

QUESTIONNAIRE

Version 2016

SLOVENIA

Part 1: Main features of the national enforcement procedures for recovery of monetary claims (general overview)

1.1. Briefly present domestic legal sources on enforcement.

Constitution of RS represents the highest source of enforcement law, especially art. 23 which guarantees the right to judicial protection. The aim of the enforcement proceeding is to ensure fulfilment of the obligations, which usually result from a final judgment. Effective enforcement proceeding is therefore inseparable element of the right to justice. The main source as regards to legislation regulating Slovenian enforcement law is Claim Enforcement and Security Act (Zakon o izvršbi in zavarovanju¹ – hereinafter ZIZ). The ESSCA includes procedural rules under which the courts order the enforcement of claims on the basis of enforceable titles and authentic documents, rules for protective measures and regulates the service of enforcement bailiffs (art. 1 ZIZ).

The CPA is a subsidiary legal source of enforcement law (art. 15 ZIZ) which has been amended several times, most notably in 2008 and in 2017.² Furthermore, some relevant provisions can be found in other legal sources, such as the Courts Act (Zakon o sodiščih), Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act (Zakon o finančnem poslovanju, postopkih zaradi insolventnosti in prisilnem prenehanju), Code of Obligations (Obligacijski zakonik), Land Register Act (Zakon o zemljiški knjigi), Private International Law and Procedure Act (Zakon o mednarodnem zasebnem pravu in postopku), and ect.

¹ Official Gazette No. 3/07, 93/07, 37/08 – ZST-1, 45/08 – ZArbit, 28/09, 51/10, 26/11, 17/13 – odl. US, 45/14 – odl. US, 53/14, 58/14 – odl. US, 54/15 in 76/15 – odl. US.

² Until 1918 the major part of the Slovenian territory was a part of the Habsburg monarchy. Slovenian civil procedure retained the main characteristics of the Austrian civil procedure, although it was later part of Yugoslavia (1918-1941, 1945-1991). Keresteš, Ekart in Rijavec, Keresteš, Ivanc, Simplification of debt collection in the EU, Kluwer Law International, 2014, p. 495.

1.2. Was there a recent reform or is there an ongoing reform in progress? If yes, please comment the changes introduced by the reform or proposed solutions.

The main goal of 1998 ZIZ was to guarantee that the enforcement of judgments is effective and that the right of access to court is properly ensured.³ The ESSCA remained "loyal" to earlier Austrian and Yugoslavian legislation according to which the enforcement procedure is independent part of the civil procedural law.⁴ The same model remained even though the recommendations prepared within the twinning project "Modernization of the judiciary and education in judiciary" went towards the implementation of German model.⁵

The new ZIZ from 1998 was actually the amendment of previous Yugoslavian act on enforcement procedure (Zakon o izvršilnem postopku) from 1978.⁶ The general direction for preparation of the new act was fast transfer of previous act into the Slovenian legal order, which resulted in the lack of time for systematic harmonization and preparation of secondary legislation.⁷ The main novelty of ZIZ 998 was certainly the introduction of private enforcement agents, but lacked the comprehensive regulation in relation to the court and to the creditor which resulted in many shortcomings in practice.⁸ In 2002 the first amendment A was introduced which, among other solutions, included important changes in the regulation of enforcement agents; e.g. according to this amendments the enforcement agent may only be the one that has completed the law degree. However, the later condition is no longer applicable. In 2006 further amendments, ZIZ -C and ZIZ -D, were introduced as a consequences of the Constitutional court decisions and because of the need for harmonisation with the provisions of the EU legal acts and international treaties.⁹

³ A. Galič, *International Encyclopaedia for Civil Procedure*, Kluwer Law, 2014, p. 187.

⁴ H. Jenull, *Nova ravnovesja v izvršilnem postopku*, Podjetje in delo, 2002, št. 6-7. In Austria and also in Yugoslavia this field was regulated in the separate act, while in Germany the enforcement procedure is regulated in civil procedure code. D. Wedam – Lukić, *Civilno izvršilno pravo*, Uradni list Republike Slovenije, 1992, p.20.

⁵ Furthermore, the project has pointed out that in principle the Slovenian enforcement proceeding has further structural failures, among which the mandatory issuance of the warrant of execution (sklep o izvršbi) was exposed as one of them. The warrant of execution verifies the enforceable title and orders enforcement measures. The German experts have pointed out that there is no need for another procedure in which the court again allows for the enforcement of obligations that have been established for example in the civil procedure and are evident from enforceable judgment. J. Savković, *Problematika zastojev v izvršbi*, *Pravna praksa*, No, 29-30/2006, p. 14-16.

⁶ Galič, Jan, Jenull, *Zakon o izvršbi in zavarovanju (vključno z novelo ZIZ-A): komentar novele in uvodna pojasnila*, GV Založba, 2002, str. 27-28. D. Volk, *Zakon o izvršbi in zavarovanju z uvodnimi pojasnili*, Uradni list RS, 1998, p. 14.

⁷ Galič, Jan, Jenull, *Zakon o izvršbi in zavarovanju (vključno z novelo ZIZ-A): komentar novele in uvodna pojasnila*, GV Založba, 2002, str. 27.

⁸ Galič, Jan, Jenull.

⁹ D. Volk, *Izvršba – neznosna lahkost spreminjanja*, *Pravna praksa*, 2015/35, p. 20.

The main common starting point of the two amendments ZIZ -E and ZIZ -F was the informatisation of the enforcement procedure with introduction of simplified forms for filing a motion for enforcement.

The amendment ZIZ -H was another extensive act that determined the method for searching the debtor's assets.¹⁰

The last substantial amendment was introduced in 2014. The main aim of the amendment ZIZ -J was to accelerate and to ensure faster completion of enforcement proceedings, which would be accomplished mainly with improvement of the enforcement upon real estate.¹¹

According to the new rules, in the first attempt of sale on an auction, the property may be sold for at least 70 percent of the determined value (par. 1 art. 188 ZIZ). The ratio for this amendment lies in the fact that the real estate was practically never sold for 100 percent of determined value.¹² With this possibility included in the ZIZ, the law increased probability for the real-estate to be sold on the first auction, because the price is more appealing for potential buyers on one hand and prevents or limits the possibility for the speculations that were possible at the auctions.¹³ The enforcement courts are now able to determine the starting price of real estate at the first hearing of public auction in the range of 70 % to 100 % of the determined value.¹⁴ Another change that was introduced is the abolition of third hearing for the sale. If the creditor does not propose the second hearing in six months from the first hearing of public auction or the real estate is not sold even for the half of the determined value, the court will suspend the enforcement (par. 2 art. 194 ZIZ). This solution will certainly contribute to the rationalisation of enforcement proceedings.¹⁵

1.3. Please indicate whether there exists an underlying philosophical or dogmatic framework for your system of enforcement.

Slovenian system of enforcement is carried out by the courts. The system of civil justice provides means for the parties to enforce their rights and obligations.

¹⁰ The act determines the beneficiaries for gaining the needed data about the debtor and his or her assets and improves the proceeding for submission of a list of debtor's assets.

¹¹ The stated is only one of the many institutes that were amended with ESCCA-J. For more, see: Rijavec, Ekart, Zakon o izvršbi in zavarovanju z novelama ZIZ-J in ZIZ-K: uvodna pojasnila, GV založba, Ljubljana, 2015, p.23.

¹² Before the amendment ESCCA-J the property could not be sold for the price lower than the determined value in the first attempt of sale on the auction.

¹³ V. Rijavec, A. Ekart, Zakon o izvršbi in zavarovanju z novelama ZIZ-J in ZIZ-K: uvodna pojasnila, p. 48.

¹⁴ Proposal of Act Amending the Claim Enforcement and Security Act, EPA 1966-VI, 8.5.2014.

¹⁵ The last amendment ZIZ-K has introduced among other new provision also the new provision upon which the enforcement is limited at 76 % of gross minimum salary, which means that the amount that needs to remain on the debtors account is 611, 76 EUR.

There are two main aspects in theory regarding the interplay between the civil enforcement and civil procedure. According to the first view, the enforcement procedure represents the continuation of the civil procedure and acts as its constituting part. However, on the other hand, it may also act as a special procedure.¹⁶ As in Austria also in Slovenian legal order, the enforcement procedure is regulated in a special act.

Furthermore, one can argue that both views may be represented. In favour of the first view, the main argument is that enforcement procedure mainly follows the civil procedure where the subject matter was decided with condemnatory decision. However, not all judgments need to be executed (for example declaratory judgment or in cases where the debtor fulfils his claim) and the enforcement may be initiated even without previous civil procedure (enforcement of authentic documents).¹⁷

Our civil procedure was strongly influenced by the procedural ideology of Franz Klein, whereby civil procedure serves as a remedy to cure social conflicts in an expedient and efficient way. This understanding results from the idea that civil procedure "fulfils the social function" (Sozialfunktion).¹⁸

1.4. Are there different types of enforcement procedures in your member state?

Comment: Does the legal framework in your member state provide for different and/or multiple types of enforcement procedures in civil or commercial matters, e.g. does it envisage special regime for enforcing money claims on the one hand and non-money claims on the other? does it envisage shortened/simplified/summary proceedings for certain claims etc? Also, explain interconnections between administrative and civil enforcement procedures, if existent and any other possible interrelation with other fields of law.

The Slovenian enforcement system distinguishes different types of procedures. Distinction relates to different issuing bodies (courts or administrative bodies), which deliver the decisions, and to the subject of the enforcement. While the old ZIZ (from 1998 until 2002) has expressly regulated the possibility of enforcement of the administrative decisions and decisions delivered in procedures for minor offences (art. 1 ZIZ from 1998), there is no such

¹⁶ D. Wedam Lukić, *Civilno izvršilno pravo*, Časopisni zavod Uradni list Republike Slovenije, Ljubljana, 1992, p. 20.

¹⁷ V. Rijavec, *Civilno izvršilno pravo*, GV založba, Ljubljana, 2003, p.

¹⁸ C. Koller, *Civil Justice in Austrian-German Tradition* in A. Uzelac, *Goals of Civil Justice and Civil Procedure in Contemporary Judicial Systems*, Springer International Publishing, Switzerland, 2014, p. 36-37

provision included in the current law. The reason lies in the fact that the act on administrative procedure (Zakon o splošnem upravnem postopku¹⁹ (ZUP)- General Administrative Procedure Act) has been amended and now in principle fully regulates the administrative enforcement. The only administrative claims that have to be enforced according to the rules of ZIZ are monetary claims which shall be enforced out of immovable property and the debtors shares. Additionally, ZUP includes a provision, which states that direct actions of administrative enforcement and insurance shall be carried out also by enforcement bailiffs appointed pursuant to the law governing civil enforcement (art. 289 ZUP). This means that bailiffs, appointed according to the rules of ZIZ, are competent for several direct enforcement acts in administrative enforcement procedure.

In civil or commercial matters, the Slovenian ZIZ foresees different types of enforcement procedures, depending on whether the debtor owes a monetary or a non-monetary claim. The monetary enforcement is carried upon debtor's movable or immovable property, debtors money claims and other assets (such as other material rights and dematerialized securities, shareholder rights) and on funds, which are located at the organizations, authorized for payment transactions (art. 30 ZIZ).

As for the non-monetary claims, the ZIZ foresees different means of enforcement: e.g. supply and handing over the movable property (art. 213-215 ZIZ); emptying and extradition of immovable property (art. 220-223 ZIZ); the obligation to do something, to permit or abandon (art. 224-229 ZIZ); returning worker to the work (art. 230-233 ZIZ); Enforcement in matters of custody of children and in personal contact with children (art. 238-238g ZIZ).

We distinguish different types of national summary procedures for recovery or enforcement of monetary claims. Order for payment procedure regulated in the Civil Procedure Act (CPA) is a general procedure combining elements of ordinary payment order and elements of enforcement procedure. Namely, CPA regulates two types of payment procedure, one is order for payment supported by authentic instruments. In this type of procedure where money claim is supported by a document there is no lower or upper limitation in value of the claim (art. 432 CPA). The other type is not supported by the document but is limited to monetary claims up to 2.000 EUR (art. 432 CPA).

According to ZIZ there are additional enforcement procedures: enforcement on the basis of authentic document²⁰ and enforcement on the basis of bill of exchange and promissory note.

¹⁹ Official Gazette No. 24/06, 105/06 – ZUS-1, 126/07, 65/08, 8/10 in 82/13.

²⁰ There is a difference between authentic documents used in EU regulations where such a document represents formal document drawn by the official body (notarial deed). On the other hand, the authentic document,

This procedure combines ordinary summary procedure according to the rules in CPA and enforcement procedure. These are ex-parte procedures where the creditor obtains the decree of the enforcement court, which includes:

- Order to the debtor to freely pay the due amount (ordinary payment order as an enforcement title),
- Execution on debtor's assets, if the debtor doesn't comply with payment order or doesn't file an objection.²¹

Procedure for enforcement on the basis of authentic document is fully computerised and enables the creditor to file application in electronic form.

1.5. Is your system of enforcement considered to be centralized or decentralized?

Comment: Decentralization may manifest itself in various forms. For instance, in decentralized jurisdiction (both subject-matter and territorial come into play); decentralized rules of procedure (in federative states where different levels (both horizontally and vertically) of government and authorities have to be taken into account; the power and scope of the court and/or other authority/body in enforcement matters – does it hold competence in all matters enforcement or are certain acts ('steps' of the enforcement procedure) ascribed/delegated to different authorities. Please provide a general overview on the above matter. In addition, please specify which authority/body is competent in matters of (refusal of) recognition and enforcement (is there a special authority/body at the 'level of the state' which decides on said matters, or does the individual for instance – akin to countries with common law – file an action on the foreign judgment.

Art. 37 of Slovenian Courts Act states that the courts are competent for enforcement of court judgments.

Jurisdiction of subject matter is vested in county courts (art. 5. ZIZ). For territorial jurisdiction different rules apply. For enforcement of movable property, a court where the property is situated has jurisdiction (art. 77 ZIZ). If the creditor does not define movable property, the court in the place of debtor's domicile is competent (art. 78 ZIZ). In the case of garnishment of debts, the court in the place of debtor's domicile is competent (par. 1 art. 100 ZIZ). The law does not oblige the debtor to also have domicile in Slovenia (par. 2 art. 100 ZIZ). If a

regulated by the ESCCA, refers to particular documents public or private where a signature of the debtor needs to be authenticated by an official body, bills of exchange, certified statement of debts and invoices. The stated documents show only probability that the claim exists.

²¹ Rijavec, 2003, 135-136.

debtor is domiciled in Slovenia, the Slovenian court may attach the debtor's bank accounts in a foreign bank. If the debtor is not domiciled in Slovenia, the court for the place of the seat or the domicile of the garnishee is competent.²² As far as the territorial jurisdiction is concerned, the system of enforcement is decentralised.

Exclusive jurisdiction of country court in Ljubljana is vested for enforcement on the basis of authentic document (Art. 99.a Courts Act and Art. 40.c ZIZ). This is a computer supported procedure where the court issues the order for enforcement according to the data included in the application without the supporting documents enclosed to the application.

In Slovenia enforcement procedure represents combination of court proceedings with the institute of private enforcement bailiffs. In the enforcement proceedings the court is competent to render the warrant of execution. After this stage the enforcement proceedings remain in the domain of the court in the cases of enforcement against real property, garnishment of debts; or private enforcement agents are authorised for enforcement into movable property and some other non-monetary claims.²³

The court must first authorise the enforcement by methods proposed by the creditor and then the bailiff may conduct the physical enforcement.

As far as the question of competence in matters of recognition and enforcement is concerned, the courts in Slovenia are competent.

1.6 The authorities/bodies and agents involved. Which authorities/bodies have competence with respect to enforcement?

The enforcement acts are mainly in the hand of court staff. The amendments of ZIZ enabled even more competences for judicial officers (sodniški pomočniki, strokovni sodelavci) who are not judges but have legal education or even have passed the bar exam. Judges are competent for enforcement matters that are more complex, such as to conduct a procedure for enforcement of non-monetary claims, deciding on legal remedies, suspension of the procedure upon the proposal of the debtor and deciding in the forced sale of immovable property and shares. However, some specific actions outside the main hearing and (para. 2. Art. 6. ZIZ) and actions relating to issuing the warrants of execution for the enforcement of monetary

²² A. Galič, *International Encyclopaedia for Civil Procedure*, Kluwer Law, 2014, p. 188.

²³ V. Rijavec, *Primerjalnopravni zgledi za učinkovitejšo izvršbo*, *Pravna praksa*, 2008/12, p. 31-33.

claims, the warrants of execution on the basis of authentic documents and decisions regarding the advance payments, security payments and the costs of the proceedings, etc. (art. 53.a Courts Act and art. 6. ZIZ) may be conferred to court officials.

Slovenian enforcement system has introduced private enforcement bailiffs who are competent to coercively accomplish enforcement of civil judgments. Their acts represent commercial activities. Bailiffs main measures concern the enforcement of movable property. Minister of justice nominates bailiffs and it is no longer obligatory for enforcement agent to have a degree of law. They are authorised to perform public services in the whole territory of the RS (art. 7 ZIZ).

The court may, according to the subject matter, circumstances of the performance of the enforcement or on other reasonable grounds decide, that certain acts of the enforcement or security are performed by the court bailiffs (par. 4 art. 7 ZIZ. Such regulation enables the possibility for the court bailiffs to be employed as court officials if there is a need in the future.²⁴

1.6. **How 'private' is the system in actuality, if it is private at all?**

Comment: The above term 'private' refers to the role of a 'private individual' in enforcement proceeding (both the creditor, debtor and other involved persons), i.e. how much significance do his actions and omissions hold; how much does he partake in advancing the procedure to later stages; is he involved in the designation of means of enforcement etc. In other words, describe the weight that the principle of 'dispositivity' holds in your system, in contrast to the ex officio powers of the court or other authority/body.

In the Slovenian enforcement law, the main principle is the free disposition of parties. The enforcement procedure is started by an application of the creditor who determines the method of enforcement and the object of the enforcement.²⁵ According to the rules of ZIZ the creditor is not obliged to supply the competent court with information regarding the location of the movables or bank information of the debtor depending of the specific means of enforcement (art. 40, 41, 41.a ZIZ) because such information are provided by the court ex officio. The enforcement proceeding may be initiated ex officio in the following cases:

- For the enforcement of the fines determined by the judgments, enforcement of judgments on the asset recovery and subject and on the cost of criminal proceedings issued by the criminal courts;

²⁴ A. Galič, M. Jan, H. Jenull, Zakon o izvršbi in zavarovanju (vključno z novelo ZIZ-a), GV založba, Ljubljana 2000, str. 531.

²⁵ V. Rijavec, Civilno izvršilno pravo, p. 52.

- For the enforcement of the warrant on the money penalty imposed in civil proceedings;
- For the enforcement of costs paid from the court funds.

Once the enforcement procedure is started, it is generally carried out *ex officio*.²⁶ However, the creditor may at any time influence the enforcement procedure without the debtor's consent (art. 43 ZIZ) with withdrawal or limitation of the application to certain measure. Further action of the creditor may also be necessary in some stages of enforcement to prevent the procedure from being stayed, where only first enforcement action was proposed. That is when, e.g. in enforcement out of movables the creditor has only proposed the first enforcement action, namely seizure and property valuation. In this case, the creditor needs to propose the sale of the property within three months from the seizure; otherwise the court may stop the enforcement (art. 81 ZIZ). If after the first public auction for the forced sale of movable or immovable property was unsuccessful, the creditor must propose a second one in 30 days from the first auction (art. 94 and 188 ZIZ).

The creditor, debtor or third involved persons (persons who claim property rights upon the object of the enforcement) may propose suspension of the enforcement (art. 71-75 ZIZ). There is no possibility for the abeyance of enforcement proceeding. If the debtor does not give reasons for the opposition, the court shall dismiss such an opposition (art. 53 ZIZ).

In addition to other examples set in the ZIZ the court shall stop the enforcement *ex officio* if the enforcement title is abolished without the possibility of legal remedies, amended, repealed or declared as invalid or if the certificate of enforceability is revoked (art. 76 ZIZ).

1.7. Briefly enumerate the means of enforcement (methods which serve to procure involuntary collection of the claim).

Methods of enforcement are methods which enable coercive enforcement of creditor's claim. The ZIZ distinguishes methods of enforcement depending on whether the creditor disposes with pecuniary claim or non-pecuniary claim. The law exhaustively lists methods for enforcement of monetary claim, namely:

- sale of movable property,
- sale of immovable property,
- transfer of pecuniary claims,
- to capitalise other pecuniary or material means and dematerialised securities,

²⁶ V. Rijavec, *Civilno izvršilno pravo*, p.53.

- the sale of
- attachment of bank assets. (Art. 30 ZIZ).

For non-pecuniary claims, the methods of enforcement are determined by the type of non-pecuniary claim which is to be enforced. The enforcement for emptying and handing over the real property is performed by emptying, which means that the persons and things need to be removed from the property and then empty real property is hand over to creditor.²⁷

The creditor is free to choose any of the methods of enforcement provided by the law. Even if the debt is low and the debtor possesses other assets, the creditor may decide for the enforcement into immovable property. However, the debtor may propose that the court allows other method of enforcement or that the court substitutes the enforcement with another immovable property or other assets. The court will approve the debtors motion, if it is probable that the claim will be re-paid by the other proposed measure or out of other assets (art. 34 ZIZ). If the debtor proposes, the enforcement to be accomplished by garnishment of salary or other forms of regular income, the court will grant the proposal if the debtor proves probable that the claim will be paid within a year from the issuance of the order on debtor's proposal (art.169. ZIZ).

1.8. In short, present the underlying principles, which govern the enforcement procedure in short.

Comment: Focus on both the principles which adhere to enforcement procedure in international capacity, e.g. territorial, sovereignty principle regarding coercive measures and the principles relating to procedural aspects in narrower terms e.g. principle of efficiency, protection of the debtor, priority principle, publicity, (non)mandatory hearing etc.

According to the Private International Law and Procedure Act, Slovenian courts have exclusive jurisdiction for the authorisation and carrying the enforcement in the Slovenian territory (art. 63. ZMZPP). However, the Slovenian courts are competent to carry the enforcement only on the debtor's assets located in Slovenia. One of the elements of the sovereignty principle is the right of the state to execute the judicial powers in the territory of its state. The judicial judgment may have the effect in the territory of the court, which has issued it.

²⁷ V. Rijavec, Civilno izvršilno pravo, GV založba, Ljubljana, 2003, pp. 146-147.

In the Slovenian enforcement law, the main principle is the free disposition of parties. The enforcement procedure is started by an application of the creditor who determines the method of enforcement and the object of the enforcement.²⁸ The creditor may at any time stop the enforcement without the debtor's consent (art. 43 ZIZ). Once the enforcement procedure is started, it is generally carried out ex officio (for more, see ch...).²⁹

The inquisitorial principle gives the court the authorisation to take into account also the facts that were found during the enforcement proceeding by the court on the grounds of official inquiry. Furthermore, the enforcement courts are competent to decide on the merits of the debtor's opposition regarding the existence of the facts. In the case where the creditor's claim is being challenged by another creditor claim on the grounds of deprivation of the repayment from the sold immovable property, the enforcement court may not decide on the facts but must refer the matter to the ordinary civil procedure (art. 202 ZIZ). The parties must state new facts and evidence in the opposition by the debtor and in the answer to the opposition by the creditor. The ZIZ regulates an institute of untimely opposition available for the debtor. The debtor is allowed to state new facts that have occurred after the judgment has become enforceable if the debtor was prevented from presenting the fact by reasons beyond his control (art. 56 ZIZ). The adversarial principle is weakened in the enforcement procedure mainly because the enforcement order is served on the debtor after the court has issued this order on the application of the creditor. So the debtor is informed on the enforcement procedure only after the court issues the enforcement order, which is served upon the debtor together with the creditor application.

The enforcement procedure should be carried out within a reasonable time (for example, substantiated debtor's opposition, deadline for the opposition is 8 days) (art. 11 ZIZ). The equal position of the parties is ensured with the principle of the order of the enforcement cases that are being dealt with by the court; the court must address the matters in the order that the individual case was filed. Only in exceptional cases, the matters are dealt with priority, e.g. maintenance obligations (par. 2 art. 11 in connection with art. 197 ZIZ).

As far as the principle of written procedure is concerned, the main hearing will be held only in the case when the court decides so (par. 2 art. 58 ZIZ).

²⁸ V. Rijavec, *Civilno izvršilno pravo*, p. 52.

²⁹ V. Rijavec, *Civilno izvršilno pravo*, p. 53.

The court may not assess the specific substantive legality and the correctness of enforceable title upon which the enforcement is proposed. The formal legality principle concerns the rules for the issuance of the warrant of execution.³⁰

In the case where several creditors are enforcing their money claims against the same debtor and on the same object of enforcement, the principle of priority applies (art. 198 ZIZ). The law sets the rules on the order of repayment of priority claims from the amount gained from the selling of the immovable property:

1. costs of the enforcement procedure;
2. value added tax or turnover tax on the selling of immovable property;
3. claims on the grounds of the maintenance obligations³¹, claims arising from compensation for damage caused by the decrease in life activity or a decrease or loss of capacity and claims arising from damages for lost maintenance due to death of the one who was obliged to pay the maintenance, employees' claims arising from the employment relationship with the debtor, and claims of social insurance contributions, due to the last year, irrespective of whether these claims are secured by a lien on the sold real estate or not (art. 197 ZIZ).

In the first attempt of sale on auction, the property may not be sold for the price lower than 70% of the determined value and on the following attempt not for the price less than half of the determined value (art. 188. ZIZ).

There are numerous provisions on the protection of the creditor (for example the creditor who is in possession of final judgment can obtain access to official records concerning the identity of the debtor's employer, information about debtor's immovable property, shares in corporations, vehicles, registered to the name of the debtor, etc.; upon the creditor's request the court may request from the debtor to deliver a list of all assets and dispositions with his property; the creditor may propose suspension of the enforcement procedure;) and debtor (for example: the ZIZ lists the objects that are immune from seizure or are restricted from the seizure of claims; the debtor may propose that the court allows other methods of enforcement or that the court substitutes the enforcement with another immovable property; the debtor may propose to stay and live there as a tenant after the sale for up to three years on condition of paying the market value rent).³²

³⁰ V. Rijavec, *Civilno izvršilno pravo*, p. 63.

³¹ These rules apply only for maintenance claims, which are not due in a 1 year from the order for extradition of the property to the buyer, was issued (Constitutional court decision, Official Gazette No. 76-2981/2015).

³² V. Rijavec, *Civilno izvršilno pravo*, p. 65-66.

- 1.9. Does the stage of 'permitting the enforcement' exist in your legal system? Please comment, e.g. German '*Titel mit Klausel*'.

Comment: *The stage of 'permitting the enforcement' is a mandatory phase of the enforcement proceedings found in certain member states, in which the court examines the enforcement title and specifically checks if all the (procedural and substantive) prerequisites for enforcement all met. If all prerequisites are found to be present, then the court allows for the enforcement to be undertaken and the enforcement proceedings enter the following phase of the procedure. The court thus issues a 'decision' or 'order', permitting the enforcement. The described phase is a pre-course to further enforcement action. It can also act in the capacity of 'title import' for foreign judgements, which means that member states withholding this stage will not be as greatly affected by the abolition of exequatur as those lacking it.*

According to the Slovenian enforcement law, the mandatory stage of the enforcement is the "authorization" of the enforcement by the enforcement court. The enforcement proceeding is divided in two stages: first is the permission of the enforcement by the court, whereby the court investigates the procedural and substantive requirements for the issuing of the enforcement order until the enforcement order becomes final. The second phase is the execution or realization of the enforcement, which consist of all necessary enforcement actions in order for the claim to be satisfied. The second phase starts right after the enforcement order is issued (which means before the enforcement order is final) and end with the repayment of the creditor or termination of the proceeding. However, the creditor may not be compensated before the enforcement order becomes res iudicata (par. 2 art.46 ZIZ). There is an exception this rule, according which the creditor may be compensated even before the finality of a decision on enforcement based on the enforceable title, provided that the application is accompanied by the enforceable title and the proposed mean of enforcement is attachment of debtor's bank account (par. 3 art.46 ZIZ).

The enforcement procedure to obtain the enforcement order starts with the application for enforcement which must contain: the names of creditor and debtor, enforceable title (the authentic instrument in the cases where the enforcement is sought upon this document) the debtors obligation, the proper mean or object of enforcement, other relevant information and in the cases of enforcement on the grounds of authentic document the requirement for the court to order the debtor to pay the claim within prescribed time (art. 40 and 41 ZIZ).

The ZIZ does not directly regulate the mandatory stage for the examination of the requirements for enforcement. However, in the situations where the ZIZ does not state otherwise, the CPA is applied mutatis mutandis (art. 15 ZIZ). Preliminary examination of the civil action represents the formal evaluation of the court whether the civil action is even

admissible, that is whether the procedural prerequisites are met³³ and then the action is served to the defendant in order for the defendant to prepare the answer. In civil enforcement proceeding the court has to investigate, whether the procedural and substantive requirements are met until the enforcement order is issued and served to the creditor and debtor. The creditor is not obliged to attach any of the supported documents or evidence and the enforcement order is issued according to the facts and circumstances described by the creditor in the application. Only when the debtor objects the enforcement order, the creditor needs to substantiate the application with additional facts and evidence. The court firstly investigates the procedural requirements for enforcement merely on the facts described in the application. When the court establishes that the procedural requirements are met, the court then investigates the substantive or material requirements of enforcement.³⁴ The procedural requirements are regulated mainly in CPA in additionally in ZIZ:

- Jurisdiction;
- Formal completeness and the content of the application (art. 40 ZIZ);
- The existence of enforceable title (the requirements for the title to obtain the effect of enforceability – art. 19 and 20 ZIZ);
- The capacity to be a party;
- The procedural deadlines, for example for the proposal for worker to be returned to the work (art. 231 ZIZ);
- Advance payment for enforcement costs (art. 38 ZIZ);
- Legal interest (there is no legal interest for commencing the enforcement procedure, if the creditor would not have been even partially repaid);
- Other general procedural requirements according to the CPA.³⁵

The substantive part of the ZIZ sets the grounds for substantive requirements, which are necessary for the application to be substantiated:

- The requirements concerning the claim: the existence, its validity and due date of the claim (art. 21 ZIZ)
- The alternative nature of the obligation;
- The existence or nonexistence of the condition and the fulfillment of reciprocity;
- Legitimatío ad causam – the enforcement proceeding may be brought only between the parties specified in the enforceable title as the holders of rights and obligations;

³³ J. Juhart, *Civilno procesno pravo FLR Jugoslavije*, Univerzitetna založba Ljubljana, Ljubljana, 1961, p. 328

³⁴ K. Iglíč Stroligo, *Preizkus predloga za dovolitev izvršbe*, *Pravosodni bilten*, št. 2/2008, p. 75-76.

³⁵ V. Rijavec, *Civilno izvršilno pravo*, p. 100.

- Means of enforcement – only means regulated in the art. 30 ZIZ;
- Admissibility of the enforcement on the particular object (exemptions and limitations set in art. 32. ZIZ);
- Extent of the enforcement (limitation only to some means or objects, which satisfy for the repayment – art. 34. ZIZ).³⁶

According to the art. 44 ZIZ the court issues the enforcement order authorizing the enforcement or the order by which the proposal is partly or fully dismissed. For other situations like when the proposal is formally incomplete or is not allowed, the rules of CPA apply. If the application is incomplete, the court is obliged to give the party a chance to make corrections (art. 108 CPA).

According to German enforcement law, there is no stage of permitting of the enforcement. The enforcement start upon the enforceable title, which includes the enforcement clause issued by the court that decided on the merits of the claim and issued the judgment. The difference according to the Slovenian certificate of enforceability is that the German enforcement clause may include also a decision on the other legal questions, like e.g. on legal succession or enforceability of conditional claims, which are in Slovenia decided within the enforcement order by the enforcement court.³⁷ The certificate of enforceability issued by the civil court, which decides on the matter represent formal confirmation that the court decision is enforceable (art. 42 ZIZ).

1.10. Subject-matter jurisdiction in enforcement proceedings. Please provide a short presentation of the judicial system - courts system.

Slovenian judicial system divides between the courts, which are competent for civil and family law, commercial and criminal matters and special courts (labour and social security court and administrative court). Courts with general jurisdiction includes 44 county courts (okrajno sodišča) and eleven district courts (okrožno sodišča), which are about courts of first instance. On the second instance, we have 4 higher or appellate courts (višje sodišča) which decides on appeals of both first instance courts. The Supreme court (Vrhovno sodišča) is competent as a court on third instance (court of cassation) and decides mainly on extraordinary remedies. The Constitutional court of RS is not part of the general judicial system. However, the parties have the right to submit a constitutional appeal after all of the

³⁶ V. Rijavec, Civilno izvršilno pravo, p. 101.

³⁷ Rijavec, Primerjalnopravni....

legal remedies have been exhausted, if the parties believes that certain constitutional human rights or liberties have been violated by the judgment.

1.11. Territorial jurisdiction in enforcement proceedings. Please provide a short description in this regard.

Country courts are vested with the subject matter jurisdiction in enforcement proceedings. For territorial jurisdiction different rules apply. For the purpose of enforcement on the basis of authentic document, the County Court of Ljubljana has been vested with exclusive jurisdiction (art. 40.c ZIZ). This court is competent for issuing the enforcement order and for decision making in all legal questions until the enforcement order on the basis of authentic document becomes final. If the debtor files and objection the case is transferred to the ordinary civil procedure. After the enforcement order becomes final, the territorial jurisdiction is vested to court competent according to the proposed means of enforcement.

ZIZ does not set the general court jurisdiction and different rules apply for different means of enforcement and objects of enforcement.

For enforcement out movable property, a court where the property is situated has jurisdiction (art. 77 ZIZ). If the creditor does not define movable property, the court in the place of debtor's domicile is competent (art. 78 ZIZ). In the case of garnishment of debts, the court in the place of debtor's domicile is competent (par. 1 art. 100 ZIZ). The law does not oblige the debtor's debtor to also have domicile in Slovenia (par. 2 art. 100 ZIZ). If a debtor is domiciled in Slovenia, the Slovenian court may attach the debtor's bank accounts in a foreign bank. If the debtor is not domiciled in Slovenia, the court for the place of the seat or the domicile of the garnishee is competent.³⁸ According to the rules mentioned above, the court that permits the enforcement also executes the enforcement (for example, one exception is the proceeding on the basis of authentic document).

1.12. How are conditional claims enforced in your member state?

According to the art. 26 ZIZ, in the case when the enforcement is subject to the prior fulfilment of certain condition, the court shall permit the enforcement of the claim if the creditor proves with the official or officially authenticated private document the fulfilment of

³⁸ A. Galič, *International Encyclopaedia for Civil Procedure*, Kluwer Law, 2014, p. 188.

the condition. If the creditor is not able to produce such an evidence, he or she may initiate a separate civil procedure to prove the fulfilment of the condition.³⁹

- 1.13. Legal succession after the enforcement title was obtained: What has to be done to proceed with the enforcement against the successors? How about the creditor's successors, are any changes required in the enforcement title?

The enforcement may be permitted in the favour of or against the person than the one named in the enforceable title, if the applying person can prove that the claim was transferred by producing public or according to the law authenticated document. If the applying party is unable to produce such an evidence, he or she has the right to initiate civil procedure to prove legal succession. If legal succession on the part of the creditor occurs after the creditor's application for enforcement was filed, the new creditor may enter in the enforcement proceeding, if he or she proves the transfer of the claim by producing public or according to the law authenticated document. If that person is unable to produce one of these documents, he or she may prove the transfer of the claim in civil proceeding. If legal succession occurs on the debtor's side, the same rules apply as for the legal succession on the creditor's side (art. 24 ZIZ).

- 1.14. Enforcement titles: Decisions (judgments and other court decisions), settlements, public documents. Please elaborate – how does your system define enforcement titles, e.g. via enumeration, general clause etc? Also, provide a short commentary.

Enforceable title (izvršilni naslov) is a qualified public document, on the basis of which it is possible to require coercive enforcement of a claim that it is determined in this document.⁴⁰ According to the law, the enforceable titles are: enforceable judgment or court settlement, enforceable notary deed, other enforceable judgment or document for which the law⁴¹, ratified international treaty or EU act which is applied directly, determines that this is an enforceable title (Art. 17 ZIZ). Enforcement on the grounds of enforceable title is a result of a certain previous proceeding in which a title was issued. In order for the judgment to be enforced, its enforceability must be first confirmed. The judgment is enforceable if it is final and the time limit for free voluntary fulfilment has expired (art. 19 ZIZ).

³⁹ If the claim includes the resolutive condition then the court permits the enforcement because the claim exists in the present time. However, when the claim includes suspensive condition the enforcement is not possible until the condition is fulfilled. V. Rijavec, 2003, p. 115.

⁴⁰ V. Rijavec, Civilno izvršilno pravo, GV založba, 2003, p. 105.

⁴¹ Payment orders, condemnatory orders issued in non-contentious and enforcement proceedings, etc.

The law states that the enforceable title is appropriate for further enforcement, if the creditor and debtor, object, type, extent and time for fulfilment of obligation are stated in it (art. 21. ZIZ).

- 1.15. Requirements for issuing the certificate, certifying that the judgment is enforceable (confirmation of enforceability) - procedural steps. Which procedural steps must be undertaken, to obtain the certificate?

Certificate of enforceability serves as a confirmation that the enforcement title is enforceable. The court of first instance, which renders the judgment also issues an enforcement clause (potrdilo o izvršljivosti) (Article 42 ZIZ). This clause should be distinguished from the enforcement order. The enforcement clause means that after the judgment becomes final the deadline for voluntary fulfilment has expired. This formal procedural requirement serves only to help enforcement courts which are not burdened with verification wheatear the time-limit has elapsed and if the judgment has become final.⁴² The certificate of enforceability may be issued as an individual document or in the form of stamp stamped on the judgment. According to the court practice, the certificate is not served to the defendant, which means that the defendant has the chance to challenge the certificate after the enforcement order has been served and the debtor realises that the certificate has been issued. Debtor then may lodge the application for annulment of the certificate⁴³ before the court that issued the certificate (par. 3 art. 42 ZIZ). Enforcement court is nevertheless bound by the certificate which does not apply also for the court that issued the certificate.⁴⁴

- 1.16. Service/notifications of documents and decisions (provide a wholesome picture of service and notification in the enforcement proceedings). Please present an overview of said activity, e.g. which documents are served and the method of service, how notifications are made.

The service of documents and decisions in enforcement proceedings is regulated by the rules of civil procedure. The CPA provides different methods of service. Documents shall be served by postal channels, by secure electronic means, by court officials, in the court, or in other manner provided by the statute (Article 132 of the CPA). Party may also propose for court to

⁴² V. Rijavec, 110.

⁴³ Debtor may not lodge an objection that the certificate is not justified, but only the application for annulment of the certificate.

⁴⁴ The certificate should be characterised as a resolution, which may be challenged by special application for annulment. Rijavec, Ekart, Čezmejna izvršba v EU, p. 228.

order the service by the bailiff or detective if the costs for service are paid in advanced by a proposing. The last amendments of CPA (amendment E) enable two new types of service. According to the first the service may be carried through electronic way with the system e-judiciary without the involvement of any legal or physical person (art. 141.a CPA). The second type is the service into the mailbox, which is opened at the Post office upon the signed agreement between the addressee and Post office (art. 139.b CPA). The service may be performed through the day from 6.00 pm until 10.00 am, and 24h a day by electronic means.

According to Article 142 CPA an action, a court's decision subject to appeal, extraordinary judicial review, and the dun letter to pay the court fee due to the action need to be served on a party in person.

In fact, personal service is prescribed for all motions on the basis of which a party is informed about initiated legal action, or that a final process continues (e.g. extraordinary remedies – revision, petition for protection of legality, etc.) and the judgments against which legal remedies are permitted (e.g. judgment of the Court of First Instance, first-instance court decision against which a special appeal is allowed).⁴⁵

The provision of Article 142 CPA allows the court to evaluate to possibility to personal or ordinary service for other documents. Other documents shall be delivered by personal service only if this is expressly provided by the statute, or when the court considers that special caution is necessary for the documents enclosed in original, or for any other reason.

If person to whom the document must be served in person is not found in the apartment or at his or her work, the document shall be served in a way that the document is handed over to one of his adult household members who are obliged to accept the document or persons authorized to accept the document (art. 140 CPA).

If service in person by means laid down in Article 140 CPA is impossible, service in person to natural persons shall be effected in a way that a process server returns the document to the court which has ordered the service; if the document is ordered to be served by post office, it shall be returned to the post office at the place of the addressee's residence. The process server leaves in the house letterbox or on the doors of the apartment a notice of service indicating the location of the document process, and a 15-day term in which the document has to be collected by the addressee.

The service of process shall be deemed to have been effected on the day the document has been collected by the addressee. If the document is not collected after 15 days, service of

⁴⁵ Ivanc, Kežmah, Kežmah, p.

document shall be deemed to have been effected upon expiry of the previously mentioned term, which the addressee shall be expressly informed of in the notice. Upon expiry of the previously mentioned term, the process server leaves the document in the addressee's post box in the house, or in the addressee's outdoor post box. If the addressee does not have a post box, the document shall be returned to the court which the addressee shall be expressly informed of in the notice (par. 4 art. 142. CPA).

Documents in electronic form can be served in physical form, or by secure electronic way (Article 141a CPA). Documents shall be served by secure electronic way via the information system of the judiciary directly to the address for service which is registered in the information system of the judiciary or in secure electronic box. The information system directly delivers the document to the address registered in the information system or in the addressee's secure electronic box. In order for the addressee to be acquainted with the document, he or she must identify him or herself, electronically sign the receipt and send it back to the sender.

The service of all documents, left in the secure electronic box or in the address registered with information system is considered to have been effected on the day the addressee takes the document. If the addressee does not take the document within 15 days, the service shall be regarded to have been effected by the expiry of this period (art. 141a CPA).

If all the parties in the proceedings are represented by counsels who are attorneys, applications and attachments may be served directly between the counsels in the course of the proceedings by post with return receipt or by secure electronic means.

1.17. Division between enforcement and protective measures.

- 1.18.1. What and/or which provisional measures are possible (are provided for) in your member state? Enumerate and briefly describe.
- 1.18.2. Difficult requirements for protective measures. Which provisional measures are possible (are provided for) in your member state and what are the requirements for issuing them? Please accompany the answer with a comment on the 'difficulty' of actually meeting those requirements.

The system of protective measures for security of claims exists within the civil enforcement procedure. ZIZ regulates the following possibilities for creditor to obtain security: interim or temporary order (začasna odredba), preliminary order (predhodna odredba), compulsory lien over movable property, mortgage over immovable property.

In Slovenia, an interim order may be issued before any judicial procedure, during the procedure, as well as after the procedure, until the enforcement is carried out, in order to secure monetary and non-monetary claims. The purpose of this measures is to preserve the existing or enable the creation of a new temporary state, in order for the success of the court or enforcement proceeding is not threatened; to prevent the occurrence of serious harmful consequences and the threat of violence (for non-monetary claims).⁴⁶

The main purpose of the interim measures is to protect future enforcement (security interim measures) or to avert serious and damaging consequences and the threat of violence (orders of a regulatory nature). However interim measures should not influence the outcome of the proceedings on the substance of the matter, although the order must be materially bound to the proceedings themselves. This is not explicitly forbidden by the law, but the claim during this phase is still so uncertain that the order should not completely use the content of the claim. Therefore, the restriction that the proposal for interlocutory injunction and claim must not match completely is necessary due to the nature and purpose of interim measures.⁴⁷

Unlike with preliminary measures, the court has the freedom to issue, on the proposal of the creditor, any kind of interim measure. The law only lists a few possible types of interim injunctions, while the court may issue any order proposed by the creditor, with which the purpose of such insurance could be achieved (Art. 271 ZIZ). For securing the claims of the monetary nature, the ZIZ sets (not exhaustively) the following interim measures:

1. Prohibition upon the debtor in order for debtor not to dispose with his or her movables and registering the movables into the public register of non-possessory security interests and goods in distraint
2. The debtor may not dispose of or burden the immovable property and annotation of this ban into the land register;
3. Prohibition upon the debtor's debtor in order for the debtor's debtor not to repay the claim to the debtor or to deliver things to the debtor and the prohibition to the debtor not to except things or to recover the claim or to dispose with things;
4. The order imposed to the bank with the prohibition for the bank not to pay the amount of the money set in the interim measure for the debtor account. (art. 271 ZIZ)

⁴⁶ Rijavec, 2003 p. 260.

⁴⁷ Rijavec, Cross-border Effects of Provisional Measures in Civil and Commercial Matters, in Cross-border Civil Proceedings in the EU (Conference Papers), 2011, p. 91-92

For securing the claims of the non-monetary nature, the ZIZ sets (not exhaustively) the following interim measures:

1. Prohibition upon the debtor in order for debtor not to dispose with his or her movables and registering the movables into the public register of non-possessory security interests and goods in distraint;
2. The debtor may not dispose of or burden the immovable property and annotation of this ban into the land register;
3. Debtor may not do anything that could harm the creditor and may not change anything on the things upon which the claim is targeted;
4. a prohibition on the debtor's debtor that the debtors may not give particular things on which a claim is targeted;
5. repayment of the salary compensation to the worker until the dispute on the unlawful decision on the determination of the employment relationship is ongoing, if such a measure is necessary for the maintenance of the worker and persons which the worker is obliged to maintain according to the law. (art. 273 ZIZ).

With the interim measure, the bank is instructed to refuse payment from the debtor's account to the debtor or another person on the debtor's instructions of the sum of money on which the interim order has been placed (Art. 271 para. 1 point 4. ZIZ). The bank may block the amount of money ordered in the court decree or transfer the money to a special bank account.⁴⁸ In the case of a violation of the prohibition to dispose of the money, the bank may be held liable for damages.

There are two conditions set in the ZIZ in order for the court to issue an interim measure. The first is common for security of both monetary and non-monetary claims. The creditor needs to demonstrate with probability, that the claim exists or that the claim against the debtor will exist in the future (art. 270 and 272 ZIZ). The second condition relates to the danger that the enforcement of the claim without the existence of the interim measure will be impossible or considerably difficult. In relation to this condition, the main difference between monetary and nonmonetary claims is in the source of the danger which is threatening the enforcement.⁴⁹

⁴⁸ N. Pogorelčnik Vogrinc, *Začasne odredbe v civilnih sodnih postopkih* (Zbirka Scientia Iustitia. GV Založba, Ius Software, Ljubljana, 2015), 251.

⁴⁹ N. Pogorelčnik Vogrinc, 2015, p. 37.

The law expressly sets additional requirement for monetary claims which is that the danger derives from debtor's alienation, hiding, or any other way of disposing with the assets (subjective danger) (par. 2 art. 270 ZIZ). On the hand for non-monetary claims the source of or who is causing danger is not important (par. 2 art. 272 ZIZ).

The creditor of monetary claim is burdened with proving that debtor's actions affect the possibility for the enforcement to be carried out. So the threat for the enforcement of a claim must necessarily result from the debtor's dispositions with his or her own property. The creditor is burdened with proving: the danger of debtors disposition with his or her property; the impact of this behaviour for the enforcement of the claim and that the enforcement of the monetary claim is enabled or significantly difficult (the law sets the present tense).⁵⁰ While, creditors are faced with lack of information about the debtor's activities and assets dispositions, proving of the stated condition is rather difficult in practice and the courts are deciding very restrictively and differently whether this condition is fulfilled in each particular case.⁵¹

Another question is whether the creditor also needs to prove the with his actions the debtor as the intent to enable or to make the enforcement difficult or is it enough for the creditor only to prove that the debtor is disposing with his or her assets. The Supreme court decision gave its answer towards the latter option so that the debtor intent or his or her deliberate behavior to enable enforcement is not required or important.⁵²

However, ZIZ gives grounds also for alternative possibility to obligation to prove subjective danger (the same is foreseen also for non-monetary claims); that is, that the debtor will suffer only minor damage if the interim measure is issued (par. 3 art. 270 ZIZ). In this case the creditor is exempt from the obligation to prove the subjective danger but needs to show whit probability that the interim measure will not cause more than minor damage to the debtor.

Second condition (besides the existence of the claim) for security with interim measure of non-monetary claims is the existence of objective danger, which means that the creditor needs to prove only the danger that the enforcement of the claim will be impossible or significantly difficult (art. 272 ZIZ).⁵³ Alternatively, the most common second condition that the creditors

⁵⁰ N. Pogorelčnik Vogrinc , 2015, p. 47.

⁵¹ V. Rijavec, 2003, p. 267; U. Vertačnik, N. Pogorelčnik Vogrinc, Pogoji za izdajo začasne odredbe, Odvetnik, No. 64/2014; N. Pogorelčnik Vogrinc , 2015, p. 63;

⁵² Sklep VS RS III Ips 78/99, 10.6.1999; VSL sklep I Cp 1750/2016, 6.7.2016.

⁵³ According to this condition the court decides the potential danger in the future.

rely upon for better chance for interim measure for securing non-monetary claims to be issued is the need to prevent the use of force, or the occurrence of damage which would be difficult to repair. With this condition the creditor needs to show that the damage would be hard to replace (restitution) or to mitigate (satisfaction). This means that the creditor expects the occurrence of serious consequences which will be difficult to overcome.⁵⁴ The third possibility for creditor to get the interim order for securing the non-monetary claim issued is the situation when the measure is needed when the consequences for creditor and debtor are in the balance. This is the case when the debtor would not suffer more severe consequences if the interim order is later being found as unsubstantiated than those caused to the creditor if the interim order is not issued at all (art. ZIZ).⁵⁵

Furthermore, if creditor needs to enforce the claim abroad (in the non-EU country), the danger for the enforcement as the second condition for the interim measure is according to the law presumed to exist.

In the Republic of Slovenia, a court's decree of interim order if issued in a civil proceeding or any other proceeding has the effect of an enforcement decree (Art. 286 ZIZ); however, it can only interfere with the sphere of the debtor and not with third parties.⁵⁶ Therefore, the issuing of an interim measure does not result in the formation of a registered charge on the subject of insurance. So, an interim order, by which, for example, measures for prohibiting the disposal of the subject of insurance were issued, does not prevent legal interventions of other parties in the same subject (e.g. proceedings of enforcement). The consequence of the debtor's violation of such an order is therefore only the creditor's right to challenge legal acts done to the creditor's detriment, according to the obligatory law.⁵⁷

The main prerequisite for preliminary order is the existence of title regarding the money claim which is not yet enforceable. Creditor may submit condemnatory judgment⁵⁸ on monetary claim from the time when the judgment is issued and until the judgment becomes enforceable. The creditor needs to prove probable danger that the enforcement of a claim will be otherwise impossible or significantly difficult (art. 257 ZIZ). Second condition for preliminary order

⁵⁴ V. Rijavec, 2003, p. 268.

⁵⁵ V. Rijavec, 2003, 269.

⁵⁶ V. Rijavec, 2003, p. 272.

⁵⁷ Rijavec, op. cit., note 43, 91.

⁵⁸ Also administrative judgments, arbitral awards, court or administrative settlements, directly enforceable notary deed for monetary claim which is not yet due.

relates to objective danger which means that any situation or debtors behaviour could seriously compromise future enforcement. However, some of the titles appropriate for issuing the preliminary order, are accompanied by circumstances for which the condition of proving the objective danger is not necessary (art. 258 ZIZ).⁵⁹

The law explicitly regulates the following preliminary orders:

- seizure of movable and entry into the register
- seizure of money claims or the claim to deliver particular things;
- seizure of other property rights;
- the attachment of a sum of money to the debtor's account at the bank;
- entry of a lien in the court register on the shareholder share;
- preliminary note of a lien on the debtor's immovable property. (Art. 260 para. 1 point 4. ESCCA).

Also, as precautionary measures, in the sense of the forced securing of claims, the ESCCA allows securing by the establishment of a lien on the object that is intended for security of a claim.⁶⁰

As soon as it comes into effect, the bank cannot legally fulfil any obligations to the debtor (art. 271 para. 1 point 4 ZIZ) and can be held liable for paying compensation to the creditor. The blocking of the preserved amount applies until the bank receives the decision on its termination. Until then, the amount preserved is blocked either by blocking the debtor's account or the bank will transfer the amount to a special account. However, the effect of blocking the debtor's account does not necessarily provide complete protection for the creditor. The transfer of the funds may be executed in an enforcement procedure where another creditor requires repayment of the claim from the debtor's assets. The issuing of an interim order by blocking the debtor's account does not, therefore, result in the formation of a lien on the subject of the insurance. If the conditions for the preliminary measure are met, the creditor may not apply for interim measures. However, the preliminary measure needs to achieve the same purpose for securing the claim as the interim measure (Art. 269 ZIZ).

These protective measures are discussed in detail in chapter 4.6.

⁵⁹ For example: judgment issued in criminal proceeding with which the monetary civil claim was granted, but extraordinary remedy renewal of the proceeding was submitted; decision enforceable abroad; judgment based on acknowledgment of the defendant; court settlement being contested; directly enforceable notarial deed on the monetary claim which is not due.

⁶⁰ Rijavec, Začasne odredbe v arbitražnem postopku, Slovenska arbitražna praksa, 2012, p. 12.

- 1.18. Comments and critical approach to your legislation. Please identify deficiencies of your national system, e.g. length of enforcement proceedings; success rate of enforcement; interconnectivity and over-lapping to other areas of law (insolvency proceedings).

In the last years we are surrounded with media high profiled stories about debtors who lost their private property even when the debt was relatively low.⁶¹ In that relation, the Government in 2012 authorised the competent ministry of justice to comprehensively examines the provisions of ZIZ regarding the on-going concern to the rule that the creditor is free to choose any of the methods of enforcement, available under ZIZ. The aim of the analyses was to prevent disproportionate interference with the constitutionally guaranteed right to private property and to concentrate on the question of disproportion related to the value of the claim on one hand and value of the sold real estate on the other. The statistics show that from all the submitted proposals for enforcement of the monetary claims with the proposal for selling the immovable property, the enforcement was successful in only 1,42% of the cases where the claims were not exceeding the value of 100 EUR.

In the ZIZ there is no lower limit of the amount of the claim over which it is possible to allow the attachment and selling of real-estate. However, the debtor may propose to the court to substitute the enforcement of real estate with another type of enforcement, if it is probable that this type would be successful. Furthermore, the debtor has a right to pay the claim at any time, up until the real estate is according to the court order handover to the buyer. Even if the real estate is finally sold the debtor gets the rest of the purchased price after the repayment of the creditor. Additionally, the debtor may propose to stay and live in the real-estate as a tenant after the sale for up to three years on condition of paying the market value rent.

However, in April 2017 the ECHR ruled in *Vaskršić vs Slovenia* ((*Application no. 31371/12*) that there was a violation of article 1 of Protocol No. 1 (protection of property), in particular that the sale of the applicant home at public auction had involved a disproportionate interference with debtor property rights. According to the case facts the property had been sold for 50% of its market value⁶², in the course of debt enforcement proceedings arising from a principal debt of only 124 euros.⁶³

⁶¹ One of the most famous case was the Vaskršić case. The debtor lost his house because of the debt in the amount of 120 EUR.

⁶² The property was valued to the amount of 140.000 EUR and was sold for 50% of the market value in the amount of 70.000 EUR.

⁶³ ECH ruled on just satisfaction awarding applicant 77.000 EUR pecuniary damage, 3.000 non-pecuniary damage and 5.000 EUR for costs and expenses.

The ECHR observed that the relevant Slovenian legislation, that is the ZIZ, does not explicitly place an onus on the enforcement court to opt for less intrusive enforcement measures of its own motion or to require it to reject a request by the creditor if disproportionality arises. Nor does the legislation set any minimum threshold in respect of the amount of debt owed, so in principle even a minor debt could be enforced by means of the judicial sale of an immovable property, such as a house.

This has been confirmed also by the data submitted by the Government, which show that in the period between 1 January 2008 and 1 March 2012, a decision transferring title of property was issued following the judicial sale of immovable property in thirty-two cases concerning debts lower than EUR 1,000. Moreover, the ECHR pointed out that pursuant to the ZIZ, property sold at auction was awarded to the buyer, and that the domestic courts in the present case interpreted the legislation to mean that in order to protect the legitimate interests of the buyer, the sale could at that point not be revoked for reasons such as the subsequent repayment of the debt.

The ECHR pointed out that the Slovenian authorities were obliged to take careful and explicit account of other suitable but less intrusive alternatives given the paramount importance of the enforcement measure taken against the applicant's property, which was also his home, and the manifest disproportion between this measure and the amount of debt it aimed to enforce.

Furthermore, the ECHR stated that the ZIZ provides for several means of enforcement, including seizure of assets from the debtor's bank account or part of the debtor's salary and that the court was aware that the debtor was employed and receiving regular salary. Nevertheless, another creditor debt was actually repaid from debtor's bank account in the period when enforcement proceedings for claim of 124 EUR were being carried out. Additionally, almost a month before the second auction creditor requested that the enforcement be carried out by seizing the applicant's salary and bank account. However, although the requests were made before the second auction was carried out respectively, the court did not grant after the successful auction, that is after the house had been sold at the second auction. The ECHR found this situation striking that the enforcement court, which had previously taken decisions rather swiftly⁶⁴, took a month to decide on creditor requests. According to the facts, the ECHR emphasized that the Slovenian court should have taken a timely decision of creditor's requests for additional enforcement measures and taken steps to

⁶⁴ For issuing a writ of execution on additional enforcement measure (because the creditor was not successful with the enforcement of movables) it took the court to decide only 2 days after the application from the creditor was submitted to the court.

postpone or cancel the auction. The ECHR concedes that the latter, as well as the lack of initial consideration of proportionality when accepting the request for the impugned judicial sale, may have resulted, at least in part, from the court's interpretation of the relevant requirements of the domestic law.

However, the ECHR also concludes that in this particular case it has not been shown that the judicial sale of the applicant's house was a necessary measure to ensure such enforcement.

Having regard, the low value of the debt that was enforced through the judicial sale of the applicant's house and the lack of consideration of other suitable and less onerous measures by the domestic authorities, the ECHR concluded that the State failed to strike a fair balance between the aim sought and the measure employed in the enforcement proceedings against the applicant.

Slovenian ECCA was amended 11 times and the next amendment (amendment L) is already in legislative procedure. According to the statistic the average length of enforcement proceedings is 5.4 months. According to the statistical data of the Supreme court the number of the unsolved matters in enforcement proceedings in 2016 has immensely lowered. However, the enforcement matter still represents the most highest proportion of all the unsolved matter at the Slovenian courts.

As for the interconnectivity between enforcement law and insolvency proceedings the general rule in the article 131 of the Financial Operations, Insolvency Proceedings and Compulsory Winding-up Act (ZFPPIPP)⁶⁵ sets that after the insolvency proceedings have been initiated the enforcement court may not issue any enforcement order or security measure⁶⁶. There are some exceptions to this general rule; namely, the general rule shall not apply to an enforcement on the basis:

1. of final resolutions: issued by the court conducting such procedure, in insolvency proceedings and for which the law provides to be the executory title;
2. final court decisions or decisions of another state body, in the part where the insolvent debtor has been imposed the compensation of costs of the procedure by this decision;
3. court decisions issued

⁶⁵ Official Gazette No. 13/14, 10/15 – popr., 27/16, 31/16 – odl. US, 38/16 – odl. US in 63/16 – ZD-C.

⁶⁶ The general rule does not apply also for securing 1. a creditor's claim for the exercising the right to separate settlement or exclusion right, except if the creditor in bankruptcy proceedings has missed the time limit for declaring such right; 2. claims which are paid in bankruptcy proceedings as the cost of proceedings (par. 3. 131 ZFPPIPP).

on a claim the subject of which is a claim which is paid in bankruptcy proceedings as a cost of the procedure, or executory titles issued in an administrative procedure on the basis of which the debtor shall have to settle the liability which is paid in bankruptcy proceedings as a cost of the procedure; 4. a decision which imposes on the insolvent debtor the payment of taxes for acts carried out in such procedure after the insolvency procedure is initiated. However, in the theory and jurisprudence there is a lack of unified opinion whether insolvency proceeding represents negative procedural prerequisites or substantive obstacle for allowing the enforcement.⁶⁷

Enforcement and securing procedures started prior to the initiation of insolvency proceedings shall be interrupted upon the initiation of insolvency proceedings. The enforcement and securing procedures referred shall be continued only upon the resolution by the court conducting insolvency proceedings which are provided for by ZFPPIPP to represent the basis for the continuation of enforcement and securing procedure. The law then explicitly sets further consequences of the initiated insolvency proceeding on the enforcement or security proceedings that started before the insolvency proceeding (art. 132. ZFPPIPP)

Part 2: National procedure for recognition and enforcement of foreign judgements

2.1. Which of the three systems is enacted in your system, disregarding EU or other international acts: (1) *Révision au fond*; (2) *Contrôle limité*; (3) *Ex lege*.

In the Republic of Slovenia, rules on recognition and enforcement of foreign judgments are regulated by the Private International Law and Procedure Act⁶⁸ [Zakon o mednarodnem zasebnem pravu in postopku] (PILPA) in Chapter four titled "Recognition and enforcement of foreign judgements" (Arts 94 – 111). The PILPA is an act of general nature and its provisions are applicable in all cases regarding recognition and enforcement of foreign judgements issued in private relations,⁶⁹ except where international or EU legal acts apply, namely the Brussels I Regulation,⁷⁰ Brussels Recast,⁷¹ Brussels II Regulation,⁷² Insolvency Regulation,⁷³ Maintenance Regulation⁷⁴ etc.

⁶⁷ D. Orož, Insolvenčni postopki ter postopek izvršbe in zavarovanja, Pravosodni bilten 1/2015.

⁶⁸ OJ RS, Nr. 56/1999 and 45/2008.

⁶⁹ There are no special provisions regarding e.g. matrimonial, heritage or maintenance disputes.

⁷⁰ Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 12, 16/01/2001, p. 1–3).

According to the Slovenian national law, a decision given in another state is not recognised or enforced automatically (*eo ipso*). Special procedure is always required in order to recognise or enforce foreign decisions.

The Slovenian national law adopts the *contrôle limité* system. Consequently, the Slovenian court recognises and enforces foreign judgements taking into account certain requirements that are formal in nature (except public order as a substantive one) without checking the substantive law or facts of the case.⁷⁵ Thus, the court can recognise and enforce foreign judgements if all the requirements provided by the PILPA are met and *vice versa*. However, the court is in no position whatsoever to alter the decision issued by the court of the state of origin – there is no *revision au fond* system in the Slovenian national law.

The PILPA provides positive and negative requirements for the recognition and enforcement of foreign judgements. In order to be recognised, the foreign judgement should be final (Art. 95(1) PILPA),⁷⁶ which differs from the Brussels system where there is no such requirement. In case of enforcement it needs to be enforceable in the state of origin as well (Art. 103 (2) PILPA). These are the only positive requirements, while all other are negative (must not be present). Thus, according to PILPA recognition and enforcement of foreign judgements can be refused (besides lacking positive requirements) on several grounds which can be grouped into five categories, among which some can be invoked only on the request of the party, while others are considered on the court's own motion (*ex officio*).

1. Public policy. The decision is not recognised and enforced if the effects of foreign judgements are contrary to public policy of the Republic of Slovenia (Art. 100 PILPA).

⁷¹ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1–32).

⁷² Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ L 338, 23.12.2003, P. 1–29).

⁷³ Council regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ L 160, 30.6.2000, p. 1–18), which will be replaced by the Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (OJ L 141, 5.6.2015, p. 19–72).

⁷⁴ Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (OJ L 7, 10.1.2009, p. 1–79).

⁷⁵ Ilešič M., Polajnar-Pavčnik A., Wedam-Lukić D., Mednarodno zasebno pravo – Komentar zakona, Časopisni zavod Uradni list Republike Slovenije, 1993, p. 132–133.

⁷⁶ Certificate on enforceability is not required for the recognition only (case Cp 9/2000).

2. Jurisdictional matters. There are three different jurisdictional grounds which can prevent the recognition and enforcement of foreign judgement. First, when Slovenian courts have exclusive jurisdiction according to the Slovenian law (Art. 97 (1) PILPA). Second, when the jurisdiction of the court of origin has been established exclusively on the so-called exorbitant rules: plaintiff's citizenship, the presence of the defendant's property in the state of origin, service in person of a document instituting the proceedings against the defendant (Art. 98 PILPA). Third, the court of origin failed to observe agreement on jurisdiction of the Slovenian court (Art. 98 (2) PILPA).
3. Default of appearance. The decision is not recognised and enforced when a person against whom the judgement was rendered had no opportunity to participate in the proceedings before the court of origin (Art. 96 PILPA).
4. There is no reciprocity. The reciprocity is presumed until the contrary is established. However, there are some instances where reciprocity is not a requirement: in matrimonial disputes and in disputes relating to fraternity or maternity and where recognition and enforcement is required by a Slovenian citizen (Art. 101 (3) PIPLA).
5. Concurrent decisions and *lis pendens*. The foreign judgement is not recognised and enforced if the court or another authority in the Republic of Slovenia rendered a final decision on the same matter or when such a decision was already recognised in the Republic of Slovenia (Art. 99 (1) PILPA). In addition, a foreign judgement is not recognised if before the court of the Republic of Slovenia proceeding, which was instituted earlier, is still pending until the decision in this proceeding becomes final (Art. 99 (2) PILPA).

In addition, the PILPA provides special provision concerning the recognition and enforcement of the judgements referring to a personal status of a citizen of the state in which the decision was rendered where exclusive jurisdiction of Slovenian court, public order and reciprocity are not examined (Art. 102 (1) PILPA).

- 2.2. What is the concept of 'recognition' and 'enforcement' of foreign judgements in your member state?

Comment: *Please firstly evaluate the terms on their own and later-on conduct a comparison. In doing so, refer to the established theories on the subject-matter which strive to provide an explanation on the effects of decision on recognition and/or enforcement (does the decision hold constitutive effects; does the decision provide for an extension of effects from the state of origin and state of enforcement; does it cumulate both effects).*

It is important to stress that recognition and enforcement procedure in the Slovenian law in contrast to the Brussels Recast is unified; meaning that recognition on the one hand and enforcement on the other hand are not separate procedures. The foreign judgement cannot be enforced without recognition. On the recognition and enforcement, it must be decided simultaneously. If the decision needs to be recognised only, then of course no enforcement is required.

The PILPA provides requirements for recognition of foreign judgements in Arts. 94 – 102, which are applicable for the enforcement procedure as well with an additional requirement under which a certificate on enforceability under the law of the state in which the decision was rendered should be submitted (Art. 103 PILPA).

In theory, there are three systems of the foreign judgement's effect in the state of recognition: system of equalisation of effects, system of extension of effects and system of cumulative effects.

Art. 94 (1) PILPA states:

"A foreign judicial decision shall be equivalent to the decision of the court of the Republic of Slovenia and its effect in the Republic of Slovenia equivalent to that of an internal judicial decision only if recognized by the court of the Republic of Slovenia."

According to this provision, the system of equalisation of effects is recognised in Slovenian law for the judgements that are not recognised under the Brussels system. This means that recognised foreign judgements is by its effects equivalent to the judgements rendered by the Slovenian courts.⁷⁷ Although, it has to be mentioned that system of cumulative effects according to which a foreign judgement cannot have broader effects in the state of recognition as it has in the state of origin on one hand and broader effect as recognised in the state of

⁷⁷ See also Pašek M., *Priznanje in izvršitev tujih sodnih odločb, magistrska naloga*, Univerza v Ljubljani, Pravna fakulteta, 2005, p. 226.

recognition on the other hand, also has some support in the Slovenian literature, when it is used as a corrective to the equalisation system.⁷⁸

At the end of the procedure on recognition and enforcement the court renders a decision (an order). If enforcement of foreign judgement is required as well, the court declares in the operative part of the order, that there are no obstacles for the enforcement of the foreign judgement in the Slovenian territory.⁷⁹ Under the majority of opinion, the ruling on recognition and enforcement rendered according to the rules of the PILPA has declaratory nature.⁸⁰

2.3. Main features of 'delibation' (*procedura di delibazione*) or 'incidenter' procedure – type of procedure. Which type of procedure is provided for in your system? Accompany the answer with commentary.

Comment: *On the continent usually two distinct civil procedures exist. One is a separate non-contentious civil procedure especially tailored for recognition and enforcement of foreign judgements in Italy called 'procedura di delibazione'. However, in certain countries a possibility also exist that the foreign judgement is recognised and enforced directly within the procedure of enforcement (in the meaning of the execution) (in France called 'incidenter' procedure).*

In the Republic of Slovenia recognition and enforcement as provided in the PILPA are not carried out automatically, which means that special procedure is required in order to recognise and enforce foreign judgement. There are two procedures in which foreign judgement can be recognised and enforced: *delibation* and *incidenter procedure*.

The *delibation procedure*, regulated in Articles 108 – 111 PILPA is a special type of non-contentious procedure where the question of recognition and enforcement appears as the main question. For the questions not regulated in the PILPA the provisions of the Non-Contentious Civil Procedure Act⁸¹ [Zakon o nepravdnem postopku; NCCPA] applies analogously (Art. 111 PILPA). Since all the procedural questions are not regulated even by the NCCPA, rules of Civil Procedure Act⁸² [Zakon o pravnem postopku; CPA] apply as well.

⁷⁸ Rijavec V., Izvršba na podlagi tujega izvršilnega naslova, Podjetje in delo, 6–7/2008, p. 997–998.

⁷⁹ Ekart A., Rijavec V., Čezmejna izvršba v EU, GV Založba, 2010, p. 50, Varadi (2010), p. 548, Pašek, p. 223, Grbin I., Priznanje i izvršenje odluka stranih sudova, Informator, zagreb 1980, p. 14.

⁸⁰ See Ekart, Rijavec, p. 47–48, and Pašek, p. 224.

⁸¹ OJ SRS, Nr. 30/1986, 20/1988, OJ RS, Nr. 87/2002, 131/2003, 77/2008 and 10/2017.

⁸² OJ RS, Nr. 73/2007, 45/2008, 45/2008, 111/2008, 57/2009, 12/2010, 50/2010, 107/2010, 75/2012, 40/2013, 92/2013, 10/2014, 48/2015, 6/2017 and 10/2017.

Incidenter procedure is provided in Art. 108 (6) PILPA according to which the question of recognition can be solved in any procedure as preliminary question, however, with an effect referring only to this procedure. In case of a different decision in the *delibation procedure*, one could file a retrial as an extraordinary legal remedy. The *incidenter procedure* is not limited to the contentious procedure only.⁸³ It could be carried in non-contentious procedure, enforcement procedure, even criminal procedure. The grammatical interpretation of Art. 108 (6) PILPA shows that *incidenter procedure* is limited to the recognition of foreign judgement only. However, such interpretation would be incorrect since both, the recognition and enforcement are placed in the same chapter of the PILPA⁸⁴ and the provisions that apply to recognition apply to enforcement as well.

According to the Slovenian theory, some issues are not suitable to be regulated as preliminary questions. These are decisions issued in disputes relating to the personal status and maternity and fraternity disputes. Although recognition is not a decision directly related to the matrimonial or maternity matters, recognition of a foreign judgement about these matters as a preliminary question would in essence have just such effects.⁸⁵

2.4. Jurisdiction in matters of recognition and enforcement (substantive and territorial). Provide a short description.

The substantive jurisdiction in matters of recognition and enforcement is regulated in the Art. 42b of the Claim Enforcement and Security Act [Zakon o izvršbi in zavarovanju]. According to Art. 42b of the Claim Enforcement and Security Act the competent courts at the first level instance are the district courts of the debtor's domicile or temporarily domicile. As it is seen from this provision, the Claim Enforcement and Security Act provides not only the substantive, but territorial jurisdiction as well. It has to be emphasised that the provision of Art. 42b applies not only to cases of recognition and enforcement of decisions governed under the rules of the PILPA. It is also applicable in cases where international treaties and EU legal acts (namely the Brussels Recast) apply.

At the second instance level the Supreme Court of the Republic of Slovenia (Art. 109 (5) PILPA) is competent.

⁸³ See the decision III Ips 64/2001.

⁸⁴ Pašek, p. 200.

⁸⁵ Ilešič, Polajnar-Pavčnik, Wedam-Lukić, p. 154.

2.5. Type of decision. Explain types of procedure and types of decision in your Member State!

In the *delibation procedure* the district court renders an order on recognition and enforcement (Art. 109 (2) PILPA). The order is rendered by a single judge (Art. 108 (3) PILPA).

The first instance procedure:

The first instance procedure can be divided in two phases: the first phase or the so-called phase with an application of recognition and enforcement, and the second phase or the opposition procedure. Thus, the first phase of procedure which concludes by rendering an order is not contradictory.

In the first phase the court examines only the requirements on the ground of which it may refuse recognition and enforcement on its own motion (finality of the foreign decision, exclusive jurisdiction of Slovenian courts, public order, reciprocity and *res iudicata*). The first phase ends with rendering an order on recognition and enforcement if all requirements are met, or by rendering an order on refusal of recognition and enforcement where grounds for refusal exist. In the latter case the second phase commences, i.e. an opposition procedure.

In the second phase the competent court is the same court that adopted an order, in a chamber of three judges⁸⁶ (Art. 109 (4) PILPA). The appeal can be filed within fifteen days from the day of the service by the court upon opposite party or/and upon other parties in the proceedings in which the foreign decision was rendered (Art. 109 (3) PILPA). The opposite party can refer not only to the grounds of refusal that can be invoked on the request of the party, but also those that courts consider on its own motion (*ex officio*).

The second instance procedure:

The second instance procedure can institute in two cases. First, where the single judge renders an order on refusal of recognition and enforcement, and the applicant files an appeal. Second, where the chamber of three judges renders an order as to the opposition and the appeal is filed. In both cases appeal to the Supreme court of the Republic of Slovenia is permissible (Art. 109 (5) PILPA). Such an appeal can be filed only by a person with a legal interest.⁸⁷

There are no provisions in the PILPA concerning the possibility of bringing extraordinary legal remedies against the decision of the court in *delibation procedure*. According to Art. 111 PILPA rules of the NCCPA are applicable. Thus, two extraordinary legal remedies are permissible, namely request for the protection of legality and retrial of the procedure.

⁸⁶ The member of a chamber is also the single judge who rendered an order in the first phase of the procedure (decision VS RS Cp 14/2001).

⁸⁷ Decision VS RS Cp 3/2004.

However, the revision is not permissible⁸⁸ since it should be especially provided by the PILPA (Art. 34 of the NCCPA), which is silent on this issue. We should emphasise that in the non-contentious civil procedure it is possible to file an appeal even after the expiration of term, that is as an extraordinary legal remedy (Art. 33 (3) of the NCCPA), but only in cases where interests of third persons arising out of the decision are not affected, or if these persons agreed with a change or annulment of the decision.⁸⁹

The PILPA contains a provision regarding the decision on the costs of the procedure. The costs are determined in accordance with the rules which would be applicable if the matter was governed by the court or another authority of the Republic of Slovenia. Since *delibation procedure* is a non-contentious procedure and the provisions of the NCCPA apply analogously, the question is whether rules of the NCCPA apply or one should apply rules of the CPA.⁹⁰ According to the Slovenian case law, rules of the CPA apply in determining the cost of the procedure.⁹¹

⁸⁸ Decision III Ips 85/2000.

⁸⁹ See Pašek, p. 199, and Ilešič, Polajnar-Pavčnik, Wedam-Lukić, p. 154.

⁹⁰ Pašek, p. 199.

⁹¹ VS RS Cp 11/2000.

Part 3: Recognition and Enforcement in B IA

3.1. Certification or declaration of enforceability in Member States of origin (Art. 53. B IA).

"Article 53

The court of origin shall, at the request of any interested party, issue the certificate using the form set out in Annex I."

3.1.1. Requirements. Provide a critical assessment on the requirements regarding the certification.

Based on Article 42 of the Slovenian Claim Enforcement and Security Act (hereinafter CESA) the court competent for issuing the certificate of enforceability of a domestic judgment is the court which issues the first instance judgment. Based on Article 42.a the same goes for the issuing of the certificate from the Brussels I bis Regulation.

Based on Article 19 CESA, Slovenian judgments become enforceable when the judgment becomes final (except when the law provides that a non-final judgment can be enforced) and the legal period for voluntary fulfilment of the judgment has expired (usually 15 days after the day of service on the debtor). A court settlement is enforceable when the claim from the settlement is due.

3.1.2. Does a specific legal remedy exist to challenge the certificate of enforceability in the Member State of origin? If yes, how does it influence the course of civil enforcement?

Based on Article 42.c CESA the authority, which issued the certificate of enforceability, is competent for its rectification, and the same authority or a court is competent for the annulment of the certificate. The rectification or the annulment are made on the request of a party. A court clerk can decide on these questions (Art. 6 CESA).

Based on Article 71 CESA, the court can, on the debtor's request, postpone the enforcement if the debtor has filed for the annulment of the certificate of enforceability.

Based on Article 76 of CESA, the court stops the enforcement ex officio if the certificate of enforceability is annulled. Thus, all enforcement actions already performed are annulled, with exception of those where the rights of third persons could be affected.

According to case-law there is no preclusive time period in which the request for rectification or annulment of the certificate of enforceability can be filed (Appellate Court in Ljubljana, no. I Ip 4020/2014 of 12 November 2014).

3.1.3. What happens if the court of the Member State of origin certifies the enforceability for a judgment which has not yet acquired this effect (e.g. in Slovenia the time limit for voluntary fulfilment of the claim in the legally binding judgment (a prerequisite for enforceability) has not yet expired)? Can

the court thereafter repeal the certificate? In connection: What happens if the judgment was served to the wrong address or to the wrong person? Does this constitute a ground for withdrawal of certificate of enforceability in the Member State of origin?

As stated above, the court can repeal the certificate if the conditions for enforceability have not been met. But as the certification of finality and enforceability is a technical matter dealt with by the clerk, only mistakes made in this process can be sanctioned with the withdrawal of the certificate (e.g. the clerk calculated the time period wrongly or the clerk issued the certificate although there was no certificate of service on the debtor). In the case of errors in the process of service of the judgment, the debtor can file legal remedies such as appeal or the reopening of the proceedings.

- 3.1.4. B IA does not provide, neither for withdrawal of certificate nor for a certificate of non-enforceability. How would the domestic court thereafter deal with unlawfully issued certificates due to deficiencies of requisites (e.g. certificates issued where the claim has not yet actually acquired the attribute of enforceability; where the judgment was served to the wrong person etc.)?

Comment: *In addition to certificate of enforceability, the Regulation does not include any provisions related to rectification or withdrawal of certificate (cf. Art. 10 of Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims). This issue is therefore governed by domestic law in the Member state of origin. Moreover, certificate of non-enforceability unfortunately does not exist (Art. 6(2) Reg. 805/2004), which could ease termination or suspension of enforcement procedure in Member State of enforcement in cases where a judgement has ceased to be enforceable or its enforceability has been suspended or limited. Is it a technical matter that can be handled by the clerk?*

Article 42.c CESA provides that the certificates issued on the basis of EU legislation can be rectified or annulled/repealed/withdrawn or rectified by the authority which issued the judgment at the first instance. The debtor must request such annulment or rectification. There is no legal time-limit in which the debtor can file such request.

The clerks can decide on the requests for rectification and annulment (Art. 6 CESA).

- 3.1.5. What are the effects of the certificate in your legal order in the Member State of origin (e.g. Germany – 'Klausel')? Comment on the type of procedure/decision and the effects it produces.

The certificate of enforceability is a prerequisite for the enforcement proceedings. The enforcement court will consider the application for enforcement non-admissible if the judgment has not been duly certified enforceable (Appellate Court in Ljubljana, no. III Ip 5539/2013 of 25 February 2014). The certificate is a stamp given and filled out by the court, on the request of a party. It is a public document, which means that a presumption of the correctness of its content applies.

3.1.6. Control and Correction. What options are available for challenging errors?

See above.

3.1.7. Plurality of certificated documents (number of copies of certificate). Provide a comment on said subject and possible problems which may stem from it.

In principle it is possible that more than one copy of the judgment will be certified as enforceable, for example in the case of multiple creditors who each received their own copy of the judgment. The danger thus exists that the debt will be enforced multiple times. Here, the role of the debtor is crucial – he/she will have to object to such enforcement.

Naturally, the problem is bigger when the enforcement will be sought in different Member States, but, again, the debtor will have to react accordingly.

3.1.8. Legal nature of the certificate of enforcement. The relation between B IA and national rules. Please comment on possible discrepancies and similarities.

In national law, the certificate of enforceability is a stamp on the judgment or a separate document. In both cases, it is considered a public document, which means that the presumption of correctness of the information stated in it applies. It is a prerequisite for the initiation of the enforcement proceedings. The certificate of the B IA has the same nature.

3.1.9. *Post festum* cancelation or withdrawal of certificate of enforceability in Member State of origin. How should such an event be treated and what effects, if any, are to be ascribed to it?

We think this event would be treated the same way as if the certificate is withdrawn under national law, i.e. the court stops the enforcement and annuls all acts of enforcement already performed. The debtor who requested the withdrawal, would have to provide the court in the state of enforcement with the decision on the withdrawal of the certificate.

3.1.10. Does the certificate need to be served to the defendant at all? Does it have to be served within a specific timeframe? Note that these questions refer to the Member State of origin.

No, the certificate of enforceability is not served on the debtor.

3.1.11. Service of declaration of enforceability, if it is foreseen in the national law. How is the service conducted? Describe the conditions for and methods of service.

Such service is not foreseen in Slovenian national legislation.

3.1.12. Although Art. 40 of the B IA enables the creditor to apply for any protective measures which exist under the law of the Member State addressed prior to the

first enforcement measure, this interim step requires additional costs and can cause delays. Please provide a critical assessment.

“Article 40

An enforceable judgment shall carry with it by operation of law the power to proceed to any protective measures which exist under the law of the Member State addressed.”

Comment: *One of the major concerns which relates to certificate of enforceability (Art. 53). According to Article 43 (1) where enforcement is sought of a judgment given in another Member State, the certificate issued pursuant to Article 53 shall be served on the person against whom the enforcement is sought prior to the first enforcement measure. Mentioned provision does not sufficiently take into account the surprise effect of enforcement. Seizure or attachment of debtor's property is usually the first enforcement measure, which freezes debtor's property and precludes debtor's to dispose with its assets. If the certificate of enforceability is served on the debtor prior to the first enforcement measure, there is no surprise effect of enforcement. What is more, in that way the court even warns the debtor that creditor attempts to attach his assets and debtor can dispose of his assets and prevent the recovery of debts.*

This provision of the B IA indeed mitigates the effectiveness of the cross-border enforcement, as it eliminates the effect of surprise available in the enforcement of domestic judgments. It must however not be forgotten that the system in the recast Regulation still provides for more effectiveness than the “old” exequatur procedure which also inevitably warned the debtor of the future enforcement and also provided the suspensive effect. The recast Regulation allows for the “warning”, but the enforcement proceedings will still be conducted despite the possible filing of the legal remedies by the debtor. It is thus a step forward from the old version of the Regulation, but the fact that the creditors might be obliged to file for preliminary measures so as to ensure the effect of surprise is undoubtedly worth of discussion and of a search for better solutions.

3.1.13. Certifying the amount of interests. Provide a comment on possible problems and solutions.

Comment: *Regarding the enforcement of interests, the certificate of enforceability does not contain easily discernable data where a judgment refers to statutory interests which are calculated in accordance with (most commonly) domestic law of the Member state of origin (e.g. Point 5.2.1.5.2.1 of certificate). In some member states, the interest rate of (default) interests is determined by statute and changes from time to time (e.g. Slovenia every 6 months). If an enforcement agent in Slovenia (Member State of enforcement) has to enforce a foreign judgment, in terms of speedy (efficient) procedure, he is not interested in the foreign (for example Italian) statute governing the interests rate. Contrary, the enforcement agent is interest in the exact amount of interests or - at the very least - a precise calculation formula to calculate them. In that regard, Points 5.2.1.2. and 5.2.1.3. contained in certificate under Regulation (EC) No 805/2004 are much more suitable for these purposes,*

because they enable the enforcement authority in the Member State of enforcement to calculate the amount of interests very easily. Replacing Annex of Brussels I Recast with a new, more detailed Annex would be very appropriate.

The Slovenian national system is described in the comment of the question. The specification of the owed interests is a very important issue and we agree that a more detailed annex to the regulation would be appropriate.

3.1.14. How does party succession affect the content of the certificate and the overall procedure?

Party succession does not affect the content of the certificate of enforceability. Succession must be asserted in the enforcement proceedings and proven by a public document or a legally certified document. If such document does not exist, legal succession must be acknowledged in civil proceedings in court.

3.2. Recognition and Enforcement in Member State of enforcement.

3.2.1. The concept of 'recognition' (Art. 36/1). Provide your understanding.

"Article 36

1. A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required."

Our understanding of "recognition" is that the requested state considers the foreign judgment to have the same effects as a domestic one, i.e. the *res iudicata* (*ne bis in idem*) effect.

3.2.2. The scope of a judgement's authority and effectiveness. Do you see any national (problematic) issues considering the doctrine of spreading the effects of a judgment from the Member State of origin to the Member State of enforcement?

Problems could arise in the case of effects provided for by the foreign judgment which do not exist/cannot be obtained in the requested state. The adaptation process would have to be conducted, which is currently not yet regulated in the national legislation.

3.2.3. Having in mind Art 43/1, is it possible to begin with the first enforcement measure and limit the enforcement proceedings to protective measures, when the certificate issued pursuant to Article 53 has not been served on the defendant (debtor) yet? Should this matter be clarified by the CJEU?

"Article 43

1. Where enforcement is sought of a judgment given in another Member State, the certificate issued pursuant to Article 53 shall be served on the person against whom the enforcement is sought prior to the first enforcement measure. The certificate shall be accompanied by the judgment, if not already served on that person."

"Article 53

The court of origin shall, at the request of any interested party, issue the certificate using the form set out in Annex I.”

Comment: *In some jurisdictions (e.g. Slovenia and Austria) the first enforcement measure and protective measure overlap. For instance, when enforcing debtor’s movable property, the first enforcement measure is seizure of certain movables (e.g. vehicle). Seizure of a certain movable is a protective measure. The following problem may therefore come to fruition: taking into account Art 43/1; may a protective measure which, in certain member states overlaps and is considered as the initial step in enforcement procedures, be regarded as a ‘first enforcement measure’, thus requiring the service of the certification and thereby stripping the protective measure of self-standing effect?*

Declaration of enforceability is now issued in the Member State of origin and is compared to declaration of enforceability according to Art. 38 of B I (44/2001), which was issued in Member State of enforcement.

Where enforcement is sought of a judgement given in another Member State, the certificate issued pursuant to Article 53 shall be served on the person against whom the enforcement is sought prior to the first enforcement measure (Art. 43/1). That is why for the debtor it is crucial that declaration of enforceability is served to him prior to the beginning of enforcement. This is the German solution. The Slovenian and Austrian solution differs – declaration of enforceability is not ex officio served to debtor. That is why a creditor with an Austrian or Slovenian enforceable title can only apply for protective measures according to Art. 40 (in Slovenia predhodne odredbe, in Austria Exekution zur Sicherstellung according to par. 373 EO).

Could this be ground for preliminary ruling for the Court of Justice of the EU? (e.g. ‘Is a national law, such as the one in the case at hand, where a self-standing protective measure overlaps with a first measure of enforcement, compatible with the Regulation’).

The problem lies in the fact that, contrary to Slovenian national law where enforcement should offer “more” to the creditor than preliminary measures, in the situation at hand, the latter provide the “surprise effect” which is not provided in enforcement proceedings, because of the prerequisite of the service of the certificate of enforcement.

The current EU regulation could incite systematic requests for preliminary measures before demanding enforcement, so as to ensure the “surprise effect”. Preliminary measures cannot be granted if enforcement is possible, but the creditor could argue that enforcement is not possible since the certificate of enforceability has not yet been served on the debtor. On the other hand, the court could find that this means circumventing the goal of the regulation, especially when the content of the preliminary measure overlaps with the enforcement.

It would certainly be good if the CJEU clarified this situation – when is it possible to demand preliminary measures and with what content, if the judgment has already been certified enforceable, but the certificate has not yet been served on the debtor.

3.2.4. A key question is whether the certificate on standard form B IA was served before commencing enforcement. Comment.

Comment: *Standard form does not allow and does not have a rubric that certificate was served. It is very convenient for the creditor that the service is done in the Member State of origin, not in Member State of enforcement.*

We deem that the most practical solution would be that the court which is seized with the request for enforcement, also serves the certificate on the debtor. But, being that the Regulation does not prescribe this, it is certainly also possible that the certificate is served via a court in the Member State of origin, e.g. the court that issued the certificate. If the debtor lives in another MS, the service would have to follow the rules of the Service Regulation. As already explained, in Slovenia, the certificate of enforceability is not systematically served on the debtor.

3.2.5. Although the *ex-ante* exequatur has been abolished, the challenge stage is retained as a result of negotiations. How is the residual stage regulated in your member state? How does your system enable the debtor to invoke a challenge? What kind of procedural instruments are at his disposal?

Comment: *By initiating a procedure in accordance with the national law of the Member State (of enforcement) the grounds for refusal of enforcement listed in Art 45 can be invoked by any interested party. However, the particularities are scarce and much is left desired – seeking introspective into national law.*

For the time being, this is not yet regulated in Slovenian national law, but an amendment to the CESA is underway which will tackle the procedure with the challenge and other issues left to the national law.

Currently, Slovenia notified the Commission with the jurisdiction of regional courts to decide on the requests for the refusal of enforcement, of the same courts regarding the appeal against the decision on the request, and of the Supreme Court regarding the second appeal. We deem this is not the best solution and the proposed amendment of the CESA provides for the jurisdiction of the regional courts regarding the request and of the Supreme Court regarding the appeal. A second appeal should no longer be available.

The procedure with the request for refusal of enforcement should, under the proposed amendment, remain a separate procedure, parallel to the enforcement proceedings conducted by local courts, which can, if the courts so decide, be suspended until the procedure with the request for refusal of enforcement is accomplished.

Part 4: Remedies

4.1. General observations on the systemization and availability of national remedies. Provide a short explanation of legal remedies in the national civil procedure of your member state. How is your domestic system of legal remedies structured (e.g. a division between ordinary and extraordinary remedies)?

One could qualify legal remedies according to different criteria relating for example to the decisions that are being challenged, which courts are deciding on the remedies, are remedies independent or must be brought in connection to some other independent remedy, are they being served on the opposite party, are they limited or not, etc.⁹²

In Slovenian civil procedure, remedies are divided in ordinary (appeal) and extraordinary legal (revision, request for the protection of legality, reopening of the proceedings, action for annulment of the court settlements) remedies. It is always possible to appeal (pritožba) against the decision of the first instance court (district or country) which is yet not final regardless of the value of the dispute. Appeal must be filed with the court which has passed the judgment of the first instance, which serves the appeal to the opposing party who submits the replication within the 15 days. The appeal and replication are sent to Higher court as the court of second instance.

Extraordinary remedies are directed against res judicata judgments and court settlements. Extraordinary remedies in principle, enable access to Supreme court (revision and request for the protection of the legality), except of the remedy for the reopening of the proceedings and the action for the annulment of the court settlement. The latter two are decided upon the court which rendered the judgment in first instance (reopening of the proceedings) or the court in which settlement was concluded (action for the annulment).

A timely submission of the appeal has in principle a suspensive effect. The appeal prevents the enforcement of the judgment and the res iudicata effect. On the other hand, the extraordinary remedies do not prevent the effect of enforceability of the judgment.

4.2. Remedies in enforcement procedure.

4.2.1. Provide a concise description of all the remedies (and other recourse, i.e. separate enforcement claims) available throughout the enforcement procedure (and separate/adjacent procedures), for all involved persons. Therein, specify the requirements for each remedy.

⁹² Dika, Pravni ljevovi, X. knjiga, Narodne novine, Zagreb, 2010, p. 7.

4.2.2. Characteristics of legal remedies in enforcement procedure. Remedies differ in effect and the way in which they exert that effect. Herein focus on the nature and attributes of different remedies in your system, e.g. does invoking a certain remedy suspend the proceedings for the time being; which body/authority is equipped with the competence on rendering a decision in remedial procedures (hierarchy of competence); is a given remedy unilateral or bilateral (does the opposing party have the option of supplying an answer); what powers does the appellate body/authority have, e.g. cassation.

4.2.3. Should objections be brought up in enforcement or in separate procedure?

In the text below the answers for pint 4.2.1 – 4.2.3 are combined.

General remarks

Remedies in enforcement procedure differ to those in civil procedure. First, parties are entitled to lodge the motion to cure deficiencies of carrying out enforcement to the enforcement judge, whereby they do not challenge any decisions as they may with remedies in civil procedure. Legal remedies in civil procedure and enforcement procedure are to be distinguished also in the sense, that the most important remedy in enforcement procedure is an objection, that is, remonstrative and not devolutive remedy. Objection does not suspend the enforcement procedure (Article 9 ESCCA).⁹³ However, the judgment debtor may lodge the motion for suspension of the enforcement according to the grounds provided by the law. However, the debtor has a possibility to lodge an objection as an extraordinary remedy.

Against the warrant of execution appeal is possible for judgment debtor⁹⁴ (or third person) and judgment creditor⁹⁵. The fact that there is a "danger" of appeal leading to prolongation of procedure is also countered through a rule which provides that the appeal, unless otherwise specified by the law, does not postpone enforcement. Extraordinary legal remedies are significantly reduced in comparison with civil procedure, since revision and the reopening of the proceedings (latter possible in exceptional cases according to Article 63 ESCCA) are excluded by the ESCCA. However, the request for the protection of the legality submitted by the public prosecutor is permitted. Other special legal remedies are action for declaration of inadmissibility of enforcement (Article 59 ESCCA) and the application for elimination of irregularities in execution of the enforcement. Furthermore, restitution is permitted solely for

⁹³ Until the enforcement order has become irrevocable, the creditor may not be repaid. Only in exceptional cases may the creditor get the repayment of his debt before the enforcement order issued upon the enforceable title become final, if the creditor purposes the attachment of a sum of money to the debtor's account at the bank and if the enforceable title is attached to the proposal for enforcement.

⁹⁴ If the debtor's objection is dismissed.

⁹⁵ If creditor's motion is dismissed.

overstepping of the time limit for lodging objection against enforcement order, and for overstepping of the appeal time limit. Specific remedy introduced by law is also counter-enforcement (Article 67 ESCCA).

Enforcement court is to decide on debtor's objection to warrant of execution, which means that the enforcement court will decide also on the disputed facts. However, in certain cases, the court may in difficult cases on the questions of facts, dismiss the objection and the debtor has a possibility to file an action in ordinary civil proceeding for declaration of inadmissibility of enforcement (Article 59 ESCCA).

Judgment debtor's objection

Objection is debtor's only legal remedy against enforcement order (Article 53 ZIZ) and represents ordinary, bilateral remedy, decided by the first instance enforcement court that issued the enforcement order (local court) and does not suspend the enforcement. Upon the objection the first instance court is obliged to reconsider the correctness of its previous decision.

We distinguish three types of objections: objection of the debtor against the enforcement order, objection of the debtor against the enforcement order on the basis of authentic document and the objection of the third person.⁹⁶

The county court that issued the enforcement order re-examines the case in the light of reasons included in the objection. Judgment debtor may file an objection against enforcement order within eight days (Article 9 ZIZ). The objection must contain grounds or reasons for opposing the order and evidence in support thereof. Unexplained objection that does not contain grounds is dismissed (Article 53 ZIZ).⁹⁷

An objection may be lodged for any reason that prevents enforcement (Article 55 ZIZ). The law further specifies the basis for it and lists examples of most important reasons for objecting to the enforcement ruling. Reasons may, according to their legal significance, be classified in three groups: formal and material prerequisites, substantive reasons and factual reasons.

Formal and material prerequisites for enforcement may be grounds for debtor's objection in particular:

- If the enforcement court that granted the enforcement order was not competent to do so;
- if the document that served as the basis of enforcement does not constitute an enforceable title or authentic document;

⁹⁶ Rijavec, 2003, str. 193.

⁹⁷ Sklep Vrhovnega sodišča RS št. II Ips 751/2006 z dne 28.1.2009.

- if the decision that served as a basis for enacting the enforcement order has not become enforceable;
- if the decision that served as basis for enacting or executing the enforcement order has been repealed, abolished, amended;
- if the settlement that served as basis for enacting the warrant of execution has been vacated or null,
- if the time limit for compensation has not passed yet or if the precondition envisaged by the settlement has not materialized yet;
- if the enforcement was granted on rights and property that are exempt from enforcement, or that are exempt partially.

Oppositional reasons or substantive legal reasons for lodging an objection, exist :

- when the claim has been extinguished on the basis of a fact that has come into existence after the moment when the decision representing the enforceable title has become enforceable, or came into existence before that moment, but at that time it was not possible for the judgment debtor to submit that in the procedure which ended with the enactment of the enforceable title, or, if the claim has extinguished upon the fact that has come into existence after the conclusion of court settlement;
- if the debtor has postponed the fulfilment of the obligation for a period of time that has not yet expired;
- if the time limit for compensation of the claim included in enforceable title the has expired.

Factual reasons (impugnative reasons) for debtor's objections:

- if the deadline for submitting motion to enforce has expired;
- and if the claim has not yet been passed to creditor or the obligation has not yet been passed to debtor.

If the fact that relates to the claim has occurred after the decision became enforceable, the debtor may file the objection after the warrant of execution has become final and until the end of the enforcement procedure, if the debtor was involuntarily not been able to invoke this fact in the course of filing the objection (Article 56 ZIZ).

According to article 57 ZIZ creditor has a right to respond to debtor's objection within eight days. If the creditor does not respond, the court will decide upon the objection. In this situation, the court will consider the debtor's arguments included in the objection as true. If the creditor objects to the debtor's objection, stating the facts and submitting evidence, the

court will according to the circumstances of the case, schedule the main hearing or issue a decision without the main hearing.

Upon the objection, the court may issue the following decisions:

- reject the objection as late, incomplete or submitted by unauthorized person;
- dismisses the objection and confirms the enforcement order;
- grants the objection and repeals the enforcement order and rejects the proposal;
- grants the objection and repeals the enforcement order;
- grants the objection and amends the enforcement order;
- declines its territorial jurisdiction and transfers the matter to the competent court that will decide on the objection.

Objection of the third party

Third person may lodge an objection against the enforcement order, if a person is likely to prove to have a right on an object of enforcement that prevents the enforcement and requests that the enforcement against such object be declared inadmissible. The objection may be filed until the enforcement procedure is concluded. The objection does not suspend the enforcement proceeding and is bilateral. It needs to be reasoned, otherwise the court will dismiss the objection. (art. 64. ZIZ)

The court serves the objection on the judgment creditor, requiring him to respond to the objection within a period of eight days. If the creditor does not submit an answer due time the court will repeal the enforcement order and stay the proceeding.

If the judgment creditor opposes the objection, the court will reject the objection of third party. Third party may within 30 days from the day that the decision became final initiate civil proceeding in order for the enforcement to be declared as inadmissible (article 65 ZIZ).

Objection as an extraordinary remedy

Objection may also be submitted as an extraordinary remedy in enforcement proceeding after the period for submitting (and after the enforcement order has become final) the ordinary objection (within 8 days) has expired (art.56 ZIZ). This objection needs to be based on the ground or fact that has appeared only after the title became enforceable and needs to relate to the creditors claim.⁹⁸

⁹⁸ For more, see point 4.3.

Appeal

Appeal is bilateral remedy which does not suspend the enforcement proceeding. It is decided by the appellate court if it is submitted within 8 days (art. 9 ZIZ). The appeal is the basic legal remedy of the creditor against the enforcement decision, with which the creditor's proposal was dismissed. For debtor's (third person) benefit the appeal may be lodged against the enforcement order with which the objection was dismissed.

Reasons upon which the appeal may be lodged are not listed in the ZIZ. However, because the provisions in the Civil Procedure Act are applied *mutatis mutandis*, the reasons for the appeal are similar to the ordinary appeal in civil proceedings. This means that the grounds for an appeal are divided in three groups, namely:

- substantial breach of procedural requirements;
- incomplete establishment of the facts;
- misapplication of substantive law.⁹⁹

The appellate court may:

- reject the appeal as late, incomplete or submitted by unauthorized person;
- dismisses the appeal and confirms the enforcement order;
- grants the appeal and repeals the enforcement order and rejects the proposal;
- Grants the appeal and repeals the order;
- Grants the appeal and changes the enforcement order.¹⁰⁰

Civil litigation for declaring the enforcement as inadmissible (see point 4.3)

Separate civil or other procedure is possible in cases where the facts about the claim are disputed. The action is submitted with the claim for declaring the enforcement as inadmissible. Main reasons for submitting the action relate to the facts that the claim has already expired or is impeded (notwithstanding the fact that the enforceable title is still valid – *opozicijski razlogi*). These are objections of substantive law against the creditor's claim:

- Facts that occurred after the title became enforceable or before that moment but in the period when the debtor could not invoke these grounds in the proceedings for issuing the enforceable title (point 8 par. 1 art. 55 ZIZ);
- If the creditor has suspended the fulfilment of the obligation and the time of suspension has not yet expired (point 9 par. 1 art. 55 ZIZ);

⁹⁹ Rijavec, 2003, p. 212.

¹⁰⁰ Rijavec, 2003, p.212.

- The creditor may not claim the fulfilment of the obligation determined by the judgment after the 10 years from the moment that the judgment became final.

However, the Supreme court has decided¹⁰¹ that the debtor may invoke also the impugnative reasons, specially the point 12 art. 55 ZIZ that the claim has not yet been passed to the debtor. Third person has a right to start the litigation in 30 days after the order on the objection¹⁰² of third person has become final. The enforcement will be declared as inadmissible, if the third person has an ownership right on the object of enforcement; or there is a common property of spouses, heirs. This action does not have suspensive effect on the enforcement.

For the legal nature of the judgment see point 4.3.

Civil litigation on the question of disputed facts in the stage of selling the real estate

Enforcement on immovable property consist of the following action: creation of a lien in a land register by notification from the enforcement court, determination of the value of immovable property, sale of the property and repayment of creditors form the amount gained with the sale.¹⁰³

The value of the property is determined by the court appointed expert before the enforcement order becomes final (art. 178. ZIZ). At the hearing for the sale of property, the value may be determined again, if the party upon the opinion of the court expert is likely to prove that the value has been drastically changed (par. 4. Art. 178. ZIZ). The value is established by the court with the court order.

After the order of determination is issued, the court issues the order on the sale of the immovable property. Until the order for sale becomes final, the sale may not be performed (par. 2. Art. 181. ZIZ).

In the first attempt of sale on auction, the property may not be sold for less than 70% of the determined value. In case of unsuccessful first auction, the creditor must propose the second auction, where the property may not be sold for less half of the determined value. However, the parties and other creditors may agree that the property may be sold also for the value less than 70 % of the determined value or less than half of determine value (art. 188 ZIZ). If the buyer of the property is the creditor himself and the final price was less than determined value (rule in art. 178. ZIZ), and the amount is insufficient to cover the creditors claim, the creditor

¹⁰¹ Sodba II Ips 250/2009, 23.2.2012.

¹⁰² Which dismissed the objection.

¹⁰³ Creditors are paid according to the priority principle. V. Rijavec. Civilno izvršilno pravo, p. 64.

is deemed to have been repaid up to the determined value of the immovable property (art. 200.a ZIZ).¹⁰⁴

After the order for extradition of the real estate becomes final, the court decides about the distribution of the amount gained by the auction among the creditors in a hearing (art. 207 ZIZ). Creditor or any other person who has the right to be repaid from the purchased price may challenge the claim of the other creditor or its amount or order in which the claims are to be repaid (art. 201 ZIZ). If the decision about the challenged claim depends on disputed facts the enforcement court will refer the creditor who challenges the other creditor's claim to start litigation. If the creditor fails to initiate the litigation the enforcement court will continue with the proceeding for repayment of the creditors' claims (art. 202 ZIZ).

Remedy to abolish irregularities

Any party or a participant may request the court to remedy any irregularities made by the enforcement agent or any other person in enforcing the enforcement order (art. 52 ZIZ).

Revision, reopening of the proceedings, the request for the protection of the legality

ZIZ explicitly excludes the possibility for revision in enforcement proceedings (art. 10 ZIZ). However, the extraordinary remedy reopening of the proceedings is possible only in exceptional cases. Namely, the debtor may use this remedy according to the rules of CPA against the part in the enforcement order ordering debtor to free willingly pay the debt (enforcement on the basis of authentic document) (art. 63 ZIZ). Reopening of the proceeding is possible also in the case when the enforcement court has issued the order (with which the proposal was either granted or dismissed) deciding on the proposal for counter-enforcement (par. 5 art. 68 ZIZ).

Against the final enforcement orders issued by the first instance or second instance court, the request for the protection of the legality is foreseen for public prosecutor who may initiate the proceedings only on the basis of procedural errors or because of wrongful application of substantive law.

¹⁰⁴ The house or apartment where the debtor permanently lives is not exempt from enforcement. However, the debtor may propose to stay and live there as a tenant for up to three years after the house has been sold on the condition of paying the market value rent (art. 210 ZIZ). This rule does not apply in the case when the property was based on the contractually acquired mortgage (par. 4. Art. 210 ZIZ).

Counter-enforcement

When the enforcement has already been carried out, the debtor may submit a motion for counter-enforcement to the court, requesting the enforcement creditor to return what he/she has acquired through enforcement, if:

1. the debtor has voluntarily compensated creditor's claim in the course of enforcement procedure;
2. enforceable title has been repealed, annulled or had its legal force set aside;
3. a final writ of execution has been repealed or changed;
4. a court has declared the enforcement as inadmissible;
5. the creditor has gained more as the determined amount of the claim or if the provisions on limitations of the enforcement were not taken into account (Article 67 ZIZ).

This remedy is possible in 3 month form the day when debtor has learned about the reason and until one year from the day the enforcement proceeding has been ended.

Restitution of the proceeding

Restitution is only possible if the deadline for appeal or objection was delayed (art. 36 ZIZ).

4.3. Opposition in enforcement.

- 4.3.1. If a separate judicial procedure to enforce claims from judgements is not foreseen in your member state, what options does the debtor have in order to challenge inadmissibility of particular enforcement on the grounds that appeared (came into being) after the enforcement title was acquired (*nova producta*) or due to the inadmissible way of performing enforcement?
- 4.3.2. On which grounds does opposition against an enforcement decision have to be substantiated? In case no substantiation is queried, does an 'assertion' of opposition suffice?
- 4.3.3. Are the grounds for enforcement exhaustively listed or encompassed by a general clause or described in exemplary fashion? If a general clause is present, how is it formulated and what is its relation to exemplary listed grounds. Are the grounds subdivided into 'categories', e.g. Slovenian and to a certain extent Austrian theory incorporate an understanding of

‘impugnation’ and ‘opposition’ grounds; while the first refer to situations where a creditor possesses a valid enforcement title and an existent claim but cannot enforce it (due to a timely preclusion for instance), the latter refer to situations where the creditor holds a valid enforcement title, however a fact, which has arisen after the title attained the attribute of enforceability (see above *nova product*), prevents the enforcement (for instance due to the extinguishing of the claim because of compensation, voluntary fulfilment by the debtor etc.).

Points 4.3.1 – 4.3.3 combined

Objection in enforcement proceedings is ordinary remedy of the debtor and prevents the enforcement order to become final. The objection is non-devolutive, not suspensive and bilateral remedy. The law sets the obligation for the objection to be substantiated and explained by asserting the facts and evidence to support the objection, whilst in the event of the lack of the grounds to support the objection, the enforcement court may refuse the objection. The standard for the proper reasoning of the objection was already explained by the Supreme court in its decision¹⁰⁵ where its stated that the objection is properly reasoned if the debtor stated legally important facts that may prevent the enforcement or may cause the rejection of the enforcement on the basis of authentic documents, if proven to be true, and to provide evidence to prove the alleged facts. However, the Constitutional court¹⁰⁶ has softened this definition of the standard with the position that the objection should be found as ungrounded if the debtor does not assert any legally important facts or if for his or her claims does not state any arguments and or evidence. If the debtor denies the existence of the ground for the claim, the standard for the reasoning of the objection is satisfied if the debtor did not provide any evidence to support the claim in the objection. In one of its latest decisions¹⁰⁷ the Supreme court defined the standard of reasoned objection necessary for successful challenging the enforcement order issued on the authentic document. The Supreme court pointed out that while in the enforcement proceedings on enforceable title the creditor possesses with enforceable title upon which the debtor was able to be heard already in the contradictory proceeding before the enforceable title was issued. However, in the enforcement proceeding upon the authentic document, which combines the procedure for issuing the payment order and the phase of permitting the enforcement, the assessment of the standard of reasoned objection should be different. Since for the obtaining of authentic documents there is no prior proceeding in which the debtor may properly state his or her legally important facts,

¹⁰⁵ Načelno pravno mnenje, občna seja VSS, 9.12.1999.

¹⁰⁶ Up 854/05 z dne 7. 2. 2007.

¹⁰⁷ Sklep II Ips 24/2013, 13.3.2014.

this right to be heard should be enabled in later stage. In the particular case creditor in the application for enforcement, did not disclose the factual basis of the alleged claim and the debtor stated in the objection that he opposes total amount of the claim in the proposal. Furthermore, from creditors business documents the amount of claim and grounds underlying the proposal for enforcement were not evident from the proposal for enforcement. The debtor suggested that the creditor submits adequate business documents that will reflect the amount of the claim and interests. Here summarized statements of the debtor are not a recognition of not denying the existence of the foundation for the emergence of the claim, but a statement of ignorance, which in the circumstances sufficient statement of reasons required object. Supreme court decided that the summarized arguments of the debtor do not present nor recognition or denying of the existence of the grounds of the claim, but a statement of ignorance, which in the circumstances meets the required standard of reasoned objection.

ZIZ sets general rule that the objection is possible on the grounds of any reason that may prevent the enforcement and further gives a non-exhaustive list of reasons (art. 55 ZIZ). In general, debtor may invoke procedural breach of rules of ZIZ and ZPP, an incorrect application of the rules of substantive law and mistakenly or incompletely establishment of the facts.¹⁰⁸

A non-exhaustive list of reasons may be divided into 3 groups:

- Reasons that relate to formal (jurisdiction, existence of the enforceable title or authentic document)¹⁰⁹ and substantive (inadmissibility of enforcement because the items are excluded or limited by law – pt. 7. Par. 1 art. 55 ZIZ) prerequisites for the enforcement;
- Reasons on the grounds that the claim has already expired or is impeded (notwithstanding the fact that the enforceable title is still valid) (opozicijski razlogi);
- Reasons for contesting the merits of the enforcement order notwithstanding the fact that the title is valid and the claim still exists (the enforcement may not be conducted in present time or in favour or detriment of the person that is the party in the proceeding – impugnacijski razlogi).¹¹⁰

However, the objection may also be submitted as an extraordinary remedy in enforcement proceeding after the period for submitting (and after the enforcement order has become final) the ordinary objection (within 8 days) has expired (art.56 ZIZ). This objection needs to be

¹⁰⁸ Rijavec, 2003, p. 195-196.

¹⁰⁹ The reasons under the points 1. – 5. of par. 1 article 55. ESCCA.

¹¹⁰ D. Wedam Lukić, Civilno izvršilno pravo, p. 72.

based on the ground or fact that has appeared only after the title became enforceable and needs to relate to the creditors claim. However, the ZIZ sets special regime for this objection. The debtor needs to show that he or she was prevented from presenting this fact in timely objection by reasons beyond his or her control. In this objection the debtor may assert reasons on the grounds of opposition and impugment and the reasoning of the objection is being assessed in that context.

If the decision on the objection depends on the fact that relates to the creditor's claim and this fact is disputed between the parties, the debtor may start the civil litigation or other proceeding for decision on inadmissibility of the enforcement on the basis of the action as an extraordinary remedy (art. 59 ZIZ). However, this action has no suspensive effect on the enforcement of the claim.

In order for the debtor to submit an action in civil proceeding, challenging the inadmissibility of the enforcement, the objection against the enforcement order needs to be submitted beforehand. In enforcement proceeding the court issues the enforcement order on the grounds of enforceable title and may not question the existence of the claim included in the enforceable title. If the debtor objects the admissibility of the enforcement claiming that the circumstances appeared after the judgment became *res judicata*, that the claim does not exist or is impeded, the court needs to once again decide about this claim. However, the enforcement court may decide about these facts only if they are not disputed between the parties.¹¹¹ Otherwise, the debtor may start the litigation in 30 days from the day that the order on the objection with which the enforcement court decided on the disputed facts, became final. As already mentioned, the debtor may invoke any reason that will enable the enforcement. However, theory has divided these reasons to ones that oppose the claim (for example – termination of the claim) and reasons that prevent the enforcement not matter the fact that the claim exists (claim was not passed to the enforcement debtor). The law (art. 59 ZIZ) explicitly states that disputed facts need to refer to the claim (*opozicijski razlogi*). For this reason the theory points out that the facts that refer to the enforceable title may not be invoked with the action.¹¹² However, the Supreme court has decided¹¹³ that the debtor may invoke also the impugnative reasons, specially the point 12 art. 55 ZIZ that the claim has not yet been passed to the debtor.

¹¹¹ D. Wedam Lukić, *Civilno izvršilno pravo*, p. 72.

¹¹² Rijavec, 2003, p. 214.

¹¹³ Sodba II Ips 250/2009, 23.2.2012.

In the civil litigation the debtor needs to invoke all the objections foreseen by the ZIZ and at the same time state all the facts and evidence, otherwise he will be precluded. Civil court will consider this new facts and evidence only, if they are proposed in the written submissions submitted within the time limits given to the debtor by the court in order to answer to the creditor's arguments (art. 60 ZIZ).

The judgment issued on the grounds of this action is of declaratory nature and does not repeal the enforcement order by itself. The enforcement court is bound by final declaratory judgment and will need to stop the enforcement proceeding.¹¹⁴

4.4. Remedies in international private procedure, i.e. remedies foreseen in national law, relating to recognition and enforcement of foreign judgments under private international law (cross-border situations), excluding B IA .

4.4.1. Types and main features of legal remedies.

4.4.2. Grounds for challenging foreign judgement.

Points 4.4.1 and 4.4.2 combined

In Slovenian national system the limited review of foreign judgments is accepted. In the system of limited review (*contrôle limité*) of foreign judgments the extent of the review is concentrated to certain requirements for the recognition which are mainly of procedural nature. However, the review of the content relates only to the question of possible inconsistency of foreign judgments with public order. In broader meaning there are two main possibilities relating to the procedure of recognition and enforcement of foreign judgments: deciding whether the foreign judgment is meets the requirements for recognition or enforcement as an incidenter question an deciding in special procedure (*delibation*). There is a difference between the question of the extent of the review and formal procedure for recognition and enforcement in Slovenian Private International Law and Procedure Act (ZMZPP).

According to the ZIZ (para. 1 art. 13 ZIZ) the enforcement of foreign judgment is allowed if the judgment complies with the regiments foreseen in the act, international contract or EU act. If the act, international contract or EU act provides that foreign judgments may be enforced without the approval, the judgment is enforced if the requirements foreseen in the act, international contract or EU act are met. (para. 2. Art. 13. ZIZ). This provision does not

¹¹⁴ Rijavec, 2003, p. 217.

distinguish between the cases where the foreign judgment needs to be recognized and enforced according to the ZMZPP or ratified international contract from the cases where recognition and enforcement is carried on the grounds of EU act, which must be used directly in EU member states.

Foreign judgment needs to be recognized by the Slovenian court to have the same effect as domestic judgment (par. 94 ZMZPP). The law sets the rules for recognition and enforcement unless bilateral or other treaties provide differently. The ZMZPP does not use the term declaration of enforceability but uses only the term enforcement, which might create an impression that there is no need for exequatur. However, the court in the proceeding for recognition and enforcement does not decide on the question of allowing the enforcement, which is under the competence of enforcement or local court. ZMZPP further sets that for the recognition district courts are competent and for the enforcement of foreign judgment local court have jurisdiction. In the past, such a rule gave grounds for opinion that adoption of foreign judgment relates only to recognition of the effects of *res iudicata* and not to enforceability, which was left for the enforcement court to decide as an incidental question.¹¹⁵

However, the enforcement law solved this confusion with the provision that district court are competent to decide on recognition and enforcement of foreign judgments (art. 42.b ZIZ).

According to ZMZPP the court may decide in special non-contentious proceeding only on recognition of effect of foreign judgment without the enforceability which might be the incidental question (and the same applies for recognition as an incidental question) in enforcement proceeding (if for example the certificate of enforceability was not attached to the judgment). However, the question on recognition and enforceability may be decided as a principal question, which means that the enforcement court would be bound by such decision.

Procedure for recognition and enforcement is regulated in provisions 108. to 111 of ZMZPP.

In the proceeding for recognition and enforcement the court will issue a resolution without prior hearing of the opposing party (par. 2 art. 109 ZMZPP). The resolution needs to be served to the opposing party (par. 3 art. 109 ZMZPP). Legal remedy against the resolution is an objection, which is decided by the court that issued the resolution without the hearing of the parties. Time limit for raising an objection is 15 days from the day that resolution was serviced to opposing party. Only when the decision depends on disputed fact the court need to perform an oral hearing (par. 4 art. 109 ZMZPP). The legal remedy against the decision with

¹¹⁵ Rijavec, Izvršba na podlagi tujega izvršilnega naslova, Podjetje in delo, no.6-7/2008.

which the proposal for recognition was dismissed and against the decision on the objection is appeal (par. 5 art. 109 ZMZPP).

In order to start the proceeding for recognition and enforcement of foreign judgment, the applicant needs to submit a foreign decision and certificate proving that the judgment is *res iudicata* and enforceable.

Requirements that the court investigates *ex officio* and will refuse the recognition:

- In the event that on the matter decided by foreign court exclusive jurisdiction of Slovenian court is determined (art. 97 ZMZPP)
- If a final judgment issued by Slovenian court or a previously recognized judgment of foreign court in Slovenia, given between the same parties, already exists (art. 99 ZMZPP)
- if an effect of such recognition is contrary to public policy of RS (art. 100 ZMZPP)
- if there is a lack of reciprocity. However, the existence of reciprocity is presumed by law until proven to be contrary (art. 101 ZMZPP).

On the objection of the person against whom the judgment is issued, the court shall deny the recognition and enforcement if:

- the right to be heard was violated because of the irregularities in the proceedings; especially if the invitation, action or resolution for initiating the proceeding were not delivered or personal service in person was not even attempted, unless the party was in any way informed and was involved in the proceeding (art. 96. ZMZPP),
- if the jurisdiction of the court of origin was exclusively based on one of exorbitant jurisdiction:
 - on the nationality of the plaintiff;
 - on the assets of the defendant in the state of origin or
 - on the personal service of the action or other procedural act, used for initiating the procedure;
- and in case when the court of origin didn't take into then account the agreement on jurisdiction of Slovenian court (art. 98. ZMZPP)

4.4.3. Please indicate what are the differences compared to the grounds in B IA.

Once the foreign judgment is in the hands of the enforcement authority of the addressed MS, under the B IA the enforcement is initiated against the debtor using the ordinary enforcement proceeding governed by the national law (par. 1 art. 41 B IA). Domestic enforcement rules are

complemented by the B IA, which integrates the review of the grounds for refusal in a special remedy available during the enforcement procedure. The grounds for refusal in B IA remain largely the same under the new B IA as under the old B I (Articles 34 and 35). An additional ground for non-recognition in B IA is in the cases where an injured party, the consumer, employee is the defendant and the judgment conflicts with Section 3, 4 or 5 Chapter II which determines the jurisdiction rules in cases of individual employment contracts. The consequence of abolition of exequatur is abolition of ex officio review of the grounds for refusal, which means that grounds for refusal are not examined by the addressed court in which enforcement is sought on the own motion of the court.

Lack of hearing as a ground for refusal is in principle the same and included in B IA (par. 1 point b art. 45 B IA) and national law (art. 96 ZMZPP). However, ZMZPP in paragraph 1 gives general explanation of this reason for refusal, which is when the court upon the application of the party against whom the judgment was given, establishes that because of the irregularities in the proceedings, the party could not participate (breach of the adversarial principle). In the following paragraph the law gives further explanation when the court should establish that the party could not participate in the proceedings, which is in the cases when the invitation, action or resolution for initiating the proceeding were not delivered or personal service was not even attempted, unless the party was in any way informed and was involved in the proceeding. However, the difference is that B IA sets further condition in order for the defendant to successfully challenge the recognition and enforcement. This condition has already been introduced by B I and relates to the obligation for the defendant to challenge the default decision in the state of origin. So the judgment needs to be rendered in the default of appearance. However, according to the wording of the B IA the obligation to challenge is only imposed on the defendant "when it was possible for him" to challenge the judgment.

Both B IA and ZMZPP include the refusal on the grounds of contradicting to ordre public. However, B IA explicitly states that recognition should be manifestly contrary to public policy. The word "manifestly" shows the intention of the EU legislator to limit the use of public policy clause as much as possible.¹¹⁶

According to the requirements for recognition under the B IA the judgment does not need to be res judicata (or enforceable when only recognising) (see art. 36 B IA). On the other hand, under the national law the court will need to establish that the applicant submitted certificate proving that the judgment is res judicata and certificate of enforceability when also enforcing

¹¹⁶ T. Keresteš, Public Policy in Brussels Regulation I: Yesterday, Today and Tomorrow; *Lexonomica* Vol. 8, No. 2/2016, p. 81.

the judgment (par. 1 art. 109 ZMZPP). In the event that the court establishes that the certificate was not submitted, the court will dismiss the recognition (but only after informing the applicant to submit the certificate). According to the B IA the competent in the Member State addressed shall, on the application of the person against whom enforcement is sought, suspend the enforcement proceedings where the enforceability of the judgment is suspended in the Member State of origin (par. 2 art. 44 B IA).

Reciprocity under the B IA is not a requirement as it is under the national law.¹¹⁷ However, the existence of reciprocity is presumed by law until proven to be contrary (art. 101 ZMZPP). Both laws include grounds for refusal based on irreconcilability with a earlier judgment. However, the national law sets additional condition that the earlier judgment, issued in Slovenia in the same matter needs to be res judicata in order for foreign judgment is refused for recognition. The recognition of foreign judgment is refused if some other foreign judgment issued in the same matter was already recognized in Slovenia (art. 99 ZMZPP). The difference according to the B IA is that the foreign judgment does not need to be already recognized but that earlier judgment fulfills the conditions necessary for its recognition in MS addressed (point c) and d) par. 1 art. 45 B IA).

The recognition of the judgment shall not be granted if the court of origin was not competent according to the Slovenian rules on private international law which determine exclusive jurisdiction (art. 97 ZMZPP). On the other hand, under B IA the court addressed with recognition is only permitted to intervene in the limited grounds provided by point e art. 45 B IA.¹¹⁸

4.5. Remedies concerning Enforcement of Foreign Judgements according to B IA following the abolishment of exequatur.

- 4.5.1. Remedies in the Member State of origin regarding the enforcement title itself. Do these remedies influence the enforcement procedure in the Member State of enforcement?

The enforceability of foreign title in a MS of origin is an essential prerequisite (art. 39 B IA) for its enforcement in the MS of enforcement. If an ordinary remedy as an appeal against the judgment in MS of origin is raised, it will usually suspend the effect of enforceability and

¹¹⁷ A. Galič, Pristojnost ter priznanje in izvršitev tujih sodb v civilnih in gospodarskih zadevah, Podjetje in delo, 6-7/2005, p. 1128.

¹¹⁸ P. Mankowski, ECPIIL, Commentary, Volume I, Brussels Ibis Regulation, 2016, Verlag Dr. Otto Schmidt, Köln p. 931.

until the judgment is enforceable in the MS of origin, such a title cannot represent grounds for issuing the certificate of enforceability.¹¹⁹

In the event of an application for refusal of enforcement is submitted (or an appeal is lodged against the decision on the application for the refusal – art. 49 B IA) the court may, on the application of a person against whom enforcement is sought, limit the enforcement proceedings to protective measures; make enforcement conditional on the provision of such security as it shall determine; suspend, either wholly or in part, the enforcement proceedings (art. 44 B IA). There is not much guidance in the B IA regulation relating the conditions on which the court addressed may suspend the enforcement which is, according to the word may of discretionary nature. B IA in art. 47 provides that the procedure for refusal of enforcement shall, in so far as it is not covered by this Regulation, be governed by the law of the Member State addressed. This means that the court would apply the law of *lex fori*. According to the B IA the court is free to choose one of the most appropriate remedy in par. 1 art. 44.

Under the art. 51 B IA the court addressed to which an application for refusal of enforcement is submitted or the court which hears an appeal lodged under Article 49 or Article 50 may stay the proceedings¹²⁰ if an ordinary appeal has been lodged against the judgment in the Member State of origin or if the time for such an appeal has not yet expired. In the latter case, the court may specify the time within which such an appeal is to be lodged. According to the case *Van Dalfsen (C-183/90)* the power to stay the enforcement proceedings is an exception to the principle that a judgment given in a Contracting State and enforceable in that State may be enforced in another Contracting State even if it has not yet become *res judicata* and that this exception should be strictly interpreted (points 29 and 30 of the judgment). The aim of this exceptional measure is to protect the party against whom enforcement is sought against any damage which might result from the enforcement of a judgment which has not yet become *res judicata* and might be amended (point 29 of the judgment). According to the Supreme court¹²¹ ruling the term any damage means only damage, which exceeds the inconveniences which normally exist in the enforcement.

The main rule concerning the decision about the staying of the proceeding is whether is likely to expect that the foreign judgment in the Member State of origin will be repealed or amended. Only arguments related to the facts posterior to the foreign judgment, which the

¹¹⁹Foreign judgment does not need to be *res iudicata*, but the condition of enforceability in MS of origin need to be fulfilled.

¹²⁰ Since the regulation does not specify by whom the proposal for staying the enforcement should applied, the legal opinion is that this is the right of the party against whom enforcement is sought. Mankowski, 2016, p. 961.

¹²¹ Supreme court decision, VSRS Sklep Cp 9/2016, 19.05.2016.

debtor could not have previously submitted to the court of MS of origin¹²², could be taken into account.¹²³

The concept of ordinary appeal was defined by CJEU (C-43/77, 22. 11. 1977) in *Industrial Diamond Supplies vs. Luigi Riva*. According to the decision the rationale of this provision is "a sufficiently broad interpretation of the concept of 'ordinary appeal' to enable that court to stay the proceedings whenever reasonable doubt arises with regard to the fate of the decision in the State in which it was given. The ruling in this case also explained that the CJEU requires that the appeal "may lead to the annulment or amendment of the judgment in question" (point 34) and "forms part of the normal course of an action and which, as such, constitutes a procedural development which any party must reasonable expect" (point 37) and is "bound by the law to a specific period of time which starts to run by virtue of the actual decision whose enforcement is sought" (point 38).

The concept of ordinary appeal¹²⁴ needs to be adopted as a autonomous definition which means that is not dependent on the characterisation of the appeal in its legal order of origin.¹²⁵ According to the Slovenian enforcement law, the debtor may propose a postponement of the enforcement in this context, for example: if the debtor filed an extraordinary remedy against the judgment, which serves as a basis for the enforcement; if the debtor filed an application to repeal a certificate of enforceability (art. 71 ZIZ). If the enforceable title is repealed, abolished, amended or determined as void or the certificate of enforceability is repealed the court shall cease the enforcement ex officio (art. 76 ZIZ).

4.5.2. Refusal of enforcement. What and/or which are the proceedings in your Member State (of enforcement)? Present the procedural aspects of the application for refusal and the role of national procedural law (Art. 47).

"Article 47

- 1. The application for refusal of enforcement shall be submitted to the court which the Member State concerned has communicated to the Commission pursuant to point (a) of Article 75 as the court to which the application is to be submitted.*
- 2. The procedure for refusal of enforcement shall, in so far as it is not covered by this Regulation, be governed by the law of the Member State addressed.*
- 3. The applicant shall provide the court with a copy of the judgment and, where necessary, a translation or transliteration of it.*

¹²² The breach of adversarial principle will not constitute as a ground for refusal of recognition of foreign judgment or for declaration of its enforceability, if defendant in the MS of origin did not use the possibility to apply for legal remedy claiming that breach, Supreme court decision, VSRS Sklep Cpg 11/2016, 30.8.2016.

¹²³ Supreme court decision, Sklep Cpg 4/2009, 7.9.2010 in connection with the CJEU *Van Dalssen*.

¹²⁴ According to the legal opinion, the revision as an extraordinary legal remedy may be considered as an ordinary remedy. A. Galič, *Postopek priznanja in razglasitve izvršljivosti tujih sodnih odločb po uredbi št. 44/2001 (»Bruseljski uredbi«)*, p. 80.

¹²⁵ Supreme court decision, VSRS Sklep Cpg 11/2016, 30.8.2016.

The court may dispense with the production of the documents referred to in the first subparagraph if it already possesses them or if it considers it unreasonable to require the applicant to provide them.

In the latter case, the court may require the other party to provide those documents.

4. The party seeking the refusal of enforcement of a judgment given in another Member State shall not be required to have a postal address in the Member State addressed. Nor shall that party be required to have an authorised representative in the Member State addressed unless such a representative is mandatory irrespective of the nationality or the domicile of the parties.”

Recital 30 of the Preamble stimulates MS to enable applicants “to invoke, in the same procedure, in addition to the grounds for refusal provided for in this Regulation, the grounds for refusal available under national law and within the time-limits laid down in that law”.

The B IA provides provisions on the grounds of refusal of enforcement (art. 45 B IA), the effect of the application on the enforceability of foreign judgment (art. 44 B IA), the documents which are to be provided (par. 3 art. 47 B IA), the right not to have a postal address or an authorised representative in the MS of enforcement (par. 4. Art. 47 B IA), the length of procedure (art. 48 B IA), one part of the regime to lodge an appeal against the decision on the application (art. 49-50 B IA). All other issues are governed by the law of the forum. The previous Brussels I regulation provided rules on time frame within which a declaration of enforceability could be challenged (An appeal against the declaration of enforceability is to be lodged within one month of service thereof – par. 5 art. 43. Brussels I). According to the recast B IA there is no similar provision, which means that *lex fori* rules will apply.

The legal theory¹²⁶ is on the position that art. 41 B IA does not impose that all grounds (in art. 45 B IA or under domestic law) must be available in the same procedure. This means that MS are free to either establish separate procedures for the purpose of allowing debtors to resist enforcement on each series of grounds (under B IA and under national law), or to establish a single procedure for both.¹²⁷

According to the concept of recital 30¹²⁸ of the Preamble B IA it would be reasonable, if debtor could invoke grounds for refusal of enforcement together with the objection against the enforcement order (in Slovenian law according to art. 53 or 55 ZIZ), which means that the proceedings would be carried before the local enforcement court.

¹²⁶ Mankowski, 2016, p. 848.

¹²⁷ Mankowski, 2016, p. 848.

¹²⁸ In the case *Prism Investments BV vs. Jaap Anne van der Meer*, 2011 I-09511, the CJEU ruled that the court, with which the appeal in accordance with art. 43 and 44 Brussels I Regulation is lodged, is precluded from refusing or revoking a declaration of enforceability of a judgment on a ground other than those set out in Articles 34 and 35 thereof, such as compliance with that judgment in the Member State of origin. This means that in the main (delibation) proceeding the reasons on the grounds that the claim has already expired or is impeded (notwithstanding the fact that the enforceable title is still valid – suspension of the payment) (*opozicijski razlogi*) may not be invoked. See also the Proposal for amendment ZIZ-L, EVA 2016-2030-0008.

In the communication submitted to the Commission, Slovenia has determined the jurisdiction of the district courts to which the applications need to submit the proposals for refusal of enforcement and the Supreme court pursuant to art. 50 B IA .

Par. 4 art. 45 B IA states that the application for refusal of recognition shall be made in accordance with the procedures foreseen for the refusal of the enforcement.

Slovenian legislator has not yet adopted provisions with amended enforcement law on the procedure for invoking the grounds for enforcement. There is a recent proposal for amendment of the Slovenian enforcement law (ZIZ-L) which is still in the procedure for harmonisation of the text between the ministries and government departments. However, one of the main aims of this amendment is also to enable implementation of the B IA. In this proposal, the legislator has decided that district (*okrožno sodišča*) are already competent for deciding in delibation principal proceedings on the recognition and enforcement of foreign judgments, so it would not be appropriate to authorise local enforcement courts to decide on the non-recognition of the foreign judgments in the proceedings where the courts are deciding on the debtor objection or opposition according to the enforcement law.

Every interested party has a right to apply, in accordance with the procedure foreseen for the refusal of the enforcement, for the decision that there are no grounds for refusal of the recognition as referred to in art. 45 B IA (par.2 art. 36 B IA). This provision gives basis for the parties, in accordance with the proceedings foreseen for the refusal of the enforcement, to apply for the recognition of the judgment in accordance with the rules, foreseen for the proceedings for non-enforcement or non-recognition (art. 46 – 51 B IA).

According to the proposal for the amendment of ZIZ-L, special procedure is foreseen for the applications for refusal of the recognition, for the decision that there are no grounds for refusal of recognition or application for refusal of the enforcement.

In the principal proceeding, the court is obliged to serve the application for refusal of recognition, proposal for decision that there is no grounds for refusal or recognition or proposal for refusal of enforcement of foreign judgment to the opposite party for her to answer to the claims from the application within 30 days. If decision of the court depends on the decision on the disputed facts, the court will conduct an oral hearing.

The remedy against resolution issued in the proceeding for refusal or decision that there are no grounds for refusal is an appeal which needs to be issued in 30 days from delivery of the resolution. The Supreme Court is competent to decide in appellate proceeding.

About other issues in relation to principal proceeding, which are not regulated in the enforcement law, the private international law (ZMZPP) rules on the proceeding for recognition and enforcement apply.

4.5.3. What are your own specifics regarding required documents?

In comparison to creditor, who needs to provide a copy of the judgments, which satisfies the conditions necessary to establish its authenticity (art. 43 B IA), art 47 B IA for a refusal of enforcement the applicant can produce only a copy of the judgment. Furthermore, the court may dispense with the production of this documents if it already possesses them or if it considers it unreasonable to require the applicant to provide them. In the latter case, the court may require the other party to provide those documents.

The applicant shall provide the court with a translation or transliteration of the judgment where necessary. The court may dispense with the production of the documents referred if it already possesses them or if it considers it unreasonable to require the applicant to provide them. In the latter case, the court may require the other party to provide those documents.

4.5.4. Service of documents and representation in your member state. How will service of documents pursuant to B IA be conducted in your member state? Please elaborate.

Where enforcement is sought of a judgment given in another Member State, the certificate issued pursuant to Article 53 shall be served on the person against whom the enforcement is sought prior to the first enforcement measure. The certificate shall be accompanied by the judgment, if not already served on that person (art. 43 B IA). Recital 32 of the Preamble explains that "in order to inform the person against whom enforcement is sought of the enforcement of a judgment given in another Member State, the certificate established under this Regulation, if necessary accompanied by the judgment, should be served on that person in reasonable time before the first enforcement measure. In this context, the first enforcement measure should mean the first enforcement measure after such service." This means that national law will give definition of the term "reasonable time". In the event that national rules will not give specifics about this term, it is submitted that the creditor must allow sufficient time for the debtor to arrange to oppose enforcement.¹²⁹

In Slovenia rules of service provided in CPA will apply and if a party is domiciled abroad the provisions of the Regulation (EC) No 1393/2007 of the European Parliament and of the

¹²⁹ Dickinson, Lein, The Brussels I regulation recast, Oxford, 2015, p. 428.

Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) may be used B IA further states that the party seeking the enforcement of a judgment given in another Member State shall not be required to have a postal address in the Member State addressed and shall not be required to have an authorised representative in the Member State addressed unless such a representative is mandatory irrespective of the nationality or the domicile of the parties (par. 3 art. 41). The same rules apply for the party seeking the refusal of enforcement of a judgment given in another Member State (par. 4 art. 47 B IA).

- 4.5.5. Opposition by the defendant (objection against recognition and enforcement of foreign judgement) – prerequisites and procedure. Does the law envisage ‘*incidenter*’ or separate procedure. Separate procedure at the first instance/at the second instance. Elaborate on the particularities of the herein provided issues.

According to the notifications Slovenia made to the Commission, district courts are wasted with jurisdiction for an application for refusal of enforcement. The same court thus has jurisdiction to decide on an appeal against the decision on the application for refusal of enforcement (art. 49 B IA) and the Supreme court has jurisdiction to decide on appeals (art. 50 B IA) against the decision on the appeal.¹³⁰ As described above (answer under the point 4.5.2), it seem that the legislator will excluded one stage of jurisdiction of district courts competent to decide in the proceedings for refusal of enforcement. Furthermore, the proposal for refusal of enforcement, according to the proposal for amendment of ZIZ-L, will need to be brought in the separate proceedings, since local courts are competent for the enforcement and district courts for proceedings for refusal of enforcement.

The proceeding for refusal is foreseen as adversarial, since the application for refusal will be served to the opposing party in order for the party to answer and the court will conduct the main hearing in the event that disputed facts exist (art. 20 proposal ZIZ-L).

- 4.5.6. Second appeal, (third instance appeal) as a remedy – is it to be utilized only in cases of violation (of procedural or substantive law) or can it be used for control of facts as well?

Comment: In Slovenia the law provides for appeal (*pritožba*) or revision (*revizija*). Whilst the former generally encompasses the control of facts, the latter does not permit for such control.

¹³⁰ This notification on the competence of the courts was the same as under the Brussels I Regulation.

In Slovenian civil procedure the appeal may be brought on the basis of all appellate grounds, including incomplete establishment of facts, which is not the case with revision. Also an appeal, which prevents the judgment from becoming *res iudicata* and enforceable and the enforcement is possible only after the enforceable title became *res iudicata*. On the other hand, with the revision as an extraordinary measure the Supreme court may not control the facts.

In the past (on the grounds of Brussels I Regulation) there were different opinions whether the second remedy¹³¹ against the decision of the appeal on the decision on the proposal for declaration for enforceability (B IA uses the term an appeal) represents appeal or revision according to the Slovenian CPA.¹³²

Under the B IA Slovenia has in its notification to the Commission used the term appeal as a second remedy. In the proposal for amendment of ZIZ-L the legislator uses the term appeal, which could mean an ordinary remedy. Furthermore, in the B IA there is no similar provision as in the previous Brussels I regulation that during the time specified for an appeal pursuant to Article 43(5) against the declaration of enforceability and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures against the property of the party against whom enforcement is sought.

The grounds for appeal as an ordinary remedy according to the CPA consists of errors in procedural law, in substantive law and in findings of facts. However, regarding the errors in facts findings, the appellate court may only consider the facts asserted already in the first instance proceedings or in exceptional cases the party may assert also the facts that were not asserted at the first instance which will be considered, if he or she proves that they could not without fault assert such a fact during the first instance proceedings (par. 2 art. 337 CPA).

4.5.7. Who is eligible to apply for a refusal of recognition or enforcement? How do you understand the euro-autonomous interpretation?

According to the proposed provision of proposal for amendment ZIZ-L (a42.b ZIZ), debtor and any interested party may apply for refusal.

4.5.8. Suspension and limitation of enforcement proceedings (Art. 44). How is it regulated in your legislation?

¹³¹ Galič, postopek priznanja in razglasitve izvršljivosti tujih sodnih odločb po uredbi št. 44/2001, 2006, p.71; V. Rijavec, A. Ekart, Čezmejna izvršba v EU, 2010, p. 87-89.

¹³² Galič was on the opinion that revision would be better solution. Galič, postopek priznanja in razglasitve izvršljivosti tujih sodnih odločb po uredbi št. 44/2001, p.72-74;

“Article 44

1. In the event of an application for refusal of enforcement of a judgment pursuant to Subsection 2 of Section 3, the court in the Member State addressed may, on the application of the person against whom enforcement is sought:
 - (a) limit the enforcement proceedings to protective measures;
 - (b) make enforcement conditional on the provision of such security as it shall determine; or
 - (c) suspend, either wholly or in part, the enforcement proceedings.”
2. The competent authority in the Member State addressed shall, on the application of the person against whom enforcement is sought, suspend the enforcement proceedings where the enforceability of the judgment is suspended in the Member State of origin.

Art. 44 B IA requires that the application for refusal of enforcement must already be lodged; however, this application may be combined with a request for suspension or limitation of enforcement proceedings.¹³³ The recital 31 of the Preamble B IA points out that limitation or suspension measures may be applied only during the entire proceedings relating to a challenge to the enforcement, including any appeal, and cannot be applied in the proceeding where national grounds for refusal of enforcement are applied.¹³⁴

According to the proposal for amendment of enforcement law (ZIZ-L), the legislator has created a provision for suspension or limitation of enforcement in the basis of the proceedings initiated for non-enforcement of the judgment in accordance with art. 44. B IA. Recital 26 of the Preamble of B IA served as the basis for the proposed provision, which states that a judgment given by the courts of a Member State should be treated as if it had been given in the Member State addressed. For the suspension of the enforcement of foreign judgment according to the art. 44. B IA, the proposed ZIZ-L foresees that the same requirements should be used as regulated in the national ZIZ art. 71., which serves as a measure of the debtor to propose a suspension of the enforcement.¹³⁵ The debtor will have to prove that he has lodged legal remedy against enforcement of foreign judgment and to show with probability that with the immediate enforcement he or she would suffered irreparable or damage difficult to replace and that this damage is greater than the damage, which could occur to the creditor if the measure for suspension is granted.

4.6. Protective measures.

- 4.6.1. Which protective measures are available, in National perspective, according to Art. 40?

¹³³ Dickinson, Lein, *The Brussels I regulation recast*, Oxford, 2015, p. 431.

¹³⁴ Dickinson, Lein, *The Brussels I regulation recast*, Oxford, 2015, p. 431.

¹³⁵ The debtor may propose a postponement of the enforcement in this context, for example: if the debtor filed an extraordinary remedy against the judgment, which serves as a basis for the enforcement; if the debtor filed an application to repeal a certificate of enforceability, etc. (art. 71 ZIZ).

4.6.2. What are the prerequisites for these protective measures?

Points 4.6.1 and 4.6.2 combined¹³⁶

The Slovenian legislator did not yet prepare special adaptation provisions in this regard (this was true also under the Brussels I regulation on the question of adaptation of the art. 47).

Two types of protective measures are available under the art. 40 B IA, namely, provisional and interim measure.

An interim order may be issued before any judicial proceeding, during the proceeding, as well as after the proceeding, until the enforcement is carried out. Unlike with preliminary measures, the court has the freedom to issue, on the proposal of the creditor, any kind of interim measure. The law only lists a few possible types of interim injunctions, while the court may issue any order proposed by the creditor, with which the purpose of such insurance could be achieved (Art. 271 ZIZ). A court issues an interim order to secure a pecuniary claim if the creditor can demonstrate the likelihood of the existence of a claim or that a claim against the debtor will arise, where the creditor must demonstrate the likely risk that, owing to disposal, concealment or other use of the property by the debtor, enforcement of the claim will be impossible or rendered considerably more difficult. A creditor is not obliged to prove that there is a risk, if he or she demonstrates that it is probable that the debtor would suffer only insignificant damage from the proposed order. A risk shall be deemed to have been demonstrated if the claim is to be enforced abroad, unless it is to be enforced in a Member State of the EU (art. 270 ZIZ).

A court issues an interim order to secure a non-pecuniary claim under the following conditions: if the creditor can demonstrate the likelihood of the existence of a claim or that a claim against a debtor will arise, and if the creditor demonstrates the likelihood of one of the following preconditions being met: the risk that enforcement of the claim will be impossible or rendered considerably more difficult (objective risk), that the order is necessary to prevent the use of force or to avert the occurrence of irreparable damage, and that the debtor will not suffer more detrimental consequences than the creditor if the interim order issued is proved to be unfounded in the course of proceedings.

¹³⁶ See also answers under question 1.18 Division between enforcement and protective measures.

With the interim measure, the bank is instructed to refuse payment from the debtor's account to the debtor or another person on the debtor's instructions of the sum of money on which the interim order has been placed (Art. 271 para 1 point 4. ZIZ). The bank may block the amount of money ordered in the court decree or transfer the money to a special bank account.¹³⁷ In the case of a violation of the prohibition to dispose of the money, the bank may be held liable for damages.

A court issues a preliminary order pursuant to a decision of a domestic court or other body in relation to a pecuniary claim that is not yet enforceable, if the creditor can show that there is a probable risk that enforcement of the claim will otherwise be impossible or rendered considerably more difficult. This type of risk is deemed to have been demonstrated if the request to secure a claim by means of a preliminary order rests on any of the law determined acts (for example on a decision on the basis of which enforcement would have to be carried out abroad, unless enforcement would have to be carried out in a Member State of the European Union or on a notarial record that is an executory title on a pecuniary claim that has not yet fallen due, art, 258 ZIZ).

A court may specify the following preliminary orders: the seizure of movable property and entry of the seizure in the register, if such is kept; the seizure of pecuniary claims or claims to hand over items; the attachment of other property rights or material rights; a prohibition on a payment transactions organisation paying the debtor or another person on the debtor's instructions from the debtor's account the sum of money upon which a preliminary order has been placed; the entry of a lien in the companies register on a partner's share in a company, or in the central register of book-entry securities on a book-entry security; the provisional entry of a lien on the debtor's immovable property or a right entered on the immovable property.

4.6.3. How long do protective measures last (duration period)?

According to the law, preliminary order may last not more than 15 days after the conditions for the enforcement are met (par. 2 art. 263 ZIZ). In practice, creditors usually propose the duration period 8 days after the judgment became *res iudicata*. The court is bound by the proposal of the creditor, which means that the court will follow and approve the proposed duration period. If duration period expires before the judgment becomes enforceable, the court will upon the proposal, extend the period if the circumstances, under which the order

¹³⁷ N. Pogorelčnik Vogrinc, *Začasne odredbe v civilnih izvršilnih postopkih*, 2015, p. 251.

was issued, remained the same (par. 3 art. 263 ZIZ). If the creditor proposes the maximum duration period of the preliminary order, the order will last no more than 15 days from the moment that conditions for the enforcement are met and the creditor must justify the preliminary order by starting the enforcement with the proposal (art. 265 ZIZ).

For interim measures, the law does not explicitly set the maximum duration period. The court will normally just follow the proposed duration time by the creditor, which in practice define the expiring time as due date but even more often descriptively.¹³⁸ Furthermore, very common are also interim measures that last until the judgment becomes *res iudicata*.¹³⁹ However, the amendments of the enforcement law (ZIZ-J¹⁴⁰) have explicitly determined that the conditions for the duration of the interim measure cease, when the conditions for the enforcement are met. Such a regulation enables the protection of the debtor so the creditor is not able to delay with the submission of the proposal for the enforcement.¹⁴¹

4.6.4. Effects of protective measures - *Auszahlungsverbot (Verfügungsverbot)* or pledge (mortgage).

In the Republic of Slovenia, a court's decree of interim order – if issued in a civil proceeding or any other proceeding – has the effect of an enforcement decree (Art. 286 ZIZ); however, it can only interfere with the sphere of the debtor and not with third parties.¹⁴² Therefore, the issuing of an interim measure does not result in the formation of a registered charge on the subject of insurance. Therefore, an interim order, by which, for example, measures for prohibiting the disposal of the subject of insurance were issued, does not prevent legal interventions of other parties in the same subject (e.g. proceedings of enforcement). The consequence of the debtor's violation of such an order is therefore only the creditor's right to challenge legal acts done to the creditor's detriment, according to the obligatory law.¹⁴³

As precautionary measures, in the sense of the forced securing of claims, the ZIZ allows securing by the establishment of a lien on the subject that is intended for security of a claim.¹⁴⁴

¹³⁸ »The court may order: The interim measure is valid immediately and lasts until the debtor does not return the bill of exchange to the creditor«... N. Pogorelčnik Vogrinc, *Začasne odredbe v civilnih postopkih*, 2015 p.260.

¹³⁹ Pogorelčnik Vogrinc, p. 260-261.

¹⁴⁰ Official gazette RS, no. 53/14.

¹⁴¹ Explanation of the legislator in the Proposal for the amendments of ZIZ-J: PREDLOG EVA 2013-2030-0096 PREDLOG ZAKONA O SPREMENBAH IN DOPOLNITVAH ZAKONA O IZVRŠBI IN ZAVAROVANJU.

¹⁴² V. Rijavec, 2003, p. 272.

¹⁴³ Vesna Rijavec, Cross-border effects of provisional measures in civil and commercial matters, in *CROSS-BORDER CIVIL PROCEEDINGS IN THE EU* 79, 91 (Vesna Rijavec & Tjaša Ivanc eds. 2012).

¹⁴⁴ Rijavec, *Začasne odredbe v arbitražnem postopku*, 1 SLOVENSKA ARBITRAŽNA PRAKSA 9, 12 (2012), available at http://www.sloarbitration.eu/Portals/0/Prispevki/revijSA_2012_01_Rijavec.pdf (last visited Mar. 13, 2017).

4.6.5. Can an application for enforcement be refused entirely due to the objection regarding foreign enforcement title or is this just limited to the security measures?

During the challenge of the enforcement on the grounds for refusal, the court may, on the application of the debtor, limit enforcement proceedings to protective measures (a); make enforcement conditional on the provisions of such security as it shall determine (b); or suspend, wholly or in part, the enforcement proceedings (c) (Art 44 B IA). As a consequence protective measures are available during the control of B IA RE's grounds for refusal. The absence of further rules in B IA could be interpreted as a ground for national law to apply. This could be supported by the provision in which states that the procedure for refusal of enforcement shall, in so far as it is not covered by this Regulation, be governed by the law of the Member State addressed (par. 2 art. 47 B IA). Under the par. 1 art. 44, the remedies are foreseen as an alternatives.

Until, the legislature is not adopted to B IA regime (the proposal for amendment of the ZIZ-L includes the provision for the proceeding under the art. 44 B IA) the provisions on the postponement (odlog izvršbe) in art. 71 of the ZIZ could apply. However, the enforcement law as its valid right now does not know some of the measures included in the art. 44 B IA. Slovenian enforcement law does not foresee the possibility for the debtor to propose the protective measures, but only the creditor may make such proposal. The same goes for the payment of the security, which is not regulated as an individual measure secured by the creditor. In the event that national law is not adapted to the B IA, the court may directly rely on the provisions of the B IA.

If Slovenia is an enforcement state, the debtor may file a proposal for postponement or suspension at the enforcement court, which will grant the measures for suspension or the security measures as long as the proceedings on the refusal of the enforcement are not completed (art. 74 ZIZ).

If a Slovenian district court finds that grounds for refusal are present, the court will with its decision (a declaratory decision) declare the foreign judgment not enforceable, because the presence of a ground for refusal in Art 45. The enforcement court will cease the enforcement proceedings and annul the previously executed enforcement acts (art. 76 ZIZ).

4.7. Grounds for refusal.

4.7.1. What are the past characteristics in your member state regarding grounds for refusal of recognition? Do you see any new problems regarding grounds for refusal?

Questions 4.7.1 and 4.7.3 combined

The common ground for refusal in practice was the breach of the adversarial principle, especially the lack of correct service as a reason for issuing the default judgment. In the Slovenian case law, the opinion of the Supreme court¹⁴⁵ is that the aim of the service is to enable the parties to be aware of the procedural actions of the opposite party and the court. This aim may be accomplished, if judicial writings are delivered to the party in person. However, the exceptions to this rule may be applied if the legitimate cause exists. Presumption of service (fiction of service) may be justified on the grounds of ensuring the protection of the right of the opposing party to access justice and the right to the trial without undue delay.

Also, very common ground was the reference to contradiction to public order though, the courts decide about this very restrictively. In the following case¹⁴⁶, the supreme court stated that, according to the case law of CJEU¹⁴⁷, national courts have jurisdiction, in cases where the defendant brings an action against the declaration of enforceability of a judgment given in default of appearance in the Member State of origin which is accompanied by the certificate, claiming that he has not been served with the document instituting the proceedings, the court of the Member State in which enforcement is sought hearing the action, to verify that the information in that certificate is consistent with the evidence. In the mentioned case the debtor has claimed that the enforcement order issued in Germany was not delivered in Slovenian but in German language which represents grounds for refusal of declaration of enforceability on the basis that such recognition is contrary to the Slovenian public order. In the assessment of the objection of public order, the court needs to determine factual possibilities of the debtor to obtain timely notice in order to prepare a defence, so that his rights to a fair trial are not violated. After all, the debtor must have been aware of the contents of that decision, which presupposes that it was served on him.¹⁴⁸

4.7.2. What is your opinion on the fact that the grounds for refusal in the B I (44/2001) apply in B IA as well?

¹⁴⁵ Sklep Cp 7/2010, 31.10.2011.

¹⁴⁶ Sklep Cpg 10/2015.

¹⁴⁷ Case C-619/10, Trade Agency Ltd v Seramico Investments Ltd, 6.9.2012.

¹⁴⁸ C-283/05, ASML Netherlands BV v Semiconductor Industry Services GmbH [2006] ECR I-12041.

The grounds for review were much debated during the revision of Brussels I regulation. During the process of revision the first idea was to delete the possibility of raising any grounds for refusal in the addressed country.¹⁴⁹ The reason for such an idea was based on the proposed provision that for all judgments rendered in a MS, the enforcement could be requested in another MS without any specific procedure. The Proposal provided for three possibilities of opposing recognition or enforcement. "First, the debtor would be able to contest the judgment in the Member State of origin if he was not properly informed about the proceedings in that State. Second, the proposal would create an extraordinary remedy in the Member State of enforcement that would enable the defendant to contest any other procedural defects which might have arisen during the proceedings before the court of origin and which may have infringed his right to a fair trial. A third remedy would enable the defendant to stop the enforcement of the judgment in case it is irreconcilable with another judgment which has been issued in the Member State of enforcement or - provided that certain conditions are fulfilled – in another country."¹⁵⁰

Nevertheless, the Brussels I 2010 proposal suggested abolishing the limited jurisdiction review and examination of substantive public policy, which was highly debated¹⁵¹. At the end, the Parliament accepted the abolition of exequatur, but reintroduced the possibility to contest the enforcement in MS addressed under the grounds previously listed in art. 34 Brussels I regulation.

Certainly, the refusal grounds in art. 45 B IA have the same goal as the previous in Brussels I regulation, that is to verify the correctness of the judgment. However, the grounds in art. 45 have influence to the enforcement stage.

4.7.3. Please comment on the most problematic grounds in your member state in more detailed manner.

See in 4.7.1

4.7.4. Grounds regarding related actions and irreconcilable judgements. Do you find any open issues in your member state in this regard?

In this regard there are currently pending cases on the issue of floods that have occurred in 2012 because the river Drava has flooded Maribor region. We do not have all the information

¹⁴⁹ M. Makowski, p. 868.

¹⁵⁰ Commission proposal, COM (2010) 748 final, under point 3.1.

¹⁵¹ See Hess, Pfeiffer, Schlosser : Study JLS/C4/2005/03 - Report on the Application of Regulation Brussels I in the Member States, 2007, p. 251-252; J. Kramberger Škerl, European Public Policy (with an emphasis on the on Exequatur proceedings), Journal of Private Int Law 2011

of the cases, however we would just like to point out the question on *lis pendis*, related actions and torpedo litigation.

Namely, the flow of river Drava increased beyond normal limits because of the heavy rain that appeared in Austria and Slovenia. The Austrian company Verbund Hydro Power GmbH that regulates the flow of Drava on the Austrian side did not open the floodgate what should be the ordinary procedure according to the bilateral agreement regulating the procedures for regulation the level of maximum flow capacity of river Drava. When the dam on Austrian side was obviously overfilled and there was a chance for the Austrian countryside to be flooded, the Austrian company opened the floodgate, which resulted in maximum enlargement of the flow of Drava. Slovenian hydropower plant could not regulate the flow of the river at the existing capacity and as a result, the river flooded causing damage on Slovenian side.

In Austria, the Austrian company initiated the litigation claiming that there is no liability of the Austrian company for the floods in Slovenia – negative declaratory claim towards the Republic of Slovenia and insurance companies. This action was brought after the Austrian company was addressed with the proposal for settlement and before all the other proceedings in Slovenia started.

In Slovenia, different plaintiffs¹⁵² (insurance, local community, natural persons), who argue that they have suffered damage because of the flooding, started litigations against the Austrian company, claiming the liability of the Austrian company for the floods. The main question in Slovenia is whether the circumstances of the cases satisfy the conditions for the use of the provision of the B IA on the related actions (art. 30 B IA), preventing irreconcilable judgment. The Slovenian appellate court has already ruled in one¹⁵³ of the cases on the question of related action and decided that the decision of the first instance court on the staying of the proceeding was well founded. The appeal was brought by the plaintiff claiming that the court should not have stayed the proceedings on the grounds of related actions because there is a discretionary right of the court. The main objection of the plaintiff was also, that it is obvious that defended is abusing the rules on international jurisdiction regulated in art. 32 of the B IA as a forum shopping and that the action brought at the Austrian court will not decide about the matter on the merits. The appellate court has reasoned the decision on the following grounds:

- The first instance court has correctly established that the same parties are involved in bot proceedings;
- The Austrian court was first seized with the jurisdiction;

¹⁵² According to the information there are 42 pending cases before the court in Maribor, 31 cases pending cases before court in Ptuj and 7 cases are pending before the courts of Slovenj Gradec. The total sum of the claims is supposed to amount 103 million EUR.

¹⁵³ Decision of the High court in Maribor, VSM sklep I Cpg 263/2016.

- In both cases, the claims relate to the *sae* factual and legal elements, which means that in the case of favourable judgment issued in the Austria will have the *res judicata* effect on the matter between the parties of the both claims.

The appellate court has further explained that the aim of the provision of the B IA is clear, which is to minimize the possibilities for the parallel proceedings and ensure that irreconcilable judgments are not issued in different countries.

Part 5: Final critical evaluation of B IA – what necessary adaptations to national legislations need to be done?

- 5.1. Does B IA in your opinion actually simplify, speed up and reduce the costs of litigation in cross-border cases concerning monetary claims and eases cross-border enforcement of judgments?

The first concern of European authorities was that the exequatur procedure slows down cross-border debt recovery. This is because a foreign judgment can only be declared enforceable in the forum after one of its courts has verified that it meets the requirements for being recognized. The creditor must therefore wait for completion of that procedure before being able to seek enforcement in the forum.¹⁵⁴ According to the Commission, this typically takes from 7 days to 4 months, depending on the jurisdictions.¹⁵⁵

The B IA certainly brings some improvements and simplifications for the creditor and on the other hand for the debtor. The abolition of exequatur is an improvement for the creditor having in mind that there is no intermediate proceeding needed.

For creditor, the abolition of the automatic “grace period” prior to enforcement that existed under the Brussels I Regulation is certainly also an improvement. Under the Brussels I regulation the creditor had a right to start with actual measures of enforcement after the period for appealing the exequatur decision has lapsed or after the appeal has been dismissed (par. 3 art. 47 B IA). The creditor was able to start the actual enforcement after one month after the service of the exequatur decision and two months if the debtor is domiciled outside the enforcement state (par. 5 art. 43 Brussels I regulation).

However, the safeguards for the debtor lie in the fact, that the B IA requires the service of the (more detailed than under the Brussels I regulation) Certificate and the foreign judgment in “reasonable time” before the first enforcement measure, which prevents any surprise effect in favour of the creditor. Additionally, the debtor may still delay enforcement, in particular by requesting a translation of the judgment (if the debtor request such a translation, only protective measures are allowed until the debtor is supplied with the translated documents)

¹⁵⁴ »On an EU average, in 93% of the cases, the intermediate step is a pure formality as there are no reasons to refuse recognition and enforcement of the foreign judgment²⁵. Between 1 and 5% of the decisions to grant exequatur are appealed²⁶ but these appeals are rarely successful. Only in a handful of cases does the procedure actually lead to a refusal of recognition and enforcement«. Impact assesment, p. 12.

¹⁵⁵ Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the Application of Regulation 44/2001 of 21.4.2009, COM (2009) 174 final, p. 4

and by applying for refusal of enforcement. In the latter case, however, the courts have more discretion than under the Brussels I Regulation in the view of allowing the enforcement to proceed, subject to a limitation of enforcement or to the provision of security (for example art. 44 and 51 – “may”). The debtor is entitled to a translation of the judgment if he is domiciled in a Member State other than the state of origin, and if the judgment is written in a language that he does not understand and that is not an official language at the place of his domicile.

The creditor is able to obtain ex parte interim measures once the foreign judgment is enforceable in the Member State of origin (art. 40 B IA).¹⁵⁶

However, the fact that Member States can provide for a total of three court instances to examine the grounds for review could lead to longer delays to the enforcement being executed in practice. In Slovenia under the Brussels I regulation, the creditor had to start a special procedure at the district court in order to obtain a declaration of the enforceability of the judgment (exequatur). This procedure was ex parte, which means that the defendant was notified with the resolution of declaration of enforceability. The remedy for the defendant against such resolution was the appeal, which needed to be submitted to the district court. Against the decision of the district court second appeal was possible to be filed at the supreme court. After the decision in the procedure for declaration of the enforceability became res judicata, the application for the enforcement was possible. However, the proposal for amendments of Slovenian enforcement law, ZIZ-L, has foreseen only the two stage proceeding, namely the appeal against the decision on the application of the refusal of the enforcement to the Supreme court. The art. 50 B IA gives an impression that the second appeal is not mandatory, since it states that the decision given on the appeal may only be contested by an appeal where the courts with which any further appeal is to be lodged have been communicated to the Commission (art. 50 B IA).

In addition, the question on how the MS will adopt the possibility of the debtor to invoke grounds for refusal under national law (whether this grounds will be considered in the same proceedings as grounds under B IA or only in enforcement proceedings)¹⁵⁷ will probably have practical importance on the efficiency of the enforcement proceedings. In Slovenia, district

¹⁵⁶ Under the Brussels I Regulation, the creditor was able to apply for protective measures following the exequatur decision.

¹⁵⁷ On three different possibilities, see: J. Kramberger Škerl: Certain open Issues Regarding the Refusal of Enforcement under the Brussels I Regulation in Slovenia, 24th Conference entities at the market and European dimensions, 2016, p. 134.

courts have already been competent to decide on the refusal grounds under the Brussels I Regulation and will have the same competence according to the B IA. The enforcement proceedings are being conducted by local enforcement courts, which will decide on the refusal grounds under the domestic law. One point to mention is also that under the B IA, which allows for domestic grounds to be invoked, the enforcement court (in Slovenia local courts) will need to evaluate that domestic grounds for refusal are not incompatible with the grounds in art. 45 B IA. It looks like that at the end enforcement court will need to test the grounds for compatibility with the refusal grounds under the B IA.

The B IA contains also improvements for the courts in the enforcement proceedings, whose work will be significantly facilitated by the more detailed Certificate.

In favour of safeguarding debtors' rights, the following "delays" of enforcement proceedings are possible:

- The requirement of service of the certificate (with the judgment if not yet served) before the first enforcement measure is sought (par. 1 art. 43 B IA);
- Translation of the judgment under conditions set down in par. 2 art. 43 B IA; only protective measures until the translations are provided;
- Application for refusal of enforcement together with the remedies against the decisions (art. 49 and 50 B IA);
- Application for suspension or limitation of the enforcement (art. 44 and 51 B IA);
- Proceeding for adaptation of the unknown measure with the right to challenge the decision (art. 54 B IA).

The abolition of exequatur was however also based on economic grounds, as the Commission stated: "it is difficult to justify, in an internal market without frontiers that citizens and businesses have to undergo the expenses in terms of costs and time to assert their rights abroad."¹⁵⁸ These costs were for sure burdensome if we consider how "applicants for declaration of enforceability are almost always successful and recognition and enforcement of foreign judgments is very rarely refused".¹⁵⁹

¹⁵⁸ European Commission Green paper on the review of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters /* COM/2009/0175 final.

¹⁵⁹ European Commission Green paper.

5.2. Which is, from the creditor's point of view, the most convenient alternative in your member state in case of cross-border collection of debts in the EU?

The European Order for Payment Procedure (EOP) is a one-sided procedure for the collection of uncontested monetary claims, whereas the European Small Claims Procedure (ESCP) applies to both contested and uncontested claims, and is yet limited to claims with a maximum value of 10.00 EUR. Both of these procedures are alternatives to national procedures, however they may only be used in cross-border cases.

European enforcement order may (EEO) be issued only after the obtaining a judgment against the debtor and the court upon application certifies the judgment as a EEO. However, the EEO may only be issued if the claims are uncontested. The enforcement is then done under the enforcement rules of the MS addressed. The only reason that enforcement in another Member State can be refused is if it is irreconcilable with another judgment in the other Member State between the same parties. EEO starts as a national procedure and then becomes a European procedure. The EOP is a European procedure from the beginning and enables taking action on the basis of forms. The positive side of this instruments is that they offer forms that can be used in the proceedings and that grounds for objection of the debtor are limited.

Additionally, the European Account Preservation Order, will also contribute to improving the cross-border debt collection.

The main criticised point that the reform of the Brussels I regulation has not removed is the possibility of the MS to control "regularity of the foreign decisions" in comparison with other European instruments without the exequatur proceedings.¹⁶⁰ Following on from this statement, some scholars are advising the use of EEO.¹⁶¹

5.3 Language issues: Is it possible or advisable to choose the form in the language of the debtor?

In Slovenia official court language is Slovenian (par. 1 art. 5 Courts act) and in the regions of autochthonic minorities also Italian and Hungarian language (par. 2 art. 5 of the Courts act). The CPA provides that civil proceedings shall be conducted in the official language of the court (art. 6 CPA), which means that all the courts actions and orders need to be made in

¹⁶⁰ M. Requejo Isidro, The enforcement of monetary final judgments under the Brussels Ibis Regulation (a critical assessment) in Lazić, Stuij, Brussels Ibis regulation: Changes and challenges of the renews procedural scheme, Springer, 2017, p. 93

¹⁶¹ Hess, cited in Isidro, 2017, p. 93.

Slovenian and the parties need to communicate in Slovenian. In the ethnically recognised areas, the parties may also communicate in Italian or Hungarian.¹⁶²

The certificate according to the art. 53 B IA is issued by the court of origin. If the court of origin is Slovenian court it may not issue the certificate in another language than the one recognised in the national law, since the B IA does not give specific provisions on that question. For the purpose of the enforcement, par. 3 art. 42 B IA prescribes that the enforcement court may, where necessary, require the applicant to provide a translation or transliteration in to the official language that the MS addressed has notified about to the Commission. The forms, available in all official languages of the EU, however should enable in the cases of monetary claims for the MS addressed to rely on the form without the need for translation in the language of the enforcing country. The translation should only be requested to be provided by the creditor in cases when the court of the MS addressed is not able to proceed the enforcement. It is advisable for enforcement courts to admit also a partial translation of the needed information in certificate.¹⁶³

5.3. Do you anticipate that the principle of national procedural autonomy shall be adversely affected by the provisions of B IA?

Comment: The principle (in essence) provides that member states are free to choose the remedies and procedures which govern the enforcement of EU law. The principle is not confined to the enforcement of substantive rights, even more so, its importance is revealed in cases such as the one at hand. B IA (in part) relies on remedies provided by national procedural law. The latter must therefore conform the euro-autonomous nature of B IA and provide for adequate remedies in terms of interpretation, effectiveness, effective judicial protection of non-discrimination. If these prerequisites are not duly respected, certain corrections to national procedural law are in order, perhaps even ad hoc introduction of new remedies.

The principle of national procedural autonomy provides that if EU law does not have its own procedural rules, national procedural law is applicable.¹⁶⁴ Slovenian legislator has done very little until now to adopt the national law.¹⁶⁵ However, the proposal for amendment of enforcement law ZIZ-L, if eventually adopted as such, foresees some adaptation for the implementation of the B IA (for example: new proposed art. a42.b ZIZ). However, there are open issues which, under the B IA are left to local civil procedures, but the legislator left open

¹⁶² Ude, Galič, Pravdi postopek: zakon s komentarjem, 1. knjiga, 2010, p. 63.

¹⁶³ M. Mankowski, 2016, p. 856.

¹⁶⁴ Case 33/76, Rewe, [1976] ECR 1989.

¹⁶⁵ The Slovenian legislator has failed to adopt the provisions also under the Brussels I regulation.

also in the proposal of the enforcement law (for example the time period within which an application for refusal of enforcement may be made; the proceedings for adaptation of the unknown measures under the art. 54 B IA).

Costs. Since the recognition and enforcement of foreign judgements no longer requires *exequatur*, what is your take on the costs, which will incur with respect to enforcing judgments under B IA in comparison to enforcing them under BI? Will it be more cost – effective?

Comment: Try to indicate the specific costs, which may arise in relation to the procedure envisaged under the BI A. Tariffs, lawyer's fees, etc.

The legislature has not yet been adopted to the B IA regime.

The table below shows the cost of court fees in exequatur proceedings.

30011	The proceeding upon the application for recognition of foreign court decision or the proceeding upon the application for a declaration of enforceability of decisions issued in another Member State of the European Union, or the proceeding for raising objections against the decision declaring the enforceability of decisions issued in another Member State of the European Union	16 EUR
30012	Proceeding Postopek o pritožbi zoper sklep o ugovoru zoper sklep o razglasitvi izvršljivosti odločbe, izdane v drugi državi članici Evropske unije	33 EUR

As for the fees in the enforcement proceedings, the following scheme is applicable:

4.0.1 First instance court proceeding		
4011	Proceeding on the proposal for enforcement or for counter enforcement	55 EUR
4012	Proceeding on the proposal of the creditor for the court in addition to the already authorized enforcement measures further allows enforcement by other means and in on other object, or to replace already authorized measures and objects with other measures or objects or proceeding on the proposal to suspend the enforcement or proceeding upon the creditor requirement for the court to	30 EUR

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	decide on the the calculation of remuneration and expenses for the enforcement agent or for the proceeding upon the application to correct irregularities or proceedings upon the application for security measures	
4.0.2 Proceeding on the objection		
4021	Proceeding on the objection against the enforcement order	55 EUR
4022	Proceeding on the rest of the objections	30 EUR
4.0.3 Appellate proceeding		
4031	Proceeding on the appeal against the enforcement resolution on the objection against the enforcement order	125 EUR
4032	Proceeding on the appeal against the enforcement resolution which the court decides on the proposal of the creditor for allowing additional enforcement measures or object for the enforcement or instead of already allowed to allow other measures or object or proceeding on the appeal against the resolution on the proposal for postponement of the enforcement	65 EUR
4033	Proceeding on the special appeals	33 EUR
4.0.4 Electronically submitted applications		
4041	Submission of the application in electronic form	0,8

Lawyers tariffs depend on the value of dispute. The cost of the lawyer's service is the sum of the points for specific service, which needs to be multiplied with the value of the point. The value of the point is 0,459 EUR.

Value of the claim	Proposal for enforcement or for counter enforcement	Objection of the debtor	Appeal and extraordinary remedies against the	Proposal for provisional measures	Zahteva za priznanje tujega izvršilnega
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			enforcement resolution		naslova
100	45,90	91,80	91,80	45,90	45,90
1.000	45,90	91,80	91,80	45,90	45,90
10.000	91,80	229,50	229,50	114,75	114,75
100.000	91,80	596,70	596,70	298,35	298,35