MANUAL – Slovenia

for legal practitioners dealing with cross-border enforcement of civil claims

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This Manual is intended to help practitioners (primarily authorities in the field of civil enforcement) facing a foreign enforcement title. It offers answers to the most pressing issues faced in cross-border enforcement proceedings in a step-by-step manner, starting with the visual inspection and identification of the elements of the enforcement title. However, the Manual should only be used as an assisting tool in an unofficial capacity and cannot replace the scrutiny of regular inspection. The materials for this Manual have been sourced from national reports and other deliverables obtained within the EU-En4s project.

Contents

1. Judgement

1.1 Headlines that form part of the judgement

The Slovenian Contentious Civil Procedure Act (hereinafter – CPA) does not explicitly set out the "headlines" of a judgement. The CPA enumerates that a judgement should contain an introductory part, an ordering (operative) part, a statement of ground (the Reasoning), and a legal instruction regarding an appeal. It stems naturally that headlines are a collateral necessity for the proper identification of these building blocks. They act as a communication vehicle.

That being said, there is no explicit "Introductory part" headline. This part of the judgement is characterized in detail in Art 324(2) of the Slovenian Contentious Civil Procedure Act (CPA). The introduction is outlined by the statement that the judgment has been rendered in the name of the people. The introductory part is typically confined to the front page of the Judgement. In addition to the former statement, it features the reference number of the case, the name of the court, together with a graphic of the Slovenian coat of arms, the name and surname of the presiding judge and other members of the panel, the name and surname as well as the permanent or temporary residence of the parties and their representatives and/or attorneys, a brief description of the matter of dispute (e.g. "for the payment of damages"), the day on which the main hearing has been completed, and the day on which the judgment has been rendered.

Neither is there an explicit "Ordering part" in terms of a headline. Rather, the court outlines the operative part by stating in (usually) capital letters that it has "DECIDED" or "ADJUDICATED".

On the contrary, the Reasoning and the Legal instructions are marked by separate headlines in the judgement. Usually, these are written in all capital letters. Sometimes, a space between each letter (e. g. R E A S O N I N G) is applied for visual impact or the letters are written in bold.

All of the above headlines are centre aligned. None of them are numbered.

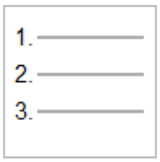
Apart from the general structure of the judgement, the Reasoning of the judgement is sometimes subdivided with the inclusion of internal headlines. In order to provide clarity and structure to the Reasoning, the court might choose to address specific issues within the context of its ruling. For example, if the court decided on a claim for damages, then it might divide the Reasoning into distinctive sections, which deal with individual prerequisites of the defendant's liability. Accordingly, one such headline could be "Harmful event", others could be "Causal nexus" and "Damage incurred", yet another could be "Negligence". Each of these can be further subdivided by new headlines/subtitles, since no formal rules exist on their drafting, e.g. usually the types of non-pecuniary damage are dealt under separate headlines ("fear", "physical pain" etc…).

There is no available study regarding the frequency and consistency on the usage of headlines in practice. It is up to each individual judge, whether he or she applies them or not. An annex to the Regulation on the rules for the uniform drafting of Supreme court decisions (ref. nu. Su 72/2009 - an internal legal act of the Slovenian Supreme court) only provides that such divisions are permissible (optional).

These optional headlines are left-indented. According to the mentioned Regulation they ought not be numbered or listed, however, the Regulation only applies to Supreme court decisions (they can, however, be taken as informal guidelines for other courts). First instance judgements therefore often feature such markings.

1.2 Structural and substantive division/sequence of the Reasoning

The Reasoning in Slovenian judgements issued by courts of general jurisdiction is structured into paragraphs. These paragraphs are numbered with Arabic numerals in accordance with the following format (they are not subdivided into decimal numbers):



The numbering does not, in and of itself, connote any particular value or information. The use of paragraphs and their numbering should be considered a stylistic figure, employed to enhance the transparency of information. This does not mean, however, that the judgement does not follow a predetermined order regarding its substance. It is customary established that the Reasoning is (albeit loosely) written in respect of the following sequence:

- [exceptionally] Observations on certain procedural irregularities (e.g. that the dispute has been reprimanded to the court following the decision of the appellate court; addressing a modification of the claim or partial withdrawal during the main hearing etc.),
- The allegations of the claimant,
- The defence (objections) raised by the defendant,
- List of admitted evidence and dismissed submissions of evidence (with explanations as to the dismissal),
- Determination of disputed and undisputed facts of the case (the court does concern itself with undisputed facts after this point),
- The intertwined legal and factual assessment of the case (this section is usually subdivided by headlines in respect of the),
- The costs of litigation.

1.3 Textual identification of the elements comprising the judgement

- “the introduction of the judgement” is called “uvod”
- “the operating part” is called “izrek”
- “the reasoning of the judgement” is called “obrazložitev”
- “legal instruction” is called “pravni pouk”.

1.4 Short description of the elements of the judgement

The structure of Slovenian civil judgements is determined by Article 324 CPA, which lists the following necessary parts of a written judgement: the introductory part, the operative part, the reasoning and legal instructions about the possibility to appeal.

The introductory part of the judgment contains the statement that the judgement has been rendered in the name of the people, the address of the court, the name and surname of the presiding judge and other members of the panel, the parties’ identification data (for details see 1.7 Identification of Parties) the name and surname as well as the permanent or temporary residence of the parties’ representatives and counsels, a brief description of the matter of dispute, the day on which the main hearing has ended, and the day on which the judgment has been rendered (the second paragraph of

Article 324 of CPA). The introductory part thus provides information on the relationship between the parties, the subject matter and the date on which the judgement was issued.

The operative part of the judgment contains the decision by which the court satisfies or dismisses particular claims relating to the main subject of dispute and secondary claims (e.g. regarding interest, costs, etc.), as well as the decision on the existence or non-existence of the claim asserted for the purpose of a set-off (the third paragraph of Article 324 of CPA).

In the reasoning, the court states the claims raised by the parties, the facts asserted by the parties to support these claims, the evidence, and the law applied in the rendering of the judgment (the fourth paragraph of Article 324 of CPA). In a default judgment, a judgment on the basis of acknowledgment of the claim, a judgment on the basis of relinquishment of the claim or an interim judgement rendered in agreement between the parties, the reasoning contains only the reasons that justify the rendering of such judgement (the fifth paragraph of Article 324 of CPA).

In legal instructions, the court states a time period within which the appeal may be submitted, necessary content of the appeal, a warning about setting aside any actions performed by an unauthorised counsel, a warning about the consequences of an incomprehensible or incomplete appeal, a warning about the consequences of a failure to pay court taxes, the court with which the appeal is to be submitted and the number of original copies to be submitted (the sixth paragraph of Article 324 of CPA).

1.5 Graphical separation of the elements of the judgement

The first page of a judgement contains only the introductory part, which is thus clearly separated from other parts of the judgement and at the same time conveniently represents the title page with the most important basic information about the case.

The operative part is preceded by the headline “DECIDED”, which connects the information about the court rendering the judgement from the introductory part with the content of the decision. The reasoning and legal instructions are preceded by respective titles.

The operative part is further divided into points, which are marked by Roman numerals (I., II., III., …) whereas the reasoning and legal instructions are divided into paragraphs or points, which are marked by Arabic numerals (1., 2., 3., …). In more complicated cases, some judges include sub-headings into the reasoning to indicate more clearly which issue is justified in which part, or separate the reasoning in parts (A, B, C, …). This is not standardised, but there is also no reason why any of these options would be considered problematic.

1.6 Specification of time-period in which the judgement must be performed

Under Article 313 of the Claim Enforcement and Security Act (henceforth – CESA), in a judgment ordering the performance of a certain obligation, the court shall also determine a time period in which the obligation is to be performed. The aim of this time limit is to prevent the claimant from seeking involuntary enforcement against the defendant, until the time limit expires. As a rule, the court will set this time period for positive obligations or for omissions, but not in the case of a decision that the defendant is required to endure certain claimant’s conduct – in such cases, the judgement is immediately enforceable. If the judgement does not contain the time period for a voluntary fulfilment of the obligation, the court of enforcement will set it in the enforcement order (Article 21 of CESA).

Unless otherwise provided by special regulations, the time limit for the performance of the obligation is fifteen days; however, the court may set a longer time period in the case of non-monetary

obligations (when it would be unrealistic to expect that the defendant could fulfil his or her obligation within 15 days, e.g. in the case of unfulfilled obligations under construction contract). In disputes involving bills of exchange and cheques, this time period is eight days. The time period for performance of the obligation starts to run on the first subsequent day following the service of the judgement upon the defendant.

Neither a judgement nor any legal provision contains any specifications of the time period within which the final judgement may not be enforced. After the time for voluntary fulfilment of the claim expires, the creditor (claimant) may start the enforcement procedure if the debtor (defendant) failed to perform his or her obligation.

A judgement does not contain any specifications of the time period after which the judgment is no longer enforceable. Instead, such provision is stipulated in the Obligations Code (Obligacijski zakonik, hereinafter - OZ). Article 356 of OZ states that all claims determined by a final court ruling or by a ruling by another relevant authority or through settlement before the court or another relevant authority shall become statute-barred after ten years, including those for which a shorter period is stipulated by the statute of limitations. All periodic claims originating from such rulings or settlement and falling due in the future shall become statute-barred after the period stipulated for the statute-barring of periodic claims. If the claimant attempts to enforce the performance of the obligation after the expiry of a 10-year limitation period, the defendant may file a complaint against the enforcement under Article 55 of CESA.

1.7 Identification of Parties

Personal information about the parties is listed in the introductory part of the judgement, on the front page, which provides basic information about the case. According to Article 180.a of CPA, the identification data for each party include the following:

- if the party is a natural person: name and surname, residence, as well as the Unique Personal Identification Number (EMŠO) if the party is recorded in the central population register, the tax ID number if the party is not recorded in the central population register, but is recorded in the tax register, or a date of birth if the party is not recorded in either the central population register or the tax register;
- if the party is a legal entity: legal name, registered office and business address, as well as the registration number or tax ID number if the registered office of the party is located in the Republic of Slovenia;
- if the party is an individual entrepreneur: personal name, legal name, registered office and business address, as well as the registration number or tax ID number if the party is registered in the Republic of Slovenia.

The purpose of including the identification data into the introductory part of the judgement is to determine the parties of the case, who are bound by the judgement. If the court fails to list all required data, such omission does not necessarily represent an infringement of essential procedural requirements (and grounds for appeal), as long as there is no doubt about who the party is and to whom the judgement refers.

1.8 Indication of the amount in dispute

The introductory part of the judgement includes, *inter alia*, a brief description of the matter of dispute (the second paragraph of Article 324 of CPA). The description depends on the type of the case and the

matter in question (e.g. it could state that the claim is for the invalidity of a contract), but for monetary claims, it also includes the amount in dispute.

Example: "*for the payment of 1,672.83 EUR*"

The amount of dispute is important because it determines the court that has jurisdiction on the substance of the matter and the type of proceedings (regular proceedings or small claims procedure), as well as the amount of court fees and the attorney tariff. Therefore, it is an essential component of the action in all cases of monetary claims (as one of the facts of the case), but also in all cases of non-monetary claims, if the jurisdiction of the court depends on the amount in dispute (the second paragraph of Article 180 of CPA). The CPA contains detailed provisions and criteria on how to determine the amount in dispute properly, in Articles 39 to 45.

If the claimant obviously sets the amount too low (e.g. because they want to pay lower court fees) or too high (e.g. because they want to financially intimidate the defendant), the court may establish a proper amount *ex officio* or upon the request of the defendant, respectively (Article 44 of CPA and Article 31 of Court Fees Act). The amount can also change if the claimant amends the amount in dispute or partially withdraws the claim under Articles 184 and 188. If the claimant reduces the amount of the claim, such amendment does not affect the jurisdiction, even if the case is adjudicated before the district court, whereas the new amount of the claim would place the case under the county court's jurisdiction. In such case, the district court's jurisdiction on the substance of the matter is considered settled at the moment the action was filed (*perpetuatio fori*, the third paragraph of Article 17 of CPA). However, if the case was under jurisdiction of the county court and the party changes the claim by increasing the amount in dispute, the case has to be relegated to the district court if it falls under its jurisdiction after the amendment.

In practice, every amendment of the amount in dispute is marked on the case file (by crossing out the previous amount and replacing it with the new one), and the amount stated in the introductory part is amended as well to reflect the changes. Procedural acts and decisions that lead to the amendment are addressed in the reasoning and, where relevant, included in the operative part.

1.9 Indication of the underlying legal relationship

The court is not required to explicitly state or qualify the underlying legal relationship in the introductory part or the operative part; the operative part contains only a specification or the scope of legal protection granted by the court, which does not include any legal assessment (see also section 1.15 References to the Reasoning found within the operative part). However, the legal assessment of the dispute is an important part of the reasoning. The court's decision does not depend only on the facts of the case as determined through the process of evidence taking, but also on legal provisions applied to these facts. The court may satisfy the claim only if finds a legal provision that ascribes the legal consequence sought by the claimant to the facts determined in proceedings.

The claimant is not required to provide his or her own legal assessment of the dispute, as the court is presumed – and required – to know the law (*iura novit curia*). Even if the claimant proposes his or her views of which legal provision should be applied in a particular case, the court is not bound by their proposal and is required to examine all possible legal grounds that could be relevant for the decision on merits of the claim. The court may dismiss the claim only if it determines that no legal norm supports the claim, considering the facts of the case. The court's assessment has to be justified and explained in the reasoning of the judgement, together with an explicit listing of relevant provisions and the court's argument of how they apply to the dispute in question (e.g.: a justification containing a conclusion that a defendant is strictly liable for damage caused by a dangerous thing owned by the

defendant under Articles 149 to 150 of OZ would be accompanied by an explanation of how these provisions were applied to the facts of that particular case and by the court's arguments of how it came to such conclusion).

1.10 Information contained in the operative part

According to the second paragraph of Article 324 of CPA, the operative part of the judgement contains the decision by which the court satisfies or dismisses particular claims relating to the main subject of dispute and secondary claims, as well as the decision on the existence or non-existence of the claim asserted for the purpose of a set-off.

The operative part determines the content of legal protection granted to the claimant against the defendant, and is especially important to determine subjective and objective limits to the legal effect of the judgement. The content of the operative part of a judgement becomes final. The content of the operative part of the judgement depends on the content of the claim. The claim already has to be specified in the action in a way that allows the court to directly transpose its content into the operative part, if it finds it justified.

1.11 Existence of a threat of enforcement

A judgement becomes enforceable by law, which is why there is no special legal provision that would require the court to include the threat of enforcement into the operative part of the judgement. However, Slovenian courts developed a practice of including a special phrase "under threat of enforcement" or "to avoid enforcement" after the decision regarding the amount or the scope of the claim and the time period for a voluntary fulfilment. Therefore, this phrase has become a standard part of the operative part of all Slovenian condemnatory judgement, even though this is in no way required by law. The omission of such phrase by the court has no legal consequences and does not represent a defect in the operative part.

1.12 Final specification of debt

The content of the operative part of the judgement depends on the content of the claim. The claim already has to be specified in the action in a way that allows the court to directly transpose its content into the operative part, if it finds it justified. In case the claim is not specified, it will also be unenforceable, which is why such action is considered incomplete. Under Article 108 of CPA, court will first give notice to the claimant to amend or supplement the claim, and then reject the claim if the claimant fails to do so.

The court of enforcement is bound by the principle of a strict formal legality, which prevents it from (re)examining the legality and correctness of the enforcement title or changing its contents in any way. Instead, it may allow and perform the enforcement only on the basis of a valid enforcement title and must, therefore, enforce the claim as determined in the operative part of the judgement. Any decision-making regarding the merits of the claim is restricted to the litigation and the role of the court of enforcement is only to realise the decision contained in the judgement. The operative part of the judgement may not leave any doubt regarding the claim and may not require any further legal reasoning to determine its content (e.g. 'the payment of appropriate damages' would require the court of enforcement to render its own decision on what the appropriate damages would be).

According to Article 21 of CESA, the enforcement title is suitable for enforcement if it states the creditor and the debtor, as well as the subject, type, scope of the obligation and the time in which it needs to be fulfilled. If any of these elements are impossible to determine in the operative part, such

judgement cannot be enforced. Therefore, the court rendering a decision about the claim is required to specify the content of the operative part in a precise and comprehensible manner, as the court of enforcement cannot remedy any deficiencies in this regard. If the operative part is undetermined or insufficiently determined, the enforcement will not be possible, whereas such infringement also constitutes an absolute infringement of essential procedural requirements under point 14 of the second paragraph of Article 339 of ZPP.

1.13 Partial rejection of a claim

A "dismissal" refers to the situation where a claim appears to be without justification.

In case the claim is wholly dismissed, the operative part repeats the wording from the claim and states that the claim is dismissed.

Example:

The claim, which reads as follows:

"The defendant is liable to pay to the claimant the amount of 10.000 EUR, together with statutory interest from 15 April 2020 until the date of the payment, within 15 days to avoid enforcement."

is dismissed.

1.14 Set-off of a claim

The CPA does not regulate a special action for the purpose of a set-off; however, the defendant may file a plea for a set-off as an instrument of his or her defence. Procedural set-off represents a special protection for the debtor's claim, the purpose of which is to achieve the dismissal of the claimant's claim (or a part thereof). The defendant may only invoke a set-off of a claim concerning the claimant's obligation that still exists and has not been set off yet before the litigation or outside the proceedings.

When the debtor invokes a set-off, they must precisely define the claim, state the amount of the claim and when it becomes due, as well as provide all the facts supporting the claim and propose evidence proving these facts. The plea for a set-off must thus contain basically the same elements as the action, since the operative part of the judgement will also include a decision on the existence or non-existence of the claim asserted for the purpose of the set-off, which will then become final and enforceable (the third paragraph of Article 319 of CPA). In such case, the operative part is composed of three parts: (1) the court determines the existence and amount of the claimant's claim; (2) the court determines the existence and the amount of the defendant's claim asserted for the purpose of the set-off; (3) the court declares a set-off and, depending on the compensated amounts, either fully dismisses the claimant's claim (where the defendant's claim against the claimant is determined in equal or higher amount than that of the claimant's claim against the defendant) or partially satisfies the claim (where the claimant's claim is higher than the claim that the defendant asserted for the purpose of the set-off).

The court may only decide on the existence of the defendant's claim if it first determined the existence of the claimant's claim. If the claimant's claim does not exist, the court dismisses his or her claim without even addressing the issue of the defendant's claim. The same applies if the case concluded with the rejection or withdrawal of the claim.

Examples:

A. Both claims exist.

'I. The claimant's claim in the amount of 1000 EUR is found to exist.

II. The defendant's claim in the amount of 1000 EUR is found to exist.

III. The claims are set off and the claimant's claim, which reads that the defendant is liable to pay to the claimant the amount of 1000 EUR, is dismissed.'

1.15 References to the Reasoning found within the operative part

The operative part of the judgement contains only a specification or the scope of legal protection granted by the court (i.e. a decision about the justification of the claim). Any additional elements, which would consist of a legal qualification or of facts upon which the decision is based, should be omitted from the operative part and explained in the reasoning instead. For example, the operative part should state that 'the defendant is liable to pay 10.000 EUR' but should not include additional qualifications like 'of damages', 'for maintenance', 'due to a breach of a contract', etc.

1.16 Wording used to mandate performance

A standard phrasing in a condemnatory judgement mandating the debtor to perform an obligation reads as the following example: 'The defendant is liable to pay to the claimant the amount of 10.000 EUR, together with statutory interest from 15 April 2020 until the date of the payment, within 15 days to avoid enforcement.' Therefore, the court does not explicitly order the debtor to perform and from a linguistic and grammatical standpoint, one could deduct that the court merely declared the debtor liable to perform the obligation, which would represent a declaratory relief. However, in practice, it is universally understood that the judgement is nevertheless condemnatory and that it imposes on the debtor the liability to perform the obligation contained in the operative part. For that reason, there are no real misunderstandings in regard to the wording in such cases. On the other hand, it is clear that such wording could lead to confusion and that some questions could arise especially in the context of cross-border enforcement, with participants who might not be familiar with the particularities of this traditional wording.

1.17 Reciprocal claims

The CPA contains no provision that would specifically regulate the content of the operative part in cases of reciprocal relationships. However, a rule on simultaneous performance is contained in Article 101 of OZ, which states that in bilateral contracts neither party shall be obliged to perform their own obligations if the other party is not simultaneously performing their obligations or is unwilling to do so, unless agreed otherwise or stipulated otherwise by law, or unless it follows otherwise from the nature of the transaction. If one party claims in court that they were not liable to perform the obligations until the other party performed theirs, the court shall impose on the party to perform the obligations when the other party performs their own. Therefore, a defendant may file a plea of a substantive nature to affect merits of the claim. The operative part in such cases will state that the defendant is liable to perform their obligation provided that the claimant performs their obligation as well.

1.18 Indication of interest (rates)

In the case of statutory interest, the operative part has to specify the date from which the interest for late payment will start to run and refer to the statutory interest. In the case of contractual interest, the operative part also has to include the interest rates (generally expressed in percent). The interest for different payments included in the same operative part may start to run on different dates (e.g. for late payments of obligations that are due periodically). In such case, the operative part has to determine precisely the date from which the interest starts to run for each individual part of the claim.

Example:

A. Statutory interest:

'The defendant is liable to pay to the claimant:

- the amount of 3.000 EUR, together with statutory interest from 1 January 2018 until the date of the payment,

- the amount of 3.000 EUR, together with statutory interest from 1 January 2019 until the date of the payment,

- the amount of 2.000 EUR, together with statutory interest from 1 January 2020 until the date of the payment,

all within 15 days to avoid enforcement.'

B. Contractual interest:

'The defendant is liable to pay to the claimant the amount of 10.000 EUR, together with contractual interest under a fixed annual interest rate of 8.5% from 15 April 2020 until the date of payment, within 15 days to avoid enforcement.'

1.19 Legal ramification for incomplete, undetermined, incomprehensible or inconsistent operative part

According to the second paragraph of Article 2 of CPA, the court shall not refuse rendering a decision on the claim that is within its jurisdiction, which means that if all procedural requirements are met, the court must issue a decision regarding all submitted claims. The operative part of the judgement must thus contain decisions concerning all submitted claims, those that were satisfied and those that were dismissed. If the claim was partly satisfied and partially dismissed, the dismissed part of the claim must be specified as well. In the case of joint claims, the court must also specify which of them were rejected. A standard formulation that the court rejects all other parts of the claim is considered insufficient (except regarding the rejected amount of a monetary claim).

If the court fails to issue a decision on all claims or a part of a particular claim, the claimant may file an application with the court to supplement the judgement within fifteen days after the receipt of the judgement (the first paragraph of Article 325 of CPA).

In addition to being complete, the operative part has to be explicit and detailed enough for the contents of the court's decision about the claim to be perfectly clear and comprehensible. The operative part that is incomprehensible (i.e. undetermined or insufficiently determined, which in turn impedes both the judicial control in the appellate proceedings and the subsequent enforcement procedure) is considered an absolute infringement of essential procedural requirements under point 14 of the second paragraph of Article 339 of ZPP and thus represents the grounds for appeal.

These infringements of essential procedural requirements under point 14 can be grouped into three combinations: (1) incomprehensible or inconsistent operative part; (2) missing reasoning (entirely or of decisive facts), unclear, incomprehensible or inconsistent reasoning; and (3) the inconsistency between the operative part and the reasoning. The main consequence of these infringements is the fact that the appellate courts are objectively prevented from reviewing the judgement, which in turn represents the violation of the right to appeal.

Furthermore, these errors in the operative part generally cause the judgement to be ineffective since it is impossible to determine the proper content of the court's decision. Such judgement can still become final, but only in a formal sense (i.e. it is no longer possible to appeal against such judgement). According to Article 21 of CESA, the enforcement title (including a judgement) is suitable for enforcement if it states the creditor and the debtor, as well as the subject, type, scope of the obligation and the time in which it needs to be fulfilled. If any of these elements are impossible to determine in the operative part, such judgement cannot be enforced.

1.20 Legal effects of the Reasoning of the judgement

Unlike the operative part, the reasoning of the judgement is not subject to the effects of the finality of the judgement and is not binding on the parties. Its purpose is to explain and justify the decision which is contained in the operative part of the judgement. For that reason, the party cannot file an appeal against certain parts of the reasoning without also appealing against the operative part, to which the reasoning refers.

1.21 Obtaining the res judicata effect

The moment depends on the circumstances of the case, i.e. whether or not an appeal against the judgement is allowed and whether or not the parties exercise their right to appeal.

If, at the outset, no appeal is allowed against a judgement, the judgement is considered final when it is issued. The law does not expressly prescribe this consequence, but it has become validated in case-law. What is more, case-law specifically rejects some (older) theoretical viewpoints that postulate that such a judgement becomes final only after it is served onto the parties. Courts position their conclusion on the premise that the inability to challenge a judgement prompts its finality.

On the other hand, if the law allows for appeal, the action or inaction of parties must be considered. The judgement will become final when the period for lodging an appeal has elapsed, if no party lodged an appeal. The judgement can become final before the period has elapsed, if both parties waive their right to appeal. The same applies if only one party lodges an appeal and later withdraws it.

Legal academics have also tackled the issue of so-called divisible or indivisible temporal concepts of finality. Since the period for lodging an appeal may differ for parties depending on the service of the judgement (one party may be served before the other party), the judgement could hypothetically become final relative for each party at separate moments. Regardless, theory is unanimous that finality is a temporally indivisible concept. This should, however, not be confused with finality of the "whole" judgement or part of a judgement. If the appeal targets only part of a judgement (e.g. only one of multiple reliefs granted), then the remainder of the judgement (the "unchallenged" part, e.g. the remaining relief) will become final.

1.22 Res judicata of negative declaratory relief

With an action for negative declaratory relief, the claimant pursues to obtain a judicial determination that a certain right or legal relation exists does not exist (see: Art. 181(1) CPA). An action for (positive or negative) declaratory effect is also called a "prejudicial" action, since it resolves the question of the (non-)existence of a right or legal relationship, which would otherwise be considered as a preliminary question of law in an action for condemnatory relief. A final judgement on negative declaratory relief binds the parties and the court in later proceedings where a preliminary question of law arises, which was the object of the request for negative declaratory relief. Such a court cannot reach a new decision to the contrary. Additionally, a contradictory claim to the contrary (a claim for positive declaratory

relief) cannot be raised by the defendant against whom the action for negative declaratory relief was filed, neither during the trial (since such claims are considered to be caught by rules on *lis pendens*), nor after the judgement becomes final (due to rules of material finality).

The situation described in the example has been the subject of only one (published) judgement, among the available case-law database of the Slovene Supreme Court. There, the latter court stated that "the dismissal [on the merits of the case] of a negative declaratory action means that a positive declaratory action is justified because the claims are mutually exclusive." Applying that same rationale to the case at hand, a dismissal would mean that the court has indirectly determined that the creditor (the defendant) does indeed have a right against the debtor (the claimant) in the amount of 1000 EUR. However, the mere judgement by which the debtor's request for negative declaratory relief was dismissed does not entitle the creditor to the enforcement of the claim. Declaratory judgements are not enforcement titles since they lack a command for performance. The creditor will have to move for a separate condemnatory action and request payment. In that event, the seized court should not be able to decide contrary to the prior determination of the existence of the creditor's claim and should not allow the debtor to produce arguments, statements, and evidence to the contrary, due to effects of material finality.

Theory and case-law in Slovenia is lacklustre on this particular situation. Since Art. 181 CPA seems to be modelled after Art. 228 and 236 of the Austrian ZPO, we believe the findings of the Austrian doctrine can be applied in Slovenian law. Along these lines, the defendant (the debtor) cannot object on the grounds, which are already encompassed by the finality of the first judgement. The defendant may, however, only be entitled to such objections which, on the basis of later relevant facts, are intended to demonstrate that the claim determined indirectly by the rejection of the request for a negative declaratory relief has subsequently been extinguished in whole or in part and therefore no longer partially or no longer fully exists. This is in line with the temporal dimensions of finality which encompass the facts of the case as determined by the court up to the point of the last hearing session.

The aforementioned conclusion was reached for the ideal situation where the creditor demands payment of the exact amount as already specified by the debtor in the declaratory proceedings. The court entertaining the condemnatory action would be tasked in each individual case to scrutinize what the matter in dispute was in the declaratory proceedings. If the creditor would seek a higher amount to be payed, than he would have to provide statements of fact and proof for the excess amount, since that amount is not covered by the finality of the first judgement.

It may also become apparent to the court during the declaratory proceedings that the claim negated by the debtor is only partially existing or valid. In such a case, a partial dismissal would partially (in a lower amount) confirm the existence or validity of the creditor's claim.

1.23 Suspensive periods barring the enforcement of a judgement

In general, court decisions shall be enforceable when they become final and when the time limit has passed for voluntary performance of the debtor's obligations (paragraph 1, Article 19 CESA). The time limit for voluntary performance shall commence on the day following the service of the decision on the debtor (paragraph 2, Article 19 CESA). Therefore, the judgement is by operation of law not considered enforceable within this period.

The length of the latter period is in principle denoted in the law. Article 313 CPA stipulates that in a judgment ordering the performance of a certain obligation, the court shall also determine a time period in which the obligation is to be performed. Moreover, the latter article states that unless otherwise provided by special regulations, the adjudged obligation shall be performed within fifteen

(15) days, while in non-monetary obligations this period may be prolonged by the court. In disputes involving bills of exchange and cheques this period shall be eight days. The time period for performance of the adjudged obligation shall start running on the first day subsequent to the day when the judgment has been served upon the debtor.

In certain *lex specialis* cases the time period is to be determined by the court. For instance, in disputes for disturbance of possession the time period for rendition of the relief obtained by the plaintiff under the court decision shall be determined by the court with respect to the circumstances of the case (paragraph 1, Article 428 CPA).

2. Court settlements

2.1 Elements of a court settlement

The content of the court settlement may refer to anything that may be decided in the operative part of the judgment. The settlement may involve the whole claim or only a part thereof and it may also contain settling of other questions between the parties in dispute. It may also concern the relationship in other or all other open procedures between the parties. The subject matter covered with the settlement may be broader than the matter in dispute. It may also concern the quantitative part of the claim. If the settlement is condemnatory in nature the content must be suitable for possible enforcement procedures on the grounds of an enforceable title. It should contain identification of the parties, subject, type and scope of the obligation, the time limits for voluntary fulfilment (art. 21 of CESA).

Moreover, a third person who is not a party to the proceedings may also participate in the settlement. However, the third person may become liable on the grounds of concluded settlement only if the third party agreed to such liability. This means that this person signs the settlement or is involved in the process of concluding the settlement. However, the involvement of a third person is not mandatory if the settlement includes the establishment of certain rights for a third person.

2.2 Formal requirements

The court settlement concluded at the main hearing must become a part of the court record (article 307 CPA). The court record must be signed by a judge (article 126 CPA), which proves that the procedural prerequisites were satisfied, and that the settlement is not in contrary to mandatory rules and morality. If the settlement is concluded outside the main hearing, the settlement should be included in a special court record. Nevertheless, a court settlement shall be deemed to be concluded when the parties, having read the record on settlement, put their signatures on this record (307/3 CPA). The judge may also prepare a written proposal which is offered to the parties as a solution of their dispute. However, the proposal must reflect the true will of the parties and informed consent to settle the dispute in such a way.

At all times during the proceeding, the court is obliged to examine whether the claim subject to a final court settlement is pending in another procedure. Should the court establish that the action is pending in respect of a claim concerning which a court settlement has already been concluded, it shall reject the action (article 308. CPA).

2.3 Identification of Parties

There are no special rules in CPA on that matter. However, the settlement must be determined in objective and subjective terms. This means that the parties who are the holders of rights and

obligations must be identified with name and surname, personal identification number, address or residence, seat etc.

3. Notarial deeds

3.1 Prerequisites for enforceability

The notary deed is directly enforceable if it contains a direct enforceability clause provided that the person liable expresses his consent that such an instrument be made directly enforceable in the same or separate notarial deed and provided that the claim is due (see Article 4 of Notariat Act). There are certain contracts/agreements, which do not contain a direct enforceability clause, because they do not contain such obligations, which could lead to direct enforceability.

3.2 Special clause

According to Article 4 of the Notariat Act, a notarial deed, which includes an undertaking to provide something, to do something, to refrain from something or to tolerate something, regarding which a settlement may be reached, shall be an enforceable title, provided that the obliged person consents to it being directly enforceable in the same or separate notarial deed, and if the claim is due.

The clause is usually stated in the following way: 'The debtor gives explicit consent to this notarial deed being a directly enforceable title according to Article 4 of the Notariat Act and Article 20a of Claim Enforcement and Security Act.'

Example from Contract of sale: 'I, A.A., as debtor, expressly state that I agree with direct enforceability of this notarial deed, especially in so far as it relates to the payment of the purchase price in amount of XX, with due date DD.MM.YY. as stated in this notarial deed, together with interests from due date until payment and together with cost of enforced recovery, thereby acquiring this notarial deed power of directly enforcement title.'

3.3 Consent

Yes. Additionally, it is the duty of the notary drawing up the notarial deed, to explain in an understandable manner, to all the parties involved, especially to the person who is liable (obligated to give, perform, waive or suffer something) what direct enforceability and his/hers commitment mean and what the provided consequences could be.

Consent for direct enforceability always relates to a certain obligation or part of that obligation. Consent does not indicate a statement of contracting will but it is a process disposition.

A notarial deed is not directly enforceable without the consent of the person liable. The direct enforceability is the consequence of wills of all involved parties, after the notary has assured that the notarial deed complies with the law. The deed is signed by all parties. With the consent of parties, especially the consent of the person liable, the notarial deed is endowed with the power of direct enforceability.

The principle of 'formal legality' in enforcement proceedings does not allow any changes of the claim and the claim has to be enforced as it is. The enforcement authority has no right to make any judgement on the enforcement title at the level of substantive law and content. Therefore, the claim must be specified from the both in personal (subjective) and objective dimensions. The subjective dimension is determined by a precise definition of parties/clients, and the objective view is determined by a precise definition of the legal protection, which the creditor wants to directly enforce. It is

necessary to precisely state every individual object and/or to enter the type and quantity of replacement objects, which have to be provided by the liable person, and/or to precisely describe the service, waiver or permission.

A clause drafted too broadly/generally contains the risk that the liable person could contest the scope of his/her statement and/or enforce an error of will (VSL order III Cp 2872/2005).

3.4 Structure

A notarial deed shall include:

1. the surname and name of the notary, an indication that he or she is acting as the notary and his or her registered office;

2. the surname and name, birth data and place of residence of the participants in the legal transaction, their authorised persons, testamentary witnesses and interpreters, and if a legal person is participating in the legal transaction, its name and registered office, and the name and surname of the representative or authorised person;

3. indication of the manner in which the identity of persons referred to in the preceding point has been ascertained;

4. content of the legal transaction, indication of authorisations or attachments;

5. indication that the notary has read the notarial deed to the participants and that the participants have approved the notarial deed;

6. date, time and place of the drawing up of the notarial deed;

7. signatures of persons indicated in points 1 and 2, and the seal and stamp of the notary who has drawn up the notarial deed.

Prior to drawing up a notarial deed, a notary shall be required to request the parties to present any documents which form part of the legal transaction or several legal transactions between the same parties that pursue the same business purpose as the legal transaction which is to be recorded in the notarial deed, or which have another legal association with it (associated legal transaction).

If parties present documents referred to in the preceding paragraph or if the notary determines in another manner that these are associated legal transactions, he or she shall caution the parties on the legal consequences of transactions associated in such manner.

Copies of documents referred to in paragraph two of this Article presented by the participants in the legal transaction or which are in the possession of the notary, shall be attached to the notarial deed.

If the notary determines that documents on the associated legal transaction exist and the participants decline to present these documents, the notary shall refuse to draw up the notarial deed.

If one or more notaries are to participate in the drawing up of a notarial deed, the deed shall also record the data referred to in point 1 of paragraph one of this Article on these notaries and their signatures.

If the notarial deed is later supplemented, revised or amended by way of another notarial deed, this must be recorded by an official note on the previous original notarial deed or, if this has been handed over, on the certified copy held in safekeeping by the notary.

3.5 Personal information

Prior to drafting a notarial deed, a notary shall confirm the identity of the clients and other parties concerned. The manner of confirming the identity of persons participating in drafting of the notarial deed must always be noted in the notarial deed.

In the notarial deed following personal information must be specified: name, surname, birth date, residence address of clients and their representatives, witnesses and interpreters, and in case a participant or a representative is a legal person its name, place of registration and name and surname of the representative.

The process of identifying parties can be done on the basis of identity documents (e.g. identity card, passport, drivers licence), personal acquaintanceship or with two witnesses who confirm the identity of the party.

3.6 Obligations contained in attachments

The notarial deed has to contain obligations within the text of the act.

3.7 Conditional claims

If the maturity of the claim does not depend on the expiry of a deadline but on another fact stated in the notarial deed, the notary shall advise the party that a creditor's written notification to the debtor that the claim has become due, with a statement of the date of maturity and evidence of the serving of the written notification of the maturity of the claim to the debtor shall suffice as evidence of maturity. The notary shall advise the party that instead of proof of service of the written notification on the maturity of the claim to the debtor, the creditor shall authorise the notary to notify the debtor of the maturity.

The notary must, when authorised by the creditor to notify the debtor of maturity referred to in the previous paragraph, notify maturity without delay and compose a minute of this, which shall suffice in calling in the claim for a note of this fact in the land register.

The written statement of the creditor or the notification of the notary referred to in the third paragraph of this article shall be served by registered mail.