Slovenia

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LITIGATION

Court system

1 | What is the structure of the civil court system?

The civil court system in Slovenia is structured in three instances: first-instance courts, higher courts and the Supreme Court.

Jurisdiction of first-instance courts is divided between local courts and district courts. The local courts, in general, have jurisdiction in matters with the amount in dispute below €20,000, as well as in certain matters regardless of the amount in dispute, such as trespassing and lease relationships. The district courts have jurisdiction in matters with amounts in dispute of €20,000 or above, as well as in certain matters regardless of the amount in dispute, such as commercial disputes and insolvency matters.

Certain district courts have exclusive jurisdiction for certain subject matters (eg, the Ljubljana District Court has exclusive jurisdiction over all intellectual property disputes). The cases before first-instance courts are generally decided by a single judge.

Appeals from first-instance courts are heard before higher courts (sitting in panels of three judges).

In certain cases, an extraordinary legal remedy – revision appeal may be made to the Supreme Court as the final instance (eg, when a decision on the legal issue is of fundamental importance) if found admissible. The Supreme Court decides either in panels of three judges (on questions of admissibility) or in panels of five judges.

Courts with general jurisdiction include 44 local, 11 district and four higher courts, and the Supreme Court.

Specialised courts include three labour courts, one labour and social court, a higher labour and social court (which rule on labour-related and social insurance disputes), and the administrative court, which provides legal protection in administrative affairs and has the status of a higher court.

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

Slovenian judges have a passive role in Slovenian civil proceedings and are thus limited by the facts and evidence presented by the parties. Only in limited situations (eg, abuse of procedural rights) would the judge have the right to introduce facts and evidence on his or her own initiative.

Judges are elected by the National Assembly upon proposal by the Judicial Council of the Republic of Slovenia and enjoy a permanent mandate.

There are no juries in civil proceedings. The tribunal in first-instance labour and social courts is composed of one professional judge and two lay judges. Lay judges, unlike professional judges, are appointed by the president of the higher court.

According to courts' statistics for 2019, in Slovenia, 79 per cent of judges are female. There have been no official attempts to promote diversity on the bench.

Limitation issues

3 | What are the time limits for bringing civil claims?

The general statue of limitations for civil claims as provided under the Slovenian Obligations Code is five years. Several exceptions apply. For example, claims out of commercial contracts become time-barred after three years. For non-contractual damages claims there is a three-year subjective time limit (from the date the damaged party became aware of the damage and the damaging party) and a five-year objective time limit (from the date the damage occurred).

Provisions on time limits are mandatory and the parties cannot agree to modify or waive them. However, the court will only consider that a civil claim is time-barred if the relevant party invokes it.

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

Slovenian law does not stipulate any obligatory pre-action procedures unless the Republic of Slovenia is the defendant. In that case, it is obligatory to attempt an amicable resolution of the dispute with the state attorney.

Before filing an action, a party may seek preservation of certain evidence or an interim injunction.

A recently introduced institute in the civil procedure of an action by stages allows a claimant to

submit in an action two claims against the same defendant, whereby the first claim is aimed at obtaining facts and evidence required to define the second claim.

Starting proceedings

5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload?

Proceedings are commenced by the plaintiff's submission of an action to the court. The action must include:

- exact identification of parties;
- a precise claim;
- description of facts on which it is based;
- evidence supporting the facts; and
- potential other formalities (eg, amount in dispute if relevant for jurisdiction).

After filing the action, the plaintiff is ordered to pay a court fee. Upon payment of the court fee, the action is served to the defendant who has a 30-day period to file a reply to the action.

In recent years, Slovenian courts have greatly improved their capacity to handle the caseload. According to the latest courts' statistics for 2019, first-instance courts usually render a decision within seven to 14 months from the filing of the action.

Timetable

6 | What is the typical procedure and timetable for a civil claim?

After the action is filed and served to the defendant, the defendant then has 30-day period to file a reply. If no reply to action is filed, the court will issue a default judgment. After the reply to action is filed, the court will fix a date for a preparatory hearing, where the procedural agenda will be set.

During preparations for trial, the parties may file written submissions stating the facts and evidence they intend to claim in the trial. Each party is allowed to file two submissions prior to the preparatory hearing, unless additional submissions are requested or allowed by the court. Submissions can be filed up to 15 days prior to the preparatory hearing at the latest.

Trial usually consists of several hearings where evidence is produced. After the court considers that all aspects of the case were argued and relevant evidence produced, it allows the parties to proceed to closing statements. After the closing statements, it renders its judgment within 30 days.

After the judgment is served to the parties, they have 30 days to appeal.

Case management

7 | Can the parties control the procedure and the timetable?

It is generally for the court to set out the procedure and the timetable of the proceedings. The court would do so, by setting the procedural agenda at the preparatory hearing and the parties may be heard on the matter.

A party may also seek for extensions of court-determined deadlines or postponement of scheduled hearings for justifiable reasons.

A party that believes that the decision is unnecessarily delayed by the court can submit a supervisory appeal that is decided by the president of the court. If the supervisory appeal is found justified, the president of the court may take certain measures to expedite the proceedings, including reallocating the case to another judge.

Evidence – documents

8 | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

Pending trial, the court may, on request of a party, decide to preserve certain evidence if its production is expected to be impossible or hindered at a later stage.

There are no general discovery or disclosure requirements of documents that would apply to the parties. Parties are only required to submit the facts and evidence on which they base their position.

If a party relies on a document in possession of the opposing party or a third person, the court can order production of that document.

The opposing party may not refuse to produce a document on which it had itself relied in the proceedings, production of which is required by contract or law, or if it is considered a document common to both parties.

Further, if the court establishes that a party is in possession of a document on which the opposing party is relying and the party refuses to produce it, the court may deem the fact that the opposing party is trying to prove by relying on that document as proven.

Evidence – privilege

9 | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

A party may refuse to produce a document (or part of document) if it is considered privileged. Privileged matters include official and military secrets, religious confession communication, communication with attorneys, doctors or other professionals bound by professional secrecy.

Privileged communication extends to business secrets to the extent disclosure is not required for reasons of public interest or if the benefit of its disclosure would outweigh the protection of secrecy.

Attorney–client communication is privileged; however, this does not extend to in-house counsel. That communication would be privileged only if it would fall within protection of business secrecy.

Evidence – pretrial

10 | Do parties exchange written evidence from witnesses and experts prior to trial?

There is no formalised process of exchanging evidence prior to the start of the civil proceeding.

During the proceedings, the parties may exchange written witness testimonies if they so agree or if ordered by the court.

Parties may also submit expert opinions with their submissions. Those opinions will not generally have the power of evidence but shall be deemed a part of the party's assertions regarding the facts of the case.

Evidence – trial

11 | How is evidence presented at trial? Do witnesses and experts give oral evidence?

The general rule is that evidence at trial is given orally.

However, witness testimony may be given in writing if it is ordered by the court or agreed between the parties. A witness who gave written testimony may still be summoned to give oral testimony at trial, if one of the parties requests it.

In principle, expert testimony is also to be given orally. The court may (and in practice nearly always does) decide that the expert is to provide also its written testimony prior to the hearing.

Interim remedies

12 | What interim remedies are available?

Interim remedies in civil proceedings generally include interim injunctions, preliminary injunctions and security (pledge) over debtor's assets.

Interim injunctions may be granted prior to the commencement of proceedings or during proceedings. Any kind of injunction that enables to achieve its purpose may be issued by the court. The party filing for an interim injunction must demonstrate the likely existence of its claim and that later enforcement may be hindered or prevented.

Preliminary injunctions may be issued after a judgment ordering payment of a monetary claim is issued but before it is final and enforceable.

Interim remedies are generally available also in support of foreign proceedings. EU Regulation 1215/2012 (Brussels I recast) applies for proceedings in other member states, as does the EU Regulation 655/2014, which allows for debtor's bank accounts to be frozen if the claimant obtains a European Account Preservation Order (EAPO).

Remedies

13 | What substantive remedies are available?

Substantive remedies available include declaratory judgments, constitutive judgments and judgments ordering performance. Although there is a presumption of legal interest in bringing proceedings for constitutive judgments and judgments ordering performance, the claimant must prove it for a declaratory judgment to be issued.

Statutory default interest is payable for the late payment of monetary claims.

Punitive damages are generally not available under Slovenian law expect if specifically prescribed by law (eg, Copyright Act).

Enforcement

14 | What means of enforcement are available?

Available means of enforcement are:

- sale of movable property;
- sale of real estate;
- transfer of receivables;
- liquidation of other material rights and dematerialised financial instruments;
- sale of a business share of the shareholder; and
- transfer of assets that are at the organisations authorised for payment transactions.

In the event of non-compliance with the decision of the court, the successful party may initiate enforcement proceedings. Additional court fine of up to €10,000 for natural persons and €100,000 for legal persons can be ordered in certain cases of debtors interference with enforcement (eg, if the debtor is hiding, damaging or destroying assets, impeding the performance of bailiffs' duties or obstructing the valuation of property).

For monetary claims, statutory default interest must be paid after the period for voluntary fulfilment expires.

Public access

15 | Are court hearings held in public? Are court documents available to the public?

Court hearings are public. In certain exceptional cases, the public may be excluded from the hearing (eg, to safeguard public morals, official secrecy, business or personal secrecy). The public is also excluded from the part of the preparatory hearing relating to conclusion of a court settlement.

Court documents are not available to the public. Only the parties to the proceedings or third parties that demonstrate a justifiable interest can access the court file.

Costs

16 | Does the court have power to order costs?

Yes. The general rule on costs is the 'loser pays' principle. During the proceedings, each party must cover costs caused by its actions (eg, pay court fee for filing the action, provide advance payment for production of evidence).

Only the costs considered necessary by the court can be reimbursed. Attorney fees are calculated in accordance with the official Attorneys' Tariff.

The claimant is not required to provide security for the defendant's costs. However, if the claimant is from a non-EU member state or is stateless, the court must approve the defendant's request for security for costs.

Funding arrangements

17 | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

Attorney fees are stipulated in the Attorneys' Tariff. Clients and attorneys may agree on a higher fee, provided that the agreement is in writing. A success fee in civil matters may be agreed, but is limited to 15 per cent of the awarded amount. For collective actions under the Collective Actions Act, an attorney may agree a success fee of up to 30 per cent, if the attorney undertakes to carry all procedural costs in case of non-success.

Third-party funding is expressly regulated only with respect to collective actions under the Collective Actions Act. Several limitations apply. For example, the party receiving funding is required to disclose and report on the origin of funds. The court examines whether there is a conflict of interest and if the third party has sufficient funds (or that the claimants can cover the costs).

In regular civil proceedings, third-party funding is not regulated and, as such, also not prohibited.

Insurance

18 | Is insurance available to cover all or part of a party's legal costs?

Yes, insurance cover of legal costs is generally available from private insurers, including potential liability of opponent's costs.

Class action

19 | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

The Collective Actions Act, in effect since mid 2018, allows for injured parties to obtain collective compensation for violations of rights arising from civil, commercial and labour relations. A collective action is available for the following:

- consumer claims from contractual relations with companies;
- claims for infringement of consumer rights under consumer protection laws;
- claims for violations of Slovenian competition law;
- claims for violation of trading regulations on the regulated market for the trading with financial instruments;
- claims by workers before labour courts; and
- claims for civil liability owing to environmental damage.

Appeal

20 | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

Grounds for appealing a judgment in civil proceedings are:

- material breach of procedural rules;
- erroneous or incomplete determination of facts; and
- erroneous application of substantive law.

The right to extraordinary appeal to the Supreme Court is limited. That appeal (revision) must first be admitted by the Supreme Court, which it will be only if it concerns a substantial question of law that will lead to legal certainty, the uniform application of the law or the development of law through case law. This is generally the case if the Supreme Court has not yet decided upon the issue, or there is a departure from the Supreme Court's existing case law.

Foreign judgments

21 | What procedures exist for recognition and enforcement of foreign judgments?

For EU member states (except Denmark), Regulation No. 1215/2012 (known as Brussels I recast) applies, meaning that judgments from member states regarding general civil and commercial cases are easily recognised and enforced, without any declaration of enforceability being required.

Foreign judgments from other countries must first be recognised by Slovenian courts in a recognition proceeding, before they can be enforced. Several conditions apply (eg, reciprocity, public policy, no exclusive jurisdiction of Slovenian court).

Foreign proceedings

22 | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

For EU member states, Regulation No. 1206/2001 of 28 May 2001 on cooperation between the courts of the member states in the taking of evidence in civil or commercial matters allows competent courts of another member state to directly request the Slovenian courts to take evidence or to take evidence directly in Slovenia.

Assistance from the Slovenian courts may also be sought pursuant to the Hague Convention on the Taking of Evidence of 1970. Bilateral treaties can also provide access to the Slovenian courts' assistance.

ARBITRATION

UNCITRAL Model Law

23 | Is the arbitration law based on the UNCITRAL Model Law?

Yes. The Arbitration Act summarises and integrates main solutions of the UNCITRAL Model Law (as amended in 2006) and expressly states that questions that are not expressly settled in this Act are to be settled in conformity with the general principles on which it is based.

Arbitration agreements

24 | What are the formal requirements for an enforceable arbitration agreement?

Generally, the requirements for an enforceable arbitration agreement are the following:

- the arbitration agreement must pertain to an arbitrable subject matter;
- the arbitration agreement must be in writing, either in an arbitration clause or in a separate agreement (including in an exchange of letters, facsimile messages, telegrams, emails or other means of communication that provide a record of the arbitration agreement that is accessible and suitable for subsequent reference); and
- the parties must have the legal capacity to enter into an arbitration agreement.

In consumer-related matters, an arbitration agreement may be entered into only after the dispute has arisen. In both consumer- and employment-related matters, the arbitration agreement needs to be set out in a separate document, which the consumer or employee has signed.

Choice of arbitrator

25 | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

If no agreement is in place, the default number of arbitrators under the Arbitration Act is three. Each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator. If a party fails to appoint the arbitrator within 30 days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within 30 days of their appointment, the appointment shall be made, upon request of a party, by the court.

An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his or her impartiality and independence, or if he or she does not possess qualifications agreed to by the parties.

A party may challenge an arbitrator appointed by it, or in whose appointment it has participated, only for reasons of which it becomes aware after the appointment has been made.

Arbitrator options

26 | What are the options when choosing an arbitrator or arbitrators?

There are no special requirements as to the qualification of arbitrators (eg, an arbitrator does not need to be a lawyer or admitted to the bar). Generally, absent the parties agreeing otherwise, each person with the capacity to enter into legal transactions may be appointed as arbitrator. Specifically, the Arbitration Act stipulates that, absent the parties agreeing otherwise, nationality is not a reasonable ground for precluding someone from acting as an arbitrator. The parties are free to agree on additional qualification requirements.

When selecting an arbitrator, the parties may also make use of lists of arbitrators with professional chambers or seek assistance from arbitral institutions. The Ljubljana Arbitration Centre Secretariat, for example, is a broad international network of experts from more than 30 different countries, with experience from different legal environments and a variety of legal and technical expertise.

Arbitral procedure

27 | Does the domestic law contain substantive requirements for the procedure to be followed?

Parties are free to agree on the rules of procedure (eg, by procedural rules of an arbitral institution). In absence of such agreement, the arbitral tribunal is free to conduct the arbitration as it considers appropriate.

In any case, arbitral proceedings are subject to a number of mandatory procedural rules, such as equal treatment of the parties, the right to be heard, independence and impartiality of arbitrators or the requirement that the arbitral award has to be in writing. The parties or the tribunal may not deviate from these rules.

Court intervention

28 | On what grounds can the court intervene during an arbitration?

The court has limited powers to intervene during an arbitration. It has the power to decide on the following matters:

- the admissibility or inadmissibility of arbitral proceedings;
- the appointment of an arbitrator;
- challenging an arbitrator;
- termination of the mandate of an arbitrator;

- jurisdiction of the arbitral tribunal;
- setting aside of the arbitral award;
- declaration of enforceability of domestic awards and the recognition of foreign awards; and
- interim measures relating to the subject matter of the arbitration.

The court's powers cannot be overridden by agreement.

Interim relief

29 | Do arbitrators have powers to grant interim relief?

Yes. The arbitral tribunal may, at the request of party, grant any interim measure it considers appropriate. The arbitral tribunal may require the party requesting an interim measure to provide appropriate security. While the tribunal has the power to order the interim measure that is binding on the parties, only the court has the power to enforce it.

Award

30 | When and in what form must the award be delivered?

There is no time limit for rendering an award.

The award must be delivered in writing and signed by the arbitrator or arbitrators. If there is more than one arbitrator, the signatures of the majority of the arbitral tribunal will suffice, provided that the reason for any omitted signature is stated. The award must provide reasons upon which it is based (unless agreed otherwise), the date of issue and the seat of arbitration. Each party has a right to receive a copy of the signed award.

Appeal

31 | On what grounds can an award be appealed to the court?

An award may be set aside only on the grounds that closely follow those set out in article V of the New York Convention (1958):

- an invalid arbitration agreement;
- a violation of due process;
- the unauthorised excess of authority;
- the improper composition of arbitral tribunal or violation of the arbitral procedure;
- no arbitrability of subject matter; and
- a violation of the public policy of Slovenia.

The grounds of arbitrability and public policy are considered ex officio. Adjudication in the setting-aside proceedings falls under the exclusive jurisdiction of the Ljubljana District Court. Appeal is decided by the Supreme Court.

Enforcement

32 | What procedures exist for enforcement of foreign and domestic awards?

Domestic arbitral awards are enforceable when the court declares them so. The court may reject an application for the enforcement of the award if it finds that the subject matter is not arbitrable or that it violates public policy.

Foreign arbitral awards are enforced by Slovenian courts pursuant to the New York Convention (1958) and other multilateral treaties. The party applying for enforcement of an award shall supply the original award or a copy of it. Additionally, the court may request that a party provides an original or a certified copy of the arbitration agreement.

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Costs

33 | Can a successful party recover its costs?

Provided that the parties have not agreed otherwise, the arbitral tribunal shall, at its own discretion, decide which party shall compensate the other party and by what amount for the costs of the proceedings (including the costs for legal representation and the arbitrators' fees). Arbitral tribunal shall take into consideration the circumstances of the case and the outcome of the proceedings.

A decision concerning costs of the proceedings shall be given either in the award, the order for the termination of the proceedings or in a separate award on costs.

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

34 | What types of ADR process are commonly used? Is a particular ADR process popular?

Mediation and conciliation are the most well-known and commonly used ADR processes in Slovenia. A programme of court-adjoined mediation is well developed in Slovenia and, in most civil proceedings, parties are invited to make use of mediation. Where appropriate, the court can suspend judicial proceedings for up to three months so that parties can engage in mediation.

The average duration of mediation proceedings is three months and, according to court statistics, a little under 50 per cent of all mediations are successful.

Requirements for ADR

35 | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

When filing an action in civil proceedings, the court shall ask the defendant whether he or she is prepared to take part in mediation proceedings. The court has the right to order the parties to attend an information hearing on mediation. The court may, where appropriate, after consulting the parties, order them to attend mediation and can suspend judicial proceedings for up to three months.

MISCELLANEOUS

Interesting features

36 Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

Not applicable.

UPDATE AND TRENDS

Recent developments

37 Are there any proposals for dispute resolution reform? When will any reforms take effect? (Please also mention any ground-breaking recent cases, etc.)

The beginning of year 2020 has been marked by the covid-19 pandemic. Many countries, including Slovenia, adopted measures aimed at preserving parties' rights during times when courts were closed. Those measures included suspension of substantive and, save for in certain urgent matters, procedural time limits.