

**COMPARATIVE STUDY OF "RESIDUAL JURISDICTION"
IN CIVIL AND COMMERCIAL DISPUTES IN THE EU
NATIONAL REPORT FOR:**

SLOVENIA

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General notes:

Note that in drafting this national report, we have relied upon national legislation and the publicly available practice of higher courts and the Supreme Court of the Republic of Slovenia.¹ Court decisions which are not publicly available were not considered in drafting this national report.

The report only contains national jurisdictional rules without any regard to the *acquis*, except where specifically indicated otherwise.

(A) General Structure of National Jurisdictional Rules for Cross-Border Disputes

1. Main legal Sources

Except in matters regulated by the *acquis*, the Hague Conventions are applicable in Slovenia.² Slovenia is also a party to the Warsaw Convention as amended and supplemented. The main legal source of the rules on jurisdiction in Slovenia in civil and commercial matters, apart from the Brussels I Regulation and Brussels/Lugano Conventions, is the Private International Law and Procedure Act,³ which entered into force on 29 July 1999 (hereinafter "**PILPA**").

However, the PILPA is not the only legal source of rules on jurisdiction. Pursuant to Art. 8 of the Constitution of the Republic of Slovenia,⁴ ratified and published international treaties shall have priority over national legislation.

If jurisdiction for a certain type of dispute is not regulated by law or an international treaty, a Slovenian court shall have jurisdiction in cases in which its jurisdiction can be derived from provisions of the Civil Procedure Act on territorial jurisdiction (Art. 29 of the Civil Procedure Act,⁵ which entered into force on 14 July 1999 (hereinafter "**CPA**").

Some special rules on jurisdiction with regard to certain types of disputes connected with ships and aircraft are also contained in the Obligations and Real Rights in Air Navigation Act⁶ and in the Maritime Code.⁷

¹ See FN 8 below with respect to the formal validity of case law in Slovenia.

² In particular the Convention on civil procedure of 1 March 1954.

³ Private International Law and Procedure Act (*Zakon o mednarodnem zasebnem pravu in postopku*), Official Gazette of the Republic of Slovenia, no. 56/1999.

⁴ Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*), Official Gazette of the Republic of Slovenia nos. I 33/1991, 42/1997, 66/2000, 24/2003, 69/2004 and 68/2006.

⁵ Civil Procedure Act (*Zakon o pravdnem postopku*), Official Gazette of the Republic of Slovenia nos. 26/1999, 96/2002, 110/2002, 58/2003, 2/2004, 36/2004, 69/2005, 90/2005 and 43/2006.

⁶ Obligations and Real Rights in Air Navigation Act (*Zakon o obligacijskih in stvarnopravnih razmerjih v letalstvu*), Official Gazette of the Republic of Slovenia no. 12/2000.

The PILPA was published in the Official Gazette of the Republic of Slovenia, no. 56/1999. The official Slovenian wording can be accessed on the web page <http://www.uradni-list.si/1/objava.jsp?urlid=199956&stevilka=2651>. We append the Slovenian wording in Attachment 1 and the English translation of the PILPA in Attachment 2. The English translation was obtained from the Ministry of Justice of the Republic of Slovenia as an unofficial translation, but it is not entirely accurate in certain respects.

With respect to the rules based on case law, note that court practice is generally not a formally binding legal source in Slovenia.⁸

2. Specific Rules (or Not) for Transnational Disputes

The PILPA contains a specific set of national rules designed to govern the jurisdiction of courts in transnational disputes. These rules are derived from the same principles as the rules applicable in internal disputes (e.g. jurisdiction based on the residence or registered office of the defendant). However, the PILPA also contains certain specific rules which are necessary due to the transnational character of the relationships (e.g. the provision that Slovenian courts shall have no jurisdiction if there is a link between the subject matter and a foreign country, which, if existing between the subject matter and Slovenia, would represent grounds for exclusive jurisdiction of Slovenian courts).

⁷ Maritime Code (*Pomorski zakonik*), Official Gazette of the Republic of Slovenia nos. 26/2001, 21/2002, 110/2002, 2/2004, 37/2004, 98/2005 and 49/2006.

⁸ When applying legal rules, Slovenian judges are independent from higher courts which have already issued an opinion in the same matter (Art. 11, par. 2 of the Courts Act). The only formal exceptions are the legal opinions of the General Meeting of the Supreme Court of the Republic of Slovenia (*Občna seja Vrhovnega sodišča Republike Slovenije*), which are binding upon senates of the Supreme Court unless changed at a new General Meeting of the Supreme Court. The General Meeting of the Supreme Court of the Republic of Slovenia (composed of all Supreme Court Judges) adopts principal legal opinions on issues important for the uniform application of laws, as well as legal opinions on questions arising out of court practice (Art. 110, Paragraph 1, Points 1 and 2 of the Courts Act). According to Paragraph 2 of Art. 110 of the Courts Act, such legal opinions are binding upon the senates of the Supreme Court unless changed at a new General Meeting of the Supreme Court. In practice, court practice is considered by lower courts when deciding upon similar issues; this is true in particular for the publicly available decisions of the Supreme Court of the Republic of Slovenia.

3. Specific Rules (or Not) for Article 4(1) Jurisdiction

There are no specific rules designed to govern the jurisdiction of courts pursuant to Art. 4(1) of the Brussels I Regulation. The traditional rules of jurisdiction for cross-border cases as contained in the PILPA apply.

4. Influence of EU Law

Since Slovenia joined the European Union, court practice has not yet evolved sufficiently to allow the assessment of any potential influence of the Brussels I Regulation and the case law of the European Court of Justice. Due to the fact that court proceedings in Slovenia are rather lengthy, there are almost no publicly available decisions in proceedings that commenced from May 2004 on.

5. Impact of Other Sources of Law

Concerning the impact of other sources of law (such as principles of constitutional law, human rights principles, principles of public international law, etc.) on the application of national jurisdictional rules, the following rules of interpretation as contained in pars. 1 and 2 of Art. 3 of the Courts Act⁹ are important: a judge shall follow the Constitution and valid laws. In accordance with the Constitution, a judge shall also follow the general principles of international law and the provisions of ratified and published international treaties. If a civil matter cannot be resolved on the basis of valid regulations, a Slovenian judge is obliged to consider regulations which regulate similar cases. Should the correct legal solution to the matter still remain doubtful, the judge is obliged to decide in accordance with general principles of Slovenian law. In so doing, the judge must act in accordance with legal tradition and established knowledge of legal theory.

There is no publicly available court practice on the application of national jurisdictional rules which would allow the assessment of the practical impact of the described provisions of the Courts Act.

6. Other Specific Features

There are no other specific feature(s) in Slovenia with respect to the jurisdiction of Slovenian courts in cross-border disputes.

7. Reform

No changes are currently contemplated in Slovenia.

⁹ Courts Act (*Zakon o sodiščih*), Official Gazette of the Republic of Slovenia nos. 19/1994, 45/1995, 26/1999, 38/1999, 28/2000, 26/2001, 67/2002, 110/2002, 56/2002, 73/2004, 72/2005, 100/2005 and 49/2006.

(B) Bilateral and Multilateral Conventions

8. Conventions with Third States

Except in matters regulated by the *acquis*, the Hague Conventions are applicable in Slovenia.¹⁰ Slovenia is also a party to the Warsaw Convention (as amended and supplemented) and to several other multilateral conventions regulating substantive issues, which also include provisions dealing with some jurisdictional aspects. These conventions include, *inter alia*, the following:

- European Convention on jurisdiction and enforcement of decisions in civil and commercial matters of September 27, 1968 (applies only in relations with Denmark pursuant to par. 3 of Art. 1 of Brussels I Regulation),
- Geneva Convention on the contract for the international carriage of goods by road (CMR) of May 19, 1956,
- Paris Convention on third party liability in the field of nuclear energy of July 29, 1960,
- Brussels International Convention on the unification of certain rules relating to the arrest of sea-going ships of 10 May, 1952,
- Brussels International Convention on the unification of certain rules concerning civil jurisdiction in matters of collision of 10 May, 1952.

Bilateral conventions with the following countries include jurisdictional rules in matters regulated by the Brussels I Regulation:

- Bulgaria,¹¹
- Mongolia,¹²
- Romania¹³ and
- the former Soviet Union.¹⁴

Certain additional conventions concluded by the former Yugoslavia or its legal predecessors might exist.¹⁵

¹⁰ In particular the Convention on civil procedure of 1 March 1954.

¹¹ Convention on mutual legal assistance (*Pogodba o medsebojni pravni pomoči*) of 1956, Official Gazette of the Federative People's Republic of Yugoslavia, International conventions, no. 1/57.

¹² Convention on legal assistance in civil, family and criminal cases (*Pogodba o pravni pomoči v civilnih, družinskih in kazenskih zadevah*) of 1982, Official Gazette of the Socialist Federative Republic of Yugoslavia, International conventions, no. 7/82.

¹³ Convention on legal assistance (*Pogodba o pravni pomoči*) of 1960 and 1972, Official Gazette of the Federative People's Republic of Yugoslavia, International conventions, no. 8/61 and Official Gazette of the Socialist Federative Republic of Yugoslavia, International conventions, no. 4/73.

¹⁴ Convention on legal assistance in civil, family and criminal cases (*Pogodba o pravni pomoči v civilnih, družinskih in kazenskih zadevah*) of 1962, Official Gazette of the Socialist Federative Republic of Yugoslavia, International conventions, no. 5/63.

9. Practical Impact of International Conventions with Third States

No publicly available court practice exists proving any practical impact of the bilateral and multilateral conventions mentioned under point 8.

(C) Applicable National Rules Pursuant to Article 4 of the Brussels I Regulation

10. Structure

The general structure of the rules of jurisdiction for actions against defendants domiciled in non-EU states pursuant to Art. 4(1) of the Brussels I Regulation contained in the PILPA is as follows:

According to the general rule of Art. 48 of the PILPA, a Slovenian court shall only have jurisdiction if the permanent residence or seat, i.e. registered office, of the defendant is in the Republic of Slovenia. If the defendant does not have permanent residence in the Republic of Slovenia or any other country, then a Slovenian court shall have jurisdiction if the defendant's temporary residence is in the Republic of Slovenia.

Furthermore, the PILPA contains special provisions on jurisdiction with respect to civil non-litigation proceedings, exclusive jurisdiction, consolidation of related claims, agreement on jurisdiction, disputes concerning non-contractual liability for damages (some of which are applicable to insurance matters as well), disputes arising from contractual relations, individual labour disputes, disputes over legal property claims, disputes over disturbance of movable property, disputes over real rights or leases or disturbance of possession relating to a ship or aircraft, disputes between spouses, divorce suits, suits to establish or contest paternity or maternity, disputes over the guardianship and upbringing of children, disputes over maintenance payments, matters concerning personal conditions and relationships between parents and children, the power to pronounce a missing person dead, probate proceedings concerning immovable estate of the deceased, etc.

11. General Jurisdiction

The following general rule(s) of jurisdiction (i.e. rules not specific to a particular matter or circumstance discussed below, and aside from the "exorbitant" rules of jurisdiction subject to question 14 below) apply against defendants domiciled in non-EU states:

According to the general rule of Art. 48 of the PILPA, a Slovenian court shall only have jurisdiction if the permanent residence or seat, i.e. registered office, of the defendant is in the Republic of Slovenia. If the defendant does not have permanent residence in the Republic of Slovenia or any other country, then a Slovenian court shall have jurisdiction if the defendant's temporary residence is in the Republic of Slovenia.

¹⁵ See also Ilešič, M., Polajnar-Pavčnik, A., Wedam-Lukić, D., *Mednarodno zasebno pravo, komentar zakona*, II. dopolnjena izdaja, Časopisni zavod Uradni list Republike Slovenije, 1992, pp.167–176.

As a supplementary rule, if a foreign court has jurisdiction in disputes against citizens of the Republic of Slovenia in a foreign country under the criteria on jurisdiction which are not contained in the provisions on jurisdiction of Slovenian courts, these criteria shall also represent grounds for jurisdiction of a Slovenian court in those disputes in which the defendant is a citizen of that foreign country (Art. 51 of the PILPA).

Pursuant to par. 3 of Art. 52 of the PILPA, the parties may agree that a Slovenian court shall have jurisdiction if at least one is a citizen of the Republic of Slovenia or a legal entity with its seat (registered office) in the Republic of Slovenia. Such agreement is not possible with respect to certain disputes between spouses, divorce suits, suits to establish or contest paternity or maternity, disputes over the guardianship and upbringing of children, disputes over maintenance payments and matters concerning personal conditions and relationships between parents and children (regulated in more detail in Arts. 68 to 77 of the PILPA). Pursuant to par. 3 of Art. 69 of the Civil Procedure Act, agreements on jurisdiction shall be concluded in writing. According to the court practice of the Higher Court in Ljubljana, such agreements must be valid both pursuant to Slovenian law and pursuant to the law of the derogated court.

In cases in which the PILPA allows the parties to agree on jurisdiction of a Slovenian court, it shall be deemed that the parties have agreed on jurisdiction of a Slovenian court if the defendant has submitted a reply to the law suit or appealed a payment order issued by the court, as well as in cases where, during the preliminary hearing or, if there was no such hearing, during the first hearing on the main issue, the defendant addressed the main issue without objection to such jurisdiction (Art. 53 of the PILPA).

With respect to certain types of disputes, the Slovenian courts shall have exclusive jurisdiction. For details, see point 17 below. Additionally, the PILPA contains several specific rules on jurisdiction – see below.

12. Specific Rules of Jurisdiction

The specific rules of jurisdiction that apply in actions against defendants domiciled in non-EU states are reviewed below. It should be noted that in accordance with the structure of the PILPA (as described under point 10), jurisdiction of a Slovenian court may be based either on these specific rules or on the general rules of jurisdiction as explained in point 11.

a) Contract

The connecting factor in contract matters is the place of performance of the contract. Pursuant to Art. 56 of the PILPA, a Slovenian court shall have jurisdiction in disputes arising from contractual relations even if the defendant is not domiciled in Slovenia when the subject of the dispute is an obligation which must be fulfilled or should have been fulfilled in Slovenia.

The connecting factor in property claims is the location of the object of the claim. Pursuant to Art. 58 of the PILPA, a Slovenian court shall also have jurisdiction in disputes over property claims when the object of the claim is located in Slovenia. If any of the defendant's property is located in Slovenia, then a Slovenian court shall also have jurisdiction when the permanent residence or seat (registered office) of the defendant is in Slovenia, provided that the plaintiff proves as probable that the decision can be executed from this property.

b) Tort

With respect to torts, the PILPA only regulates jurisdiction in disputes concerning non-contractual liability for damages. Pursuant to Art. 55 of the PILPA, a Slovenian court shall have jurisdiction in such disputes when the damaging action was committed or the damaging consequence occurred in Slovenia. This provision is also applicable in suits against insurance companies requesting payment of damages incurred to third parties under the regulations on direct liability of insurance companies, and in claims for recourse payments arising from the entitlement to reimbursement of damages by parties liable to recourse (note that in the attached translation of the PILPA, the term "bonus" is used instead of "recourse").

c) Criminal Proceedings

The PILPA does not contain any special provisions with regard to civil claims or restitution which are based on acts giving rise to criminal proceedings.

Pursuant to Art. 105 of the Criminal Procedure Act,¹⁶ the court ruling in criminal proceedings may, together with a judgment proclaiming the defendant guilty, also sustain the injured party's claim in whole or in part (and, if only a part of the claim is sustained, refer the injured party to a civil suit with respect to the rest of the claim). If the data obtained in criminal proceedings do not provide a reliable basis for a decision on the civil claim, the criminal court shall refer the injured party to a civil suit with respect to the whole claim (in practice criminal courts exercise this option in the vast majority of cases and do not decide on the civil claim themselves). In cases when the injured party is referred to a civil suit, the rules described in this questionnaire shall apply.

¹⁶ Criminal Procedure Act (*Zakon o kazenskem postopku*), Official Gazette of the Republic of Slovenia nos. 63/1994, 70/1994, 25/1996, 39/1996, 5/1998, 49/1998, 72/1998, 6/1999, 66/2000, 110/2002, 111/2001, 32/2002, 44/2003, 56/2003, 43/2004, 68/2004, 101/2005 and 8/2006.

d) Secondary Establishment

Pursuant to Art. 59 of the PILPA, a Slovenian court shall also have jurisdiction in disputes against an individual or a legal entity with its seat (registered office) abroad if such individual or legal entity has a branch, or a person who has been trusted with conducting business, in the Republic of Slovenia. This provision applies only to disputes which arise from the functioning of such branch or of such person in Slovenia.

e) Trust

The term "trust" as used below means any combination of establishments in the same line of business for securing the same ends by holding the individual interests of each subservient to a common authority for the common interests of all.¹⁷ There is no legal institution of trusts under Slovenian law. Consequently, there are no specific provisions on jurisdiction regarding trusts as such.

However, pursuant to Art. 60 of the PILPA, a Slovenian court shall have exclusive jurisdiction in disputes which arise with respect to the founding, cessation or status changes of a company, other legal entity or association of natural persons or legal entities and in disputes over the validity of decisions of their bodies if the seat (registered office) of the company, other legal entity or association is in Slovenia.

f) Arrest and/or location of Property

Pursuant to Art. 63 of the PILPA, a Slovenian court shall have the exclusive power to permit and conduct forced execution proceedings (which may include arrest of property) if such proceedings are to be carried out in Slovenia. This provision also applies to disputes arising during forced execution or bankruptcy proceedings if such proceedings are conducted before a Slovenian court.

The PILPA does not contain any special provisions with respect to jurisdiction relating to (forced) security proceedings, which may include arrest of property through preliminary and interim injunctions. After reviewing Art. 29 of the CPA in connection with the provisions of the Execution of Judgments in Civil Matters and Insurance of Claims Act,¹⁸ we are of the opinion that the above rule applies by analogy.

Special provisions apply with respect to forced execution or forced security proceedings relating to a ship or aircraft.

In addition to points a) to f) above, the PILPA contains several other provisions on additional connecting factors with respect to:

- disputes over disturbance of movable property (the additional connecting factor is disturbance in the territory of Slovenia);

¹⁷ Black's Law Dictionary, sixth edition, p. 1509.

¹⁸ Execution of Judgments in Civil Matters and Insurance of Claims Act (*Zakon o izvršbi in zavarovanju*), Official Gazette of the Republic of Slovenia nos. 51/1998, 72/1998, 11/1999, 89/1999, 11/2001, 75/2002, 87/2002, 70/2003, 16/2004, 132/2004, 46/2005, 96/2005, 17/2006, 44/2006, 30/2006 and 69/2006.

- disputes over real rights or leases or disturbance of possession relating to a ship or aircraft (additional connecting factors are registration of the ship/aircraft in a Slovenian register or disturbance in Slovenia);
- disputes between spouses concerning their property relations (depending on the type of dispute, additional connecting factors can be property in Slovenia, citizenship of both parties, citizenship and permanent residence of the plaintiff in Slovenia, etc.);
- probate proceedings concerning the estate of the deceased, etc.

13. Protective Rules of Jurisdiction

The protective rules of jurisdiction that apply in actions against defendants domiciled in non-EU states for certain types of disputes in which one of the parties appears to deserve jurisdictional protection are the following:

a) Consumer Contracts

The only provision of the PILPA relating to consumer protection is contained in par. 2 of Art. 52, which provides that the parties may not agree upon jurisdiction of a foreign court in disputes arising from relations with consumers and/or disputes arising from insurance relations if the consumer or the insured party, who is an individual, has permanent residence in Slovenia.

b) Individual Employment Contracts

Pursuant to Art. 57 of the PILPA, a Slovenian court shall (in addition to the general rule) also have jurisdiction in individual labour disputes in cases where work is or was performed (or should have been performed) in Slovenia.

c) Insurance Contracts

Pursuant to par. 2 of Art. 55 of the PILPA, a Slovenian court shall (in addition to the general rule) have jurisdiction in suits against insurance companies requesting payment of damages incurred to third parties under the regulations on direct liability of insurance companies (e.g. a claim of the insured person against the insurance company, which is directly liable for payment of the insurance sum) and in claims for recourse payments arising from the entitlement to reimbursement of damages by parties liable to recourse (e.g. claim of the insurance company against the person who caused damage and is liable to recourse) in cases where the damaging action was committed or the damaging consequence occurred in Slovenia.

Note that the wording of Art. 55 of the attached translation of the PILPA is slightly different.

d) Distribution Contracts

The PILPA does not contain any special rules of jurisdiction in distributorship agreements, commercial agency agreements or franchise agreements.

e) Protective Rules in Other Matters

The PILPA contains several other protective rules of jurisdiction providing additional connecting factors with respect to:

- divorce suits (the additional connecting factor is that the plaintiff is a Slovenian citizen and that the laws of the country which would have jurisdiction do not recognise the institution of divorce – in some cases exclusive jurisdiction is provided);
- suits to establish or contest paternity or maternity (depending on the type of dispute, additional connecting factors can be the citizenship of both parties, citizenship and permanent residence of the plaintiff in Slovenia, etc.);
- disputes over the guardianship and upbringing of children (depending on the type of dispute, additional connecting factors can be the citizenship of both parties or citizenship and permanent residence of the child in Slovenia, etc. – in some cases exclusive jurisdiction is provided);
- disputes over maintenance payments (depending on the type of dispute, additional connecting factors can be the permanent residence of the child in Slovenia, the citizenship of both parties, minority and citizenship of the plaintiff in Slovenia, citizenship and permanent residence of the plaintiff in Slovenia, etc.);
- matters concerning personal conditions and relationships between parents and children (depending on the type of matter, additional connecting factors can be the citizenship of both parties (or the sole party) or the citizenship of the child).

14. Rules for the Consolidation of Claims

Art. 49 of the PILPA contains the following provisions allowing consolidation of related claims before the same court:

- If a suit has been filed against several defendants who are joint in a legal community or whose obligations are based on the same legal and factual foundation, a Slovenian court shall also have jurisdiction when the permanent residence of at least one of the defendants is in Slovenia.
- If the main debtor and the guarantor are sued in the same suit, then a Slovenian court shall also have jurisdiction over the guarantor when it has jurisdiction in the suit against the main debtor.
- A Slovenian court shall also have jurisdiction in the countersuit if the claim in the countersuit is made in connection with the claim of the suit. (Note that in the attached translation of the PILPA, the term “opposing” is used instead of “counter” claim).

In the situations described below, the above provisions apply as follows:

a) Co-Defendants

A defendant domiciled in a non-EU state can be sued before Slovenian courts as a co-defendant in a proceeding brought against a defendant domiciled in Slovenia. Under the provisions allowing consolidation of related claims, this is possible in the following cases:

- if the defendant domiciled in a non-EU state is joint in a legal community with other defendants, or its obligations are based on the same legal and factual foundation, and at least one of the other defendants is domiciled in Slovenia, provided that they are sued in one suit;
- if the defendant domiciled in a non-EU is a guarantor for the obligations of the main debtor who belongs under the jurisdiction of a Slovenian court, provided that both are sued in the same suit.

b) Third Party Proceedings

Under Art. 49 of the PILPA, a Slovenian court shall have jurisdiction if the defendant domiciled in a non-EU state is a guarantor for the main debtor, who is subject to the jurisdiction of a Slovenian court, provided that they are both sued in the same suit (see a)).

An action on warranty or guarantee in which the guarantor would have the status of a third party is unknown in Slovenian law. Under the Slovenian system any party being sued is a defendant.

Slovenian law does not allow a defendant domiciled in a non-EU state to be sued before Slovenian courts in a separate action (i.e. not together with the main debtor) on a warranty or guarantee or similar basis.

c) Counter-Claims

A party domiciled in Slovenia that has been sued by a party domiciled in a non-EU state can bring a counter-claim against the former party before Slovenia courts if the claim in the countersuit is made in connection with the claim of the suit (and provided that the same court has jurisdiction over the subject matter).

d) Related Claims

The PILPA does not contain any other provisions allowing consolidation of related claims.

e) Any Problems Pertaining to Lack of Harmonisation

Publicly available court practice does not reveal any specific problems with respect to the lack of harmonisation of the above-mentioned rules in actions against non-EU domiciliaries.

15. Rules of Jurisdiction Pursuant to Annex I of Brussels I

a) The rules listed in annex I

In Slovenia, the rules listed in Annex 1 of the Brussels I Regulation are as follows:

15.a.1) Par. 2 of Art. 48 of the PILPA in relation to par. 2 of Art. 47:

Par. 2 of Art. 48 of the PILPA provides: if the defendant does not have a permanent residence in the Republic of Slovenia or any other country, then a Slovenian court shall have jurisdiction if the defendant's temporary residence is in Slovenia.

Par. 2 of Art. 47 of the CPA provides: if a Slovenian court has jurisdiction due to the fact that the defendant has temporary residence in Slovenia, the court of the defendant's residence shall have territorial jurisdiction.

15.a.2) Par. 1 of Art. 58 of the PILPA in relation to par. 1 of Art. 57 of the CPA and par. 2 of Art. 47 of the CPA:

Par. 1 of Art. 58 of the PILPA provides: a Slovenian court shall also have jurisdiction in disputes over property claims when the object of the suit is in Slovenia.

Par. 1 of Art. 57 of the CPA provides: in disputes over real rights, disturbance of possession or leases of real estate, the court of the location of the real estate shall have exclusive territorial jurisdiction.

Par. 2 of Art. 47 of the CPA is described under 15.a.1).

b) Practical use of the rules listed in Annex I

There is no publicly available court practice concerning the above rules.

c) Extension of jurisdiction pursuant to article 4(2) of Brussels I

There is no publicly available information on application of Art. 4(2) of the Brussels I Regulation by Slovenian courts in practice. Due to the fact that court proceedings in Slovenia are rather lengthy, there are almost no publicly available decisions in proceedings that commenced from May 2004 on.

16. Forum Necessitatis

Slovenian law does not provide any general rules allowing a court to exercise jurisdiction on the basis that there is no other forum available abroad (*forum necessitatis*).

However, the PILPA contains the following special provisions with certain characteristics of *forum necessitatis*:

- a provision stipulating that a Slovenian court shall have jurisdiction in divorce suits when the plaintiff is a Slovene citizen, and the law of the country whose court would have jurisdiction does not provide for dissolution of a marriage;
- a provision stipulating that a Slovenian court shall have jurisdiction in probate proceedings concerning real estate of a Slovenian citizen which is located abroad if, pursuant to the law of the state where the real estate is located, a body of this state is not competent to decide upon the matter;
- a similar provision applying to probate proceedings concerning movable property of a Slovenian citizen located abroad, disputes arising from heritage proceedings, and disputes over claims of debtors against the heritage.

(D) National Jurisdiction & Enforcement of Non-EU Judgments

17. National rules of jurisdiction barring the enforcement of a non-EU judgment

Pursuant to Art. 97 of the PILPA, a foreign (non-EU) court decision shall not be recognised if the subject matter is within the exclusive jurisdiction of a Slovenian court or other Slovenian body. As an exception, if a request for recognition of a foreign (non-EU) court decision issued in a matrimonial suit is filed by the defendant, or if recognition is requested by the plaintiff and not objected to by the defendant, exclusive jurisdiction of a Slovenian court shall not be an obstacle for its recognition.

A general rule is that a Slovenian court shall have exclusive jurisdiction if so explicitly provided for by the PILPA or other law. The PILPA stipulates exclusive jurisdiction of Slovenian courts:

- in disputes arising during the founding or cessation or status changes of a company, other legal entity or association of natural persons or legal entities and in disputes over the validity of decisions of their bodies if the head (registered) office of the company, other legal entity or association is in Slovenia;
- in disputes over the validity of entries in official registers kept in Slovenia;
- in disputes in connection with the registration and validity of inventions and distinguishing marks if the application for registration was submitted in Slovenia;
- for permission and conduct of forced execution proceedings (in court matters) if execution is carried out in Slovenia, and in disputes arising from execution or bankruptcy proceedings if conducted before a Slovenian court;
- in disputes over real rights, in disputes over disturbance of possession and in disputes arising from leases of real estate if the real estate is located in Slovenia (also applies to civil non-litigation proceedings);
- in disputes between spouses concerning their property relations if the defendant is a Slovenian citizen and has permanent residence in Slovenia;
- in suits to establish or contest paternity or maternity if the suit has been filed against a child who is a Slovenian citizen and has permanent or temporary residence in Slovenia;
- in disputes over the guardianship and upbringing of children if the defendant and the child are Slovenian citizens and they both have permanent residence in Slovenia (applies accordingly to decisions of other bodies in such cases);
- for pronouncement of a missing Slovenian citizen dead;

- in the probate process concerning real estate of the deceased if the real estate is in Slovenia (applies in all cases – if the deceased was a Slovenian citizen or citizen of another state or a stateless person).

Some special rules on exclusive court jurisdiction with regard to certain types of disputes connected with ships and aircraft are also contained in the Obligations and Real Rights in Air Navigation Act and in the Maritime Code.

The PILPA also contains provisions regulating the exclusive jurisdiction of other bodies:

- if a minor requesting permission to marry is a Slovenian citizen, or if the persons who wish to marry are Slovenian citizens and the matrimony is to be concluded abroad;
- for decisions regarding adoption and termination of adoption of a person who is a Slovenian citizen and has permanent residence in Slovenia;
- in matters of guardianship of Slovenian citizens, unless otherwise provided in the PILPA.

(E) Declining Jurisdiction

18. Forum Non Conveniens

Par. 2 of Art. 50 of the PILPA provides that the Slovenian courts shall have no jurisdiction if there is a link between the subject matter and a foreign country which, if it existed between the subject matter and Slovenia, would represent grounds for exclusive jurisdiction of Slovenian courts, unless otherwise provided by the PILPA.

In Slovenia, there are no general rules or doctrines (such as *forum non conveniens* or other similar techniques) which would allow the courts to decline jurisdiction or stay the proceedings on the basis of judicial discretion (with no distinction between the situation where the defendant is domiciled in the EU and where the defendant is domiciled in a third state).

19. Declining Jurisdiction when the Defendant is Domiciled in a Third State

When the defendant is domiciled in a non-EU state and the jurisdiction is based on domestic law pursuant to Art. 4 of the Brussels I Regulation, the courts can decline jurisdiction or stay their proceedings in favour of a non-EU court under the following circumstances:

a) Non-EU Jurisdiction Agreements

Pursuant to par. 1 of Art. 52 of the PILPA, the parties may agree that a foreign court shall have jurisdiction only if at least one of them is a foreign citizen or a legal entity with its head (registered) office abroad, with the exception that exclusive jurisdiction of a Slovenian court is set forth by the PILPA or other law. Pursuant to par. 3 of Art. 69 of the Civil Procedure Act, agreements on jurisdiction shall be concluded in writing. According to the court practice of the Higher Court in Ljubljana, such agreements must be valid both pursuant to Slovenian law and pursuant to the law of the derogated court.

As an exception, the parties may not agree on jurisdiction of a foreign court in disputes arising from relations with consumers and in disputes arising from insurance relations if the consumer or the insured party, who is an individual, has permanent residence in Slovenia. Furthermore, the following types of disputes may not be subject to agreement on jurisdiction:

- disputes between spouses,
- divorce suits,
- suits to establish or contest paternity or maternity,
- disputes over the guardianship and upbringing of children,
- disputes over maintenance payments and matters concerning personal conditions and relationships between parents and children

(regulated in more detail in Arts. 68 to 77 of the PILPA).

b) *Parallel Proceedings in a non-EU Court*

Pursuant to Art. 88 of the PILPA, a Slovenian court shall, at the request of a party, suspend proceedings if another procedure on the same matter has been initiated between the same parties before a foreign court:

- 1) if the civil action as filed abroad was served to the defendant before the civil action which was filed in Slovenia, or if a non-litigation procedure abroad started earlier than the one in Slovenia;
- 2) if it can be anticipated that the foreign decision can be recognised in Slovenia; and
- 3) if reciprocity exists between the two countries.

c) *“Exclusive” Jurisdiction in a non-EU State*

Par. 2 of Art. 51 of the PILPA provides that Slovenian courts shall have no jurisdiction if there is a link between the subject matter and a foreign country which, if it existed between the subject matter and Slovenia, would represent grounds for exclusive jurisdiction of Slovenian courts, unless otherwise provided by the PILPA.

See also the explanation under point 17.

20. Declining Jurisdiction When the Defendant is Domiciled in the EU

Slovenian law does not distinguish between the situation where the defendant is domiciled in the EU and where the defendant is domiciled in a third state. There are no general rules or doctrines (such as *forum non conveniens* or other similar techniques) which would allow the courts to decline jurisdiction or stay the proceedings on the basis of judicial discretion.

When the defendant is domiciled in the EU and jurisdiction is based on domestic law pursuant to Art. 4 of the Brussels I Regulation, courts can decline jurisdiction or stay their proceedings in favour of a non-EU court under the following circumstances:

a) Non-EU Jurisdiction Agreements

See point 19a for details (conditions).

b) Parallel Proceedings in a non-EU Court

See point 19b for details (conditions).

c) "Exclusive" Jurisdiction in a non-EU State

See point 19c for details (conditions).

If the conditions described under point 19c are not be fulfilled and a Slovenian court has jurisdiction pursuant to the provisions of the PILPA, it should, in our opinion, not decline jurisdiction even though one of the parties would object that a court of another state has exclusive jurisdiction (pursuant to the laws of that other state).

With respect to the above situations, we have found no publicly available court practice.

(F) The Adequate Protection (or lack thereof) of EU Nationals and/or Domiciliaries through the Application of Domestic Jurisdictional Rules

21. Use of National Jurisdictional Rules to Avoid an Inadequate Protection in Non-EU Courts

There is no publicly available court practice in which courts in Slovenia have exercised jurisdiction on the basis of national rules in circumstances where it was shown that the plaintiff would not get a fair hearing or an adequate protection in the courts of non-EU states.

22. Lack of Jurisdiction Under National Rules Having the Effect to Deprive EU Plaintiffs of an Adequate Protection

a) Claims from EU Consumers against non-EU defendants

There is no publicly available court practice in which Slovenian courts have found not to have jurisdiction or have declined jurisdiction (including on the basis of a foreign choice of court clause) to hear a claim brought by an EU domiciliary in such situations.

b) Claims from EU Employees against non-EU Employers

There is no publicly available court practice in which Slovenian courts have found not to have jurisdiction or have declined jurisdiction (including on the basis of a foreign choice of court clause) to hear a claim brought by an EU domiciliary in such situations.

c) Claims from EU Plaintiffs in Community Regulated Matters

There is no publicly available court practice in which Slovenian courts have found not to have jurisdiction or have declined jurisdiction (including on the basis of a foreign choice of court clause) to hear a claim brought by an EU domiciliary in such situations.

23. Lack of Adequate Protection as a Consequence of Transfer of Domicile to or from a Third State

There is no publicly available court practice in which a Slovenian national was not able to invoke the protection of Community legislation because the person(s) involved was (were) no longer domiciled in the EU at the time the proceeding was instituted.

24. The Risk that EU Rules and Principles be Put in Jeopardy Because of the Application of National Jurisdictional Rules

There is no publicly available court practice in which the application of domestic jurisdictional rules led in practice or were likely to lead to jeopardising the application of mandatory Community legislation or the proper functioning of the internal market or the adequate judicial protection of EU nationals and domiciliaries.

(G) Residual Jurisdiction under the new Brussels II Regulation

25. Applicable National Rules Pursuant to article 14 of the New Brussels II Regulation (Parental Responsibility)

Under Art. 14 of the new Brussels II Regulation no. 2201/2003 on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and the Matters of Parental Responsibility ("Brussels II bis Regulation"), relating to "residual jurisdiction" in matters of parental responsibility, it is provided that "(w)here no court of a Member State has jurisdiction pursuant to Arts. 8 to 13, jurisdiction shall be determined, in each Member State, by the laws of that State". The relevant grounds of jurisdiction that can be used in Slovenia under this provision are the following:

25.1) Parental responsibility matters covered by the Brussels II bis Regulation:

The relevant grounds of “residual jurisdiction” relating to parental responsibility matters covered by the Brussels II bis Regulation¹⁹ are the following:

The general rule of jurisdiction on the basis of the defendant’s residence applies.

Furthermore, pursuant to Art. 73 of the PILPA, a Slovenian court shall also have jurisdiction in disputes over guardianship and upbringing of children when the defendant does not have a permanent residence in the Republic of Slovenia, but

- both parents are Slovenian citizens, or
- the child is a Slovene citizen and has permanent residence in the Republic of Slovenia.

The jurisdiction is exclusive if the defendant and the child are Slovenian citizens and they both have permanent residence in the Republic of Slovenia. The described rules apply by analogy to decisions adopted by other bodies of the Republic of Slovenia concerning guardianship and upbringing of children (Art. 74 of the PILPA).

Pursuant to Art. 76 of the PILPA, a Slovenian court shall also be competent to adopt decisions concerning guardianship, upbringing and maintenance of children when such disputes are being resolved jointly with marital disputes or with suits contesting paternity or maternity which are within the jurisdiction of Slovenian courts.

Pursuant to Art. 77 of the PILPA, a Slovenian court shall also have the power to remove or restore the right of a parent, prolong the right of a parent, appoint a parent as a guardian of the property of the child, to pronounce a child to have been born within a marriage and to decide on other matters concerning personal conditions and relationships between parents and children if both the person who submitted the claim and the person against whom it was submitted are Slovenian citizens, or, when one person only is involved in the procedure, if this person is a Slovenian citizen or when the child is a Slovenian citizen and has permanent residence in Slovenia.

Jurisdiction of Slovenian courts may also be based on the Hague Convention on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children of October 19, 1996. Since many non-EU states joined this Convention, the jurisdictional provisions refer to those non EU-states as well.

25.2) Parental responsibility matters not covered by the Brussels II bis Regulation:

The general rule of jurisdiction on the basis of the defendant’s residence applies.

Furthermore, pursuant to Art. 71 of the PILPA, a Slovenian court shall also have jurisdiction in suits to establish or contest paternity or maternity when the defendant does not have permanent residence in Slovenia if

- the plaintiff and the defendant are Slovenian citizens, or

¹⁹ Scope of parental responsibility matters covered by the Brussels II bis Regulation is defined in Art. 1 thereof and includes (a) rights of custody and rights of access; (b) guardianship, curatorship and similar institutions; (c) the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child; (d) the placement of the child in a foster family or in institutional care; and (e) measures for the protection of the child relating to the administration, conservation or disposal of the child's property.

- the plaintiff is a Slovenian citizen with permanent residence in Slovenia.

The jurisdiction is exclusive if the suit has been filed against a child who is a Slovenian citizen and has permanent or temporary residence in Slovenia. Pursuant to Art. 72 of the PILPA, the court shall also have jurisdiction in such cases when the parties are foreign citizens if the plaintiff or one of the plaintiffs has permanent residence in Slovenia, but on condition that the defendant permits that the ruling shall be given by a Slovenian court and provided that the regulations of the country of his/her citizenship permit such jurisdiction.

Pursuant to Art. 74 of the PILPA, a Slovenian court shall also have jurisdiction in disputes over maintenance payments for children when the defendant does not have permanent residence in Slovenia:

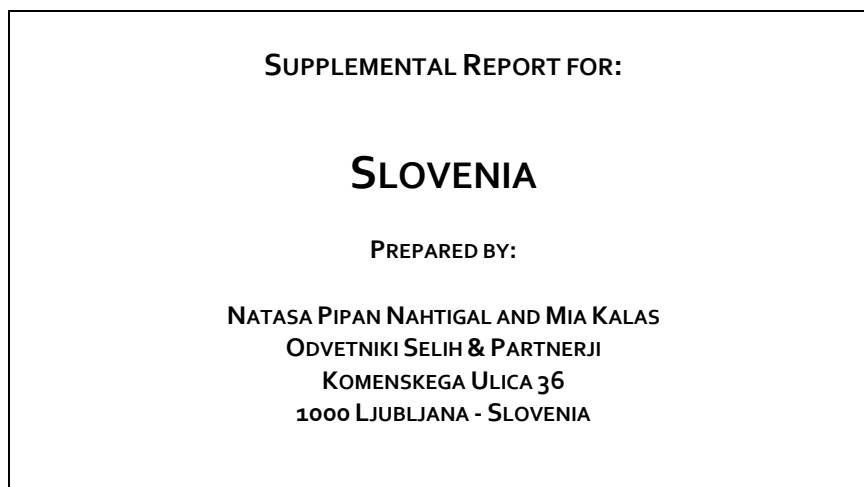
- 1) if the suit has been filed by a child with permanent residence in Slovenia;
- 2) if the plaintiff and the defendant are Slovenian citizens and both have permanent residence in Slovenia; or
- 3) if the plaintiff is a minor and a Slovenian citizen.

A court in the Republic of Slovenia shall also have jurisdiction in disputes over maintenance payments not listed in the previous paragraph when the defendant does not have permanent residence in Slovenia if the plaintiff is a Slovenian citizen and has permanent residence in the Republic of Slovenia.

Pursuant to Art. 75, a Slovenian court shall also have jurisdiction in disputes over maintenance payments when the defendant has property in Slovenia which may be used to pay the maintenance.

The PILPA also regulates jurisdiction of other state bodies in matrimonial, custody, adoption and similar issues.

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26. NA

27. Conventions with Third States in Matters of Parental Responsibility (and maintenance of children)

What are the international (and in particular bilateral) conventions concluded between your country and non-EU countries that include rules of jurisdiction in matters of parental responsibility (and maintenance of children)?

On the basis of publicly available data on international conventions concluded between the Republic of Slovenia and non-EU countries, we have found the following conventions which contain rules of jurisdiction in matters of parental responsibility:

A) Multilateral convention:

- Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, signed in Hague on October 19, 1996 (in Slovenian: "Konvencija o pristojnosti, pravu, ki se uporablja, priznavanju, uveljavljanju in sodelovanju glede starševske odgovornosti in ukrepov za varstvo otrok").

B) Bilateral conventions:

- Convention between the Socialist Federative Republic of Yugoslavia and the People's Republic of Mongolia on legal assistance in civil, family and criminal matters (in Slovenian: "Pogodba med SFR Jugoslavijo in Ljudsko republiko Mongolijo o pravni pomoči v civilnih, družinskih in kazenskih zadevah"), signed in Ulan Bator on June 8, 1981;
- Convention between the Federal People's Republic of Yugoslavia and the Federation of Soviet Socialist Republics on legal assistance in civil, family and criminal matters (in Slovenian: "Pogodba med Federativno ljudsko republiko Jugoslavijo in Zvezo sovjetskih socialističnih republik o pravni pomoči v civilnih, rodbinskih in kazenskih zadevah"), signed in Moscow on February 24, 1962.

Please note that we have asked the Slovenian Ministry of Foreign Affairs and the Slovenian Ministry of Labour, Family and Social Affairs to provide us with an exhaustive list of conventions concluded with non-EU countries regulating matters of parental responsibility, but we have only been provided with a list of certain multilateral conventions which did not contain any rules of jurisdiction in matters of parental responsibility.

28. Jurisdiction as a Ground for Resisting the Enforcement of non-EU Judgment in Matters of Parental Responsibility

Can the judgment of a non-EU State relating to matters of parental responsibility (for instance, a judgment given the guardianship of a child to one of the parents) be denied recognition or enforcement in your country on the basis that the courts of your country are the only ones who have jurisdiction to entertain the matter? If so, what is (are) the ground(s) of these "exclusive" rules of jurisdiction (e.g., habitual residence of the child in your country, citizenship of one or several of the parties, etc.)

Any judgement of a non-EU state (including judgements relating to matters of parental responsibility) shall be denied recognition (and consequently enforcement), if the subject matter is within the exclusive jurisdiction of the court or another body of the Republic of Slovenia (Par. 1 of Art. 97 of the PILPA). The only exception applies to foreign court decisions issued in matrimonial suits if recognition is a) requested by the defendant or b) requested by the plaintiff and not objected by the defendant. Only in such cases exclusive jurisdiction of a Slovenian court is not an obstacle for recognition of such foreign court decisions (Par. 2 of Art. 97 of the PILPA).

Exclusive jurisdiction of Slovenian courts or other competent bodies is provided in the following parental responsibility matters:

A) Parental responsibility matters covered by the Brussels II bis Regulation:

Pursuant to Par. 2 of Art. 73 of the PILPA, a Slovenian court shall have exclusive jurisdiction in disputes over the guardianship and upbringing of children if the defendant and the child are Slovenian citizens and they both have permanent residence in the Republic of Slovenia. Pursuant to Par. 3 of Art. 73 of the PILPA, this rule applies by analogy to decisions adopted by other bodies of the Republic of Slovenia concerning guardianship and upbringing of children.

B) Parental responsibility matters not covered by the Brussels II bis Regulation:

- Pursuant to Par. 2 of Art. 71 of the PILPA, a Slovenian court shall have exclusive jurisdiction in suits to establish or contest paternity or maternity if the suit has been filed against a child who is a Slovenian citizen and has permanent or temporary residence in Slovenia.
- Pursuant to Par. 1 of Art. 83 of the PILPA, a body of the Republic of Slovenia shall have exclusive jurisdiction for decisions regarding adoption and termination of adoption of a person who is a Slovenian citizen and has permanent residence in the Republic of Slovenia.
- Pursuant to Art. 84 of the PILPA, a body of the Republic of Slovenia shall be exclusively competent in matters of guardianship of Slovenian citizens, regardless of their permanent residence (unless

otherwise provided for by the PILPA). As an exception to this general rule, Art. 85 of the PILPA provides that a body of the Republic of Slovenia shall not issue a decision and take action in matters of guardianship of Slovenian citizens with permanent residence abroad if it is established that a body with jurisdiction under the law of the foreign country has issued a decision or adopted measures protecting the personality, rights and interests of the Slovenian citizen concerned.

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