

**– National Report: Slovenia –**  
**Questionnaire No 1: Collection of Statistical Data**

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**1.****Evaluation of the number of decisions concerning Regulation 44/01/EC proportional to decisions in civil and commercial matters all in all<sup>1</sup>****NUMBER OF DECISIONS IN CIVIL AND COMMERCIAL MATTERS**

Exact statistics is available for 2004. In 2004 there were 37.952 decisions in the areas which roughly correspond to the definition of civil and commercial matters (source: the official judicial statistics [Republika Slovenija, Ministrstvo za pravosodje, 2004 Sodna statistika, Ljubljana 2005, pages 54 - 56]).

This number (37.952) is actually only an approximation since the delineation of different kinds of matters in the official statistics does not correspond completely with the Article 1 of the Regulation. The approximation may be considered as relatively good. The caseload in 2004 amounted to 37.952 cases.

There is no official statistics for year 2005 available at the moment. It may be however assumed that the statistics for 2005 will not differ significantly from those for 2004.

The figures for 2003 are available but they are irrelevant. Slovenia was in 2003 neither Member State of the Convention of 1968 nor Member State of the EU.

**NUMBER OF DECISIONS CONCERNING REGULATION 44/2001**

There is no official statistics concerning Regulation 44/01. The decisions in which the Regulation is applied do not have any distinctive feature (e.g.: specific number). An evaluation of the number of decisions concerning Regulation 44/2001 is impossible at present.

An approximation may be rendered only for the recognition of judgments and declaration of enforceability (see questionnaire no. 3, preliminary note to question 1.1.) There were probably 20 to 40 cases between 1<sup>st</sup> May 2004 and 1<sup>st</sup> May 2006 but it is more likely that the number is closer to 20. See also preliminary note to question 2.1 in the questionnaire no. 2.

For further explanations see also answer to the question 2 in this questionnaire and questionnaire no. 3, preliminary note to question 1.1.

**2.****Evaluation of the approximate number of judgments where the courts and tribunals of the Member States concerned retained jurisdiction on the basis of the rules of Regulation 44/2001/EC in 2003/2004 and evaluation of the provisions mostly relied on for that purpose<sup>2</sup>**

Since Slovenia was in 2003/2004 neither Member State of the Convention of 1968 nor Member State of the EU, the answer is that no such judgments exist.

Since Slovenia is a Member State since 1<sup>st</sup> May 2004 it would make sense to collect information on the number of judgments in 2004/2005 or in 2005. This proved to be impossible. There are two reasons. The first is, that no such statistics exist (see answer to

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<sup>1</sup> Due to the short period of application it can be expected that there are only very few decisions concerning the recognition of judgments. Therefore the evaluation shall be expanded, regarding recognition, on decisions concerning the Judgments related to the Convention of 1968 in 2003/2004.

<sup>2</sup> All legal proceedings where the defendant is domiciled in a Member State as well as actions according to Article 22 and 23 Regulation 44/01/EC. It is aimed to evaluate the data of the year 2004 – insofar this data is statistically recorded in the Member States. It has to be admitted that the different methods of organisation and documentation within the EU Member States constitute an element of uncertainty. A separate evaluation of court records is – due to the given time and budget frame –, not possible. The evaluation of data will be carried out at the judicial authorities of the Member States by means of the European Judicial Network (EJN). Supplementary, national reporters should selectively address courts and public authorities, which are according to the reporters' knowledge concerned with the application of the Regulation. If all proceedings concerning declarations of enforceability were concentrated in one senate and had special reference numbers it would be quite easy to determine the number of proceedings by means of the last reference number which has been passed out in the respective year.

question 1). The second one is that the Slovene courts have an enormous backlog. The official statistics reveal this backlog (source: the official judicial statistics [Republika Slovenija, Ministrstvo za pravosodje, 2004 Sodna statistika, Ljubljana 2005], pages 54 - 56). The plaintiff has to wait at least 1,5 year in average (but rather longer) until the decision is taken before the court of first instance. For details see also questionnaire no. 3, preliminary note to question 1.1.

The decisions in which Regulation 44/2001 was applied and which will be available in the databases cannot be expected before mid-2007. Even then there won't be many available in any database until the Supreme Court starts rulling on these cases. This will probably not happen before mid-2008.

The only exception are the decisions concerning recognition and declaration of enforceability since they are subject to a more expeditious proceedings.

### 3.

#### **Evaluation of the approximate number of applications for a declaration of enforceability on the basis of Regulation 44/2001/EC in 2003/2004**

There were none until 1<sup>st</sup> May 2004.

There is neither an official statistics referring to declaration of enforceability of foreign decisions nor a statistics limited to Regulation 44/2001. It does not seem possible even for the period of time after 1<sup>st</sup> May 2004 to find a way of how to approximate the number of applications, declarations, revocations etc. since they have no distinctive feature (like a specific number or similar). But the most important fact is that many cases have not been decided yet neither by the courts of first instance nor by the courts of appeal even if they were applications have been submitted after 1<sup>st</sup> May 2004. For further explanations see also questionnaire no. 3, preliminary note to question 1.1..

### 4.

#### **Evaluation of the approximate number of declarations of enforceability granted on the basis of Regulation 44/2001/EC in 2003/2004**

None until 1<sup>st</sup> May 2004. For further explanations see answer to question 3.

### 5.

#### **Evaluation of the approximate number of declarations of enforceability which have been refused already in the first instance in 2003/2004, including the principal grounds for refusal; further evaluation of the number or proportion of cases, where a subsequent improvement of the application has been asked for**

None until 1st May 2004. For further explanations see answer to question 3.

### 6.

#### **Evaluation of the approximate number of revocations of decisions containing a declaration of enforceability after an appeal in 2003/2004, including the principal grounds for revocation**

None until 1st May 2004. For further explanations see answer to question 3.

### 7.

#### **Evaluation of the average amount of time required/accrued for obtaining a decision containing a declaration of enforceability**

It is impossible to evaluate this time.

In very similar proceedings (recognition of decisions) it may take from several weeks to several month to obtain the decision of the court of first instance. About the same amount of time is probably required to obtain a decision containing a declaration of enforceability.

**8.**

**Compilation of a list of the provisions of Regulation 44/2001/EC that are most frequently applied by the courts and tribunals in the Member States concerned**

Since only information referring to the recognition of judgments could be obtained, the list of the provisions is limited to them:

Art. 76, 33, 34.

**– National Report: Slovenia –****Questionnaire No 2: Collection of Empirical Data**

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## 2.1

### **Are there conditions of recognition and enforcement of judgments, authentic instruments and court settlements which are beyond those permitted under Regulation 44/01/EC?**

Preliminary note.

The recognition and declaration of enforceability fall within the jurisdiction of regional courts in Slovenia. There are 11 regional courts. All were asked to answer the questionnaire. 1 court did not send an answer and two courts informed the national reporter that they haven't applied the Regulation 44/2001 yet. However the most important 8 courts whose caseload exceeds 85 % of the caseload of the Slovene regional courts sent the answers.

It proved much more difficult to become any answers from the solicitors. The national reporter could find some names of solicitors from the dossiers or on the basis of personal contacts but not many (some 7 in all). This is however no surprise since there are no international law firms in Slovenia and the solicitors tend to work on almost everything they are offered. Not all of the solicitors were available for the interview. Some of the solicitors promised the answers but eventually only two of the solicitors sent them.

The courts were asked to send as many answers from different judges or court clerks as possible but they refused to do so. There was one exception which sent 2 questionnaires which were almost similar. This did not effect a markable impact neither on the number of cases nor on the outcome of this research. The reason for this behaviour was that normally only one person in the court has any experience with the Regulation. So there was no sense (from the point of view of the courts) to sent more than one answer.

The discussions and the answers to the questionnaire alike revealed that the Slovene courts and attorneys do not have much experience with the application of the Regulation 44/2001. This allegation could be frequently heard in the discussions with the judges and solicitors alike.

Some additional questions (which were not comprised in any of the questionnaires) were raised by the national reporter. The most important questions were two.

1. How many cases have you encountered in which chapter II of the Regulation was applied?
- 2 How many cases of recognition or declaration have you already adjudicated?

None of the respondents could report that he has already applied chapter II of the Regulation. The answers to the second question were different but it was quite obvious that the number of the matters referring to recognition or declaration of enforceability was below 40 and probably close to 20 in Slovenia in the period between 1<sup>st</sup> May 2004 and 1<sup>st</sup> May 2006. This explains amongst other things why the answers to the questions raised in the questionnaire (and in the interviews) were frequently not answered at all or the respondent answered that he didn't know.

10 persons filled in the questionnaire. 8 respondents were judges or court clerks, 2 respondents were solicitors.

#### ANSWER TO THE QUESTION

The majority of respondents (7 out of 10) answered that there are no conditions of recognition which are beyond those permitted under Regulation 44/01/EC.

2 respondents believed that there were additional conditions.

1 respondent did not know.

## 2.2

### **Are there local focal points, i. e. do cross border litigations accumulate in border regions?**

3 respondents thought there are no local focal points.

6 respondents did not know.

1 respondent did not answer the question.

Comment: the question does not have much sense in Slovenia since Slovenia is so small that there are no specific border regions (or conversely, all regions may be easily considered as border regions).

Since I asked for some detailed information on how many decisions have already been recognized in the court where the respondent works I have some additional material for a correct answer to this question. No local focal points seem to exist in my opinion.

### 2.3

#### **From which State of origin do titles that shall be recognized or executed in your State come from?**

The answers were: from

Germany (5 answers)

Austria (5 answers)

Italy (2 answers)

France (1 answer).

1 respondent didn't answer the question at all.

Comment: the answers are very much in accord with expectations. The number of titles recognized or executed is however at present too small for any in-depth analysis.

### 2.4

#### **Can the handling of the standard form concerning Article 54 be regarded as satisfactory or do similar problems arise as regarding the standard forms concerning Regulation 1348/2000/EC? (See the respective parts of the Mainstrat-study (p. 93–98), which are attached to the questionnaire. Explanation: group 1 = members of state administration, group 2 = judges and attorneys, group 3 = *hussiers de justice* and other persons providing the service of documents.).**

Since there were only 10 respondents it does not make much sense to split the answers into two separate groups.

5 respondents (4 court clerks or judges and 1 attorney) did not encounter any problems (50 %).

2 respondents (20 %, both court clerks or judges) replied that the standard form has not been submitted yet.

2 respondents reported problems: 1 respondent (10 %, attorney by profession) answered that the standard forms do not correspond with the standard form provided by the Regulation. The other respondent (clerk of the court) answered that the date is not filled in.

1 did not answer the question. He is clerk of the court by profession.

The results are therefore:

1. no problems at all: 50 %

2. date is not filled in: 10 %

3. other problems: 10 %

4. others (no answer to the question, the form has not been submitted yet): 30 %.

### 2.5

#### **Do courts make use of the possibility provided for in Article 55 to dispense with the certificate's production?**

4 respondents answered that the courts demand the certificate's production.

2 respondents answered that the courts make use of the possibility to dispense with the certificate's production.

4 didn't know.

## 2.6

### **Do any language problems arise regarding recognition and enforcement – especially regarding the handling of the standard form concerning Article 54?**

7 respondents encountered no language problems.

3 respondents could not answer the question.

## 2.7

### **Is the production of translations required (Article 55 (2) Regulation 44/01/EC)?**

3 respondents reported that the translations are required.

3 respondents reported that the translations are not required.

3 respondents did not know (since the translation was submitted without any request).

1 respondent did not answer the question.

### 2.7.1

#### **If yes, will the translation of the operative provisions suffice or is it necessary to translate the whole judgment including the grounds for the decision?**

Translation of the whole judgment is necessary: 3 answers.

Only operative provisions shall be translated: 2 answers.

Don't know: 3 answers.

Our court does not demand a translation: 1 answer.

No answer at all: 1 respondent.

### 2.7.2

#### **Do the costs for translations lead to less efficiency?**

They don't lead to less efficiency - 7 answers

They lead to less efficiency - 0 answers

2 respondents did not know

1 respondent didn't answer the question.

## 2.8

### **Which costs result from the recognition of judgments, authentic instruments and court settlements?**

The responses were: costs for attorney at law (solicitor's charges), court charges and costs for translation. 2 respondents did not answer.

Commenatary: the court fees are fixed by the Law on Court Charges and the solicitor's charges are regulated by the Solicitors' Tariff. The costs for translation are not fixed at all if the translation is rendered by a foreigner. But if the translator is a Slovenian than they differ minimaly. This question therefore did not have much sense for the respondents since they were all aware of these facts. This is probably the reason why the answers were very general.

#### **In particular:**

### 2.8.1

#### **How is Article 52 implemented?**

4 persons answered that the court charges are not calculated by reference to the value of the matter at issue.

3 persons did not answer

2 persons answered that this provision has not been applied yet

## 2.8.2

### **How are solicitor's charges calculated?**

The answers differ to a great deal.:

4 respondents did not know.

4 respondents referred to the Solicitors' Tariff without any specification

1 respondent answered that they are they correspond with the provisions concerning the recognition of judgments

1 respondent answered that the charges are not calculated by reference to the value of the matter at issue if the value cannot be assessed. But if the value can be assessed the charges may be calculated by reference to the value in his opinion. The respondent quoted tariff number 27 (4) of the Solicitors' Tariff.

## 2.8.3

### **Are these costs reimbursable?**

Yes, they are reimbursable: 6 answers.

No, they are not reimbursable: 1 answer.

Don't know: 1 answer.

Other answers: 2 answers.

#### **In particular:**

### 2.8.3.1

#### **Who calculates and verifies the amount of the reimbursable costs, which have been asserted?**

The court or the judge: 7 respondents.

No answer: 2 respondents.

No experience at reimbursement: 1 respondent.

### 2.8.3.2

#### **Is it possible to execute the reimbursable costs without bureaucratic formalities?**

Yes, it is possible: 3 respondents.

No, it is not possible: 0 respondents.

No answer: 6 respondents.

I do not understand the question: 1 respondent.

Comment: The respondents probably didn't understand the question at all.

### 2.8.3.3

#### **Are there any delays in time due to the fact that the costs have to be calculated or due to the fact that the calculation has to be verified?**

No delays: 7 respondents.

Yes, delays occur: 0 respondents.

No answer at all: 2 respondents.

Don't know: 1 respondent.

**2.9**

**Does the requirement to serve the party against whom enforcement is sought with the declaration of enforceability, which is provided for in Article 42 – or the practice of judicial authorities regarding the dispatch of communications in general – impair the efficiency of enforcement – in particular its surprise effect? Does this virtually obstruct the possibilities of Article 47?<sup>1</sup>**

Yes, it impairs the efficiency of enforcement - 2 respondents.

No, it does not: 0 respondents.

Don't know: 7 respondents.

Others: 2 respondents (both answered that the service in accordance with the Regulation does not deviate from the Slovene law).

None of the respondents described the chronology of all steps that are carried out by the creditor and the court.

**2.10**

**Is there any experience with the granting of legal aid according to Article 50 of the Regulation?**

10 out of 10 respondents answered that there is no experience with the granting of legal aid.

**2.11**

**Is there any experience with the declaration of enforceability of authentic instruments (Article 57), court settlements (Article 58) and appealable judgments (Article 37)? (See also Questionnaire No. 3, part 4.).**

10 out of 10 respondents answered that there are no experience so far.

**2.12**

**Do problems arise regarding the references to national procedural laws that are included in Annex I to IV of the Regulation?**

There are no problems: 6 answers.

Yes, problems arise: 0 answers.

I don't know: 4 answers.

**2.13**

**Do problems arise regarding the application of the standard forms (certificates) that are included in Annex V and VI of the Regulation?**

No problems arise regarding the application of the standard forms: 5 answers.

Yes, we have problems: 0 answers.

We haven't used the forms yet: 3 answers.

I don't know: 1 answer.

No answer: 1 respondent.

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<sup>1</sup> Please describe in detail the chronology of all steps that are carried out by the creditor and the court (including its administrative staff). For instance, in Germany the same court clerk is competent to serve the debtor and to notify the creditor. As a consequence of that, the creditor is not informed before the debtor, so that the surprise effect of the first enforcement measure fails. If in your country the court is competent for service: Do similar problems occur? In case your State follows the system according to which the debtor is served by order of the creditor: Does this guarantee the surprise effect?

**2.14**

**Do judges have easy access to a version of the printed form concerning Article 54 of the Regulation (Annex V) in their own language, so that a translation of the completed form is dispensable?**

Yes, the judges have an easy access: 8 responses.

No, the judges don't have an easy access: 0 responses.

Don't know: 2 responses.

**2.15**

**Are there any possibilities to improve the implementation of the Regulation within the EU? How could guidelines for an improved coordination and cooperation (at a judicial and administrative level) look like?**

The majority did not give any proposals at all. Some of them argued that this is due to lack of experience.

The proposals of the minority either did not refer to the Regulation or were not specified.

**2.16**

**How much time does it take usually until the first enforcement measure (at least seizure of assets) is carried out – i. e. not only until the judgment – after an application for a declaration of enforceability has been submitted? How much time does it take usually after a judgment has been given in a Member State to collect all documents which are necessary to pursue the application for a declaration of enforceability in another Member State?**

No answer to the questions: 2 respondents. 5 respondents do not know how much time would it take until the first enforcement measure is carried out.

The answers to the time required to collect all documents different answers were given: 3 days, 8 days, 14 days, 2 months.

Comment: it was obvious that the respondents were reluctant to give any assessment of the required time to carry out the first enforcement measure.

**2.17**

**Is there any experience with actions raising a substantive objection to the judgment claim?<sup>2</sup>**

9 respondents answered that they have no experience.

1 respondent didn't answer the question.

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<sup>2</sup> Example: The debtor claims that he has performed in the meantime or has set off his claim against the creditor's claim or has made a compromise including the arrangement to pay by instalments. This is possible according to an explicit provision in the German implementing statute (§ 12). Does a similar rule exist in your legal system? If yes, did this lead to delays in granting declarations of enforceability?

**– National Report: Slovenia –****Questionnaire No. 3: Legal Problem Analysis**

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## 1. General Themes

### 1.1

#### **Are there any problems in the judicial practice with the autonomous interpretation of „civil and commercial matters“ (Article 1 (1)) practised by the European Court of Justice (ECJ)?**

##### PRELIMINARY NOTE

The Regulation covers roughly three areas:

- a) the jurisdiction,
- b) the recognition and
- c) the enforcement.

Before the answers in this questionnaire will be given to the the questions some factual information about Slovenia shall be provided.

##### JURISDICTION

There is no indication that the Regulation has already been used for ascertaining the jurisdiction. The Regulation is applicable in Slovenia only since 1st May 2004. Neither Slovenia nor its predecessor (Yugoslavia) were member states of the Brussels Convention of 1968. The Slovene courts do not have any experience neither with the Brussels Convention of 1968 nor with the Regulation 44/2001 from the time prior to the Slovene accession to the EU. Regulation 44/2001 has probably already been applied by the courts of first instance but there are no judgments of the Higher Courts or of the decisions of the Supreme Court of the Republic Slovenia as to the jurisdiction. The majority of the cases must be pending at the moment. For details see also questionnaire no. 1 question 2.

There are no possibilities to detect the judges of the courts of first instance and their judgments who have already used it. So always when this questionnaire would like to know something which refers to practical experience with the jurisdiction matters the most appropriate answer would be that there are no practical experience at all.

##### RECOGNITION AND DECLARATION OF ENFORCEMENT

The situation concerning recognition and declaration of enforcement is different. The procedure is - by Slovene standards - relatively expeditious. Some foreign judgements have already been recognized or declared enforceable under the provisions of Regulation but neither a single authentic instrument nor a single court settlement. The number of the decisions of the Supreme Court of Slovenia in its database ([www.sodnapraks.si](http://www.sodnapraks.si) or in a very similar lus-Info Database) referring to recognition is relatively small (4 in all; all of them deal with recognition) but there are at least some decisions available. The Supreme Court is the court of appeal in these cases. But how many decisions have already been taken in the courts of first instance?

Since the matters which deal with recognition and declaration of enforceability are not counted separately only approximations are possible. The most valuable were the data from the regional courts of Ljubljana and Maribor for their caseload amounts to approximately 40 % of the total Slovene caseload. I studied particularly carefully the structure of cases in the regional court in Ljubljana (about 30 % of the total caseload of the Slovene courts). I also asked the regional courts to provide information on how many cases of recognition or declaration of enforceability they have already adjudicated upon since 1<sup>st</sup> May 2004. Although the collection of data was far from perfect an estimation could be made. My estimation is that the number of the applications for recognition in the period between 1<sup>st</sup> May 2004 and 1<sup>st</sup> April 2006 in Slovenia did not exceed 40 but it was very likely closer to 20. This is a major surprise because the number is very low.

The experience of me as the national reporter asking judges and solicitors to fill in the questionnaire No. 2 was somewhat disillusioning. There are only 11 regional courts which have jurisdiction for recognition of judgments or declaration of enforceability. The vast majority of the courts asked to fill in the questionnaire did that but refused to fill in more than one questionnaire. The reason for this attitude was very simple. There is normally only one person in any of these courts (Ljubljana not excluded) who prepares and reports the cases. This person is the only one who felt competent to give any information.

There are only very few lawyers who have already actually worked with the Regulation 44/2001 so that not so many interviews could be made as wished and initially planned. There are no big international law offices in Slovenia at present. The country is too small to be attractive to them. Only a minority of lawyers that I detected that they had already worked with the Regulation 44/2001 did ultimately send an answer. The discussions with the lawyers (attorneys) revealed that they do not know much about the Regulation 44/2001 either since they do not use it frequently or do not understand it correctly. It is at present far more likely that a Sloven lawyer will have to use the Slovene law on recognition of judgments than the Regulation 44/2001. So there is no real incentive to get to know it.

Even in the area of recognition and declaration of enforceability are the findings therefore rather poor. For some further data see also preliminary note to question 2.1 in the questionnaire no. 2.

## CONCLUSIONS

Many questions in the questionnaires cannot be answered at the moment. It will certainly take some years to have some practical experience, particularly in the area of jurisdiction. Even then it is very likely that the cases will deal with the most basic problems rather with the complex issues.

## ANSWER TO THE QUESTION

Since there is no judicial practice as to these question, the question cannot be responded.

The expression "commercial matters" is however quite confusing for the Slovene lawyers since it is not familiar to them. The Slovene lawyers generally use the term "business law" for the matters which are related to business and economy instead.

The business law includes the commercial law but it is also includes much of the administrative law related to entrepreneurship.

### 1.2

#### **Do public authorities use the Regulation to assert claims against private persons?**

There is no indication that they try to assert claims against private persons. See also the preliminary note in 1.1.

### 1.3

#### **How is the delineation of the scope of application of the Regulation and other instruments concerning the judicial cooperation in civil matters?**

There is no practical experience in Slovenia.

#### **In particular:**

#### **1.3.1**

#### **the delineation to Regulation 2201/03/EC (concerning Article 1 (2) lit. a) Regulation 44/01/EC)? Are there any problems with the assertion of claims concerning maintenance/living costs?**

There is no practical experience as to the delineation.

In my personal opinion the application of both regulations (in the area of delineation) could be made easier by a simple amendment of a text which would determine what does not fall within the jurisdiction of the regulation (just to make application easier, not to change the rules) and by a reference in a Regulation 44/2001 to the Regulation 2201/03 and vice versa.

### 1.3.2

**the delineation to Regulation 1348/2000/EC (concerning Article 1 (2) lit. b)), particularly: How does the judicial practice treat the delineation of collective and single actions? Are there any problems with the delineation of actions concerning cases of insolvency and those that do not?<sup>1</sup>**

There is no judicial practice at present. No problems have been reported yet.

### 1.4

**Is the application of Article 4 of Regulation 1438/71/EC practical for the determination of Article 1 (2) lit. c)?**

It seems to be practical and it therefore might be of some importance since it makes the application of Article 1 (2) lit. c) easier. There is however no judicial practice at present.

### 1.5

**Should the scope of application be extended, especially to incorporate arbitration and mediation proceedings?**

I think that this would be very reasonable. It is not common to solve problems in Slovenia by arbitration. There are probably not many requests for the recognition of arbitration awards from abroad in Slovenia. Both does not diminish the importance of arbitration because it may be much more effective than judicial procedures.

The mediation seems to gain ground in Slovenia. It is however a moot point whether it will be of any real importance in the near future. For the mediation, just like the arbitration, can be very effective, I think that scope of the application of Regulation 44/2001 should be extended to arbitration and mediation.

### 1.6

**How do the guarantees for the rights of defence provided by the Regulation work concerning jurisdiction on the one hand and recognition and enforcement on the other hand?**

As we do not have any Slovene practice referring to the jurisdiction and enforcement nothing really relevant can be said about these two areas.

I believe however that the guarantees for the rights of defence may work quite well. The rules of the Regulation 44/2001 are roughly the same as in the Slovene Private International Law and Procedure so that they are not completely unfamiliar to the Slovene lawyers. They seem to be well balanced and better drafted than the Slovene provisions, at least in details. Article 24 of the Regulation 44/2001 seems to be one of the Articles for which this may be claimed: it is better drafted than its Slovene counterpart (Article 53 of the Slovene International Private and Procedure Act).

Unfortunately the case law referring to the recognition of judgments is still very scarce. The major problem was until now (roughly) if the Regulation 44/2001 is applicable at all and

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<sup>1</sup> In some legal systems the avoidance in insolvency proceedings has to be asserted before another court than the court of origin. Before Regulation 44/01/EC and Regulation 1346/2000/EC came into force, the proceeding was treated as one ruled by insolvency law, whose jurisdiction was ascertained by national law. Today it is said that the rules of Regulation 44/01/EC and Regulation 1346/2000/EC concerning the jurisdiction interlock. On the other hand Regulation 1346/2000/EC gives jurisdiction to a court only in the case of opening the insolvency proceedings, not in other cases concerning the law of insolvency. Does this lead to the conclusion that the avoidance of insolvency proceedings is ruled by Regulation 44/01/EC? The same problem arises with actions concerning the liability of a liquidator. Do such problems arise in your country?

which rules of the Slovene law are therefore out of use. No major problems seem to have occurred.

### 1.7

**Are the rules of Articles 32–58 of Regulation 44/01/EC compatible with national procedural rules? What is still left to be ruled by the Member States? Do special rules exist or do the general rules have to be used?<sup>2</sup>**

It is probably the best if the last question is answered first.

There are no special (specific) national rules referring to Regulation 44/2001. The general rules are therefore applicable. The Slovene "Private International Law and Procedure Act" refers in Art. 111 to analogous application of the rules of the Non-contentious Procedure Act which refers to analogous application of the rules of the Civil Procedure Act. Since the majority of the rules of the Private International Law and Procedure Act on recognition are not applicable the main source of the rules of the Slovene law are those laid down by the Civil Procedure Act, the Law on Court fees and by the Solicitor's Tariff.

The representation of the parties (Article 86 and 87 of the Civil Procedure Act are only the most important), details concerning the application (Art. 105 to 108 of the Civil Procedure Act), and the judicial decision (Articles 330 to 332, 324 of the Civil Procedure Act) and many procedural but rather "technical" rules (like those referring to the terms) are still applicable.

The party is not obliged to appoint a representative. The only exception is the proceeding of the extraordinary judicial review (mainly revision) which is in the jurisdiction of the Supreme Court (Article 86 (3) of the Civil Procedure Act). But this rule is not applicable when party applies for recognition of judgment or declaration of enforceability.

In the procedure with the regional court (a court of first instance in the procedure of recognition or declaration of enforceability of a judgment) a representative may be only a person with a state examination (Art. 87 (3) of Civil Procedure Act. This examination corresponds with the German second state examination. Normally it is a solicitor.

In the procedure before the Supreme Court which acts as court of appeal (see Annex IV to the Regulation) the representative may be only a person with a state examination (Art. 87 (3) of Civil Procedure Act). Normally it is a solicitor.

The Slovene national rules (Articles 94 to 102 of the Private International Law and Procedure Act) are very similar to those laid down by the Regulation. This is why I think that Articles 32 to 58 are perfectly compatible with the general rules of the Slovene law.

### 1.8

**Is the meaning of these conventions in relation between the Member States reduced by the application of Regulation 44/01/EC?**

The question does not specify conventions it refers to. But if the question is if Regulation 44/2001 reduces the application of conventions in relation between the Member States with the same scope as the Regulation 44/2001, than the answer is yes since they are superseded (see Article 69 of the Regulation 44/2001).

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<sup>2</sup> Example: In Germany there is an obligation for the parties of being represented by a solicitor when taking action at the *Landgericht*. An exception is made for the order of enforcement of a foreign judgment by a rule of the national implementation law (§ 4 (2)).

## **2. Provisions of Regulation 44/01/EC dealing with Jurisdiction**

### **2.1**

#### **General Issues**

##### **2.1.1**

#### **Does the Regulation guarantee, according to its overall objectives, predictability of judicial decisions and legal certainty?**

The Regulation seems to comply with the requirements of the constitutional state. In comparison with the Slovene legislation it is more accurate.

##### **2.1.2**

#### **Do the provisions on jurisdiction deal satisfactorily with the relevant issues, in particular: Do the courts of the Member States comply with the obligation as laid down by the ECJ that exclusively deal with the issues identified by Article 5 constitute a ground of jurisdiction?**

The Regulation is, compared with the Slovene legislation (the Private International Law and Procedure Act), more accurate and better drafted. The Regulation and the Slovene law are basically similar. Since there was no complaint about Slovene law so far, I can conclude that it dealt satisfactorily with the relevant issues. The same must be assumed for the Regulation. It is however true that the Slovene legal system does not have to deal with very complex legal issues. The experience or opinion of the other countries with more complex economy might be very different from ours.

The Regulation is however still a complex act of legislation to be easily applicable. This is (in my opinion particularly) true when a national material law (which is out of the scope of Regulation) has to be applied in order to determine the jurisdiction.

There is no Slovene practical experience to draw any conclusions as to compliance of the Sloven courts to the obligations laid down by the Regulation.

##### **2.1.3**

#### **Is the catalogue of fact-specific grounds of jurisdiction sufficient?**

The catalogue resembles similar rules of the Slovenian legislation in the Private International Law and Procedure Act. I think it is sufficient.

##### **2.1.4**

#### **Does Article 4 (2) cause a discrimination in fact of third State parties?**

The third State parties are not protected by Article 3 which excludes national rules of jurisdiction and therefore the exorbitant jurisdictions too. The third State parties are subject to Article 4(2) which refers to the national law which may (but must not) include exorbitant jurisdictions.

It is quite clear that the third State parties and the persons domiciled in a Member State are not in equal position.

##### **2.1.5**

#### **How are Articles 25 and 26 applied in practice? In particular: How does the examination "ex officio" work? Does such examination include grounds of jurisdiction not mentioned in Article 25? Do the courts examine ex officio if there is a valid choice-of-forum clause derogating the jurisdiction seized with the matter by reviewing the entire document of the agreement or do they demand a declaration of plaintiff that there is no derogation?**

There are no practical experience as to the application of Articles 25 and 26 in Slovenia.

### 2.1.6

**Is the examination of the issue of jurisdiction expensive and time-consuming? Are the same fees for the court and the attorneys to be paid as under the main proceedings? How long does it usually take to obtain a final decision on jurisdiction? Are there any complaints that courts do not decide the issue of jurisdiction separately, but only in connection with the main proceedings? In reverse, are there complaints that a separate decision on jurisdiction results in an unbearable delay of the decision in the main proceedings?**

There is no specific practical experience in relation to Regulation 44/2001. The question can nevertheless be answered.

The examination of the issue of jurisdiction is nor expensive nor time-consuming. The examination must be rendered at the beginning of the proceedings (Article 17 (1) of the Civil Procedure Act). The plaintiff has to pay the court fee when he files in the lawsuit (Article 180 (1) Civil Procedure Act). There are no specific court fees or lawyers fees for examination of jurisdiction.

Since the examination must be rendered ex offa by the court at the beginning of the proceedings it does not take much time. It depends however on the backlog of the Slovene courts. It may take as much as - for instance - two years or just a couple of weeks. In a majority of cases it is unpredictable how long will it take.

The Slovene Civil Procedure Act (Article 315 (1)) does not state clearly if in a proceedings in which the jurisdiction is disputed an interim judgment may be issued. It is more likely that an interim judgment would not be admissible.

Apart from this it is unlikely that a court would issue an interim judgment as to the question of jurisdiction. The reason is that the interim judgments are very rare even when there is not doubt as to their admissibility.

The Slovene examination under the Slovene Civil Procedure Act is very similar to the rules of the Austrian ZPO. It works very well. There are neither complaints that the courts do not decide the issue of jurisdiction separately nor complaints that it causes delays.

## 2.2

### Questions regarding the various grounds of jurisdiction

#### 2.2.1

**How is the reference in Articles 2 and 59 applied? How is the term "domicile" defined? Are there any cases where the courts held that the Defendant had several domiciles?**

There are no cases referring to Articles 2 and 59.

The term "domicile" is used also in the Slovene Civil Procedure Act. The latest commentary to it (Wedam Lukić in: Ude/Betto/Galič/Rijavec/Wedam Lukić/Zobec, Pravdni postopek, zakon s komentarjem, Ljubljana 2005, commentary to Article 47 [page 244] states that domicile is not defined by the aforementioned law. It therefore defines the domicile under reference to the allegedly "generally accepted opinion" as the place where a person resides if he has intention to reside there permanently. This definition seems to overlook that domicile is defined in the Law on Registration of Residence (Art. 3 (3)). The fact that the domicile is not defined in the Civil Procedure Act can hardly be used as an argument for non-application of Article 3 (3) Law on Registration of Residence.

The definition in Law on Registration of Residence does not differ from the definition in the commentary very much. According to the law the domicile of a person is a settlement where the person resides with the intent to stay permanently due to the fact that in the settlement is the centre of his or hers life interests.

### 2.2.2

#### **Does Article 60 with its alternative connecting factors appear feasible?**

It does appear feasible. It is however very favourable for the plaintiff(s) to have three connecting factors. It is arguable if three are really necessary. Whereas the statutory seat as connecting factor seems reasonable some doubts occur if both the place where the company has its central administration and the place where the company has its principal place of business should be connecting factors.

### 2.2.3

#### **How does Article 5 No. 1 work? In particular: Article 5 No. 1 lit. b) 1<sup>st</sup> indent leaves open the place of fulfilment if goods are handed over to a carrier under CIF or FOB. Is the place of delivery the place where the goods are handed over to the carrier or is the place of delivery to the addressee at the latter's place? In that respect, are there any difficulties known in court practice or contract drafting?**

Since there is no practice no answers can be given.

The question where is the place of delivery could arise even under the Slovene Private International Law and Procedure Act (Article 56). There is however only a very scarce practice in connection with the place of fulfilment (1 decision) but no practice at all in connection with the CIF or FOB clauses. There is also no literature as to this question.

### 2.2.4

#### **Do courts have difficulties to determine the place where a service was provided or should have been provided?**

There is absolutely no practical experience in Slovenia as to this question. See also answer to question 2.2.3.

### 2.2.5

#### **Under Article 5 No. 1 lit. a), how is the place of performance determined in light of the jurisprudence of the ECJ?**

The place of performance is determined by the Art. 5 (1) lit. b of Regulation 44/2001. There is no Slovene jurisprudence in which the Slovene courts applied this provision.

### 2.2.6

#### **Under Article 5 No. 1 lit. b), how is the term „provision of services“ defined and how are services localised?**

The place of performance of the obligation is defined:

- in the case of the sale of goods, as the place in a Member State where, under the contract, the goods were delivered or should have been delivered,
- in the case of the provision of services, as the place in a Member State where, under the contract, the services were provided or should have been provided.

Since there is no Slovene jurisprudence referring to Article 5 (see also question 2.2.5) no further details can be provided.

### 2.2.7

#### **How is the scope of Article 5 No. 1 lit. c) determined?**

It is determined by a reference to Article 5 No. 1 lit. a) of Regulation 44/2001. The court before which the question had arisen must determine the place for the performance of the contractual obligation. The court has to apply its own private international law to ascertain the law governing the place of performance of the relevant obligation. There is no Slovene jurisdiction as to the Article 5.

### 2.2.8

#### **How is the line drawn between Article 5 No. 1 and Article 5 No. 3?**

In matters relating to tort, delict or quasi-delict, the jurisdiction has the court for the place where the harmful event occurred or may occur. In matters relating to a contract however the jurisdiction have the courts for the place of performance of the obligation in question.

The line drawn between Article 5 (1) and Article 5 (3) may not be easy to apply in some cases. The difference between the torts (and delicts and so on) on the one side and the contractual obligations seems to be drawn in the way that should not cause any major problems in the Slovene practice.

There is no Slovene jurisprudence at present. See also answer to question 2.2.10.

### 2.2.9

#### **Does it provoke any problems that the ECJ does not accept annex grounds of jurisdiction? In particular: Do the courts of the Member States manage to draw a line between contractual and matters of offence in a way other than their own law?**

There is no practical experience as to this question.

### 2.2.10

#### **What falls within the scope of the term „matters relating to tort“ under Article 5 No. 3?**

Since the term "matters relating to tort" has an autonomous meaning the is the question, how are these matters characterized in the Slovene law. Since there is no judicial practice the answer expresses the opinion of the national reporter.

As "matters relating to tort" shall be considered particularly liability based on fault (Article 131 Code of Obligations) and the strict liability (Article 149 Code of Obligations).

There are quite numerous provisions in the Code on Obligations which regulate the strict liability. In Articles 149 to 155 Code on Obligations one can find the basic rules. Since these rules are only a part of the rules which are applicable to torts (Article 131 to 189 Code on Obligations) there can be no doubt that matters relating to strict liability fall within the scope of Article 5 (3).

The culpa in contrahendo cases (Article 20 (2) and (3) Code on Obligations) and also liability based on unfair competition (Article 13 Law on Unfair Competition) shall fall within the scope of Article 5 (3) Regulation 44/2001 too. Article 20 (2) and (3) Code on Obligations is applicable only if the contract is not concluded. The liability on the basis of provisions of Article 20 (2) and (3) Code on Obligations is therefore not contractual in its nature. The literature (see review in Plavšak et al.: Obligacijski zakonik s komentarjem, Ljubljana 2003, commentary to the Article 20, p. 229 (6.1) supports this opinion.

There are no specific provisions as to the nature of liability on the basis of the rules concerning unfair competition. Since there is no contractual relationship between the tortfeasor and the injured person there can be little doubt that the cases concerning unfair competition do not fall within the scope of Article 5 (1).

Matters relating to culpa in contrahendo and unfair competition are extremely rare in the Slovene jurisprudence.

### 2.2.11

#### **Taking into consideration the case law of the ECJ, how is the jurisdiction determined under Article 5 No. 3, in particular in the case of distance and multistate offences? Is the ratio of the decision of the ECJ in "Shevill" workable?**

There is no relevant case law in Slovenia.

The main ratio of the Shevill is that a claimant is entitled to sue in a state where a part of damage occurred but he is entitled to demand compensation only for a part of damage which occurred in the state of the court. This rule seems to be restricted to the libels. It is hard not

to believe that the ratio of "Shevill" is not workable from a point of view of a practitioner. It does not cause any further problems for adjudication of the case.

#### 2.2.12

**Functioning and practical relevance of Article 6 No. 1 and No. 2 Regulation 44/01/EC:  
Are there any doubts as to the compatibility of Article 6 No. 1 Regulation 44/01/EC with  
Article 6 European Convention on Human Rights?**

There is neither any judicial practice nor any doubts as to the compatibility with the ECHR.

#### 2.2.13

**How broad is the scope of the grounds of jurisdiction for consumer issues?**

The scope of the grounds of jurisdictions for consumer issues has not yet been discussed not even with respect to the Slovene legislation which is older than the Regulation 44/2001. Any opinion with respect to the Regulation shall be therefore considered as exclusively that of the national reporter.

The scope of the grounds jurisdiction for consumer issues may be for instance compared with the Article 52 (2) Private International Law and Procedure Act. The scope of the Slovene equivalent is comparable to Article 15 Regulation 44/2001 but somewhat broader than the scope of Article 15 Regulation 44/2001 because it is applicable for any the sale of goods not only those on instalment credit terms. I think this is right since it is hard to find grounds for the narrower scope of the Regulation. Otherwise is the scope of the Regulation is broad enough in my opinion.

#### 2.2.14

**Determination of defendant's quality, of a consumer in the sense of Article 15 (1) (in  
light of the case law of the ECJ).**

There is no relevant Slovene case law.

#### 2.2.15

**How is the concept of an activity „directed to one or several Member States“ under  
Article 15 (1) lit. c) applied in practice? How is the provision construed in case of  
internet business?**

There is no relevant practice as to this question.

#### 2.2.16

**Taking into consideration the case law of the ECJ, how is the term of „establishment“  
in the sense of Article 15 (2) interpreted?**

There is no relevant practice as to this question.

#### 2.2.17

**How do the provisions on individual contracts of employment (Articles 18–21) apply  
and how do they interrelate with the respective choice of law rules (in particular  
Article 6 Rome Convention)?**

There is no relevant practice as to this question.

Slovenia became a Member State of the Rome Convention on the 5<sup>th</sup> January 2006.

#### 2.2.18

**How is the term „rights in rem“ in the sense of Article 22 construed?**

The term covers lawsuits referring to what is in the Slovene law interference with possession, ownership, mortgage, and similar. The vast majority of the rules referring to the rights of rem

is in in the Slovene Law of Property Act and some of them, but not many, in the Land Register Act and some other acts.

Slovene law does not know the principle of abstraction (Abstraktionsprinzip). There are however two different transactions necessary to establish a right in rem (Art. 23 of Property Act). In this respect is the Slovene law much more similar to the Austrian law on property than to the German for instance but entirely different from the French law.

The interpretation of the term "rights in rem" may therefore cause some difficulties when the judge has to decide if the object of the proceedings is a right in rem or not. For instance, the lawsuit in which the plaintiff seeks to obtain re-conveyance of legal title to him, would very likely not fall within the scope of Article 22 of Regulation but this might not be so easy to apply in practice.

The delineation in detail is at present not possible since there is not practice in this area.

#### **2.2.19**

##### **Determination of the national practice in respect to the exclusive grounds of jurisdiction under Article 22 No. 2, in particular: In which types of cases is the provision most frequently applied in practice?**

There is no national practice at present.

#### **2.2.20**

##### **Are there any positive or negative conflicts of competence?**

See answer to question 2.2.19.

#### **2.2.21**

##### **To what extent does the provision comply with the ECJ's decisions on the freedom of establishment (Centros/Überseering)?**

The courts of the Member State in which the company, legal person or association has its seat have exclusive jurisdiction in certain cases (Article 22 (2)). In order to determine that seat, the court has to apply its rules of private international law. This provision alone does not comply with the ECJ's decision in Centros and Überseering cases in my opinion. The only possibility to reconcile both is to assume that in the EU the private international law is unified so that the company has always seat where it was incorporated. If the company does not have seat in the EU the private international law of the Member State might define the seat in different way since this does not fall within the scope of the Centros, Überseering and Inspire Art decisions.

#### **2.2.22**

##### **How do you draw the line between Article 5 No. 3 and Article 22 No. 4 in respect to litigation on patents? How do the national courts deal in infringement proceedings with the argument of patent invalidity?**

There is no practical experience as to the first question.

The proceedings which concerning patents are extremely rare in the Slovene practice. This assertion refers to all (very) different kinds of proceedings in which the patent is involved. The reason is that Slovenia is a small country which doesn't have wide industrial tradition or tradition in inventing. It is also a too small market to be really of much interest for also those who would like to infringe patents.

The database of the Supreme Court covers period between approximately 1991 (when the database was established) and 2006. I tried to find out if any proceedings have already taken place in which similar questions were raised under Slovene law.

Only in one case the question of infringement might have played a role before the inferior courts (joint case VIII Ips 156/2003, VIII Ips 157/2003) but not before the Supreme Court. Yet we do not know any details. So there is no experience at all.

Nevertheless an answer may be given to the question. The general rule of the Civil Procedure Act is (Article 212) that the defendant may argue whatever he might consider beneficial to his legal position. Although Article 121 and 122 Industrial Property Act provide some details on infringement proceedings no further details as to the defences are provided in this act. Therefore the defendant might argue that the patent is invalid by referring to Article 212 of the Civil Procedure Act. This would not in my opinion change the nature of the proceedings. It would retain its character of an infringement proceeding.

### 2.2.23

#### **Are any of the exclusive grounds of jurisdiction in the catalogue of Article 22 too broad or too narrow?**

The delineation of the exclusive grounds of jurisdiction causes in any case some situations which are not entirely satisfactory from a point of view of the parties. I believe that Article 22 (1) might be too narrow since it constitutes jurisdiction only for the proceedings for the rights in rem but not for the proceedings which are narrowly connected to the rights in rem. It would be better to draft Article 22 (1) broader so that it would include all the proceedings in which the title which is the legal ground for the right in rem is the object of the proceedings. For instance if there were a dispute as to the purchase agreement it would be desirable that the court where the immovable is situated would have exclusive jurisdiction too.

### 2.2.24

#### **What is the relation between the respective national remedies against enforcement and the freedom of judgments (Articles 22 No. 5, 32)? In particular: What remedy does the obligor rely on if he argues that the claim has changed since the judgment or the title to enforce rendered outside courts does not base on a respective payment on the claim?**

The creditor can apply for recognition of a judicial decision if he desires to. He can also apply for the enforcement of the judicial decision directly.

In the Slovene legal system the creditor cannot directly start an enforcement by giving an order to the bailiff. He always has to apply for a further court decision in the enforcement proceedings. This court decision is called decision referring to enforcement (decision on enforcement). The concept of the Slovene Law on Execution and the Interim Protection of Claims is the same as the concept of the Austrian Exekutionsordnung but different from the concepts underlying the German and French law.

The court decision is served to the obligor. This is a general rule which has some exceptions. After the service the obligor may remonstrate that the claim has changed. He can claim for instance that he is not obligor anymore because he settled his debt. The obligor can also claim that the debt was released or cleared and so on. The same court which issued the decision on enforcement must decide upon the remonstrations (Article 54 (1) Law on Execution and the Interim Protection of Claims). Afterwards the creditor and the obligor may appeal to the Higher Court which has roughly the same function as the Higher Regional Court in Germany or Austria. No appeal to the Supreme Court of Republic of Slovenia is provided except in very rare cases.

It shall be noted that the decision on enforcement is not always served before the begin of execution of decision on enforcement (Vollzug der Zwangsvollstreckung). This is a necessity in order not to thwart the enforcement. The seizure of movables is the most prominent exception. It is however true that the obligor has nonetheless a chance for defence in a (formal) judicial proceedings.

### 2.2.25

#### **Questions relating to the applicability of Article 23**

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**In particular:****2.2.25.1****Implementation in practice of the decisions of the ECJ by the courts of the Member States?**

Due to the backlog of the Slovene courts there is not much experience on implementation of the decision of the ECJ in practice. In a matter relating to the recognition (Cp 10/2005) the Supreme Court referred to a decision of ECJ but it was merely an obiter dictum.

In one decisions (I Up 667/2004, databank of the Supreme Court of Slovenia) referring to the restitution of assets (which were expropriated between 1945 and 1990) the Supreme Court referred to the decisions of ECJ.

It does not seem at all that the Slovene courts hesitate to implement the rules comprised in the decisions of the ECJ. But it is also true that the Supreme Court or any other court (so far as it could be verified) has never implemented any of the decisions of the ECJ in a decision which specifically refers to Regulation 44/2001.

**2.2.25.2****Except for the issue of formal requirements, are conclusion and validity of choice-of-forum agreements determined according to the *lex causae* or the *lex fori*?**

There is no jurisprudence which would deal with that question.

Even the older literature to the Yugoslav private international law and procedure does not answer the question, at least not clearly (see Wedam-Lukić in: Ilešič/Polajnar-Pavčnik/Wedam-Lukić, *Mednarodno zasebno pravo*, 2<sup>nd</sup> ed., Ljubljana 1992, com. to Article 49, p. 92 (number 2, at the bottom of the page). The most recent work does not answer this question either (Wedam-Lukić in: *Pravdni postopek, zakon s komentarjem*, Ljubljana 2005, commentary to Article 29, p. 189 (Nr. 12).

**2.2.25.3****Are choice-of-forum clauses in standard form contracts subjected to judicial control?**

There is no practice which would expressly deal with this question. It should be noted that the choice-of-forum clauses are subject to judicial control only if one of the parties submit it on time to the court.

If the standard form contract is submitted on time, it shall be regarded (legally qualified) as the substantive law. The court must apply the substantive law ex officio (Article 180 (3) and 324 (4) Civil Procedure Act). The court of the first instance shall therefore examine the choice-of-forum clause in standard form contract in my opinion.

The correctness of application of the substantive law is examined ex officio before a court of appeal or the Supreme Court. The choice-of-forum clauses are therefore examined before these courts too.

**2.2.25.4****National practice in determining „usages“ of international trade or commerce in the sense of Article 23 (1) lit. c)?<sup>3</sup>**

There is no national practice.

**2.2.25.5****Applicability of Article 23 vis-à-vis third states?**

There is no national practice nor literature as to this question.

**2.2.26****How does Article 26 function, in particular in comparison with Article 19 of Regulation 1348/2000/EC?**

There are, at least at present, no cases referring to Article 26 Regulation 44/2001 and even no cases which would deal with Regulation 1348/2000.

**2.2.27****Effect and functioning of Article 31**

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**In particular:****2.2.27.1****Term of „provisional measures“. According to the practice of the courts of your Member State, do measures resulting in the provisional fulfilment of the claim fall within the ambit of “provisional measures”?<sup>4</sup>**

We do not have any practice as to the provisional measures which would refer specifically to the Regulation.

If the creditor has a monetary claim, a "preliminary order" (Art. 256 to 265 of the Law on Execution and the Interim Protection of Claims may be issued. The preliminary order is more a measure of an interim protection. It has clearly only a temporary nature (Articles 263 to 265 Law on Execution and the Interim Protection of Claims). The preliminary order shall not be confused with a temporary injunction (Articles 266 to 279 of the Law on Execution and the Interim Protection of Claims) which must also be considered a temporary measure. If the temporary injunction is applied to protect non-monetary claims it can lead to the provisional fulfilment of claims. If it is so it is designated as regulatory temporary injunction (see also Šipec in: Šipec/Plavšak/Klampfer/Jerovšek/Čebulj, Začasne odredbe, Ljubljana 2001, pages 84 to 91).

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<sup>3</sup> The problematic point lies with written confirmations of orders that are issued by the provider of the non-cash contribution with reference to general conditions that encompass a clause-stipulating jurisdiction. According to the opinion of the ECJ ("Segoura") this was not possible without written confirmation by the client. This was the reason for the implementation of today's Article 23 (1) c) in the adapting negotiations with Denmark, Ireland and the United Kingdom. According to the leading decision of the ECJ ("Mainschiffahrtsgenossenschaft"), the meaning of "commercial customs" used by Article 23 (1) c) is a matter of fact that has to be finally decided upon by national courts. Did the courts of your State express their opinion regarding this point – in particular with regard to confirmations of orders to which general conditions are attached? Are there any complaints from representatives of the economy who claim that there are no workable and reliable possibilities anymore to achieve choice of forum agreement for certain kinds of business?

<sup>4</sup> According to the rulings of the ECJ ("van Uden", "Mietz") a provisional measure according to Article 31 can only be assumed when the repayment of the granted amount is guaranteed to the claimant for the case of the claimant being defeated in the proceedings of the main action. Are there any opinions of the judicial practice or legal writers concerning the meaning of "guaranteed"? Does it only mean the existence of a substantive claim for a payment or does it mean the obligation of the claimant to grant sufficient securities?

The presumably correct answer to the question is that the measures resulting in the provisional fulfilment of the claim fall within the ambit of "provisional measures".

#### **2.2.27.2**

##### **Territorial connection with the State where the measure was rendered<sup>5</sup>**

There is no practice as to this question.

#### **2.2.27.3**

##### **Problems in applying autonomous provisions on jurisdiction in cross-border transactions**

See answer to question 2.2.27.2.

#### **2.2.27.4**

##### **Relation between interim protective measures and main proceedings**

See answer to question 2.2.27.2.

#### **2.2.27.5**

##### **Enforcement of provisional measures under national law<sup>6</sup>**

No cases that might resemble the Mareva injunctions can be found in the databases of the Supreme Court or of the Higher Courts. It is highly doubtful if there has ever been one. See also the answer to the question 2.2.27.1.

#### **2.2.28**

##### **Is there any case law relying on Article 24 Brussels I Convention (jurisdiction by appearance)?**

There is no case law. Slovenia was not a signatory of the Brussels Convention.

### **3. *Lis Pendens* and Similar Proceedings**

#### **3.1**

##### **How does Article 27 work concerning the principle of *lis pendens*, particularly in the light of the case law of the ECJ and the courts of the Member States?**

There is no Slovene judicial practice at all. The majority of the questions in this chapter cannot be answered.

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<sup>5</sup> In the judgments quoted above, the ECJ has set up the requirement that a provisional measure issued by a court that has no jurisdiction on the proceedings of the main action must have a territorial connection to the State of the forum. The question is, whether this criterion is also capable in cases, where the provisional measure shall impose or interdict an action to the opponent, e. g. not to distribute goods, which have been produced by infringements of the legal protection of industrial property. Are there any experiences concerning such cases in your State?

<sup>6</sup> The provisional measures provided by the national legal systems are very different. The rules regarding the enforcement in the Member States are not applicable regarding provisional measures unknown to the national law. The problem has become a practical one in connection with the freezing order (Mareva Injunction) of the English law. This instrument prohibits the opponent from disposing over his assets. Infringements cause penalties because of contempt of court – even for third persons (e. g. banks running the account) that take part in these infringements. British courts add a clause to the world wide freezing order that persons who are not subject to the court's jurisdiction are only covered, when this special order is declared enforceable abroad. What are the results of such a declaration of enforceability? Is there a possibility of enforcement in your State, when an English freezing order has been declared enforceable? To the national reporter of the UK: Do English courts demand to impose "contempt of court"-penalties on foreign banks because of account dispositions in the State of question after the declaration of enforcement of the freezing order?

### 3.2

#### **Does the principle of *lis pendens* (“first seized”) cause an incentive to “race to the court room” in the judicial practice?**

This question cannot be answered. See question 3.1.

### 3.3

#### **Are there any frictions between Civil Law- and Common Law-systems caused by the different procedural cultures?**

Different procedural cultures necessarily cause frictions. The injunctions restraining foreign proceedings or Mareva injunctions, for instance, are unthinkable under the Sloven law.

The courts of the Republic Slovenia have almost no contacts to the Common Law legal systems. There is therefore no experience of how to deal with the problems which arise from - very generally expressed - different procedural cultures.

### 3.4

#### **How does Article 28 work with actions that have close connections to each other? Would a positive differentiation by hard criteria be useful?**

There is no experience as to the Article 28.

Article 28 (3) is a general clause by its nature. This nature is favourable to the second court. The second court can decide if the the actions have close connections by taking into account the criteria which differ from case to case. The second court can therefore take appropriate decision on this basis. A positive differentiation by hard criteria would probably be worse than the general clause since it would reduce the flexibility of the second court in his decision-making.

### 3.5

#### **Within the Articles 27 to 30, how is it determined whether pending actions concern the same claim between the parties, particularly taking into consideration the case law of the ECJ?**

See answer to question 3.1.

### 3.6

#### **Do practical problems arise regarding the application of Articles 27 to 30 with actions of several parties? If yes, please indicate which problems arise in your State.**

The Slovene courts do not have practical problems for there are no cases in connection with Articles 27 to 30. See also 3.1.

### 3.7

#### **Is there a loss of efficiency because of the tactics of taking negative actions for a declaratory judgment at courts without jurisdiction (“torpedos”)? Please give a short description of these tactics.**

Torpedos are not known from the Slovene practice. If the torpedos were admissible they would cause a loss of efficiency.

### 3.8

#### **Or could the client with an action taken quickly for a declaratory judgment turn away an oppressive action of a claimant in a foreign country (for example in a country with extremely high costs)?**

See answer to question 3.7. These are feasible but there are no accounts that they have ever been used in Slovenia.

### 3.9

#### **Are there any cases of actions concerning the infringement of a patent that were delayed by the objection of nullity of the patent?<sup>7</sup>**

There are no cases of such type. See also answer to question 2.2.22.

### 3.10

#### **In the case of a European patent: Can a consistent action of infringement be asserted in your country when the objection is raised that several elements of this European patent are infringed by a consistent strategy of marketing?**

There are exactly 19 decisions that deal with the patents in Slovenia in the database of the Supreme Court of Slovenia. The database covers all cases that were decided by the Supreme Court since (approximately) 1991. None of the cases deals with the European patent in any way. The answer to the question can therefore not be given.

## **4. The Recognition and Enforcement of Judgments, Authentic Instruments and Court Settlements According to Regulation 44/01/EC**

### 4.1

#### **Questions regarding the free movement of judgments**

#### 4.1.1

##### **How does the procedure regarding the recognition and enforcement of judgments, authentic instruments and court settlements work?**

The applicant lodges the application for recognition with the regional court. He has to fulfil all conditions provided in the Regulation and also pay the court fees. The fees are relatively low (3.900 SIT = approx. 15,85 EUR). Representation by an attorney is not mandatory (Article 86 (1) Civil Procedure Act). For further details on representation see also answer to question 1.7. The solicitor's fee is calculated by reference to the value of the matter (Tariff Number 27 (4) and 18 (1) of the Solicitors' Tariff). It is fixed only if the value of the matter cannot be evaluated.

The solicitor's fees are rather high (24.000 SIT = approx. 91,70 EUR if the value of the matter cannot be evaluated; if it can be valued it can amount to as much as 165.000 SIT = approx. 688 EUR).

The regional court issues a decision. A party can afterwards lodge an appeal with the regional court (Annex III of the Regulation). He must also pay the court fees (1.900 SIT = approx. 7,92 EUR) for the appeal.

The parties may lodge an appeal to the Supreme Court of Slovenia (Annex IV of the Regulation). The fee amounts to 3.900 SIT = approx. 15,85 EUR). The representation by an attorney is not mandatory but usual. See also answer to question 4.1.13.

The practical experience with this procedure are relatively scarce. The jurisprudence has to struggle with some very basic problems like the applicability of the Regulation on the judgments issued before the accession of Slovenia to the EU and the problems in connection with the application of Article 34 (2) of the Regulation.

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<sup>7</sup> In Germany the judgment of an action concerning the nullity of a patent does not ascertain the nullity of the patent, but furthermore abolishes it. In such cases only the special court for patents has jurisdiction. The objection of the nullity of the patent cannot be raised in an action concerning the infringement of the patent. So the action of infringement must be suspended until a decision is made in the action concerning the nullity of the patent, when such an objection is raised. How far is the court that is concerned with the action of infringement of the patent able to decide whether the announced action concerning the nullity of the patent in the foreign country is serious?

The general impression is that the problems with the recognition or declaration of enforceability are of rather temporary nature and that in some years the procedure will become a routine. At present it is not.

#### 4.1.2

**Are the establishment of additional standard forms, e. g. for applications for a declaration of enforceability, desirable?**

Yes, it would be desirable. The regional court of Ljubljana uses them for instance and they seem to be a convenient help for the applicants.

In my opinion it is difficult for the applicants to understand Articles 32 to 58 so that a simple standard form might be of a major practical help. It could simply guide him what does he have to apply for and what does he have to submit. It could be of some help even to the courts.

#### 4.1.3

**Did the term “judgment” in Article 32 lead to difficulties in your State?**

No, there is no account of difficulties.

#### 4.1.4

**Please describe the status of the accessibility of courts by electronic means.**

Courts are generally accessible by fax only. An application submitted by fax must be later supplemented by a normal written application signed by the applicant or his representative and by the original documents.

Applications may not be submitted by e-mail or by internet at present.

#### 4.1.5

**Are the reasons for objection that are laid down in Articles 34 and 35 appropriate? Is there a possibility to decrease the number of reasons for objection or is it – on the contrary – necessary to increase this number?**

It think that the reasons for objection are appropriate.

The reasons for objections laid down in Articles 34 and 35 roughly correspond to those laid down in the Slovene Private International Law and Procedure Act (see Articles 95 to 100). The Slovene Act is of course no benchmark for the European law but it would be difficult to disagree for me as a Slovene lawyer to the (roughly) the same reasons in the Regulation for objection.

The only reason that might be questioned is the public publicity objection (Article 34). Is it really necessary to keep it? This question might be answered by a careful analysis of the judicature from different European countries that refers to the recognition of judgements from the other Member States.

#### 4.1.6

**What is the criteria regarding the requirement of clarity and definiteness of foreign titles have to comply with according to Article 38?**

There is no jurisdiction as to the clarity and definiteness of foreign titles with reference to the Regulation or at least to the Slovene Private International Law and Procedure Act.

There is some judicature to this issue in the Slovene enforcement law which has to deal with similar problems when the Slovene law is applicable. There are only few decisions which deal with very specific situations. This judicature does not provide much information as to the criteria regarding the requirement of clarity and definiteness. It does not seem to be of any importance for the application of the Regulation.

#### 4.1.7

##### **How often is the reservation of public policy (Article 34 No. 1) referred to and with which result?**

It should be noted that there are only 4 decisions available in the database of the Supreme Court of Slovenia in which Regulation 44/2001 was applied until now (Cp 2/2005, Cp 8/2003, Cp 9/2005, Cp 10/2005; all of them are translated into the German language).

The analyse of these 4 decisions shows that only in one case the defendant referred to Article 34 No. 1 Regulation 44/2001 (Cp 10/2005) but without success.

The number of the decisions referring to Regulation 44/2001 is in my opinion not sufficient to draw any conclusions of how often will be the reservation of public policy referred to.

Some impressions of how the Slovene courts deal with the reference to the public policy under the Slovene Private International Law and Procedure Act (Article 100) might be gained by a study of these cases. The Slovene courts are not inclined to use Article 100 or to interpret the term "public policy" broadly. The defendants seem to refer to Article 100 quite frequently but not with much success. It is therefore very unlikely that the Slovene courts, above all the Supreme Court, will change their attitude when applying Article 34 (1) Regulation 44/2001 which is even more restrictive than Article 100 of the quoted Slovene law.

#### 4.1.8

##### **Did the non-recognition of judgments given in your State (in particular due to incompatibility with the public policy in the respective Member State) lead to amendments of laws?**

No. There are no accounts of non-recognition of the Slovene judgments. There was therefore no need to amendment of the Slovene laws.

#### 4.1.9

##### **What kind of interrelation exists between the rule of public policy and the general objection of abuse of the process of the court?**

There is no practical experience as to this specific issue.

The Slovene law of procedure forbids abuse of the procedural rights of the parties (Article 11 of the Slovene Civil Procedure Act). The notion that abuse of the process of the court might be contrary to public policy is not completely unthinkable for a Slovene lawyer. I believe therefore that it would be possible to object abuse of the process of the court. It would be an objection within the objection of the public policy. It is however arguable what decision a court would take on this issue.

#### 4.1.10

##### **How does Article 49 work with regard to the enforcement of foreign decisions, which are aimed at the payment of an administrative fine to the creditor and what is the practical significance of this provision?**

There are no Slovene decisions with reference to Article 49 of Regulation.

#### 4.1.11

##### **Is there any practical experience or is there a theoretical discussion among legal writers regarding the enforcement of titles which are aimed at the specific performance of an obligation or which are framed as a prohibitory injunction by means of penalties for contempt of court?**

There is neither practical experience nor theoretical discussion regarding this issue.

#### 4.1.12

##### **Does the inadmissibility of “anti-suit injunctions” which has been stated by the ECJ have any consequences for the efficiency of legal protection?**

The "anti-suit injunctions" are unfamiliar in Slovenia. I believe it would be illegal to issue one under Slovene law since it denies the right of everyone to have access to court. The contacts to the Common Law area are scarce. The concept of the "anti-suit injunctions" is therefore not known in the Slovene practice at all.

If the applicant of the "anti-suit injunction" had a legal right not to be sued in the foreign country or if it was oppressive or vexatious for the applicant to be sued in the foreign country the "anti-suit injunction" was granted. The illegality of the "anti-suit injunctions" stated by the ECJ means that this simple but effective measure may not be granted anymore insofar as the proceeding falls within the scope of the Regulation. This would of course have consequence for the efficiency of legal protection.

#### 4.1.13

##### **How does the practical implementation of appeals work in your State (costs, duration, mandatory representation by lawyers)?**

###### JURISDICTION

The jurisdiction over the appeal (as it is called in Slovenia) has the Supreme Court.

###### REPRESENTATION

A party does not have to be represented by a solicitor before the Supreme Court. For details see answer to question 1.7.

###### COSTS

The appellant has to pay the court fees and the solicitor's fees. For recognition of foreign judgements are the court fees fixed and do not reflect the value of the matter. The court fees amount to 5.700 SIT (= approx. 23,80 EUR; Tariff No. 3 (5) and 7 of the Court Fees Act).

The solicitor's fees are determined by the Solicitors' Tariff. The solicitor's fees are generally calculated with the reference to the value of the matter (Tariff No. 27 (6) and 18 (1) of the Solicitors' Tariff.)

For instance:

- a) the minimum solicitor's fee amounts to 11.000 SIT (approx. 45,90 EUR),
- b) if the value of the matter amounts to e.g. 4.500 EUR, the solicitor may charge 33.000 SIT (approx. 138 EUR).
- c) if the value of the matter amounts to e.g. 45.000 EUR, the solicitor's fee amounts to 99.000 SIT (approx. 412,50 EUR),
- d) the maximum fee amounts to 330.000 SIT (approx. 1380 EUR).

If the value of the matter cannot be assessed than the solicitor may charge not less than 22.000 SIT (approx. 92 EUR) but it is more likely that 44.000 SIT (approx. 184 EUR).

The solicitor's fees can be exorbitant. Some respondents however reported that the solicitors do not apply for compensation of any solicitor's fees (although they may do so).

The party may demand the compensation of the fees. The courts decides on this claim. This does not take much time and it workes well in the practice.

###### FOUNDATIONS FOR THE APPEAL

A decisions may be attacked (Article 338 Civil Procedure Act)

1. on the ground of severe violation of civil procedure provisions;

2. on the ground of erroneous or incomplete determination of state of facts;
3. on the ground of violation of substantive law.

New facts and evidence may not be presented in the appeal although there are several exceptions of minor importance to this general rule (Article 337 (1) Civil Procedure Act).

The court decides on the appeal without court hearing (Article 347 (1) Civil Procedure Act). This is a general rule but the exceptions to it are negligible in practice. All what parties can do is to submit appeal, defence pleadings to the appeal and further pleadings (if any). Generally the appeals and the pleadings are rather simple in their structure.

The Supreme Court may not establish facts. If an appeal on the ground of erroneous or incomplete determination of state of facts is successful the Supreme Court can only set aside the decision and remand the case to the court of first instance (Article 355 Civil Procedure Act). This protracts the court proceedings significantly. The court of appeal may also dismiss the appeal and affirm the judgment or modify the decision (Articles 353 and 358 Civil Procedure Act).

#### DURATION OF APPEAL

It is difficult to give any reliable assessment of duration of a proceedings before the Supreme Court. The proceedings may take several months but probably less than one year at present.

### 4.2

#### **Provisional Measures according to Article 47**

##### 4.2.1

#### **How does Article 47 work?**

In Slovenia there is no practical experience with reference to Article 47.

##### 4.2.2

#### **Do law enforcement authorities consider – within the scope of Article 47 – the reasons to refuse recognition that are laid down in Articles 34 and 35?**

See answer to question 4.2.1.

##### 4.2.3

#### **If yes, on the basis of which factual criteria?**

See answer to question 4.2.1.

##### 4.2.4

#### **Does the judge who is competent for declarations of enforceability have competence for provisional measures (Article 47) as well?**

Before the proceeding for the recognition of enforcement have been vested, the local court has jurisdiction over provisional measures (Article 266(1) of Law on Execution and the Interim Protection of Claims). If civil or other legal proceedings have been instituted, an application for provisional measures shall be decided on by the court conducting such proceedings (Article 266(2) of Law on Execution and the Interim Protection of Claims).

When a procedure for declaration of enforceability commences before the regional court also the interim measures fall within the scope of its jurisdiction. This is so until the procedure is finished.

### 4.3

#### **Cross-border Enforcement of Court Settlements and Notarial Deeds**

##### 4.3.1

###### **How do Articles 57 and 58 work?**

There is no practical experience. The Slovene law knows both the court settlements and the notarial deeds. They are quite widely applied. It is quite a surprise that there is not indication that recognition of any notary deed has ever been applied for.

I do not expect the recognition would cause much trouble at least if the notarial deeds from Germany and Austria should be recognized for the legal systems of these countries is quite well known in Slovenia. The Slovene legal order is historically related to both and comparable to both of them. More doubts might occur if any notarial deeds from the other Member States were submitted. Since there is no list of notaries in the Member States the Slovenian judges might be in doubt about authority of the person who issued the deed for instance.

###### **In particular:**

##### 4.3.1.1

###### **Is there any experience regarding the interpretation of the term “authentic instrument” in Article 57?**

There is no experience. See also answer to question 4.3.1.

##### 4.3.1.2

###### **Is there any experience regarding the interpretation of the term “settlement approved by a court” in Article 58? Did the wrong English version (“court approved” instead of “*conclus devant le juge*”) lead to difficulties?**

There is no experience. See also answer to question 4.3.1.

##### 4.3.1.3

###### **Are the standardised forms sufficient?**

Since there is no practical experience the question cannot be answered.

##### 4.3.1.4

###### **To which extent are Articles 34 and 35 applied?**

There is no experience. See also answer to question 4.3.1.

##### 4.3.2

###### **Please describe the practical significance of Article 57 and Article 58**

None at present.

##### 4.3.2.1

###### **Did the situation occur that declarations of enforceability against the debtor have been applied for in several States at the same time?**

There is no experience. See also answer to question 4.3.1.

##### 4.3.2.2

###### **For creditors` lawyers: Was it possible to achieve a higher efficiency of legal protection by means of this?**

There is no experience. See also answer to question 4.3.1.

#### 4.3.2.3

**For debtors` lawyers: Did oppressive situations arise out of this? Did this lead in particular to the result that excessive enforcement measures have been carried out?**

There is no experience. See also answer to question 4.3.1.

#### 4.3.3

**Specific problems regarding court settlements, enforceable instruments and provisionally enforceable judgments**

##### 4.3.3.1

**Are there any known cases, where a court of a higher instance has reversed a foreign judgment after enforcement measures had been carried out? How can enforcement measures be set-aside in such a situation?**

There are no known cases and therefore no practical experience what to do in such cases.

The question refers to two different situations in my opinion. In the first one some enforcement measures have already been carried out but not all of them. In the second one all enforcement measures had been carried out and the enforcement procedure was finished.

In the first case the debtor can file a remonstrance (Article 56 of the Law on Execution and the Interim Protection of Claims). This specific type of remonstrance is called -"remonstrance (plea) after expiry of deadline". The court of first instance can set aside enforcement measures which have already been carried out. This is a quite effective remedy in favour of the debtor.

In the second case there is no possibility of setting aside the enforcement measures since the procedure is finished. The debtor can probably only assert a claim on account of unjust enrichment.

##### 4.3.3.2

**Are there – from the debtor’s point of view – any problems with documents that are not valued?<sup>8</sup>**

In Slovenia a notarial deed is enforceable if the debtor has submitted to enforcement in an abstract manner (just like in Germany). The problem may arise if the creditor demands (in the enforcement procedure) more than he is entitled to. The problem in Slovenia is exactly the same as in Germany.

This kind of risk cannot be eliminated or reduced prior to the begin of the enforcement procedure at all. Reports on the legal practice with respect to the notarial deeds are only a few so that we do not know much about the problems that occur specifically in respect with the notarial deeds (nor do we know if an excessive enforcement has ever taken place) but it is likely that it has.

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<sup>8</sup> In some States, as for instance in Germany, notarial deeds are only enforceable if the debtor has submitted to enforcement explicitly. The submission is abstract. The debtor can submit to enforcement for a sum that he does not owe at all or does not owe to the stated amount. If the creditor pursues the enforcement nevertheless, the debtor is entitled to claim restitution of the unjust enrichment – if necessary in a separate legal proceeding. Therefore, there is a risk that the enforcement is carried out first for a much higher amount than the debtor has to pay (especially regarding interests). In Germany there exists – regarding cases without a foreign element – a very differentiated system of provisions of security and provisional stay of execution or limitations in its contents (only seizure of assets), which ensures a balance between the interests of both sides – the creditor as well as the debtor. Does the problem of titles that are not valued exist also in other States? Are cases known, where an excessive enforcement has taken place and the debtor was unable to obtain judicial remedy in time?

If the enforcement procedure runs the debtor can basically submit a remonstrance (Article 53 of the Law on Execution and the Interim Protection of Claims) and a claim on stay of the enforcement measures (Article 71 of the Law on Execution and the Interim Protection of Claims). The court is however not obliged to grant a stay.

If the claim of the creditor is dependent upon any claim-related fact which is disputed by the parties, the court may instruct the debtor to institute civil or other proceedings in order to prove the inadmissibility of execution. E.g.: the debtor claims he has already paid a part of his debt but the creditor denies this. The court may in this case give the above mentioned instruction to the debtor. If a stay of the enforcement measures is granted than the debtor does not have much to fear.

## 5. Proposals for Improvements

Do you see, based on your experience with Regulation 44/01/EC, any necessity to improve the regulation, in particular regarding the rules on jurisdiction, *lis pendens*, provisional measures and recognition and enforcement? If yes, please make proposals.

I believe that the establishment of the standard forms for application for a declaration of enforceability would be reasonable (see also answer to question 4.1.2). It could provide a major help to the creditors and to the courts too.

It would also be reasonable to provide a manual of how to use in Articles 32 - 57 of the Regulation 44/2001 in practice. I was astonished when I realized from the discussions with the fellow judges and attorneys how many problems they have with the recognition and declaration of enforceability which is supposed to be a simple procedure. A manual should not be too general but also not a scientific treatise. It should deal with the problems a practitioner may encounter and provide some examples of how the court shall decide in some typical situations. If possible it should also refer to the legal situation in the Member States.