GLOBAL LEGAL INSIGHTS

Litigation & Dispute Resolution

Second Edition

Contributing Editor: Michael Madden

Published by Global Legal Group

CONTENTS

Preface	Michael Madden, *Winston & Strawn London*	
Austria	Christian Eder, Christoph Hauser & Alexandra Wolff, *Fiebinger Polak Leon Attorneys-at-Law*	1
Belgium	Koen Van den Broeck & Thales Mertens, *Allen & Overy LLP*	9
British Virgin Islands	Scott Cruickshank & David Harby, *Lennox Paton*	14
Bulgaria	Assen Georgiev, *CMS Cameron McKenna LLP – Bulgaria Branch*	25
Canada	Caroline Abela, Krista Chaytor & Marie-Andrée Vermette, *WeirFoulds LLP*	35
Cayman Islands	Ian Huskisson, Anna Peccarino & Charmaine Richter, *Travers Thorp Alberga*	44
Cyprus	Anastasios A. Antoniou & Louiza Petrou, *Anastasios Antoniou LLC*	51
England & Wales	Michael Madden & Justin McClelland, *Winston & Strawn London*	59
Estonia	Pirkka-Marja Põldvere & Marko Pikani, *Aivar Pilv Law Office*	75
Finland	Markus Kokko & Niki J. Welling, *Attorneys at Law Borenius Ltd*	86
France	Philippe Cavalieros, *Winston & Strawn LLP, Paris*	92
Germany	Dr. Stefan Rützel & Dr. Andrea Leufgen, *Gleiss Lutz*	99
Guernsey	Christian Hay & Michael Adkins, *Collas Crill*	107
India	Siddharth Thacker, *Mulla & Mulla & Craigie Blunt & Caroe*	114
Indonesia	Alexandra Gerungan, Lia Alizia & Christian F. Sinatra, *Makarim & Taira S.*	123
Ireland	Seán Barton & Heather Mahon, *McCann FitzGerald*	131
Isle of Man	Charles Coleman & Chris Webb, *Gough Law*	142
Italy	Ferdinando Emanuele & Milo Molfa, *Cleary Gottlieb Steen & Hamilton LLP*	149
Jersey	Kathryn Purkis & Dan Boxall, *Collas Crill*	158
Korea	Kap-you (Kevin) Kim, John P. Bang & David MacArthur, *Bae, Kim & Lee LLC*	167
Malaysia	Claudia Cheah Pek Yee & Leong Wai Hong, *Skrine*	176
Mexico	Miguel Angel Hernandez-Romo Valencia & Miguel Angel Hernandez-Romo, *Bufete Hernández Romo*	186
Nigeria	Matthias Dawodu, Olaoye Olalere & Debo Ogunmuyiwa, *S. P. A. Ajibade & Co*	192
Pakistan	Ashtar Ausaf Ali, Zoya Chaudary & Nida Aftab, *Ashtar Ali & Co.*	203
Portugal	Nuno Lousa & Manuel Castelo Branco, *Linklaters LLP*	214
Slovenia	Matej Perpar & Sana Koudila, *Kirm Perpar Law Firm*	222
Spain	Álvaro López de Argumedo & Juliana de Ureña, *Uría Menéndez*	229
Switzerland	Balz Gross, Claudio Bazzani & Julian Schwaller, *Homburger*	237
Turkey	Gönenç Gürkaynak & Ayşın Obruk, *ELIG, Attorneys at Law*	247
Ukraine	Andrey Astapov, Oleh Beketov & Oleksiy Zorin, *AstapovLawyers International Law Group*	255
USA	Stephen R. Smerek, Bruce R. Braun & Andrew S. Jick, *Winston & Strawn LLP*	266
Uruguay	Carlos Brandes & Federico Florin, *Guyer & Regules*	275
Venezuela	Jesus Escudero E. & Raúl J. Reyes Revilla, *Torres, Plaz & Araujo*	283

Slovenia

Matej Perpar & Sana Koudila
Kirm Perpar Law Firm

Efficiency/integrity

With regard to the efficiency of Slovenian courts in civil proceedings, it can be concluded that their efficiency has improved significantly in the past couple of years, and that courts are in most cases providing final decisions in reasonable time. Understandably, some cases can still take several years to reach a final decision, as the duration of the proceeding does not depend solely on the actions of the court, but also on the actions of the parties, the complexity of the case and other circumstances which are outside the power of the courts to influence.

Currently the situation is sustainable, but further efforts will have to be invested into optimising and speeding up court proceedings before we can conclude that the situation is satisfactory overall, and that the court system provides efficient and prompt legal protection. For a more practical insight into Slovenian court practice, it is worth taking a look at statistics on the duration of court proceedings. Current official statistics of Slovenian courts reveal that the average expected time of resolving a case on a first instance is 12 months in civil matters and 10.8 months in commercial disputes, while on the second instance (appellate courts), the average expected time of resolving the case is 3.2 months in civil matters and 5.4 months in commercial disputes. Judging by these statistical facts, there is still plenty of room for improvement.

When discussing predictability of decisions in view of established judicial practice, we can also report significant progress. Appellate courts, and the Supreme Court of the Republic of Slovenia, are putting efforts into building a framework of judicial practice to ensure predictability for all addressees of judicial decisions. It can be concluded that, in the field of civil law, judicial practice is more or less stabilised regarding the majority of relevant legal issues. More difficulties regarding predictability of court decisions can, however, be found in the field of commercial law, especially insolvency law, where the main reason for the situation is frequent amendment of legislation. Thus, the courts do not have the opportunity to stabilise judicial practice. When searching for a solution to a certain legal question for which there is no existing reference court practice, courts often look for inspiration in, or look up to the court practice of, the highest German and Austrian courts, as the Slovenian legal system is deemed to be, especially in the field of civil and commercial law, similar to German and Austrian.

Enforcement of judgments/awards

Enforcement of domestic judgments

The party that has succeeded in a lawsuit (fully or partially) may request enforcement of the judgment in an enforcement proceeding. The court allows the execution based on an enforceable judgment. A judgment is enforceable if it has become final, and if the time limit for the voluntary fulfilment of the debtor's obligation has elapsed.

The party proposing the enforcement files a proposal for execution by the competent court. The proposal has to contain the following information: the identification data of the creditor and the debtor; the enforceable judgment; the debtor's obligation; the means or the object of the enforcement; and other information required by the subject of enforcement. The judgment can be enforced through

a variety of means, e.g.: through the sale of movable or immovable property; transfer of monetary claims; the realisation of other property or material rights and dematerialised securities; the selling of a business share in the company; freezing of bank accounts etc.

The debtor may appeal against the enforcement decision within eight days of the decision being served to him. Relevant grounds for an appeal are limited. The ground rule is that the objection may be made on the grounds that prevent enforcement, while the law also lists some of the main reasons for an appeal.

In cases specified by law, the debtor may propose to the court that it fully or partially suspends the enforcement. In addition to formal reasons that have to be demonstrated to the court, the debtor must also demonstrate as probable that the immediate enforcement would cause an irreparable harm, or a harm that would be difficult to repair, and that this harm is greater than the harm caused to the creditor due to the suspension of the enforcement.

Costs of enforcement are initially borne by the creditor, who has to deposit a certain amount of money in advance, out of which costs of enforcement will be covered. These costs can then be recovered from the debtor. If the creditor does not pay in advance for the costs of enforcement actions within the time period set by the court, the court stops the enforcement.

Enforcement of foreign judgments

The proceedings of enforcement of foreign judgments depend on whether the foreign judgment is issued by an EU Member State or by a non-EU Member State.

The enforcement of a foreign judgment issued by an EU Member State will be performed in accordance with the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. In accordance with the provisions of this Regulation, a judgment given in a Member State and enforceable in that Member State shall be enforced in another Member State when, on the request of any interested party, it has been declared enforceable there.

For other foreign judgments issued in jurisdictions with which Slovenia did not conclude any treaty, enforcement shall be performed in accordance with the general rules that are determined in the Private International Law and Procedure Act. According to the provisions of this Act, foreign court decisions are equal to the decisions issued by the courts in Slovenia and have the same legal effect in Slovenia, only if they have been recognised by a Slovenian court. The person filing for enforcement has to supplement the request with the original foreign court decision or an authenticated copy thereof, a certificate, issued by a competent foreign court or other body, stating that the decision is legally binding under the law of the country in which it was issued, and a certificate of enforceability under the law of the country in which it was issued. The Act also contains provisions that determine the grounds, based on which the Slovenian courts may refuse the enforcement of the foreign judgment. *Inter alia*, these grounds are: the subject matter is within the exclusive jurisdiction of the court or other body of Slovenia; if the court or another body of Slovenia has issued on the same matter a legally binding decision; if some other foreign decision on the same matter has been enforced in Slovenia; if the effect of the enforcement would be contrary to the public order of Slovenia; or if mutuality does not exist.

Enforcement of foreign arbitral awards

Slovenia is a party to the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards (the Convention). Therefore, the provisions of the Convention shall apply to the enforcement of foreign arbitral awards. According to Article III of the Convention, each Contracting State shall enforce the arbitral awards in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the Convention. The party applying for enforcement shall, at the time of the application, supply: the duly authenticated original award or a duly certified copy thereof; and the original agreement referred to in Article II of the Convention or a duly certified copy thereof. The Convention also provides a list of reasons for which enforcement of the award may be refused (see Article V of the Convention).

Privilege and disclosure

The ground principles of the Slovenian Civil Procedural Law are the principle of disposition and the principle of discussion/disquisition.

In accordance with the principle of disposition in civil proceedings, the court decides on the scope of the appointed claim. This means that the court cannot adjudge something more or something other than the plaintiff requested in his claim.[1] A further fundamental element of the principle of disposition is the fact that the parties to the civil proceedings can freely dispose of their claims. Thus, they may waive their claim, recognise the opponent's claim, or they may settle. Nevertheless, the court must be careful that such disposition is not contrary to mandatory provisions or rules of morality. In the Slovenian Civil Procedural law there are also certain limitations regarding the principle of disposition in matrimonial disputes, and disputes arising from relationships between parents and children. The special nature of these proceedings (in particular the protection of children) requires the application of the principle of officiality.

Closely related to the principle of disposition is the principle of discussion/disquisition, under which the parties have to present all the facts and evidence on which they base their claims. This means that the court shall not take into account, or as a basis of its decision, anything that at least one of the parties did not claim.

Regarding disclosure, we should also mention the extraditable duty (the duty to hand over the material evidence to the procedural authorities) of the parties of the lawsuit. If, for example, one party refers to a document and maintains that the document is in the possession of the other party, the court demands of that party that it submit the document. The party must not decline the submission of a document if it has itself referred to it as a proof of its claims in the lawsuit, or if it is a document that has to be presented or shown by law, or if the document is by its substance common for both parties. In this respect, the Slovenian Civil Procedural Law has an interesting provision. If the party in possession of the document refuses to submit the document or, contrary to the belief of the court, denies that the document is in its possession, the fact the other party wanted to prove with the document is considered to be proven. The extraditable duty applies also to third parties. Third parties must submit a document if they have to submit or show it by law, or if it is by its substance common for the party of the lawsuit and the third party. The third party is entitled to reimbursement of expenses incurred in connection with the submission of documents. It should be noted that only a general reference to the fact that a document is in the possession of another person is not enough. The party requesting the submission of documents from the other party/third person has to concretise its proposal. Thus, it has to specify which facts are to be proven with the submitted documents, and the document also has to be well defined.

The court realises the evidence with an expert in case a determination or clarification of some facts via expertise is necessary, which the court does not possesses. The expert is selected by the court, which may give the parties the opportunity to make a declaration prior to the selection of the expert. The expert may submit his/her findings and opinion orally or in writing (the practice in Slovenia is that the opinion is mainly given in writing). It often happens that the parties to the litigation submit as evidence an expert opinion, which was acquired by them prior to litigation. If the opposing party constantly gives reasoned arguments against such an opinion, the position in the legal literature and the case law of Slovenia is that the expert opinion does not have any direct probative value, and it is not possible to base a decision on it. Such an opinion can only be considered to be part of the party's statements. From the perspective of the process, the expert at the party's request is not an expert who works as the judge's assistant, but as an assistant of the party itself. He works at the party's instruction and in its favour. The provisions of the Slovenian Civil Procedure Act on demonstration of evidence with an expert provide for the impartiality of the expert and the contradiction of this evidence. Slovenian Civil Procedural Law in certain cases allows witnesses to decline their testimony (so-called privileged witnesses). Such witnesses are given the opportunity to decide for themselves whether to testify, or to recall themselves to the privilege provided for them by the law. The privilege belongs to: the party's attorney; a religious confessor about what a person confessed to him; and a lawyer, doctor or any other profession, if it is necessary to keep secret what is learned in the course of that profession.

With regard to the confidentiality of settlement negotiations, Slovenian Civil Procedural Law provides a legal framework for this. For example, it is determined that the settlement hearing at court is closed to the public, and that litigating parties are not allowed to submit to the court documents from the pre-trial stage, which include concrete settlement proposals that have been exchanged between parties in the negotiation process or during other pre-trial attempts to amicably resolve the dispute.

It is deemed that the closure of settlement hearings for the public contributes to faster and more successful resolution of disputes, as the parties are prepared to discuss legal and factual views of their case more freely and openly. For the same goal of reaching settlement, there are provisions that forbid the submission of documents in which parties have expressed their proposals for possible settlement at the pre-trial stage.

Costs and funding

Litigating costs are costs which occur during the process or due to the process. The costs include attorneys' fees, court costs (e.g. court fees and other costs incurred by the court), and costs of expert witnesses and other witnesses. The general principle is that the statutory fees depend on the amount of the principal claim. The higher the principal claim is, the higher the related court and attorney fees are. Court fees are governed by the statutory rules, while attorney fees are either governed by the statutory rules or set forth in written agreements between the attorney or law firm and the client. The attorney and the client may agree that the client will pay a higher reward, as governed by the statutory rules. They can also agree to the payment of lump sums, or to the payment based on an hourly rate according to the consumed time. Such fee agreements must be in writing to be considered valid and legally binding. In the case that the attorney represents the client *ex officio* or in the case of free legal aid, the attorney's fees are determined in accordance with the statutory rules. Any other arrangements are void.

The general rule is that the plaintiff has to pay the entire amount of the court fees, otherwise the court will not serve the claim upon the defendant and the proceedings will not begin. Another mandatory rule is that during the lawsuit each party has to cover its own costs that are caused by their actions in the proceeding. If any party suggests an execution of evidence, the court may call upon the party for advance payments to cover the necessary costs that will occur in this respect. The witnesses and the expert witnesses have the right to reimbursement of costs incurred as a result of their participation in the proceeding (e.g. travel expenses, cost of food and accommodation, reimbursement of lost earnings, expenses and fees of expert work). In its decision, the court can order that a certain amount of the costs have to be paid in advance. If advance payment has not been provided, the court can order the party to pay an appointed amount within eight days.

The main criterion for the payment of costs is the success of the parties in the lawsuit according to the decision in the principal claim. The party that did not succeed in the lawsuit has to reimburse the other party the expenses of the lawsuit. In case the party is only partially successful in the lawsuit, the court may, depending on the achieved success, decide that each party shall bear its own costs or, regarding all the circumstances of the lawsuit, order one party to reimburse the other party the relevant part of the costs. Irrespective of the outcome of the lawsuit, the party must reimburse the other party the costs caused by its fault or by accident, which occurred to it. However, a special rule in Slovenian law applies to the process of matrimonial disputes and disputes arising from relationships between parents and children. In these proceedings the court decides on the costs of the proceedings on the basis of discretion. Therefore, success of the parties in the lawsuit is not decisive.

The court may exempt a party from the payment of court fees if this payment would significantly reduce the means by which the party is living, or provides a living for its family members. Anyone who, according to their financial situation and the financial situation of their families, without prejudice to their social status and social status of their families, could not afford the costs of litigation, can apply for legal aid. Granting of legal aid is approved by the president of the District Court. However, the granted legal aid does not cover the cost of proceedings and actual costs and awards of the attorney of the counterparty. When granting legal aid, the court pays particular attention to the fact that the case is not evidently unreasonable, or that the applicant for legal aid has plausible prospects of success,

so that it is reasonable to start the proceeding or to take part in it, or to invest legal measures in the proceeding or respond to them. It is also important that the matter is relevant to the applicant's personal and socio-economic status, and that the expected outcome of the proceeding is vital for its life and the life of its family.

Interim relief

In the Slovenian Civil Law there may be found two types of interim relief: the preliminary injunction; and the interim (temporary) injunction.

On the basis of a preliminary injunction, only monetary claims can be protected. A preliminary injunction can be issued by the court on the basis of a decision of domestic courts or other authorities that is not yet enforceable. The creditor must prove a credible threat that otherwise the enforcement of the claim will be impossible, or at least substantially more difficult. The types of preliminary injunctions are enumerated by law, so that only the following measures are possible: seizure of movable property; seizure of monetary claims and of claims to hand over things or other material rights; freezing of bank accounts; registration of pledge on business share; and prenotation of a lien upon the debtor's immovable property, or his right in immovable property entered in the land register. If necessary, the creditor may propose that the court should order two or more preliminary injunctions.

The interim injunction is a time-limited insurance mean, the aim of which is to maintain the existing state or to create a new temporary state in order to avoid failure in the litigation in which the creditor asserts his claim, or the success of future enforcement, or to prevent serious harm and threatening violence.[2]

An interim injunction may be issued before any judicial procedure, during the procedure, as well as after the procedure, until the enforcement is carried out. Slovenian law distinguishes between two types of interim injunctions: interim injunction for insurance of monetary claims; and interim injunctions for insurance of non-monetary claims. These two types differ in the conditions that must be given for the issue of the order. For the interim injunction in monetary claims, it is necessary to demonstrate that the claim likely exists or that it will arise against the debtor. It also has to be demonstrated that a subjective threat to the execution of the enforcement is likely. In non-monetary claims, in addition to the existence of the claim, it is also necessary to demonstrate one of the following presumptions: an objective threat to the execution of the enforcement; the threat of use of force or the occurrence of a damage that is difficult to repair; or that the debtor (on the basis of the interim injunction) would not suffer more severe consequences than those that would be caused to the creditor without issuing the injunction, if during the process the injunction were proved to be unfounded.

Unlike preliminary injunctions, the court has the freedom to issue on the proposal of the creditor any kind of interim injunction. The law only lists a few possible types of interim injunctions, while the court may issue any order proposed by the creditor, with which the purpose of such insurance can be achieved.

There is a particular provision that allows the creditor to call in the proposal for an interim injunction, or thereafter that instead of an interim injunction, he is willing to accept that the debtor deposits an amount of money.

Although the basic act governing interim relief in Slovenia is the Enforcement and Securing of Civil Claims Act, a series of acts of Slovenian law contain special provisions for interim injunctions in certain specific areas. Special arrangements are known for the following civil proceedings: matrimonial matters and matters of relationships between parents and children; disputes regarding trespassing on private property; non-litigious proceedings; disputes over copyright infringement; and infringement of industrial property rights.

Interim injunctions can also be issued in arbitration proceedings. The arbitration panel can, unless the parties agree otherwise, based on the proposal of a party at any time before the issue of the final decision, admit against the opposite party a temporary measure which it considers necessary in relation to the subject of the dispute. Before that, the arbitration panel has to enable the declaration of such a proposal to the opposite party.

Mediation and ADR

In 2008, Slovenia passed the Act on Alternative Dispute Resolution in Judicial Matters. By this act, the parties were given the chance of another attempt to resolve their disputes, for which they have already started judicial litigation, before the court starts its proceedings and takes a decision on their motions. In practice, after the receipt of the lawsuit and defendant's response to the lawsuit, the court invites both litigating parties to start mediation proceedings in writing.

Mediation proceedings are voluntary, as they can take place only upon receiving written confirmation from both or all involved parties that they agree with the mediation taking place. If one of the parties disagrees with mediation, the proposed mediation cannot take place and the court continues handling the case in judicial proceedings. Mediation is organised by the courts and is run by mediators. Mediators have to fulfil required conditions, and must get listed as mediators on the lists kept by the courts.

Confidentiality is one of the most important preconditions for successful mediation. All communication in connection with the mediation proceeding is confidential. Only the mediator is introduced with all written and oral statements. Information deriving from the mediation proceeding is not accessible to other natural or legal persons, or to the general public. If the mediation process fails, the court ensures confidentiality of the whole mediation proceeding, also in relation to the judge who will deal with the matter in the court proceeding. The principle of confidentiality in the mediation proceeding allows the mediator to determine the actual interests of the parties, which ensures more favourable grounds for an optimal arrangement.

Mediation proceedings are fast and generally do not delay court proceedings. The suspension of court proceedings for attempting settlement with mediation can only take three months at most. If there is no amicable settlement within this period, the litigation continues.

* * *

Endnotes

1. *Ne eat iudex ultra et extra petita partium.*
2. Vesna Rijavec, Civilno izvršilno pravo, GV Založba, Ljubljana 2003, str. 260.

Matej Perpar
Tel: +386 31 340 962 / Email: matej.perpar@k-p.si

Matej Perpar is a partner and attorney at Kirm & Perpar. He practises corporate and commercial law, advertising law, intellectual property law, commercial criminal law and law of misdemeanour. Before joining Kirm & Perpar, he held the position of the head of the commercial law department in one of the larger law firms in Slovenia. Before starting his career as an attorney, he had worked as a higher judicial adviser at the Supreme State Prosecution Office of the Republic of Slovenia. He is a Member of the Slovenian Bar Association and German Chamber of Commerce in Slovenia.

Sana Koudila
Tel: +386 8 205 9221 / Email: sana.koudila@k-p.si

Sana Koudila graduated from the Faculty of Law in Maribor in 2010. Before joining Kirm & Perpar, she worked as a court trainee at the High Court in Ljubljana. She passed the State Bar Exam in January 2013. She practises civil and commercial law.

Kirm Perpar Law Firm

Poljanski nasip 6, 1000 Ljubljana, Slovenia
Tel: +386 8 205 9221 / Fax: +386 8 205 9220 / URL: http://www.k-p.si

Strategic partners:

www.globallegalinsights.com