

**Second Study Commission  
Civil Law and Procedure**

**Cross-border issues in the face of increasing globalization – as reflected in a 2011  
series of individual fact scenarios**

**Answers to the questionnaire - Slovenia**

**A. Recognition and Enforcement of a Foreign Judgment**

**(A). General Questions:**

**1) What laws exist in your country regarding the recognition and enforcement of a foreign judgment?**

In the absence of a treaty, foreign judgments concerning civil and commercial matters are recognized and enforced pursuant to the Act on private international law and procedure (PILPA).

Judgments given in other EU Member States concerning civil and commercial matters are recognized and enforced pursuant to the Regulation 44/2001 (Brussels I Regulation), while judgments concerning parental responsibility and matrimonial disputes are recognized and enforced pursuant to the Regulation 2201/2003 (Brussels II Regulation). The system in both regulations is based on the principle of mutual trust and recognition and provides for almost automatic recognition and enforcement.

Slovenia shall be a party to the new Lugano Convention on jurisdiction, recognition and enforcement in civil and commercial matters. Several Hague conventions in the field of private international law apply in Slovenia, e.g. Hague convention of 1 March 1954 on civil procedure, Convention of 1 February 1971 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children. Certain bilateral treaties in the field of mutual legal assistance in civil matters (e.g. between Slovenia and Macedonia, between Slovenia and Croatia) also contain norms on recognition and enforcement, but fundamentally they do not depart from the system of the PILPA.

**2) What is the difference in the operative result in your country between the recognition of a foreign judgment and the enforcement of a foreign judgment?**

A creditor who is in a possession of a foreign judgment has two options how to have it enforced in Slovenia. The first option is to seek a recognition (*exequatur*) of the judgment in a separate proceeding and after the recognition is granted enforcement proceedings may be initiated in the same matter as if it was conducted on the basis of a Slovenian judgment. The creditor, however, does not need first to obtain an *exequatur* in order to have a foreign judgment enforced in Slovenia. According to the regulation of the PILPA, in case the recognition of a judgment is raised as an incidental question in any court proceedings that court may determine that issue. Thus, it is not necessary for the creditor first to engage in a separate proceeding for recognition of a foreign judicial decision. The possibility of *incidenter* recognition also applies to the enforcement procedure – the creditor may directly move to enforcement proceedings in Slovenia on the basis of a foreign judgment. In the course of enforcement proceedings, the court will examine as a preliminary question whether the foreign judgment fulfills criteria for recognition.

A creditor whose judgment is subject to the regime of the aforementioned EU regulations, unlike the creditor who is subject to the regime of the PILPA, may not directly move for an enforcement procedure in Slovenia. Prior to that, he or she must obtain a declaration of enforceability (*exequatur*) in a separate proceeding. This should however be issued virtually automatically after purely formal checks of the documents and forms supplied.

**3) What conditions are required in the court of your country in order to declare a foreign judgment as enforceable?**

Concerning substantive conditions for recognition Slovenian law is rather liberal. It is clearly based on the principle of *contrôle limité* and a foreign judgment may not be reviewed as to its substance (no *contrôle au fond*). Grounds of non-recognition are limited to the examination whether the subject matter of the foreign judgment concerns a dispute for which exclusive jurisdiction of a Slovenian court is reserved; the violation of public order; the violation of the right to be heard; the obstacles of *res iudicata* and *lis pendens*. Recognition shall also be denied if a foreign court disrespected a prorogation

agreement in favor of a Slovenian court duly invoked by the opposite party and if a foreign court based its jurisdiction on the grounds which count as excessive jurisdictions (e.g. the nationality of the plaintiff or the presence of the defendant's assets). It should only be stressed that only judgments which are *res iudicata* in the country of origin can be recognized and enforced in Slovenia. Therefore, even if a judgment although not final can be a subject to a preliminary enforcement in the country of origin it cannot be recognized and enforced in Slovenia. It is an obligation of the creditor to attach to the request for recognition not only the proof that the judgment is enforceable in the country of origin, but also that it is a *res iudicata*.

**4) In order to enforce a foreign judgment, does your country require reciprocity with the country which gave the judgment?**

One of the conditions for recognition and enforcement of a foreign judgment is also the reciprocity – the factual reciprocity is sufficient and its existence is presumed.

**5) Under what circumstances does the court in your country not enforce a foreign judgment?**

With regard to the public order (*ordre public*) it should be mentioned that in the doctrine and in the case law it is conceived in a restrictive manner. Foremost constitutional provisions (substantive and constitutional procedural guarantees), but also certain norms which are fundamental for the socio-economic order and vital interests of the state are considered to form *ordre public*. Its notion is certainly narrower than the notion of *ius cogens*. Besides the doctrine argues that the notion of *ordre public* should be conceived even in a more restrictive manner when it concerns recognition of foreign judgments than when it concerns the application of foreign substantive law in a domestic court (doctrine of *ordre public attenué*). See also above under A3.

**6) Can your country impose temporary orders issued by a foreign court, such as alimony?**

Any final judicial decision including temporary orders can in principle be subject to recognition and enforcement. See below under B, factual scenario 2.

**7) What are the conditions necessary for recognition of a foreign judgment in your country? Can your court recognize a foreign judgment incidentally?**

See above under A2 and 3.

**8) Is it possible to enforce a foreign arbitration award in your country?**

Slovenia is a contracting state of the New York convention on the recognition and enforcement of foreign arbitral awards. The Arbitration Act simply stipulates that for recognition and enforcement of foreign arbitral awards the New York convention shall apply. This applies also to awards rendered in non-contracting states. A foreign arbitral award shall not be enforced in Slovenia unless it is recognized by the competent Slovenian court – the Ljubljana district court.

**(B). Cases**

- 1) Humpty and Dumpty are a business partners in Wonderland. Humpty violated the partnership agreement signed between them. The partnership agreement stated that the partnership will be the representative in your country, of an investment company from Wonderland, and will market its services in your country. Humpty argued that Dumpty established a competing investment company in your country. Wonderland Court ruled that the Dumpty violated his duty of good faith and fair dealing and ruled against him to pay Humpty damages of 5.5 million dollars. A sum of one and a half million dollars as punitive damages and the rest as compensatory damages for harm caused. Humpty asks the court in your country to enforce the Wonderland court ruling, Dumpty opposed, his main claim being that part of the damages is punitive and therefore is not enforceable. What is the law in your country?**

The question the court would have to answer in this case is whether the judicial decision of a foreign is contrary to *ordre public*. Punitive function is not immanent to the notion of damages in Slovenian tort law, but, as mentioned above, *ordre public* is conceived in a restrictive manner. Foremost constitutional provisions (substantive and constitutional procedural guarantees), but also certain norms which are fundamental for the socio-economic order and vital interests of the state are considered to form *ordre public*. Substantive conditions for recognition Slovenian law are rather liberal.

It is clearly based on the principle of *contrôle limité*. Therefore the court ruling would probably be enforced.

**2) A British businessman got into debt in the amount of 100-200 million pounds sterling and a bankruptcy order was issued against him by the High Court of Justice in London, with the appointment of estate trustees. Following this ruling, the trustee submitted to the court in your country a request to enforce the order and to appoint an official receiver for the realization of the debtor's assets located in your country.**

- a. Will the court in your country enforce the court order obtained in England?**
- b. The question was asked to address the fact that the English ruling does not include a personal operative remedy; in this case can your court enforce the ruling or rather give recognition?**
- c. Can it be a direct recognition? If not, can it be an incidental recognition?**
- d. What are the different effects of the three variations: enforcement, direct recognition and incidental recognition?**

In such case a Slovenian court would be guided by the Regulation 1346/2000 of 29 May 2000 on insolvency proceedings. This Regulation enables the main insolvency proceedings to be opened in the member state where the debtor has the center of his main interests. These proceedings have universal scope and aim at encompassing all the debtor's assets. To protect the diversity of interests, this regulation permits secondary proceedings to be opened to run in parallel with the main proceedings. Secondary proceedings may be opened in the member state where the debtor has an establishment. The effects of secondary proceedings are limited to the assets located in that state. Mandatory rules of coordination with the main proceedings satisfy the need for unity in the EU.

**3) Sarah and Judy have been lifetime partners for 7 years and are citizens of your country. Their permanent residence is the State of Neverland. Sarah bore a son after she had been impregnated with a donor sperm. The son was adopted by Judy with Sarah's consent. The adoption order was issued in Neverland and Judy was registered in the birth certificate as an**

additional parent. Sarah and Judy would like to return to your country for the purpose of studying there for two years. They have notified the registration official that Judy has adopted the child, relying on the birth certificate and the ruling of the State of Neverland which issued the decree of adoption. The Registration official refused to accept the registry on the grounds that the existence of two biological parents of the same gender is not possible and he is not obliged to accept the registration at its face value. Sara and Judy apply to the court in your country to recognize the adoption.

- a. What will be your ruling?
- b. Does it depend on the question of the law in your country allowing an adoption by a couple of the same sex?
- c. If so, what will be the ruling if it is not allowed?

The question the court would have to answer in this case is (the same as under B1) whether the judicial decision is contrary to *ordre public*. The law in Slovenia does not allow an adoption by a couple of the same sex, but that does not mean that the recognition of such a court ruling would be denied. On the contrary, according to the existing case law it would be recognized – the notion of *ordre public* is narrower than the notion of *ius cogens*.

## **B. Cross border issues in the conduct of trials:**

### **Factual Scenario #1**

Company “Head Co.” is the parent company of an international group of companies. It carries on business in its country of incorporation, country A. It also carries on business in country B through a subsidiary (“Subsidiary”) which is incorporated in country B.

“Director” is a director of Head Co. and Subsidiary. He is also a resident of country B.

Head Co. and Subsidiary claim that Director has breached statutory, fiduciary and contractual duties that he owed to each of them, arising out of his position as director of both Head Co. and Subsidiary. The companies allege that he

**misappropriated funds of Head Co. and Subsidiary. They rely on substantially the same acts and events to support their respective claims.**

**Head Co. and Subsidiary have commenced two sets of proceedings against Director: one in country A and the other in country B, both actions seeking relief against Director arising out of substantially the same facts.**

**Assume you are a Court in country A. Director has applied to your Court for an order to stay the proceedings against him in your country.**

**Questions:**

- 1) What test would your Court apply or what factors would your Court take into account when determining Director's application?**

In the absence of a treaty the following factors relevant according to the PILPA would be taken into account: which is the court first seised; reciprocity; exclusive jurisdiction. If the Slovenian court is not the court first seised it would have to stay the proceedings and decline its jurisdiction in favor of the foreign court's jurisdiction. Slovenia is a party to the Hague convention of 1 February 1971 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters. If country B is also a party to the convention its relevant factors would be taken into account. If B country is an EU member state the Regulation 44/2001 (Brussels I) would have to be considered which stipulates that in such a case any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established (Article 27/1) . Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favor of that court (Article 27/2).

- 2) Would you be guided by the laws of your country alone, or some kind of international agreement? For instance, is your country a signatory to a convention on jurisdiction?**

See above under 1.

- 3) If your country is a signatory to such a convention how would this influence the decision making process?**

See above under 1.

- 4) Would it make any difference if there was a choice of jurisdiction provision in the contractual arrangements between the companies and Director providing that the parties submitted to the exclusive jurisdiction of country B?**

The prorogation clause in the contractual arrangement has an exclusive character. Therefore the Slovenian court in such a case would deny its jurisdiction.

- 5) Would your Court take into account considerations of international comity? In other words, grant a stay to give recognition to the jurisdiction of country B to determine the dispute?**

Yes.

- 6) Would it make any difference if country B was not a signatory to the convention?**

The provisions of the PILPA would apply, but the result would be basically the same: staying of the procedure until such time as the jurisdiction of the court first seised is established.

- 7) If your country is a signatory to such a convention, what is your Court's experience of the convention in resolving issues of jurisdiction and does the convention assist to reduce disputes on jurisdiction?**

The Hague convention of Convention of 1 February 1971 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters is helpful in this respect.

**Additional facts:**



**Assume that Head Co. argues that your Court should not stay the proceedings in country A because the laws of country B do not recognise all of the claims that have been made under the laws of country A.**

- 8) Would this be a relevant consideration to take into account in determining whether to stay the proceedings?**

The factual reciprocity is a relevant factor under the PILPA, but not under the Brussels I Regulation.

- 9) How would your Court determine whether the relevant claim formed any part of the laws of country B?**

It is the responsibility of the court to determine the law, not only domestic but also foreign.

**Additional facts:**

**Assume that Director's employment contract with Head Co. and Subsidiary contained a choice of law clause, nominating the law of country B as the applicable law in the event of a dispute.**

- 10) How would the choice of law clause influence your decision in the above scenario?**

The choice of law clause would not affect the court's decision in the above scenario. According to Slovenian law prorogation of jurisdiction and choice of law clause must be treated separately. Once it is established that the Slovenian court has jurisdiction it has to apply the law (either domestic or foreign).

- 11) In what circumstances would your Court decline to stay proceedings, despite the clause?**

See above under 1.

- 12) Is your country a signatory to a convention for the recognition of exclusive choice of court agreements? If so, how does this influence the decision-making process? Is it your Court's experience that such a**

**convention reduces disputes about the law to be applied?**

Slovenia is not a signatory of such convention.

**13) Does your Court recognise any limit of jurisdiction based on principles of international comity – that is, that a court should decline jurisdiction in recognition of the foreign court’s jurisdiction?**

See above under 1.

**Additional facts:**

Assume that both courts are the appropriate forum for the dispute. Assume also that Director makes an urgent application for a stay of both proceedings in both country A and country B. You are the Court in country A and would find it helpful to speak with the judge in country B to ascertain what stage the proceeding has reached in country B and its likely hearing date. You consider that this may be helpful in deciding whether to stay the proceedings.

**14) Is there any structured way in your system that enables judges of different courts to communicate? If so, what is the structure and how effective is it?**

No.

**Additional facts:**

Assume your Court does not grant a stay and the matter proceeds in country A, applying the laws of country B.

**15) How would your Court receive evidence in relation to foreign law? For example in most common law countries, the content of foreign law is a question of fact which is proven by expert evidence.**

In Slovenia it is the responsibility of the court to determine the law, not only domestic but also foreign. The court may not require the parties to make any legal assessment of the claim. Parties may, of course, present their contentions of the law but they are not obliged to. If they do, the court is not bound by

then and is responsible to find and apply the norms of substantive law which correspond to the factual situation.

- 16) Is your country a signatory to any convention for determining foreign law? For instance, the New South Wales Supreme Court in Australia and the Singapore Supreme Court have entered into a Memorandum of Understanding (MOU) to work closely on issues of foreign law. Under the MOU, when an issue of foreign law arises in a case before either of the courts, they will be able to direct parties to take steps to have any contested issue of foreign law determined by the court of the governing law.**

Slovenia is a signatory to the Convention of 4 May 1971 on the Law Applicable to Traffic Accidents and the Convention of 2 October 1973 on the Law Applicable to Products Liability.

- 17) If your country has similar arrangements with foreign courts, what is your Court's experience? Has it reduced the complexities and difficulties in ascertaining the content of the foreign law?**

There are no similar arrangements with other foreign courts in Slovenia.

**Additional facts:**

**Assume that Director applies to have evidence taken in country B?**

- 18) What factors would your Court take into account when determining the Director's application?**

See below under 19.

- 19) Would you be guided by the laws of your country alone, or some kind of international agreement? For instance, is your country a signatory to a convention for the collection of evidence? If so, how successful is the co-operation in taking evidence in a foreign state and how efficiently and expeditiously can evidence be taken?**

Slovenia is a signatory to the Convention of 18 March 1970 on the taking of

evidence abroad in civil or commercial matters. Therefore, if country B is also a signatory the court shall be guided by the convention. It envisages taking of evidence through central authorities. A contracting state shall designate a central authority which will undertake to receive letters of request coming from a judicial authority of another contracting state and to transmit them to the authority competent to execute them (Article 2/1). It also provides for taking of evidence by diplomatic officers, consular agents and commissioners. If country B is an EU member state the Regulation 1206/2001 on taking of evidence will apply. It envisages two routes for taking of evidence: active and passive judicial assistance. Direct transmission of requests between the courts (the transmission through central bodies is thereby omitted) entails important acceleration of the procedure. Passive judicial is a novelty which enables direct taking of evidence by the requesting court.

**Additional question:**

**If your country is a signatory to conventions in civil proceedings, is it your Court's experience that civil procedure for commercial cases as between signatory countries have become more harmonised?**

Conventions on civil procedure and EU regulations undoubtedly contributed to the harmonisation of civil proceedings.

**Factual Scenario #2**

**The plaintiff company commenced civil proceedings in country "X" against the defendant, who was resident and living in England. The plaintiff alleged the defendant had been involved in the misappropriation of \$US21m by one of its employees, and applied to the Court for a worldwide injunction "freezing" the defendant's assets, in aid of the proceedings in country "X", together with an ancillary disclosure order relating to the defendant's assets worldwide.**

**Questions:**

- 1) Would the court in your country have jurisdiction to hear this matter? If so, on what basis? For instance, in some common law countries**

**exceptional circumstances would permit the making of an order on a particular issue, even where the court otherwise did not have jurisdiction to hear the matter. One such exceptional circumstance might be where the court hearing the substantive dispute could not make the freezing order of a person's assets, so the making of the freezing order by another court would assist the main proceedings.**

See below under 4.

- 2) What provisions (statutory, procedural or otherwise) exist to enable a court to make a worldwide order freezing an individual's assets? What about disclosure orders?**

See below under 4.

- 3) How would an order for disclosure and/or an order for the freezing of assets be enforced? Would enforceability of the order influence the decision as to whether or not to make the order in the first place? (If it was likely that the order could not be enforced, do you think the court would still make the order?)**

See below under 4.

- 4) Are there any provisions the defendant can rely on, to resist the disclosure order? (for instance, the privilege against self-incrimination)**

The current position in Slovenia seems to be that protective measures rendered by a foreign court cannot be recognized and enforced in Slovenia. Protective measures seem to be linked to the execution and according to the provisions of the PILPA only a Slovenian court can allow the execution of a judicial decision in Slovenia. The violation of exclusive jurisdiction of a Slovenian court results in the denial of recognizing foreign judgment. Such restrictive approach cannot be applied to protective measures by a court in EU. According to Article 31 of the Regulation 44/2001 (Brussels I) and the ECJ case law when a court in one of the contracting states has jurisdiction on the substance, this court also has jurisdiction to grant interim relief and protective

measures. The system of simplified recognition and enforcement, under certain conditions, in principle applies also to protective measures.

