Alternative Dispute Resolution in Administrative Matters
Answers to the Questionnaire - Report Slovenia

Introductory questions

1. In Slovenian legal order the alternative procedures i.e. alternative dispute resolutions (ADR) are usually defined as procedures which do not involve an adjudicating by the courts. Usually ADRs include help or involvement of third, independent person, which offers to the parties solutions and possibilities to resolve disputable legal relationships. It involves also arbitration procedures, defined in the *Arbitration Act*[1] and mediation. Mediation is also regulated in the *Mediation in Civil and Commercial Matters Act*,[2] which is, according to mentioned act, only possible in civil matters.
2. As mentioned above, this procedures exists in Slovenia. They are also regulated by legislative acts and further on, arbitrations have their own internal acts (like *Ljubljana Arbitration Centre - LAC*[3]), especially guarding procedures. This is true for arbitrations procedures, as well as with respect to mediation procedures. Alternative dispute resolutions (ADR) are well accepted in Slovenia, since also the environment is friendly for different out-of court options; the ADR's awards and settlements are recognised by Slovenian courts. Mediation has been develop even more smoothly and successfully after the Mediation Act was passed and since also courts started to use a mediation as an optional procedure after the commencement of the litigation. The latter is regulated in Act Alternative Dispute Resolution Judicial Matters,[4] which makes possible to the courts to initiate mediation, based on offer given to the parties within the court procedures. This is however true only for the commercial disputes, labour disputes, family disputes and disputes of other private law relationships, and not for administrative disputes.

I. The goals and the scope of alternative procedures

I.1. Yes, this procedures are active and objectives behind them are: (i.) to give parties possibilities to resolve their disputes outside court procedures and therefore to (ii.) relieve courts and court procedures. There are also certain other advantages like possibilities to resolve the dispute in shorter time period, not being burdened with very specific procedure rules, not to use all instances of judicial processes and to receive the finality of the dispute in shorter time, to make dispute secret, to await additional and higher costs, make use of parties' autonomy, etc.

I.2. The answer here is negative; it is well accepted approach that in the administrative matters alternative dispute procedures are not used. When it comes to the *iure imperii decisions* which are under the review of their legality at the Administrative court, or Constitutional court, the mediation is not possible. Also, even in cases when dispute is not given yet to the court to adjudicate (in admin. procedures), the state and their administrative authorities do not negotiate or do not take part in alternative dispute resolutions. There are certain examples in the field of private public relationships, where contracts between private party and state authority include private law relationships (like concessions) and for this part it is possible to employ ADR, mostly arbitration procedures.

1Official journal of RS, no. 45/08.
2Official journal of RS, no. 56/08.
3 See http://www.sloarbitration.eu/en
4Official journal of RS. no. 97/09, 40/12.

I.3. Basically, there are no prohibitions, however stems from above mentioned statutes, that mediation and arbitration procedures are possible in civil, i.e. private law relationships. There are no rules that would stipulate ADR in administrative matters. In fact, Slovenian legal order opened possibilities to negotiate and mitigate in criminal matters, which gives certain indications that the Slovenian legal order could in the future be open to include ADR also in other, not only in private law relationships.

I.4. We understand, that this question basically asks if alternative procedures exist in administrative matters. The answer is negative and there are no legally binding rules in this respect neither any soft law rules.

I.5. The directive 2008/52/EC was transposed and implemented in *Mediation in Civil and Commercial Matters Act,* and its implementation is limited to private law relations.

II. The stakeholders in alternative procedures

II.1. Alternative procedures are possible to all kind of natural and legal persons. Actually, it is not a criteria, i.e. it does not matter who is plaintiff or defendant, who are the parties, but the criteria is the nature of the relationship, which should be private, not administrative.

II.2. No, this would only be possible in case, that the administration or administrative bodies would be involved in a dispute for compensation of damages. Administrative disputes cannot be entrusted to be resolved by any other institution or third party than by the courts.

II.3. Not applicable.

II.4. Administrative courts cannot invite neither can oblige parties to presume any alternative procedures: The courts have to accept law suits, usually actions for annulment, if they are competent to adjudicate the case. Also, the administrative courts cannot entrust mediation to any third party.

II.5. The administrative court cannot conduct mediation proceeding by itself. The court are only entrusted with the role to resolve the dispute by of judgements or other court decisions. Mediation is not part of it. This is only possible in civil and commercial matters.

III. The procedures of alternative procedures

III.1. This answer cannot be answered since there are no different alternative procedures in administrative matters in Slovenia.

III.2. Administrative appeals do exist in Slovenia. Usually, in most cases, two-stage procedure is possible in administrative procedure and minimum one–stage in administrative dispute procedure. Revisions or appeals are possible in certain circumstances also in administrative dispute procedure to the Supreme Court of the RS. Optional appeals to non-judicial bodies are not possible. In procedures at the Administrative court the parties can not present new evidences, neither to put forward new facts already if they have had this possibilities in administrative procedures. However, in any case, the Court is not bound only to evidences given by parties and it can demand other evidences which help it to resolve the dispute.

III.3. The general principles regulating alternative procedures (i.e. for civil and commercial matters – not for administrative, since this is not the case in Slovenia) are: adversarial procedure, impartiality, also confidentiality, parties autonomy, defining procedural schedule, nominating arbitrators or mediators, deciding on language, place of arbitration or mediation, limitations given to arbitrator, possibility to decide at eaquo et bono, etc.

III.4. This question cannot be answered since initiation of alternative procedures in administrative matters is not possible.

III.5. This question cannot be answered since initiation of alternative procedures in administrative matters is not possible.

IV. The efficacy of alternative procedures

IV.1. This answer is of general application, meaning to alternative procedures in general, in civil relationships and not in administrative ones. Indeed, usually the alternative procedures are faster, since court procedures are multi-level, with possible appeals to the second and third appeal levels, and this takes time. Also, according to the Ljubljana arbitration centre Arbitration rules, the arbitration procedure shall last 90 days (with possible exemptions).

IV.2. This question cannot be answered, since there are no alternative procedures in administrative disputes.

IV.3. This question cannot be answered, since there are no alternative procedures in administrative disputes.

IV.4. This question cannot be answered, since there are no alternative procedures in administrative disputes.

IV.5. Indeed, it would be appropriate to develop alternative procedures in case of administrative relationships, but with certain limitations (most importantly in case of annulments of administrative decisions). Nevertheless, one shall bear in mind that in administrative cases the administrative authorities especially the courts are dealing with annulments of the acts *de iure imperi* and that means that an adjudicator, possible a third person, would have to decide, whether the authorities acted in line with the law, whether they use appropriate discretion, principle of proportionality, etc. Actually, the adjudicator influences the decisions of authorities and therefore these are not cases that could be easily compared with civil relationships and therefore annulments cannot be treated as any other court dispute in private law sphere. However, apart from that, they might be some margin sphere where the state could negotiate with the parties in order to come to satisfactory conclusions for both sides.