Question 1

What alternative means are used in your legal system for resolving civil law disputes outside normal court procedures?

- Mediation (a process in which the parties engage a mediator or conciliator to encourage and assist them towards agreeing a solution)
- Arbitration (a process in which the parties agree to submit their dispute to a binding decision by an arbiter)
- Non-binding arbitration (a process in which the parties obtain a decision on their dispute but which is non-binding and does not prevent litigation)
- Other methods [please describe]

Since the reform of the civil procedure in November 2002 the Civil Procedure Act provides for different kinds of processes of alternative dispute resolution as a means of dispute resolution in cases which fall into the jurisdiction of the ordinary courts (court-annexed or court based alternative dispute resolution). It states that the court may, when it is proposed by the parties, adjourn the case for a specified period of time, no longer than three months, to encourage and enable the parties to use ADR.

In Slovenia court-annexed mediation is the ADR process number one. Since it has been introduced in a form of an experiment in the District Court of Ljubljana in 2001, its popularity has grown considerably. In the District Court of Ljubljana in 2004 122 civil cases and 62 family disputes were settled in a mediation procedure. In addition to court-annexed mediation mediation used before recourse to the courts, with some less success, is also offered by some non-governmental organizations.

According to the Civil Procedure Act rules the parties may use arbitration either under an arbitration clause introduced into a contract in order to resolve any disputes that may arise from its application, or under an express agreement for the settlement of disputes that have already arisen. When the arbitration agreement is binding it prevents litigation before the ordinary courts. The arbitrators are chosen either by the parties or by the persons or institutions specially authorized to do so, and the solution, having the same value as a judgement, is binding on both parties to the dispute (res judicata) and in general cannot be appealed on the merits. Although arbitration has certain advantages its use is comparatively rare. There are several permanent tribunals of arbitration which, however, are not integrated into the system of the administration of justice. The Permanent Court of Arbitration at the Chamber of Commerce and Industry of Slovenia is the best known among them.

In addition to mediation in pending cases another voluntary ADR process is offered by the District Court of Ljubljana, i.e. early neutral evaluation in copyright disputes. It is a form of ADR which involves a systematic case assessment by an experienced attorney in the substantive area of the dispute.
Question 2

(a) Are any of the alternative means used in your country subject to special regulation by statutory provisions?
See question 1.
(b) Does a mediator or an arbitrer require to have a particular qualification or to have undergone professional training?
The training of mediators is not subject to any special regulation by statutory provisions, but in courts offering court-annexed mediation the mediators are compelled to comply with high standards for education, training and practice. The District Court of Ljubljana specified 40 hours of training and 10 hours of practice requirement for the new mediators before they are allowed to mediate. Persons who fulfill all the conditions are put on a list of mediators. The training is free of charge, but novice mediators are obliged to assist parties in resolving their disputes without being paid for a certain period of time. According to the District Court of Ljubljana and other district courts (where mediation is offered) mediation rules mediators must have a formal legal education. Co-mediators are allowed to have a non-legal professional background (e.g. social workers, psychologists).
(c) If a mediator requires to undergo training, who provides such training?
Candidates for mediators are trained by highly qualified trainers from Slovenia and abroad who have a long experience in mediation and training. Special emphasis is being put on acquiring the special mediation skills and techniques. See also question 2.a.
(d) Is there a professional organization of mediators which lays down rules of professional conduct?
There is no such organization. There are plans to establish a mediation institute which would be in charge of education and laying down rules of professional and ethical conduct. At the moment each court or non-governmental organization sets its own rules following the standards generally accepted in mediation procedures.

Question 3

(a) Insofar as alternative dispute resolution procedures are available and are in use in your country, what are the principal areas of law (for example family law, building or construction law, medical negligence claims, consumer cases, etc) in which disputes are settled by the alternative procedures?
The most important areas of law are family law, commercial disputes, personal injury cases, construction disputes, disputes between neighbours, domestic relations cases.
(b) Are there any types of civil law dispute which cannot be resolved by such alternative means but must be decided by a court?
In any situation, where a precedent is desirable, where there are very strong power imbalances between the parties (e.g. domestic violence), where a good faith desire to settle is missing, mediation may not be appropriate.

Question 4

(a) Is any publicly funded system of mediation available in your country? In particular, is there any mediation service annexed or attached to the courts?
(b) If so, for what types of civil law dispute is publicly funded mediation available?
The court-annexed mediation programmes are set by the individual courts of the first instance. As the organizational aspects are not subject to special regulation by statutory provisions it is up to the management of the court whether to start such programmes or not. All the mediation attached to court is free of charge and funded by the individual court. By the contrast, mediation offered by non-governmental organizations is subject to payment.

Question 5
(a) To what extent, and by what means, are the courts in your system able to encourage or to require parties to attempt mediation or some other form of alternative dispute resolution either as a preliminary to commencing any litigation or in the course of ordinary court proceedings?

Mediation in Slovenia is voluntary. In general, in courts offering mediation the mediation process is integrated into the case management. In all pending cases all parties are informed about the possibility of reaching an agreement in a mediation procedure by a written form at an early stage of litigation. The case is referred to mediation only when parties consent. The judge can (and is encouraged to do so) recommend a mediation process in a later stage of litigation, but he is not authorized to order mediation without consent of the parties. Because any referral system relying on the judge’s judgement requires knowledgeable judges court management pays a lot of attention to the education of judges.

(b) Is the court administration able to assist litigants, or potential litigants, in using alternative dispute resolution procedures by, for example, explaining the various possibilities of alternative dispute resolution or providing information about mediators or arbiters?

The court administration is trained to assist litigants. The biggest court in the country the District Court of Ljubljana established a special ADR division assisting the parties and promoting ADR.

Question 6

Has the use of alternative dispute resolution procedures in your country been increasing in recent years?
The use of mediation procedures has been increasing considerably, while the arbitration seems to be less important.

(b) If so:-
   (i) are there any particular reasons for the increase in use of alternative dispute resolution procedures?
   (ii) has the increase in use sufficiently reduced the burden of work on the courts to allow the courts to improve the delivery of justice?
   (iii) has any alteration been made to the rules of procedure or the practices of the courts in response to the increase in the use of alternative dispute resolution?

After the court-annexed programmes were started in courts a great effort was made by the judiciary to inform the citizens about the new possibility how to resolve their conflicts (press conferences, articles in newspapers, brochures sent to the parties in pending cases, educating "the key players" - the bar, judges, insurance companies). The adherents of mediation believe that disputing parties have more autonomy in the process and control of the outcome and that it results in an agreement that is more responsive to individual needs than a court judgement. Therefore to improve the delivery of justice by giving the people a chance of an alternative dispute resolution is perhaps more important than to reduce the burden of work in court. To offload pressure on the court system cannot be pursued as an independent objective. As to the alterations made to the rules of procedure, see question 1.

Question 7

In your system does the court provide any procedures in which a judge acts as a mediator?

There are several active judges who act as (pro bono) mediators, but they never mediate their "own" cases.

Question 8

Are there any proposals to change the law relating to alternative dispute resolution procedures? In Slovenia we are facing a situation where the referral to court-annexed
mediation and the agreement rate in mediation procedures are very high, while the ADR processes are hardly subject to special regulation by statutory provisions. The legislator will have to adopt some basic rules as to the professional and ethical standards of mediators and their training.

II

Which points would you wish to discuss in detail?
Question 7: advantages and disadvantages of a judge acting as a mediator. The court-annexed mediation: a better access to justice?

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