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Problems of European Small Claims Procedure in Connection with Spanish Small Claims

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INTRODUCTION

“Simplified and accelerated cross border litigation on small consumer and commercial claims” § 4 Regulation 861/2007.

REGULATION (EC) No 861/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 11 July 2007
establishing a European Small Claims Procedure

FEATURES

Declaratory process

Up to 5000€

Cross-border civil and commercial matters

Use of forms



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Use of Spanish SCP

2.250.000
civil claims



500.000
National SCP



Reason of this
success:
Effectiveness in case
of insolvency of the
debtor



Article 28 Regulation 861/2007

Review

By 1 January 2014, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a detailed report reviewing the operation of the European Small Claims Procedure, including the limit of the value of the claim referred to in Article 2(1). That report shall contain an assessment of the procedure as it has operated and an extended impact assessment for each Member State.

Who carried it out?

- MS
- Deloitte
- Associations

Conclusions

- Positive assessment
- Certain disfunctions: shortcomings in forms, limits in the scope of SCP, etc.

Consequencies

- Improvement possibilities
- Ammendments through Regulation 2015/2421



MAIN AMENDMENTS IN REGULATION 2015/2421

- Compatible procedure in all MS.
- Cross-border cases.
- Limit in the amount: raises to 5000 €.
- Use of communication technologies.

* Objective: how are main amendments working? which are the main problems in the application of SCP?



§ Limit in the amount for small? claims procedure

Raised from 2.000 € to 5.000 € in 2015.
Aim: improve acces to justice



Experience in Spanish SCP:

Year 2000	→	30.000 €
Year 2009	→	250.000 €
Year 2011	→	No limit

Is acces to justice effective for small claims?



- Setting of costs must be transparent
- Methods of payment

COSTS

But...

There is no contention on the fees

Case: Commercial Court of Madrid September 2016

-Claimant living in Germany

-Fees of 1.200 € in a claim of 600 €



§ Plurality of means for the recovery of debt: consequences

EEO

- European Enforcement Order.
- Enforcement of a judicial decision without opposition.

EOP

- European Order for Payment.
- Declaratory proceeding.

SCP

- Small Claims Procedure
- Declaratory proceeding with limit on the amount.



domestic proceedings for the recovery of debt



The plurality of options & the rules of jurisdiction may cause *lis pendens* or
false *lis pendens*

Case: Judgement of the Appeal Court of Barcelona

May 2014

-Keytel vs Fm Hotel

Date: 18 April 2012

Claim of 800 €

Oposition of the defendant (Fm Hotel)

-Fm Hotel vs. Keytel

Date: 25 June 2012

Claim of 1.161 €

Counterclaim of Keytel for 1.400 €



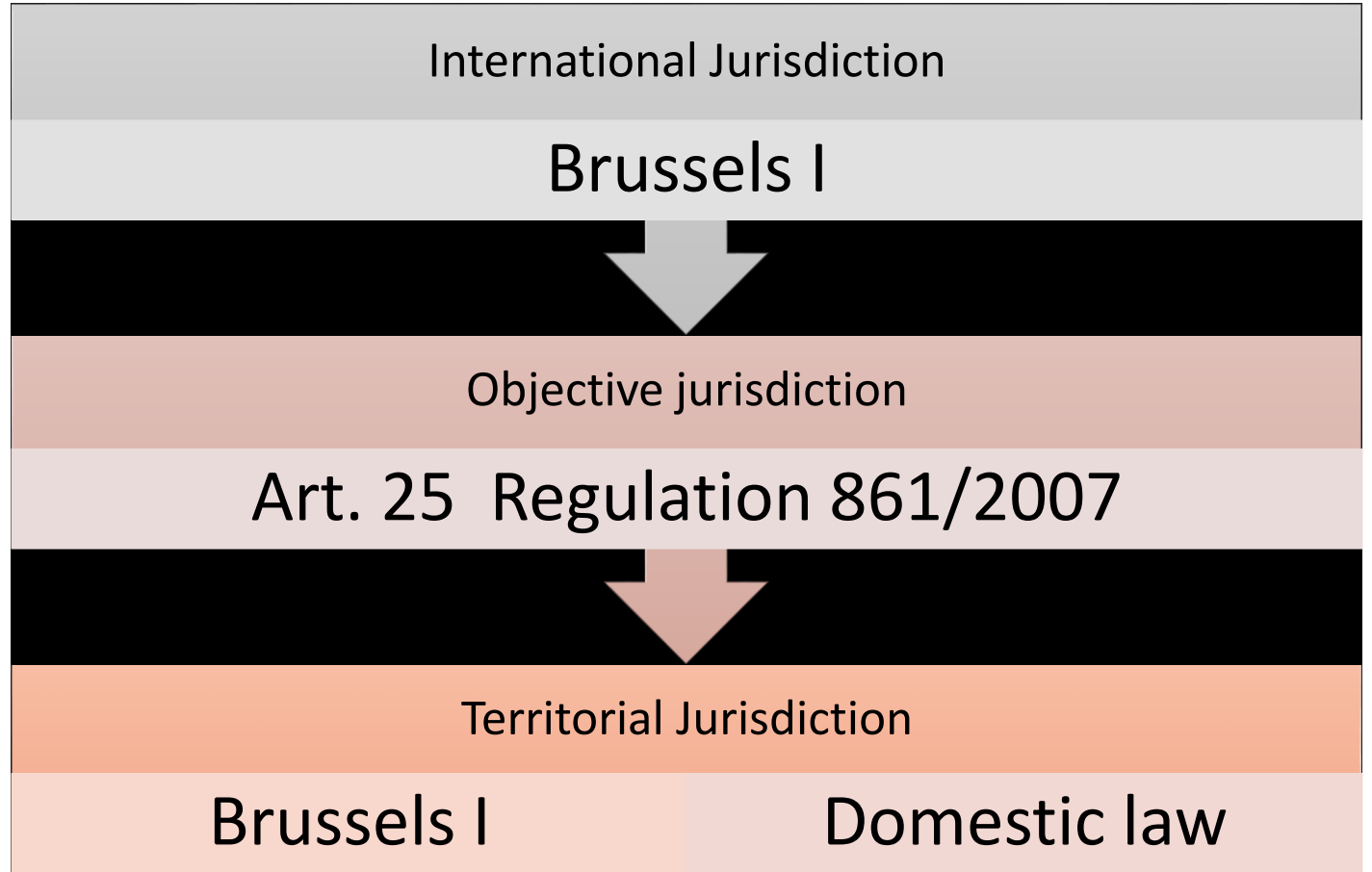
§ Rules of jurisdiction

Application of Brussels I:

Recital 27

Art. 4
Regulation
861/2007

Form A





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Case: Appeal Court of Madrid October 2012

Graficas Aguirre Campano vs. Mox Telecom Ireland

Application of domestic law is not appropriate: Regulation Brussels I allows jurisdiction of Madrid Courts.

Case: Appeal Court of Alicante October 2010

Rupprecht Brinkmann Lawyers vs. Braulio and Cristóbal

Claiming of the payment of translation services.

Rule of jurisdiction for consumers matters is not applicable because the consumer is the claimant.



§ Use of modern technologies

Overcome consequences of geographical distance and costs of the procedure



Modern technologies in the **service of documents** are allowed by Regulation 2015/2421:

- ❖ When procedural rules allow these means of communication
- ❖ When the party accepted in advance to be served by electronic means

Case: Judgement of the Supreme Court October 2015

-Quality management business vs. Mateo and Angelina

-Mateo and Angelina have a domicile in London and separate domiciles in different villages in the province of Madrid.

-Claim is served by postal service from Madrid to London while they were in Madrid.

-Mateo and Angelina ask for the review of the final judgement proving that the service was never delivered.



Use of modern technologies in **oral hearing**:

- ❖ They are allowed from Regulation 861/2007
- ❖ The possibility of requesting an oral hearing was very reduced under Regulation 861/2007

Case: Appeal Court of Barcelona September 2012

Mario vs. Graduate School of Management

Mario requests in due form the oral hearing but the judge does not consider it necessary

Art. 8
Regulation
2015/2421

Oral hearing
will be held
if necessary

Oral hearing
by electronic
means



§ Right to appeal under Spanish domestic law

- ✧ 2007: Availability of the appeal shall be communicated to the Commission: Spain announces the availability of the appeal.
- ✧ 2011: Availability of appeal is suppressed for civil claims under 3000 € in domestic civil procedure, Spanish legislator establishes an exception for SCP whose judgements will be appealable in any case.
- ✧ 2016: Spain informs the Commission about the unavailability of appeal for decisions in SCP:
 - Unequal treatment compared to national proceedings.
 - Does not allow the creation of case law.



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§ *Conclusions*

- 1) SCP is not fully effective for very low debts
- 2) Amendments of 2015 are in the good direction
- 3) SCP: necessary and clear but we are still on the way



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THANK YOU!