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# Regulation on “useless” court costs not unconstitutional

Since 2016, creditors of undisputed debt claims have been able to call on an administrative procedure in order to collect the debt. However, the use of this procedure is not obligatory. Creditors who opt for an ordinary judicial proceeding may not be sanctioned for doing so by having them bear the court costs. Both the Court of Cassation and the Constitutional Court have recently confirmed this principle.

On the occasion of the introduction of the administrative proceeding for the collection of undisputed money debts (the so-called “IOS proceeding” [IOS = invordering van onbetwiste (geld)schulden), whereby enterprises can reclaim their undisputed and unpaid invoices outside of court, the regulation concerning the court costs was also modified.

Where normally the losing party has to bear the court costs, including the procedural indemnity, the amended art. 1017 of the Judicial Code provides that useless costs can be imposed even ex officio on the party that wrongly gave rise to them. The legislature’s intention was in this way to promote the use of the IOS proceeding.

The question arose whether the use of an ordinary judicial proceeding instead of the IOS proceeding by creditors of undisputed money debts should already per se be regarded as a fault, as a result of which such creditors could not recover their court costs from their debtor (even if the creditors win their case).

Although some case-law initially seemed to be heading in that direction, by decision of 12 October 2017 the Court of Cassation (correctly) took a different view. It decided in particular that creditors of undisputed money debts are not obliged to make use of the IOS proceeding and retain the possibility of collecting money debts via the courts. In other words, the mere fact that a creditor chooses not to use the IOS proceeding cannot per se be regarded as a fault, and thus does not suffice to oblige him to assume the court costs.

By decision of 28 June 2018 the Constitutional Court has supported this view. The Constitutional Court decided that the regulation about “useless” court costs is not unconstitutional, in the interpretation given to it by the Court of Cassation.

A good two years after its entry into effect, the IOS proceeding must be recognised as a success. The proceeding is fast, simple, inexpensive and lightens the workload on the courts. Yet there are

also a number of significant disadvantages associated with it. For example, the amount of the owed interests and damages clause is limited by law to 10 percent of the principal amount, which in some cases entails that the creditor would have to waive a substantial part of his debt claim. Moreover, the enforceable title that can be obtained within the framework of the IOS proceeding is not regarded as a final and conclusive judgement, and a recalcitrant debtor can always block its enforcement.

A creditor can thus have good reasons to opt for an ordinary collection procedure. That the discussion about the recovery of the court costs now appears to be definitively resolved in favour of this freedom of choice is a good thing.

For more information about this subject, you can always contact Joost Bats and Geert De Buyzer (the authors).

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