

PART XI

SPECIAL FORMS OF PROCEDURE

CHAPTER 3

SUMMARY PROCEDURES

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1 INTRODUCTION TO THE CHAPTER

- 1 Legal systems around the world have supplemented the ordinary judicial procedures by introducing special forms of procedure, including summary procedures.¹ In this chapter the term ‘summary’ procedures refers to procedures that are abbreviated, simplified, and condensed, yet lead to final judgments on the merits that have finality, *res judicata*, and preclusive effects. These summary procedures vary widely, but they share the objective of seeking to achieve results more quickly than possible under the ordinary procedures. In many instances, summary procedures also have additional objectives, such as reducing the workload of the ordinary courts and increasing access to justice.
- 2 This chapter will survey three categories of summary procedures, namely (1) small claims procedures, (2) early final judgment procedures, and (3) other expedited trial procedures outside the small claims setting. Category (1) generally refers to proceedings specifically developed for resolving (monetary or non-monetary) claims with low monetary value, whether adjudicated organizationally by small claims courts or not. Category (2) encompasses proceedings that terminate with a final judgment (on the merits), which is rendered at an early stage of an ordinary procedure. Category (3) includes expedited proceedings applicable to claims with higher monetary value, authorized by legislation or established by best practices by the judiciary or via party autonomy. While procedures for payment orders, default judgments, or provisional remedies could be considered summary procedures, they will not be handled here. Nor will special procedures for specific subject matters be addressed, such as proceedings for commercial matters, consumer protection, family law, intellectual property, labour law, landlord/tenant disputes, and so forth, regardless of whether they could be characterized as ‘summary’. To the extent, these subject matters are litigated under summary procedures, and not under special procedures, as, for example, the small claims procedures for consumer protection disputes², this chapter will in principle not address the procedural details arising from their special needs.
- 3 This chapter will examine summary procedures as they appear in multiple legal traditions: the civil law model, the common law model, and, to some extent, the mixed models. Among national laws to be observed, specific attention will be given to Brazilian, Canadian, Dutch, French, Spanish, Taiwanese, UK, and US laws. In addition, it will refer to relevant supranational laws and uniform (soft) laws, especially Regulation No 861/2007 establishing a European Small Claims Procedure (EC) as amended by Regulation No 2015/2421 (hereafter ESCP Regulation) and the ELI/UNIDROIT Model European Rules of Civil Procedure 2020 (hereafter ELI/UNIDROIT Model Rules). These sets of rules and regulations are a result of harmonization of civil procedural law on a

¹ Cf above Introductory Chapter, para 4-7.

² B Hess and P Taelman, 'Chapter 3: Consumer Actions before National Courts' in B Hess and S Law (ed), *Implementing EU Consumer Rights by National Procedural Law (Luxembourg Report on European Procedural Law. Vol. II)* (Hart & Nomos 2019), para 56-57.

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regional scale. They are significant, because they demonstrate how summary procedures could be structured under common value judgments despite originating in different legal traditions. However, this chapter will not provide detailed reports on legal systems discussed here. Instead, it will only make note of examples from each legal system in order to illustrate variations that exist.

- 4 Following the perspectives outlined here in Section One, Section Two will present the main categories of summary procedures, pointing out the features that distinguish them from ordinary procedures. Section Three will then reveal the normative objectives and underlying policies of summary procedures, which justify derogations from basic procedural concepts developed with regard to ordinary procedures. To the extent relevant information is available, it will also note the practical relevance of summary procedures in achieving civil justice in each legal system and their potential sociological or economic impact. Section Four will be devoted to concerns about procedural fairness or fundamental procedural rights that could arise due to the abbreviated, simplified, and compressed characteristics of summary procedures, especially small claims procedures.

2 THE CATEGORIES OF SUMMARY PROCEDURES

2.1 Small Claims Procedures

- 5 The summary procedure most frequently observed in legal systems around the world is the small claims procedure. Almost every legal system surveyed has created either formal or informal systems for resolving disputes over small monetary amounts³; the World Bank reports that 128 countries maintain specialized small claims proceedings.⁴ Small claims procedures typically follow an accelerated timetable, provide for informal hearings before judges, relax evidentiary standards, limit appellate review, and reduce court fees.⁵ They also anticipate that many litigants will appear without legal representation and give judges more discretionary power.⁶ Small claims procedures are commonly combined with alternative dispute resolution (ADR) mechanisms.⁷

³ For a contrasting example, see Argentina, which has no small claims procedures in any form.

⁴ World Bank, *Doing Business 2016: Measuring Regulatory Quality and Efficiency*, (2016) 92, <https://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB16-Full-Report.pdf> accessed 30 June 2024.

⁵ X Kramer and S Kakiuchi, 'Relief in Small and Simple Matters in an Age of Austerity - General report for the XVth World Congress of Procedural Law', in H Pekcanitez, N Bolayir and C Simil (ed), *XVth International Association of Procedural Law World Congress* (Oniki Levha Yayıncılık 2016) 121, 205.

⁶ Ibid 220.

⁷ Ibid 158.

2.1.1 Notion of Small Claims Procedures

- 6 In this sub-section, small claims ‘procedures’ are to be understood broadly.⁸ They include both simplified procedural rules set forth by statutory laws and also those procedures developed by consistent court practice. It is noteworthy that many legal systems establish courts whose jurisdiction is differentiated between ordinary and non-ordinary claims. This is typical within first instance courts or within the divisions of the lowest level of courts. The distinction between the courts or divisions tends to be the monetary value of the disputes, the composition of the staff, and the geographical location of the courts.⁹ The notion of small claims procedures includes proceedings before the non-ordinary courts or court divisions dealing with ‘small’ claims (see below para 9-24); such courts typically, though not necessarily, apply a more simplified and informal procedure than the ordinary courts; they do not always sit with the same judges as in the ordinary courts.¹⁰
- 7 In this vein, for example, the English small claims track (Part 27 UKCPR), the Scottish Simple Procedure (Act of Sederunt (Simple Procedure) 2016), and the Taiwanese small-claim proceeding (Chapter IV TWCCP) are independent types of procedures that undoubtedly fall within the notion of small claims procedures. In addition, individual provisions that modify the ordinary procedural rules for the purpose of simplification, such as § 495a of the German Code of Civil Procedure (GCCP), are encompassed by this sub-section on small claims procedures. *Procédure orale* (the oral procedure) of the French Code of Civil Procedure (Art 817-839 FCCP) and *procedimiento verbal* (the verbal procedure) of the Spanish Code of Civil Procedure (Art 437-447 SCCP) are also included.
- 8 As to proceedings before non-ordinary courts that can qualify as small claims procedures, multiple examples can be found. In Japan, there are summary courts (簡易裁判所) in addition to district courts (地方裁判所), and in the Netherlands, there are *rechtbank* (district courts) along with their *sector kanton van de rechtbank* (sub-district sectors). To the extent that proceedings before the summary courts or sub-district sectors concern claims with lower monetary value, they could be perceived as small claim procedures.¹¹ Indeed, this perception is clearly endorsed by Art 270 of the Japanese Code of Civil Procedure (JCCP), which reads: ‘in summary court, disputes are to be resolved promptly through simplified proceedings’. In Brazil, in addition to *Justiça Estadual* and *Justiça Federal* (state and federal courts), *Juizados Especiais* (small claims courts) have been established with their own procedural rules, which are guided by the principles of orality,

⁸ Cf W Hau, ‘Zivilprozesse mit geringem Streitwert (Small claims courts, small claims tracks, small claims procedures)’ (2017) 81 The Rabel Journal of Comparative and International Private Law 570, 574-575.

⁹ Cf Kramer and Kakiuchi (n 5) 140.

¹⁰ Hau (n 8) 597-98.

¹¹ Ibid 579.

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simplicity, informality, procedural economy and amicable settlement.¹² It goes without saying that the proceedings before small claims courts constitute a typical form of small claims procedures.

2.1.2 Defining a Small Claim

2.1.2.1 Relevant Perspectives

- 9 As a preliminary matter, we note that a *small* claim is often defined as a dispute over a claim with a low monetary value. As we shall see, legal systems vary considerably in what they consider to be a small monetary amount. Nonetheless, the underlying view is that litigants will only be willing to devote limited resources to a claim with a small monetary value. Accordingly, small claims procedures should be designed to be inexpensive and quick so as to achieve a proportionate resolution to the dispute.
- 10 Monetary value is not the only means of defining a *small* claim. Sometimes this term is used to describe a dispute that is not likely to have a large impact on society. A single dispute between neighbours over an expensive fence that is not likely to affect others or to establish standards for future such disputes might be described as *small*, no matter what its monetary value. Conversely, a suit with a low monetary value to the litigants, such as whether a student may be suspended from school for a day, may have significant social ramifications and potentially large consequences. With the definitional ambiguity of *small* claim in mind, we will be attentive to the ways in which various legal systems define a *small* claim. We will also be attentive to whose evaluation of the monetary value or the social value the legal system privileges. Is it a matter left to the litigating parties? Do courts have the authority to determine what is and is not a *small* claim? Does legislation set forth criteria for determining *small* claims?
- 11 Another initial point concerns the assumption that a *small* claim entails a simple procedure. It is doubtful that all *small* claims, however they are defined, are simple in terms of legal and factual disputes. Some, no doubt, are. But other claims of limited monetary value, such as many consumer disputes, may raise complicated questions of legal interpretation. Other times *small* claims involve tangled evidentiary questions. Thus, we eschew the assumption that *small* claims are simple to resolve. Nonetheless, we pay attention to the frequent demands for procedures that are quicker and less complicated than the ordinary procedures in cases involving *small* claims.
- 12 That being said, as we shall see below (para 14-24), the applicability of small claims procedures depends generally on the monetary value of disputes. Meanwhile, legal systems do not ignore the fact that claims with lower monetary value could involve, for instance, public importance or complex (legal or factual) issues, which may make the

¹² A Gidi and H Zaneti, 'Brazilian Civil Procedure in the Age of Austerity' (2015) 8 Erasmus Law Review 245, 255.

application of small claims procedures inappropriate. There are hence additional conditions, such as the simplicity of the case, in order for small claims procedures to be applicable, as exemplified in Brazilian (Art 3 of Federal Law n. 9.099/1995) and Chinese law (Art 157(1) and 162 CNCPL). This is also why provisions exist that allow courts to allocate a *small* claim to ordinary (or other less simplified) procedures, as is the case in England and Wales¹³ and in Taiwan (Art 436-8(2) TWCCP).

- 13 It should be further noted that some legal systems, such as Spain's, expressly exclude certain kinds of claims from being litigated under small claims procedures despite their low monetary value (Art 249 SCCP). As mentioned earlier, the reasons for these exclusions may be based on the complexity or the wide impact of the dispute; for example, claims concerning the right to protection of personality may be considered too complex and claims involving judicial review over standard terms may be excluded due to their broad scope. In addition, exclusions from small claims proceedings may be based on other legal policies. In this vein, Brazil only allows natural persons and small enterprises to file small claim actions (Art 8(2) Brazil Federal Law 9.099/95). Similarly, some provinces of Canada characterize small claims courts as 'people's courts' and accordingly restrict access by corporate entities; for example, the small claims courts of Quebec and Nova Scotia substantially limit participation by business creditors.¹⁴ This is an additional perspective that shall be taken into consideration when it comes to the definition of *small* claims.

2.1.2.2 Valuing *Small* Claims

- 14 As mentioned earlier, the definition of a *small* claim is not always straightforward. Further, even assuming the small claim must be directly tied to a measurable monetary amount, an additional factor will involve ascertaining the perspective from which to measure the monetary value. Is it the potential loss to the claimant, and, if so, does that include consequential damages? Does the judge decide? If so, what standard of valuation does the judge use?
- 15 A survey can provide the specific monetary limits that different countries impose on their small claims proceedings. It must be remembered, though, that the monetary value

¹³ N Andrews, *Andrews on Civil Processes*, (2nd edn, Intersentia 2013) para 5.49.

¹⁴ J Silver and T Farrow, 'Canadian Civil Justice: Relief in Small and Simple Matters in an Age of Efficiency' (2015) 8 (4) *Erasmus Law Review* 232, 240.

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specified by the legal system always has a relative meaning, as the cost of living, average income, and other pertinent expenses vary widely from society to society.¹⁵

- 16 Turning first to the European Small Claims Procedure (ESCP), which represents a more or less joint view supported by 27 different countries, the current system is limited to disputes valued less than EUR 5,000. It is interesting to observe that the ESCP initially defined a small claim as one less than EUR 2,000, but within a few years the amount was increased.¹⁶
- 17 Within the national legal systems of Europe, the jurisdictional amount limitation varies. In Germany, small claims procedures are applicable for claims valued under EUR 600, while claims valued under EUR 5,000 fall within the jurisdiction of *Amtsgericht* (the local court) applying ordinary procedural rules with some modifications. In Spain, the verbal procedure applies to claims valued under EUR 15,000; prior to 2024 the claim limit was EUR 6,000. By contrast, in France, there are no small claims procedures equivalent to the ESCP but there are two routes for disputes less than EUR 10,000: disputes involving an amount of less than EUR 10,000 are subject to the oral procedure that involves a single judge, oral proceedings, and no mandatory representation by legal counsel; whereas Art L125-1 ff of the French Code of Civil Enforcement Procedures provide another simplified procedure, which may be implemented by *commissaire de justice* (the judicial officer), for the recovery of claims with a value less than EUR 5,000. In the Netherlands, claims valued under EUR 25,000 fall within the competence of the sub-district sector. Prior to 2011 the claims had to be valued under EUR 5,000. The proceeding before the sub-district sector features an altered scheme that is more informal and relies more heavily on written submissions.
- 18 In England and Wales, there is a small claims track within the County Court system, although there is no separate small claims court system. Originally, in 1973, only claims with a monetary value lower than GBP 75 could be routed into the small claims track. The upper limit for small claims has been raised multiple times over the intervening half-century and currently stands at GBP 10,000. In contrast, small claims in Northern Ireland must be lower than GBP 3,000. It is noteworthy that England and Wales County Courts also have a fast track for claims above GBP 10,000 and below GBP 25,000, which can perhaps be viewed as a slightly expanded small claims proceeding. In this chapter,

¹⁵ Cf Kramer and Kakiuchi (n 5) 168-169: 'It is difficult to compare these amounts on the same basis, since the economic value of the amount varies from one country to another. However, we can see a rough difference between countries where the scope of the small claims procedure is rather wide and those limiting it to the truly smallest claims. This may affect the function and importance of the procedure as well. Thus, whereas the German discretionary procedure deals with only 7% of cases, in England, "the vast majority of civil claims are allocated to the small claims track".'

¹⁶ Recitals 1-4, Regulation establishing a European Small Claims Procedure, 861/2007 of 11 July 2007 (ESCP).

however, the fast track will be primarily addressed as an expedited trial procedure outside the small claims context, as discussed in section 2.3 below.

- 19 In Scotland the Sheriff Court, which has jurisdiction over civil claims up to GBP 100,000 follows a Simple Procedure when the claim totals less than GBP 5,000.
- 20 The New Zealand Disputes Tribunal handles claims up to NZD 30,000, although there are significant categories of disputes, such as those arising in employment, family law, land, tax, wills, and certain types of debts that are beyond the jurisdiction of the Disputes Tribunal.
- 21 The monetary limits on small claims jurisdiction vary substantially in Asia. Turning first to Taiwan, the small claims are defined as amounts below NTD 100,000. Japanese law limits small claims to those less than JPY 600,000.¹⁷ In both legal systems, there are also simplified procedures established for somewhat larger claims, those valued under NTD 500,000 or JPY 1,400,000, which are respectively tried through summary proceedings (Art 427 ff TWCCP) or proceedings before summary court (Art 270 ff JCCP). In addition, Korea recognizes disputes valued up to KRW 30,000,000, the equivalent of EUR 22,000, as small claims. By contrast, China does not fix a unified amount for the whole country but uses 30% of the annual average wages of employees in the preceding year of each region, provided that the case is simple so as to fall within the jurisdiction of the basic people's courts (基层人民法院).
- 22 African and Middle Eastern countries cover a wide gamut. In Kenya, legislation in 2020 increased the small claims limit to KES 1,000,000 (Art 3 Small Claims Court Amendment Act), which is approximately EUR 7,500. Nigeria limits small claims to NGN 5,000,000 (Art 2(1)(d), Practice Directions on Small Claims, Magistrate's Court Law), approximately EUR 10,000. Israel imposes a jurisdiction amount of NIS 33,800 on small claims, approximately EUR 9,000.¹⁸ Dubai has a limit of AED 500,000, equivalent to EUR 117,000.
- 23 In the Americas, the amounts vary significantly. Brazilian law requires the value of the claim to be less than 40 Brazilian 'minimum wage', that is BRL 4,200 (Art 3 of Federal Law No 9.099/1995)¹⁹, approximately EUR 6,700. North American countries also present a variety of definitions of small claims. In Canada, the maximum amount for small claims procedures ranges from CAD 15,000 in Manitoba and Quebec to CAD 50,000 in Alberta, with the majority of other provinces setting amounts in the CAD 20,000 to CAD 35,000

¹⁷ Japan national report for the XVth World Congress of Procedural Law (2015).

¹⁸ Israel national report for the XVth World Congress of Procedural Law (2015).

¹⁹ The Brazilian legal system limits small claims to those valued less than 40 Brazilian 'minimum wage', which is similar to the minimum wage the law allows employers to pay. Converting 40 'minimum wage' to the Brazilian currency leads to a total of roughly BRL 41,800. Art 3, Federal Law No 9.099/1995 (Brazil).

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range.²⁰ The upper limit on small claims courts in the United States varies significantly from state to state. However, compared to Canada, they tend to be lower, in the USD 5,000 to USD 15,000 range²¹. The lowest limit is USD 2,500 in Kentucky and Rhode Island; the upper limit is USD 25,000 in Delaware and Tennessee.²²

- 24 Small claims proceedings typically are available for disputes concerning small monetary amounts. As indicated above, small claims procedures are sometimes available for non-monetary claims as is the case under ESCP.²³ Disputes in which the parties seek non-monetary relief, however, do not predominate in small claims proceedings.

2.1.3 Optional or Mandatory Character of Small Claims Procedures

- 25 Small claims procedures can be of optional or mandatory character. They are optional where (one of) the parties can decide the applicability of the special procedural rules for claims with lower monetary value while they are mandatory where the applicability is imposed by the law itself or by the judge's discretion irrespective of the intention of the parties. Acknowledging the optional or mandatory character of the small claims procedures provides essential background information for assessing different techniques adopted to make small claims proceedings simplified and flexible (below para 28). As a fundamental matter, a legal system's choice for an optional or mandatory model reflects its policy decision on which interest should prevail: Procedural economy in the sense of conserving judicial resources or equal treatment of the substantive rights protected in non-small claims cases. Further, the mandatory model must specifically justify the limitations imposed on the right to be heard, presuming that the public interests do not suffice to do so (cf below paras 137, 161-166). In contrast, the optional model could evade this issue by referring to party autonomy and the corresponding self-responsibility; the small claims proceedings could therefore be designed in a simpler and more flexible way under the optional model than under the mandatory model. For these reasons, special procedural rules that apply to small claims cannot be appropriately evaluated without taking their optional or mandatory character into consideration.
- 26 The small claims procedures are optional in many legal systems, such as in Brazil, Japan, Lithuania, and New Zealand. In Canada, small claims rules are optional in Ontario, which provide for the possibility of transfer from the ordinary courts to the small claims court (Courts of Justice Act 23(2)). Within the United States, some States, including

²⁰ Silver and Farrow (n 14) 240.

²¹ C Peterson and D McNeill, *Unwarranted: Small-Claims Court Arrest Warrants in Payday Loan Debt Collection* (Consumer Federation of America 2020) 11.

²² Small Claims Legal Forms: 50-State Survey (Justia 2023) <https://www.justia.com/trials-litigation/law-suits-and-the-court-process/small-claims-court/small-claims-forms-50-state-resources/> accessed 3 July 2024.

²³ B Hess, *Europäisches Zivilprozessrecht (European Civil Procedure Law)* (2nd edn, De Gruyter 2021) para 10.107.

Massachusetts, North Carolina, and Oregon, make small claims procedures optional.²⁴ Many States, including Colorado (CRS 13-6-403), Georgia (GA Code 15-6-8), and Idaho (ID Code 1-705), expressly provide that ordinary courts have concurrent jurisdiction with small claims courts. Other States, such as Michigan, authorize either party to remove a case from small claims court to the general trial court (MI Comp. Law 600.8411). North Dakota, however, provides that only defendants can remove a dispute from small claims to the district court (ND Cent. Code 27-08.1-02). The flexibility of moving from small claims procedures to ordinary trial courts is related to the general view that small claims procedures frequently lack some procedural protections, such as the right to trial by jury, afforded in ordinary procedures. For this reason, the State of Michigan requires judges to warn litigants of the rights they may be foregoing if they proceed in small claims courts (MI Comp. Laws 600.8411).

- 27 In other legal systems the small claims procedures are not solely dependent on the option of the parties. For example, in Canada, small claims rules are mandatory in Quebec (Part 536, CCP). This is also true for some of the US States, which require claims below a low threshold to be filed in small claims court.²⁵ In England and Wales the court decides which track the dispute will follow. Judges consider the potential impact of the dispute, the complexity of the case, as well as the parties' preferences, but the parties are not able to overturn the judge's assignment of a claim to the small claims track. In Germany, the court has discretion of whether to apply the small claims procedure (Art 495a GCCP). In Taiwan, disputes qualified as small claims must be tried through the simplified proceedings unless the courts consider it inappropriate to do so (Art 436-8 TWCCP).

2.1.4 Simple and Flexible Proceedings

- 28 No matter how small claims procedures are constructed, whether in the form of a special type of court, special set of procedural rules, or combined approach, the proceedings ought to be simple and flexible.²⁶ The European Small Claims Procedures, which is 'available to litigants as an alternative to procedures [under national laws]' (Art 1(1) ESCP Regulation) and thus optional, include many representative techniques for achieving this goal. It is useful to note that the ESCP, as a supranational system, differs from national legal systems in some significant regards. For example, the ESCP requires proceedings that are entirely in writing, whereas many national systems envision proceedings that are entirely oral. This is due to the conclusion that a written procedure is more efficient between parties in different countries speaking different languages.²⁷ Nonetheless, in

²⁴ Small Claims Courts and Consumer Lawsuits (Justia 2023) <https://www.justia.com/consumer/enforcing-your-rights-as-a-consumer/small-claims-court-for-consumers/> accessed 3 July 2024.

²⁵ Ibid.

²⁶ Cf Kramer and Kakiuchi (n 5) 205.

²⁷ Cf W Hau, 'Art. 9 EG-BagatellVO' in W Krüger & T Rauscher (ed), *Münchener Kommentar zur Zivilprozessordnung (Munich Commentary on the Code of Civil Procedure)* Vol. 3 (6th edn, C H Beck, 2022), para 3.

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most regards, the European Union has created a typical European special form of procedure for (monetary or non-monetary) claims that are valued less than EUR 5,000. It includes, apart from the written proceeding mentioned above, the use of standard forms, short deadlines, relaxed methods of taking evidence, and quick judicial decisions; it also provides unified rules on notice or service of documents and the possibility to review judgments. Additionally, representation by an attorney is not required in the ESCP, while (court) assistance for the parties is prescribed. These separate aspects of small claims proceedings will be explored in more detail below.

2.1.4.1 Use of Standard Forms

- 29 Some legal systems provide or even require the use of standardized forms for parties to institute or defend claims, which should allow the litigants and court to communicate in a smoother and more effective way.²⁸ This can particularly be exemplified by the ESCP: according to Art 4(1) of the ESCP Regulation, the proceeding is commenced by the filing of Form A. If the claim form is not completed correctly, in principle, the court should use Form B to give the claimant an opportunity to fix it (Art 4(4) ESCP Regulation). In order to avoid delay caused by incorrect and incomplete forms, the EU countries are obliged to provide free (online) assistance for the parties in this regard (Art 11 ESCP Regulation). Where the claimant correctly completes Form A, the court then fills in Part I of Form C (Art 5(2) ESCP Regulation); the defendant, on whom this document is to be served, should defend the claim by filling in Part II of Form C (Art 5(3) ESCP Regulation).
- 30 In Taiwan, claimants may use a standard complaint form to initiate small claims proceedings (Art 436-10 TWCCP). This is expected to expedite the proceedings and make it easier for unrepresented claimants to file lawsuits. In principle, the Simple Procedure in Scotland must be instituted using a special claim form which should be submitted electronically to the Sheriff Courts.²⁹
- 31 Several provinces in Canada require claimants to use specified forms in order to commence a small claims lawsuit; Ontario (Claim Form 7A) and Quebec (Online Form SJ-870-E) are among those that provide forms. Several States in the United States also require parties to fill in forms and affidavits to initiate small claims litigation. These include Colorado (Form JDF 250), Idaho (CAO SC 1-2 Form), Michigan (Affidavit and Claim Form), and North Dakota (Claim Affidavit, ND Cent. Code 27-08.1-02).
- 32 Small claims courts in the State of New York have forms for claimants to use, as well as sample forms for affidavits and notices of appeal.³⁰ There are written instructions and

²⁸ Kramer & Kakiuchi (n 5) 157-158.

²⁹ Scottish Courts and Tribunals, Simple Procedure <https://www.scotcourts.gov.uk/taking-action/simple-procedure> accessed 3 July 2024.

³⁰ New York State Unified Court System, Small Claims Forms <https://www.nycourts.gov/courts/nyc/smallclaims/forms.shtml> accessed 3 July 2024.

guidelines to assist both claimants and defendants; video instructions are also provided. The objective is to enable parties to proceed with small claims without seeking the assistance of lawyers.³¹ In the State of Utah, the courts have developed forms for complaints and responses to debt collection cases, with the goal of avoiding confusion for litigants not represented by attorneys.³² To the extent that forms assist parties to proceed without legal representation, this approach lowers the costs of litigation (cf para 64, 70).

2.1.4.2 Notice/Service of Documents

- 33 Service of documents such as court orders and the response of the defendant can be a factor that increases costs and delays proceedings. The ESCP Regulation therefore encourages the use of modern technology:³³ according to Art 13 of the ESCP Regulation, electronic service has the same effect as postal service, unless the addressee (legally) refuses to accept electronic service. In either case, the service should be attested by an acknowledgment of receipt. However, it should be noted that the use of electronic methods of service is not a phenomenon specific to small claims procedure.³⁴
- 34 Frequently, parties can initiate small claims proceedings with less formal methods of notification. For example, in some States within the United States, the small claims procedures authorize the clerk of the court to issue notice to the defendant via regular postal mail, in contrast to the requirement in the *ordinary* procedures that notice must be delivered in person. Some States permit postal delivery to the defendant's last known address, with no requirement that the claimant ascertain the defendant's current address.³⁵ In other States within the United States, the court staff plays no role in providing notice; the claimant is solely responsible for providing notice in small claims proceedings. There have been reports that the claimants do not make serious efforts to ensure that the defendant is notified, which raises serious problems with the fairness of the proceedings. This is a problem of great magnitude, as the consequences of a judgment in small claims the court can deprive the defendant of property, ruin the defendant's credit-worthiness³⁶, and sometimes lead to imprisonment for contempt of court for not cooperating to pay the judgment.³⁷

³¹ New York City Bar, Small Claims Court Guide <https://www.nycbar.org/for-the-public/legal-forms-and-resources/small-claims-court-guide-overview> accessed 29 June 2024.

³² Report on Debt Collection in Utah's Courts (Utah Bar Foundation 2022) 17 <https://www.utahbarfoundation.org/static/media/UBF2022.912d30c10e5681bf5f8c.pdf> accessed 29 June 2024.

³³ ESCP Regulation (n 16), Recital 7.

³⁴ Cf Rule 74, Model European Rules of Civil Procedure 2020 (ELI / UNIDROIT).

³⁵ E Rickard, *How Debt Collectors Are Transforming the Business of State Courts* (Pew Charitable Trusts 2020) 16.

³⁶ Ibid 17.

³⁷ Ibid 18-19; Peterson and MacNeill (n 21) 12-13, 20-23, 27.

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- 35 Another example can be found in China. There, according to a relevant Judicial Interpretation, documents and notice, except for judgment, can be served (on parties) using any convenient methods, such as phone calls or short messages. However, without proof that the party received notice requiring his/her attendance, the court is not allowed to enter a default judgment. Similarly, in France, service may be effected without the involvement of *commissaire de justice* (a bailiff) in small claim proceedings, while the claimant must hire a bailiff to notify the document instituting the action in ordinary proceedings.³⁸
- 36 Many legal systems, on the other hand, do not set special rules on notice or service of documents. This is the case in Taiwan and Spain. Brazil also does not allow less formal methods of service in small claims than in ordinary proceedings; rather, publication, which can be used as a method of service when the identity of the defendant or her location is unknown, uncertain, or inaccessible, is allowed in ordinary proceedings but is prohibited in small claims proceedings (Art 256 BRCCP, Art 18, § 1, 1º, Federal Law 9.099/95).

2.1.4.3 Accelerated Deadlines

- 37 It is very common that small claims proceedings have deadlines that are much shorter than provided in ordinary proceedings. Although the small claims time periods vary from country to country, it is typical that the time periods at each phase of litigation are accelerated. By way of illustration, the ESCP envisions a total of three months from the filing of the claim to the entry of judgment. After the claim is filed, the court must act within 14 days (Art 5(2) ESCP Regulation), and the defendant must respond within 30 days (Art 5(3) ESCP Regulation). If the defendant responds within the time limit, the response must be dispatched to the claimant within 14 days (5(4) ESCP Regulation). The court must either enter judgment or take other action within 30 days (Art 7(1) ESCP Regulation) and then enter judgment within 30 days of the completion of that action; if not, the court should directly enter judgment (Art 7(3) ESCP Regulation).
- 38 Although other legal systems may lack small claims proceedings deadlines as expedited as the ESCP, the great majority schedule small claims litigation on a faster schedule than other civil disputes. Legal systems thus envision small claims proceedings as both expedited and compressed. They accomplish these goals either by fixing deadlines for individual procedural stages or by requiring the proceedings to be terminated within certain time limits.
- 39 For example, Egypt limits the time between filing of a claim and examining a claim to eight days.³⁹ Turkey limits each party to one statement and permits only two hearings

³⁸ See Art 665 to 670-3, Code Procedure Civile (France): notification by ordinary or registered post.

³⁹ Egypt national report for the XVth World Congress of Procedural Law (2015).

(Art 320 TCCP).⁴⁰ China shortens the period for offers of evidence from no less than 15 days in ordinary proceedings to no more than seven days in small claims proceedings (Art 277 of the Interpretation of Supreme People's Court on the Application of the Civil Procedure Law (Amended in 2020)). Both Japan and Taiwan prescribe the single-day trial principle, which generally restricts the judges' managerial power to order further oral hearings (Art 370(1) JCCP, Art 436-23, 433-1 TWCCP). In Spain a case in the verbal procedure does not include a preliminary hearing, unlike the ordinary procedure, and the judgment must be issued within 10 days after the trial (Art 447.1 SCCP), compared with 20 days after the trial in the ordinary procedure (Art 434.1 SCCP).

- 40 Germany does not set forth specific deadlines for small claims proceedings but explicitly provides judges with discretion to set short time periods for each phase of the litigation.⁴¹ Similarly, the simple procedure in Scotland does not expressly limit the time between filing and hearing, but does contemplate the issuance of a decision at the end of the hearing; if the hearing ends without a decision, the law requires a decision within four weeks. The small claims track (GBP 10,000 monetary limit) in England and Wales relaxes evidentiary requirements, forbids interim relief, and envisions a quick proceeding.

2.1.4.4 Taking of Evidence

- 41 Frequently, one of the hallmarks of small claims proceedings is the informality of the presentation of the evidence. The ESCP emphasizes that '[the court] shall use the simplest and least burdensome method of taking evidence'. In this vein, broad discretion is conferred on courts as regards whether and how evidence should be taken; it is possible for courts to examine witnesses, experts, or parties via telephone, email, or videoconference.⁴² In addition, courts may refuse to take (party-appointed or court-appointed) expert evidence in order to reduce costs, so long as other evidence is sufficient to prove the relevant facts (Art 9(4) ESCP Regulation).⁴³
- 42 The rules of evidence that the ESCP adopts can be regarded as a common denominator of the national laws. In those legal systems which do not statutorily implement rules limiting evidence, courts are also inclined based on the proportionality principle to limit the taking of extensive evidence.⁴⁴ There are, however, many legal systems that take further legislative measures in favor of procedural economy. While German and Taiwanese law count on the court's discretion to avoid disproportionate costs (Art 495a GCCP, Art 436-14(2) TWCCP), Japanese and Swiss law only permit evidence that can be

⁴⁰ Turkey national report for the XVth World Congress of Procedural Law (2015).

⁴¹ Kramer and Kakiuchi (n 5) 24.

⁴² Hess (n 23) para 10.107.

⁴³ Hau (n 27) para 3.

⁴⁴ Rule 5, Model European Rules of Civil Procedure 2020 (ELI / UNIDROIT) embodies this approach by requiring courts to ensure that the dispute resolution process is proportionate in light of the nature, importance, and complexity of the case.

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taken without unduly delaying the proceedings (Art 371 JCCP, Art 203(2) CPC-Swiss). Brazilian, New Zealand and English law go another step and place explicit limitations on the types of evidence.

- 43 Accordingly, regarding expert evidence, which is normally the most time- and cost-intensive means of evidence, in Germany, the court may refuse to take expert evidence if the costs do not bear relation to the value of the claim, provided that the court can decide the case on other evidence.⁴⁵ Similarly, in Taiwan, the court can also disregard a party's request for appointing an expert on the ground that 'the time and cost for taking evidence is manifestly disproportional to the claim demanded'.⁴⁶ Moreover, in Japan, expert evidence typically falls in the category of evidence that cannot be initially taken, which renders it generally inadmissible in small claims proceedings.⁴⁷ In Switzerland, in order not to 'substantially delay the proceedings', the conciliation authority tends to be restrained in taking evidence when it acts as a small claim court to render a decision on the merits requested by the plaintiff.⁴⁸ In Brazil, the prevailing interpretation arising from the principles underlying small claims courts is that expert evidence is excluded in the small claims proceedings. Despite some contrary views, this is the predominant understanding at the State Courts and at the Superior Court of Justice.⁴⁹ In New Zealand, expert witnesses are not allowed to appear; only the parties can attend the hearing. Similarly, in England, expert evidence is not admissible without permission of the court in the small claims proceedings (Rule 27.5 UKCPR).
- 44 The exclusion of expert evidence does not mean that expert opinion cannot be considered by the court. On the contrary, when specific expertise is needed, the court may obtain the specialist's knowledge in an informal way instead of formally appointing the expert, as under German and Taiwanese law.⁵⁰ Even in cases of formal appointment, the expert evidence should principally be given orally, not by written report, as under Swiss law.⁵¹ This reflects the general tendency in small claims proceedings to relax the evidence rules intended for ordinary procedures. The small claims track in England and

⁴⁵ C Berger, '§ 495a ZPO' in R Bork and H Roth (ed), *Stein/Jonas Kommentar zur Zivilprozessordnung (Commentary on the Code of Civil Procedure. Vol. 5* (23rd edn, Mohr Siebeck 2015), para 39.

⁴⁶ Cf L-G Chiou, *cheng xu li yi bao hu lun*(*程序利益保護論*) (Self-published 2005).

⁴⁷ Y Hibino, 'Articles 368 to 375 CCP' in H Takata, K Miki, K Yamamoto and K Yamamoto (ed), *chuushaku minjisoshouhou*(*注釈民事訴訟法*). Vol 5. (Yuhikaku, 2015) 643, 668.

⁴⁸ U Gloor and B U Lukas, 'Art. 212 ZPO' in P Oberhammer, T Domej and U Haas (ed), *Kurzkomentar Schweizerische Zivilprozessordnung (Short Commentary on the Swiss Code of Civil Procedure)* (3rd edn, Helbing Lichtenhahn 2021), para 5; D Infanger, 'Art. 203 ZPO' in K Spühler, L Tenchio and D Infanger (ed), *Basler Kommentar Schweizerische Zivilprozessordnung (Basel Commentary on the Swiss Code of Civil Procedure)* (2nd edn, Helbing Lichtenhahn 2013), para 11. The conciliation authority is regarded as a small claims court, see C Schrank, *Das Schlichtungsverfahren nach der Schweizerischen Zivilprozessordnung (The Arbitration Procedure According to the Swiss Code of Civil Procedure)* (Helbing Lichtenhahn 2015) para 666.

⁴⁹ Case 57.649/SP (Superior Court of Justice, Brazil), Judgment 17 December 2019.

⁵⁰ Berger (n 45) para 39; Chiou (n 46) 43.

⁵¹ Schrank (n 48) para 666.

Wales expands, in a sense, the range of permissible evidence as sworn testimony is not required; the same is true in Japan (Art 372(1) JCCP). Similarly, the small claims proceedings in Northern Ireland are not subject to strict rules of evidence. In Israel, small claims courts can take evidence that would be inadmissible under standard rules.⁵²

2.1.4.5 Oral Hearing

- 45 Legal systems are divided on whether proceedings generally advance more efficiently without oral hearings of the parties. The European Small Claims Procedure is in this regard affirmative. It relies primarily on written proceedings (Art 5(1) ESCP Regulation); exceptions exist only where the court considers itself unable to decide the case without an oral hearing, or if it agrees to hold one upon (individual or joint) request of the parties (Art 5(1a) ESCP Regulation).⁵³ This feature is obviously related to the cross-border nature of the ESCP, and its presumption that parties speaking different languages often will avail themselves of the written procedure.⁵⁴ However, in addition to the concerns that could arise with regard to the right to a public hearing and the right to be heard (see below section 4)⁵⁵, it has been noted that oral hearings can help the court achieve an amicable resolution between the parties.⁵⁶ When oral hearings are held, modern technology such as video- or teleconference should be used as a rule instead of requiring the physical presence of the parties (Art 8 ESCP Regulation); the costs of travel and time off work could thus be avoided.⁵⁷
- 46 In contrast, and much more common, is the oral small claims procedure in Spain. Oral proceedings are also important in Brazil's small claim procedures. In Taiwan, oral hearings, which could be held by videoconferencing, are an indispensable part of the small claims proceedings. Many of the small claims procedures in the state and provincial court systems in Australia, Canada, and the United States, also feature oral hearings.
- 47 Against this backdrop, France appears to choose an intermediate solution that establishes an oral procedure, but allows the parties to agree on entirely written proceedings (Art 828(1) FCCP); this is inspired by the ESCP.⁵⁸ Germany, on the contrary, leaves the court leeway to conduct the proceedings entirely in writing, unless one of the

⁵² E Brosh, 'Cutting Corners or Enhancing Efficiency?' (2015) *Erasmus Law Review* 185, 188.

⁵³ Recital 11, ESCP Regulation (2015).

⁵⁴ Cf X Kramer, 'The European Small Claims Procedure: Striking the Balance Between Simplicity and Fairness in European Litigation' (2008) 2 *Zeitschrift für Europäisches Privatrecht* 355, 371.

⁵⁵ Hau (n 27) Art 5, para 2.

⁵⁶ Hess (n 23) para 10.101 (fn 391).

⁵⁷ Recital 12, ESCP Regulation (2015).

⁵⁸ European E-Justice Portal, France, Small Claims: 'The application may mention the applicant's agreement for the procedure to take place without a hearing (Article 757 of the Code of Civil Procedure). Article 828 of the Code of Civil Procedure also allows the parties to expressly give their agreement at any stage for the procedure to take place without a hearing. This procedure without a hearing has been in force since 1 January 2020 and was inspired by the European Small Claims Procedure'. https://e-justice.europa.eu/42/EN/small_claims?FRANCE&member=1 accessed 6 July 2024.

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parties requests an oral hearing (Art 495a GCCP); the limitation of the court's discretion should guarantee the party's right to a public hearing.⁵⁹

- 48 Conventionally, oral proceedings have been and still are a common feature of civil procedure, at least in European and other European-oriented laws.⁶⁰ It is thus in this context remarkable that the ESCP chooses to principally dispense with oral hearings.⁶¹ For the jurisdictions that take the traditional approach and prescribe that small claims proceedings should be oral as a rule, it is important to note that legal representation is in most cases not mandatory (see below para 65). As a consequence, the intensive use of written information and arguments may be counterproductive, in the absence of standard forms or templates and questionnaires and directions that are accessible to and understandable by the parties.

2.1.4.6 Limits on Multiple Claims or Counterclaims

- 49 It goes without saying that proceedings will proceed more swiftly if counterclaims or joinder of multiple claims are limited. As a rule, those possibilities only exist where claims could still be valued as *small* (see above para 16-23): According to Art 5(7) of the ESCP Regulation, the regulation will cease to apply if the (admissibly) submitted counterclaim is valued beyond EUR 5,000; in such a case the small claim along with the non-small counterclaim will then proceed in the relevant national procedure.
- 50 By the same token, in Taiwan, the amendment of claims or submission of counterclaims is in principle only allowed when the NTD 100,000 threshold is not exceeded (Art 436-15 TWCCP). Because complicated proceedings should be avoided within small claims procedures, counterclaims are prohibited in Japan (Art 369 JCCP). In Brazil, the admissibility of counterclaims is also subject to more restrictions under small claims procedures than under ordinary ones (Art 31 Brazil Federal Law n. 9.099/95).

2.1.4.7 Appeals

- 51 Rights to appeal from the judgment entered in a small claims proceeding vary significantly from country to country. The majority permit appeals that more or less accord with the rights to appeal provided in the ordinary procedures.⁶²
- 52 Many countries, though, place substantial limitations on appeals in small claims proceedings. For example, Japan prohibits all appeals from small claims judgments (Art

⁵⁹ Berger (n 45) para 34.

⁶⁰ Cf R Stürner, 'Mündlichkeit – ein europaweit anerkanntes Verfahrensprinzip mit Zukunft?' in C Beicke and S Huber (ed), *National, International, Transnational: Harmonischer Dreiklang im Recht (Festschrift für H. Kronke)*, (Giesecking 2020) 1259, 1264.

⁶¹ Ibid 1265.

⁶² Kramer and Kakiuchi (n 5) 29-30.

377 JCCP), as does China (Art 162 CNCPL). However, under Japanese law, save for the possibility of a special appeal to the Supreme Court on constitutional grounds (Art 327 JCCP), the losing party may submit an objection against the judgment before the same court; the court will then decide the case through the ordinary proceeding with certain modifications, which concern *inter alia* the appeal of the second judgment (Art 378-380 JCCP). Under Chinese law, it is said that the ‘trial supervision’ (Art 198 ff China CPL), which allows the court to retry the case, is an appropriate legal remedy against erroneous small claim judgments.⁶³ Furthermore, Germany allows appeals in small claims proceedings only when the (adjudicating) court grants authorization (Art 511(2) GCCP); Israel is the same.⁶⁴ Under German law, when no other legal remedies are available, the losing party may file an objection before the same court on the ground of not having been given an effective and fair legal hearing; in case of a successful objection, the proceeding shall be reinstated (Art 321a GCCP). Such specific remedies do not seem to exist under Israeli law.⁶⁵

- 53 Several countries permit appeals from small claims judgments but have structured the appellate process in a more restrictive fashion than for ordinary civil litigation. For example, in Brazil, appeals of small claims judgments are heard by a panel of judges of the Small Claims Court rather than by the Court of Appeals (Art 41, para 1, Federal Law 9.099/95). Brazil further imposes a fee for filing appeals in small claims proceedings, which is not the case for instituting small claims proceedings (cf below para 69), with the intention of discouraging appeals. Despite the financial disincentive, the rate of appeals is higher before State Small Claims Courts than before State Courts.⁶⁶ Another example is Taiwan, where the district courts, not the high courts, exercise appellate jurisdiction and the appellate judgments are not subject to further appeal (Art 436-24, 436-30 TWCCP). With the aim of accelerating the dispute resolution, in the small claims appellate proceedings, unlike in the ordinary appellate proceedings, amendments of claims or submission of counterclaims are generally prohibited (Art 436-27 TWCCP); new facts or evidence are only to be considered or taken in exceptional circumstances (Art 436-28 TWCCP). Similarly, in the United States, the State of Idaho permits any party to appeal a small claims court judgment; the appeal is to the district court, which conducts a trial *de novo* (ID Rule 15 of Small Claims Actions). In California, defendants may appeal small claims judgments, but plaintiffs cannot (CA Civ Proc Code 116.710).⁶⁷

⁶³ Y Fu, ‘Small Claim and Summary Procedure in China’ (2014) 1 BRICS Law Journal 67, 75.

⁶⁴ Kramer and Kakiuchi (n 5) 29-30.

⁶⁵ Brosh (n 52) 189-190.

⁶⁶ For example, the rate of appeals filed before State Courts in 2021 was 28.60%, and the rate of appeals filed before State Small Claims Courts in 2021 was 52.82%. Brazil National Council of Justice (Brasília Conselho Nacional de Justiça), *Justiça em Números 2020, ano-base 2019/Conselho Nacional de Justiça (CNJ)* (Brazil 2022) 285–287 <https://www.cnj.jus.br/wp-content/uploads/2022/09/justica-em-numeros-2022-1.pdf> accessed 6 July 2024.

⁶⁷ California permits small claims appeals by plaintiffs only with regard to decisions on counterclaims filed by defendants.

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- 54 Another approach restricts appeals depending on the monetary amount of the claim: no appeal unless the specified threshold is exceeded. This approach is taken by Belgium, where the threshold lies at EUR 2,000 (Art 617 of Judicial Code), the Netherlands (EUR 1,750) (Art 60 of Judiciary (Organization) Act), and Spain, (EUR 3,000) (Art 455(1) SCCP). France also prohibits appeals from judgments concerning claims valued under EUR 5,000 but allows the parties to seek recourse to the French Supreme Court.⁶⁸
- 55 It is worth mentioning lastly that the ESCP, despite the intention of harmonization, does not provide substantive rules on appellate review, but refers the issue to national laws (Art 17 ESCP Regulation). However, this does not signify that the European lawmaker considers the issue of legal remedy irrelevant. Instead, in order to protect the defendant's rights⁶⁹, Art 18 of the ESCP Regulation gives the defaulted defendant the possibility to move for review of the judgment, if the defendant was not able to contest the claim.⁷⁰

2.1.4.8 Variety of Venues

- 56 Many small claims proceedings are presided over by judges in traditional courtrooms, and the venues may be the same as for ordinary civil litigation. There are, however, examples of small claims proceedings that are located in places and at times that are considered to be more accessible to lay people.
- 57 Small claims courts in some nations have extended hours beyond the normal working day into the evening, which allows claimants to pursue their disputes without taking leave from work. In a similar vein, some countries have established small claims courts that convene on weekends and holidays. For example, Art 436-11 of the Taiwanese Code of Civil Procedure allows parties in small claims procedures to agree to litigate in the evenings or on weekends. In practice, however, few parties make use of this option. In contrast, in the United States parties in New York, small claims court make frequent use of the evening court sessions.⁷¹
- 58 The importance of having various venues is to a certain extent related to the necessity of face-to-face court proceedings. In other words, if the small claims procedure is structured as a purely written proceeding (above para 45) or if oral hearings could

⁶⁸ For example, Art R 211-3-24 Code de l'organisation judiciaire (France) : 'Lorsque le tribunal judiciaire est appelé à connaître, en matière civile, d'une action personnelle ou mobilière portant sur une demande dont le montant est inférieur ou égal à la somme de 5 000 euros, le tribunal judiciaire statue en dernier ressort ». For the Suprême Court, see Art. 605 Code de procédure civile : Le pourvoi en cassation n'est ouvert qu'à l'encontre de jugements rendus en dernier ressort'. (It is sufficient that there is no ordinary recourse available for access to the court of cassation).

⁶⁹ Hau (n 27) Art 18, para 2.

⁷⁰ Recital 31, ESCP Regulation (2007).

⁷¹ New York City Civil Courts, Judge Assignments, Small Claims, <https://www.nycourts.gov/COURTS/nyc/civil/assignmentsdef.shtml#sc> accessed 4 July 2024.

generally be conducted virtually (below para 59), there would be less need for additional locations or extended court hours. With regard to the written ESCP, many German states accordingly make use of the possibility of centralizing the jurisdiction in few local courts (Art 1104a GCCP).⁷²

2.1.4.9 E-Court and Online Dispute Resolution

- 59 The use of information and communication technologies, such as electronic service (cf above para 33) or video-conferencing (cf above para 45), has been at courts' disposal for some time in many legal systems; this kind of digitalization of civil procedure was accelerated by court responses to the COVID-19 pandemic. Separate from pandemic-induced measures, a new trend in online dispute resolution (ODR)⁷³, particularly in terms of low-value disputes, has allowed some legal systems to establish a small claims proceeding that takes place totally online. Parties can file pleadings and respond to demands and queries online at any hour of the day or night. This approach puts the timing totally in the hands of the parties, who can participate via smartphone or personal computer and is believed to be particularly suitable for small claims.⁷⁴ Korea has been an early adopter of online dispute resolution in the small claims context. Other small claims proceedings that have embraced online dispute resolution include the Online Civil Money Claims Pilot Project in England and the Franklin County Municipal Court Online Dispute Resolution Project in the State of Ohio, United States. The Franklin County ODR program charges no fees and provides video instructions for claimants; it is asynchronous, allowing participants to respond at their own schedule and convenience and from private settings where they are comfortable.⁷⁵ Those who do not resolve their disputes online may proceed to the in-person Small Claims Court. In its first three years, more than 1,000 claimants resolved their disputes via this ODR program.⁷⁶ The rate of defendant participation increased; the rate of default judgments significantly declined.⁷⁷
- 60 The digitalized form of litigation, which utilizes modern technologies to promote the use of standard forms, to simplify the taking of evidence or to facilitate the oral hearing and

⁷² Cf O Hinrichs and J Thevis, 'The Implementation of the European Small Claims Procedure in Germany' (2021) 10 (2) *Journal of European Consumer and Market Law* 75, 76.

⁷³ UNCITRAL, *Technical Notes on Online Dispute Resolution* (2017) para 22, 24, according to which ODR is a 'mechanism for resolving disputes through the use of electronic communications and other information and communication technology'.

⁷⁴ A Schmitz, 'Expanding Access to Remedies through E-Court Initiatives' (2019) 67 *Buffalo Law Review* 89, 94, 156.

⁷⁵ A Sanchez and P Embley, 'Access Empowers: How ODR Increased Participation and Positive Outcomes in Ohio in NCSC Trends in State Courts 2020' (National Center for State Courts 2020) 17 https://www.ncsc.org/__data/assets/pdf_file/0019/42166/access_empowers_Sanchez-Embley.pdf accessed 4 July 2024.

⁷⁶ D Greiling, 'Franklin County Municipal Court Assists More than 1,000 Individuals and Businesses via Online Dispute Resolution' (Matterhorn 2019) <https://getmatterhorn.com/franklin-county-municipal-court-assists-more-than-1000-individuals-and-businesses-via-online-dispute-resolution/> accessed 4 July 2024.

⁷⁷ Sanchez and Embly (n 75) 17.

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the like, could raise certain legal and sociological concerns (cf below para 169). Despite this, it still relies on human judges to manage the cases and render the judgments. In this sense, the technology remains a tool for simpler, swifter, and less expensive dispute resolution, in particular when it comes to small claim procedures. However, as computer-aided decision mechanisms become available for judges, it may be possible in the future to replace human judges with the use of artificial intelligence (AI). At the current stage, Estonia has experimented with AI programs to generate final decisions in certain low-value small claims proceedings, which are perceived to be the most suitable realm for such e-justice experimentation.⁷⁸ Given the black box problem of AI, this kind of e-justice raises serious risks of eroding the rule of law and the right to a fair trial.⁷⁹

2.1.5 Court-Annexed Conciliation or Mediation

- 61 Court-annexed conciliation or mediation is a feature of many small claims procedures.⁸⁰ Typically, these conciliation and mediation efforts are recommended to ordinary litigants, too, so they can be considered an aspect of the regular court procedures. For example, Principle 24 of the ALI/UNIDROIT Principles of Transnational Civil Procedure 2004 acknowledges the need for courts to promote settlement or resort to alternative dispute resolution (ADR). However, as ADR generally appears to be quicker, less costly and more accessible in comparison to court proceedings⁸¹, it is particularly suitable for resolving disputes over small monetary amounts. In this vein, Art 12(3) of the ESCP Regulation emphasizes the courts' efforts to further amicable settlements, given that costs arising from cross-border proceedings easily become disproportionate to the parties' interests.⁸² With regard to recognition and enforcement in other EU countries (Art 23a ESCP Regulation), the ESCP treats these settlements encouraged by the court as judgments.
- 62 Moreover, a number of legal systems require parties involved in small claims to participate in mandatory mediation or conciliation proceedings at the first stage of small claims proceedings or prior to formal initiation of them. This is the situation in Brazil (Art 16, Federal Law 9.099/95) and Taiwan (Art 403 TWCCP). French law also obliges the litigants to seek consensual resolution via mediation, conciliation or *procédure participative* (participatory procedure) before they invoke the small claims proceedings (former Art 750-1 FCCP). Many German states, which are generally authorized to introduce mandatory conciliation proceeding as a prerequisite for a court case (Art 15a German EGZPO), make use of this possibility, even though with different practical

⁷⁸ Rule 18, Comment 9, Model European Rules of Civil Procedure 2020 (ELI/UNIDROIT).

⁷⁹ Recital 40, European Commission Proposal for a Regulation Laying Down Harmonized Rules on Artificial Intelligence, COM 206 (2021)

⁸⁰ Kramer and Kakiuchi (n 5) 158.

⁸¹ Cf Hess and Taelman (n 2) para 97.

⁸² J Wolber, 'Art. 12 EuGFVO', in V Vorwerk & C Wolf (ed), *Beck'scher Online-Kommentar* (42nd edn, C H Beck 2021), para 12 https://beck-online.beck.de/Dokument?vpath=bibdata%2Fkomm%2Fbeckokzpo_42%2Fcont%2Fbeckokzpo.htm accessed 4 July 2024.

outcomes.⁸³ In Canada, several provinces recommend or require mediation once cases are filed in small claims courts, while other provinces leave it up to the parties.⁸⁴

- 63 Some nations have developed court-based mediation resources that are specialized in small claims. An example can be found in England and Wales, where mediation is available free of charge at any point during the litigation. The mediation is typically offered via telephone with sessions limited to one hour.⁸⁵ The New Zealand small claims procedures themselves have taken on many of the attributes of alternative dispute resolution. A referee runs the hearing and neither judge nor jury is present. Only the parties may attend, and lawyers are prohibited from the hearing, though they may assist in preparations for it.

2.1.6 Party without Legal Representation

- 64 In principle, litigants of small claims should be able to conduct their cases in person. Should the representation of an attorney be required, the costs of proceedings would increase significantly, which would then deter potential creditors, especially those with limited financial resources, from seeking justice. As a consequence, the small claims procedures must be less formal and more understandable for unrepresented litigants. However, since litigation inevitably involves legal terms and concepts, the lack of legal knowledge creates many pitfalls for *pro se* litigants. Thus, during the proceedings, the court is expected to take an active part rather than merely to hear and adjudicate. In legal systems that do not restrict the party's right to engage an attorney, the reimbursement of attorney fees arises. These inter-related aspects will be discussed in the paragraphs below.

2.1.6.1 Self-Representation as a Rule

- 65 Typically, small claims proceedings do not require claimants to be represented by an attorney. Indeed, there are multiple legal systems in which the small claims courts prohibit the participation of legal representatives. For example, both Korea and New Zealand (Disputes Tribunal Act 1988; Disputes Tribunal Rules 1989) expressly prohibit lawyers in small claims proceedings. In Canada, the province of Quebec prohibits legal representation in small claims court unless there are exceptional circumstances. The provinces of Manitoba and Saskatchewan disincentivize legal representation by severely

⁸³ U Gruber, '§ 15a EGZPO' in W Krüger and T Rauscher (ed), *Münchener Kommentar zur Zivilprozessordnung (Munich Commentary on the Code of Civil Procedure)* Vol. 3 (6th edn, C H Beck, 2022), para 3.

⁸⁴ Silver and Farrow (n 14) 242.

⁸⁵ Kramer and Kakiuchi (n 5). For mediation in England and Wales see Her Majesty's Courts Service, Civil Court Mediation Service Manual (2009) https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Guidance/civil_court_mediation_service_manual_v3_mar09.pdf accessed 4 July 2024.

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limiting the costs available for legal fees.⁸⁶ The State of Idaho in the United States also prohibits lawyers in small claims proceedings (Idaho Rule 8 for Small Claims Actions).

- 66 In contrast, several countries require legal representation in matters worth more than a certain amount, even though they fall within the ambit of small claims proceedings. In Spain, for example, the threshold amount is EUR 2,000 (Art 23.2.1⁰, 31.2.1⁰ SCCP) and in Brazil, it is 20 minimum wage (Art 9 Federal Law n. 9.099/95). Italy requires legal representation for claims above EUR 1,100 (Art 82(1) ITCCP), unless the justice of the peace grants an exemption (Art 82(2) ITCCP). This approach, which is counterintuitive at first glance, is further evidence of the definitional ambiguity of *small* claims (above para 10-11).
- 67 In the majority of countries, small claims procedures, in contrast to ordinary procedures, permit, but do not mandate, legal representation.⁸⁷ This is the approach adopted by the ESCP (Art 10 ESCP Regulation), apparently in order to reduce costs.⁸⁸ In this vein Egypt, Taiwan, Japan, France (Art 817 FCCP), as well as England and Wales (UKCRP Part 27), just to mention a few examples, designed the small claims proceedings to progress without lawyers, but do not prohibit lawyers. The Netherlands also does not expressly prohibit lawyers but specifically allows non-lawyer representation, thus signifying that lawyers are not crucial. China relaxes the formal requirement for appointing legal representation in small claims proceedings (Art 89 of the Interpretation of Supreme People's Court on the Application of the Civil Procedure Law (Amended in 2020)).

2.1.6.2 Costs and Legal Aid

- 68 Costs that could arise from bringing an action are one of the most significant factors concerning the choice of dispute resolution mechanism. This is especially true as regards small claims, as a simple cost-benefit analysis may often result in 'rational apathy' or 'rational disinterest' of the individual concerned.⁸⁹
- 69 As a consequence, many legal systems, that impose fees for bringing a claim⁹⁰, mandate reduced court fees for small claims proceedings.⁹¹ Representative in this regard is the ESCP, which requires court fees to be proportionate (Art 15a(1) ESCP Regulation), so as

⁸⁶ Silver and Farrow (n 14) 240.

⁸⁷ Kramer and Kakiuchi (n 5) 161.

⁸⁸ Hau (n 27) Art 10, para 1.

⁸⁹ R Caponi and T Nowak, 'Chapter 2: Access to Justice' in B Hess & S Law (ed), *Implementing EU Consumer Rights by National Procedural Law (Luxembourg Report on European Procedural Law. Vol. II* (Hart & Nomos 2019), para 7, 11-13.

⁹⁰ For example, civil justice is free in France. Art L 111-2 *Code de l'organisation judiciaire*: 'The public service of justice contributes to access to law and ensures equal access to justice. The service is free of charge and is provided in accordance with the procedures laid down by law and regulation'.

⁹¹ Kramer and Kakiuchi (n 5) 156.

to ensure access to justice.⁹² Brazil exempts the claimant from paying court fees at the first instance (Art 54 and 55 Federal Law n. 9.099/95).

- 70 However, court costs encompass not only court fees but also other court expenses (eg, cost of service of documents, costs paid to experts or witnesses) and notably costs of legal representation (ie, attorney fees); the latter normally account for a major part of court costs.⁹³ For the small claims procedures to be inexpensive, merely reducing court fees is not sufficient.
- 71 Whether and to which extent the losing party should pay the attorney fees of the other party is a significant issue. While some legal systems, such as Japan and Taiwan, do not generally allow the recovery of this kind of court costs, many do, but usually with limitations. For example, Art 16 of the ESCP Regulation orders the unsuccessful party to bear the attorney fees of the successful party but requires the amount to be proportionate to the claim.⁹⁴ Further, attorney fees on an hourly fee basis may not be claimed from the losing party.⁹⁵ Several provinces in Canada take a similar approach: Saskatchewan forbids lawyer-related costs while Manitoba caps the legal fee at CAD 100, and Newfoundland at 10% of the claim.⁹⁶ As noted earlier (para 65), they employ monetary limits to discourage the use of lawyers in small claims courts.
- 72 Brazil, as well as England and Wales (UKCRP Part 27), does not allow courts to impose legal fees on the losing party in small claims proceedings.⁹⁷ In England and Wales, although the court generally cannot levy legal fees, Part 27 permits certain limited costs, such as travel costs, limited expert witness fees, and lost wages, to be imposed.
- 73 If parties are not obliged to be represented by an attorney and the prevailing party is not entitled to (totally) recover its attorney fees, many parties would not have sufficient incentive to obtain legal representation unless they have legal expenses insurance.⁹⁸ At least in cases involving complex legal issues, the need for financing legal representation through legal aid arises.⁹⁹ In this vein, Art 11 of the ESCP Regulation refers to the EU Legal Aid Directive¹⁰⁰, which covers legal assistance and representation (Art 3 Legal Aid Directive), to secure effective access to justice.¹⁰¹

⁹² Recital 14, ESCP Regulation (2015).

⁹³ Cf Caponi and Nowak (n 89) para 16-19.

⁹⁴ Recital 29, ESCP Regulation (2007).

⁹⁵ Hau (n 27) Art 16, para 2.

⁹⁶ Silver and Farrow (n 14).

⁹⁷ In Brazil there are no legal fees when the party loses in the first instance; there are legal fees if the party files an appeal and loses. Art 55, Federal Law 9.099/95 (Brazil).

⁹⁸ Cf Caponi and Nowak (n 89) para 30-31.

⁹⁹ Ibid para 33.

¹⁰⁰ Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes.

¹⁰¹ Recital 16, ESCP Regulation (2015).

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2.1.6.3 Active Role of Judges

- 74 Even though the concept of *case management* frequently leads courts to take an active role in ordinary procedures, the active involvement of judges is nonetheless a noteworthy feature of small claims procedures. This has at least three manifestations. The first appears in intensified substantive case management and is closely related to the possibility of litigating without legal representation.¹⁰² Austrian law provides a good example: according to Art 432(1) of the Austrian Code of Civil Procedure (ATCCP), the local courts must ensure that the unrepresented party knows the relevant procedural rules and the legal consequences of their acts; this appears to exceed the general obligation of the court to monitor and guide the parties' proper presentation of their cases, which Art 182 of the same code prescribes for the ordinary procedures.¹⁰³ Japanese law also specifically requires the judges to explain relevant provisions (eg, rules of taking evidence) to the parties at the outset of the small claims procedure.¹⁰⁴
- 75 The second aspect concerns enhanced procedural case management, particularly the court's broad discretionary power to organize the proceedings to improve efficiency.¹⁰⁵ An obvious example can be found in German law: according to Art 495a of the German Code of Civil Procedure, the local courts can examine small claims solely on written documents, without obtaining the parties' consent to waive the oral hearing as Art 128(2) of the same code requires for the ordinary procedures; judges can also take evidence in an informal way (eg, question witnesses via telephone) or even exclude relevant evidence offered by parties where substitute information is available.¹⁰⁶ Also, in Japan, as a result of the single-day trial principle (see above para 39), the district courts have developed a trial model that mixes the hearing of parties' oral arguments and the taking of evidence.¹⁰⁷ Both the relaxation of evidentiary rules under German law and the mixed trial model in legal practice in Japan are closely connected to the fact that legal representation is not mandatory for litigants of small claims.¹⁰⁸
- 76 The third aspect concerns the flexible application of the law governing the merits of the parties' case. In fact, the simple structure of small claims proceedings (above para 28) along with the preference for ADR (above para 61) makes it clear that the resolution of the dispute, rather than truth-finding and protecting substantive rights, is the paramount consideration of small claims procedural law. As a consequence, this leads

¹⁰² Cf Hess and Taelman (n 2) para 31.

¹⁰³ W Rechberger and D Simotta, *Zivilprozessrecht (Civil Procedure Law)* (9th edn, Manz 2017) para 1013.

¹⁰⁴ K Shindo, *shinminjisoshouhou(新民事訴訟法)* (6th edn, Koubundou 2019) 890.

¹⁰⁵ Kramer and Kakiuchi (n 5) 160.

¹⁰⁶ Berger (n 45) para 21, 28, 37 ff.

¹⁰⁷ Hibino (n 47) 660.

¹⁰⁸ Hess and Taelman (n 2) para 116; Hibino (n 47) 660-661 points out that by not differentiating the party's oral argument and the examination of the party, the mixed trial model could make the proceedings more understandable for pro se litigants.

to the question of whether there should be a lower standard of proof and to the additional question of whether the judges should be authorized to decide *ex aequo et bono* or act as *amiable compositeur*. While the answer is negative in Germany¹⁰⁹, there is a strong voice in favor of answering these questions positively in Japan¹¹⁰.

- 77 Nonetheless, legal systems frequently take a flexible approach regarding the merits of small claims. According to Art 436-14 of the Taiwanese Code of Civil Procedure, the courts may enter an equitable decision based on all the circumstances if both parties consent. The courts may also make an equitable decision if they find taking evidence would disproportionately increase the time and costs. In this way, the small claims procedure contains features of non-contentious jurisdiction and arbitration.¹¹¹ Similarly, the Brazilian small claims courts do not need to rule on the case according to strict rules of law and can instead adopt the most appropriate solution (Article 6 Law 9.099/95). France also permits the parties to jointly authorize judges to decide in light of general notions of fairness, equity and justice (Art 12(4) FCCP)¹¹²; this is, however, not specific to small claims procedures.

2.1.7 Ease of Enforcement

- 78 Ease of enforcement of judgments, in combination with quick judicial decisions and flexible informal modes of presentation of evidence, is one of the hallmarks of small claims procedures. The principle of proportionality that justifies the simple and flexible trial procedure for small claims also requires inexpensive and speedy enforcement of the relief granted.
- 79 Parties who are successful in small claims proceedings want to benefit promptly from the judgment they have received. Legal systems vary in the techniques available for enforcing small claims judgments. For example, small claims courts in the State of New York in the United States issue judgments that are valid for 20 years. The prevailing party has the burden of collecting the judgment and can rely on enforcement officers, such as sheriffs, who are authorized to seize the defendant's property in order to use the proceeds to satisfy the judgment.¹¹³
- 80 Ease of enforcement is attractive to the claimant but may be oppressive to the losing defendant. As an illustration, some states within the United States allow the prevailing claimant to recover pre- and post-judgment interest on the underlying debt, as well as

¹⁰⁹ Berger (n 45) para 23, 40 ff.

¹¹⁰ Shindo (n 104) 891.

¹¹¹ Chiou (n 46) 43-44.

¹¹² Art 12. (4) CPC (France): Once a dispute has arisen, the parties may also, in the same matters and under the same condition, entrust the judge with the task of ruling as *amiable compositeur*, subject to appeal if they have not specifically waived this.

¹¹³ New York State Unified Court System, 'A Guide to Small Claims and Commercial Small Claims' (2024) 21-25 <https://www.nycourts.gov/courthelp/pdfs/smallclaimshandbook.pdf> accessed 4 July 2024.

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the claimant's court costs and attorney fees, which under the *American Rule* are not generally recoverable. Judgment can be enforced via garnishing wages, attaching bank accounts, and placing liens on real property. This, in turn, prevents defendants from obtaining loans, making payments on other bills, or selling or refinancing their homes. In addition, successful claimants can sometimes seek to have defendants held in contempt of court for not providing information on their assets. Findings of contempt of court can lead to civil arrest warrants and incarceration. In other words, a form of debtors' prisons has been effectively re-created in some systems as a by-product of measures to increase the ease of enforcement of small claims judgments.¹¹⁴

- 81 Another approach is the one taken by Japan and Taiwan. There, the law incentivizes voluntary satisfaction of judgments by either providing a benefit to the losing parties or putting pressure on them. On the one hand, under Taiwanese law, the judge may, upon agreement of the claimant, exempt the defendant from part of the debt if the payment is made within a designated period (Art 436-21 TWCCP). Under Japanese law, the judge may grant such an exemption in consideration of the defendant's financial resources and other circumstances (Art 375(1) JCCP). On the other hand, Taiwanese law allows the judge to render an additional amount not to exceed one-third of the judgment when the defendant defaults in performance after the judge granted, upon request of the defendant, a grace period or payment by instalments (Art 436-22 TWCCP). The common rationale behind these provisions is to avoid time-consuming enforcement proceedings, which will cause an extra burden on the prevailing parties.¹¹⁵

2.2 Early Final Judgment

2.2.1 Overview

- 82 Many legal systems allow the early termination of a lawsuit, although the forms used are quite varied. In common law systems, courts are empowered to render 'summary judgments' before the trial. In civil law systems, procedural laws similarly confer the power on courts to adjudicate the merits of a claim or defence before the final hearing.¹¹⁶ These types of judgments fall under the general term *early final judgment*.
- 83 The terminology used here is that suggested by the ELI/UNIDROIT Model Rules. However, for the purpose of this chapter, only early final judgments on the merits will be discussed. The possibility to render early final judgments on procedural grounds

¹¹⁴ Peterson and MacNeill (n 21) 12-13, 20-23, 27; Rickard (n 35) 18-19.

¹¹⁵ Hibino (n 47) 693; S-H Shyu, 'xiao e su song zhi he jie xing pan jue (小額訴訟之和解性判決)' (2022)

11 Formosan Jurist 104, 114, 117-118.

¹¹⁶ Principles of Transnational Civil Procedure 2004 (ALI/UNIDROIT) Comments 9-PD, R-19C.

pursuant to Art 65(2)(a) of the ELI/UNIDROIT Model Rules, which corresponds to part of the functions of common law summary judgments¹¹⁷, will not be addressed.

- 84 Legal systems that authorize early final judgment make it possible to deal with a large volume of litigation without overly burdening the court. In this sense, the proceedings for such court decisions could be considered a summary form of procedure, although they are normally incorporated into ordinary proceedings.¹¹⁸ The legitimacy of summary procedures relies on confidence in the judge's assessment, which can be reviewed on appeal. This overview begins with the elaboration of conditions for rendering early final judgments.

2.2.2 Summary Judgment in Common Law Systems

- 85 Procedures allowing early final judgment in a lawsuit are typical in common law systems, where there has been a long tradition—honoured in the breach, more than in the practice—of jury trials in civil proceedings. Put simply, a legal system that relies on the jury system assigns the factual disputes to the lay people comprising the jury and assigns the legal disputes to the professional judge. In this vein, disputes between parties that involve disputed facts (eg, did the goods conform to the production standards?) are assigned to the jury to decide. Disputes about legal issues (does the legislation outlawing discrimination based on sex encompass discrimination based on sexual orientation?) are assigned to the judge. In light of this division of responsibility, a procedure developed to allow the judge to end litigation before a jury trial in certain instances. The central idea is that if there are no facts in dispute, there is no need for a jury. To the extent there are disputed factual issues that are dispositive to the case, the judge must deny summary judgment and schedule the case for trial. To the extent there are disputed legal issues but not factual issues, the judge would schedule a hearing, or series of hearings, to consider written and oral arguments concerning the legal points submitted by the parties and their lawyers. These hearings would not be considered a trial, however, because the parties would not introduce sworn evidence of disputed facts and there would be no jury.

2.2.2.1 Summary Judgment Based on No Need for Jury Trial

- 86 A common procedure that allows parties to request a final judgment before trial is known variously as a motion seeking summary judgment, or summary order, or summary decree. In the United States and Canada¹¹⁹, the judge reviewing a motion for summary judgment must first determine whether there is a legal issue, with undisputed facts relevant to that particular issue, that disposes of the lawsuit. If the facts that relate

¹¹⁷ Rule 65, Comment 2, Model European Rules of Civil Procedure 2020 (ELI/UNIDROIT).

¹¹⁸ Cf Rule 49, Comment 4, Model European Rules of Civil Procedure 2020 (ELI/UNIDROIT).

¹¹⁹ All provinces other than Quebec, which is based in civil law, permit motions for summary judgment. Silver and Farrow (n 14) 238.

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to a dispositive legal issue are undisputed, the judge should rule on the legal issue, grant the motion, and end the case by entering judgment for the party seeking the motion. If the parties dispute the facts relevant to the dispositive legal issue, the judge should deny the motion and let the case proceed to trial where a jury will be impanelled to hear the evidence and resolve the factual disputes while the judge will resolve the legal disputes. A (genuine) dispute of fact exists if there is record evidence that, if believed by the jury, would allow the plaintiff to prove its case or the defendant to prove its defence.

2.2.2.2 Summary Judgment Based on No Prospect of Success

- 87 In England and Wales, the request for a summary judgment does not explicitly focus on the presence or absence of a disputed issue of fact. There the procedure allows the judge to give summary judgment against either party if the judge believes that any claim or defence (1) has no real prospect of succeeding and (2) there is no compelling reason why the case or issue should be disposed of via a trial. The grounds for summary judgment are similar in New Zealand (District Court Rules Part 12; High Court Rules Part 12) and Australia (Federal Court of Australia Act of 1976; Federal Court Rules Division 26.1; Family Court Rules Section 10.12; Federal Circuit Court Rules Section 13.07), with the court authorized to provide summary judgment on part of the case or on the whole dispute if the court concludes there is no reasonable prospect of success. Australian procedures further hold that defences or proceedings need not be ‘hopeless’ or ‘bound to fail’ for the judge to conclude they have ‘no prospect of success’.

2.2.2.3 Limits on Summary Judgments

- 88 Some legal systems restrict summary judgments to situations in which the underlying defences are deficient. For example, in Ireland (Circuit Court Rules Order 28), Northern Ireland (Rules of the Court of Judicature Order 14), and Scotland (Court of Session Rules Chapter 21; Sheriff Court Ordinary Cause Rules Chapter 17), motions for a summary decree are authorized only on the basis that the opposing party has no valid defence to the claim, counterclaim, or crossclaim. This is also true in Ghana (CPR- Ghana Order 14) and the Philippines (RCP-Philippines Rule 35). Similarly, South Africa permits only plaintiffs to seek summary judgment (Uniform Rules of Court Rule 32). Thus, motions for a summary decree cannot be used to challenge the validity of a claim.
- 89 In contrast, England and Wales (UKCRP Part 24), Canada (Federal Court Rules 214-215), and the United States (USFRCP 56) allow motions for summary judgment to challenge claims or defences. Caribbean countries, too, allow summary judgments to contest both claims and defences (eg, Belize Civil Procedure Code Part 15; Jamaica Civil Procedure Rule Part 15).
- 90 Frequently, legal systems limit the types of cases in which parties can seek summary judgment. Sometimes these limits are expressed positively. In Ireland, for example, Order 28 of the Circuit Court Rules authorizes applications for summary judgment when

the plaintiff's claims are for a debt or liquidated demand in money, delivery of a chattel or specific goods, ejectment, or enforcement or performance of a trust. In other legal systems, the limits are expressed negatively. For example, in New Zealand, Part 12 of the District Court and High Court Rules prohibits summary judgment in disputes involving a broad set of subject matters: corporations, cultural property, customs, marine law, patents, property, securities, terrorism, trusts, and wills and intestacies. Part 12 also specifies that motions for summary judgment cannot be used in certain procedural settings, such as appeals, applications for writs of habeas corpus, and contempt of court. Other limits on types of cases eligible for summary judgment can be found in Ghana (CPR-Ghana Order 14) and the Caribbean common law countries (eg, Belize Civil Procedure Code Part 15; Jamaica Civil Procedure Rule Part 15), which forbid summary judgment in defamation, false imprisonment, probate, *in rem* admiralty proceedings, and claims against the Crown.

2.2.2.4 Procedural Aspects of Seeking Summary Judgments

- 91 Motions seeking summary judgments are part of the ordinary procedures in most common law countries. In other words, the lawsuit starts out in the ordinary procedures and then one party – or the judge – seeks to resolve this particular dispute via the summary judgment procedure to avoid the need for a trial on the merits of the claim. Typically, the decision to grant summary judgment is reviewable via the ordinary appeals procedures.

2.2.2.4.1 Notice

- 92 In general, lawyers for either side can file a motion seeking summary judgment. It must be noted, though, that some legal systems, such as Israel, permit the judge to initiate the summary judgment proceeding. Usually, lawyers for both sides receive advance notice of motions for summary judgment and the hearings concerning them.

2.2.2.4.2 Timing

- 93 In most systems, a claimant cannot seek a summary judgment until after the defendant has formally appeared in the litigation. For example, in England and Wales, claimants cannot seek summary judgment until the defendant has filed an acknowledgement of service or has entered a defence (Part 24 UKCPR). The rules grant the court the power to alter this approach, however.
- 94 In the majority of legal systems that employ summary judgments, the time periods allotted to defending against these motions are generous.
- 95 Many legal systems require that the party opposing the motion receive plentiful notice of the date of any hearing on summary judgment motions and notice of the specific issues to be addressed at the hearing. In England and Wales, for instance, opposing

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parties must receive at least 14 days' notice of such hearings (Part 24 UKCPR). Further, parties must file evidence at least 7 days prior to the hearing in order to allow parties and the court sufficient time to consider the evidence. Evidence filed in reply must be submitted at least three days prior to the hearing.

- 96 In the United States judges frequently schedule hearings on summary judgment motions in open court. Judges typically require all parties to file substantial written briefs concerning the motions and frequently schedule lengthy oral hearings in public courtrooms. Judges who grant summary judgment in favor of a party write opinions articulating their reasoning. Thus, it is noteworthy that the procedures leading to a summary judgment are, in a certain sense, not *summary*. Rather they include full, deliberate, and public debates about the case in front of the judge and in the presence of all parties to the dispute. What makes this procedure a *summary* one is that it may terminate the legal dispute without the participation of the lay persons on a jury. Therefore, the summary judgment procedure can bring an end to litigation more quickly and more cheaply because it can obviate the need and expense of bringing together six or 12 lay persons to hear all the evidence and to reach conclusions about the factual disputes between the parties. Simultaneously, though, the claimants lose the opportunity to have a full discussion of the merits of their dispute in a courtroom in the presence of a jury of lay persons. The parties opposing summary judgment may feel their procedural protections were diminished as they did not have their *day in court* in the formal setting of a jury trial. In legal systems that do not employ jury trials in civil litigation, including many common law jurisdictions that strictly limit civil jury trials, this loss may be less pronounced in that a judge would be the decisionmaker at a trial as well as at a summary judgment. Nonetheless, litigants often expect a thorough trial of their grievances, and summary judgments, by definition, foreclose the possibility of a full trial.

2.2.2.4.3 Evidence

- 97 Evidence plays a major role in procedures developed to facilitate summary judgments. Many legal systems require evidence to be in writing and require parties seeking summary judgments to submit sworn affidavits supporting the grounds for their requests. Some legal systems, such as Canada and the United States, generally limit the judges to consideration of the *paper record* (written evidence) in ruling on summary judgment motions.
- 98 The absence of evidence can also be highlighted in motions for summary judgment. For example, in the United States motions for summary judgment are frequently raised by defendants during litigation while the discovery process is underway or has recently been completed. A defendant may outline the elements of the plaintiff's claim, point out that during discovery the plaintiff has produced no evidence on one of the required elements, argue that the case is legally defective in light of plaintiff's failure to satisfy the burden of presenting evidence on each element, and request the court to enter

summary judgment in favour of the defendant rather than allowing the case to proceed. In such an instance, the judge must review the legal arguments to determine if the case is insufficient as a matter of law. If so, the judge can *summarily* (without trial) enter judgment and end the case. However, as noted earlier, if there are factual issues that must be decided, the judge must deny the motion and proceed to trial.

- 99 In both the United States and in the Canadian province of British Columbia, the judge cannot weigh the evidence in ruling on a summary judgment motion. In most Canadian provinces, however, the judge can decide whether there is a genuine issue for trial after weighing the evidence, assessing the credibility of witness testimony, and drawing reasonable inferences from the evidence ‘unless it is in the interest of justice for such powers to be exercised only at trial’ (eg, Ontario Rules of Civil Procedure, RRO, Reg 194 r20.04 (2.1)).¹²⁰

2.2.3 Early Final Judgment in Civil Law Systems

- 100 Jurisdictions that do not adopt the jury-trial model provide similar instruments to expedite proceedings. Where the parties fail to produce relevant or contested facts or fail to submit factual or evidentiary contentions in a timely manner, an early final judgment (although not labelled a summary judgment as in a common law system) can be rendered to terminate the litigation. Under this approach, judges decide cases without completing all the stages of proceedings, that is, judges grant or deny the relief sought by the claimant during the interim phase of an ordinary proceeding. This type of early final judgment constitutes the functional equivalent of the summary judgment; although there is no concern about evading a jury trial, the focus is likewise on the lack of disputed factual issues or the prospect of success (above para 86-87). Both types of early final judgments bring a speedier end to litigation and thus save costs that would arise if the case proceeded all the way through trial or to a final hearing.
- 101 This is certainly true for civil law systems. In continental Europe, for example, in Germany, courts may dismiss the case in the preparatory phase of the proceeding if they find that the pleading of the claimant is not *schlüssig* (pertinent); likewise, courts may uphold the claim for relief without taking evidence if they find that the reply of the defendant to the pertinent pleading is not *erheblich* (relevant)¹²¹. This is the result of the so-called *Relationstechnik* (technique of relation), which has been developed and applied in court practice. In a somewhat similar vein, it is possible in France for *juge de*

¹²⁰ Silver and Farrow (n 14) 238.

¹²¹ Cf C Daßbach, 'Die Arbeitstechnik des Zivilrichters' (2019) 10 Juristische Arbeitsblätter 772, 773-774; M Arz and H Gemmer, 'Die zivilrechtliche Relation als Kern praktischer juristischer Arbeit' (2019) 11 Juristische Arbeitsblätter 851, 853-855.

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la mise en état (the pre-trial judge) to render a final judgment when she rules on pleas of inadmissibility.¹²²

- 102 In eastern Asia, for example, Taiwan, courts are entitled to dismiss the proceedings without holding any oral hearing if the factual allegations of the claimant appear to be obviously ungrounded as a matter of law (Art 249(2)(b) TWCCP). Courts in Japan on occasion immediately dismiss a claim or defence on the ground that the pleading is not pertinent (主張自体失当), even though there is no specific statutory authorization for this practice; this helps to conserve judicial resources and protects the opposing party from the additional costs that would be incurred by proceeding to the stage of taking evidence.¹²³ A similar approach seems to be adopted by Chinese law, given that providing ‘specific claims, facts and reasons’ is one of the prerequisites for instituting an action (Art 119(3) China CPL).
- 103 In South America Brazil instructs courts to enter a *julgamento antecipado* (summary judgment) where it is not necessary to take further evidence (Art 332, 355 and 356 BRCCP). In Argentina, courts have the power to immediately dismiss an unfounded claim; according to Art 362 of Code of Civil and Commercial Procedure of the Nation, courts can also terminate the proceedings where only legal issues need to be tried (Art 362 ACCP).

2.3 Other Expedited Trial Procedures Outside the Small Claims Setting

2.3.1 Overview

- 104 Other than small claims procedures, many legal systems provide procedures in which litigation moves at an accelerated pace as compared to the ordinary procedures. Some of these expedited procedures are set forth in legislation while others have been established via judicial decision or court practice. It is further worth noting that expedited procedures can also occur based on contractual agreements between the parties or as a result of the case management power of the courts; these specific aspects affecting expedited procedures are only outlined here, as the contractualization of procedure and judicial case management are questions of general procedural law.

2.3.2 Expedited Trial Procedures under the Law

- 105 The law may determine that certain disputes should be dealt with under an accelerated procedure. This may involve speeding up only part of the proceedings (eg, the first

¹²² According to Art 789(6) of the French Code of Civil Procedure, the pre-trial judge is additionally competent to rule on a question of substance when the ruling on the ground of inadmissibility requires a decision on the question of substance.

¹²³ Cf only K Miki, M Kasai, S Kakiuchi and Y Hishida, *minjisoshouhou*(民事訴訟法) (3rd edn, Yuhikaku 2018) 231.

hearing set promptly in case of urgency or danger). The law may also accelerate the whole procedure, without any condition of urgency, because the purpose underlying the law justifies expedited treatment. The reasons for allocating certain types of claims to expedited procedures are heterogeneous but are generally related either to the special need for rapid realization of rights or to the call for alleviating the burden of the courts. The following survey provides a sense of the variety of situations and goals.

- 106 First, some national laws expand the applicability of *small claims procedures* (for the notion of *small* claims, see above para 6) to specific claims with higher monetary value. For example, in Austria, disputes arising out of sea freight business or carriage of passengers fall within the jurisdiction of the *Bezirksgericht* (local court)¹²⁴, which applies ordinary procedural rules modified for simpler and quicker realization of rights.¹²⁵ Likewise, in Taiwan, claims arising out of road traffic accidents, irrespective of the amount sought, should be tried through simplified and condensed procedures known as a summary proceeding (Art 427 TWCCP). In the Netherlands, consumer (sales or credit), rental, and labour cases remain within the jurisdiction of the sub-district sector, even if the EUR 25,000 threshold is exceeded (Art 93 DCCP). In addition, in Spain, the verbal procedure applies, *inter alia*, to claims for payment of rent or recovery of leased property regardless of the monetary value, with further restrictions on the rules of evidence (Art 444.1 SCCP); such techniques highlight the expedited nature of these kinds of procedures which are thus perceived as *procedimientos sumarios* (summary proceedings).¹²⁶
- 107 Secondly, the law may provide specific procedures for specific types of disputes. An obvious example is the documentary proceeding under German law (Art 592-605a GCCP). This long-established special form of procedure is applicable for monetary claims that can be proved solely through documentary evidence. In this case, the claimant can opt for expedited proceedings for collecting sums due.¹²⁷ For the sake of simplicity, counterclaims are prohibited, and only documentary evidence and party interrogation are permitted. Insofar as claims are based on a bill of exchange (eg, check), the proceedings are further accelerated by shortening the time within which the defendant must answer or appear, even to 24 hours. However, if the defendant's defences require taking evidence other than that admissible in the documentary proceedings, the court can only enter a judgment subject to *Vorbehaltsurteil* (reservation of rights) in favour of the claimant; the case will then proceed in the ordinary form without prejudice to the (provisional) enforceability of that judgment. It should be noted that the claimant will be liable to the defendant for damages caused by enforcement of the judgment, if the judgment is overruled in the following proceedings. The so-called negotiable

¹²⁴ P Mayr, '§ 49 JN' in W Rechberger and T Klicka (ed), *Zivilprozessordnung* (5th edn, Verlag Österreich 2019), para 12.

¹²⁵ Rechberger and Simotta (n 103) para 1010.

¹²⁶ It should be noted that judgments rendered through the summary proceedings generally lack the effect of *res judicata*.

¹²⁷ P Murray and R Stürner, *German Civil Justice* (Carolina Academic Press 2015) 425.

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instruments collection proceedings under Spanish law (Art 819-827 SCCP) have a similar function.

- 108 It must be noted, however, that the documentary proceedings are of limited efficiency due to the availability of subsequent proceedings where ordinary procedural rules apply, as set forth by the German law. As a consequence, the documentary proceedings play only a minor role in Germany.¹²⁸ For similar reasons, Japanese lawmakers abolished the documentary proceedings originally transplanted from the German Code of Civil Procedure in the procedural law reform of 1926, and reintroduced similar documentary proceedings in the 1960s in order to meet the contemporaneous need to speedily collect debts based on bills of exchange, and have since seen these proceedings dwindle to a minuscule number.¹²⁹ Interestingly, the development of the Israeli summary procedure, which resembles the German documentary proceedings, is remarkably different; it has become a ‘deeply rooted’ procedural institution favouring swift debt collection.¹³⁰ Mixed results concerning swift procedures based solely on documents led the drafters of the ELI/UNIDROIT Model Rules to abstain from adopting this summary form of procedure.¹³¹
- 109 Another example is *procédure accélérée au fond* (the accelerated proceedings on the merits) under French law (Art 481-1 FCCP). This is a special form of procedure, whose scope of application is determined by individual provisions (eg, Art L. 631-19-2 of the Commercial Code or Art L. 511-4-1 of the Code on Construction and Housing). The proceedings are expedited in the following sense: the claimant may give notice to the defendant to appear in court at a specified date, on which a hearing will take place according to the rules governing the oral procedure; the case will then normally be decided by a single judge and the appeal time limit is shortened. The judgment will have the force of *res judicata*. The accelerated proceedings on the merits are applicable without preconditions, such as urgency.
- 110 As noted earlier (para 18), England and Wales have a fast track for litigation of claims between GBP 10,000 and GBP 25,000 (Art 28 UKCPR). Road accidents caused by a minor or a party who otherwise lacks legal capacity are slated for the fast track even if the amount in dispute is less than GBP 10,000. The law accelerates the proceedings by limiting the number of expert witnesses to one per field, with a total of two experts per party. The trial is anticipated to last one day or less, and judges must complete the trial within 30 weeks of the assignment of the case to the fast track (Art 28.2 UKCPR). The judges have flexibility over the scheduling and typically adopt the following interim deadlines: disclosure occurs within 4 weeks after assignment to the fast track; witness statements are exchanged within 10 weeks; expert reports, where allowed, are

¹²⁸ L Rosenberg, K Schwab and P Gottwald, *Zivilprozessrecht* (18th edn, C H Beck 2019) § 164 para 2.

¹²⁹ Shindo (n 104) 905.

¹³⁰ Brosh (n 52) 190-193.

¹³¹ Preamble, para 47, Model European Rules of Civil Procedure 2020 (ELI/UNIDROIT).

exchanged within 14 weeks; courts send pre-trial checklists within 20 weeks; and parties return pre-trial checklists within 22 weeks of the assignment of the case.¹³²

- 111 Many provinces in Canada have established expedited procedures, sometimes known as *fast track litigation*. In many provinces disputes of CAD 100,000 or less are automatically assigned to the fast track, which uses simplified procedures and an accelerated schedule.¹³³ The details vary, but typically the procedures limit the amount of time that can be devoted to pre-trial discovery of evidence. In Manitoba, by way of example, parties in the fast track based on a claim less than CAD 50,000 can only conduct an examination for discovery with permission of the judge (Manitoba Court of Queen's Bench Rules Man Reg 553/88, r 20A(40)).¹³⁴ If the claim is for CAD 50,000 or more the examinations for discovery are limited to three hours (Manitoba Rules r 20A(41)). Frequently, the parties must attend pre-trial case planning conferences to focus on the issues in dispute. In addition, the expedited procedures often establish fixed costs to incentivize the parties to proceed speedily. For example, in Saskatchewan a successful party to an accelerated procedure receives fixed costs if the trial takes less than three days (Saskatchewan Queen's Bench Rules, r 8-11). Many disputes are handled on the fast track. In Ontario, for example, more than 60% of civil cases proceeded on an expedited schedule with simplified procedural rules.¹³⁵
- 112 In the United States, the State of Idaho has established a Small Lawsuit Resolution Act to seek swift and cost-effective resolution of claims that exceed the USD 5,000 small claims amount and fall below USD 35,000 (ID Code 7-1502). Pursuant to this legislation, parties may petition the district court to submit evidence informally to a neutral evaluator, who then issues a decision.¹³⁶ Either party can decline the evaluator's decision and proceed to a trial *de novo*, but the law includes an incentive to accept the evaluator's award: the court will assess costs and attorney fees against parties seeking a trial *de novo* who fail to improve their position at trial by at least 15% (ID Code 7-1509 (5)).

2.3.3 Expedited Trial Procedures by Rules Established by the Court

- 113 Multiple legal systems have procedures that apply techniques similar to those used in small claims proceedings to accelerate the proceedings, notably with regard to gathering evidence and preparing for trial, followed by abbreviated presentations of evidence at

¹³² HM Courts and Tribunals Service, 'The Fast Track and Multi-Track in the Civil Courts' (2017) 5 EX305 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725673/ex305-eng.pdf accessed 4 July 2024.

¹³³ Silver and Farrow (n 14) 237-238. British Columbia, Manitoba, Nova Scotia, Ontario, and Saskatchewan use the CAD 100,000 threshold.

¹³⁴ Ibid 236-238. Regulations and rules of court specify the provincial fast track requirements.

¹³⁵ Ibid 238.

¹³⁶ The Small Lawsuit Resolution Act also allows parties to seek mediation instead of evaluation by a neutral evaluator (ID Code 7-1502).

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the trial (cf above para 28). These procedures are either formally or informally established by the court exercising the power of case management within the framework of ordinary procedural rules. In certain situations, these court-based rules are mandatory; in other settings they are voluntary.

- 114 In the United States three different types of expedited trial programs organized by the judiciary have high visibility: the Delaware Chancery Court case management system, the Eastern District of Virginia accelerated procedures (the *rocket docket*) and *fast-track* programs. The last-mentioned type could also be found outside the US, for example, in the Netherlands.

2.3.3.1 Delaware Court of Chancery Case Management System

- 115 The Delaware Court of Chancery is the pre-eminent court dealing with business disputes in the United States. Commercial litigation, trusts, real property, and guardianships form the bulk of its jurisdiction, and it is the leading venue for resolving corporate disputes. As a court of equity, it does not hold jury trials. In addition to its prominence in the law of corporations and commercial matters, it is highly regarded for the efficiency and speed of its proceedings. Cases are categorized as expedited, non-expedited, and summary. Guidelines issued by the court set forth detailed information as to the length of time permissible for submitting legal briefs, undertaking discovery, and scheduling other matters.¹³⁷ For example, the guidelines state that in non-expedited cases, parties each generally have 30 days for filing and responding to a dispositive motion. Expedited cases move more quickly. Summary proceedings are even faster; they are typically completed within 45 to 60 days. In addition to short deadlines for legal briefs, there are accelerated discovery techniques.
- 116 Trials are brief and condensed. The judge, after consultation with counsel, decides the number of trial days/hours for the trial. In comparison with most other courts handling high-value, big-stakes litigation, the hours allotted for trial are few. Parties divide the time evenly, and every oral intervention during the trial counts. As the guidance states: 'If your side is talking, it comes out of your time. This include questioning witnesses, making objections, and arguing points'.¹³⁸ At the end of each day the parties track the time usage to the second, so they know the precise amount of time they have available to complete the trial.

¹³⁷ Delaware Courts, Guidelines for Persons Litigating in the Court of Chancery (2021) <https://courts.delaware.gov/chancery/guidelines.aspx> accessed 6 July 2024.

¹³⁸ Ibid. Guidelines, Trial Procedure, 9(e)(i)(A) at 36. <https://courts.delaware.gov/forms/-download.aspx?id=99468> accessed 6 July 2024.

2.3.3.2 Accelerated Litigation Schedules

- 117 For the past several decades, the federal court in the Eastern District of Virginia has earned a nickname as the *rocket docket*. This court is well known for the speed of litigation.¹³⁹ It is subject to the Federal Rules of Civil Procedure that are applicable in all the ordinary federal courts of the United States. Nonetheless, this particular court has for the past decade been recognized as the federal court with the fastest pace of civil litigation. Cases on average proceed from filing suit to starting trial (or, more likely, settling the case) in 14.2 months. Several federal courts in other states, from Oklahoma to Florida, come very close, also measuring fewer than 15 months from start to finish on average. In contrast, the completion times in federal courts with the slowest records range from 40 to 50 months on average.
- 118 Judges on the three or four *rocket docket* courts credit their speed in resolving disputes to multiple factors: short scheduling orders, no (or rare) continuances, active utilization of senior judges, and pride in efficient docket control. The judges impose the shortened deadlines and actively manage the cases; the parties must comply with the time limits set by the judge. These courts appear to have institutionalized a local court culture that prizes speed and efficiency.

2.3.3.3 'Fast Track' and Similar Programs

- 119 There are approximately 10 court 'fast-track programs' scattered in federal courts across the United States.¹⁴⁰ They differ slightly in details, but all are voluntary and they share common elements. As soon as parties consent to the expedited proceedings, the court schedules a trial conference within 30 days, shortens discovery to 90 days, limits the number of expert witnesses, and schedules the trial within 6 months. Each side is permitted an equal amount of time, generally from four to eight hours, to present evidence at trial. Post-trial motions and grounds of appeal are limited. Although judges have strongly supported these programs and spoken favourably about them to bar associations, only a handful of parties have agreed to put their cases on the expedited trial track. It is noteworthy that these expedited litigation tracks are voluntary, in contrast to the somewhat comparable fast track litigation paths developed in Canada and in England and Wales.
- 120 Similarly, in the Netherlands, the District Court Amsterdam has since 2019 enabled an optional expedited trial procedure for claims over EUR 5,000 if the matters are relatively uncomplicated and do not involve high-stakes interests. Upon agreement by the parties, court-based procedural rules, which resemble the *kort geding* (provisional procedure),

¹³⁹ Cf H Koenig, 'The Eastern District of Virginia: A Working Solution for Civil Justice Reform' (1998) 32 Univ. of Richmond Law Review 799.

¹⁴⁰ S Gensler and J Cantone, 'Expedited Trial Programs in Federal Court: Why Won't Attorneys Get On the Fast Track?' (2020) 55 Wake Forest Law Review 525.

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apply: a standard claim form is available, and written documents should be submitted by email according to strict deadlines.¹⁴¹ This reflects the current trend in procedural law that emphasizes the role of judicial case management, on the one hand, and strengthens the party procedural autonomy, on the other hand.

*2.3.4 Other Possibilities for Expediting Trial Procedure**2.3.4.1 Contractual Agreement by the Parties*

- 121 Many legal systems allow the parties, to varying degrees, to shape their procedure on a consensual basis. While the party-agreed-proceedings that deviate from the default procedural rules could be considered a special form of procedure, they qualify as a summary procedure where the parties agree to simplify the disputed issues, to flexibly apply the formal procedural rules, or otherwise to accelerate the proceedings.
- 122 One obvious approach grants the parties the option of allocating their case to *small claims procedures* (for this notion, see above para 6). This is the case in Taiwan and China. According to Art 427(3) of the Taiwanese Code of Civil Procedure, parties with claims that should be tried through ordinary proceedings can opt for summary proceedings; and Art 436-8(4) of the same code allows parties to agree to small claims proceedings for claims valued between NTD 100,000 and NTD 500,000. Similarly, Art 157(2) of the Civil Procedure Law of the People's Republic of China authorizes the parties to agree to apply summary proceedings to cases that fall within the jurisdiction of the basic people's courts; according to a relevant Judicial Interpretation, the courts have discretion to decide whether or not to recognize the agreement.¹⁴² The US State of Idaho takes a similar approach regarding disputes that are larger than small claims but less than USD 35,000. As stated above (para 116), the Small Lawsuit Resolution Act allows either party in the general trial court to seek alternative dispute resolution (ADR) via mediation or evaluation, which can expedite the litigation (ID Code 7-1501 ff).
- 123 Another approach permits the parties to consensually derogate from the strict rules of taking evidence, which often prolongs litigation. Thus, according to Art 284 of the German Code of Civil Procedure, with the consent of the parties, courts can take evidence in ways they consider appropriate (eg, accept testimony from witnesses or experts via telephone or email). These provisions help speed up proceedings.¹⁴³

¹⁴¹ This approach by the District Court of Amsterdam, which permits expedited procedures that result in a judgment on the merits, is set forth in practice rules rather than in legislative provisions. See 'Verkorte procedure' ('Shortened Procedure') on the judiciary website, which provides a brief description and link to the procedural rules. <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Rechtbanken/Rechtbank-Amsterdam/Over-de-rechtbank/Rechtsgebieden/Civiel-recht/Paginas/Team-Handelszaken.aspx> accessed 6 July 2024.

¹⁴² Fu (n 63) 72-74.

¹⁴³ Rosenberg, Schwab and Gottwald (n 128) § 111 para 9.

- 124 In addition, it is observed that a process is developing in which the parties agree by contract regarding multiple details of pre-trial proceedings. One can say that this aims to outsource a litigation task and conserve resources of the judicial system. At the same time, it strengthens the involvement of the parties in establishing an adversarial procedure. This approach is adopted notably by the ELI/UNIDROIT Model Rules. Aiming to promote proportionality in dispute resolution, and acknowledging both private and public interests, parties are encouraged to agree to confine the courts' competence to certain contested substantive issues (Rule 57 ELI/UNIDROIT Model Rules).¹⁴⁴ By the same token, courts are bound by the party-agreed procedural rules (eg, publicity of hearings), insofar as the relevant procedural law are subject to party disposition (Rule 58 ELI/UNIDROIT Model Rules).¹⁴⁵ These approaches reflect the impact of arbitration on proceedings before state courts.¹⁴⁶
- 125 As supranational law, the ELI/UNIDROIT Model Rules reflect, to some extent, national laws. Indeed, the French legal institution of *requête conjointe* (joint application) inspired the drafters¹⁴⁷, although it was not successful in France¹⁴⁸. Nevertheless, currently in France, the concept of *procédure participative de mise en état* (participatory preparation of procedures) entitles the parties, along with their lawyers, to determine how the substantive aspects of the case proceed, including how to take evidence or interpret facts (Art 2062 ff Civil Code, Art 1542 ff FCCP).¹⁴⁹
- 126 In terms of determining the procedural aspects of the litigation, in Japan, the courts may, upon meaningful consultation with the parties, formulate a plan for trial (審理の計画) that could facilitate proceedings concerning complex cases (Art 147-3 JCCP). In Brazil, the law gives the parties great freedom to decide the details of their proceedings by agreement so long as fundamental procedural rights are respected (Art 190 BRCCP), although practitioners report that thus far it has not been widely used in practice.
- 127 The overall picture reveals an increasing contractualization of procedure. This phenomenon can be criticized as leading to the privatization of justice. However, the more opportunities the parties have to form their procedure by contractual agreement, the greater role that party autonomy will play. Given that an agreement to expedite litigation could hardly contradict the public interest, there would be no good reason to

¹⁴⁴ Rule 57, Comment 1, Model European Rules of Civil Procedure 2020 (ELI/UNIDROIT).

¹⁴⁵ Rule 58, Comment 1, Model European Rules of Civil Procedure 2020 (ELI/UNIDROIT).

¹⁴⁶ R Stürner, 'The ELI/UNIDROIT Model European Rules of Civil Procedure' (2022) 86(2) The Rabel Journal of Comparative and International Private Law 421, 465.

¹⁴⁷ Rule 57, Comment 2, Model European Rules of Civil Procedure 2020 (ELI/UNIDROIT).

¹⁴⁸ N Cayrol, 'Chapitre 282: Actes introductifs d'instance' in S Guinchard (ed), *Droit et Pratique de la Procédure Civile 2021/2022* (10th edn, Dalloz 2020), para 282.81.

¹⁴⁹ S A Mekki (ed), *Guide des modes amiables de résolution des différends* (2nd edn, LexisNexis 2021) para 283 ff.

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restrict the freedom of parties to accelerate the proceedings, so long as the parties freely and knowingly agree.

2.3.4.2 Case Management by the Courts (Power of Judges)

- 128 Many different legal systems authorize the judge to adapt the procedure to the complexity of the dispute; this corresponds undoubtedly to her duty to render justice within a reasonable time.¹⁵⁰ The judge enjoys the power of case management and, at the same time, has the responsibility to manage the case actively and effectively. Where the judge exercises this power *in concreto* to meet the needs of individual cases for a rapid resolution, for example, by selecting short deadlines in preparation of the case, we may also speak of a special form of procedure with a summary character.
- 129 Acknowledging the importance of active case management for expediting proceedings, the ELI/UNIDROIT Model Rules list various tools that courts can adopt. In addition to managing the substantive aspects of the case, which primarily focuses on identifying the core issues and (un)disputed elements of the case, the court is also charged with managing the time schedule and necessary organizational steps in proceedings, which collectively shall be referred to as procedural case management.¹⁵¹ In this regard, the court can set deadlines for parties to allege facts or offer evidence (Rule 49(4) ELI/UNIDROIT Model Rules), with non-compliance sanctioned by disregarding factual allegations or offers of evidence (Rule 27 ELI/UNIDROIT Model Rules). This should be particularly helpful in complex cases.¹⁵²
- 130 As observed in the rules allowing parties to agree by contract to the litigation framework (above para 125), the case management rules of the ELI/UNIDROIT Model Rules are not an invention of supranational law. Instead, they reflect recent trends that can be discerned in both civil law and common law jurisdictions.¹⁵³ As regards the court's managerial power to set expedited procedural timetables, the following examples of national laws are illustrative.
- 131 In Germany, the court may require the parties to submit explanations to clarify their pleadings and may set a deadline for the explanations (Art 273(2)(1) GCCP). If the parties fail to comply with the time limit, late submissions are permitted only in exceptional cases (Art 296(1) GCCP). Similarly, in Taiwan, to speed up proceedings, the parties should submit preparatory pleadings containing detailed information within the deadline set by the court (Art 268 TWCCP), in order to avoid the sanction of preclusion (Art 268-2 TWCCP). It is worth noting in this context that, under German and Taiwanese law, the

¹⁵⁰ ALI/UNIDROIT Principles (n 116), Comments P-7A, P-7B.

¹⁵¹ Rule 49, Comment 2, Model European Rules of Civil Procedure 2020 (ELI/UNIDROIT).

¹⁵² ALI/UNIDROIT Principles (n 116) Comment P-14B.

¹⁵³ Cf R Stürner, 'The Principles of Transnational Civil Procedure' (2005) 69 (2) The Rabel Journal of Comparative and International Private Law 201, 226-227; Stürner (n 146) 440.

parties, as well as the courts, have the general duty to facilitate proceedings; the parties are thus obliged to present facts and evidence in due time (Art 282 GCCP, Art 196(1) TWCCP). In France the pre-trial judge must ensure that the proceedings are conducted fairly, requiring punctual exchanges of pleadings and documents (Art 780 FCCP).

- 132 In the United States the power and the practice of judicial case management varies from State to State, and it also varies within a State. Nonetheless, case management tools are undoubtedly available to move proceedings along expeditiously. In the Federal system, the procedural rules (USFRCP 16) authorize federal judges to manage cases actively and to issue scheduling orders that limit different phases of the litigation. As noted (para 117-118), working within the general procedural rules, Federal courts in specific districts in Florida, Oklahoma, and Virginia have imposed shortened deadlines, denied extensions, and created local court cultures that incentivize speed and efficiency. In England judges have the discretion to review all the information submitted by the parties, to consider the value and complexity of the disputes, and to assess the types and amount of evidence that may be needed as they decide the appropriate pathway for each litigation.¹⁵⁴

3 OBJECTIVES AND FUNCTIONS OF SUMMARY PROCEDURES

- 133 The primary objective of summary procedures is speed. The greatest concern is for deciding disputes quickly. Speedy resolution, in turn, can lighten the workload of the courts, can reduce the financial costs of litigation, can allow business transactions to proceed without great interruption, and can permit individuals to resume their lives without the spectre of litigation and unresolved disputes. In sum, procedural efficiency and economy are paramount goals.
- 134 There are two basic approaches for promoting procedural efficiency or economy within the framework of summary procedures: one is to establish a stand-alone set of rules vis-à-vis the standard procedures; the small claims procedures are the most obvious examples. The other is to rely on goal-oriented use of standard procedural rules, in particular the judicial case management approach, to condense the proceedings or to end the cases before the final hearing, and the increasing recognition of party autonomy to consent to expediting the proceedings. How these approaches function in each jurisdiction depends not only on the concrete design of relevant legal institutions but also on the social, economic or cultural situation. As discussed below, summary proceedings often have become tools that economically powerful organizations use against the poor and vulnerable populations and do not achieve social justice. This can especially be observed in small claims procedures, which will be the focus of this section.

¹⁵⁴ HM Courts and Tribunals Service (n 132) 4-5.

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3.1 Small Claims Procedures

3.1.1 Normative Objectives and Underlying Legal Policies

- 135 As exemplified by the ESCP, the small claims procedures are structured to resolve the dispute at a fast pace and low cost.¹⁵⁵ In order to accelerate the proceedings and avoid excessive costs, jurisdictions commonly prescribe shorter deadlines, relaxed rules of evidence, limits on appeal and allow self-representation (above para 5). The last-mentioned point, in turn, requires that small claims procedures ensure that *pro se* litigants can conduct their cases by themselves (above para 64). While the ESCP simply notes the court's duty to provide assistance¹⁵⁶, in many national systems the judges generally assume a more active role¹⁵⁷.
- 136 As such, the purpose of small claims procedures is two-fold: to facilitate access to justice and to assure the principle of proportionality. The first aspect, on the one hand, concerns the (genuine) small claims litigants who otherwise would not dare to institute or defend actions owing to the barriers posed by the standard rules of civil procedure. In this regard, the small claims procedures often assert they are people-friendly, as exemplified by labelling US-American small claims courts as 'the people's court'¹⁵⁸ or by the term '*juge de proximité*' (judge of proximity) used under French law before 2017. On the other hand, the second aspect prioritizes the optimal allocation of judicial resources. In this regard the idea of proportionality, which has become mainstream across Europe¹⁵⁹, refers to the proportionate use of personal and material resources and procedural instruments; English law, where proportionality was one of the overriding objectives in creating procedural 'tracks' (Rule 1.1 UKCPR)¹⁶⁰, illustrates this point. But as reasonable as the principle of proportionality may sound in this context, it cannot be denied that small claims procedures allow the government to reduce the expense of the judicial system, which may ultimately benefit the public.¹⁶¹ In this sense, the proportionality objective can be reformulated as simply conserving judicial resources. Whatever the case may be, the objective of robustly protecting rights via a fair trial is not central to small claims procedures, a perspective implicitly conveyed by the drafters of the ESCP.¹⁶²
- 137 Jurisdictions frequently highlight access to justice, as the Japanese law-makers explicitly put it when introducing special procedural rules that apply for small claims.¹⁶³ However,

¹⁵⁵ T Domej, 'vor Art. 1 EuGfVO' in Stein and Jonas, *Kommentar zur Zivilprozessordnung* (Commentary on the Code of Civil Procedure) Vol 11 (23rd Edn, Mohr Siebeck 2021), para 15.

¹⁵⁶ *Ibid* para 21.

¹⁵⁷ Kramer and Kakiuchi (n 5) 220.

¹⁵⁸ Hau (n 8) 592.

¹⁵⁹ Stürner (n 146) 453.

¹⁶⁰ Andrews (n 13) para 1.20, 23.74-75.

¹⁶¹ Cf Kramer and Kakiuchi (n 5) 212-213.

¹⁶² Domej (n 155) para 15.

¹⁶³ Houmushou minjikyoku sanjikanshitsu(法務省民事局参事官室) (ed), *ichimonittou shinminjisoshouhou*(一問一答新民事訴訟法) (Japan Institute of Business Law 1996) 386-387.

proportionality in the sense of conserving judicial resources prevails where legal systems allow relatively high monetary value claims to qualify as *small* claims; one example might be the ESCP (cf above para 16). Insofar as high value claims are tried through simpler and more flexible proceedings, the main objective is saving judicial resources, not incentivizing access to justice; no 'rational apathy' or 'rational disinterest' (above para 68) would be feared and the efficient protection of substantive rights would be ensured in the ordinary proceedings. Given the inevitable trade-off between procedural efficiency and procedural justice¹⁶⁴, the danger is that due process and truth-finding are no longer fully guaranteed, and the small claims procedures become second-class procedures¹⁶⁵; indeed, the ESCP has faced such criticisms¹⁶⁶. In order to avoid this intolerable consequence, the optional model (above para 25) is preferable.¹⁶⁷ But this is not to say that a mandatory simplified or flexible procedure is per se illegitimate in a state governed by the rule of law. The problem is rather to determine whether the techniques employed violate fundamental procedural rights, in particular, the right to be heard or the right to present a defence.¹⁶⁸ This will be discussed in the last section of this chapter.

- 138 Nonetheless, for those involved in low value disputes, ie, genuine *small* claims, access to justice would remain merely theoretical if nothing more than ordinary procedures were available. Small claims procedures are thus necessary to ensure disputes can be resolved based on law; without them, potential creditors would have no recourse or would turn to self-help or criminal means of intervention.¹⁶⁹ Furthermore, the inability to seek justice before courts would eventually undermine the function of a legal order.¹⁷⁰ Nonetheless, it is crucial not to ignore the potential conflicts between increasing access to justice and conserving judicial resources, because a growth in civil litigation could increase the burden on courts.¹⁷¹ In such a situation, the quality of civil justice will suffer unless more personnel or material resources are provided. This leads to the related issues regarding the greater development of ADR or E-Courts in order to resolve small claims. In addition, it may be necessary to develop other special forms of procedure, for example, collective proceedings for the recovery of small damages caused by the same unlawful conduct.

¹⁶⁴ Kramer and Kakiuchi (n 5) 171, 213.

¹⁶⁵ Stürner (n 146) 454.

¹⁶⁶ C Kern, 'Das europäische Verfahren für geringfügige Forderungen und die gemeineuropäischen Verfahrensgrundsätze' (2012) 67 *Juristen Zeitung* 389, 392 ff.

¹⁶⁷ Cf Hau (n 8) 594-595.

¹⁶⁸ Ibid 591.

¹⁶⁹ S Kawashima, *minjisoshounokanikyusaihouru* (民事訴訟の簡易救済法理) (Koubundou 2020) 70.

¹⁷⁰ Hau (n 8) 590-591.

¹⁷¹ Ibid 588.

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3.1.2 Practical Functions and Concrete Impacts

3.1.2.1 Volume of Small Claims Procedures

- 139 As stated in the first chapter, in terms of quantity, small claims procedures should be called *ordinary procedures*. To provide an idea of the large volume of disputes processed according to small claims procedures, let us examine Brazil's small claims *legal microsystem*. In Brazil, the jurisdiction of small claims courts is limited by two factors: (1) the claim must have a small monetary value (BRL 41,800 or EUR 6,700), and (2) the claim must not be complex. In 2019, 4,435,270 small claims actions were filed, in comparison to 11,100,421 ordinary actions. Thus, disputes adjudicated under the special small claims procedures correspond to 39% of the claims handled pursuant to the ordinary procedures.¹⁷²
- 140 Turning to Asia, we find that an even greater percentage of civil cases in Taiwan are adjudicated according to small claims procedures. In 2019, small claims disputes (69,816) accounted for 37% of all cases (187,894) resolved by first-instance district courts. These should be added to summary matters (59,264), which account for 31% of first-instance resolutions; the remaining 32% of civil cases (58,814) comprise the caseload resolved according to ordinary procedures.¹⁷³ Similarly, Korean small claims constitute roughly two-thirds of all first-instance civil cases.¹⁷⁴ In contrast, there are many fewer cases filed in small claims procedures in China. Only about 2% of all civil proceedings concern small claims.¹⁷⁵ The situation in Japan is equivocal. Only 8,542 small claims actions were filed in 2019, accounting for roughly 1% of all civil cases that year. However, the case numbers of summary courts (344,101) vastly exceeded those of district courts (134,935) in 2019,¹⁷⁶ a situation more like Taiwan and Korea.
- 141 Europe presents a rich area of study. Each nation has its own judicial system with both ordinary and summary procedures, including special approaches for small claims. In addition, as noted above (para 3, 28), the European Union has created a supranational small claims procedure that applies in cross-border disputes, disputes in which at least one of the parties is from a different EU Member State from the court dealing with the claim. To date, the ESCP, established in 2009, has been only of marginal importance in practice.¹⁷⁷ In 2013, the low volume of ESCP disputes was attributed to unawareness of

¹⁷² Justiça em Números 2020 (n 66) 178-179.

¹⁷³ Judicial Yuan, Annual Report of Statistics (2019) <https://www.judicial.gov.tw/tw/lp-1951-1.html> accessed 8 July 2024.

¹⁷⁴ Korea national report for the XVth World Congress of Procedural Law (2015).

¹⁷⁵ Statistics from <https://law.wkinfo.com.cn>.

¹⁷⁶ Saikousaibansho jimusoukyoku(最高裁判所事務総局) (ed), *sihou toukei nenpou*(司法統計年報) (Hosokai 2019) 1-2.

¹⁷⁷ M Stürner, 'Der Anwendungsbereich der EU-Verordnungen zur grenzüberschreitenden ForderungsdurchsetzungInhalt' (The Scope of the EU regulations on cross-border debt collection) (2020) 119 *Zeitschrift für Vergleichende Rechtswissenschaft* (German Journal of Comparative Law) 143, 162 ff.

its existence and operation.¹⁷⁸ In order to benefit more consumers and small and medium-sized enterprises (SMEs), the ESCP was amended in 2015 to increase the cap on the monetary amount from EUR 2,000 to EUR 5,000.¹⁷⁹ However, practical experience shows that, with the exception of Luxembourg, the amendment has not led to a significant increase in case numbers; national courts continue to deal with small claims according to national proceedings.¹⁸⁰ While many individuals are still not aware of the ESCP and there should be renewed efforts to inform the public about it¹⁸¹, there are multiple reasons that it has not been used frequently: the high degree of complexity of the proceedings, the lack of (full) national implementation of the Regulation, the co-existence of national small claims procedures, and the insufficient digitalization of courts¹⁸².

- 142 Turning from the supranational European Union ESCP to national judicial systems within Europe, small claims procedures are a common feature in the national legal systems of many Member States, either in a formal or informal way. The volume of disputes handled in small claims procedures varies from country to country. For example, in Spain, 290,911 claims were decided in the ordinary procedures in 2019, while an equivalent number, 287,209, were decided in the verbal procedure. In the same year the Netherlands reported that many more cases, including those with higher monetary value, were dealt with in the sub-district sector (852,808), where the judges have an expansive competence, than in the civil sector (230,728).¹⁸³
- 143 Focusing on North America, both the United States and Canada have robust systems for processing small claims. In the United States, this occurs within the court systems of the 50 States, as the jurisdiction of the federal courts generally is limited to claims above USD 75,000.¹⁸⁴ The State courts reported that 2,312,655 new small claims were filed in

¹⁷⁸ Report from the Commission on the application of Regulation 861/2007 establishing a European Small Claims Procedure, COM/2013/0795 final, 19 November 2013.

¹⁷⁹ Recitals 3-4, EU Regulation 2015/2421 of 16 December 2015 amending ESCP Regulation 861/2007 (2015).

¹⁸⁰ M Buzzoni and C Santaló Goris, *Report on Practices in Comparative and Cross-Border Perspective* (2022) 55.

¹⁸¹ Cf from the German perspective, O Hinrichs and J Thevis, 'The Implementation of the European Small Claims Procedure in Germany' (2021) 10 (2) *Journal of European Consumer and Market Law* 75, 78; from the French perspective, P Baquero and M Winkler, 'The Implementation of the European Small Claims Procedure in France' (2021) 10 (1) *Journal of European Consumer and Market Law* 36, 39.

¹⁸² Buzzoni and Santaló Goris (n 180) 56-57.

¹⁸³ WODC Scientific Research and Data Center, Civil and Administrative Law-Tables 2020, Tables t4.2-t4.3 <https://www.wodc.nl/onderzoek-in-uitvoering/documenten/publicaties/2021/12/22/rechtspleging-civiel-en-bestuur-tabellen-2020> accessed 6 July 2024.

¹⁸⁴ Federal legislation, 8 USC 1332(a), limits the jurisdiction of the first instance federal courts to disputes where the 'matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs'.

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2019, in comparison to 15,776,831 civil disputes filed under the ordinary procedures.¹⁸⁵ The small claims comprised approximately 15% of the civil cases. The State of Texas alone reported 399,072 new small claims filings or 1,376 new filings per 100,000 of the population. South Carolina reported 236,992 new small claims cases, which amounted to 4,602 per 100,000 population. Small claims procedures are popular in Canada, as exemplified by the volume of filings in the Ontario Small Claims Court. More than 66,000 small claims filings took place in this single province in 2012-2013, comprising 45% of all the civil claims.¹⁸⁶

3.1.2.2 Length of Small Claims Procedures

- 144 The goal of speeding the resolution of small claims by means of simple and flexible procedures has generally worked. Jurisdictions have been able to quickly process small claims while devoting other resources to ordinary cases. For example, in Brazil, the small claims procedures averaged 18 months at first instance in 2019; this was 62% of the average length of ordinary procedures, which was 29 months.¹⁸⁷ In Taiwan, the completion time averaged 57 days for small claims, 82 days for summary matters, and 170 days for ordinary civil proceedings in 2019.¹⁸⁸ In Japan, summary courts terminate 88% of cases within 6 months, whereas district courts complete just under 50% in an equivalent period.¹⁸⁹ In China, over 70% of small claims proceedings are terminated within 15 days; however, the significance of this is unclear because nearly 60% of all civil proceedings end within the same time period.¹⁹⁰
- 145 Moreover, in Spain, the average length of verbal procedures was 7.9 months in 2019, which was approximately half the time of ordinary procedures (15.1 months).¹⁹¹ In the Netherlands, 90% of cases before sub-district sectors are concluded within a year, which is obviously faster than cases before district courts, where the equivalent percentage is around 65%.¹⁹² Although the ESCP has not been used frequently (above para 141), it has

¹⁸⁵ S Gibson, B Harris, et al (ed) Court Statistics Project courtstatistics.org. The caseload details for the total civil filings in 2019 reflect data reported by 44 of the 50 States; the small claims filings reflect data reported by 37 States. Court Statistics Project (CSP) STAT Civil, <https://www.courtstatistics.org/court-statistics/interactive-caseload-data-displays/csp-stat-nav-cards-first-row/csp-stat-civil> accessed 5 July 2024.

¹⁸⁶ Silver and Farrow (n 14) 240.

¹⁸⁷ Justiça em Números (n 66) 178–179.

¹⁸⁸ Unpublished internal statistics of the Judicial Yuan, on file with co-authors.

¹⁸⁹ Saikousaibansho jimusoukyoku (n 176) 10, 20.

¹⁹⁰ Statistics from <https://law.wkinfo.com.cn> accessed 8 July 2024.

¹⁹¹ *Memoria sobre el estado, funcionamiento y actividades del Consejo General de Poder Judicial y de los juzgados y tribunales en el año 2019* (Report on the status, functioning and activities of the General Council of the Judiciary and the Courts and Tribunals of Justice for the year 2019) 389 <https://www.senado.es/web/actividadparlamentaria/iniciativas/detalleiniciativa/index.html?jsessionid=QP1GmyfdhnTy6xy2KXYTK9WyhT0hKISMgWPCwbhTnNMFcKtTnTQ0X!-1890497236?legis=15&id1=762&id2=000002> accessed 6 July 2024.

¹⁹² *De Rechtspraak, Kengetallen 2019, (The Judiciary, Key Figures)* (Netherlands), <https://www.rechtspraak.nl/SiteCollectionDocuments/kengetallen-2019.pdf> accessed 7 July 2024.

reduced the duration of cross-border small claims litigation from 29 months to five months on average.¹⁹³

- 146 It is hard to generalize about the United States because there are 50 separate State small claims procedures. The State of Utah recently reported that the average length between filing and judgment was 76 days for small claims cases.¹⁹⁴ In contrast, the average length of debt collection cases in the district courts was 39 days¹⁹⁵; however, regard should be given to the fact that debt claims are indeed ‘smaller’ than small claims and default rates are higher. The State of California reports that most small claims cases are heard within three months, while civil cases under USD 25,000 take up to one year or longer to decide.¹⁹⁶ In Canada, Quebec reports that on average it takes between six and 15 months from filing a small claim to the trial.¹⁹⁷
- 147 It must be acknowledged, however, that small claims proceedings move much more slowly in some countries. For example, in Ghana a small claim takes on average three years to conclude, although some may end within one month.¹⁹⁸

3.1.2.3 Content of Small Claims Procedures

- 148 As the applicability of small claims procedures is principally dependent on the monetary value of the relief sought by the claimant (above para 12), it is unsurprising that the types of disputed matters are fundamentally similar in small and non-small claims; for example, the same kind of tortious act could cause various degrees of damage. Where small claims procedures are of a mandatory character, this similarity is essential. So, in Taiwan, the two most frequent causes of action in small claims and in ordinary proceedings are loan repayment and tort, which respectively account for 64% and 23% of all small claims and 45% and 18% of all ordinary cases in 2019.¹⁹⁹ However, one may still surmise that small claims arise more often from daily life transactions or accidents than from complicated contractual relationships or infringement of rights. So, in the Netherlands, the majority of cases dealt with by the sub-district sectors are disputes involving consumer contracts,

¹⁹³ EU Commission Report (n 178).

¹⁹⁴ Report on Debt Collection (n 32) 28.

¹⁹⁵ Utah law prohibits third-party debt collectors from using small claims procedures (Utah Code 78A-8-103), which channels a large volume of claims with low monetary amounts into district courts where the presumption is that litigants will have legal representation, although many debtors do not. Report on Debt Collection (n 32) 8. The more complex requirements in district court correlate with a higher rate of default judgments. Ibid 19. The median amount in controversy is lower in district court debt claims (USD 1,227) than in small claims proceedings (USD 1,318). Ibid 22. Indeed, 94% of the debt claims filed in district court were for amounts lower than the threshold for small claims proceedings. Ibid 21.

¹⁹⁶ California Courts, Cases for USD 10,000 or Less, <https://www.courts.ca.gov/1062.htm?rde-LocaleAttr=en> accessed 7 July 2024.

¹⁹⁷ Educloi, ‘Small Claims Court, 10 Questions to Ask Yourself Before Making a Claim’, <https://educloi.qc.ca/en/capsules/small-claims-court-10-questions-to-ask-yourself-before-making-a-claim/> accessed 7 July 2024.

¹⁹⁸ Ghana national report for the XVth World Congress of Procedural Law, 2015.

¹⁹⁹ Judicial Yuan (n 173).

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housing or insurance issues, although sales and service disputes between SMEs also account for a good portion of them.²⁰⁰ In a similar vein, China explicitly subjects disputes over the supply of water or electricity and bank cards or telecommunications to small claims proceedings (Art 274 Judicial Interpretation on China CPL).

- 149 Where small claims procedures are optional, statistics reveal which types of disputes the citizens perceive to be suitable for a simple and flexible resolution. In Japan, although the volume of small claims litigation was low, this special form of procedure was often used for payments of the purchase price (8%) or damages incurred by traffic accidents (5%), and repayment of loans (12%) in 2019. By contrast, in Brazil, where only natural persons and small enterprises may resort to small claims courts (Art 8(2) Brazil Federal Law 9.099/95), a remarkable portion (14%) of small claims concerned consumer law, followed by general civil liability (6%) in 2019.²⁰¹ The different pictures demonstrate the practical impact of policy-making as regards the applicability of small claims procedures.
- 150 In Canada, the content of small claims disputes varies widely. In some provinces, such as Ontario and British Columbia, a large portion of the small claims are concerned with debt collection. As noted earlier (above para 13), in other provinces, such as Quebec and Nova Scotia, business creditors generally are not allowed to file suit in small claims courts.²⁰²

3.1.2.4 Social Inequality

- 151 The summary procedures, in part because they move quickly and in part because they follow special rules, reward those who are educated, who are knowledgeable about special procedures, and who can afford legal representation. They disadvantage the poor, those without access to technology, legal resources, or money. Summary procedures privilege the *repeat players* in the legal system (cf below para 155). As a consequence, summary procedures such as small claims proceedings have become tools of oppression by debt collection companies against the poor and uneducated.
- 152 It is possible, though the empirical evidence is less clear-cut, that summary judgment procedures have worked to the disadvantage of employees in disputes with their employers and to the disadvantage of claimants who protest against discriminatory treatment.
- 153 However, it would be inappropriate to assume that procedural equality between the parties cannot be ensured in small claim proceedings. These proceedings generally

²⁰⁰ X Kramer, M Tuil and I Tillema, Verkrijging van een executoriale titel in incassozaken (Obtaining an enforceable title in debt collection cases) (WODC report 2012) 2-3 English summary <https://repository.wodc.nl/bitstream/handle/20.500.12832/1934/2105-summarytcm28-72090.pdf?sequence=3&isAllowed=v> accessed 7 July 2024.

²⁰¹ Justiça em Números 2020 (n 66) 241.

²⁰² Silver and Farrow (n 14) 239-240.

feature arrangements to reduce legal technicalities and to focus on quick and inexpensive dispute resolution. Most importantly, legal provisions often require the court to give a helping hand to the weaker party (cf above para 74), who is normally a defendant debtor who lacks legal representation vis-à-vis the represented creditor. Even when the court is not normatively obliged to take such an active role, the court is generally expected to protect the *pro se* litigant and, research shows that in some countries this frequently takes place.²⁰³ If the procedural safeguards are robust, the small claims procedures may raise fewer concerns of inequality than one might fear.

3.1.2.5 Repeat Litigants/Abuse of Small Claims Procedures

- 154 Although the salutary objectives of small claims procedures may generally be achieved, there is some danger of abuse. Defendants who are not sufficiently aware of the compressed pace of litigation are particularly vulnerable to malicious actions.²⁰⁴ Specific measures may be necessary for their protection. One example occurs in Taiwan, where claimants are principally not allowed to divide a big claim into several smaller claims and collect them through small claims procedures; the small claims proceedings are only applicable for such a partial claim when the claimant waives the right to initiate another action with regard to the remaining part of the claim (Art 436-16 TWCCP).
- 155 Another form of abuse comes with the phenomenon of repeat players. For example, small claims proceedings have become a major avenue of debt collection in some States in the United States. These debts generally stem from medical bills, auto loans, and credit card bills.²⁰⁵ A recent report indicated that 83% of all the claimants in small claims courts in Utah are companies; almost all the defendants are individuals.²⁰⁶ Moreover, a small number of companies – only nine – file 50% of the small claims.²⁰⁷ Massachusetts reported that nine debt collection companies accounted for 43% of small claims and civil litigation in 2015; in Oregon six debt buying companies filed 25% of all civil disputes between 2012 and 2016.²⁰⁸ To provide context, there were approximately 18,000 small claims cases filed in 2019²⁰⁹ when the jurisdictional limit was USD 11,000. The amount has since been raised to USD 15,000 and will increase to USD 20,000 in 2025 and to USD 25,000 in 2030.²¹⁰ Utah does not permit companies that have purchased debt from

²⁰³ Hess and Taelman (n 2) para 31, 33; J Hoevenaars, 'Tussen partijautonomie en ongelijkheidscompensatie: Hoe kantonrechters omgaan met niet-vertegenwoordigde partijen' ('Between party autonomy and inequality compensation: How Dutch subdistrict judges deal with unrepresented parties') (2021) *Recht der Werkelijkheid* 16-40.

²⁰⁴ Shindo (n 104) 890.

²⁰⁵ Rickard (n 35) 11; Report on Debt Collection (n 32) 6.

²⁰⁶ Report on Debt Collection (n 32) 11.

²⁰⁷ *Ibid* 10.

²⁰⁸ Rickard (n 35) 12.

²⁰⁹ Report on Debt Collection (n 32) 5. Original creditors can file claims in the Justice Courts, where small claims are adjudicated.

²¹⁰ Utah Code, Title 78A, 78A-8-102 (USA).

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creditors to initiate small claims proceedings, but other States do.²¹¹ In those situations, the individual defendants may not recognize the claimant and may not understand why they have been sued by an unfamiliar entity.²¹² Furthermore, the inequitable circumstances are exacerbated by the lack of legal representation. In Utah 97% of the defendants are not represented by a lawyer; of these 30% result in a default judgment. In contrast, the 3% who are represented by lawyers result in a default judgment only 6% of the time.²¹³

- 156 The problem of lenders or credit institutions as repeat plaintiffs may raise concerns in other jurisdictions, especially those that do not prohibit (larger) enterprises from instituting small claims proceedings. Several measures attempt to limit this type of harm. In Japan, for example, one person can only file ten small claims actions with the same summary court per year (Art 223 Rules of Civil Procedure). This provision, which clearly targets lenders or credit institutions, ensures access to justice for normal citizens²¹⁴ by preventing repeat litigation from overloading the summary courts. The Taiwanese law that prevents creditors from multiplying small claims proceedings by dividing a large debt into several small ones (para 154) also protects judicial resources from overuse by repeat litigants.²¹⁵ Some jurisdictions in Canada, such as Quebec and Nova Scotia (above para 13), forbid business creditors from filing suit in small claims courts.²¹⁶ In the United States, the State of California limits businesses to disputes below USD 5,000 in small claims court, while allowing individuals to file claims up to USD 10,000. California further prohibits claimants, individual or business, from filing more than two small claims court actions for more than USD 2,500 in any single year.²¹⁷

3.2 Early Final Judgment and Other Expedited Trial Procedures Outside the Small Claims Setting

- 157 Speeding the litigation and avoiding unnecessary expenses are also the objectives of the other forms of summary procedures: summary judgments under US law allow courts to avoid costly jury trials (para 86); joint applications under French law allow judges to concentrate on a few contested issues (para 125). The similar objectives of all summary procedures are particularly evident where small claims procedures are expanded to include claims with higher monetary value (para 106). Accordingly, it is reasonable to conclude that both early final judgments and other expedited trial procedures outside

²¹¹ Report on Debt Collection (n 32) 5. Companies that have bought debt from creditors must file in the District Courts; six companies file 50% of all the debt cases in the District Courts. This demonstrates the enormous participation of repeat players.

²¹² Rickard (n 35) 16.

²¹³ Report on Debt Collection (n 32) 13.

²¹⁴ Hibino (n 47) 650.

²¹⁵ S-H Shyuu, *quan li zhi que ding yu shi xian* (權利之確定與實現) (Sharing 2022) 11-13.

²¹⁶ Silver and Farrow (n 14) 239-240.

²¹⁷ California Courts, *Cases for \$10,000 or Less*, <https://www.courts.ca.gov/1062.htm?rdeLocaleAttr=en> accessed 7 July 2024. Claimants can file unlimited claims for USD 2,500 or less.

the small claims setting aim to speed litigation and save judicial resources as the small claims procedures do (para 136). However, to the extent that those summary proceedings allow businesses to operate more smoothly and debt collection to occur more quickly, there may be an additional objective: the summary procedures applicable to non-small claims may enhance the economic viability of a state or nation.

- 158 While statistics concerning the usage and effectiveness of other sorts of summary procedures are – at least within the framework of the CPLJ project – generally lacking, the few previously indicated examples regarding the Canadian *fast track litigation* (para 111) and the US-American *rocket docket* courts (para 117) permit the assumption that these summary procedures have an impact on the length of litigation. However, scepticism is generally warranted as experience shows that legal innovations, such as the French joint application (para 125) and Brazilian party-agreed proceedings (para 126), frequently are not adopted by parties in practice.
- 159 It is important to note that jurisdictions may establish summary procedures to ensure that the civil justice system is capable of responding to current social needs. The Japanese documentary proceedings, which were (re)introduced to address the economic situation of the 1960s (para 108) provide a good example. By the same token, social conditions may lead to the modification of summary procedures. For instance, the Spanish government adopted measures during the COVID-19 pandemic to suspend proceedings to protect tenants in economic difficulty²¹⁸; this was in addition to suspensions available in summary proceedings for evictions based on non-payment of rent. Similar suspensions of summary proceedings during the COVID-19 pandemic were enacted at the Federal and State level within the United States.²¹⁹

4 ISSUES CONCERNING PROCEDURAL FAIRNESS OR FUNDAMENTAL PROCEDURAL RIGHTS: FOCUSING ON SMALL CLAIMS PROCEDURES

- 160 Many special forms of procedure allow for derogations from the *primary* guarantees of a fair trial on the premise that there are sufficient other procedural protections. The sufficiency of these guarantees can be challenged; moreover, this illustrates a tendency to reduce fundamental rights. This is especially obvious with small claims procedures, where procedural efficiency or economy leads to the relaxation of standard procedural rules. Many of the techniques adopted to accelerate proceedings or reduce costs raise concerns about the effective protection of the right to a fair trial, which ‘serves as a

²¹⁸ In response to the crisis triggered by COVID-19, Royal Decree-Law 11/2020 of 31 March 2020 (Spain) established complementary measures in the social and economic spheres; Royal Decree-Law 16/2021 of 3 August 2021 (Spain) introduced further modifications, including an extraordinary suspension of eviction proceedings.

²¹⁹ Eg, US Centers for Disease Control and Prevention (CDC), Temporary Eviction Moratorium, 85 Federal Register 55292, 4 September 2020; Tenant Safe Harbor Act of 30 June 2020 (New York); Executive Order 128, 24 April 2020 (New Jersey) <https://nj.gov/infobank/eo/056murphy/pdf/EO-128.pdf> accessed 7 July 2024.

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procedural means to safeguard the rule of law'.²²⁰ However, it is important to consider proceedings 'as a whole' in judging their conformity to procedural fairness²²¹; that is, an extensive restriction of an aspect of a fundamental procedural right does not necessarily constitute an infringement of this right. For this reason, small claims procedures, across legal systems, generally withstand most criticism of insufficient procedural guarantees.²²² Against this backdrop, particular attention will be paid to the right to be heard, the right to notice, and the right to an oral hearing.

4.1 The Right to be Heard

- 161 Restrictions on the right to be heard are evident in small claims procedures as greater protections for this right generally entail proceedings that are lengthier and more expensive. Speeding the proceedings and reducing the expenses requires limiting the parties' opportunity to present their case and develop evidence. Commonly, there are limitations on evidence and appeals, which are discussed below. Jurisdictions adopting other (less frequent) approaches, such as service of process to the defendant's last known address (above para 34 and below para 162), prohibiting legal representation by lawyers (above para 65) or allowing judgments that do not provide reasoning (Art 436-18(1) TWCCP), also may infringe on the right to be heard in terms of the principle of due notice (cf Rule 52 ELI/UNIDROIT Model Rules), the right to engage a lawyer (cf Rule 15(1) ELI/UNIDROIT Model Rules) or the obligation to explain the reasoning in judgments (cf Rule 12(1) ELI/UNIDROIT Model Rules).
- 162 Unquestionably, fundamental fairness requires that individuals receive adequate notice of a dispute in order to benefit from the opportunity to be heard with regard to the dispute. Summary procedures may impinge on this principle insofar as they permit informal and less intensive forms of notifying the adversary. Small claims proceedings, in particular, often allow informal means of providing notice at the beginning of litigation; particularly with regard to the United States, it has been observed in multiple settings that an alarming proportion of small claims defendants never respond or appear (above para 34), raising serious questions about the practice of due notice in some systems.
- 163 As noted previously (para 160), violations of the right to a fair trial occur only when the proceedings *as a whole* are unfair. Accordingly, the exclusion of expert evidence, either as a matter of law or at the court's discretion (above para 43), when the party needs this evidence to satisfy the burden of proof may contravene the right to present evidence (cf Rule 92(1) ELI/UNIDROIT Model Rules). But this restriction would be justifiable if the

²²⁰ UN Human Rights Committee, General Comment No. 32, CCPR/C/GC/32 (2007) para 2.

²²¹ Cf the approach taken by the European Court of Human Rights to assess whether there is a violation of Art 6(1) of the European Convention on Human Rights, eg, *López Ribalda and Others v. Spain*, Cases 1874/13 and 8567/13 (ECtHR), Judgment 17 October 2019 para 150.

²²² Kramer and Kakiuchi (n 5) 184.

proceedings are optional for the party. Even if the proceedings are mandatory, this restriction should still be acceptable for small claims as opposed to ordinary claims²²³, considering the high costs of taking evidence, on the one hand, and the low monetary value of small claims, on the other. Furthermore, it is relevant that expert opinion can generally be presented in a less formal way (above para 44).

- 164 The answer is less straightforward when there are limitations on accepting evidence offered by a party in cases involving the judge's power to resolve the dispute on an equitable basis instead of pursuant to substantive law (above paras 76-77). In Taiwan there are criticisms of this kind of legislation, demanding protection for the substantive legal order and the right to be heard²²⁴, while in Brazil, the possibility of adopting an equitable resolution has not been generally called into question.
- 165 Aside from the prior issue, the real problem arises where claims with relatively high monetary value are mandatorily treated as *small* claims (cf above para 137). Limitations on evidence lose legitimacy to the extent that the goal of avoiding disproportionate costs is a lower priority than the accuracy in decision-making and the realization of substantive rights. As a result, in high value *small* claims, legal systems tend to refrain from authorizing judges to exercise the same discretionary power to limit evidence as they do in genuine small claims settings; an example is the Taiwanese summary proceedings that apply for claims valued over NTD 100,000 up to NTD 500,000. With such limits on the exclusion of expert evidence, the small claims proceedings are not much different from ordinary ones; no serious restriction on the right to evidence can be asserted. Another factor is that legal systems, such as Brazil, can ensure the availability of sufficient appellate review to make up for the application of relaxed evidence rules.²²⁵ All things considered, it may be inappropriate to assume that small claims proceedings unfairly limit the parties' opportunity to present their evidence.
- 166 Similarly, the limitation or even deprivation of the right to appeal, a right commonly recognized amongst European or European-oriented legal systems for ordinary civil litigation²²⁶, does not necessarily constitute a violation of the right to a fair trial for the losing party. The right to appeal does not have the quality of a fundamental procedural right in many jurisdictions, including the established case-law of the European Court of Human Rights²²⁷; states enjoy a large leeway in designing appellate proceedings. Furthermore, there is an overriding justification: trivial disputes must be resolved quickly and inexpensively. The goals of speed and proportionality in small claims cases justify limiting appellate review. Spanish and Dutch laws, which respectively set the threshold

²²³ Cf Stürner (n 177) 166.

²²⁴ M-S Liu, 'xiao e su song cheng xu zhi yan jiu(小額訴訟程序之研究)' (2018) 61 Cross-Strait Law Review 90, 111-114.

²²⁵ Cf Kramer and Kakiuchi (n 5) 180-181.

²²⁶ Cf Introduction to Part IX, Comment 1, Model European Rules of Civil Procedure 2020 (ELI/UNIDROIT).

²²⁷ See *Cumhuriyet Halk Partisi v. Turkey*, Case 19920/13 (ECtHR), Judgment 26 April 2016 para 117.

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for appeals at EUR 3,000 and EUR 1,750 (above para 54), are suitable examples. Moreover, legal systems that restrict the availability of appeal often provide extraordinary recourse, such as the special appeal based on the unconstitutionality of the judgment in Japan (above para 52) or the revision on points of law before the Supreme Court in France (above para 54), in order to avoid gross violation of the law or fundamental rights. With this in mind, there would be less reason to doubt the procedural fairness of small claims procedures even when they apply to claims with higher values.

4.2 The Principle of Public Oral Hearings

- 167 The principle of oral hearings open to the public is undoubtedly restricted by a written small claims procedure, as is notably the case under the ESCP (above para 45). This raises a basic concern about procedural fairness. The right to a public hearing, which requires in principle the hearing to be oral, is broadly recognized worldwide as a fundamental element of procedural fairness, as exemplified by Art 6(1) of the European Convention on Human Rights (hereafter ECHR) and Art 14(1) of the International Covenant on Civil and Political Rights (hereafter ICCPR)²²⁸. If this procedural guarantee requires, at minimum, an oral hearing upon the request of a party²²⁹, the ESCP appears to be questionable²³⁰. The French version of written proceedings, which is based on explicit agreement of parties (above para 47), should be unproblematic, however.
- 168 It would be possible to avoid conflict with the principle of oral public hearings if the ESCP obliged the court – at the request of a party – to consider holding an oral hearing by video-conferencing or similar technologies. Furthermore, in light of the costs that arise from in-person attendance, oral hearings in small claims procedures could benefit from the use of audio-visual communication. To the extent that organizational safeguards are available, including those that prevent undue influences on the parties or witnesses being examined, and the court perceives it to be appropriate, an oral hearing via video-conference could be afforded the same value as an oral hearing with parties present in person.²³¹ In such situations, there would not be a violation of the right to a public (and oral) hearing.
- 169 In fact, as Art 6(1) ECHR and Art 14(1) ICCPR explicitly prescribe, the right to a public hearing is inherently subject to manifold exceptions. Procedures conducted principally

²²⁸ As for ECHR, F Meyer, 'Art. 6 EMRK', in U Karpenstein and F Mayer (ed) *Konvention zum Schutz der menschenrechte und Grundfreiheiten: EMRK (Convention for the Protection of Human Rights and Fundamental Freedoms: ECHR)* (2nd edn, C H Beck 2015), para 60; as for ICCPR, UN Human Rights Committee, General Comment No. 32 (n 220) para 28.

²²⁹ Stürner (n 60) 1265.

²³⁰ Kern (n 166) 394-395; Domej (n 155) Art 5 para 2.

²³¹ Cf K-L Shen, 'min shi su song zhi xian shang qi su yu yuan ju shen li (Part II)' (民事訴訟之線上起訴與遠距審理 (下)) (2021) 317 Taiwan Law Review 84, 97-100.

in writing and virtual oral hearings do not raise serious questions of constitutionality.²³² The real issue is rather whether the strong deviation from the traditional in-person oral hearing in the courtroom, ie, the absence of the 'day in court', will result in the depersonalization of proceedings, which would be contrary to democratic basic concepts.²³³ There could be multiple manifestations of this concern. For example, with regard to *pro se* litigants, there is a danger of confusion between civil litigation and ADR.²³⁴ Moreover, the absence of a physical hearing could cause greater social injustice, particularly for populations vulnerable due to illiteracy or the digital gap. Creating more distance between the litigants and the judge could create the risk of a social fracture. All of these concerns, however, are not questions specific to small claims procedures and therefore are better addressed in other chapters.

²³² Cf Kramer and Kakiuchi (n 54) 355, 371.

²³³ Stürner (n 60) 1264.

²³⁴ M Stürner, 'Der digitale Zivilprozess' (2022) 135 Zeitschrift für Zivilprozess 369, 388-389.

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ABBREVIATIONS AND ACRONYMS

ACCP	Code of Civil Procedure (Argentina)
ADR	Alternative Dispute Resolution
AED	Arab Emirates Dirham
AI	Artificial Intelligence
ALI	American Law Institute
ANCCPC	Argentine National Civil and Commercial Procedural Code (Argentina)
Art	Article/Articles
ATCCP	Code of Civil Procedure (Austria)
BGH	<i>Bundesgerichtshof</i> (Federal Court of Justice) [Germany]
BID	<i>Banco Interamericano de Desarrollo</i> (Inter-American Development Bank)
BRCCP	Code of Civil Procedure (Brazil)
BRL	Brazilian Real
CAD	Canadian Dollar
CAO	Court Assistance Office (Idaho)
CEPEJ	<i>Conseil de l'Europe Commission européenne pour l'efficacité de la justice</i> (Council of Europe European Commission for the efficiency of justice)
cf	<i>confer</i> (compare)
ch	chapter
CIDH	<i>Corte Interamericana de Derechos Humanos</i> (Interamerican Court of Human Rights)
CJEU	Court of Justice of the European Union
CNCPL	The Civil Procedure Law (Mainland China)
CPC-Swiss	Code of Civil Procedure (Switzerland)
CRS	Colorado Revised Statutes
DCCP	Civil Code of Procedure (Netherlands)
EBRD	European Bank for Reconstruction and Development
EC	European Small Claims Procedure Regulation No 861/2007 (EU)
ECHR	European Convention on Human Rights
ECLI	European Case Law Identifier
ECtHR	European Court of Human Rights
ed	editor/editors
edn	edition/editions
eg	<i>exempli gratia</i> (for example)
EGZPO	<i>Gesetz betreffend die Einführung der Zivilprozeßordnung</i> (Law on the introduction of the Code of Civil Procedure) (Germany)
ELI	European Law Institute
ESCP	European Small Claims Procedure Regulation No 2015/2421 (EU)
etc	et cetera

EU	European Union
EUR	Euro
FCCP	Code of Civil Procedure (France)
ff	following
fn	footnote (external, ie, in other chapters or in citations)
GA Code	Code of Georgia (US)
GCCP	Code of Civil Procedure (Germany)
GDPR	General Data Protection Regulation (EU)
ibid	<i>ibidem</i> (in the same place)
ICCPR	International Covenant on Civil and Political Rights
ICPR	Civil Procedure Regulations (Israel)
ICT	Information and Communication Technologies
ID Code	Code of Idaho (US)
ie	<i>id est</i> (that is)
IIDP	<i>Instituto Iberoamericano de Derecho Procesal</i> (Iberoamerican Institute of Procedural Law)
ITCCP	Code of Civil Procedure (Italy)
JCCP	Code of Civil Procedure (Japan)
JPY	Japanese Yen
KES	Kenyan Shilling
KRW	South Korean Won
n	footnote (internal, ie, within the same chapter)
NGN	Nigerian Naira
NIS	Israeli Shekel
no	number/numbers
NTD	New Taiwan Dollar
NZD	New Zealand Dollar
ODR	Online Dispute Resolution
para	paragraph/paragraphs
PD	Practice Direction
PDPACP	Pre-Action Conduct and Protocols
pt	part
RSC Order	Rules of the Supreme Court (UK)
SCC	Supreme Court Canada
SCCP	Code of Civil Procedure (Spain)
Sec	Section/Sections
SME	Small and medium-sized enterprises
supp	supplement/supplements
TCCP	Code of Civil Procedure (Turkey)
trans/tr	translated, translation/translator
TWCCP	Code of Civil Procedure (Taiwan)

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UK	United Kingdom
UKCPR	Civil Procedure Rules (UK)
UNIDROIT	<i>Institut international pour l'unification du droit privé</i> (International Institute for the Unification of Private Law)
UP	University Press
US / USA	United States of America
USD	United States Dollar
USFRCP	Federal Rules of Civil Procedure (US)
v	versus
vol	volume/volumes
WB	World Bank

LEGISLATION

International/Supranational

Directive to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes, 2002/8/EC of 27 January 2003 (EU)

European Convention on Human Rights 1951

International Covenant on Civil and Political Rights 1966

Model European Rules of Civil Procedure 2020 (ELI / UNIDROIT)

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