Chapter

Slovenia

Luka Fabiani

Irena Šik

CMS Reich-Rohrwig Hainz

I. LITIGATION

1 Preliminaries

1.1 What type of legal system has Slovenia got? Are there any rules that govern civil procedure in Slovenia?

Slovenia has a civil law system, where court decisions, with the exception of the Constitutional Court rulings, have no formal value of a precedent, though in practice judicial decisions have *de facto* precedence.

Civil procedure is governed by the Civil Procedure Act (*Zakon o pravdnem postopku*, CPA), Enforcement and Securing of Civil Claims Act (*Zakon o izvršbi in zavarovanju*, Enforcement Act), Non-litigious Civil Procedure Act (*Zakon o nepravdnem postopku*), Arbitration Act (*Zakon o arbitraži*), Mediation in Civil and Commercial Matters Act (*Zakon o mediaciji v civilnih in gospodarskih zadevah*) and partially in the Court rules (*Sodni red*) and Private International Law and Procedure Act (*Zakon o mednarodnem zasebnem pravu in postopku*).

1.2 How is the civil court system in Slovenia structured? What are the various levels of appeal and are there any specialist courts?

All courts in Slovenia are regular courts. The civil court system consists of courts with general and courts with specialised jurisdiction. Courts with general jurisdiction include 44 local (county) courts, 11 district courts, four higher courts and the Supreme Court, while specialised courts include four labour courts and a social court (these courts rule on labour-related and social insurance disputes). The Administrative Court, which is also a special court, provides legal protection in administrative affairs, has a status of a higher court.

Local (county) and district courts act as first instance courts. Appeals are solved by the four higher courts. Revision of rulings of the higher courts is available through extraordinary legal remedies (revision and request for protection of legality), which are decided by the Supreme Court.

1.3 What are the main stages in civil proceedings in Slovenia? What is their underlying timeframe?

Civil proceedings commence with the filing of a complaint (action, application, motion) with the court. The complaint is then served to the defendant to respond. In litigious procedure, the parties may generally exchange further briefs providing additional facts and evidence only up to the end of the opening court hearing session. The court may perform several oral hearings in order to take the necessary evidence. The procedure in the first instance ends with a settlement or a court decision (judgment) which may be appealed.

On average, the length of a litigious court procedure before the court of first instance is two years, while complex cases may take longer. The procedure before the court of second instance lasts, on average, one year.

1.4 What is Slovenia's local judiciary's approach to exclusive jurisdiction clauses?

The CPA and other special laws provide exclusive territorial jurisdiction of Slovenian courts in certain matters (i.e. in disputes over title to or other rights in immovable property etc.). Unless the statute provides for an exclusive territorial jurisdiction, the parties may conclude a written agreement conferring the first instance jurisdiction upon a court without territorial jurisdiction, provided, however, that this court has proper jurisdiction over the subject matter.

1.5 What are the costs of civil court proceedings in Slovenia? Who bears these costs?

Civil court proceedings costs are regulated by the statute and (may) include court fees, attorneys' fees, experts' fees, and translators' and interpreters' fees, as well as travel costs (e.g. those of witnesses and experts). Court fees are usually paid at the beginning of the proceeding – when the complaint is filed. Attorneys' fees must be paid after the court issues an order on the costs of the proceeding. However, it is common for the attorneys to request that a portion or the full amount of their fees is paid in advance. In general, the court and attorneys' fees are proportionate to the amount of the principal claim.

In civil proceedings, the party losing the litigation must refund the costs incurred by the winning party, while each party must cover costs resulting from their own fault or by coincidence. The winning party is not automatically entitled to reimbursement of all costs. In deciding which costs are to be refunded to a party, the court takes into account only the expenses necessary for the litigation.

1.6 Are there any particular rules about funding litigation in Slovenia? Are contingency fee/conditional fee arrangements permissible? What are the rules pertaining to security for costs?

Free legal aid may be granted to a party if its family's financial status prevents it from paying judicial costs without endangering the minimum subsistence level.

Attorneys' fees are regulated by the Attorney Fees Act (*Zakon o odvetniški tarifi*), which allows attorneys and clients to enter into negotiated fee arrangements. They can agree on a contingency fee, which cannot exceed 15% of the adjudicated sum, or a payment of an hourly rate based on the time actually spent working on the case, or a payment pursuant to rates, higher or lower than those set in the Attorney Fees Act.

If a foreigner or an apatrid files a lawsuit before Slovenian courts, he must (with a few exceptions), at the request of the defendant, provide a security deposit for legal costs, unless international agreements provide otherwise.

1.7 Are there any constraints to assigning a claim or cause of action in Slovenia? Is it permissible for a non-party to litigation proceedings to finance those proceedings?

Assignment of claims as a transfer of a right from one party to another and assignment of a cause of action, by which a party may be able to enforce a right, are generally allowed, however some exceptions may apply (e.g. contractual non-assignment provisions, legal constraints for certain claims, etc.). A claim may be assigned either before or after proceedings have been issued, however, where proceedings have been issued, an assignment is likely to give rise to procedural complications which will need to be addressed – especially in relation to the enforceability of the claim.

Third party litigation financing is not prohibited, however, as this is a private relation between the party in procedure and the financing party, it should not have any effect to the court procedure.

2 Before Commencing Proceedings

2.1 Is there any particular formality with which you must comply before you initiate proceedings?

No, there is not.

2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

The general limitation period for the bringing of proceedings is five years, commencing when a right could have been first exercised. In certain disputes, different limitation periods apply:

- a one-year limitation period applies to disputes involving certain regularly supplied household services (e.g. electricity, thermal energy, gas, water supply, internet and phone services, publications, etc.); the limitation period starts running at the end of the year in which the claim is due for payment;
- a three-year limitation period applies to claims from commercial and certain rental contracts and to damage compensation claims – the latter from the moment after the injured party learnt of the damage and of the person that inflicted it;
- a 10-year limitation period applies to claims for the issue of a document for entry in the land register and to claims determined by a final court or other relevant authority ruling or settlement; and
- damages compensation claims that arise from a criminal offence become statute-barred when the period stipulated for the statute-barring of criminal prosecution expires.

Limitation periods are a part of the substantive law and upon expiry, the right ceases to exist under the law itself. They must be argued before the court explicitly.

3 Commencing Proceedings

3.1 How are civil proceedings commenced (issued and served) in Slovenia? What various means of service are there? What is the deemed date of service? How is service effected outside Slovenia? Is there a preferred method of service of foreign proceedings in Slovenia?

The civil (litigation) proceeding commences with the submission of the complaint to the court. If sent by registered mail, the complaint (and other pleadings) is deemed filed on the day it is mailed, otherwise the claim is considered filed on the day of receipt.

The Slovenian legal system recognises two forms of service of documents – ordinary service and personal service. The following documents are served in person: complaints, court decisions that are open to special appeal, extraordinary legal remedies and reminders to pay court fees for an action. Other documents are served in person only where specified by the statute or where the court deems it necessary because the documents enclosed are the original copy or for any other precautionary reasons. In all other cases ordinary service is used.

Pleadings and court writings are usually served by registered mail or by electronic court traffic (especially in the insolvency and execution procedures), by court officials directly, in the court, or in any other manner provided by the statute. These documents are deemed served upon receipt.

If a process is to be served to a person or an entity based abroad or to a foreign citizen enjoying immunity, the service is effected through diplomatic channels, unless otherwise provided by an international agreement or the CPA. Service of process within the European Union is generally regulated by the Council Regulation (EC) No 1348/2000.

3.2 Are any pre-action interim remedies available in Slovenia? How do you apply for them? What are the main criteria for obtaining these?

Interim measures in civil procedures are mainly governed in the Enforcement Act which distinguishes between:

a) the **interim measures to secure monetary claims**: these may only be of preventative nature, usually instituting some prohibition upon the respondent and his property; and

b) the **interim measures to secure non-monetary claims**: these may include preventative and regulatory measures and, as a sub-category of the latter, also performance measures.

An interim measure may be granted prior, during or after court proceedings. If an interim measure is granted before an action is brought, or if it is granted for the protection of a claim which had not yet arisen at that time, the court instructs the applicant as to which action to bring or which proceedings to institute in order to justify the injunction. It also determines the deadline by which the action is to be brought or proceedings instituted.

The court shall grant an interim measure to secure a monetary claim if the applicant proves presumptively the following:

1) the claim against the respondent exists or is about to arise; and

2) the existence of a danger that the enforcement of his claim is likely to be rendered impossible or considerably impeded due to the alienation, concealment or another sort of disposal of property by the respondent.

The applicant does not need to prove the danger if he proves presumptively that the measure will not result in any considerable damages to the respondent. Note that the danger shall be deemed to exist when the claims are to be enforced abroad, with the exception of Member States of the European Union.

Similar procedural requirements as described above apply to the **preservation of evidence**.

3.3 What are the main elements of the claimant's pleadings?

The pleadings shall contain a specified relief or remedy claimed, the lateral claims (e.g. interests), the statement of facts constituting the cause of action, the statement of evidence proving these facts, and other particulars required in every pleading. The pleadings should generally also contain the statement of amount in dispute.

3.4 Can the pleadings be amended? If so, are there any restrictions?

Parties are generally allowed to exchange written submissions providing additional facts and evidence. After the opening hearing, new facts and evidence may be provided only if the parties have been prevented to do so earlier for reasons beyond their control (i.e. the parties became aware of the new facts or evidence only in the later stage of the procedure).

In order to accelerate the procedure, the court may also require the parties to provide additional explanations or evidence by a certain deadline.

Amendments to the pleadings, once the claim is served, are subject to the opposing party's consent; however, the court may nevertheless permit the amendment if the amendment is reasonable and convenient in terms of definite resolution of the dispute.

4 Defending a Claim

4.1 What are the main elements of a statement of defence? Can the defendant bring counterclaims/claim or defence of set-off?

The defence statement must contain a statement of grounds, otherwise it is deemed not filed. Specifically, it must state whether the defendant refutes the whole claim or only a part thereof and, in the latter case, which particular part. The defendant shall enclose the documents and adduce evidence supporting his statements.

The defendant is allowed to bring a **counterclaim** (*nasprotna tožba*) until the completion of the main court hearing if: (i) the counterclaim is in connection with the claim; (ii) the claim and the counterclaim may be set off; or (iii) by filing the counterclaim the defendant seeks to obtain a judicial resolution of the question of whether a right or a legal relation exist or not, upon which the determination of the plaintiff's claim is wholly or partly dependent.

The defendant is also allowed to bring a **defence of set-off** (*pobotni ugovor*), in which case the decision of the court also contains the decision as to the existence or non-existence of such claim.

4.2 What is the time limit within which the statement of defence has to be served?

The defendant shall file his statement of defence within 30 days of service of process, otherwise the court will render a judgment granting the relief or remedy claimed by plaintiff (default judgment).

4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on liability by bringing an action against a third party?

In general, the defendant may not simply add a third party to the procedure. In specific cases, when being sued as a possessor of a certain thing or as a holder of a certain right and such a person asserts that he is possessing such thing, or exercising such right, on behalf of someone else he may, until becoming engaged in trying of the main subject at the main hearing, invite that other person (his predecessor) through the court to enter the litigation in his place. Nevertheless, if a duly summoned predecessor fails to appear at the hearing, the defendant can no longer refuse to litigate.

Also, any person who is directly affected by a court decision may join the litigation as an intervener. Such person shall be deemed to be an indispensable co-litigant.

4.4 What happens if the defendant does not defend the claim?

The court may render a default judgment (see question 4.2 above).

4.5 Can the defendant dispute the court's jurisdiction?

The defendant may dispute the court's jurisdiction with an objection in his statement of defence at the latest.

5 Joinder & Consolidation

5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

Any third person who claims an interest with respect to the subject being litigated may join the litigation on the side of the party whose victory would satisfy such interest of his (intervention). An intervener may enter the litigation at all times during the proceedings until the decision with respect to the cause of action becomes final, and at all times during the continuation of proceedings due to extraordinary judicial review. Either party may object to the right of an intervener to become involved in the proceedings and move for the dismissal of intervention. An intervener joins the litigation in the state as it is. In the further course of proceedings he is allowed to perform all procedural acts in the time periods applicable to the party to whom he has joined.

5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

In the event that several proceedings are litigated between the same persons in the same court, or if several proceedings in which the same person is sued by several plaintiffs or sues several defendants are heard by the same court, the court may decide to jointly hear these proceedings if this is convenient to speed up the proceedings or to reduce the costs.

Further, the plaintiff may join several claims against the same defendant if all the claims are based upon the same factual and legal ground. If the claims are based upon different factual or legal

ground, they may be joined in one action against the same defendant only if the same court has jurisdiction to adjudicate each of them in the same type of procedure.

5.3 Do you have split trials/bifurcation of proceedings?

The court may decide on the severance of the complaint consisting of several claims and may render separate decisions on particular claims after hearing them separately from each other, if the prerequisites for the consolidation are not met (see question 5.2 above).

Also, if due to acknowledgment of the claim or upon hearing of the case only one of several claims, or only one part of a particular claim, are ripe for decision, the court may close the hearing with respect to such claim (or of such part of the claim) and render the judgment (partial judgment). In the event of a counterclaim by the defendant, a partial judgment may be rendered only with respect to the claim contained in the action or only with respect to the counterclaim, when only one of the claims is considered ripe for decision.

Further, if the defendant has challenged the ground as well as the amount of the claim, and if the case is ripe for decision concerning the ground, the court may render a prior judgment in respect of the ground of the claim, when this is reasonable or convenient (interlocutory judgment).

6 Duties & Powers of the Courts

6.1 Is there any particular case allocation system before the civil courts in Slovenia? How are cases allocated?

At first instance, local (county) courts decide in property-law related disputes, when the value of the dispute does not exceed EUR 20,000 and, regardless of the value of the dispute, in (i) disputes for disturbance of possession, (ii) disputes on easements and real encumbrances, and (iii) disputes on lease or tenancy relations.

District courts decide in all other matters above the said dispute value threshold and, regardless of the value of the dispute, in (i) certain family and matrimonial status related matters, (ii) intellectual property disputes and disputes relating to the protection of competition, (iii) commercial disputes, (iv) disputes arising from bankruptcy proceedings, and in (v) recognition of foreign court decisions. Cases are allocated to judges according to the court rules and in general follow the alphabetical order of the judges' names.

6.2 Do the courts in Slovenia have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

The management powers in a civil procedure are vested in the judge (or the presiding judge of the panel), who, among other things, directs the main hearing, askes the parties the questions, examines witnesses and experts, and announces the decisions rendered by the panel. He sees to a thorough examination of the subject of dispute and elimination of any matter delaying the proceedings. Special appeals against a decree issued in reference to the direction of the hearing are not allowed.

The parties are allowed to raise motions for interim measures and preservation of evidence (see question 3.2 above) and to petition the court to order the opposing party to produce certain relevant documentation in its possession. The general rules on cost consequences (see question 1.5 above) apply.

6.3 What sanctions are the courts in Slovenia empowered to impose on a party that disobeys the court's orders or directions?

If the parties fail to state the relevant facts or produce evidence in statutory or court-ordered time frame, the court might disregard them. If a party does not obey the court order to produce certain documentation (see question 6.2 above), the court might deem the fact to be proved by such documentation as proven.

The court may also impose a monetary fine of up to EUR 1,300 (or even a detention up to one month) on a witness that fails to appear when duly summoned by the court or does not want to testify or answer to specific questions without justified reason.

6.4 Do the courts in Slovenia have the power to strike out part of a statement of case? If so, in what circumstances?

The parties are free to dispose of their claims. However, the court shall not permit the parties to perform any dispositive act which is not in conformity with peremptory norms or with moral principles.

6.5 Can the civil courts in Slovenia enter summary judgment?

No, however the CPA provides rules for the so-called "small claim procedure", used in disputes over a monetary claim where the amount of dispute does not exceed EUR 2,000 (in commercial disputes EUR 4,000). This procedure is expedited and in general based on only written pleadings. The plaintiff shall state all facts and adduce all evidence in the action, while the defendant shall do so in his statement of defence, and each of the parties is allowed to provide only one more preparatory pleading. The time frames are shorter and the judgment is announced immediately after completion of the main hearing.

6.6 Do the courts in Slovenia have any powers to discontinue or stay the proceedings? If so, in what circumstances?

The court may order the suspension of the proceedings (i) if it decides not to resolve the preliminary question of law, (ii) if a party resides in the area which is inaccessible to the court for emergency reasons (floods, etc.), or (iii) if the decision with respect to the cause of action depends on a question whether a criminal offence has been committed. Upon the suspension of the proceedings, all deadlines for the performance of acts of procedure are suspended. Also, under certain circumstances, the proceedings can be suspended for other reasons, i.e. death of the party, bankruptcy of the party, etc.

The court will also stay the proceedings if both parties agree to this before the completion of the main hearing. The proceedings are stayed until any party moves for the continuation. Note, however, that the proceedings in commercial litigation are not subject to stay.

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in Slovenia? Are there any classes of documents that do not require disclosure?

Each party must state the facts and adduce the evidence, upon which their claims are based, and based on which the party contest the facts stated and evidence adduced by the opposing party. The facts to which a party has admitted in the court generally need not be proved. Facts presumed to be existing by virtue of statute and generally known facts also do not need to be proved.

If a party adduces a document as evidence to support its statements, asserting that the opposing party has such document, the court may order the other party to submit such document within a specified period (see also question 6.2 above).

Parties are not obliged to produce documents, protected by certain privileges (such as privilege against self-incrimination or trust related privilege, e.g. between the client and an attorney). Nevertheless, a party may not refuse disclosure of documentation on the grounds of a business secret, if the disclosure of certain facts would benefit the public or some other person, provided that such benefit outweighs the damage caused by disclosure of the secret. If the disclosure of certain evidence documentation might violate some official or military secret, such documentation may not be provided until the competent authority approves the disclosure.

7.2 What are the rules on privilege in civil proceedings in Slovenia?

Similar rules as described above under question 7.1 in relation to the disclosure of the documentation also apply to witness testimonies. The general confidentiality obligation of attorneys towards clients and the possibility for exemption from testifying in court is also set in the Attorneys Act (*Zakon o odvetništvu*).

7.3 What are the rules in Slovenia with respect to disclosure by third parties?

Persons other than parties may be ordered to submit documents only if the statute imposes such obligation or if the contents of a document to be submitted relate both to such person and to the party adducing it as evidence.

7.4 What is the court's role in disclosure in civil proceedings in Slovenia?

See questions 7.1 and 7.3 above. If a third person who has been ordered to submit a document asserts that they are not in possession of such document, the court may produce evidence to determine the truth of such assertion.

7.5 Are there any restrictions on the use of documents obtained by disclosure in Slovenia?

There are no specific restrictions limiting the use of produced documentation.

8 Evidence

8.1 What are the basic rules of evidence in Slovenia?

The burden to produce evidence generally lies with the parties. The parties shall state all facts giving rise to their cause of action and shall adduce evidence proving these facts. The court may decide to establish the facts the parties have not stated and produce the evidence they have not adduced if the course of hearing and production of evidence shows that the parties intend to perform dispositive acts which they are not entitled to perform. However, the court may not base its judgment upon the facts on which the parties were denied the opportunity to be heard. If the evidence produced with respect to a particular fact does not induce a sufficient degree of persuasion, the court's conclusions on such fact are drawn pursuant to rules on the burden of proof. See also question 7.1 above.

8.2 What types of evidence are admissible, which ones are not? What about expert evidence in particular?

Main types of admissible evidence are (i) inspection by the court, (ii) documentary evidence, (iii) witnesses, (iv) experts, and the (v) examination of the parties.

Expert examination is carried out by the court-appointed experts. The court decides on whether the expert is to give the findings and the opinion orally at the hearing, or in writing prior to the hearing. The expert must always state the grounds for his opinion.

8.3 Are there any particular rules regarding the calling of witnesses of fact? The making of witness statements or depositions?

The witness has the duty to appear before the court if duly summoned. The witness has to speak the truth and should not withhold anything, under the consequence of perjury. If the witness does not appear before the court or refuses to testify, the court may impose a fine or even a detention (see question 6.3 above). Privileges as described in questions 7.1 and 7.2 above apply.

On court's demand or with its consent, the party may produce a written witness statement and the court may decide to read such statement as evidence instead of oral hearing of the witness.

8.4 Are there any particular rules regarding instructing expert witnesses, preparing expert reports and giving expert evidence in court? Does the expert owe his/her duties to the client or to the court?

Expert examination is carried out by the court-appointed experts. The experts owe their duties to the court. A party may produce a written expert opinion prepared by a privately engaged expert, but such opinion is only accepted as a statement of the facts by the party.

The court directs the production of expert evidence. The court also shows to the expert the object to be examined, asks him questions, and, when necessary, requires additional explanations regarding the expert's findings and opinion.

8.5 What is the court's role in the parties' provision of evidence in civil proceedings in Slovenia?

The burden of proof lies with the parties (see question 8.1 above). The court decides which evidence is produced to support the ultimate facts.

9 Judgments & Orders

9.1 What different types of judgments and orders are the civil courts in Slovenia empowered to issue and in what circumstances?

The courts will usually issue a final judgment, making decisions on all the claims. The courts may, however, issue also a partial judgment (making decisions on only some of the claims), an interlocutory judgment (see question 5.3 above), a default judgment (see question 4.2 above), a judgment by waiver or a judgment by consent. A judgment may be (i) for an affirmative relief (i.e. monetary or performance claims), (ii) of declaratory nature (regarding an (non)existence of a certain legal relationship between the parties), or (iii) for the alternation of a legal relationship or status (i.e. dissolution of a contract, divorce).

The court may issue also procedural decisions, including decisions on interim remedies (see question 3.2 above).

9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

The court may award damages for any loss suffered. If the party is awarded money or generic goods, and if the amount of money or quantity of goods cannot be determined or if the determination thereof would ensue unreasonable difficulties, the determination of such amount of money or quantity of goods is left to the judicial discretion – which, however, does not happen often.

The court may award interests if the plaintiff requested them. The court also issues a decision on costs (see question 1.5 above).

9.3 How can a domestic/foreign judgment be enforced?

A party must start a separate enforcement procedure for the enforcement of a final domestic judgment. The proposal has to include the identification of the parties, the enforceable (final) judgment and the obligation of the debtor, the means of enforcement (i.e. seizure and sale of debtor's property, transfer of money from debtor's to creditor's account etc.) and other required information.

A decision on interim measure requires no further proposals for enforcement.

Enforcement of foreign judgments generally follow the Council Regulation (EC) No. 44/2001 and the "Lugano" Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. In the absence of international treaties, foreign judgments are enforced following the rules of the Slovenian Private International Law and Procedure Act. Under these provisions, foreign judgments may be enforced in Slovenia if they have been recognised by a Slovenian court.

9.4 What are the rules of appeal against a judgment of a civil court of Slovenia?

In general, there are two levels of appeal: ordinary; and extraordinary judicial review.

The judgment rendered by the court of first instance may be generally appealed within 15 days from the day of service of the judgment. The court of second instance (higher court) decides on the appeal. A party may appeal a judgment on grounds of: (i) severe violation of civil procedure provisions; (ii) erroneous or incomplete determination of state of facts; and/or (iii) violation of substantive law.

New facts and evidence may be presented only if the appellant proves presumptively that for reasons beyond his control he was unable to present them by the first hearing session or until the conclusion of the main hearing.

On the second appellate level, the parties may file a revision against a final judgment rendered by the court of second instance. A revision is decided upon by the Supreme Court. A revision is admissible if the amount in dispute exceeds EUR 40,000 in civil litigation and EUR 200,000 in commercial litigation. The deadline to file a revision is 30 days from the day of service of the judgment. If the amount in dispute does not exceed these amounts, the parties may file a proposal to the Supreme Court to permit the revision. The Supreme Court permits a revision if it is expected that the decision will contribute to the legal security and homogeneity and the development of the judicial practice.

II. ALTERNATIVE DISPUTE RESOLUTION

1 Preliminaries

1.1 What methods of alternative dispute resolution are available and frequently used in Slovenia? Arbitration/Mediation/Expert Determination/Tribunals (or other specialist courts)/Ombudsman? (Please provide a brief overview of each available method.)

Among the main types of ADR practised in Slovenia are arbitration, mediation and court action in a broader sense aimed at encouraging a court settlement. The Act on Alternative Dispute Resolution in Judicial Matters contains specific provisions on mediation offered by courts to parties in judicial proceedings. The Act imposes the obligation to all first instance courts and courts of appeal to offer mediation or other ADR to parties in civil, commercial, family and labour disputes.

The arbitration board is a private court composed of one or more persons, appointed by the parties on mutual agreement. The board delivers a decision on the merits of the case and the law treats the decision as equal to the final decision by an ordinary court. By concluding an arbitration agreement, parties exclude ordinary court's jurisdiction. In commercial disputes, parties sometimes use the domestic Permanent Court of Arbitration with the Chamber of Commerce and Industry of Slovenia. The Arbitration Act defines the legal framework for arbitration and is based on the UNCITRAL Model Law.

In mediation, the neutral third party helps to solve the dispute, but cannot deliver a binding decision. The Mediation in Civil and Commercial Matters Act contains basic principles and rules on mediation procedure; it implements the Directive 2008/52/EC of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters to Slovenian law. Slovenian courts have introduced, as an associated part of the litigation procedure, mediations in civil, family, commercial and labour matters.

During proceedings in a civil court, the parties may, at any time, conclude a settlement on the subject of the dispute (court settlement). Anyone intending to bring an action may try to reach a court settlement (preventive court settlement) in the local court where the opposing party has its residence. The agreement on the conclusion of a court settlement constitutes an instrument permitting enforcement.

Additionally, The Patient Rights Act (*Zakon o pacientovih pravicah*) introduces mediation as a means of resolving disputes between a patient and a provider of medical services. In these cases, mediation is offered to parties by the Commission for the Protection of Patient's Rights.

1.2 What are the laws or rules governing the different methods of alternative dispute resolution?

See question 1.1 above.

1.3 Are there any areas of law in Slovenia that cannot use Arbitration/Mediation/Expert Determination/Tribunals/Ombudsman as a means of alternative dispute resolution?

In general, all pecuniary claims may be subject to arbitration. Other claims may be subject to arbitration if the parties conclude a court settlement regarding the claim.

A court settlement may be used to resolve all types of civil law disputes, with the exception of matrimonial disputes and disputes between parents and children (save in cases concerning the protection, education and maintenance of children or concerning contacts between children and parents or other persons, where the court does not allow a settlement if it is not in the child's interest). Likewise, a court settlement cannot be concluded regarding claims which parties are not free to assert (because they run counter to mandatory regulations or moral rules).

1.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will a court – pre or post the constitution of an arbitral tribunal – issue interim or provisional measures of protection (i.e. holding orders pending the final outcome) in support of arbitration proceedings, will the court force parties to arbitrate when they have so agreed, or will the court order parties to mediate or seek expert determination? Is there anything that is particular to Slovenia in this context?

The courts encourage the conclusion of court settlements and to that end, special settlement hearings are scheduled to explore the possibility of concluding a court settlement. However, conclusion of such settlement depends on the parties' will. Mediation and other types of ADR are voluntary, but the CPA provides that the court may, based on the parties' proposal, suspend the civil proceedings at the settlement hearing so that the dispute is attempted to be resolved by alternative means.

The Labour and Social Courts Act (*Zakon o delovnih in socialnih sodiščih*) also states that, where a mandatory procedure for the peaceful resolution of a dispute is prescribed by law or by collective agreement, a court action is admissible only in that case that such procedure was initiated beforehand, but was unsuccessful. This provision does not apply in disputes concerning the existence or termination of an employment relationship.

Courts encourage the parties to engage in a court-related mediation in civil, family and commercial matters, during which the court procedure is suspended.

Court intervention in arbitration procedures is very limited. Where permitted or where the parties have agreed to such procedure, the court is allowed to issue interim reliefs.

If the parties have agreed on an arbitrage clause, the court shall, if one of the parties objects, declare the lack of judicial jurisdiction, set aside the executed procedural acts, and reject the action.

1.5 How binding are the available methods of alternative dispute resolution in nature? For example, are there any rights of appeal from arbitration awards and expert determination decisions, are there any sanctions for refusing to mediate, and do settlement agreements reached at mediation need to be sanctioned by the court? Is there anything that is particular to Slovenia in this context?

Arbitration awards and court settlements have the same effects as final judgments. The Arbitration Act stipulates the conditions under which the District Court in Ljubljana as the competent court may set aside an award, which a party may pursue by an application to the court. An arbitration award may be set aside if the applicant party proves that (i) a party to the arbitration agreement was under some incapacity, (ii) the arbitration agreement is not valid under the relevant law, (iii) the party was in some way excluded from appointment of an arbitrator or else was unable to present its case, (iv) the award lies outside of the scope of the submission to the arbitration, or (v) the arbitral tribunal was composed contrary to the parties' agreement or the arbitral procedure was not in accordance with this agreement. The award may also be set aside if the court itself finds that (i) the subject matter is not capable of settlement by arbitration, or (ii) the award itself violates public policy.

Mediation has no influence on the possibility for instituting or continuing court proceedings or on the course of the limitation period. If the parties do not conclude a court settlement, the court continues proceedings and delivers a decision.

2 Alternative Dispute Resolution Institutions

2.1 What are the major alternative dispute resolution institutions in Slovenia?

The Permanent Court of Arbitration at the Chamber of Commerce and Industry of Slovenia is probably the most sought arbitration institution when it comes to commercial disputes. Specific ADR procedures are available at other institutions, e.g. regarding web domain name disputes at the public institute Academic and Research Network of Slovenia or regarding insurance disputes at the mediation centre at the Slovenian Insurance Association.

2.2 Do any of the mentioned alternative dispute resolution mechanisms provide binding and enforceable solutions?

Arbitration awards and court settlements have the same effects as final judgments between the parties (see question 1.5 above). There is no difference if a settlement was reached with the involvement of a mediator.

3 Trends & Developments

3.1 Are there any trends in the use of the different alternative dispute resolution methods?

Since the introduction of the legal framework for alternative dispute resolution methods, mediation is generally offered as part of the court procedure. At first it was only in civil matters (from 2001), but it is now has offered also in family (from 2002), commercial (from 2003) and labour matters (from 2010).

In January 2014, new Arbitration Rules of the Permanent Court of Arbitration at the Chamber of Commerce and Industry were introduced, which should stimulate the parties before or in dispute to decide on arbitration rather than on court proceeding.

3.2 Please provide, in no more than 300 words, a summary of any current issues or proceedings affecting the use of those alternative dispute resolution methods in Slovenia.

In 2013, the Higher Court in Ljubljana, in a dispute of a minor value (EUR 194.26), ruled that when determining whether an agreement on arbitration exists, the relevant moment is the moment when the action was served – an agreement on arbitration that was concluded between the parties later cannot be taken into account in the (already pending) civil proceedings.

In another decision, the High Court in Ljubljana ruled that the findings of an arbitration panel that are part of the arbitration protocol do not represent an authoritative ruling of the arbitration panel and therefore cannot have the effect of a final judgment.

Other notable decisions of the Supreme Court are not very current and should therefore be already taken into account in the use of ADR methods.

Luka Fabiani

CMS Reich-Rohrwig Hainz
Bleiweisova 30
1000 Ljubljana
Slovenia

Tel: +386 1 620 5210
Fax: +386 1 620 5211
Email: luka.fabiani@cms-rrh.com
URL: www.cms-rrh.com/en-Luka-Fabiani

Luka Fabiani's focus is (Commercial) Dispute Resolution, Competition Law & Compliance (also White Collar Crime) and IP & IT law. He joined CMS after being the local partner an international business law firm for several years, and continues to advise clients in litigation proceedings, as well as discretely and effectively defend clients in corporate criminal proceedings. He has been active for several clients in areas of Competition Law & Compliance and IP & IT. He is fluent in Slovenian, English, German, Croatian and Serbian. He obtained his LL.M. (*magister legum*) in 2005 at the University of Tuebingen (Germany).

Irena Šik

CMS Reich-Rohrwig Hainz
Bleiweisova 30
1000 Ljubljana
Slovenia

Tel: +386 1 620 5210
Fax: +386 1 620 5211
Email: irena.sik@cms-rrh.com
URL: www.cms-rrh.com/en-irena-sik

Irena Šik earned her law degree from the University of Ljubljana in 2005. Following graduation, she worked as a legal trainee at the Court of Appeals in Ljubljana. After passing the Bar exam in 2008, she joined a casino gaming company in the United States, where she was responsible for legal and compliance matters. She earned an LL.M. degree at the University of Virginia in 2012 and is also admitted to the Bar in New York. She joined the CMS office in Ljubljana in September 2013.