



**British Institute of
International and
Comparative Law**

COLLECTIVE REDRESS SLOVENIA



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**British Institute of
International and
Comparative Law**

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I. General Collective Redress Mechanism

1. Scope/ Type

Currently, collective redress is only provided for in consumer disputes. Only actions for the cessation of illegal practices and actions for a declaration of nullity are provided for in the CPA. No collective compensatory action is available (for the mechanism of actions for nullity, see above).

The Slovenian Civil Procedure Act¹ provides for similar mechanisms: joinder of claims (Sl. *atrakcija pristojnosti*, e.g. Art. 49), joinder of proceedings (Sl. *združitev pravn*, Art. 30), as well as, as of 2008, a so-called “model procedure” (Sl. *vzorčni postopek*, Art. 279b). However, these mechanisms do not provide for a possibility that an action be filed on behalf of third persons. They merely help to deal with related actions which have already been commenced in a more economical way. Importantly, the risk related to the costs of losing the proceedings stays entirely with the injured parties.²

However, the CRA which is about to be adopted (see above) will grant the possibility of compensatory, as well as injunctive collective redress. The act will apply in specifically defined civil, commercial and labour law matters. Special chapters of the CRA Proposal deal with collective redress in consumer disputes and in the field of discrimination (in the latter field, only injunctive redress will be available).

2. Procedural Framework

The CRA Proposal contains several procedural provisions. For the questions not regulated in the CRA, Art. 11 of the CRA proposal provides for a subsidiary application of the Slovenian Civil Procedure Act.

a. Competent Court

The CPA does not set out any procedural provisions on the jurisdiction of the courts for collective actions in consumer disputes, the general provisions of the Slovenian Civil Procedure Act therefore apply. The competent court regarding the injunctive and declaratory actions will thus be the court in the place of the permanent residence or statutory seat of the defendant.

Under Art. 6 of the CRA Proposal, the District Court of Ljubljana (*Okrožno sodišče v Ljubljani*) has exclusive jurisdiction for deciding on collective claims and requests for collective settlements. In labour law disputes where labour courts would have jurisdiction for individual claims, the Labour and Social Court in Ljubljana (*Delovno in socialno sodišče v Ljubljani*) has jurisdiction for collective claims and settlements.

Art. 6/3 of the CRA Proposal specifically states that the above-mentioned rules do not affect rules on jurisdiction and applicable law in cross-border disputes.

b. Standing

The currently applicable legislation in consumer disputes, as well as the CRA Proposal opted for the organisational type of collective redress.

Under the Consumer Protection Act, previously established consumer organisations have standing to file collective actions on behalf of the injured parties. Injunctive and declaratory actions can also be filed by an organisation of which the defendant is a member. Actions can be filed by qualified entities from other Member States, after consultation with the Slovenian Office for Consumer Protection (*Urad za varstvo potrošnikov*).³

The CRA Proposal grants standing for filing collective actions and for requesting a collective settlement to all “private law legal entities who exercise a non-profitable activity and where there is a direct connection between their main goals of action and the rights which were allegedly violated and regarding which the action is being filed”, as well as to the State Attorney (Art. 4/1 of CRA Proposal). The latter, however, does not have standing in proceedings where the defendant is the Republic of Slovenia (Art. 4/3 of CRA Proposal).

¹ Zakon o pravdnem postopku (ZPP), Official Gazette RS, No. 26/99 of 15 April 1999, with further amendments.

² Cf. CRA proposal, p. 7.

³ Such office no longer exists as a separate authority; the Ministry of Economy and Technology took over its tasks.

Regarding injunctive actions in consumer matters, the CRA Proposal grants standing only to legal entities which were founded with the aim of protecting consumer rights and interests (Art. 52/1). They can, however, also be founded *ad hoc*, with the aim of obtaining collective redress for a specific violation of rights.⁴ The Ministry of Commerce will inform the European Commission of the entities qualified for filing injunctive actions. Furthermore, such action can be filed by a chamber or a business association of which the defendant is a member (Art. 52/2).

The filing of a collective injunctive action does not prevent individual consumers from filing actions on their own behalf for the protection of their rights arising from the legal relationship with businesses (Art. 53 of the CRA Proposal). The judgment given on the basis of a collective action is binding on the courts deciding on individual claims of the consumers (Art. 55).

Art. 57 of the CRA Proposal regulates standing for filing injunctive collective actions in the area of discrimination. Such actions can only be filed by the Slovenian Equal Rights Ombudsman (*Zagovornik načela enakosti*)⁵ or an NGO with a recognised status of acting in the public interest in protection against discrimination or protection of human rights under the legislation regarding the protection against discrimination.

The persons or entities, which have standing under Art. 4 of the CRA Proposal must furthermore be deemed able to represent the group on behalf of which they wish to file the collective action. Under Art. 6 of the CRA Proposal, the court determines whether the claimant fulfils this condition, taking into account all circumstances of the case, e. g. the existing financial means, human resources and legal knowledge for representing the group, the activities already accomplished regarding the preparation of the collective settlement or collective action, as well as the organising of the injured persons and the communications with them. The potential claimant must convince the court that they will adequately and fairly represent and protect the interests of the whole group. When there are several potential claimants that cooperate regarding the filing of the collective action or settlement, in that they represent a part of the group each, they must all satisfy the conditions mentioned above.

c. Availability of Cross Border collective redress

Under Art. 75/3 of the currently applicable CPA, collective injunctive claims can be filed by an organisation or an independent public authority (e. g. consumer ombudsman) who is, under the law of another EU Member State, established for the protection of the rights and interests of the consumers in that state, if the activity to which the claim relates can affect the situation and the rights of the consumers in that EU Member State.

Art. 56 of the CRA Proposal regulates active standing of entities from other Member States of the EU for filing the injunctive collective action in the area of consumer protection. This is possible if the contentious actions of the business having its statutory seat in Slovenia, or actions which originate in Slovenia, can affect the situation and the rights of consumers in another EU Member state. In such a case, the injunctive collective action can also be filed by an organisation or an independent public authority, which was founded for the protection of the rights and interests of consumers in that country. Such entities and authorities must figure on the list of persons qualified for filing injunctive collective actions, published in the Official Journal of the EU.

d. Opt In/ Opt Out

Principal availability of either/or/both options?

As the legislation currently in force only provides for injunctive and declaratory redress, where the position of third parties (ie. members of the group) can only be improved, the issue of opting in or out is not addressed. Namely, the binding effect of the declaratory judgments obtained under Article 76 of CPA is construed in the way that in the case when the defendant is condemned and certain contractual provisions are declared null and void, courts are bound by that decision when deciding on individual claims of the consumers regarding such contractual provisions. On the other hand, if the defendant wins the collective proceedings, the consumers can still assert the nullity in individual compensatory or other proceedings.

⁴ CRA Proposal, p. 15.

⁵ The authority competent for the protection against discrimination under the Protection against Discrimination Act (*Zakon o varstvu pred diskriminacijo*, Official Gazette RS, No. 33/2016 of 9 May 2016).

The CRA Proposal which, in addition regulates compensatory mechanisms of collective redress, provides for both options.

Conditions for either type (prescribed by law or discretion of the judge?) Opt-out restricted to in-jurisdiction claimants?

The CRA Proposal leaves the decision for opt-in or opt-out system to the discretion of the judge, with some exceptions. Under Art. 30 of the CRA Proposal, the judge must consider all the circumstances of the case, above all the value of individual claims of the members of the group and the circumstances, which are crucial for the certification of the collective compensatory action. If at least one of the claims included in the collective action is seeking compensation for non-pecuniary damage, or if at least ten percent of the members of the group are claiming payment in an amount over 2.000 EUR, only opt-in can be applied.

Furthermore, persons who at the moment of the issuance of the decision on the certification of the collective claim for damages do not have permanent residence or statutory seat in Slovenia must opt-in to the claim.

Opt-out justified by the sound administration of justice

The possibility of adopting the opt-out option in the CRA Proposal is justified by its effectiveness. The experience in other countries has shown that, especially in cases of relatively small damage sustained by individuals, the members of the affected group often do not take the time and effort to communicate their decision to the court and thus do not participate in collective redress conducted under the opt-in system. The opt-out system results in a larger number of participating individuals, which, as is stated in the CRA proposal, can also be beneficial for the defendants. Namely, the risk of individual claimants initiating separate proceedings will be smaller and therefore it will be easier for the defendant to evaluate the whole amount of the compensation they will have to provide as a result of a certain business practice.⁶ The fact that more potential individual claimants are participating in the collective redress also enables a better response by the judiciary which will not have to deal with large numbers of individual proceedings.

Specific measures related to the fact that affected persons are not identifiable

Under Art. 31/3 of CRA Proposal, the court decides on other measures for informing the members of the affected group, if not all members are known and cannot be notified by regular post or e-mail (Art. 31/2). Other measures of informing depend on the number and the composition of the group and where they are located. This can be publication in printed media, in electronic media, the existing internet sites or sites which must be established by the plaintiff.

e. Main procedural rules

Admissibility

The CRA Proposal regulates the admissibility criteria of a collective compensatory claim in Art. 26. Beside the general admissibility criteria for civil claims from the Civil Procedure Act, the collective compensatory claim must contain the following information:

- the specification that the claim is being filed as a collective compensatory claim;
- information about the parties, their addresses and legal representatives;
- a statement of facts and the proposed evidence by which the claimant shows the fulfilment of the conditions from Art. 28 of the CRA Proposal, namely:
 - all the circumstances which are common or similar for all the members of the class,
 - the circumstances for which the claimant knows that they are important only for certain members of the class and other circumstances,
 - the basis on which it can be assessed whether the collective claim is an adequate legal remedy;
- a description of the mass damage, the facts, the evidence and the legal arguments aiming to show that the claim is founded;

⁶ CRA Proposal, pp. 10, 11.

- a description of the class; if there are sub-classes regarding the nature and the amount of damage, such sub-classes must also be described in detail;
- an estimation of the number of the members of the class, as well as the estimation regarding each sub-class if they exist, and the foundation for such estimation;
- a declaration as to whether the proposed proceedings should follow the opt-out or opt-in principle, and the reasons for the chosen option;
- an estimation of the full amount of the monetary compensation or other satisfaction, as well as such estimation regarding sub-classes if they exist, by way of categorisation of damages;
- an explanation of the method of the calculation of the amount from point 8;
- a proposal as to the determination of damages as aggregate damages or as individual amounts for each member of the class, and the reasons for the proposed option;
- a proposal regarding the method of informing the members of the class, e.g. by notification in person, by publication in the media and the establishing of adequate internet sites;
- proposals regarding the conditions for the determination of the right to obtain damages;
- information regarding the costs of the proceedings and the financing of the proceedings by third persons under Art. 59:
- where applicable, information as to whether the authority competent for the protection of competition has already issued a decision regarding the violation and if such decision is final.

The plaintiff must also enclose a copy of the decision on the violation, if it exists, and any other document to which the claim refers, as well as, if possible, the list of all known members of the class with the latest known addresses of their permanent residence or statutory seat.

Certification

Art. 28 of the CRA Proposal regulates certification (confirmation) of the collective compensatory claim. After receiving the defendant's answer to the claim concerning the conditions for certification of the collective compensatory claim, or after the expiration of the period for such answer, the court determines an audience regarding the certification. Both parties are invited to participate at the audience. Members of the group or other qualified organisations can inform the court of their position concerning the questions relating to the certification of the claim. If the court deems necessary it will invite such person or entity to participate at the audience and present their view.

The court will certify (confirm, allow) the collective compensatory claim under the conditions of Art. 28/4 of the CRA Proposal where:

1. the different demands which constitute the collective claim are of the same nature, they are filed on behalf of a determinable group of persons and they concern the same, similar or connected factual or legal issues, they concern the same case of mass damage and they are suitable for being decided on in collective proceedings.
2. there are more common legal and factual issues for the whole group than questions relating only to individual members of the group;
3. the group is so numerous that the filing of individual claims or another manner of joining its members, e.g. joinder of claims or joinder of actions, would be less efficient than the filing of a collective compensatory action;
4. the plaintiff fulfils the conditions regarding the ability to represent the group under Art. 5 of the CRA Proposal;
5. the collective compensatory action is not manifestly ill founded;
6. the conditions of Art. 59 of the CRA Proposal regarding the agreements on costs and funding are fulfilled;
7. the court deems that the eventual agreement with the lawyer on contingency fees under Art. 61 of the CRA Proposal is reasonable.

When deciding on the adequacy of the claims for being dealt with within a collective compensatory claim the court will take into account the following factors:

- whether the collective proceedings enable an effective resolution of common legal and factual issues;
- the costs and benefits regarding the continuation of the collective proceedings;
- whether the members of the class have filed any individual claims regarding these or similar claims;
- the size and characteristics of the class;
- how the membership of the class may be established;

- whether aggregate damages can be determined regarding the claims;
- whether alternative dispute resolution or other options for resolving the dispute are available.

Art. 29 of the CRA Proposal regulates the court's decision on the certification of the collective compensatory action. If the court deems that the conditions set out above are not fulfilled, it will dismiss the collective action. This is a procedural decision with no *res judicata* effect. If the conditions are fulfilled, the court issues a decision which must contain information about the plaintiff and the defendant, the description of the mass harmful event to which the collective proceedings refer, a detailed description of the group, the decision on opt-in or opt-out type of the action and the time limit between 30 and 90 days for the members to inform the court of their decision to opt-in or out, the time limit for written statements of the group members and other qualified persons, and the decision on the manner of informing the group members.

The court can make its decision on certification conditional on the plaintiff undertaking additional steps, for example, making information about the collective action available to the public (e.g. that they establish an internet page), or that the plaintiff deposits security for the costs of the proceedings which would have to be reimbursed to the defendant in case the latter wins.

In the decision on certification of the collective compensatory action, the court sets a time limit between 30 and 60 days from the finality of the latter decision for the defendant to respond to the claim.

Single or Multi-stage process

Under the CRA Proposal there is a four-stage process. After the certification of the claim (first stage of the proceedings), there is the period in which members of the class either opt-in or opt-out of the proceedings (depending on the decision of the court on this question) (second stage). When the designated period expires, the court will proceed with the deciding the claim on the merits (third stage). The final decision is followed by the enforcement (fourth stage).

Deadlines

Under Art. 27/2 the court serves the admissible claim on the defendant for response. At this stage only the arguments regarding the certification of the claim are to be asserted. No time limit is provided for in the CRA Proposal, so the 30-day time limit from the Civil Procedure Act applies (Art. 277/1).

At the time of service on the defendant, the collective action is published in the Registry of Collective Actions (without the names of the known members of the group).

After receiving the defendant's response regarding the certification conditions (or after the expiration of the time limit for the defendant's response), the court invites both parties to a hearing where the certification criteria is discussed.

In its decision to certify the action, the court sets a 30-90 day time limit for the members of the class to opt in or out. In this decision, the court also sets a 30-60 day time limit for the defendant to respond to the claim on the merits, as well as a time limit for the potential members of the group and other qualified entities to lodge their written arguments.

The CRA Proposal does not set any other deadlines. The Civil Procedure Act has effect regarding all other deadlines.

Case management

In comparison with regular civil proceedings, the court has a much wider jurisdiction to actively manage collective proceedings with the aim of protecting the interests of the individual members of the group who are not parties to the proceedings. The court exercises this role throughout the different stages of the collective proceedings, starting with the assessment of the plaintiff's ability to represent the group, and further with certification the claim, during the proceedings on the merits and in the proceedings for the enforcement of the

judgment. This enhanced role of the court is further justified by the usually high complexity of collective proceedings.⁷

Under Art. 35 of the CRA Proposal, the recognition of facts, the withdrawal of the claim, the modification of the claim or the renouncement of the claim will be accepted by the court only if the court deems that this is not contrary to the interests of the group. If the court deems that the plaintiff severely violates the interests of the group or that the plaintiff can no longer be considered as an adequate representative of the group, the court can, based on the proposal of a member of the group or another qualified organisation, issue a decision that the plaintiff be replaced with another qualified organisation or with one of the members of the group if they are ready to enter the proceedings. The original plaintiff nevertheless remains liable for all the costs incurred until the replacement of the plaintiff. If such replacement is not possible, the court issues a decision ending the collective procedure.

Expediency (particularly in injunctive cases)

In injunctive cases, the plaintiff must first inform the potential defendant of their intent to file a collective injunctive action. The action can only be filed after a minimum of 15 days from the potential defendant's receiving such information (temporary injunctions can still be demanded under the Claim Enforcement and Security Act without regard to the latter time limit).

Other time limits and deadlines are the same as in collective compensatory cases explained above.

Evidence/discovery rules

The CPA and the CRA Proposal do not contain any rules on evidence. Hence, the rules of the Civil Procedure Act apply. Currently, the latter does not contain rules providing for discovery/disclosure. In principle, the parties cannot be obliged by the court to provide evidence which could harm them. However, amendments to this act have already been adopted by the Slovenian Parliament and will enter into force in September 2017. Under the new rules, disclosure/discovery will be possible to a certain extent. Namely, parties will be able to ask the court to oblige the opposite party to disclose specific information and the court will decide whether the right of the demanding party to a fair trial prevails over the right of the other party to withhold potentially harmful evidence. If the request is granted, the court will decide whether the documents must be disclosed as a whole or whether the opposite party can redact them in order to conceal certain information which is unnecessary for the proceedings. Also, an expert can be appointed to study the documents and prepare a report for the court, without the court or the parties seeing the full set of documents (new Art. 219b of the Civil Procedure Act). This amendment will presumably be of much use, especially in antitrust collective proceedings.

Interim measures

Under Art. 50 of the CRA Proposal, the plaintiff can request the issuing of a temporary protective measure following the provisions of the Claim Enforcement and Security Act (cited above) by which the court orders the defendant to cease the activity damaging the common interests of the consumers. The court can issue a temporary protective measure even where the defendant has not yet started the harmful actions provided they are about to start. The Claim Enforcement and Security Act regulates the conditions for the issuing of such a measure. Under Art. 272, the plaintiff must demonstrate the probable existence of the claim, as well as the danger that the claim will not be satisfied without the issuing of the temporary measure (or that the defendant will not suffer worse consequences if the measure will prove not to be founded than the plaintiff would suffer if such measure was not granted).

Court directed settlement option during procedure

Chapter II (Arts. 12 to 25) of the CRA Proposal regulates the procedure for confirmation of a collective court settlement. The parties can conclude a settlement confirmed by the court without filing a collective compensatory action. Where an action has been filed the court will, following the principle of peaceful dispute resolution, promote the possibility of settlement and assist the parties in reaching one.

⁷ CRA Proposal, p. 12.

The court not only controls the formal aspect of the collective settlement, but also assesses whether the settlement guarantees a reasonable and just compensation for the different categories of injured parties, accounting for the fact that compensation obtained by a settlement will naturally be somewhat lower than that claimed in the proceedings.⁸

At the beginning of the proceedings, the court can also refer the parties to mediation under the Act on Alternative Dispute Resolution in Judicial Matters.⁹

In case of out of court settlements: judicial control

A settlement controlled and confirmed by the court is referred to as a 'court settlement' (although the contents were entirely drafted outside of the court). Out-of-court settlements are considered as contracts and in the case of refusal by the debtor to fulfil their obligation from such settlement, the creditor must initiate judicial proceedings to obtain an enforceable judgment.

3. Available Remedies

a. Type of damages

Art. 39 of the CRA Proposal provides that in a case where all the members of the group are known and it is possible to decide on their individual claims without this prolonging the proceedings disproportionately, the court will name all members of the group in the operative part of the judgment together with the amount of money or other obligation that the defendant must provide to each of them. Such a collective compensatory judgment is an enforceable title and each member of the group can initiate enforcement proceedings regarding the amount that is owed to them.

Art. 40 of the CRA Proposal regulates situations where it is not possible to determine the damages individually. In such cases the court will determine, in the operative part of the judgment, the total amount of the damages or other compensation (aggregate damages) or an amount or otherwise determinable value (e.g. percentage of the price or a unit) or other obligation which will be fulfilled to every member of the group who has applied or will apply and prove that they fulfil the conditions determined in the judgment, whereas the court also estimates the expected full amount of the fulfilments of the defendant. The court will set a time limit, no shorter than 90 days and no longer than six months, within which the members of the class must demand fulfilment. The amount of aggregate damages or the expected full amount of payments must be transferred on the fiduciary account of a notary who was nominated as the administrator of the collective damages.

b. Allocation of damages between claimants for compensatory claims/ distribution methods

If the court determined the individual amounts of damages payable to the known members of the group, then they will be served with the collective judgment and will be able to start enforcement proceedings regarding their individual claims.

If the court determined aggregate damages or the amount of damages for not individually named members of the group, the latter are informed of the collective judgment under the same rules as they were informed about the opting in or out of collective proceedings (via regular post, e-mail or/and media).

The administrator of the collective damages makes a draft list of the injured parties and sends it to the court, to both parties and to the persons for which the administrator deems that they cannot figure on the list. Both parties can oppose specific persons being on the list. The court examines the list of injured parties at a hearing, to which the administrator, both parties and the persons who were not put on the list by the administrator or whose listing was opposed to by the parties, are invited. After the hearing, the court decides on the final list of injured parties and amounts of money or other fulfilments to which they are entitled. No appeal is possible against such decision.

What follows is the payment of damages to the injured parties. If, after all the payments and the payment of the costs of the proceedings, there is any money left, it will be returned to the defendant. After the

⁸ CRA Proposal, p. 11.

⁹ Zakon o alternativnem reševanju sodnih sporov, Official Gazette RS, No. 97/09 of 19 November 2009, and 40/12 of 30 May 2012.

accomplishment of all acts regarding the payments, the administrator prepares the final report including the list of all payments, and sends it to the court for confirmation. The collective compensatory procedure is finished when the court issues its decision confirming the final report.

c. Availability of punitive or extra-compensatory damages and their conditions

Punitive damages are not allowed.

d. Skimming-off/ restitution of profits

The CRA Proposal does not provide for skimming-off or the restitution of profits arising from illegal conduct (outside compensation that will have to be paid in the case of a successful compensatory collective claim).

e. Injunctions

Chapter IV (Arts. 47 to 50) of the CRA Proposal regulates the collective injunctive actions within the material scope of application of the Act. Based on such actions, the court can order the ceasing of the violations or the endangering of the common interests of a large number of persons or of persons who cannot be individually named, as well as the interdiction of such actions in the future. In cases where a special state authority is established for the protection of specific groups or interests, such authority can also file the collective injunctive claim, beside the other qualified persons from Art. 4 of the CRA Proposal.

Before filing the injunctive claim, the qualified organisation must inform the future defendant of their intent to file the collective injunctive claim if they do not cease the prohibited activity. The collective action can be filed no earlier than 15 days following the receiving of the said warning by the potential defendant. Nevertheless, the potential plaintiff can request that the court issue a temporary protective measure before the filing of the claim.

If the court finds that the collective injunctive action is well founded on the merits, it will establish the existence of the activity, which violates the collective rights, order that the defendant must cease such activity, and forbid such activity in the future. The court can also decide that the judgment be published at the cost of the defendant or that an illegal advertising be rectified, if it deems that this would contribute to the mitigation or elimination of the damaging consequences of the violations.

f. Possibility to seek an injunction and compensation within one single action

The possibility to seek an injunction and compensation within one single action is not expressly provided for in the CRA Proposal. We deem that it is in the discretion of the court to decide whether all criteria for the admissibility and the certification are met and if both actions can be dealt with together.

g. Possibility to rely on an injunction in separate follow-on individual or collective damages actions

The judgment in collective injunctive proceedings does not constitute a basis for individual or collective compensation claims. Equally, if the injunction is not granted, this does not preclude the possible future individual claims for damages.¹⁰

However, in consumer disputes, Art. 54 of the CRA Proposal provides that the judgment granting the interdiction of certain general contractual conditions or contractual provisions prepared in advance, includes the interdiction for the business to invoke such conditions or provisions in previously concluded contracts. If the court establishes the illegal doings of the business, such judgment is binding on other courts regarding the proceedings initiated by individual consumers for the protection of their rights from the legal relationships with the same business (Art. 55).

h. Limitation periods

Art. 8 of the CRA Proposal regulates special rules on the limitation periods regarding claims which are dealt with in collective proceedings. The limitation periods regarding claims which are the object of a collective compensatory claim or of a proposal for a collective settlement are suspended for the duration of the collective proceedings. They continue to run from moment when the proceedings are ended without a decision on the merits, or, regarding persons who are not bound by the collective judgment or collective settlement, when the

¹⁰ CRA Proposal, p. 18.

time limit for opting in or not opting out expires. In the case of legal time limits for starting judicial proceedings regarding a claim which is the object of collective proceedings, such time limits cannot expire less than 30 days after the ending of the collective proceedings.

4. Costs

a. Basic rules governing costs and scope of the rules

Funding is regulated in Chapter V of the CRA Proposal. The court fees, as well as attorney fees, depend on the value of the object of the claim, which in collective redress will often be very high. Since this could dissuade the potential plaintiffs, Art. 58 of the CRA Proposal provides that the value of the object of the claim (regarding which the fees will be calculated) is considered as the amount of 20% of the full amount of the individual claims of the group members or 20% of the demanded aggregate damages. In injunctive collective actions, such estimated value cannot be higher than 10.000 EUR.

Art. 25 of the CRA Proposal provides that the parties to the collective court settlement must cover half of the costs each, if the settlement does not provide otherwise.

b. Loser Pays Principle (and exceptions from it)

Under Art. 60 of the CRA Proposal, the party who does not succeed in the collective proceedings must pay the opposite party the costs which were necessary for conducting the proceedings. The necessary costs include the costs which were necessary in order to prepare for the filing of the collective action and to inform the group members.

Under Art. 62 of the CRA Proposal the individual group members are not entitled to reimbursement of the costs and they are not liable for the payment of the costs of the defendant, except from those which they caused themselves.

5. Lawyers' Fees

Lawyers' fees are regulated in Art. 17 of the Slovenian Attorneys Act.¹¹ The attorney has the right to obtain payment for their work and compensation of the costs related with their work based on the Attorneys Tariff¹² adopted by the Attorneys Chamber after the previous consent of the Minister of Justice and published in the Official Gazette RS. By a written agreement, the attorney and their client can agree to a higher payment than the payment provided for in the tariff. It is important to note that the losing party will only have to reimburse the costs of the opponent's attorney in the amount provided for in the tariff, and not the higher amount possibly provided for in the contract between the opponent and their attorney.

Art. 62 of the CRA Proposal provides the possibility for a contingency fee agreement. As in other court proceedings in Slovenia, the plaintiff and the attorney can conclude an agreement, under which the attorney will acquire no more than 15% of the amount which will be granted by the final judgment. If the attorney accepts to bear all costs of the collective proceedings in the case of the defeat of the plaintiff (i.e. also the costs incurred by the opposite party),¹³ they may be granted up to 30% of the granted amount.

6. Funding

Under Art. 59 of the CRA Proposal, the plaintiff must publicly reveal and inform the court of its source of funding for the collective proceedings. The court will not certify the collective action if, in the case of funding by a third party, it establishes: that there is a conflict of interests between the third person and the plaintiff, or that the third person does not have enough financial means to fulfil its obligations regarding the plaintiff, or that the plaintiff does not demonstrate that they have enough financial means for the reimbursement of the costs of the defendant in case of losing in the proceedings. If the third-party funder is a private law entity, such entity must not try to influence in a decisive manner the procedural choices of the plaintiff, including the decision to conclude a court settlement. They must also not finance a collective action against the defendant who is in

¹¹ Zakon o odvetništvu (ZOdv), Official Gazette RS, No. 18/1993 of 9 April 1993, with further amendments.

¹² Odvetniška tarifa, Official Gazette RS, No. 2/2015 of 9 January 2015.

¹³ CRA Proposal, p. 20.

competition with the funder, or against a defendant, of which the funder is dependant; they must also not demand interests above the legal rate for the provided financial means.

Since for the time being no collective proceedings have been initiated in Slovenia, we cannot report on the experience with the funding of such proceedings.

7. Enforcement of collective actions/settlements

a. Framework for enforcement

According to the CRA Proposal, in cases where the court names all members of the group and the amount that each of them is granted, such judgment is served on all group members who can start enforcement proceedings under the Slovenian Claim Enforcement and Security Act¹⁴ in case the defendant does not fulfil the obligations from the judgment.

When aggregate damages are determined or where the amounts of individual damages are determined without the naming of the group members, the administrator of the collective damage will establish the list of the injured persons and will proceed, after the confirmation of the list by the court, to the individual payments.

b. Efficient enforcement of compensatory/ injunctive order

Under the CRA Proposal, compensatory judgments will be enforced as stated above. The enforcement of injunctive judgments can only be requested by the plaintiff. Under the Claim Enforcement and Security Act, the enforcement will be conducted by way of monetary fines.

c. Cross border enforcement

There are no special rules on cross border enforcement of judgments in collective redress. Such enforcement is regulated by the national, EU or international acts, depending on their respective scope of application.

8. Number and types of cases brought/pending

Currently, only injunctive collective actions are provided for in consumer disputes. However, no such action has been filed to date.

9. Impact of the Recommendation/Problems and Critiques, including

a. Consequences where no collective redress mechanism is available

To our knowledge, no empirical study has been made, but there is a consensus that it is important to regulate collective redress possibilities, including compensatory action, to respond to mass violations of consumers' and workers' rights, as well as the violations of antitrust, as classical mechanisms of civil procedural law do not provide an adequate response to such situations.

b. Impact of the collective mechanism (or lack of) on behaviour/ policy of stakeholders (direct/ indirect, economic/social impact)

Injunctive collective claims and claims for the declaration of nullity, both in consumer disputes, have been available in Slovenia for the last 15 years, but no proceedings have been initiated under these rules. Since no claims have been concluded, the impact, if it exists, is very difficult to assess.

It must, however, be mentioned that there are several cases where consumer organisations or private persons organised the filing of individual claims by the injured persons, by providing the necessary information and the representation by a common attorney. This was successful and undoubtedly many injured persons participated who would not otherwise have initiated court proceedings. Nevertheless, contrary to the position under a collective action, it was necessary for the courts to deal with a large number of individual actions and the injured persons ran the risk of paying the defendant's costs if unsuccessful.¹⁵

¹⁴ Zakon o izvršbi in zavarovanju (ZIZ), Official Gazette RS, No. 51/1998 of 17 July 1998, with further amendments.

¹⁵ Cf. CRA Proposal, p. 7.

c. Incompatibilities with the Recommendation's principles

The CRA Proposal was prepared based on the Recommendation. Apart from not respecting the recommended period for introducing the collective redress in the national law (the new act will presumably enter into force in 2018), we have detected no significant incompatibilities with the Recommendation.

Two points could potentially prove problematic from the point of view of the recommendation. Firstly, contingency fees, which are allowed but regulated in detail, and secondly, the possibility of the opt-out type of collective redress. The Ministry addresses and thoroughly (and, in our opinion, satisfactory) explains its choices in the explanatory part of the CRA Proposal.

d. Problems relating to access of justice/fairness of proceedings including

Restrictions on access to justice negatively affecting collective redress

The CPA currently in force only grants standing to bring injunctive collective actions in the area of consumer protection to already established organisations for the protection of consumers. This has proven to be insufficient, since no collective action has been filed in the 15 years since this action became available in Slovenian law. Since the mentioned regulation proved to be insufficient, the Ministry of Justice has opted for a broader scope of qualified entities in the CRA Proposal.¹⁶

Regarding admissibility and certification conditions for collective redress in the CRA Proposal, only time will show whether they are too restrictive or not.

Time and burden of collective actions on courts and parties compared to non-collective litigation

It is presumed that collective litigation will prevent the courts of being overburdened by a large number of individual claims arising from the same harmful event or practice.¹⁷ However, this might also be perceived as paradoxical, since one of the main reasons for the introduction of collective redress is the fact that in many cases of mass harm, individuals would not introduce individual actions for different reasons (e. g. the amount of individual demands is too little for the potential claimants to invest time and money in legal proceedings), but it is (also) in the public interest that they act.

Risks of and examples of abusive litigation

Being that there is no experience with collective litigation yet, we cannot report any examples of abusive litigation.

Effective right to obtain compensation

We deem that the CRA Proposal provides for effective instruments for the adjudication of compensation in collective redress. The enforcement of the judgment is conducted by the administrator of collective damages or, in the case of individually determined amounts, the enforcement courts.

¹⁶ CRA Proposal, p. 15.

¹⁷

II. Sectoral Collective Redress Mechanism(s)

At the time of writing, collective redress is only provided for in the Consumer Protection Act (CPA). This act regulates the injunctive collective actions and the actions for establishing the nullity of general contractual conditions or of certain contractual provisions. It is anticipated that these provisions will soon be replaced by the provisions of the Collective Redress Act, prepared by the Ministry of Justice and waiting for the confirmation of the Government in order to be sent to the Parliament for adoption.

The CRA Proposal contains provisions on collective court settlement, collective compensatory actions and collective injunctive actions. Within Chapter IV (Collective Injunctive Action), two subchapters regulate collective injunctive claims in consumer and discrimination area.

The solutions of the CPA and of the special subchapters of the CRA Proposal are included in the presentation of the general mechanisms of collective redress.

Interplay between injunctions and compensation and follow on actions

The interplay between injunctions-compensation is discussed in the presentation of the general mechanisms of collective redress.

Art. 9 of the CRA Proposal regulates follow-on actions in the area of competition law. When proceedings are pending at the authority competent for the protection of competition regarding the determination of violation of the provisions on antitrust, the collective claim is only admissible when the said authority adopted a final decision. If the said authority starts proceedings after the filing of the collective claim, the court will stay the proceedings regarding the collective claim until the antitrust authority has adopted a final decision. If special act does not provide otherwise, the limitation period regarding the demand from the collective claim or the proposal for a collective settlement is suspended from the day when the antitrust authority performs any act with the aim of examination or proceedings regarding the violation, until the expiration of one year period after the decision on the violation has become final or the proceedings have ended in another manner.

III. Information on Collective Redress

1. National Registry

Art. 10 of the CRA Proposal provides for a Registry of collective claims that will be held at the Slovenian Supreme Court in electronic form. The said article contains a non-exhaustive list of the information which can be published in the registry, but the court competent for the collective claim or settlement decides which data will actually be published, so that as many members of the class will be informed. The access to all information in the registry will be free and open to everybody. The link to the registry will be available on the internet site of the judiciary, on a “visible” place.

As the establishing of the registry will open many technical questions, the CRA Proposal provides that the Ministry of Justice should adopt more detailed rules on the functioning of the registry.

2. Channels for dissemination of information on collective claims

The main channel (and the only one provided for by the CRA Proposal) is the Registry of Collective Claims.

IV. Case summaries

At the time of writing of this report, no collective redress actions have been filed in Slovenia, even though injunctive and declaratory actions are provided for by the CPA. The doctrine has been critical about the passivity of the consumer associations which have standing to activate collective redress mechanisms.¹⁸

¹⁸ Galič, p. 221.

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