Small claims

Portugal

1 Existence of a specific small claims procedure

There are two specific procedures in national law for small claims (provided for in Decree-Law No 269/98 of 1 September 1998):
a special action for compliance with financial obligations arising from a contract, consisting of a fast and simplified declaration procedure (Articles 1 to 5 of the Procedural Rules (*Regime dos Procedimentos*), annexed to Decree-Law No 269/98);
an order for payment, which is a measure to attribute the power of an enforcement order to a claim relating to non-compliance with debts involving small sums (Articles 7 to 22 of the Procedural Rules, annexed to Decree-Law No 269/98).

1.1 Scope of procedure, threshold

Both of the abovementioned special procedures apply when the following requirements are met:
a financial obligation is involved (an obligation to settle in cash)
this obligation originated in a contract
the sum does not exceed €15 000.

1.2 Application of procedure

The complainant can choose from the procedures set out in the reply to question 1.

1.3 Forms

In the special action for compliance with financial obligations arising from a contract, the application and defence do not have to be presented in procedural documents, in other words, the pleadings do not need to be numbered by article. When submitted by legal representation, they must be sent electronically using specific forms provided for the purpose by the computer support system for the courts, unless the representative invokes legitimate grounds for not using this system. When submitted by the parties themselves, the special form is not required and they can be delivered to the court by registered post or fax.
An order for payment must be submitted on a specific form provided at Order for Payment Procedure - Citius Portal (mj.pt). The use of this form is compulsory, regardless of whether it is submitted by the party directly or through a representative.
When submitted by a legal representative, the order for payment form must be sent electronically through the court computer support system (unless the representative invokes legitimate grounds for not using this system). When submitted directly by the party, the order for payment form can be handed in on paper.

1.4 Assistance

The legal aid scheme applies to both procedures (e.g. appointment of legal representative, payment of legal representative's fees, payment of judicial fees and other related charges) (Law on Access to Courts (*Lei de acesso aos tribunais*), Law No 34/2004 of 29 July 2004).
For more detailed information on this topic, please refer to the factsheet on Legal Aid

1.5 Rules concerning the taking of evidence

In the special action for compliance with financial obligations arising from a contract, presentation of evidence is as follows:
evidence is offered during the hearing;
if the claim does not exceed €5 000, each party may present up to three witnesses. In all other cases, up to five witnesses may be presented. In either of the above cases, a party may not present more than three witnesses for each of the facts in question;
in claims not exceeding €5 000 where the parties do not have legal representation or the legal representative does not appear, witnesses will be questioned by the judge;
expert evidence is always provided by a single expert;
the judge may require further evidence which is deemed to be indispensable to a proper decision. In such cases, the hearing may be suspended at a time deemed convenient by the judge and a date will be set for continuation. The judgment must be concluded within 30 days.
Orders for payment:
if a notified defendant does not challenge an order for payment, evidence does not need to be presented and the competent court clerk will append the following to the order for payment – *'This document has legal force'*;
if an order for payment is challenged, it will follow the form of a special action for compliance with obligations arising from a contract and the associated procedure for the presentation of evidence will apply;
if it proves impossible to notify the defendant, the order for payment is handled as an ordinary case if the claimant has expressed this wish; otherwise, the clerk will return the order for payment to the claimant.

1.6 Written procedure

If a defendant has been notified and does not challenge an order for payment, the entire procedure is in writing.
In the special action for compliance with financial obligations arising from a contract, when witnesses have to present evidence, they may do so in writing if their knowledge of the facts was acquired as a result of performing their duties.
In such cases, testimony is in writing, dated and signed by the witness, with indication of the action it refers to, the facts as they are known and the reasons why the said witness has such knowledge.

1.7 Content of judgment

In a special action for compliance with financial obligations arising from a contract where there is a hearing, the judgment is given verbally and dictated for transcription, with grounds being provided in a succinct manner.
When an order for payment is upheld, there is no decision as such, merely the appending of the enforcement order by the court clerk.

1.8 Reimbursement of costs

The legal costs of the successful party are paid by the losing party, on a sliding scale based on the burden of loss. As such, the successful party could obtain total or partial reimbursement of the following costs: court fees already paid; costs incurred by the party in the production of evidence when it was not this party which requested such evidence or no use is made of such evidence; remuneration paid to the enforcement officer and expenditure incurred by the said enforcement officer (e.g. when summons is served on the defendant by an enforcement officer); lawyer's fees and expenditure incurred by the said lawyer.
The sums to be reimbursed must be indicated in an explanatory note. This note must be sent by the party entitled to the reimbursement to the court, the losing party and the enforcement officer, when applicable, within five days after the decision becomes final.
The explanatory note will contain the following information:
name of the party, case number and name of legal representative or enforcement officer;
indication of the sums paid by the party with regard to court fees;
indication of the sums paid by the party for expenditure previously incurred by the enforcement officer;
indication of the sums paid for legal representative or enforcement officer fees;
indication of the amount to be received.
As a general rule, the successful party's costs are paid directly by the losing party, unless otherwise provided for by law.

1.9 Possibility to appeal

Decisions handed down in a special action for compliance with financial obligations arising from a contract may be challenged through an appeal submitted to a court of appeal, provided that the sum in question exceeds €5 000 and the contested decision is unfavourable to the applicant with a value greater than €2 500.
This is the form of an ordinary appeal. Rules governing extraordinary appeals also exist and are provided for in national legislation.
With an order for payment, complaints must be submitted to the judge as regards a dismissal of an order for payment application and a dismissal of joining of enforcement order carried out by the court clerk.

Useful links

Decree-Law No 269/98 of 1 September 1998;
The Ministry of Justice's Citius portal;
Law on Access to Courts, Law No 34/2004 of 29 July 2004.

Warning

The EJN-Civil Contact Point, the courts or other entities and authorities are not bound by the information contained in this factsheet. The relevant legal texts in force must also be read in full as changes may have been made which have not yet been included in this factsheet.

Last update: 05/01/2024

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