later than in the lawsuit, i.e. the response to the lawsuit

b) the claimant in the submission submitted to the court no later than 15 days from the receipt of the decision overturning the order for payment

c) the defendant within 15 days from the receipt of the said claimant's submission.

A LOOK INTO THE PAST

The Act on Amendments to the Civil Procedure Act of 2019:

- 7) the absence of the claimant from the preliminary hearing results in the presumed withdrawal of the lawsuit
- 8) has been expanded the range of grounds for appeal in relation to absolutely essential violations of the procedure
- 9) an appeal has no suspensive effect, unless the court ex officio exceptionally decides otherwise
- 10) no longer allowed to extraordinary second appeal (extraordinary appeal on points of law) in small claims disputes with the permission of the court of second instance

A LOOK INTO THE PAST

The Act on Amendments to the Civil Procedure Act of **2019**:

11) the parties may file an appeal on points of law against the judgment delivered in the small claims proceedings in the second instance if the Supreme Court of the Republic of Croatia would allow such an appeal on points of law

12) request to reopen the proceedings as an extraordinary legal remedy is allowed in small claims procedures

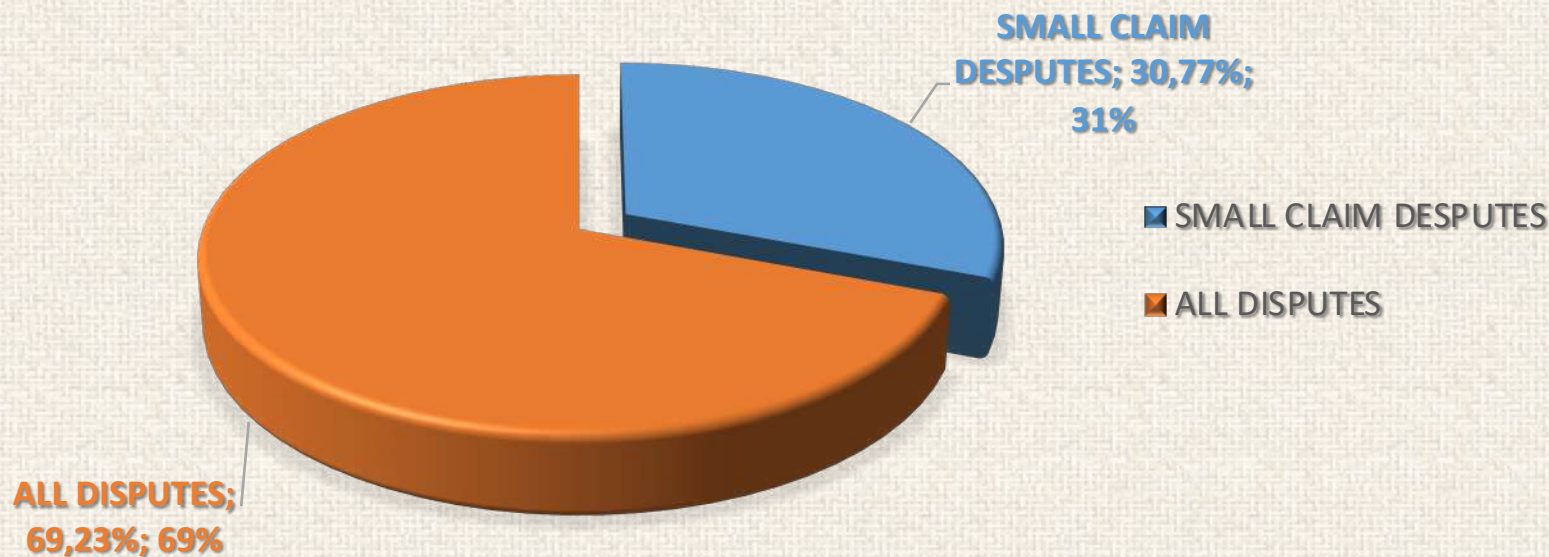
STATISTICAL DATA



The number of cases in small claims disputes is still relatively great in Croatian courts, hence the need to provide a better regulation thereof is quite understandable.

STATISTICAL DATA

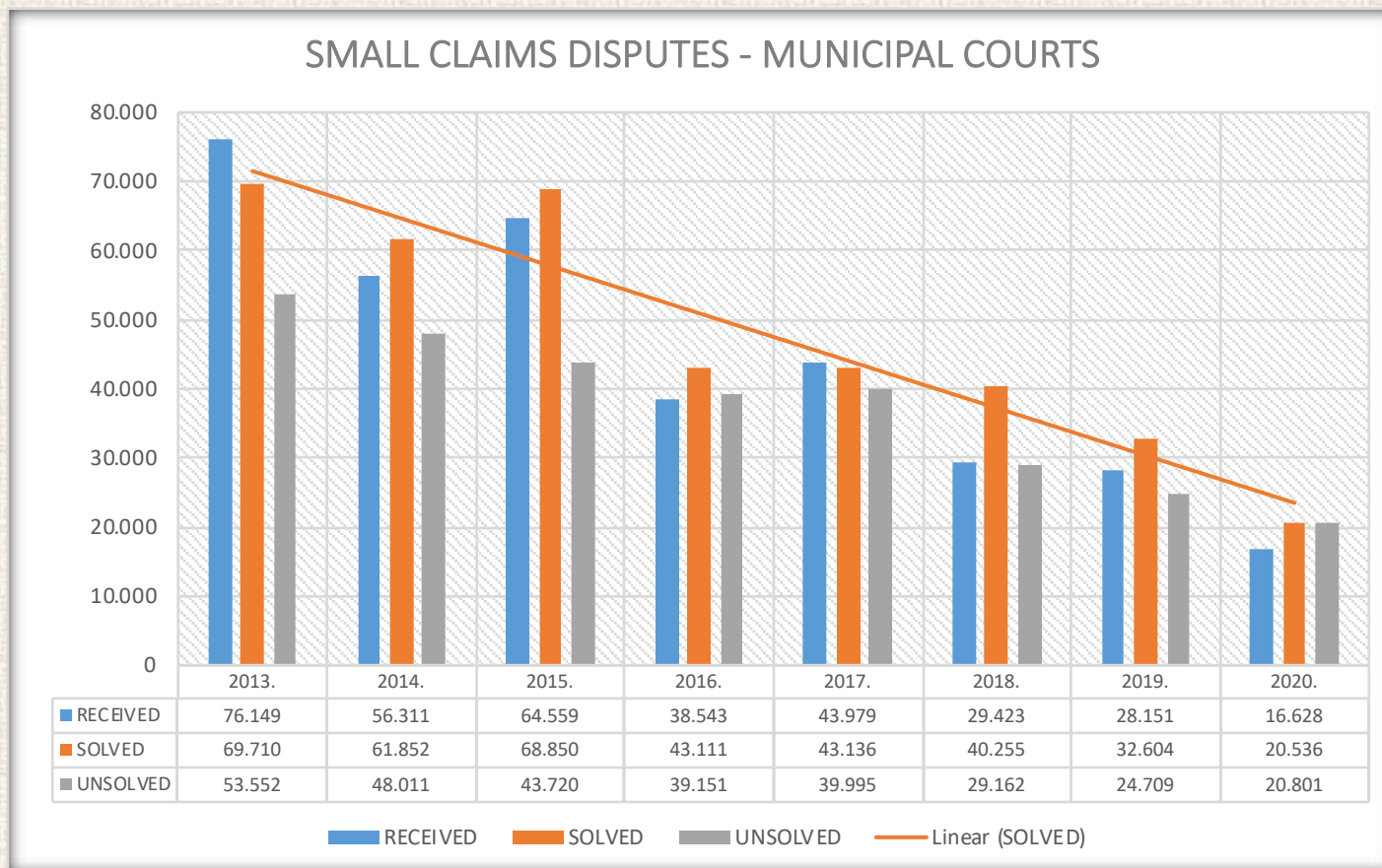
REPRESENTATION OF SMALL CLAIMS DISPUTES IN ALL DISPUTES BEFORE THE MUNICIPAL COURT IN SPLIT IN SOLVED CASES IN THE PERIOD FROM 2013 - 2020



**Statistical data refer to cases from the register P, Pl, Povrv, Pmal, Pn, Pnš, Pi, Pmed, Pst, Ps and Psp
Source: eSpis - a unique information system for managing and working on court cases**

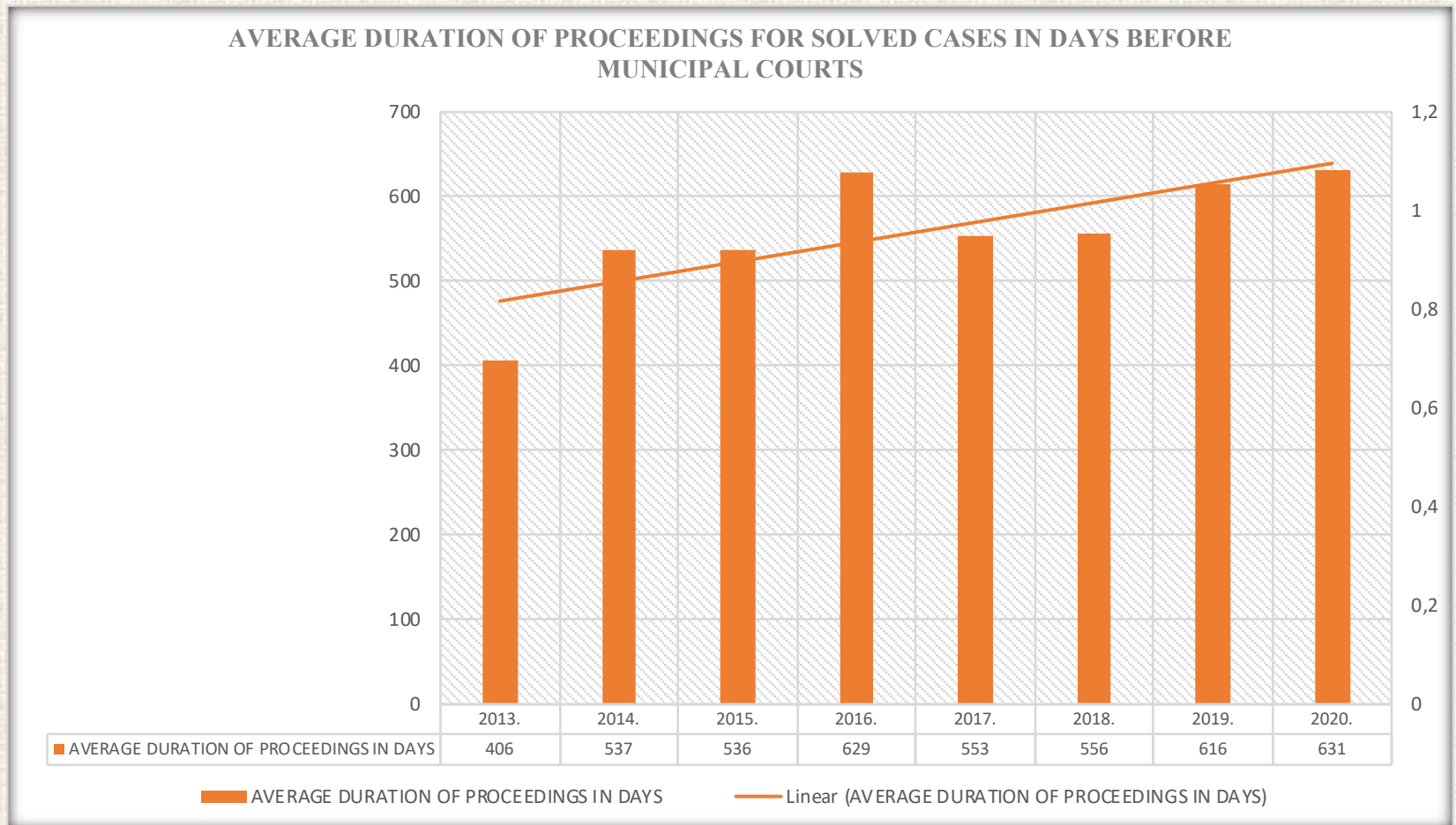
STATISTICAL DATA

The following statistics show whether the legislator succeeded in reducing the number of small claims and the duration of proceedings by amending the law.



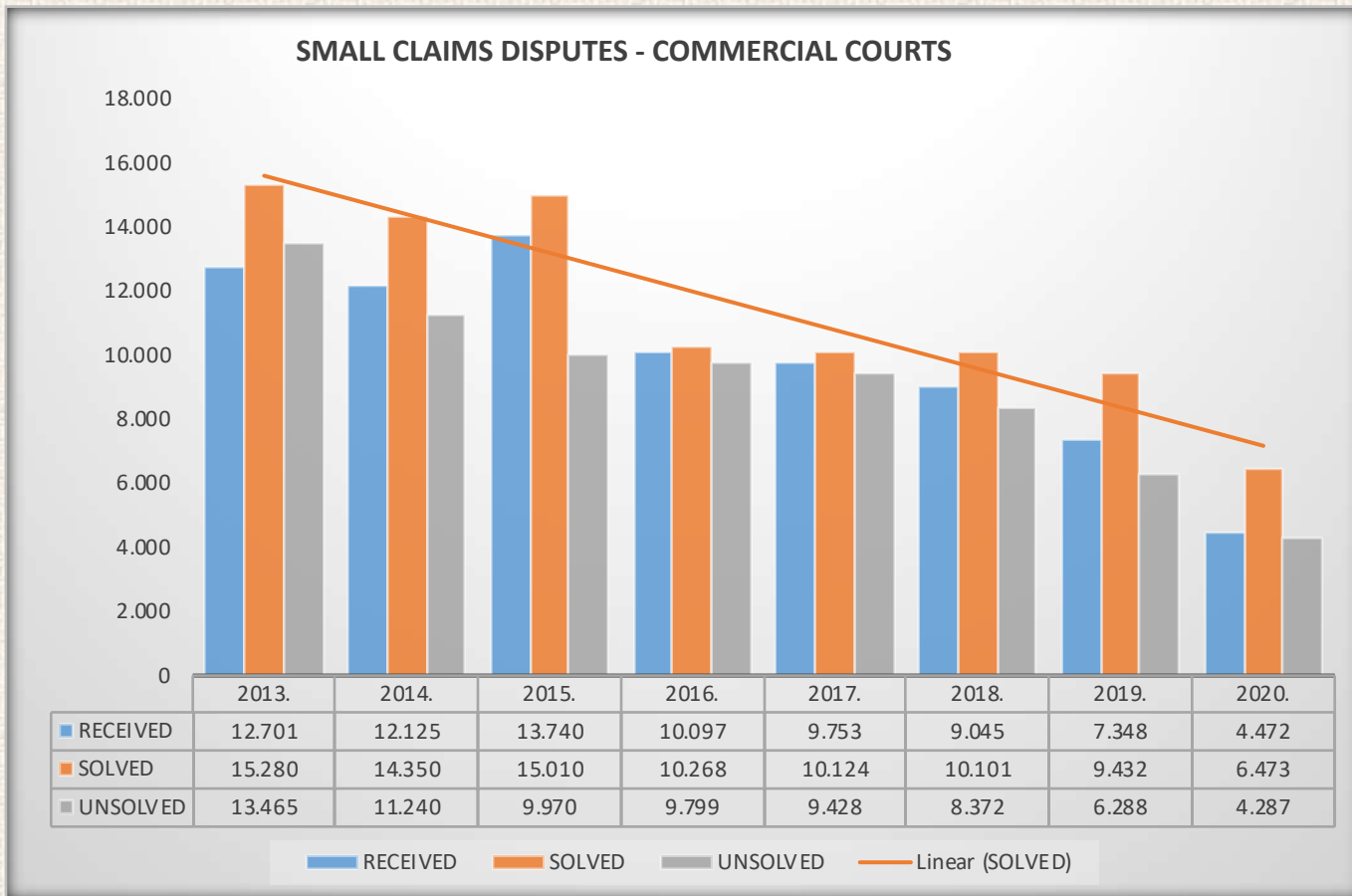
**Statistical data refer to cases from the register P, PI, Pn, Povrv and Pmal.
Source: Ministry of Justice of the Republic of Croatia**

STATISTICAL DATA



**Statistical data refer to cases from the register P, Pl, Pn, Povrv and Pmal.
Source: Ministry of Justice of the Republic of Croatia**

STATISTICAL DATA

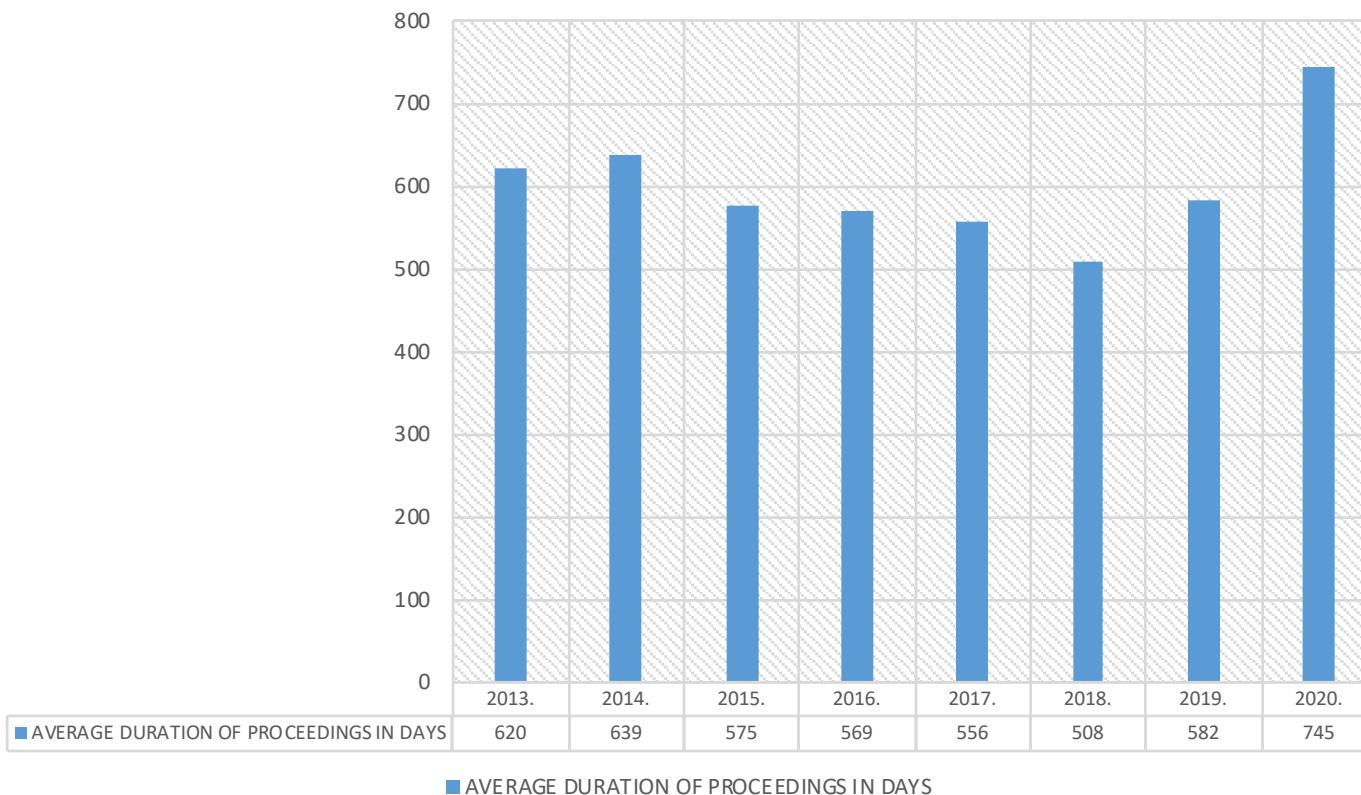


Statistical data refer to cases from the register P, Pl i Povrv.

Source: Ministry of Justice of the Republic of Croatia

STATISTICAL DATA

AVERAGE DURATION OF PROCEEDINGS FOR SOLVED CASES IN DAYS BEFORE COMMERCIAL COURTS



Statistical data refer to cases from the register P, Pl i Povrv.

Source: Ministry of Justice of the Republic of Croatia

STATISTICAL DATA



Statistics show a reduction in the number of cases in small claims, while the duration of the proceedings has not reduced.

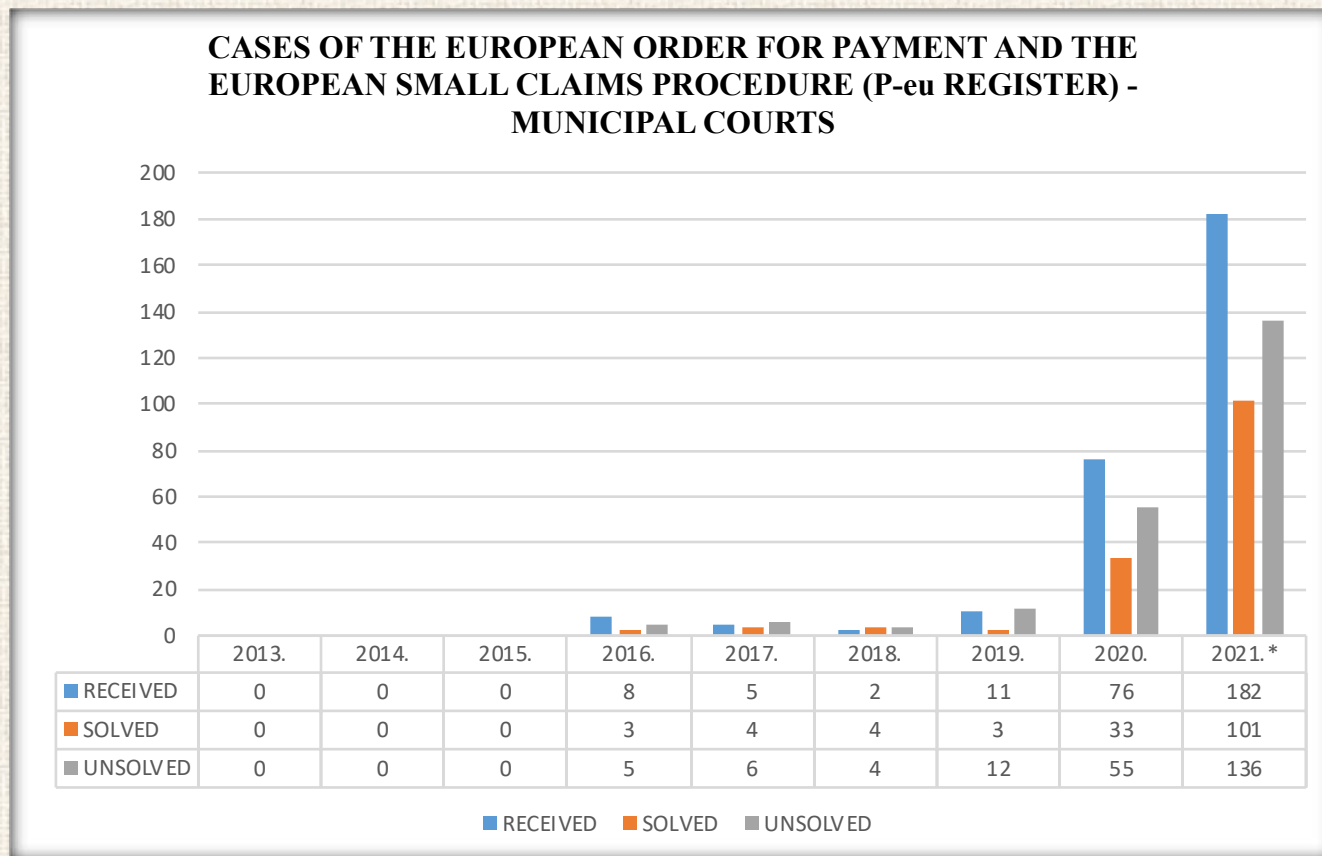
EUROPEAN SMALL CLAIMS PROCEDURE

- **European procedure for small claims disputes was introduced by Regulation No. 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure.**
- **2015. was adopted Regulation (EU) 2015/2421 of the European Parliament and of the Council which 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.**
- **In Croatian CPA the European procedure in small claims disputes is regulated by the Chapter Thirty-three of CPA, provisions of Art. 507.o - 507.ž CPA**
- **The provisions of the Croatian CPA referring to the European procedure for small claims disputes entered into force on the day of accession of the Republic of Croatia into the European Union (1st July 2013).**

STATISTICAL DATA



STATISTICAL DATA

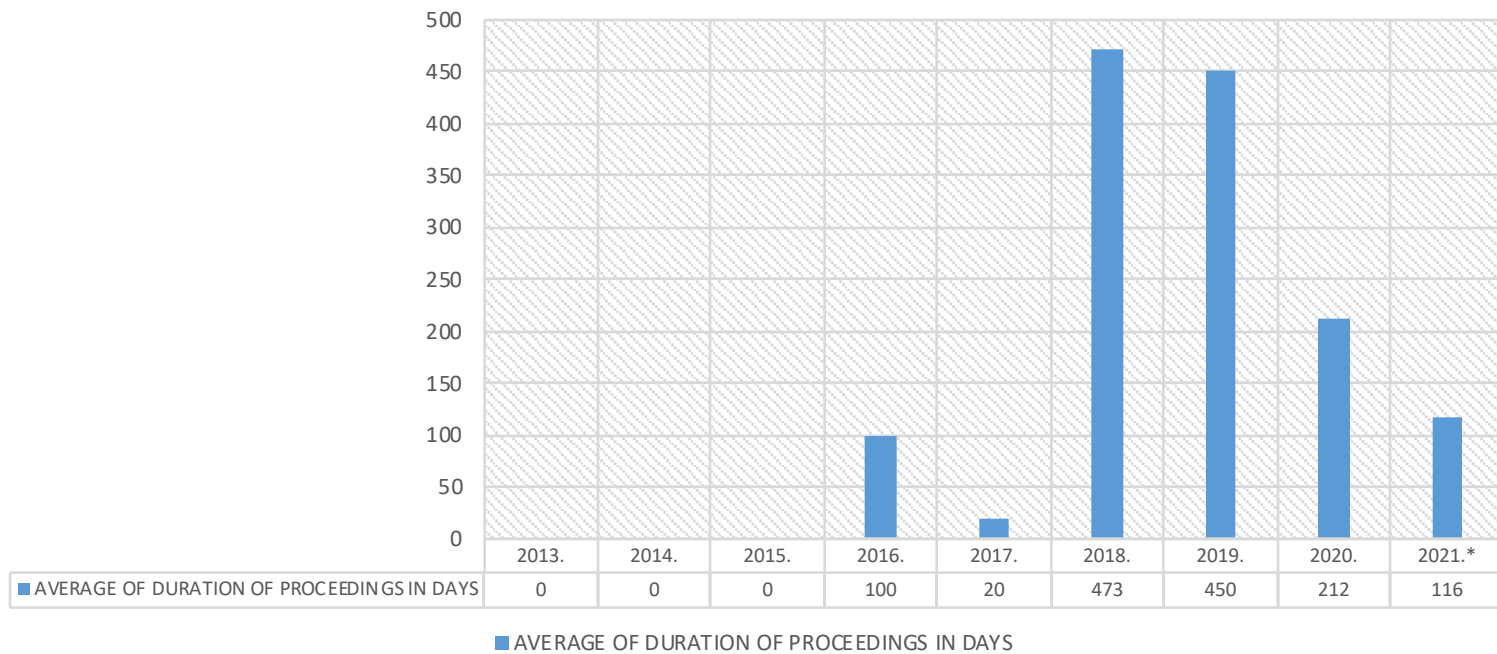


Data for 2021 refer to the period from 1th January 2021 to 30th September 2021.

Source: Ministry of Justice of the Republic of Croatia

STATISTICAL DATA

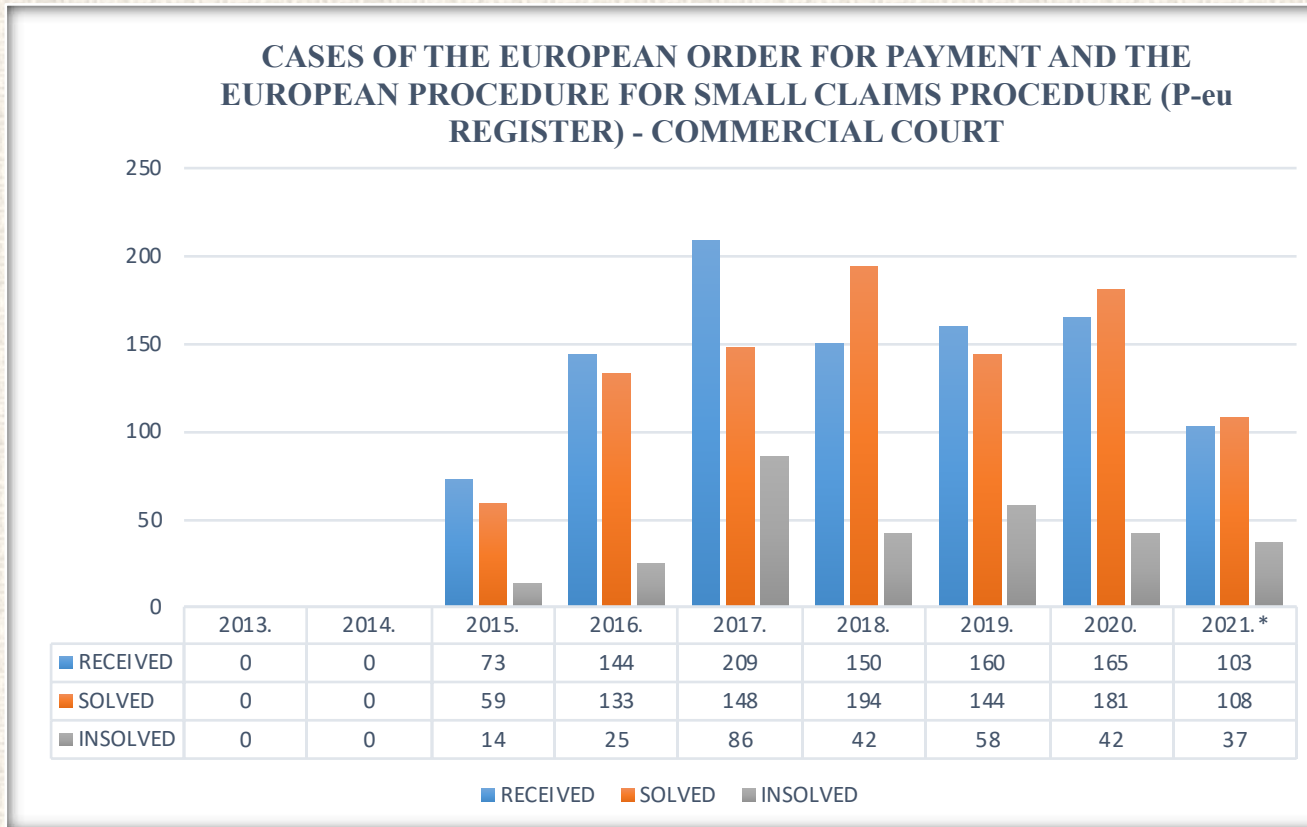
DURATION PROCEEDINGS IN DAYS IN EUROPEAN SMALL CLAIMS PROCEDURE - MUNICIPAL COURTS



Data for 2021 refer to the period from 1th January 2021 to 30th September 2021.

Source: Ministry of Justice of the Republic of Croatia

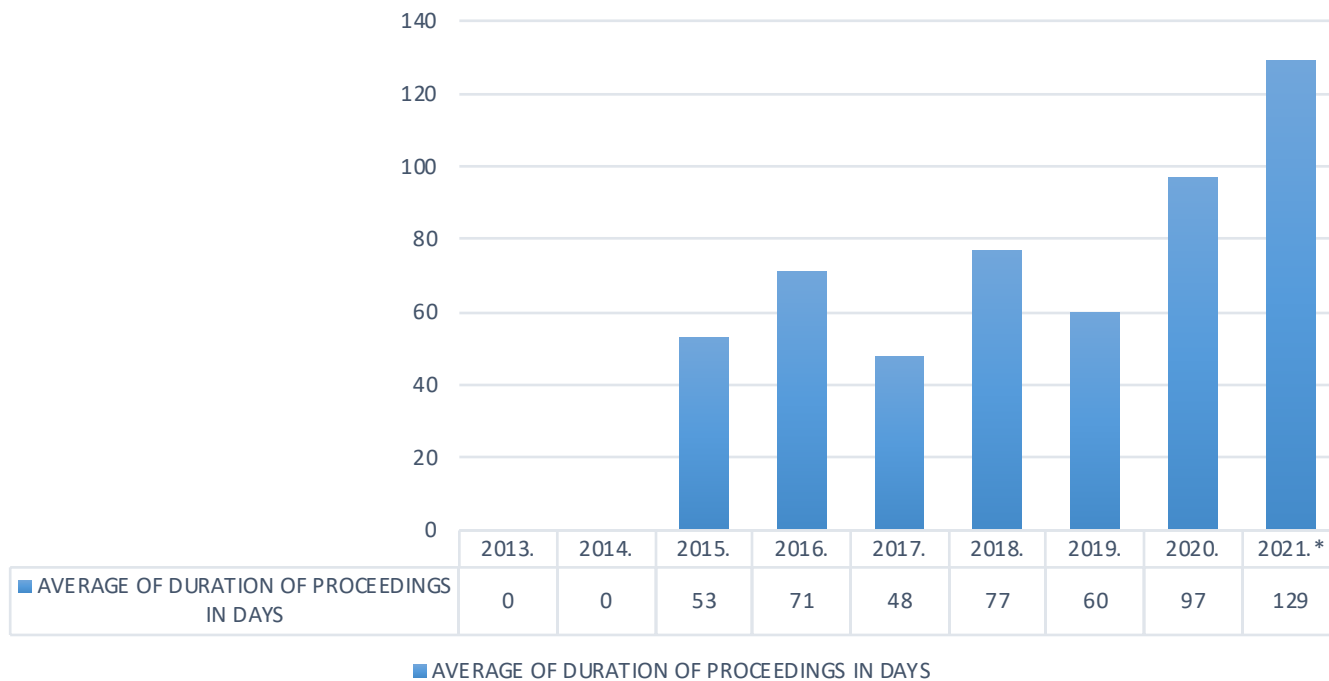
STATISTICAL DATA



**Data for 2021 refer to the period from 1th January 2021 to 30th September 2021.
Source: Ministry of Justice of the Republic of Croatia**

STATISTICAL DATA

DURATION PROCEEDINGS IN DAYS IN EUROPEAN SMALL CLAIMS PROCEDURE AND EUROPEAN ORDERS FOR PAYMENT - COMMERCIAL COURTS



Data for 2021 refer to the period from 1th January 2021 to 30th September 2021.

Source: Ministry of Justice of the Republic of Croatia

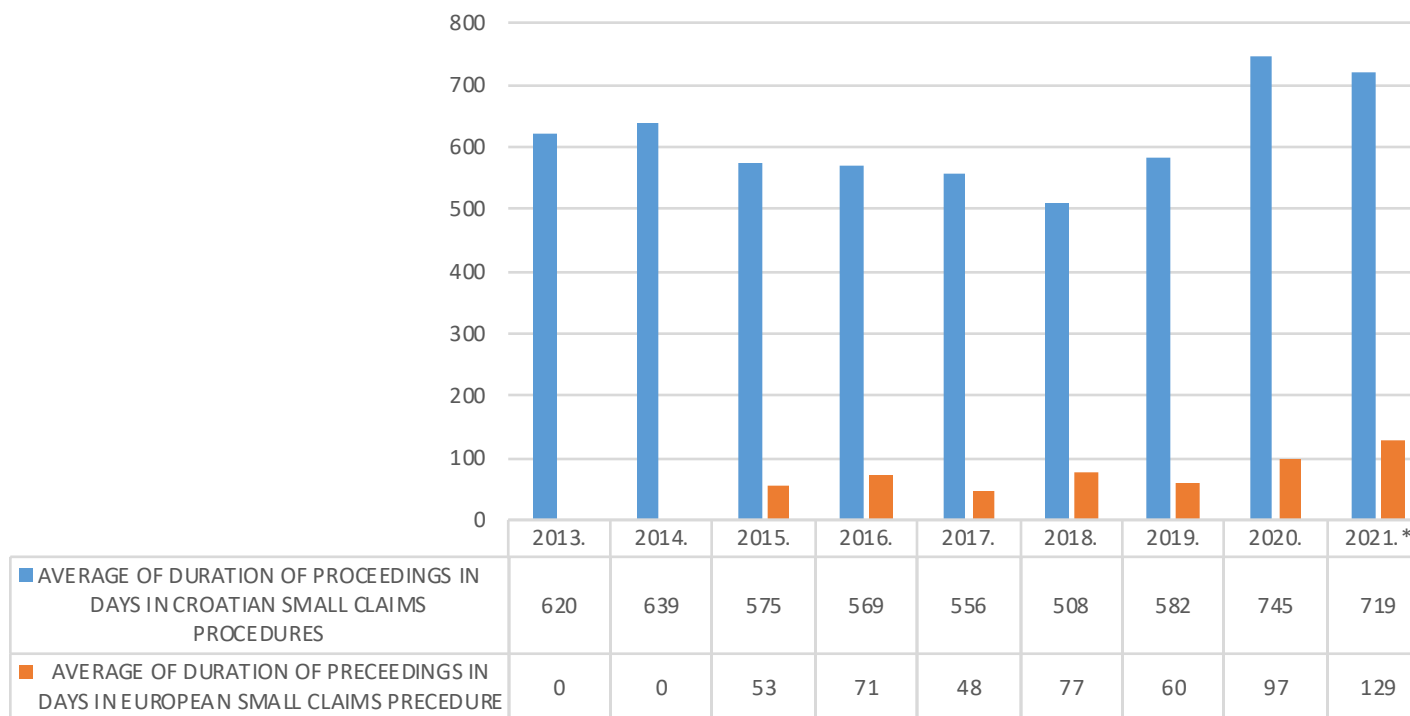
POSSIBLE SOLUTIONS TO INCREASE THE QUALITY AND EFFICIENCY OF TRIALS IN SMALL CLAIMS

General

- **The Croatian legislature has tried to speed up duration of the procedure in small claims disputes through greater procedural discipline of the parties through the introduction of preclusion.**
- **The provision according to which small claims must be resolved at a single hearing is usually unenforceable in practice, mostly due to the extensive interpretation of the provision on the preclusion of evidence**
- **The European Small Claims Procedure is certainly worthy of attention due to some successful solutions it applies, but also due to the expectation that it could soon come to life in practice in Croatia as well.**

STATISTICAL DATA

**COMMERCIAL COURTS
AVERAGE DURATION OF PROCEEDINGS IN DAYS FOR
CROATIAN SMALL CLAIMS PROCEDURES AND
EUROPEAN SMALL CLAIMS PROCEDURES**



■ AVERAGE OF DURATION OF PROCEEDINGS IN DAYS IN CROATIAN SMALL CLAIMS PROCEDURES

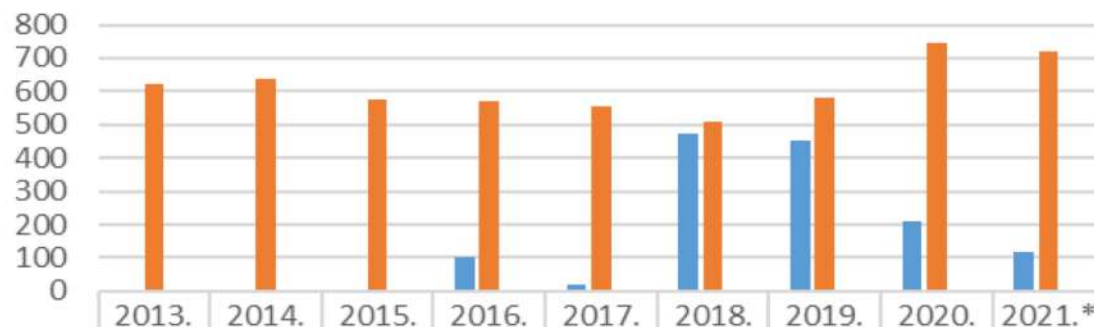
■ AVERAGE OF DURATION OF PRECEEDINGS IN DAYS IN EUROPEAN SMALL CLAIMS PRECEDURE

Data for 2021 refer to the period from 1th January 2021 to 30th September 2021.

Source: Ministry of Justice of the Republic of Croatia

STATISTICAL DATA

MUNICIPAL COURTS AVERAGE OF DURATION OF PROCEEDINGS IN DAYS FOR CROATIAN SMALL CLAIMS PROCEDURES AND EUROPEAN SMALL CLAIMS PROCEDURES



■ AVERAGE OF PRECEEDINGS IN DAYS IN EU-SCP	0	0	0	100	20	473	450	212	116
■ AVERAGE OF PRECEEDINGS IN DAYS IN CROATIAN SCP	620	639	575	569	556	508	582	745	719

■ AVERAGE OF PRECEEDINGS IN DAYS IN EU-SCP

■ AVERAGE OF PRECEEDINGS IN DAYS IN CROATIAN SCP

Data for 2021 refer to the period from 1th January 2021 to 30th September 2021.

Source: Ministry of Justice of the Republic of Croatia

POSSIBLE SOLUTIONS TO INCREASE THE QUALITY AND EFFICIENCY OF TRIALS IN SMALL CLAIMS

Principle of orality v. the principle of written form

- The principle of orality is one of the basic principles of the Croatian civil procedure. In the basic provisions of the Croatian CPA it is emphasized that the court decides on the claim based on an oral, direct and public hearing.
- **European Small Claims Procedure is a written procedure. The court or tribunal shall hold an oral hearing if it considers this to be necessary or if a party so requests. The court or tribunal may refuse such a request if it considers that with regard to the circumstances of the case, an oral hearing is obviously not necessary for the fair conduct of the proceedings (art. 5. par.1. Regulation) – *principle of written form***
- Following the example of the European Small Claims Procedure, the omission of mandatory oral hearings in small claims disputes could contribute to increasing the quality and efficiency of trials in small claims

POSSIBLE SOLUTIONS TO INCREASE THE QUALITY AND EFFICIENCY OF TRIALS IN SMALL CLAIMS

Principle of party presentation v. the principle of inquisitorial

- In Croatia the principle of party presentation is a fundamental principle for gathering evidence. The initiative to collect procedural material is up to the parties. The court is only a passive observer of their discussion.
- In the European Small Claims Procedure where the court or tribunal considers the information provided by the claimant to be inadequate or insufficiently clear it shall give the claimant the opportunity to supply supplementary information or documents (art. 4. par. 4. Regulation). Court also can demand further details concerning the claim from the parties (art. 7. par. 1. Regulation) - *partial inquisitorial regulation*
- Following the example of the European Small Claims Procedure, it would be advisable to strengthen the role of the court in order to speed up proceedings by acceptance the partial inquisitorial regulation.

POSSIBLE SOLUTIONS TO INCREASE THE QUALITY AND EFFICIENCY OF TRIALS IN SMALL CLAIMS

Right to an appeal

- **The provision of Article 18 para. 1 of the Constitution of the Republic of Croatia (RC Constitution) prescribes that the right to an appeal against certain legal acts filed in the first-instance procedure before the court or a competent authority is guaranteed.**
- **Some authors who criticized such regulation claim that our legal order guarantees this right in a very “generous manner”.**
- **European Convention for the Protection of Human Rights and Fundamental Freedoms (Convention) has a substantially narrower view of the right to an appeal.**
- **Bearing in mind aforesaid lower social significance of these procedures in small claims disputes (with respect to the value criterion), and the fact that they are vastly represented in Croatian courts, we believe that the following question is legitimate. Would it be justified to additionally limit or entirely exclude the right of the parties to an appeal in such procedures?**

POSSIBLE SOLUTIONS TO INCREASE THE QUALITY AND EFFICIENCY OF TRIALS IN SMALL CLAIMS

Right to an appeal



With respect to small claims disputes, Europe is dominated by two systems of limited right to an appeal

the system where the possibility to challenge a decision before a second-instance (appellate) court is entirely excluded (Germany, France, Netherlands)

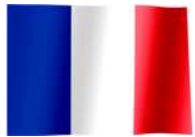
the system where such contestation is allowed, but is limited only to some appellate reasons, usually to violations in the application of a law or which are limited by the need to procure a court approval for filing a legal remedy (Austria, Croatia)

POSSIBLE SOLUTIONS TO INCREASE THE QUALITY AND EFFICIENCY OF TRIALS IN SMALL CLAIMS

Right to an appeal



- Germany - an appeal is allowed if the monetary threshold of the disputed part exceed EUR 600



- In France, an appeal against civil procedure judgements is allowed, unless otherwise prescribed (not allowed in cases where the first-instance court decides on the matters from its own exclusive jurisdiction whose value is up to EUR 4 000)



- Netherlands - an appeal is not allowed in civil procedure up to EUR 1 750



- Austrija - in small claims disputes (up to EUR 2 700) the grounds for appeal are limited to the grounds of absolute nullity and misapplication of applicable law

POSSIBLE SOLUTIONS TO INCREASE THE QUALITY AND EFFICIENCY OF TRIALS IN SMALL CLAIMS

Right to an appeal



- In European procedure for small claims disputes in article 18. of Regulation prescribes minimum standards for review of the judgment:

- the claim form or the summons to an oral hearing were served by a method without proof of receipt by defendant personally, and service was not effected in sufficient time to enable the defendant to arrange for his defense without any fault on his part, or

- the defendant was prevented from objecting to the claim by reason of force majeure, or due to extraordinary circumstances without any fault on his part, provided in either case that he acts promptly.

POSSIBLE SOLUTIONS TO INCREASE THE QUALITY AND EFFICIENCY OF TRIALS IN SMALL CLAIMS

Right to an appeal



In Croatia an appeal may be lodged for:

- **misapplication of applicable law,**
- **for absolutely essential violations of the procedure provided for in ordinary proceedings, unless the court erred in deciding that it has subject-matter jurisdiction or territorial jurisdiction over the parties' objections.**

Unlike a regular procedure, an appeal cannot be lodged:

- **due to an erroneously or incompletely established factual situation and**
- **due to relatively essential violations of the procedure.**

POSSIBLE SOLUTIONS TO INCREASE THE QUALITY AND EFFICIENCY OF TRIALS IN SMALL CLAIMS

Right to an appeal



We find the legal solution of the German CPA is acceptable with monetary threshold of HRK 3 000 (EUR 400) which suited to our economic circumstances and the standard of living.

Given that the acceptance of the German model implies a change in the Constitution of the Republic of Croatia modeled on the European procedure in small claims, the reasons for appeal could be limited to the most serious legal violations (e.g., right to access to court, violation of applicable law).

CONCLUSION

Possible solutions to increase the quality and efficiency of trials in small claims:

1. Abandoning the principle of orality and accepting the principle of written form as a rule for small claims, following the example of the European Small Claims Procedure,

2. Abandoning the principle of party presentation and accepting the partial inquisitorial regulation for small claims procedure following the example of the European Small Claims Procedure,

3. Accept German model of right to an appeal with the monetary threshold of HRK 3 000 (EUR 400) or modeled on the European procedure in small claims, the reasons for appeal could be limited to the most serious legal violations (e.g. right to access to court, violation of applicable law).

**THANK YOU FOR
ATTENTION**



GREETINGS FROM SPLIT