Questionnaire

Replies by the Slovak Republic

II – Administrative Information and Updates

3.1.

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3.2. The staff of the Ministry is capable of communicating in Slovak, Czech, Hungarian, English, French and German. Spanish and Italian are also understood.

3.3. No statistics is available.

4. To the Ministry´s knowledge, there has been no significant case law relating to the Convention in Slovakia. Likewise, no articles or other published work relating to the Convention has been brought to the attention of the Ministry.

5.1. We agree with the idea of publishing the information on the Hague website. In view of the financial repercussions of the regular updating of such information, there could be an alternative solution to the update problem. Since most (maybe even all) Contracting Parties´ Central authorities have their own websites (in one form or another), there could be an agreement reached by the CP to have the updated information available on THEIR individual websites (in English and/or French) and the Hague website would only provide links to the updates. It is always easier to do such a decentralised updates from financial point of view.

5.2. Yes, the system seems acceptable.

5.3. It is not clear from the Handbook (since it is "provisional") whether the original Explanatory Report to the Convention itself shall be included. It should be.

5.4. One of the possible option is to set up a system familiar with other "free leaf" books (as this one presumably will be). Each purchaser could subscribe to updates and those would be sent to the purchaser 3 to 4 times a year (depending to the extent of changes). Maybe in the context of this particular handbook, even once a year might be sufficient. Especially if updates under 5.1. are set in place.

5.5. The link of the Ministry of Justice www.justice.gov.sk contains under the heading "Rôzne" information on the Hague Conference and its Conventions and some practical issues (e.g. central authorities for certain conventions, etc.). The information is in Slovak language only, as it is intended for Slovak practitioners.

III – Information Relating to Application of the Convention

6.1. We have not encountered cases where the interpretation of the Convention´s scope would play an important role (see also 6.2.).

6.2. We have encountered one particular problem with the scope in relation to one country´s authorities (France) who tried to serve documents in administrative matters (orders for fines) on the basis of the Convention. Even in this case, we do not think this was a problem with the interpretation of the scope, but rather finding a way to serve documents in situations where there is no other international instrument.

Slovak courts do not seem to have difficulties with the scope "civil and commercial" matters and it has always been interpreted widely (including family law, succession, labour law matters as well).

The only area of "uneasiness" are cases of presumably administrative law decided by foreign (administrative) courts (we had cases with Germany), where sometimes for us as a requested country is difficult to assess whether the case does or does not fall under the scope. But even in

such margin cases we provide the requested assistance, though we advise the Slovak courts that they cannot use the convention for assistance in matters of administrative law.

6.3. The aspect of lex fori determining whether a document should be transmitted abroad has always been applied and continues to be applied in our legal practice.

6.4. As regards the exclusive character, the Slovak authorities have always accepted this aspect. We have, however, encountered a repeated disregard for this kind of interpretation by the German courts in relation to Slovak parties to the proceedings. The German courts would repeatedly serve some documents on Slovak residents by post (irrespective of the fact that Slovakia entered a reservation on Article 10 of the Convention). When approach, the Federal Ministry of Justice of Germany argued that documents , which under German procedural law, do not have to be served on a party (i.e. whose service has no legal consequences), do **not** have to be served under the Convention.

We do not agree with this interpretation, however, because the Convention does not distinguish between documents which **have to** be served and those which do **not.** We maintain that once the authority makes the decision to serve a document abroad, then it has to follow the Convention.

6.5. The terms have been translated into Slovak taking into account the terminology used in our legal system and that terminology has not changes since.

7.1. In Slovakia courts are competent to forward a request to the foreign Central authority and also the Ministry of Justice.

7.2. We have had situations where the "competence" of the forwarding (requesting) authority was somewhat questionable, but in the light of the philosophy of the Convention we accepted such requests. The determination of the consequence for the service by an "incompetent" requesting authority shall lie with the forum (i.e. invalid service) and the receiving authority or State should not be put in a position to scrutinise whether that authority is or is not competent under the law of the forum.

Consequently, such scrutiny should remain subject to special circumstance. Of course, information on the authorities competent under each Contracting Party´s law would be useful (i.e. through the Handbook or via Conference website).

8.1. The wording of the question is not precise: it does not have to be the Central authority which serves the documents (Article 5 does not give the obligation to serve to the CA only). Perhaps a sub-question should be "who" is responsible for the service under Article 5, the CA or some other authority.

In the case of Slovakia, it is the courts who are responsible to serve documents on the addressees, not the Ministry of Justice as the Central authority.

Service under Article 5 (1) a (service under Slovak law) is done either by the court summoning the addressee and handing over the documents or by postal service (special form of delivery, so called "service into own hands", with the possibility of alternative service by deposit, under the strict circumstances prescribed by law). Postal service is done only if Slovak translation is attached to the documents or if it can be concluded that the addressee understands the language of the (untranslated) document.

Simple service (Article 5 (2)) is done by the court summoning the addressee, informing him of the possibility to refuse service and handing over the documents if he accepts or returning the request without execution, if he does not accept.

Special service under Article 5 (1) b has, as far as we know, never been requested from the Slovak authorities. In such a case the court would try to follow the method for service described in the request.

It has to be pointed out, however, that the domestic provisions on service of documents are undergoing a legal scrutiny at the moment which may result in changes to the methods/forms of service under Slovak law. Yet, it is premature at the moment to foresee the results of that exercise.

8.2. As stated in point 8.1., translation into Slovak is required for service under Article 5(1) a, unless it can be concluded that the addressee understands the language of the document (unless specifically pointed out by the requesting authority, such presumption is applied to the nationals of the requesting State residing on the territory of Slovakia).

Specific agreement on language in relation to the Hague Convention exists only in the relation with the Czech Republic, but it could be argued that provisions on language of bilateral treaties (regulating judicial assistance) might be applicable, though the question is more theoretical than practical.

8.3. No.

8.4. No charges for service are levied.
Though a request for a specific method of service (Article 5(1)b) might give rise to costs which would have to be reimbursed. This has never been tested in practice, though.

9.1. It depends to a certain degree on the content of such a general declaration: were it sufficiently flexible, we would not have a problem with States making them (we suspect that, having regard at "who" has been appointed as Central authority, in most cases it would be the Central authority itself who would initiate such a declaration to be made by its government). Such a declaration has one clear advantage: transparency. Thus avoiding loss of precious time, should the request be returned by the CA upon receipt, for reason of translation being required.

9.2. Yes, but the "burden" should be put on the shoulders of the requesting authority. It should give a short reasoning why no translation, in its opinion is required and why the language of the document is deemed to be understood by the addressee.

9.3. The above (9.2.) should be put in practice: if the requesting authority wants to avoid the need for translation , it should notify in the requests the reasons as given above. Otherwise, the "normal" procedure would be applied (need for translation OR voluntary service).

9.4. The requirement for translation goes into the direction of the receiving authority "protecting" the interests of the addressee on its territory, rather then the requesting State´s obligation to observe some kind of due process in relation to the addressee. If that is the underlying philosophy than the document should be translated in full.

9.5. If Article 3 applies to documents to be served also and not only to requests (as has been argued in the Manual) , the same rule should apply to the translation of such documents. That has been the policy of Slovakia so far.

10.1. In Europe about 4 months. Outside of Europe 6 months and more.

10.2. Differences between the States address are sometimes substantial.

10.3. We do not think there is an avenue for improvement which has not been already explored. Seldom leading to any real improvement. However, the communication between the authorities is vital most of the time and that can be always improved.

11.1. Consular channels are used to serve documents directly to Slovak nationals living abroad, because (however strange it may seem) this form is sometimes more effective than the service through "regular" Convention channels. Now, after some States have confirmed that they would not apply reciprocity in relation to Slovakia´s objection to service to other than own nationals, this method might even gain on popularity with Slovak courts.

11.2. In view of the fact that Slovakia raised an objection to this form of service, the provision has not been used in practice until now. In view of the statements from some States that they do not object to such service from Slovakia, despite our objection, this form of service may gain on popularity in the future. As regards problems, only problems relating to Germany (mentioned under 6.4.) have been experienced, where German authorities ignore the objection and serve to residents in Slovak by postal channels (whereas no additional "regular" service under Convention was attempted).

11.3. This question is not applicable to Slovakia at the moment, since only courts can make requests for service abroad under the Convention and only courts can serve documents coming from abroad under the Convention.

11.4. Same as 11.3.

12.1. The distinction is not very clear, specially not in the area of service of documents. The law leaves a wide range of discretion for the judge to decide which document has to be served into the "own hands of a party " (a "higher" form of service suggesting that the document produces procedural effects) and which shall be served by "simple" service. The distinction is even less clear in an international setting, because , as a general rule, Slovak authorities accept the form of service under the law of the requested State (i.e. they do not require specific method of service under Article 5(1)b for "service into own hands"). That leads to the practice that Convention is used for all documents to be served abroad. The only distinction being made

that documents which do not produce procedural effects are usually requested to be served by simple remit (voluntary acceptance).

12.2. No such statistics are available.

13.1. It is unknown in our legal system and is not easily comprehended. Since the responsibility of the service never lies with a party, we cannot imagine a situation where such system would have any practical consequences in your civil procedure.

13.2. As follows from 13.1., it does not.

14.1. The "procedural" condition which is being reviewed by a Slovak court in the course of recognition of a foreign judgement (in lack of an international treaty governing recognition) is whether the court of origin has, by its actions, prevented the respondent to effectively take part in the proceedings. In the example given in the questionnaire that would most likely not be the case (though, of course, since Slovakia objected to the postal channels, Slovak court would most likely refuse recognition for ordre public reasons even if the respondent would not object). In absence of any case law to that effect, it is difficult to conclude how a Slovak court would proceed, but we cannot imagine that it would entertain an objection by a respondent if the court of origin complied with the Convention. Of course, the issue of Article 15 provides a different scenario. Default judgements issued by the court of origin would most likely not be recognised (in particular if the respondent was not served the document instituting the proceedings).

15.1. Parties cannot waive the application of the Convention between themselves. Though, they can do so by other means (by giving a power of attorney to accept service of documents on their behalf within the forum).

16. The whole issue of e-mail or fax transmission is premature for the Slovak republic, since its authorities are not prepared to use these methods, either in outgoing or incoming situations at the moment.

17. 1. No

17. 2. No.

17.3. We do not consider it necessary. It might be also dangerous: leading to some scrutiny by the requested authority into the "competence" of the requesting authority which is not warranted by the Convention. The competence of the requesting authority is under the control of the forum and should service have been requested by an "incompetent" authority, the consequences should be taken into account by the forum.

17.4. As procedure, yes.

17.5. It would depend on the technical conditions for its use.

18.1. and 18.2. These questions are not applicable to Slovakia, since we entered objections on both Articles. Slovakia has received a number of replies from non-objecting States that they would not invoke reciprocity against Slovakia.

19.1. List of States with which such treaties exist is attached.

19.2.-19.4. not applicable to Slovakia

Treaties on legal assistance

in civil and commercial matters

(All listed treaties, with the exception of the one marked + were concluded by the former Czechoslovakia and as a result of general succession by Slovakia into such treaties they are considered by Slovakia to be binding. The process of negotiations regarding the acceptance by individual States of the succession by Slovakia has, however, not been completed in relation to all the listed States.)

Afganistan
Albania
Algeria
Armenia[1]
Austria
Azerbaijan[1]
Belarus[1]
Belgium
Bosnia and Hercegovina[2]
Bulgaria
Croatia[2]
Cuba
Cyprus
Czech Republic+
Former Yugoslav Republic of Macedonia, The[2]
France
Greece
Hungary
Italy
Kazakhstan[1]
Korea (North)
Kyrgyzstan[1]
Moldova[1]
Mongolia
Poland
Portugal
Romania
Russia[1]
Slovenia[2]
Socialist Republic of Viet Nam
Spain
Switzerland
Syrian Arab Republic
Tadjikistan[1]
Tunis
Turkey
Turkmenistan[1]
Ukraine[1]
United Kingdom[3]
Uzbekistan[1]
Yemen (South)
Yugoslavia[2]

[1] On the basis of the Treaty between the former Czechoslovakia and the former Soviet Union

[2] On the basis of the Treaty between the former Czechoslovakia and the former Socialist Federative Republic of Yugoslavia

[3] Extended to Canada, Fiji, Kenya, Lesotho, Nauru, New Zealand, Singapore and Tonga