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Arbitration in Slovenia
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Arbitration in Slovenia

Tony Cole[1]

1. The Interviews

The interviews on which this report is based were performed as part of a research project funded by the United Kingdom's Economic and Social Research Council. Interviews were performed in 47 countries, including 127 cities and 1,042 interviewees.[2] Further information on the project is available on the project website (https://commercialarbitrationineurope.wordpress.com).

Three interviews were performed in Ljubljana on 15 April 2024, involving 9 participants. All interviews were performed by the author. Interviews were recorded and then professionally transcribed. Interviewees were identified through a combination of legal guides (WhosWhoLegal, Chambers, Legal500), recommendations, and internet research. A list of interviewees who have chosen to be publicly identified is available on the project website.

Interviews lasted approximately 90 minutes and were semi-structured, drawing from a list of topics but guided by the discussion as it evolved. In addition to this discussion, during the interviews participants were asked to name three "leaders" of arbitration in Slovenia (domestic or international) and three "leaders" of arbitration internationally (whether or not Slovenian), and to discuss what characteristics qualified them as "leaders". Finally, interviewees were also asked to respond to up to three hypothetical situations, describing how they believed the situation should be addressed, with each situation being altered by the interviewer as discussion progressed.

2. The Arbitration Market

While Slovenia has achieved a fair degree of name recognition in arbitration over the past decade, due largely to an active arbitral institution, interviewees were consistent that there is currently only a limited amount of arbitration in or connected with Slovenia, whether international or domestic. Not that there is none, but there is insufficient for even the leading arbitration specialists in Slovenia to practice only

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[2] As of 1 November 2024. A limited number of additional interviews will be performed prior to conclusion of the research in August 2025.

arbitration, and for most dispute resolution practitioners it remains a small portion of their overall practice.

Historically, arbitration took some time becoming a notable part of the Slovenian arbitration market, even after Slovenia's independence in 1991, with interviewees pointing to the economic crisis of 2008 as the point at which arbitration became to some degree more common. However, interviewees described even this increase as reflecting primarily an increase in the number of disputes arising from the crisis, rather than an actual shift towards arbitration and away from litigation.

Arbitration was described by interviewees as being relatively common in certain specific legal/economic areas characterised by international transactions, with M&A, finance, and energy being highlighted. However, interviewees stated that even in these areas, arbitration agreements are much more likely to incorporate a foreign seat, particularly Vienna, than a Slovenian seat.

In turn, some domestic arbitration does occur, with interviewees particularly highlighting arbitration involvement governmental contracts, such as highway construction. However, overall interviewees agreed that domestic arbitration remains relatively rare.

In this respect, Slovenia arguably provides an example of a dynamic seen in some other jurisdictions that have also focused on attempting to develop a reputation as an international "hub", without a corresponding focus on developing arbitration as a common practice domestically. While name recognition internationally is achievable, success as an international arbitral hub is more difficult in the absence of an active domestic arbitration practice. The absence of such a practice limits the familiarity of domestic parties with arbitration, limits the experience of practitioners and any local institutions with arbitration, and limits the ability of parties considering entering into an arbitration agreement to predict how the local courts will approach arbitration.

Reflecting this difficulty, one significant obstacle to the development of arbitration in Slovenia repeatedly emphasised by interviewees was a widespread and ongoing, although to some extent improving, lack of arbitration knowledge by non-arbitration lawyers in Slovenia. Not, to be clear, that those lawyers misunderstand the technical details of how arbitration works or what the applicable laws say, but that more fundamental misunderstandings are widespread, including in terms of confusion between arbitration and mediation. By way of example, one interviewee described lawyer friends often wishing him good luck in achieving a settlement when he mentioned pending arbitrations, while another described lawyers in a domestic arbitration expressing surprise when as arbitrator he suggested the use of formal procedural rules and discovery rather than an approach more typical of mediation.

A further widespread obstacle is an ongoing conceptual connection, on the part of both parties and non-arbitration lawyers, between arbitration and high costs. Because of this connection, parties and lawyers unfamiliar with arbitration often just reject it out-of-hand, rather than seriously comparing its advantages and disadvantages with those of litigation. The Ljubljana Arbitration Centre (LAC), the primary arbitral institution in the Slovenia, has attempted to address this concern through its own rules, including the adoption of rules for "expedited" arbitrations, but while these rules were praised by interviewees, they were also described as rarely used.

As already noted, there have been active efforts over the past decade to develop Slovenia as a regional arbitration "hub", those efforts being driven predominantly by the LAC. More specifically, the hope, as described by interviewees, was that Slovenia would be adopted as a hub for disputes involving parties from the former Yugoslav countries. This was seen as a plausible goal because Slovenia's legal system shares foundations with the legal systems of those countries, while its limited involvement in the wars that followed the break-up of Yugoslavia gave it some insulation from the political and other impacts of that period. In addition, Slovenia's membership in the European Union has been beneficial both economically and institutionally.

However, interviewees were uniform in their agreement that these efforts have not been successful, and that it remains extremely rare for two foreign parties to agree to arbitration in Slovenia absent some Slovenian connection. Moreover, even international arbitrations with a strong Slovenian connection, such as when one party is Slovenian, are unlikely to be seated in Slovenia, simply because the foreign party is unlikely to agree to Slovenia as the seat. As a result, Slovenian parties agreeing to arbitration with a foreign party will predominantly agree to a foreign seat, the leading seat in this respect being Vienna with the Vienna International Arbitral Centre (VIAC) administering.

Even with respect to former Yugoslav countries, interviewees described Belgrade as having a more plausible claim to being a regional arbitration centre. However, even Belgrade was seen as having only limited success in development as a regional hub, with interviewees again describing Vienna with the Vienna International Arbitral Centre administering as having the strongest claim to being a "hub" for disputes between parties from former Yugoslav countries.

Commenting on this situation, one interviewee drew a direct comparison between Vienna and Ljubljana in terms of the efforts that have been made to promote their respective use as an arbitral seat in contracts involves Austrian or Slovenian companies. This interviewee observed that he began his career at a time of significant Austrian investment in Slovenia, and he saw Austrian companies regularly pushing for arbitration in Vienna to be incorporated into contracts. By contrast, he has not seen the

same efforts made to convince Slovenian companies that when they enter into contracts abroad, they should actively pursue agreement to arbitration in Ljubljana.

Those qualifiers being given, interviewees expressed no dissatisfaction with the idea of Slovenia as a seat for arbitrations or with the LAC as an administering body, and described ongoing efforts to get agreement on incorporating arbitration in Ljubljana into contracts. Rather, the obstacle was just that it was unlikely that a foreign party would agree to do so, particularly given the presence of a Slovenian counterparty. Then, when Ljubljana was rejected, the natural next step would be proposing Belgrade or Vienna, which would be more acceptable to the foreign party, and not a concern to the Slovenian party. Parties from former Yugoslav countries were seen as more likely to agree to arbitration in Ljubljana than parties from elsewhere, but it was still difficult to get agreement from them.

Notably, one interviewee also commented that while Slovenia's membership of the European Union has obviously been beneficial, it can actually work as an impediment to the perception of Slovenia as a possible regional arbitration hub, given that it has increased the differences between Slovenia and most former Yugoslav countries, whether in terms of economics or of the law (including the applicability of EU law). It was suggested that this meant that Slovenia and Croatia had more relevant similarities with each other, in terms of an arbitration market, than either of them now does with the remaining former Yugoslav countries.

Arguably, then, Slovenia's position as both a former Yugoslav country and a member of the European Union actually contributes to the difficulties it has had developing as a seat for foreign arbitrations. It has two "natural" markets in this respect: (i) other European Union countries, and (ii) other former Yugoslav countries. However, other European Union countries have alternative successful seats to which they can instead turn when a foreign seat is desired (Paris, Vienna, Geneva/Zurich, etc.), while other former Yugoslav countries have both Belgrade and Vienna as alternative seats, both of which have in their very different ways long been regional centres.

3. The Arbitration Community

As might be expected given the relative lack of development of Slovenia's arbitration market, interviewees consistently expressed the view that there is not really an arbitration "community" in Slovenia, in the sense of an organised group of practitioners coordinating to develop arbitration in Slovenia and their arbitration careers. Instead, since Ljubljana's broader legal community is itself not huge (the population of Ljubljana as a whole is only around 300,000), arbitration practitioners simply know informally who else practices and has an interest in arbitration.

Moreover, even for people involved in arbitration, a natural barrier to the development of a cohesive arbitration community arises from the fact that interviewees predominantly worked as litigators or transactional lawyers, working on arbitrations only when the opportunity arose. As noted by interviewees, this professional reality introduces a layer of separation between people with a shared interest in arbitration, because one most naturally knows and engages at a professional level with people with whom one shares a practice. But if one person is primarily a litigator while the other is primarily involved in M&A, they may encounter one another at arbitration-focused events, but they are unlikely to do so on a regular basis professionally.

This does not mean, though, that there is no "community" at all to which interviewees saw themselves belonging. However, rather than there being a Slovenian arbitration community, or even a post-Yugoslav arbitration community (although there were suggestions of such a community existing at some level), interviewees instead most commonly described themselves as members of a broader Eastern European arbitration community. Notably, though, this was described as being, in a sense, an "itinerant" community, involving individuals meeting up at events, both inside and outside Eastern Europe. That is, it was a matter of the same broad group of individuals participating in and encountering one another at the same events, and recognising their regional connection, rather than of active coordination across the region. Both Belgrade and Zagreb were highlighted in this respect as important "centres" for this community, while outside Eastern Europe Vienna and Paris were identified, including specifically meetings relating to the ICC. One interviewee went as far as describing Vienna as effectively serving as the "hub" for this Eastern European community.

A contrasting description was given of the efforts of the LAC at community-building in Slovenia. Up until 5 or so years ago, the LAC was very active, regularly putting on conferences and constantly communicating with local arbitration practitioners. However, after a change in management of the Centre, it was seen by interviewees as no longer playing this community-building role. It still takes part in events put on in coordination with local law firms, but interviewees described these events as fundamentally organised by the law firms with the LAC's involvement, rather than resulting from the LAC's own initiatives.

To be clear, this was described as a reflection of the limitations under which the LAC now functions, rather than as a failure by the specific individuals now leading the LAC. As described by interviewees, there has been a significant reduction in the resources available to the LAC, including in the number of staff now working at the institution, and as a result, the LAC was seen by interviewees as no longer really having the capacity to take the active role it had previously performed, even if the desire was there.

4. Arbitration Education

Despite the preceding, interviewees described a relatively successful integration of arbitration into Slovenian legal education. Arbitration was reported to be covered in standard law school courses on civil procedure, although the ongoing lack of understanding of the broader legal community of arbitration, as described above, might suggest that this coverage could certainly be improved. But for those interested, specialised courses are also available at higher levels, and academics were described as having a prominent role as arbitrators.

Obtaining an LLM abroad was described as common, with possession of an LLM (whether domestic or foreign) described as now virtually essential for anyone looking to be hired by a leading law firm. Studying for an LLM abroad has become particularly common since Slovenia joined the European Union, due in large part to the availability of funding though the EU's Erasmus programme. However, no particular rationale was advanced for this enhanced role of LLMs in career development, with interviewees largely describing it as just a consequence of competition for jobs resulting in the need to add an LLM to CVs.

5. Entry into Arbitration Practice

Whether in terms of entering the field or in terms of developing a practice as an arbitrator, interviewees confirmed that the low levels of arbitration in Slovenia mean that there is no clear path to either. Not, of course, that neither goal can be achieved, but only that interviewees had no reliable advice that they could give on how to achieve those goals. Some interviewees had initially worked abroad before returning to Slovenia, and a number of interviewees expressed the view that their advice to young Slovenians with a strong interest in arbitration would be the same: go abroad to a place where arbitration is more common – although more than one interviewee had then returned to Slovenia after gaining that initial arbitration experience.

6. Courts and Arbitration

The consistent point highlighted by interviewees when discussing Slovenian courts was their slowness, with a first hearing often not occurring until 3 years or more after a claim is commenced. The slowness of courts is often an important factor in development of support for arbitration, and it is notable that the LAC has indeed highlighted speed when promoting its services, including the adoption of an expedited arbitration process with a time limit of six months from the date on which the arbitrator receives the completed file to the date by which the award must be issued.

Speed, moreover, was not the only concern about Slovenia's courts raised by interviewees, with standard concerns also being raised that the generalist role of Slovenian judges means that they can often lack the expertise needed for more complex commercial disputes. This was seen as combining with the excessive caseload of judges to create a situation in which judges were seen as often being unwilling to fully engage in a complex commercial dispute. Finally, concerns were also raised about Slovenian court procedure, which was described as being at times overly complex and formalistic.

When asked why arbitration has not developed more despite these concerns about the courts, several suggestions were offered. Firstly, while courts may be slower than arbitration, Slovenian parties were said to not always see slowness as a disadvantage. That is, they are used to the slow speed of the courts, and over time it has become integrated into the way that they approach disputes. Arguably this can be seen in the greater awareness in Slovenia of mediation than arbitration, with the former aligning well with a tradition of pursuing a consensual private resolution of disputes in the absence of an efficient court system. Given this context, a quick resolution of a dispute through arbitration can appear to some degree actually unattractive, since it will be imposed by a third party, rather than developed informally by the parties themselves. While interviewees described this attitude as less common now than in the past, it was nonetheless described as still quite common.

An additional factor, also reflecting this notion of the impacts of cultural background, was seen to be a cultural hangover from Slovenia's decades of communist rule. Throughout this period, adjudicative resolution of disputes was only available from state-controlled bodies, and it was noted by interviewees that some time can be required for parties to become comfortable with that remedy being provided through a non-state process. This results in somewhat of a loop, in which parties prefer state-controlled courts because they are unfamiliar with the alternative, which prevents the development of that alternative, which keeps parties unfamiliar with it, reinforcing their preference for state-controlled courts.

Specifically with respect to arbitration, one point highlighted as important in the ongoing preference for courts was the availability in court of appeal, and its unavailability in arbitration. Connecting with the previous point, where parties are unfamiliar with a process, and hence trust is low, the fact that a poor decision could not be appealed serves as a significant obstacle to parties being willing to try arbitration.

Nonetheless, despite the concerns noted above about Slovenian courts, interviewees reported retired judges as playing an important role in Slovenian arbitration, primarily as Chairs of arbitral tribunals. Not every interviewee approved of this practice, of course, and some expressed passionate dislike of judges as arbitrators, but it was nonetheless acknowledged as being common. However, not every judge was

seen as a reasonable candidate for appointment, with retired Supreme Court judges being particularly preferred. Moreover, the preference was for only certain judges, as some knowledge of arbitration was seen as desirable, but interviewees agreed that few judges have that knowledge.

In terms of the rationale for this practice, interviewees highlighted the experience of judges in handling procedures and in legal reasoning and decision-making. Effectively, the picture presented was of the different roles of Chairs and party-appointed arbitrators. Party appointees should preferably be practicing attorneys or professors, particularly with a knowledge of and experience with arbitration, while the judge as Chair would ensure that procedure was properly handled and any awards were properly reasoned and drafted.

The use of a judge as Chair was also seen as addressing one of the complications of Slovenia's relatively small size, namely supporting impartiality. Interviewees acknowledged as relatively unavoidable that members of Slovenia's legal community with an interest in arbitration will have some degree of personal connection, given the small size of that community. Moreover, even if no clear present connection exists between a party and an arbitrator, it is not possible to be rule out a prior connection, or something sufficiently informal not to be apparent. Retired judges, however, were seen as having spent their careers operating under rules designed to ensure independence and separation from parties and lawyers likely to appear before them in court. As a result, appointing a retired judge as Chair gives confidence that at least the Chair of the tribunal is likely to be fully independent.

In terms of the preference for retired, rather than active judges, there were different views expressed on whether active judges can serve as arbitrator. One interviewee commented that it was the view of the "court counsel" that it could not be done, while another commented that it was nonetheless still happening. Which suggests that there is at least no formal rule preventing serving judges sitting as arbitrators, but that it is discouraged. It was also noted that appointing a serving judge can create problems if an award is challenged, as Slovenia's size means that it is not unlikely that any challenge to the award may end up at the same court on which the arbitrator judge sits.

7. Arbitration Procedure

Interviewees described arbitration in Slovenia as not having any particular procedural features, with the specific procedures largely depending on the identity of the arbitrators and counsel. As a result, there is no such thing as a distinctively "Slovenian" arbitration.

That said, interviewees did comment on a degree of procedural informality that often characterises domestic arbitrations, when they occur, attributing it to the previously-mentioned greater familiarity of Slovenian lawyers and parties with mediation than with arbitration. Notably, the LAC has recently responded to this latter situation through the adoption in 2019 of mediation rules, the availability of which is promoted as making the LAC a "one stop shop" for dispute resolution, because of the possibility to coordinate mediation with arbitration. By way of example, if parties engage in mediation prior to or during an arbitration, on the same matter and between the same parties, the LAC does not require payment of a second registration fee, effectively treating them as part of the same procedure in this respect. Nonetheless, one interviewee commented that this formal mediation process remains little used, although this perhaps reflects to some extent that it is still relatively new.

As previously noted, speed is also seen as a potential attraction of arbitration, given the slowness of Slovenia's courts, and interviewees did describe a relatively quick process. One interviewee gave their personal experience as being that an average arbitration took 7-9 months to conclude.

Paralleling the previous discussion of judges as arbitrators, interviewees also confirmed the importance of academics as arbitrators, although as with judges this was a matter of certain individuals being seen as desirable appointees, rather than there being a general preference for the appointment of academics. In this respect, interviewees specifically highlighted that many Slovenian academics have no real-world legal experience, and the preference is always to appoint someone who has practiced law, rather than merely written about it. While the rationale for appointing judges was described as primarily arising from their procedural and decision-making expertise, the rationale for appointing academics was their subject-matter expertise, rather than any particular respect for the position of academic.

8. Language and Arbitration

While domestic arbitrations will naturally most likely be in Slovenian, as already noted those are rare. International arbitrations are unlikely to be in Slovenian simply because one party will not be Slovenian. Instead, English is the most common language used.

9. Arbitration Institutions

Discussion of institutions focused almost exclusively on three institutions: (i) the Ljubljana Arbitration Centre (LAC), (ii) the ICC International Court of Arbitration (ICC),

and (iii) the Vienna International Arbitral Centre (VIAC). No other institution was described as having a consistent and prominent role in arbitration in Slovenia.

As described above, the LAC's efforts to establish itself as a regional arbitration "hub" have not been successful, but this was not seen as reflecting inadequacies in the LAC as an administering institution. Interviewees were consistently positive about the LAC's rules and about their experiences with the institution. Those experiences are, however, limited because of the low levels of domestic arbitration, the failure to convince foreign parties to use the LAC in an arbitration with no connection to Slovenia, and the difficulty in getting foreign parties to agree to arbitration at the LAC when a Slovenian party is involved.

Nonetheless, while the LAC was presented as being the preferred choice in many disputes, even if it was often not accepted by the non-Slovenian party, one problem highlighted relates the appointment of arbitrators, as the LAC was said to have closed its list of arbitrators to new entrants. While parties using the LAC are not obligated to appoint an arbitrator from off the list, when consulted by parties the LAC is said to recommend an individual on the list, which makes being on the list important for aspiring or practicing arbitrators. Moreover, not only is the list now closed, it was said to no longer be publicly available, which means that no oversight is possible on the fairness of the LAC's use of the list. Interviewees expressed concerns not only about the difficulties this situation creates for individuals attempting to become arbitrators, but that it encourages an insularity and incentive to remain well-connected with the LAC that can risk affecting impartiality.

In terms of foreign institutions, the ICC was described by interviewees as having a strong presence in Slovenia, and as being the dominant institution for larger international transactions. It is, however, limited in its ability to reach beyond that "big and complex arbitrations" market by its perceived expensiveness, and by the poor knowledge of most Slovenian lawyers and parties about arbitration. In short, it was a common perception outside the small group of Slovenian arbitration practitioners that agreeing to ICC arbitration meant arbitrating in Paris, with the additional costs that would involve.

This gap in the market between the "local" LAC and the "expensive" ICC was then described as filled by VIAC, as long as there was not an Austrian party involved in the dispute. Interviewees emphasised that the choice between the ICC and VIAC was primarily a financial one, reflecting the quantum in dispute, and so how much was worth spending on the arbitration.

10. Gender and Arbitration

Interviewees consistently described gender as not a significant issue in Slovenian arbitration. This is not to say that it is never an issue at all, but female interviewees described any such experiences as being a departure from the norm. When discussing this situation, interviewees highlighted in particular the impact of the fact that most Slovenian judges are female. As a result, Slovenian lawyers and parties are used to the idea of women as legal decision-makers and legal experts, which was seen as translating to a comfort with the same situation in arbitration.