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1. Would your jurisdiction be described as a common law or civil code jurisdiction?

Slovenia is a civil law jurisdiction. It has been developed on the basis of the Roman law and pertains to the Germanic group of legal systems. The primary source of law is legislation. Courts decide on a case-by-case basis with reference to legal provisions. Common law and precedence formally do not have any influence on court decisions (meaning that judicial decisions do not have the same value as laws); nevertheless, in general, the lower instance courts normally follow the practice of the High and especially of the Supreme Court. The Supreme Court also issues principle legal opinions regarding a unified court practice, which in general are observed by the courts.

2. What method of adjudication is used (adversarial, inquisitorial, other or hybrid)?

There are different methods of adjudication in use, depending on the legal area. In civil disputes, the adversarial legal procedure is implemented. The parties have to state and substantiate all the necessary facts. The court may only exceptionally decide to establish the facts, which the parties have not stated and produce the evidence, which they have not adduced when the course of a hearing and production of evidence shows that the parties intend to perform dispositive acts, which they are not entitled to perform. Nevertheless, the court may not found its judgment upon facts on which the parties have been denied the opportunity to be heard.

However, a slight deviation from the strict adversarial system is implemented in special procedures regarding the family-related disputes and in labour law proceedings, where the court has also limited inquisitorial competences. In social litigation, the court shall establish the facts in their entirety and find out the material truth underlying the dispute. The General Administrative Procedures Act (*Zakon o splošnem upravnem postopku*) provides for a similar rule: the court shall find out the truth and establish all the facts, necessary to render a correct and lawful decision.

The criminal/penal procedure is even more of a hybrid method of adjudication - an inquisitorial procedure with adversarial elements, with major exceptions in the area of plea bargaining. It has developed primarily on the basis of the inquisitorial method with adversarial elements added gradually with amendments to the Criminal Procedure Act (*Zakon o kazenskem postopku*). Thus, the primary goal of a criminal procedure is not to adjudge in a dispute, but rather to find out the truth about a criminal matter. Consequently, the court may determine which evidence will be presented and may even provide evidence not previously provided by any of the parties in the procedure.

3. What are the qualifications of the adjudicator (judge – elected, appointed; jury; other?

The Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*) stipulates that the judges are elected by the National Assembly on the proposal of the Judicial Council. Five members of the Judicial Council are elected by the the National Assembly on the proposal of the President of the Republic and the remaining six members are elected by the judges holding permanent judicial office from among their own number.

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There is no jury in the Slovenian legal system; however, there are lay judges in some procedures. The Labour and Social Courts Law stipulates that the panel of the court consists of a judge and two lay judges, of which – for the labour litigation – one is elected from the list of workers' candidates for lay judges and the other is elected from the list of employers' candidates for lay judges. In social litigation, one list is composed with candidates proposed by insured persons and the other by the relevant social institutions. Lay judges are elected by the National Assembly.

Under the Criminal Procedure Act, when a dispute is decided by a panel, such panels are at the first instance courts composed either of two judges and three lay judges, or one judge and two lay judges.

4. Are there any procedures available for specialized courts (i.e. commercial court, employment, environmental)?

In Slovenia, most of the procedures are adjudged by the courts with general jurisdiction, which consist of 44 District, 11 Regional, 4 Higher Courts and the Supreme Court.

However, there are a few specialized courts, namely 4 Labour courts and a Social Court, which rule on the labor-related and social insurance disputes, as well as the Administrative Court, which provides legal protection in administrative affairs and has the status of a Higher Court.

Moreover, the Civil Procedure Act (*Zakon o pravdnem postopku*) provides for special provisions on several sectorial judicial proceedings such as: (i) a procedure in matrimonial trials and trials concerning the relationship between parents and children; (ii) a procedure in disputes for disturbance of possession; (iii) a procedure for the issue of a payment order; (iv) a small claims procedure for trials with a claim under EUR 2,000; and (v) a procedure in commercial litigations. No specialized courts are organized for these proceedings.

Furthermore, a special procedure act regulates several nuances of the proceedings before the Labor and Social court, namely the Labour and Social Courts Act (*Zakon o delovnih in socialnih sodiščih*) as *lex specialis*, where nevertheless the Civil Procedure Act applies in general.

Special procedure regulation is also included in the Non-litigious Civil Procedure Act (*Zakon o nepravdnem postopku*), which may be applied as lex specialis in special non-litigious procedures at general courts (even commercial courts).

5. Is arbitration an option and when? If so, what rules are typically used?

Yes, pursuant to the Arbitration Act (*Zakon o arbitraži*) the parties may enter into an arbitration agreement (in form of a separate agreement or an arbitration clause in a contract) and thus agree to submit the dispute in question to arbitral proceedings. The Slovenian Arbitration Act incorporates the principal features of the UNCITRAL Model Law (1985) and some aspects of the 2006 amendments to the Model Law (1985).

Slovenia also promotes institutional arbitration through the Chamber of Commerce and Industry of Slovenia. The most sought arbitration institution in Slovenia is thus the Ljubljana Arbitration Centre at the Chamber of Commerce and Industry of Slovenia (CCIS). The CCIS hosts an autonomous and independent permanent court of arbitration (CCIS Court) which seeks to resolve both domestic and international commercial disputes. Arbitral proceedings in the CCIS Court are conducted

pursuant to its Arbitration Rules (CCIS Rules).

6. Will the Courts enforce an arbitration agreement to preclude other forms of litigation?

A claim brought before the courts will be dismissed on the grounds of lack of jurisdiction, if it is subject to an arbitration agreement and the respondent objects to the court's jurisdiction no later than when submitting its statement of defence. However, the courts may decide to hear the claim, if it is found that the arbitration agreement: (i) does not exist; (ii) is null and void; (iii) inoperative; or (iv) incapable of being performed. Moreover, at the request of the parties the courts may issue an interim measure relating to the subject matter of the arbitration, before or during arbitral proceedings.

7. For Court proceedings, is mediation mandatory, either before or after filing of a claim or complaint?

There are no statutory provisions which would determine mediation as mandatory; however, the parties may reach an agreement establishing mediation as a prerequisite before the eventual commencement of any court proceeding.

The Mediation in Civil and Commercial Matters Act (*Zakon o mediaciji v civilnih in gospodarskih zadevah*) governs the rules for a special court mediation used in civil, commercial, labor, family, and other monetary claims where parties are free to reach such a settlement on the use of a mediation procedure.

The Employment Relationship Act promotes the use of alternative dispute resolutions and specifically states that a worker and an employer may agree on a mediation procedure.

In special proceedings, such as labor disputes, sometimes a preliminary conciliation procedure is prescribed by relevant material law as a prerequisite before filing an action.

8. What is the process for pre-hearing fact discovery (if any)?

Under the Slovenian law, there is no pre-hearing fact discovery in place. The following questions will be answered in regard to fact discovery in the main proceedings.

(a) Are there provisions for mandatory document disclosures?

Document disclosure is mandatory under the Civil Procedure Act when a party refers to a document as an evidence for his/her statements during the court proceeding. Moreover, if one party of the procedure refers to a document, which is in possession of the other party, the court may demand that the party, who has the relevant document in possession, shall submit such a document to the court. The party shall not decline the submission of a document if he/she himself/herself referred to such documentation as an evidence for his/her statements or if the documentation shall be submitted accordingly to the law, or the subject matter of the document is relevant for both parties. If a party who has been ordered to submit the documentation asserts that it is not in his/her possession, the court may produce evidence to determine the truth of this assertion.

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If a party, who has a certain document, fails to comply with the order of the court to submit it, or if such a party contrary to the conviction of the court denies the possession of such document, the court will consider all the facts that the opposing party wanted to prove with such a missing document as certainly proven.

(b) Is there provision for oral examinations of the parties or others?

Yes, the Civil Procedure Act (and in criminal matters the Criminal Procedure Act) specify rules on the oral examination of parties of the procedure, witnesses and court experts. All witnesses as well as court experts are bound to testify by law and may only refuse to testify on the grounds specified in the act. No such duty to testify may be imposed on the parties to the procedure.

In principle, witnesses as well as parties shall be examined separately and in the absence of other witnesses, who shall be examined subsequently. Prior to the examination, a witness shall be advised of his/her duty to speak the truth and not to withhold anything, whereupon he/she shall be warned of the consequences of perjury. Thereafter, a witness as well as a party shall be asked several general questions (e.g. name and surname, father's name, occupation, place of birth, age and relationship to the parties etc.) and further ordered to freely explain everything that he/she knows regarding the subject matter. A witness shall also be always asked to explain the source of the knowledge he/she has about certain facts. The members of the panel are permitted to pose questions after the president of the panel has concluded with examination. Also the opposing party may ask questions and if the testimonies of several witnesses and or parties differ with respect to any important facts, a confrontation shall be performed. Suggestive and/or leading questions are not allowed.

(c) Are there limits on the length of oral examinations?

No, there are no limits regarding the length of oral examination.

(d) Are witness statements or summaries to be provided before the hearing?

According to the provisions of the Civil Procedure Act a party of the procedure may upon request of or in agreement with the court provide a written and signed statement of a witness about the relevant facts.

9. What is the process for pre-hearing expert disclosure (if any)?

As stated above, under the Slovenian law, there is no real pre-hearing discovery procedure in place. The following questions will be answered in regard to the use of experts in the main proceedings.

(a) Are expert reports or written summaries required to be exchanged?

The experts are obliged to issue their expert opinions either orally in a hearing or/and in a written form prior to the hearing. When possible, the court is obliged to serve the expert's written report and opinion to the parties of the procedure before the hearing where those statements will be discussed. When there are several experts requested to issue an opinion and they agree on the results of the examination, they may all together issue one single opinion. If they do not agree, they shall issue each his/her own opinion. If the opinion of one or several experts contains contradictions or other shortcomings, or if a reasonable doubt arises as to accuracy of their opinions, and if such shortcomings or doubt cannot be removed by a

re-examination of experts, another expert's opinion shall be ordered.

(b) Are the parties entitled to conduct a pre-hearing oral examination of opposing experts?

No.

(c) Are there provisions requiring experts to meet and narrow issues before the hearing?

The court may decide that the experts should provide their report and opinion in a written form already prior to the hearing. Moreover, the court may narrow down the issues by ordering the experts to answer certain specific pre-listed questions that are relevant to adjudge the case at stake.

10. Are there other notable discovery rules?

The parties are bound to state all facts upon which their motions are based, adduce evidence required to establish the truth of their statements, to produce declarations regarding the statements and evidence adduced by the opposing party, at the opening hearing session. At later hearing sessions, the parties are allowed to present new facts and new evidence only if at the opening session they were prevented from presenting them by reasons beyond their control.

11. Is there a prehearing conference (for trial management, settlement or other purposes)? Who conducts it? How long before the hearing?

A prehearing conference is provided by the Criminal Procedure Act as well as by the Civil Procedure Act. The latter states that any court proceeding shall first start by a settlement hearing. Only if a trial settlement cannot be reached, the dispute shall be further resolved in a hearing (a hearing may follow straight away or may be postponed to a later date).

The Criminal Procedure Act states that a prehearing conference shall be conducted by the president of the panel. At this stage, the accused shall enter a guilty/not guilty plea, which may be accepted or rejected by the president of the panel. The sentence may be determined immediately after the guilty plea was entered. After the entering of the plea, a prehearing of the prosecutor shall follow, continued by the determination of the time and place of the hearing by the president of the panel. The hearing to determine the sentence may follow immediately after the prehearing conference but no later than two months after the conclusion of the prehearing stage.

12. Can a prehearing motion for judgment be brought? If so, what is the threshold test for judgment?

In civil matters, the court shall reach the final judgment after a careful and thorough evaluation of the evidence and considering the outcome of the entire proceedings, which usually only happens after the hearing proceeding. In general, the law does not prescribe that either of the parties, or even jointly in mutual agreement, may file a motion for a pre-hearing judgment, hence the court is not bound to follow such motion, even when allowed to issue a judgment without a hearing. In following cases, the court may by itself decide without a hearing:

- the court issues a judgment based on acknowledgment, if the defendant admits to the claim (even before a hearing in a written statement);

- the court issues a judgment by relinquishment, if the plaintiff dismisses the claim (even before a hearing in a written statement);
- the court may issue a judgment by default, if the defendant omits the statement of defense in due date and if several other preconditions are met.

Further, in small claims procedure (see also answer under No. 20) the court may decide without a hearing, if after the receipt of the defense plea and the preparatory pleadings of the parties, the court finds that no dispute exists on the matter the facts and that no other obstacles hinder the rendition of a decision. The same applies for the commercial litigation disputes. In the special proceeding with a payment order, a hearing is not conducted at all and a payment order is issued by a law clerk in ex parte proceedings.

Special regulation applies for decisions with the interim measures, where the court may issue a decision on an interim measure in an ex parte proceeding (again – without a motion by the parties).

13. Is there a process for obtaining pre-hearing rulings with respect to evidence admissibility including admissibility of expert testimony? What is the process and when does it occur?

The general rules as to when a pre-hearing ruling may be issued, are described above. In general, whenever expert testimony is proposed by either of the parties, the court would proceed with carrying out a hearing procedure, unless it decides not to take the evidence proposed by the parties (eg if it does not substantiate the claim or the answer to the claim). As a rule, the court may decide without a hearing (in the proceedings as described in the above answer), if after the receipt of the defense plea and the preparatory pleadings of the parties, the court finds that no dispute exists on the matter the facts and that no other obstacles hinder the rendition of a decision – meaning that enough facts and evidence were provided already with the written statements of the parties.

14. What is the standard for admissibility of expert evidence?

The experts (individuals or scientific institutions) are appointed by the court, when expert knowledge is needed in order to establish or clarify certain facts and the court has no such knowledge. An appointed expert is obliged to render his/her opinion. They are broadly speaking court officials and support the court when the latter lacks on certain specific knowledge.

Experts must not be confused with expert witnesses, who are not appointed experts but are merely witnesses that due to their education, work and/or profession have certain expert knowledge about the disputable facts. The testimony of such expert witnesses has the same value as the testimony of any other witnesses.

15. Does the Court have the power to appoint its own experts? Under what circumstances and what type?

The experts are appointed by the court based on a proposal of either a party (or in some proceedings *ex officio* (please see Answer 2)) from a pre-made list of experts, who obtain the required qualification in a specific scientific/expert area (e.g. construction of buildings, real estate appraisals, medicine, traffic, psychiatry etc.). The court may allow the parties to present

their opinion on the choice of the expert; nevertheless, the court has a decisive power to determine the expert.

Expert witnesses are appointed as every other regular witness, i.e. nominated by the parties and summoned by the court.

16. Does your jurisdiction protect privilege? If so, what privileges are protected from disclosure (attorney client / legal advice; documents prepared in anticipation of litigation; settlement discussions; other)?

Yes, to a certain extent, especially when it comes to an oral hearing of privileged witnesses, provisions on protection of business secrecy and negotiation discussions (e.g. unsuccessful mediation procedure or plea bargaining).

In a civil procedure, a witness may decline the testimony as a whole about the facts, which he/she has learned as an authorized representative, confessor, attorney, physician or as any other person, required to keep any information, obtained in a due course of practicing a profession, as a secret. Furthermore, a witness may decline the testimony, if that would require disclosure of a business secret, except when such a disclosure is necessary for public benefit or when a benefit from disclosure of business secrets is greater than a benefit of maintaining such a secret. A witness may also decline an answer to a certain question if his/her answer would mean a grave shame, if it would cause pecuniary loss, or commencement of a criminal procedure for the witness, his/her relatives, his/her spouse or partner in extramarital union, members of family by marriage, caretaker or a person who is taken care of, adopter or adopted child.

Similar rules are in place in criminal procedure, where a complete prohibition to be asked questions applies for certain witnesses who are in close relation with the accused (e.g. privileged witnesses) and a partial prohibition to answer a certain question applies to all other witnesses. In criminal law the disclosure of certain evidence is also secured by the provisions on exclusion of evidence from the court file.

17. If privilege is not protected, are there other protections from disclosure (i.e. privacy) that could prevent disclosure of otherwise privileged information, and what is the basis for those protections?

Not applicable.

18. Who determines privilege disputes, or disputes with respect to other forms of protection described in 17 above?

Such disputes are always determined by the court. In case of personal data protection, the Slovene Information Commissioner is entitled to issue binding decisions regarding the violation of privacy legislation.

19. Briefly describe the trial process?

(a) Are there opening submissions, in what form and of what length?

Neither civil nor criminal procedures prescribe for a special opening submissions stage. Especially civil procedure is mostly a written one, whereby most common written submissions are a lawsuit, a statement of defense, legal remedies and a proposition for preservation of evidence. Litigation starts with the service of the lawsuit to the defendant.

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(b) What is the order of presentation of witnesses?

The witnesses who are yet to be examined shall not be present at the examination of other witnesses. The examination shall start with the witness talking freely about the facts that are known to him/her and then continue with answering questions. The witnesses may also be confronted if there is a discrepancy in their answers (please see also Answer to Point 8.(b)).

(c) Who conducts examination and in what order?

Examination is conducted by a judge or a president of the panel (presiding judge). In civil procedure no special rules on the order of presentation of evidence is prescribed. Parties are only bound to state all facts upon which their motions are based, to adduce the evidence required to establish their argumentation and to produce declarations regarding the statements and evidence by the opposing party, no later than at the opening hearing session. Any later presentation of new facts and evidence could only be conditionally allowed.

According to the Criminal Procedure Act, a suspect as well as witnesses may be examined also in the pre-trial investigation. The accused and those witnesses and experts that are, by evaluation of the presiding judge, expected to present necessary information, are examined again at the hearing. As in civil litigation, the examination is conducted by the president of the panel. The hearing shall be conducted in the order, provided for by the Criminal Procedure Act, unless the panel confirms a different order due to special circumstances. The hearing starts with the examination of the accused, immediately followed by the examination of the injured party, if he/she is to be examined as a witness. The examination of evidence follows, whereby evidence, presented by the prosecutor are examined first, followed by evidence presented by the accused and lastly the evidence presented *ex officio* by the panel. Witnesses and experts are examined at this stage of the proceedings.

(d) What is the process for closing submissions?

No closing submissions exist in civil litigation.

There are however closing submissions in the criminal procedure. Closing submissions are presented after the conclusion of the examination of evidence stage and are conducted by the president of the panel. The submissions are presented in the following order: first the prosecutor's submission, followed by the attorney of the injured party and the injured party itself, then the defense counsel of the accused, and lastly the accused. After all the closing submissions are presented, the president of the panel invites everybody to add a statement and the hearing is concluded.

The length of the closing submissions may not be limited.

20. Please identify any other notable trial procedures.

In principle Slovenian legal system differs between civil and criminal procedure. The first is set forth in the Civil Procedure Act, whereas the latter is specified in the Criminal Procedure Act.

Moreover, the Civil Procedure Act in vast majority of its articles regulates a general civil procedure, whereas it also mentions several sectorial judicial proceedings such as (i) a procedure in matrimonial trials and trials concerning the

relationship between parents and children; (ii) a procedure in disputes for disturbance of possession; (iii) a procedure for the issue of a payment order; (iv) a small claims procedure for trials with a claim under EUR 2,000; and (v) a procedure in commercial litigations. For all these additional sectorial procedures, general principles and rules of civil procedure apply, insofar nothing else is specified in their special provisions. Similarly also the Criminal Procedure Act regulates several marginal proceedings.

Furthermore, the Minor Offences Act (*Zakon o prekrških*) contains specific procedural rules governing the minor offences procedure. The jurisdiction in employment and social matters is further regulated in a separated act – e.g. the Labor and Social Courts Act. Special Arbitration Act specifies the rules of arbitration proceedings and the Mediation in Civil and Commercial Matters Act determines the rules of a mediation procedure.

21. Who bears the burden of proof of liability? Causation? Damages? What is the standard of proof for each?

Under the Code of Obligations (*Obligacijski zakonik*), any person that inflicts damage on another shall be obliged to reimburse it, unless it is proved that the damage was incurred without the culpability of the former. The law prescribes as a rule a fault-based liability. Nevertheless, this rule has several exceptions, constituting the principle of strict liability. In order to constitute a legal basis for civil liability the following conditions should be fulfilled: (i) an act or omission must be unlawful; (ii) the act or omission must result in damage; (iii) a causal nexus between the unlawful action or omission and the resulting damage must be established; and (iv) the person to be held liable must be considered culpable (meaning at least negligent) in relation to the alleged unlawful act or omission.

In any event the burdens of demonstrating the first three conditions (unlawful act, a causal nexus and damages) is on the injured party, whereas the liability of the culpable person shall be presumed. The culpable person may exclude his/her liability by proving he/she has acted with due diligence and may not be held liable for the alleged unlawful act or omission.

The Code of Obligations specifies that the required standard of proof is the standard of certainty. This means that the injured party must demonstrate that he/she has an underlying liability claim against the culpable person and that such a claim has been sufficiently proven by providing factual (arguments) and evidence base.

22. What heads of damage are recoverable (compensatory, pre-judgment interest, punitive damages, other)?

Pursuant to the Code of Obligations, the liable person is obliged to be restored to his/her previous state (e.g. the principle of full compensation). When damage cannot be completely recovered, the liable person is obliged to fully recompense the damaged party. Damages shall thus include an actual loss and *lucrum cessans* (loss of profit). If the circumstances of the case do justify, the liable person is obliged to pay the non-pecuniary loss. If the object was damaged by purpose, the liable person is also obliged to pay the subjective value of the object to the damaged party.

23. If punitive damages are available, what is the threshold for recovery, and range of awards?

In general, Slovenian rules on indemnity do not provide for punitive damages. Nevertheless, there are some exceptions to

this rule such as the provisions of the Copyright and Related Rights Act (*Zakon o avtorski in sorodnih pravicah*), which do provide for punitive damages. According to its provisions, the damaged party may demand compensation in the amount of pecuniary loss based on general rules on compensation for damage recovery as well as punitive damages. If a copyright or any other related right was infringed intentionally or by gross negligence, the damaged party may claim the payment of agreed or customary remuneration increased by up to 200%. This is irrespective of the fact whether such party has actually suffered any pecuniary damage due to such infringement or not. Moreover, the damaged party may even demand the recovery of the non-pecuniary damage.

24. Are there time limits for bringing claims? Responding to claims? Please describe.

General time limit for bringing compensation claims is 3 years after the injured party has learnt of the damage and of the person that inflicted it. In any case, the claim shall become statute-barred 5 years after the damage occurred. Time limits are more specifically determined for different claims, for instance claims for periodic charges that fall due annually or at specific shorter time intervals become statute-barred after 3 years, compensation claims for damages inflicted by a criminal offence become statute-barred when the period stipulated for the criminal prosecution expires, monthly charged services have in most cases a 1-year statute-barring period, claims determined by a judicial decision become statute-barred after 10 years etc. The passing of the time limit for bringing claims starts on the first day after the date on which the creditor had the right to demand the performance of the debtor's obligations. There are more specifically determined time periods for criminal prosecution, depending on the gravity of the criminal offence. Claims arising out of employment relations cannot be brought after 5 years.

There is no general time period for responding to claims, however, there is a 30 days limit to respond to a lawsuit.

25. What are the requirements to establish jurisdiction over a foreign defendant in your court? Can a foreign defendant request that the court decline jurisdiction on the basis that there is a more convenient forum?

In civil litigation, the jurisdiction of the court is established on the basis of the references made in the lawsuit and facts, known to the court. The general requirements to establish jurisdiction are the subject matter of the claim and the place of defendant's permanent residence. In case of disputes with international element, the jurisdiction of Slovenian courts is derived either from law or international agreement.

The Private International Law and Procedure Act (*Zakon o mednarodnem zasebnem pravu in postopku*) determines the rules of jurisdiction for legal claims enclosing an international element. According to this Act, a Slovenian court has a jurisdiction, if the defendant has a place of residence in Slovenia. If the defendant has no place of residence, jurisdiction of a Slovenian court is established if such a person has a temporary residence in Slovenia. Moreover, if a court in a foreign country exercises jurisdiction over a Slovenian citizen, a Slovenian court shall exercise jurisdiction over a defendant who is a citizen of respective country on the basis of reciprocity.

If one of the parties in dispute is a Slovenian citizen or a legal person with registered seat in Slovenia, the defendant may consent to jurisdiction of a Slovenian court. It is deemed that the defendant has consented, if he/she has filed a statement of defence, objection on payment order or has engaged in trying of the main subject at the preliminary hearing or, in case there is no preliminary hearing, in main hearing, without having objected to jurisdiction of the court.

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Exclusive jurisdiction of Slovenian courts is established by law. The Private International Law and Procedure Act stipulates exclusive jurisdiction of Slovenian courts in cases such as consumer related issues, insurance claims, claims in connection to IP rights if the application has been filed in Slovenia, execution procedure on the Slovenian territory, claims in connection to real estates, if such real estate is on the Slovenian territory etc., if certain conditions provided for by this Act are met.

The parties cannot agree on a subject matter jurisdiction (for instance they cannot chose between a general or a specialized court or between a district or a circuit court at the first level), but they may agree on the territorial jurisdiction, if there is no exclusive territorial jurisdiction provided for by the law and if the court, the parties agreed upon, has the subject matter jurisdiction.

The court, at the request of a party, stops the proceeding, if at the same time a proceeding is pending before a foreign court regarding the same subject matter and involving the same parties and provided that the following conditions are met: (i) the lawsuit in a proceeding before a foreign court was served to the defendant sooner than the lawsuit in a proceeding before a Slovenian court was served; (ii) it is plausible that a foreign decision will be recognized in Slovenia; (iii) existence of reciprocity.

26. Are there procedures for a defendant to bring other potentially responsible parties into the proceeding? Briefly describe.

A third party intervener may join a party in the proceedings at all times during the proceedings until the decision in respect of the case becomes final, and at all times during the continuation of proceedings due to extraordinary judicial review, if he/she has a legal interest that this party wins the dispute. Both parties shall be notified about the intervention and they may oppose to it. Also the court may *ex officio* reject the intervention if the intervener cannot establish a legal interest. If both parties agree, the intervener may enter into the proceedings. In such a case, the intervener takes over the litigation in the state as existing upon his/her accession. In the further course of proceedings the intervener shall be allowed to perform all procedural acts in the time periods applicable to the party to whom he/she has joined (but not to him/her specifically). In case both parties consent, the intervener may enter in the proceedings as a party and instead of the party to whom he/she has initially joined.

The defendant may only make a claim for contribution or indemnity agains such a third party / intervener in a separate legal proceeding.

27. Are legal costs recoverable by either party? If so, under what circumstances, and how is the amount calculated? (i.e. is it a loser pays costs system).

A principle of cost shifting is applicable to both court costs and party compensation, meaning that if the applicant's request for a claim is fully approved, the responding party (the losing party) shall pay the costs. However, in deciding which costs are to be refunded to the applicant, the court only takes into account the expenses, which are indispensable. Irrespective of the outcome of the procedure for interim measures, a party shall refund the opposing party the costs, which arose due to its fault or coincidence.

The costs of proceedings include all expenses incurred during or due to the litigation as well as attorney's fees and fees of other persons as regulated under the Civil Procedure Act. In case of a civil procedure an applicant shall in particularly take into account the costs of court fees, costs of possible translation of evidence material, costs of a possible execution of

evidence (expert examinations), fees of enforcement officers as well as attorney's fees. Besides that, an applicant shall take into account the actual (not just tariff based) costs of its own representation and the fact that usually several costs such as court fees, costs of translations and experts need to be paid in advance.

Party compensation includes compensation for the professional representation (attorney's fees) and to certain extent reimbursement of necessary expenses, which are usually predominant costs in the proceeding (i.e. if no substantial translation or involvement of experts is required). Attorney's Fee Act (*Zakon o odvetniški tarifi*) and its Tariff govern the fees of professional representation and reimbursement of certain expenses that are also recognized by courts in their decision on repayment of such cost for instance by the losing party. Attorney's fees are determined as either fixed costs or a percentage of the value of the claim.

In case of criminal procedures, a slightly different system is in place, so that the accused person is not responsible to pay any legal costs if he/she is able to prove that the payment of such costs would put in jeopardy the maintenance of the accused or the persons he/she is bound to support.

28. Are contingency fees allowed?

As stated above, the Attorney's Fee Act and its Tariff prescribes the fees of professional representation and reimbursement of certain expenses that are also recognized by courts in their decision on repayment of such cost, for instance by the losing party. It is thus up to the client and his/her attorney to agree on another way of the calculation of fees, such as the payment of a fee-cap, hourly rates etc. Any agreements on fees that exceed the payments under the prescribed Tariff shall be made in writing. Moreover, in case of monetary claims, contingency fees may be agreed instead of the prescribed Tariff. The amount of such fees is prescribed by the Attorney's Act (*Zakon o odvetništvu*) and is capped at 15% of the amount that the court could award the client. Such an agreement should also be made in writing and as a separate document next to the PoA.

29. Is third party funding of claims permitted? Under what circumstances?

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 on the court procedure.

30. Are class or multi-party actions allowed? Under what circumstances? For what types of claims?

Multi-parties are permitted in the civil litigation either as plaintiffs or as defendants, if the following requirements are met: (i) if they are in a legal community in regard to the subject matter of the civil claim, or if their rights or obligations have the same factual or legal background, or if their claims or obligations are solidary so that they are jointly liable (material co-litigants); (ii) if the subject matter of the civil claim is a claim or an obligation, based on the same factual and legal background and the same subject matter jurisdiction and territorial jurisdiction is established for each and every claim and for each and every defendant (formal co-litigants); or (iii) if another legal provision provides for such an option (legal co-litigants).

See also the answer to question 40.

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31. Can claims be commenced by a consumers association or other representative organization? Under what circumstances?

Yes, pursuant to the Consumer Protection Act (*Zakon o varstvu potrošnikov*) a civil claim against the companies conducting business on terms and conditions that violate the consumer protection legislation, or that use unlawful business-to-consumer commercial practice or conduct marketing in such a way that violates the law or that their practice is in other ways harmful for consumers, may be brought by the organization established to protect consumers' rights and interests.

32. On average, how long does it take to get to trial/final hearing, and what factors can affect that?

The recent court statistics for 2013 indicate that on average a decision of the first instance court in civil/commercial litigation may be obtained within 13 months, and the second instance decision (upon an eventual appeal) within 5 months. These statistics nevertheless hide a broad dispersion of cases where on average a complex litigation matter may usually take up to 2 years until a decision of the first instance court is reached. The duration of the procedure largely depends on the legal complexity of the matter, in specific cases also on the number of witnesses heard and evidence produced, and in our experience also on the presiding judge involved.

33. Is an appeal process available (distinguish between final and interlocutory/procedural orders as needed)? Who hears the appeal? How are they appointed? What are their qualifications?

In civil as well as criminal proceedings, in general an appeal against the first instance decision is always allowed. If stipulated by the procedural law, appeals against procedural orders are allowed too, especially against orders on interlocutory measures. The appeals are heard by the second instance court, which is usually the regionally competent Higher Court or in special cases in criminal proceedings a panel of judges of the first instance court. For further information about qualifications and appointment of judges see question 3.

34. Are hearing rooms available for electronic trials or appeals (i.e. where documents and transcripts are presented on computer monitors; witnesses can testify by video conference)?

In general, hearing rooms are not available for electronic trials or appeals. Nevertheless, the latest amendments to the Civil Procedure Act and the Criminal Procedure Act have both provided with an option that a hearing of a party and/or a witness is carried out by means of a video conference. This method could be used if several conditions are met, mostly if such a person is located elsewhere or in case of criminal proceedings if a person is being under protection or if so requested by another State in accordance with the international law provisions.

35. What is the practice regarding the use of graphics, computer animation, power point and the like, in trials? In appeals?

The use of graphics, computer animation, power point and any other new forms of media is neither explicitly prescribed nor explicitly prohibited. The biggest problem is rather the execution, as the courtrooms are in most cases not equipped with the required technology to perform such practices. In general, all evidence is provided to the court in a written form, on a CD or a DVD or presented orally. The same applies to appeals; however, in the second instance, the Higher Courts only rarely

decide to conduct a new oral hearing or to supplement the hearing procedure.

36. Will the lawyer at trial be the same as the one responsible for pre-trial procedures? Is there a solicitor / barrister distinction?

Since the Slovenian legal system is a civil law system, no distinction between solicitors and barristers is made such as in common law jurisdictions. In principle, the lawyer could be the same throughout the whole trial procedure. The law further stipulates conditions when a lawyer could be supplemented by an associate lawyer or a law candidate, who has already obtained a Slovene bar exam.

37. What are the contributory negligence laws in your jurisdiction? Is there a comparative fault assessment, joint and several or proportionate liability among tortfeasors? Does a plaintiff's negligence reduce or eliminate liability of defendants named in the litigation?

Contributory negligence is regulated in the Code of Obligations in the chapter on the infliction of damage provisions. An injured party that has in any way contributed to the occurrence of the damage or has caused that the damage was greater than would otherwise be, has the right to a proportionate reduction of the compensation payment. In case of such shared liability, the court will need to decide how big the contribution of the injured party was. If it would be however impossible to determine, which part of the damage was a consequence of the injured party, the court shall award a compensation in the amount determined at the court's judicial discretion having taken all the circumstances of the case into consideration.

Furthermore, in case of strict liability for damages from dangerous objects or actions, the holder of such an object could be partially exempted from his/her liability, if it is proven that the injured party has contributed somehow to the occurrence of the damage. A special rule on contribution of damages is prescribed in case of liability for accidents caused by moving motor vehicles.

All those involved in a tort shall be jointly and severally liable for damages inflicted to an injured party. A jointly and several debtor that has paid to an injured party more than what his/her share of the damage is, may demand reimbursement from all other debtors.

38. Is service of a complaint issued outside your country permitted in your country by "informal" means, or must the Hague Convention be followed?

Both Civil as well as Criminal Procedure Act provide for specific provisions on the service of court documentation. A rather formal procedure is stipulated in both cases. Furthermore, the Hague Convention shall be duly followed especially as to the language of the serving documents. Moreover in case of service of documentation within the EU Member States, the Regulation (EC) No 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) applies.

The Criminal Procedure Act allows that the serving of court documentation to a Slovenian national abroad is made by help of diplomatic or consular missions of the Republic of Slovenia, providing that a foreign country in question does not oppose such a method of serving and that the recipient agrees to accept such letter. A special obligation exists for a foreign party in

the Civil Procedure Act – if the latter does not have a statutory representative in the Republic of Slovenia, it shall appoint a person authorized to accept the service of the documentation in the Republic of Slovenia on his/her behalf.

39. Do your laws prohibit export of relevant documents from your jurisdiction for the purposes of litigation outside your jurisdiction? (Consider privacy rules)

Considering the fact that Slovenia is a Member State of the European Union, it is bound by the EU legal order. In accordance with the European legislation, the Cooperation in Criminal Matters with the Member States of the European Union Act (*Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije*) was adopted, providing the provisions for a common European arrest warrant, surrender procedure, legal aid between the Member States, recognition and enforcement of judicial decisions, exchange of data from the criminal records between the Member States etc. Similarly, Slovenia is bound to respect EU legal acts in civil procedure such as for instance the Council Regulation (EC) 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.

The Personal Data Protection Act states that personal data may be processed (which also includes transmission of data to a data processor) if so provided by law or if the personal consent of the individual has been given. Regarding the public sector (e.g. courts), personal data may further be processed even if no legal base exists but processing is essential for the exercise of lawful competences, duties or obligations by the public sector, provided that such processing does not encroach on the justified interests of the individual to whom the personal data relate.

40. Please point out any litigation Best Practices employed by Courts in your jurisdiction but not yet referenced in the survey.

The latest substantial amendment to the Civil Procedure Act concerns cases where there is a greater number of lawsuits in which the claims are based on the same or similar factual and legal basis. The Court is in such cases empowered to solve all other disputes based on a single exemplary procedure, whereby the latter procedures are in the meantime suspended and would be later adjudged taking into account the decision in the exemplary procedure. This procedure was enforced due to an overload of claims in front of Slovene courts and the success of this procedure in the labor and social disputes based on the Labour and Social Courts Law.

41. Are there any significant areas in which you believe the playing field between plaintiff and defendant is not level that you think need to be addressed?

This is especially so in the criminal proceedings due to its inquisitorial elements. For instance, the investigation on the initial pre-criminal level is conducted by the police authorities with basically limited powers of the accused to be involved. The accused therefore has no possibility to be involved and eventually oppose certain investigation measures, contribute to the pre-criminal witness hearings etc. Rules on exclusion of illegally obtained evidence *post festum* amend eventual infringements of the procedural law; nevertheless, they leave the involved investigation judge and sometimes also the presiding senate *de facto* contaminated.

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42. Are there legislative efforts under way that address any of the litigation practices in your country?

A bill of law amending the Criminal Procedure Act is in preparation at the National Assembly. The main aim of this amendment is to incorporate the principles of the Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings and the Directive 2012/13/EU on the right to information in criminal proceedings, as well as to further regulate the use of concealed investigation measures, amend the regulation of the punitive order and implement easier methods of collaboration between the authorities.

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