COUNTRY COMPARATIVE GUIDES 2021

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Slovakia
LITIGATION

Contributing firm

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This country-specific Q&A provides an overview of litigation laws and regulations applicable in Slovakia.

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SLOVAKIA
LITIGATION

1. What are the main methods of resolving commercial disputes?

Slovak law offers two main methods of resolving disputes, either by bringing a lawsuit before a general court or through arbitration proceedings. Mediation is also an alternative.

2. What are the main procedural rules governing commercial litigation?

Civil procedure law is governed in particular by the following Acts: Act No. 160/2015 Coll., Rules of Civil litigation ("RCL"); Act No. 161/2015 Coll., Rules of Civil investigative procedure ("RCIP"); Act No. 244/2002 Coll. on arbitration proceedings that regulates proceedings held by courts of arbitration; Act No. 233/1995 Coll. on court bailiffs and execution (Rules of Distraint Procedure) that regulates enforcement of court decisions. Civil procedure is divided into two basic categories: civil litigation regulated by RCL; and civil investigative procedure regulated by RCIP (proceedings where courts can investigate the facts or produce evidence on their own, e.g. in matters concerning the Register of Companies and proceedings in certain matters of legal entities – e.g. proceedings on dissolution of a legal entity or proceedings on declaring nullity of a company). We mention the civil investigative procedure here since its outcome may in some cases affect the litigation.

3. What is the structure and organisation of local courts dealing with commercial claims? What is the final court of appeal?

The system of general courts in Slovakia consists of district courts that are the courts of first instance, regional courts that are the courts of appeals against decisions of the courts of first instance, and the Supreme Court of the Slovak Republic that is the appellate review court. Unlike an appeal, an appellate review is an extraordinary remedial measure admissible only against valid decisions of lower courts and should rectify most serious errors. For completeness we point out that the Supreme Court of the Slovak Republic may be a court of appeals in certain cases if a regional court is the court of first instance – e.g. in the case of proceedings on abstract control in consumer matters. The Constitutional Court of the Slovak Republic stands outside the general courts system and decides on constitutional matters.

4. How long does it typically take from commencing proceedings to get to trial?

The law does not stipulate a specific period within which the court should schedule a preliminary hearing or first regular hearing. The first regular hearing is usually scheduled within 3 to 9 months of the action filing date, depending on the workload of the court and the type of claim. According to the statistics of the Ministry of Justice of the Slovak Republic, the average duration of civil proceedings in 2017 was 20.8 months in civil matters and 21.6 months in commercial matters.

5. Are hearings held in public and are documents filed at court available to the public? Are there any exceptions?

In principle, hearings are public, however, certain exceptions apply. The public may be excluded from the entire hearing or a part thereof only where a public hearing would pose risk to the protection of classified information, sensitive information and information protected by a special regulation (e.g. trade secret or banking secrecy) or an important interest of a party or witness. Documents filed with the court are accessible only to the parties to proceedings and their representatives. Other persons may examine the court file only if they prove a good reason therefor and provided that the rights of the parties will remain thereby unaffected.

6. What, if any, are the relevant limitation

periods?

Limitation periods and the moment from which they begin are stipulated by law. In commercial relationships, the general limitation period is 4 years and it begins on the date when the claim could have been filed in a court for the first time unless otherwise set out by the law. The commercial law regulates the beginning of the limitation period differently, e.g. in the case of claims arising out of a breach of obligations, the limitation period begins on the date of the breach; in the case of damages claims, the limitation period begins on the date when the aggrieved party has learned or could have learned about the damage and about who is liable for damages; in the case of rights arising out of total damage or a loss of shipment, the limitation period begins on the date when the shipment was to be delivered to the recipient, in other cases on the date of the shipment receipt. Slovak commercial law also recognizes specific limitation periods – e.g. damages cannot be awarded if the claim has not been filed in ten years since the breach of obligations occurred, regardless of the fact when the aggrieved party has learned about the damage and about who is liable for damages. Rights arising out of damage caused to transported objects and by belated shipment/mail delivery against the sender and against the carrier cannot be filed after one-year limitation period expires. In civil law (as opposed to commercial law) the limitation period is three years and it begins on the date when the right could have been exercised for the first time.

7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?

Slovak law does not set out any procedural formality with which the plaintiff must comply prior to filing a lawsuit. In practice, however, creditors frequently give late payment notices to debtors with an additional period to pay their dues before going to court.

8. How are commercial proceedings commenced? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?

Civil litigation commences when a complaint or motion for an interim injunction or freezing order is filed with the court. The court then serves the defendant with the complaint and invites him/her to respond with an answer; all of this is done electronically or by mail. A document is deemed served when the addressee confirms the delivery of the document. If the addressee fails to confirm the delivery of the document (in the case of certified mail, such as the case of a defendant being served with the complaint for his/her response) or fails to collect the mail, the document is deemed delivered under RCL after a certain period of time has passed. This also applies if the addressee does not learn about the mail – the so-called deemed service applies. If legal documents are to be served in the EU Member States, the EU regulations apply. If documents are to be served outside the EU, the relevant authority of the country is served with a request for service under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. If the country is not a signatory to any multilateral international treaty, the courts proceed according to a bilateral or convention arrangement, and where existing arrangements such as a bilateral or convention arrangement do not exist, diplomatic channels are used under Act No. 97/1963 Coll. on international private and procedural law.

9. How does the court determine whether it has jurisdiction over a claim?

In general, under the RCL Slovak general courts have jurisdiction over private disputes and other private matters, unless law stipulates that a certain matter belongs in the jurisdiction of another administrative body. Jurisdiction of Slovak courts applies if a person against whom/which a complaint has been filed has primary residence or registered office in the Slovak Republic, and where property rights are involved, if such a person has property in the Slovak Republic. Under Act No. 97/1963 Coll. on international private and procedural law (hereinafter “AoIPPL”), the court shall verify its jurisdiction ex officio before it starts the proceeding on the merits, on the basis of facts that exist at the time of filing the complaint. If those facts subsequently change, the court retains its jurisdiction over the case. The international procedural law stipulates further methods of jurisdiction determination – e.g. if a claim involves real property situated in the Slovak Republic, the Slovak courts have exclusive jurisdiction. In the event of international disputes, jurisdiction of the court is established: according to the EU regulations if the parties have their primary residence or registered office in the EU member state – in particular in accordance with Regulation (EU) No 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; or according to a bilateral or convention arrangement or AoIPPL (where bilateral or convention arrangement do not exist), if the parties do not have their primary residence or registered office in

the EU member state. However, national and EU law also grant the parties the option to choose the country in which the courts will have jurisdiction over their case. An arbitration clause may exclude jurisdiction of a general court. The court does not examine on its own (ex officio), whether there is an arbitration clause in the contract (and therefore, whether it lacks jurisdiction). Therefore, the defendant who challenges the general court's jurisdiction needs to file a motion with the court. Such motion must be filed along with the first procedural action that is available to the defendant; otherwise the court will dismiss the motion. If a Slovak court is the court of competent jurisdiction, that court shall ex officio verify its factual, causal and functional jurisdiction. The court verifies whether the venue is appropriate only upon objection of the defendant that must be filed along with the first procedural action that is available to the defendant.

10. How does the court determine what law will apply to the claims?

The general principle that "the court knows the law" applies – in other words, if a foreign element is present in a legal relationship, the court alone is responsible for determining which law applies to a particular case, and how. The court may on its own initiative take evidence necessary to determine which law applies. In the event of conflict of laws, courts determine the applicable law: according to the EU regulations if the parties have their primary residence or registered office in the EU member state – in particular according to Regulation (EC) No 593/2008 on the law applicable to contractual obligations (Rome I) or Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations (Rome II); according to a bilateral or convention arrangement or AoIPPL (where bilateral or convention arrangement do not exist), if the parties do not have their primary residence or registered office in the EU member state.

11. In what circumstances, if any, can claims be disposed of without a full trial?

The court may issue a payment order or an European payment order if it is possible to make a decision on the basis of facts stated by the plaintiff, perceived by the court as uncontested, in particular if those facts are supported by documentary evidence. If so, the court will decide without a statement of the defendant and without scheduling a hearing. Under RCL, a claim may also be decided on by abridged decisions, i.e.: default judgment – if the plaintiff or defendant is procedurally passive in a lawsuit concerning fulfilment of an obligation (as opposed to lawsuits where the plaintiff seeks a declaratory judgment for example) and the conditions under RCL have been met; judgment on acknowledgment of claim – if the defendant entirely or partially acknowledges the raised claim; and judgment on waiver of claim – if the plaintiff entirely or partially waives his/her raised claim. We also have a partial judgment used by the court to decide on any of several claims raised or on a part of a single claim raised, provided that the claim has become uncontested in the course of the proceedings, and an interim judgment used by the court to decide on the basis or reason of a raised claim. If the court does not decide on the merits, it issues a resolution instead of a judgment.

12. What, if any, are the main types of interim remedies available?

There are two pre-action interim remedies available –interim injunction and freezing order. A motion for interim injunction should include, in addition to the general information mandatory for any motion, a description of decisive facts giving grounds for the necessity of interim injunctions or concern that enforcement of the claim could be thwarted, a description of facts reliably confirming the grounds for and duration of the entitlement for which protection is sought, and it must be clear from the motion which interim injunction is sought by the claimant. By freezing order, the court may order pledge of assets, rights or other property of the debtor to secure a monetary claim of the creditor if there is concern that enforcement of the claim could be thwarted.

13. After a claim has been commenced, what written documents must (or can) the parties submit and what is the usual timetable?

If the conditions of proceedings are met (jurisdiction of the court for example), once a complaint is filed, the court serves the defendant with the complaint and invites him/her to respond with an answer. The plaintiff may then respond to the defendant's answer (the socalled replica, derived from the word "reply"). The defendant may then respond to the plaintiff's response (the so-called duplica). Those statements of the parties should provide factual information important for the decision making on the merits and designate evidence to prove those facts. The court might not take later statements and evidence into consideration. Where the nature of evidence allows it, evidence should be enclosed with the written statements of the parties – e.g. documentary evidence or expert opinions. Power of attorney is a mandatory annex where a defendant is

represented by a legal counsel. The timetable depends on the workload of the court and complexity of the dispute. A commercial dispute can therefore continue for several years. In the course of the proceedings, the court usually gives the parties a period of 15 days for their written statements (e.g. for a defendant's answer and plaintiff's response – replica and duplica). However, it might take longer for a court to process those statements due to excessive caseload.

14. What, if any, are the rules for disclosure of documents? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?

"Disclosure", as it is known in common law, is not known in Slovak law; it is therefore impossible to answer this question.

15. How is witness evidence dealt with in commercial litigation (and, in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?

The court orders examination of a witness upon a motion of a party to the proceedings. In civil investigative procedure the court may order examination of a witness also without a motion if the court finds it necessary for establishing the factual situation. Witnesses give only oral evidence at a hearing before a judge. The court conducts the witness examination; the court first prompts the witness to describe everything he/she knows about the matter. During this stage the witness is not interrupted by questions. The parties to the proceeding, or with consent of the court also other attending subjects, may then pose questions to the witness. The court conducts the witness examination by deciding on admissibility of the questions – inadmissible are questions that are not related to the subject-matter of the proceedings, captious questions or suggestive questions. "Deposition", as it is known in common law, is not known in Slovak law; it is therefore impossible to answer this question.

16. Is expert evidence permitted and how is it dealt with? Is the expert appointed by the court or the parties and what duties do they owe?

Expert evidence may be taken in two ways – by a professional statement or an expert report. Expert evidence in form of a professional statement is preferred where it is necessary to ascertain facts for which professional knowledge is needed. If it is so, upon a motion of a party to the proceedings, the court orders a professional statement of a qualified person (other than a state-recognized expert). The court assesses the qualification of such a person. The state bears the cost of a professional statement; however, the court may order the party that filed the motion for a professional statement to pay an upfront fee corresponding with the estimated cost of the professional statement. The court may appoint an expert witness upon a motion of a party to the proceeding if the decision-making depends on the assessment of facts for which scientific knowledge is needed and due to the complexity of the matter, a professional statement is not sufficient. The expert witness then prepares an expert report in writing that answers the questions posed by the court. If the court appoints an expert witness, the state bears the cost, however, the party that filed the motion for an expert report should pay an upfront fee corresponding with the estimated cost of the expert report. Parties to the proceeding may also order their own expert report and pose the expert their own questions to be answered in the expert report. If the court decides that such a private expert report is admissible as evidence, it is regarded as an expert report prepared by an expert witness appointed by the court. The party that ordered a private expert report should bear the cost of the expert report. The winning party is awarded the costs of proceedings – including the cost of expert reports and professional statements. An expert and/or expert witness shall be objective, independent and unbiased when answering the questions, regardless of whether the expert and/or expert witness is appointed by the court or prepares an expert report ordered privately by a party to the proceeding.

17. Can final and interim decisions be appealed? If so, to which court(s) and within what timescale?

Final decisions and partial and interim decisions may be appealed. Appeals are decided on by courts of higher instance – e.g. if a district court is the court of first instance, a regional court is the appellate court. If a regional court is the court of first instance (in extraordinary cases – e.g. in the case of proceeding on abstract control in consumer matters), the Supreme Court of the Slovak Republic is the appellate court. The timescale of decision on appeals depends on the complexity of the matter and the court's caseload. An appellate court usually decides on appeals within 20 months of the appeal filing.

18. What are the rules governing enforcement of foreign judgments?

Enforcement of a foreign judgment follows only after the judgment recognition, i.e. after it has been declared as having legal force in the Slovak Republic. In the event of decisions of the courts of the EU countries, capability of foreign judgments of being enforced is regulated by EU law – in particular Regulation (EU) No 1215/2012 in civil and commercial matters and Council Regulation (EC) No 2201/2003 in family matters. In the event of recognition and enforcement of a foreign judgment issued by a third country the AoIPPL applies provided that there is no relevant international treaty concluded with this third country. Slovak courts recognize foreign judgments only if (i) the matter resolved by the foreign judgement does not fall under exclusive jurisdiction of Slovak authorities, (ii) the foreign judgment is capable of being enforced in the country of issue, (iii) the foreign judgment is a judgment on the merits and (iv) the foreign judgment recognition does not contradict the Slovak public policy (ordre public).

19. Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side?

In general, each party to the dispute bears the costs incurred by that party – the costs of the proceedings. Costs of proceedings are the provable, justified and purposefully paid expenses incurred in proceedings in relation to filing a claim or defending against the claim in court. In civil litigation, the winning party is awarded the costs of proceedings proportionally to that party's success, i.e., if the party was only partially successful, the costs of proceedings may be awarded to both parties pro rata or the court may exceptionally decide that neither party is awarded the costs of proceedings where there is good reason for that. The opposite is true in civil investigative procedure: the courts usually do not award the costs of proceedings apart from the exceptions stipulated by the law. The costs of legal representation are paid within the costs of proceedings in the form of tariff remuneration that is calculated according to the regulation on remuneration and reimbursement of costs and expenses of attorneys-at-law. If a party and its legal counsel agree on another manner of the remuneration calculation (e.g. fixed fee or hourly rate), the adverse party is not obliged to pay such remuneration; the adverse party pays only the tariff rate calculated according to the regulation.

20. What, if any, are the collective redress (e.g. class action) mechanisms?

Several entities (e.g. several plaintiffs) may act as one party – it is a joinder of parties. If more than 10 entities act as one party, the court may rule that only one entity should act on behalf of the joinder of parties. A joinder of parties may be permissive, inseparable or compulsory. In permissive joinder of parties, the subjects have separate rights and obligations and each of them acts on their own behalf and the court decides on each claim separately. In inseparable joinder of parties, there are such joint rights or obligations that the decision on them must apply to all the defendants and plaintiffs joined in the action, which also means that a procedural action of one of the subjects is binding on all the others, that is why for some material procedural actions – e.g. amendment of the complaint, withdrawal of the complaint or claim recognition – consent of all the subjects joined in the action is necessary. In compulsory joinder of parties, a special regulation makes it mandatory that some parties be joined.

21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings?

Third parties can join the on-going proceedings in two ways: the first one is joining the proceedings upon the motion of the plaintiff. That third party becomes the plaintiff or defendant (depending on the plaintiff's motion) and has all the rights and duties arising out of that position. The second one is intervention of an intervenor. An intervenor is a person who participates in the proceedings alongside the plaintiff or defendant and has a legal interest – arising out of substantive law – in the result of the proceedings. However, when an intervenor joins the proceedings, the legal liability of the defendant does not pass onto the intervenor and the intervenor also does not share legal liability with the defendant. The intervenor's legal interest consists in the following: the losing party in the proceedings may usually initiate a so-called regress claim against the intervenor, arising out of substantive law (which happens most frequently in liability insurance cases). Intervention is excluded in civil investigative procedure (Art. 11 of RCIP). Two sets of proceedings may be consolidated under RCL. The court consolidates proceedings that are factually related to one another or related to the same parties. However, the court may consolidate only the proceedings that have commenced before the same court. If the cases were heard by several judges of the same court, the judge that hears

the case that started earlier should decide on the consolidation. A party to proceedings may file a motion for consolidation; however, the court will decide on the consolidation also without such a motion of a party to proceedings. RCIP explicitly excludes consolidation of two sets of proceedings.

22. Are third parties allowed to fund litigation? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

Although Slovak civil procedural law does not recognize a third-party funding procedure, according to the substantive principle of autonomous will, a party to proceedings may agree with a third party on litigation funding at its own discretion.

23. What has been the impact of the COVID-19 pandemic on litigation in your jurisdiction (and in particular, have the courts adopted remote hearings and have there been any procedural delays)?

Slovak legislature passed Act No. 62/2020 Coll. on some extraordinary measures concerning the spread of a dangerous infectious disease Covid-19 regarding the judiciary ("Covid-19 Judiciary Act"), which was recently amended by Act No. 9/2021 Coll. on changes and amendments to the COVID-19 legislature regarding the second wave of COVID-19 pandemic ("Amendment").

The Covid-19 Judiciary Act currently stipulates (among other things) that in the time period since Amendment to the Covid-19 Judiciary Act came into force (19th of January 2021) until 28th of February 2021, the limitation periods as well as deadlines for the parties to submit their pleadings (deadlines both set by courts or prescribed by law), are suspended. If such period/deadline has passed after 31th of December 2020 but before 19th of January 2021, these periods/deadlines will not pass sooner than on 18th of February 2021. In some extraordinary cases, a court can rule that this provision of the Covid-19 Judiciary Act will not apply.

Furthermore, during the state of emergency (that has been declared in Slovakia) courts should not schedule hearings, unless it is absolutely necessary and if they do, courts should exclude public from such hearings.

Recently, the Ministry of Justice passed a decree No. 24/2021 Coll., which precisely stipulates the types of hearings courts can conduct without restriction. Types of proceedings, which can be heard by court without restriction (and with the presence of affected parties) include predominantly proceedings, which cannot be delayed – for example guardianship and adoption proceedings, criminal proceedings (concerning custody) and asylum and deportation matters.

Regular civil and commercial hearings cannot be heard with the parties present. If the parties agree, court can schedule a hearing which will be conducted with the parties absent. However, if the parties do not agree with having their case heard in their absence, the court has to postpone the hearing.

This has led to substantial delays in many civil and commercial proceedings and a huge backlog of unresolved disputes on each court, which (in our opinion) will take months to clear after the COVID-19 pandemic ends. The courts also have not adopted remote hearings in any form.

The courts were also affected by the stay-at-home orders and mandatory curfew issued after 1st of January 2021, with most of the court's administrative staff working from home. This has also led to substantial delays and slowing down of the proceedings – for example, motions filed by parties are usually delivered by court to other parties in a span of few days. Now, during the COVID-19 pandemic, it takes several weeks.

24. What, in your opinion, is the main advantage and the main disadvantage of litigating international commercial disputes?

The main advantage is the on-going electronation of the court system in the Slovak Republic and simple, and in particular fast, exercise of claims in shortened procedures by electronic court payment orders. Among the disadvantages of international litigations in commercial matters in Slovakia is the obligation to conduct the proceedings exclusively in Slovak language which necessitates the hiring of professional interpreters and translators and it is impossible (e.g. on agreement of the parties) to conduct the proceedings in English. Among the disadvantages is also the average duration of civil litigations in Slovakia – it was 21.6 months in 2017. The average duration of civil litigations has been increasing since 2011.

25. What, in your opinion, is the most likely growth area for disputes for the next five years?

The most likely growth areas for disputes are the real estate and development and public procurement sectors.

26. What, in your opinion, will be the impact of technology on commercial litigation in the next five years?

The Slovak Republic has been implementing electronation of the court system since 2015. In the past 4 years, the system has significantly improved and the system use has become widely accepted. The courts communicate with the parties – legal persons – only electronically since in the Slovak Republic, legal persons are obliged to communicate electronically via their mailboxes destined for communication with the authorities and courts. Parties to proceedings are still allowed to file documents also in hard copy, however, the current tendency is to make the entire procedure electronic. For example, enforcement of claims in enforcement proceedings is entirely electronic. We expect that in the next 5 years the entire procedure will be fully electronic (apart from the hearings).

27. What, if any, will be the long –term impact of the COVID-19 pandemic on commercial litigation in your jurisdiction?

In our opinion, the only impact the COVID-19 pandemic will have on commercial litigation will be the increased time scale due to the current backlog of unresolved disputes.

This will be, however, only temporary and once the courts will clear their backlog of unresolved disputes, we presume the state of commercial (and any other) litigation will be in the same state as it was before the pandemic.

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