U-II-1/12, U-II-2/12,
17 December 2012

DECISION

At a session held on 17 December 2012 in proceedings in accordance with the first paragraph of Article 21 of the Referendum and Popular Initiative Act (Official Gazette RS, No. 26/07 – official consolidated text), initiated upon the requests of the National Assembly, the Constitutional Court

decided as follows:

1. Unconstitutional consequences would occur due to the suspension of the implementation or rejection of the Slovene National Holding Company Act (EPA 516-VI) in a referendum.

2. Unconstitutional consequences would occur due to the suspension of the implementation or rejection of the Measures of the Republic of Slovenia to Strengthen the Stability of Banks Act (EPA 637-VI) in a referendum.

REASONING

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1. On the basis of the first and second paragraphs of Article 21 of the Referendum and Popular Initiative Act (hereinafter referred to as the RPIA), on 6 November 2012 and 23 November 2012 the National Assembly adopted two orders requesting the Constitutional Court to assess whether unconstitutional consequences could occur due to the suspension of the implementation or rejection of the Slovene National Holding Company Act (hereinafter

referred to as the SNHCA) and of the Measures of the Republic of Slovenia to Strengthen the Stability of Banks Act (hereinafter referred to as the MSSBA) in a referendum.

2. In the request regarding the SNHCA, the National Assembly alleges that unconstitutional consequences could occur due to the suspension or rejection of the SNHCA in a referendum, as well as a situation that would be inconsistent with Articles 1, 2, 3, 8, 34, 50, 51, 86, 87, 89, 90, 91, and 153 of the Constitution. The implementation of entire chapters of the Constitution that regulate the organisation of the state, human rights, and fundamental freedoms would allegedly be seriously jeopardised. It alleges that the SNHCA should be implemented within the shortest possible period of time; any later implementation would allegedly to a high degree nullify its provisions. Even the approval of this Act in a referendum would allegedly not be able to eliminate unconstitutional consequences, as in the period until the referendum is to be carried out it would not be possible to take urgently necessary measures to maximise the value of state property and to stabilise public finances, which would thus render impossible the financing of state tasks determined by the Constitution. In the assessment of the National Assembly, such a situation represents an evident unconstitutionality, the elimination of which is allegedly necessary for the protection of such constitutionally important values as ensuring a social state and human dignity.

3. The National Assembly alleges that if the Republic of Slovenia does not adopt the reform measures in time it will be obliged to apply for international financial assistance. It is of the opinion that the commitments contained in the agreement regulating the granting of such assistance would entail an interference with the constitutional principle of supremacy. The so-called *troika* that would be making the decision, i.e. the representatives of the European Union, a representative of the International Monetary Fund (hereinafter referred to as the IMF), and the parliaments of other Member States of the European Union, would "dictate" assistance measures that would be inconsistent with Article 3a of the Constitution. Furthermore, by the end of 2013 Slovenia should adopt regulations for the implementation of Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States (OJ L 306, 23 November 2011, page 41 – hereinafter referred to as Directive 2011/85/EU), while it is also bound by the intergovernmental treaty on the fiscal agreement that was ratified by the National Assembly by the Act Ratifying the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union between the Kingdom of Belgium, the Republic of Bulgaria, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, Hungary, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, and the Kingdom of Sweden (Official Gazette RS, No. 35/12, MP, No. 4/12 – hereinafter referred to as the TSCG).

4. Delayed adoption of measures regarding the management of state property would allegedly also jeopardise the fulfilment of international commitments of the Republic of Slovenia regarding the public deficit. The National Assembly warns that on the basis of Articles 3a and 8 of the Constitution, Slovenia must respect the commitments that it made to its European partners in the euro area. Disrespecting such commitments under European Union law would not only entail a violation of such law, but also an unconstitutional situation in the framework of Slovenia's constitutional regulation. Without the adoption of the immediate necessary measures it would not be possible to eliminate the excessive public deficit of the state and thus provide for the fulfilment of the obligations determined by Articles 119 and 126 of the Treaty on the Functioning of the European Union (consolidated version, OJ C 83, 30 March 2010 – hereinafter referred to as the TFEU) in order to reduce the public deficit by 3% of the gross domestic product (hereinafter referred to as GDP) by the end of 2013.

5. The National Assembly substantiates the unconstitutionality of the present regulation by alleging that anomalies and complexities occurred in the implementation of the Management of Assets Owned by the Republic of Slovenia Act (Official Gazette RS, Nos. 38/10, 18/11, 77/11, and 22/12 – hereinafter referred to as the MAORSA), allegedly resulting in the Republic of Slovenia losing credibility abroad. The SNHCA, as part of the reforms, would allegedly contribute to the improvement of the economic environment and to the stabilisation of the public finances. As Slovenia has announced such reforms, the implementation of the SNHCA would allegedly be a necessary step towards improving the credit rating of the state. The National Assembly alleges that the present regulation in the MAORSA and its implementation in practice allow for abuses, which devalues state property. The Capital Assets Management Agency of the Republic of Slovenia (hereinafter referred to as the CAMARS) allegedly overexploited its independent position and acted, contrary to the guidelines adopted by the Government, to the detriment of state property and therefore of the taxpayers. It allegedly follows therefrom that due to the worse economic situation in the state, the exercise of the constitutional right to security of employment and the right to social security (Articles 66 and 50 of the Constitution) is not ensured. As the CAMARS allegedly does not achieve optimal profitability from the management of state property, which allegedly affects the economic situation, the welfare of the state, and employment possibilities, the National Assembly alleges that the MAORSA interferes with Article 34 of the Constitution, which guarantees the right to personal dignity and safety to everyone.

6. The National Assembly also alleges that the present regulation under the MAORSA is inconsistent with the principle of the separation of powers (the second paragraph of Article 3 of the Constitution). The SNHCA allegedly determines additional competences of the National Assembly that allegedly to a greater extent implement the principle of the separation of powers.

7. The current regulation is allegedly inconsistent with the principle of the conformity of legal acts determined by Article 153 of the Constitution as it allegedly fails to implement to a

sufficient degree the Guidelines of the Organisation for Economic Co-operation and Development (hereinafter referred to as the OECD) for the corporate management of companies in state ownership.

8. In the opinion of the National Assembly, the hindered borrowing of the state on the international financial markets and consequent jeopardised financing from public funds allegedly entail a violation of the Constitution, as such a situation already interferes with the constitutional guarantees regarding social security and human dignity. A situation in which financing from public funds that are allegedly jeopardised to such a degree that the state is allegedly no longer able to finance its obligations that are guaranteed to citizens and other entitled persons by Articles 50 and 51 of the Constitution allegedly violates the principle of a social state determined by Article 2 of the Constitution and interferes with the position of Slovenia as a democratic republic (Article 1 of the Constitution) based on human dignity. In such a position, the current regulation in the MAORSA, which does not allow for effective and clear management of state property, is allegedly inconsistent with the constitutional right to social security, including the right to a pension, as the Republic of Slovenia is allegedly not able to guarantee a living minimum income to a particular part of the population, and even less the social minimum income, which is higher.

9. The National Assembly also alleges that the request of a group of deputies that a referendum on the SNHCA be called does not fulfil the constitutionally determined conditions for the calling of a referendum, as it allegedly does not contain 30 handwritten signatures of deputies. Therefore, the calling of such referendum would in itself cause unconstitutional consequences. By Order No. U-II-1/12, dated 15 November 2012, the Constitutional Court requested that the National Assembly state whether there exists a request for the calling of a subsequent legislative referendum regarding the SNHCA, with the handwritten signatures of at least 30 deputies enclosed, in conformity with the first paragraph of Article 15 of the RPIA and the second paragraph of Article 113 of the Rules of Procedure of the National Assembly (Official Gazette RS, No. 92/07 – official consolidated text – hereinafter referred to as RPNA-1). On 22 November 2012, the President of the National Assembly announced that a request calling for a referendum on the SNHCA with 30 signatures of deputies enclosed exists.

10. In its request regarding the MSSBA, the National Assembly alleges that the suspension of the implementation or the rejection of this Act in a referendum could lead to a situation that would be inconsistent with Articles 1, 2, 3, 8, 50, 51, and 153 of the Constitution, and also the implementation of entire chapters of the Constitution that determine the organisation of the Republic of Slovenia, human rights, and fundamental freedoms would be seriously jeopardised. The National Assembly alleges that the prompt adoption of reform measures, including the reorganisation of the banking sector, is crucial due to the deterioration of the credit rating of Slovenia, as Slovenia would otherwise have to apply for international financial assistance from the European fund in order to ensure financial stability. By applying for international financial assistance in which also the IMF is included, a constitutionally

inadmissible interference with the supremacy of the state that is outside the scope determined by Article of 3a of the Constitution would occur.

11. The National Assembly substantiates the unconstitutionality of the existing statutory regulation with the allegation that the regulation currently in force fails to regulate the possibility to resolve the situation that has arisen in the Slovene banking system and caused a deterioration of the credit ratings of the Republic of Slovenia. As a consequence, borrowing possibilities are allegedly limited and thus financing from public funds is jeopardised. It claims that the existing instability of public finances is so severe that the Republic of Slovenia is no longer able to finance the obligations that are guaranteed to its citizens and other entitled persons by Articles 50 and 51 of the Constitution, which entails, as a consequence, also a violation of the principle of a social state determined by Article 2 of the Constitution. In the opinion of the National Assembly, such a situation also entails an interference with the position of the Republic of Slovenia as a democratic state (Article 1 of the Constitution) and an interference with the human dignity of its citizens. Due to the hindered borrowing, which is a consequence of the continual deterioration of its credit ratings, the reason for which lies precisely in the condition of the banking system, the state is allegedly no longer able to ensure the social minimum income to current and future generations, and for a certain part of the population the provision of even a living minimum income is allegedly jeopardised. In addition to the rights that the Constitution specifically determines as human rights, also other rights whereby the Constitution binds the state to act in a defined active way (e.g. Articles 49, 52, and 66 of the Constitution) are allegedly jeopardised. Due to the hindered borrowing or imminent incapacity to borrow, the state is allegedly unable to fulfil its obligations even by increasing the public deficit, which currently is already excessive. Due to its incapacity to borrow, the state is allegedly unable to provide for social and other rights, thus also causing a violation of the second paragraph of Article 148 of the Constitution.

12. The National Assembly also alleges that without the adoption of the immediate urgent measures contained in the MSSBA subsequent deterioration of the credit ratings of the state and of the banks would occur, possibly rendering the recapitalisation of banks through the European Central Bank (hereinafter referred to as the ECB) impossible, thus causing a liquidity crisis in the banks, as the ECB resources are allegedly the sole remaining source of liquidity for the banks. The problem of repaying the credits that the Republic of Slovenia has received from the European Investment Bank (hereinafter referred to as the EIB) would allegedly result, and also the credibility of guarantees by the state would allegedly decrease.

13. The National Assembly alleges that the negative trend regarding the deterioration of credit ratings, which has arisen precisely because of the problems in the Slovene banking system, can only be halted by the implementing measures contained in the MSSBA. The adoption of the MSSBA would allegedly once again enable state borrowing, which is urgently necessary in order to provide for social security. It thereby specifically underlines the importance of prompt implementation of the reform measures, as the MSSBA would

allegedly efficiently eliminate unconstitutional consequences and prevent the emergence of new, even worse, unconstitutional consequences only if it is implemented in the shortest time possible. Even if the Act were to be implemented after a decision thereon in a referendum, which allegedly would happen only in the first quarter of 2013, this would compromise its effects to a great degree.

14. Allegedly, delayed implementation of the MSSBA would, due to the higher price of delayed realisation of such measures, also jeopardise the fulfilment of the international commitments of Slovenia regarding the public deficit. Without the adoption of immediate necessary measures it would allegedly be impossible to eliminate the excessive public deficit of the state and thereby provide for the fulfilment of the obligations determined by Article 3a of the Constitution and Article 126 of the TFEU, and, by the end of 2013, to reduce the public deficit by 3% of GDP. For the same reason, it would allegedly be impossible to fulfil the obligations under Article 8 of the Constitution. The legislature has namely already ratified the TSCG, on the basis of which respect for the fiscal rule regarding a balanced budget must be ensured. The National Assembly also warns that the Republic of Slovenia has to adopt regulations ensuring transposition of Directive 2011/85/EU by the end of 2013.

15. The request of the National Assembly regarding the SNHCA was transmitted by the Constitutional Court, for reply, to the group of deputies who filed the request calling for a referendum regarding the SNHCA (hereinafter referred to as the applicant of the request for the calling of a referendum on the SNHCA), which replied to it. It claims that the substantive prerequisites for prohibiting the referendum are not met, as the National Assembly allegedly had not demonstrated the unconstitutionality of the regulation currently in force, which it should have demonstrated with reference to the established case law. It thereby refers to Decisions of the Constitutional Court No. U-II-1/11, dated 10 March 2011 (Official Gazette RS No. 20/11), and No. U-II-3/11, dated 8 December 2011 (Official Gazette RS No. 109/11). The claims of the National Assembly allegedly refer only to the inefficiency of the regulation currently in force, which the SNHCA allegedly eliminates and ensures a higher level of accord with the OECD guidelines. The applicant of the request for the calling of a referendum on the SNHCA does not concur with the position of the National Assembly that during the legislative proceedings the insufficiencies of the SNHCA to which the OECD called attention were eliminated by amendments. Moreover, it claims that the regulation under the SNHCA is inconsistent with the first paragraph of Article 146 and with Article 148 of the Constitution. It explains its viewpoint on the reasons for the adoption of the Act at issue and its own proposal regarding the statutory regulation of the management of state property, which as such was also submitted in the legislative procedure and which was intended to ensure, through a special state management company, effective and clear management of state property, but which was rejected by the ruling coalition. It specifically warns that also the capital investments of the state in the banks that would allegedly in the near future face reorganisation requiring an increase in their capital will be transferred to a holding company. As the resources for an increase in the banks' capital are allegedly not envisaged in the budget for 2013 and 2014, these resources will allegedly have to be

provided by the holding company. The applicant of the request for the calling of a referendum on the SNHCA claims that the SNHCA does not belong in the framework of measures that are linked to the financial stabilisation of the state. Also the real properties of the state would allegedly be transferred to the holding company, whereby it would not be suitable for some of them to be managed by the holding company. The applicant is of the opinion that all the formal prerequisites for the calling for a referendum are met. The proceedings by which the Constitutional Court decides whether due to the calling of a legislative referendum unconstitutional consequences could occur are allegedly not intended to assess whether the procedural prerequisites for the calling of such are met, as this is, according to the regulation of the National Assembly in its Rules of Procedure, decided on by the President of the National Assembly, which reflects his autonomy when dealing with such issues. The applicant proposes that the Constitutional Court decide that unconstitutional consequences would not occur due to the suspension of the implementation or the rejection of the SNHCA at a referendum.

16. The request of the National Assembly regarding the MSSBA was transmitted by the Constitutional Court for reply to the Trade Union of Chemical, Non-Metal, and Rubber Industries of Slovenia (hereinafter referred to as the petitioner for a referendum on the MSSBA), which replied to it. It is of the opinion that the request of the National Assembly is deficient as it states neither that the MSSBA represents the direct implementation of a particular human right, nor that this Act remedies the unconstitutionality of an act that has been so determined by a decision of the Constitutional Court, in light of the fact that in its hitherto constitutional assessments the Constitutional Court has allegedly only interfered with the right to a referendum in these two instances. In this regard, the National Assembly allegedly only unclearly claimed the existence of the unconstitutionality of the provisions of the valid legislation in the field of the financial system. The National Assembly allegedly did not even allege the unconstitutionally of particular statutory provisions, thus the Constitutional Court would have to, as is required when it assesses a request regarding the unconstitutionality of an act, refuse to decide on the merits of the request. The reasons by which the National Assembly substantiates the request allegedly show at the utmost that the implementation of the legislation is inappropriate, and not that it is constitutionally deficient. Also the assessment of the National Assembly that the current regulation is poor and that the MSSBA improves it allegedly cannot substantiate the claims regarding the unconstitutionality of the statutory regulation. The claims of the National Assembly regarding the jeopardised sovereignty of the Republic of Slovenia are allegedly "misplaced" and allegedly concern some uncertain and distant possibility, which is not demonstrated. The reference to human dignity allegedly cannot be regarded as a relevant constitutional argument, as the decision-making of the Constitutional Court would thus pass from a legal assessment to an assessment of economic grounds and of the benefits resulting from challenging the acts. The urgency of the implementation of the MSSBA allegedly also cannot be a reason for the interference with the right to a referendum, as this Act could have been implemented sooner. Furthermore, the right to a referendum allegedly cannot be nullified due to some supposed time constraint.

17. The Constitutional Court sent the reply of the applicant of the request for the calling of a referendum on the SNHCA and the reply of the petitioner for a referendum on the MSSBA to the National Assembly, which replied to them. The National Assembly concurs with the attached opinions of the Government regarding the allegations of the applicant of the request for the calling of a referendum on the SNHCA and regarding the allegations of the petitioner for a referendum on the MSSBA. Regarding the SNHCA, the Government is of the opinion that the issue of proving the inexistence of the basic prerequisites for prohibiting the referendum in the case at issue by referring to another case (Decision No. U-II-1/11) with a significantly different factual and substantive situation is inappropriate and that each individual case should be decided on separately. It states that in the case at issue regarding the SNHCA, this Act is part of an integrated package of measures and that it is precisely the bad management of companies with capital investment from the state that is one of the key reasons for the poor condition of the public finances. The fact that the method of management of state property is of key importance to the condition of the public finances is allegedly admitted by the applicant of the request for the calling of a referendum on the SNHCA itself, in that it claimed that "the management influences not only the state as the owner but also the economic and social condition of the state." The government is of the opinion that the existence of unconstitutionality is sufficiently and relevantly demonstrated by the substantiation of the unconstitutionality of the existing statutory regulation from the viewpoint of the right to social security and a pension, of a democratic and social state, of the right to security of employment, of the principle of the separation of powers, and of the principle ensuring the conformity of legal acts. It explains in detail why the SNHCA is more appropriate than the MAORSA, and reiterates the claims of the National Assembly from the request. Regarding the MSSBA, the Government claims that the request of the National Assembly is substantiated in detail and grounded, and that it clearly stems therefrom which constitutional rights are violated in the current situation, as there exists no legal basis for appropriate treatment of weakened finances in the banking sector. Therefore, it would be impossible to prove the unconstitutionality of the existing legislation, as it does not contain tools for transferring and resolving the banks' bad debts. In the opinion of the Government, the economic sovereignty of the state is a sufficiently high criterion that can be considered by the Constitutional Court when weighing the right to a referendum and the limitation of such right. It states reasons why it is allegedly precisely the MSSBA that is of crucial importance for improving the situation in the banking sector. It stresses the need for prompt implementation of the MSSBA, as its delayed implementation (if a referendum is held, only in the first quarter of 2013) would lead to the inability to realise measures urgently necessary for the reorganisation of the Slovene banking system whereby the financing of the obligations of the state determined in the Constitution would be rendered impossible.

18. From the Ministry of Finance the Constitutional Court received the documents regarding the proceedings conducted against the Republic of Slovenia on the basis of Article 126 of the TFEU due to its excessive public deficit, data regarding the main guidelines for economic policy and public finance policy for 2013 and 2014, data regarding expected borrowings of the Republic of Slovenia for 2013, data regarding the expected total amount of payments for

obligations arising from credits and guarantees to the detriment of the state for 2013, the last three credit ratings of the Republic of Slovenia issued by the credit rating agencies Standard & Poor's, Moody's Corporation, and the Fitch Group, as well as some other data regarding the situation of public finances in the Republic of Slovenia.

19. The explanations of the Ministry of Finance were sent to the applicant of the request for the calling of a referendum on the SNHCA and to the petitioner for a referendum on the MSSBA. The petitioner for a referendum on the MSSBA took a position thereon, whereby it continued to fully support the positions in its reply to the request of the National Assembly. It is of the opinion that the documentation of the Ministry of Finance confirms its position that there are no substantiated constitutional reasons for the prohibition of a referendum on the MSSBA. Allegedly, from the data of the Ministry of Finance it namely proceeds that "the budget is not at all illiquid, and there are no prospects (demonstrated or substantiated in the request of the National Assembly) for something similar in the future; the borrowings of the state are obviously flowing quite smoothly, even 'successfully', regarding the MF documentation. These data allegedly only show a certain oscillation of interest rates or conditions for borrowing. Referring to the assessment criteria determined by Decision U-II-1/11, it claims that it is not possible to substantiate the prohibition of a referendum by the supposed unconstitutionalities in the future and by economic reasons that are not measurable.

B – I

20. In conformity with the first sentence of the second paragraph of Article 3 of the Constitution, in Slovenia power is vested in the people. In conformity with the second sentence of the second paragraph of this Article, they exercise this power directly and through elections, consistent with the principle of the separation of powers. In such manner, the Constitution establishes already at the level of basic constitutional principles two ways whereby the power, which in any case belongs to the people, is exercised.[1] Elections are that democratic and generally established constitutional institute on the basis of which the people – the voters – confer this power on the members of the representative body for the period of a predefined term of office. It is through elections that the legitimacy that the elected members of the representative body exercise this power in the name of the citizens is established.[2] For the exercise of this power they are politically accountable to the people, and such accountability is re-established over and over again through periodic and free democratic elections. Therefore, in such sense this is termed the people's indirect exercise of power, i.e. representative democracy.[3] The people's direct exercise of power includes the known forms of direct democracy,[4] which also include the referendum.

21. In Article 90, the Constitution determines the legislative referendum as the basic form of direct democracy, whereby it determines in the first paragraph of this Article that in a referendum questions that are regulated by law can be decided on. In the fifth paragraph of

Article 90, the Constitution leaves the determination of the regulation of the manner of conducting legislative referenda to a law. Legislative referenda are called by the National Assembly, and the National Assembly is bound by the result of such referendum (the first paragraph of Article 90 of the Constitution). The second paragraph of Article 90 of the Constitution on one hand confers on the National Assembly the competence to decide on its own and of its own initiative whether to call a legislative referendum, and on the other hand gives certain subjects the right to call for a referendum: the National Assembly must call a legislative referendum if so is required by at least one third of the deputies, by the National Council, or by forty thousand voters. It clearly proceeds from this provision of the Constitution that voters directly exercise power at a legislative referendum either when a decision thereon is adopted by the National Assembly or when constitutionally authorised applicants request a legislative referendum. The manner how the right to request a call for a referendum is exercised is also determined by law, in conformity with the fifth paragraph of Article 90 of the Constitution. The legislature implemented its constitutional mandate determined by the fifth paragraph of Article 90 of the Constitution by means of the RPIA, by which the subsequent legislative referendum was established. The right to request a referendum is an important constitutional right which in an established constitutional democracy enables individual issues subject to statutory regulation to not be definitively decided on by an elected representative body, but that an act which such body has already adopted is, in accordance with the valid regulation under the RPIA, referred to the voters in order to be confirmed. If such right is successfully exercised, the voters decide on the implementation of such act in a referendum, whereby in this case they exercise the legislative power directly by exercising the right to decide in a referendum, the exercise of which is also regulated by the RPIA.[5]

22. In the first paragraph of Article 90, the Constitution allows for the calling of a legislative referendum on all issues that are the subject of regulation by law. From this provision stems the fact that the Constitution favours a wide possibility of conducting legislative referenda. However, this does not mean that the right to request a legislative referendum is absolute in the sense that the referendum should be admissible whenever the conditions for the calling of such under the second paragraph of Article 90 are fulfilled. The Constitutional Court adopted such a position already by Decision No. U-I-47/94, dated 19 January 1995 (Official Gazette RS No. 13/95, and OdlUS IV, 4), where it proceeded from the fact that parallel to the right ensured by the second paragraph of Article 90 of the Constitution there can also exist other, equally constitutionally protected rights whose constitutional protection needs to be ensured. The weight of such other constitutional rights can in certain cases be so important that the right to request a legislative referendum must give way to them. It is also on this that the first paragraph of Article 21 of the RPIA is based, in accordance with which, even though the conditions determined by the second paragraph of Article 90 are fulfilled, a referendum cannot be held if it is possible to assess that unconstitutional consequences would occur due to the suspension of the implementation of the act at issue or its rejection in a referendum.

23. The Constitutional Court has hitherto numerous times underlined that the notion of an unconstitutional consequence is a non-defined legal term whose content is interpreted by the Constitutional Court through positions adopted in proceedings for the review of the constitutional admissibility of a legislative referendum.[6] As a particular case might deal with a collision of constitutional values, wherein on one hand there is a constitutionally ensured right to request a legislative referendum, and on the other there are other constitutionally protected values, it has to be determined in each individual case what these constitutionally protected values are that can oppose the right determined by the second paragraph of Article 90 of the Constitution. In the hitherto decisions adopted in the exercise of its competence determined by Article 21 of the RPIA, the Constitutional Court proceeded from the criteria of its assessment that were, after being first formulated in Decisions No. U-II-1/06, dated 27 February 2006 (Official Gazette RS No. 28/06, and OdlUS XV, 17) and No. U-II-1/09, dated 5 May 2009 (Official Gazette RS No. 35/09, and OdlUS XVIII, 20), further elaborated and as such their grounds were contained in Decision No. U-II-2/09, dated 9 November 2009 (Official Gazette RS No. 91/09, and OdlUS XVIII, 50). In the latter case, the Constitutional Court had to deal with a request for the calling of a referendum on an act by which the legislature had remedied an unconstitutional situation which had arisen because it had failed to respond to Decision of the Constitutional Court No. U-I-159/08, dated 11 December 2008 (Official Gazette RS No. 120/08, and OdlUS XVII, 71) within the time limit imposed by the Constitutional Court.[7] By this Decision, the unconstitutionality of an act in force was determined. The Constitutional Court deemed the position and the authority of the judiciary, as ensured by the second paragraph of Article 3 and Article 125 of the Constitution, the right to judicial protection (the first paragraph of Article 23 of the Constitution), and the importance of respect for the Constitutional Court decisions for the enforcement of the principles of the rule of law (Article 2 of the Constitution) and of the separation of powers (the second sentence of the second paragraph of Article 3 of the Constitution) to be constitutionally protected values that had to be given priority over the right to request a referendum.[8] In the mentioned case, these values were the starting point of the assessment. Therefore, the criteria of the assessment proceeded from the fact that there existed an unconstitutionality with regard to the valid statutory regulation that previously had been finally determined by a Constitutional Court decision, and from the assessment of whether the act which was to be the subject of deciding in a referendum remedied such unconstitutionality. On the basis of these findings, the Constitutional Court assessed whether it would be admissible for the previous unconstitutional situation to continue, were the act to be rejected in the referendum. Decision No. U-II-1/10, dated 10 June 2010 (Official Gazette RS No. 50/10), also concerned a case with the same basis. In that case an unconstitutionality had been determined by Decision No. U-I-246/02, dated 3 April 2003 (Official Gazette RS No. 36/03, and OdlUS XII, 24)[9] due to an inconsistency with the principles of legal certainty (Article 2 of the Constitution) and equality (the second paragraph of Article 14 of the Constitution), while by Decision No. U-II-1/10 the Constitutional Court specifically underlined also the right to personal dignity (Article 34 of the Constitution). For a long period of time the legislature failed to respond to Decision No. U-I-246/02, whereby the Constitutional Court in quite a number of subsequent decisions kept warning of the

unconstitutionality of such situation.[10] Therefore, the assessment of the admissibility of the referendum in that case was performed on the basis of the same starting points as in Decision No. U-II-2/09.

24. The criteria of assessment by which the Constitutional Court in the mentioned cases assessed whether unconstitutional consequences could occur due to the rejection of the act in a referendum were adapted to the constitutional values which the Constitutional Court established carry significant weight in relation to the right to request a referendum.[11] The fact that the unconstitutionality had already been determined by a decision of the Constitutional Court placed two questions at the centre of the assessment criteria: 1) whether the valid act is unconstitutional, and 2) whether the act which was to be decided on in a referendum eliminates such unconstitutionality in a constitutionally consistent way. These were the basic questions that had to be answered in order for the Constitutional Court to then weigh, in such a situation involving a collision of constitutional values, whether priority should be given to the right to request a referendum or to other constitutional values. The Constitutional Court followed such approach in its subsequent decisions by which it exercised its competence determined by the first paragraph of Article 21 of the RPIA, regardless of the fact that in some of them (see, in particular, Decision No. U-II-1/11) it was faced with situations that in their essence were significantly different than the situations in the mentioned decisions. Furthermore, as two cases concerned extensive acts that regulated entire legal fields (i.e. pension insurance and family relations), the Constitutional Court, due to the mentioned starting points, requested that the National Assembly demonstrate that there existed an evident unconstitutionality in the valid legislation that the Act which was to be subject to approval in a referendum allegedly remedied. Therefore, it requested that the National Assembly clearly demonstrate the existing unconstitutionality of the valid statutory regulation whose elimination was necessary in order to protect important constitutional consequences that had to be given priority over the right to request a legislative referendum, by which the voters were to decide on the adopted act.[12] If the National Assembly failed to demonstrate the unconstitutionality of the valid act, the Constitutional Court halted its assessment already at the first level of the determination of the existence of unconstitutional consequences, i.e. on the level of assessing whether the valid regulation was unconstitutional, without substantively assessing whether the case at issue referred, in addition to the right to request a legislative referendum, also to other values whose exercise and protection the newly adopted act pursues and which also must enjoy constitutional protection. In this manner, by Decision No. U-II-1/11 the Constitutional Court rejected the request at issue of the National Assembly, as the latter failed to demonstrate that the unconstitutionality of the act regulating pension and disability insurance already existed. It dismissed as irrelevant the allegations of the National Assembly that the state would have to increase borrowings even more in the future due to increased expenditures for the co-financing of the pension system as they could not substantiate the unconstitutionality of the valid statutory regulation.

25. In cases which are different in terms of content from the instances in Decisions Nos. U-II-2/09 and U-II-1/10, the hitherto established way of assessing the possibility of the occurrence of unconstitutional consequences can cause the constitutional arguments of the National Assembly directed towards the determination of unconstitutional consequences and the constitutional arguments of the applicants of the request for the calling of a referendum to not be given sufficient weight. When the situations which the Constitutional Court deals with are not such as those contained in Decisions Nos. U-II-2/09 and U-II-1/10, it can occur that the question of whether in addition to the right to request a legislative referendum also other constitutional rights are at issue is no longer the starting point of the assessment, as the assessment of the Constitutional Court can halt already at the first stage, as the criteria of assessment are entirely adapted to the situation stated in the mentioned Decisions. The criteria on the basis of which the Constitutional Court assessed the admissibility of the referendum in the stated cases were adapted to the constitutional values that by these two Decisions were weighed against the right to request the calling of a legislative referendum. What they had in common was especially that there already existed two Decisions of the Constitutional Court regarding the unconstitutionality of an act that in a state governed by the rule of law, in which the principle of the separation of powers is established, required that the legislature respond by adopting an appropriate statutory regulation that remedies such unconstitutionality. In different cases, such a starting point can lead to the overlooking of other constitutional values that may have an important, even decisive, weight when weighing the constitutional right determined by the second paragraph of Article 90 of the Constitution and other constitutionally protected values. Such can occur especially when what is at issue is a statutory regulation that predominantly or entirely regulates anew particular social questions. An act can namely regulate the exercise of constitutionally guaranteed rights and protect constitutional values that by their nature have an important constitutional weight in comparison to the right to request the calling of a constitutional referendum.

26. The stated facts require the Constitutional Court to modify to a certain extent its position regarding the starting point of the assessment and elaborate its understanding of the notion of unconstitutional consequences in the sense of the first paragraph of Article 21 of the RPIA. The fundamental value-based starting point for the competence of the Constitutional Court under the first paragraph of Article 21 of the RPIA is namely that that it is the Constitutional Court as the guardian of the Constitution whose duty it is to adjudge truly whether by the suspension of the implementation of an act or by its rejection in a referendum "so important constitutional rights would be affected that for this reason it would be admissible – by weighing the affected constitutional values – to interfere with the constitutional right"[13] to request a referendum, which is provided for by the second paragraph of Article 90 of the Constitution. The starting point of the assessment of the Constitutional Court is the constitutionally protected rights or other constitutionally protected values, while the assessment of the Constitutional Court regarding which of them has to be given priority in each individual case must be adapted to their nature and the relationship between them.

27. The criteria of the assessment that the Constitutional Court introduced by Decisions Nos. U-II-2/09 and U-II-1/10 are thus appropriate and sufficient when the Constitutional Court deals with a request to respect the principles of a state governed by the rule of law (Article 2 of the Constitution) and of the separation of powers (the second sentence of the second paragraph of Article 3 of the Constitution), the basis of which can be found in the already extant decisions of the Constitutional Court. Then, by the adopted act the legislature eliminates the established unconstitutionality. These criteria are also appropriate when what is at issue is in one part a fully defined statutory regulation for which, already in the legislature's assessment, it is evident that it is unconstitutional, regarding which the legislature itself would assess that such an unconstitutionality must be remedied. It is then possible to request and expect that the legislature fulfil the burden of allegation and the burden of proof in order to convince the Constitutional Court of the unconstitutionality of the valid act that the newly adopted statutory regulation remedies in a constitutionally consistent way, and that due to the need to ensure the protection of the stated constitutionally protected values these values must be given priority over the right to request a legislative referendum.

28. However, the constitutional assessment of the admissibility of a referendum is not limited only to instances when what is at issue is a determined unconstitutionality of a statutory regulation that needs to be eliminated. When what is at issue is the question of whether due to the rejection of an act in a referendum other constitutional values would inadmissibly be affected that do not of themselves refer to the elimination of the existing unconstitutionality of the statutory regulation, nor does the newly adopted act primarily pursue such a goal, in the starting point of the assessment of the admissibility of a referendum such constitutional rights must be taken into consideration and, regarding their importance and nature, the criteria for the assessment of the possibility of the occurrence of unconstitutional consequences must be established. Due to the holding of the referendum and the [possible] rejection of the act in a referendum, these constitutional values must not remain unprotected to such an extent that such would cause their substantial limitation or even emptying, which would destroy the balance of the constitutionally protected values.

29. With regard to all of the above, in the assessment of the existence of the possibility that unconstitutional consequences might occur, it is not possible to proceed from the established criteria for the assessment that presuppose an assessment of the constitutionality of the valid statutory regulation and of the newly adopted statutory regulation that is to be the subject of deciding in a referendum, but what has to be determined is which constitutionally protected values may be an obstacle to the realisation of the legislative referendum. Important constitutionally protected values are placed in opposition to the right determined by the second paragraph of Article 90 of the Constitution and these establish the starting point of the constitutional assessment and determine the criteria of its assessment in individual cases. In this manner, the Constitutional Court has the possibility to perform its role as the guardian of constitutional values and to assess, by means of weighing – in conformity with the general principle of proportionality (Article 2 of the Constitution) – which values, among all the values that otherwise enjoy constitutional protection, must be given

priority in order to maintain the balance between the constitutional values and to protect those that due to the rejection of the act at issue could be jeopardised.

30. The legislature must respond, with the adoption of appropriate statutory regulation, to needs in all fields of social life, which is even more true if such needs concern the foundations of the functioning of the state or its ability to efficiently ensure human rights and fundamental freedoms.[14] The representative authority was given the competence to exercise legislative authority in free democratic elections that demand responsible exercise of such power. The Government, as the constitutionally determined proposer of laws (Article 88 of the Constitution), also carries equal responsibility. The legislature has wide discretion regarding the regulation of individual social questions. The way it regulates them is a matter of the appropriateness of the statutory regulation, the adoption of which it is competent for and for which it carries all political responsibility. In this sense, the statutory regulation can also be, in conformity with the first paragraph of Article 90 of the Constitution, the subject of political decision-making in a referendum. However, the legislature is the first subject that, in accordance with the statutory regulation, is bound by the Constitution (the first paragraph of Article 153 of the Constitution), which it has to respect. Therefore, in instances when the legislature's intention is to protect important constitutional guarantees by exercising the legislative power and when by the adopted act it also has, in its opinion, already protected them, these values are placed against the right to request a legislative referendum. The legislature then no longer operates only in the framework of the appropriateness of the statutory regulation that is entirely within its discretion. When the protection of constitutional values is at issue, the statutory regulation gains a constitutional dimension. The latter is the basis for weighing the values and for assessing which of them should be given priority in order to ensure balanced (proportional) respect for all protected interests. Thereby the legislature has to assess whether the implementation of the newly adopted act is necessary in order to ensure the protection of the constitutional values that are placed against the right to request a referendum.

31. The right to request a legislative referendum is an important constitutional right explicitly determined by the second paragraph of Article 90 of the Constitution. As such, the Constitutional Court has to ensure its constitutional protection. Therefore, in the case of a collision between various constitutional values, the Constitutional Court must assess, when exercising the competence determined by the first paragraph of Article 21 of the RPIA, which of the constitutionally protected values must be given priority. Thereby, it first has to assess the importance of the constitutionally protected values that the National Assembly claims are placed against the right to request a referendum and whether their protection requires that statutory measures must be urgently adopted. Due to the holding of a referendum or rejection of the act in a referendum, the non-implementation of the newly adopted statutory regulation would inadmissibly limit or possibly even empty such values. Such would entail a serious obstacle to the exercise of the right to request a legislative referendum on acts that are intended to at least substantially mitigate, if not prevent, the limitation or even emptying of constitutional values. Due to their constitutional weight, they can outweigh the right under

the second paragraph of Article 90 of the Constitution. On this basis, it first has to be determined what constitutional values are relevant in a specific case. Then, in accordance with their constitutional weight, it has to be assessed whether the right to request the calling of a legislative referendum has to have priority or whether such has to give way, as due to the protection of other constitutional values newly adopted statutory measures must urgently be implemented in order to prevent unconstitutional consequences from occurring due to the suspension of the implementation of the act or its rejection in the referendum. Thereby, the Constitutional Court has to consider that due to Article 25 of the RPIA (which prohibits the National Assembly, for one year after the promulgation of referendum decision, from adopting an act that would be substantively inconsistent with the decision of the voters), the rejection of an act in a referendum can cause unconstitutional consequences to remain for at least one year.

B **– II**

32. The petitioner for a referendum on the MSSBA alleges that there is a substantial deficiency in the request of the National Assembly in that it allegedly does not claim which statutory regulation is allegedly unconstitutional. Therefore, these allegations [of the petitioner] have to be replied to even before beginning a substantive assessment. Neither the RPIA nor the Constitutional Court Act (Official Gazette RS No. 64/07 – official consolidated text – hereinafter referred to as the CCA) precisely determine the content of a request of the National Assembly by which it initiates the proceedings determined by the first paragraph of Article 21 of the RPIA. By the nature of the matter, its content can only be directly linked to the subject of the decision-making of the Constitutional Court, while this depends precisely on the content of the notion of unconstitutional consequence. In fact, the CCA namely does explicitly determine in the first paragraph of Article 24b what a request for a review of constitutionality must contain, but this and other provisions of Chapter IV of this Act, in conformity with the first paragraph of Article 49 of the CCA in other matters in the jurisdiction of the Constitutional Court, only apply *mutatis mutandis* and insofar as not otherwise provided by this Act. Under the second paragraph of Article 49, the CCA explicitly determines that the Rules of Procedure of the Constitutional Court determine which information must be contained in applications in other matters within the jurisdiction of the Constitutional Court if such is not already determined by law. As the RPIA, which establishes this special competence of the Constitutional Court, does not contain any provisions regarding this matter, the Rules of Procedure of the Constitutional Court (Official Gazette RS, Nos. 86/07, 54/10, and 56/11 – hereinafter referred to as the Rules) determine that the request of the National Assembly must contain a statement of the consequences which allegedly could occur due to the suspension of the implementation of the law or due to the law at issue not being adopted, and a statement of reasons due to which the consequences are allegedly unconstitutional (the second and third indents of Section XI.1. of the Annex with reference to the second paragraph of Article 34 of the Rules). The request of the National Assembly that refers to the referendum on the MSSBA contains such statement.

Therefore, it is not possible to concur with the allegations of the petitioner for a referendum on the MSSBA regarding the existence of a substantial deficiency in the request that as a consequence allegedly does not allow for its substantive review.

33. However, it is necessary to agree with the position of the applicant of the request for the calling of a referendum on the SNHCA that the decision regarding the existence of the request for the calling of a legislative referendum constitutes an integral part of the National Assembly's autonomy. Therefore, the Constitutional Court did not take a position on the allegations of the National Assembly that refer to whether the National Assembly correctly determined that there existed a request by at least one third of the deputies regarding the calling of a referendum on the SNHCA.

34. Regarding the facts stated in paragraphs 28 to 30 of the reasoning of this Decision, what first has to be determined is which constitutional values are those which the National Assembly claims would be inadmissibly limited or jeopardised due to the suspension of the implementation of the SNHCA or the MSSBA or due to their rejection in a referendum. Thereby, the National Assembly specifically warns that inadmissible unconstitutional consequences would already occur due to the suspension of the implementation of the Acts, which was the reason why, regarding the MSSBA, it had filed its request even before the collection of voters' signatures for the filing of a request for the calling of a legislative referendum finished.

35. In both requests, the National Assembly underlines specific constitutionally protected values that in its opinion are already limited to such a degree that an unconstitutional situation already exists. It is precisely the implementation of the SNHCA and the MSSBA that allegedly would prevent the deterioration of the otherwise already existent unconstitutional situation and thus also the emergence of more severe unconstitutional consequences than already exist. Therefore, the implementation of these two Acts as two measures, among others, for the stabilisation of public finances intended to ensure the reorganisation of the banking sector and to ensure efficient and clear management of state property, is allegedly necessary.

36. The National Assembly alleges that the existing instability of public finances is already such that the Republic of Slovenia is no longer able to finance the state's obligations arising from the constitutionally guaranteed rights to social security and health insurance. Due to the hindered borrowing, which is a consequence of the continued deterioration of the relevant credit ratings, the reason for which lies precisely in the condition of the banking system and in the inefficient and opaque management of state property, the state is allegedly no longer able to ensure a social minimum income to current and future generations, and for a certain part of the population, even a living minimum income is allegedly jeopardised. Thereby, human dignity is allegedly already inadmissibly affected. In such an unstable condition of public finances, the fulfilment of the state's obligation to ensure the exercise of individual rights by paying out financial resources is allegedly made impossible, even though the state

is bound to such action on the basis of Article 2 and the second paragraph of Article 148 of the Constitution. Thereby, beside the rights that are explicitly provided for by the Constitution as human rights, there are allegedly many other rights at issue regarding which the state is bound by the Constitution to act in a certain active way so that individual rights, such as those regarding employment and work (Article 66 of the Constitution) would also in fact be ensured. If the necessary measures are not adopted, the state would allegedly no longer be able to fulfil its obligations due to the hindered borrowing or imminent inability to borrow. The National Assembly therefore alleges substantial limitations regarding providing for the efficient functioning of the state and providing for an efficient system of social security and health care, which under the second paragraph of Article 50 of the Constitution the state must provide for in order for the human rights determined by the first paragraph of Article 50, the first and second paragraph of Article 51, and Article 52 of the Constitution to be ensured, as well as the rights which the state must create the conditions for the implementation thereof (such as Article 66 of the Constitution).

37. The National Assembly affirmed that without the adoption of immediate urgent measures it would not be possible to eliminate the excessive public deficit of the state and thus to ensure the fulfilment of the obligations that Slovenia must respect on the basis of Article 3a of the Constitution and Article 126 of the TFEU, so that by the end of 2013 it would reduce the public deficit by 3% of GDP. Equally, for such reason it would allegedly be impossible to ensure the fulfilment of the obligations determined by Article 8 of the Constitution. The legislature had namely already ratified the TSCG, on the basis of which respect for the fiscal rule regarding a balanced budget should be ensured. Furthermore, Directive 2011/85/EU should be implemented by the end of 2013. The National Assembly therefore claims that without the adoption of specific measures, which the MSSBA and the SNHCA also constitute an integral part of, the state cannot ensure the fulfilment of its obligations that stem from binding instruments of international law (Article 8 of the Constitution) and obligations that stem from its membership in the European Union (Article 3a of the Constitution).

38. Without the adoption of immediate urgent measures, the subsequent deterioration of the credit ratings of the state as well as of the banks would allegedly occur, which could render impossible also the recapitalisation of the banks by the ECB and thus cause Slovene banks to have a liquidity crisis, as ECB funds are currently allegedly their only remaining source of liquidity. The problem of repaying the loans that the Republic of Slovenia obtained from the EIB would allegedly occur and subsequently the credibility of the guarantees of the state would deteriorate. Subsequent deterioration of credit ratings would allegedly in this and in the next year lead to an increase in the public deficit, and also problems with the liquidity of the banks and the state would allegedly occur, which would lead to a situation in which Slovenia would be obliged to apply for financial assistance from the European fund for providing the financial stability. By requesting international financial assistance, in which also the IMF is involved, a constitutionally inadmissible interference with the sovereignty of the state outside the scope determined by Article 3a of the Constitution would occur. The National Assembly therefore claims that by the adoption of immediate, urgent measures an

inadmissible interference with the sovereignty of the state (the first paragraph of Article 3 of the Constitution) would be prevented.

39. The National Assembly therefore places against the constitutional right to request a decision on an act in a referendum determined by the second paragraph of Article 90 of the Constitution the duty to ensure the efficient functioning of the state by the performance of its important functions and ensuring the rights to social security, health care, and also the other human rights regarding which the Constitution imposes obligations on the state, which is underlined already among the general provisions of the Constitution (the first paragraph of Article 5). In the field of establishing an appropriate economic basis for ensuring efficient free economic initiative (the first paragraph of Article 74 of the Constitution) as well as in the field of the creation of opportunities for employment and work (Article 66 of the Constitution), as well as in other fields, the efficient functioning of the state is in public interest. The efficiency of the state in all of the above fields should enable the establishment of conditions for work and for ensuring social protection and thus for ensuring the conditions which should provide for a life worthy of a human being (Article 34 of the Constitution), which actually forms the basis of human dignity (Article 1 of the Constitution). In addition, the National Assembly also underlined the duty of the state to respect adopted international obligations (Article 8 of the Constitution) and obligations arising from the European legal order (the third paragraph of Article 3a of the Constitution), and ensuring the sovereignty of the state (the first paragraph of Article 3 of the Constitution), which forms a constitutionally determined basis for the existence of the state insofar as the exercise of a part of its sovereign rights were not transferred to the European Union. What are at issue are important constitutional values which call, if they are substantially limited, for a responsible response from the Government as well as from the legislature.

40. Therefore, while assessing whether unconstitutional consequences would occur due to the suspension of the implementation of the SNHCA and the MSSBA or due to their rejection in a referendum, the Constitutional Court must proceed from the question whether the possibility of a significant limitation of important constitutional values has been demonstrated, as is alleged by the National Assembly. After it determines that the National Assembly has demonstrated such limitation, it has to assess which constitutional values should be given priority in the stated circumstances: the right to request a legislative referendum or the immediate implementation of the Acts which the National Assembly assessed are urgently necessary for the protection of important constitutional values.

B **– III**

41. As the National Assembly first of all underlines that the sovereignty of the state, which is certainly one of the central constitutionally protected values (the Preamble to the Constitution and the first paragraph of Article 3 of the Constitution), is in jeopardy, it first has to be assessed whether this value is in fact jeopardised in the stated circumstances. As the

Constitutional Court already stated in Opinion No. Rm-1/02, dated 19 November 2003 (Official Gazette RS No. 118/03, and OdlUS XII, 89), with reference to legal theory, state sovereignty is a characteristic of state power as the highest authority in the state (the so-called supreme state power), which is externally independent from any other authority; what is at issue are thus its external sovereignty, which represents the independence of the state power or the state with respect to other subjects of the same kind, and its internal sovereignty, which reflects the fact that in its territory the state is the supreme, independent, and original power, which has legally subordinated everything located in its territory. It expressly underlined that neither the first nor the second aspect of state sovereignty is absolute; the external sovereignty precisely due to the existence of public international law.[15] If the state were to need international monetary assistance and if to acquire such assistance it were necessary to conclude an agreement on its allocation with the IMF, which in the opinion of the National Assembly would exceed the transfer of sovereignty under Article 3a of the Constitution to the European Union, such in itself would not entail an inadmissible threat to state sovereignty. The Republic of Slovenia as a state is an international subject and as such can sovereignly conclude international treaties that have, in conformity with Article 8 of the Constitution, a status higher than laws within the hierarchy of legal acts that exist in the state. However, treaties are only assigned such power after being ratified by the National Assembly, meaning that the final decision regarding the conclusion of such international agreement is left to the legislature. When what is at issue is a transfer of the exercise of a part of the sovereign rights to international organisations which are based on respect for human rights and fundamental freedoms, democracy, and the principles of the state governed by the rule of law, such international agreement must be ratified by the National Assembly by a qualified majority of deputies (the first paragraph of Article 3a of the Constitution). Sovereignty could be jeopardised by the content of such international agreement and only then the question of its constitutional relevance might arise. The circumstances of the case at issue are not such, therefore in the framework of this assessment it is not demonstrated that this good, which otherwise is constitutionally very important, would already be directly affected or inadmissibly limited.

42. However, also other values underlined by the National Assembly which are likewise constitutionally protected need to be taken into consideration. Other important constitutional values include the effective functioning of a state governed by the rule of law and the effective functioning of a social state, and in such framework, also fostering the exercise of human rights and fundamental freedoms, which include the right to free economic initiative (the first paragraph of Article 74 of the Constitution), the duty of the state to create opportunities for employment and work (Article 66 of the Constitution), and the rights from the field of social security. Under the first paragraph of Article 74, the Constitution ensures free economic initiative. Such requires that the state create conditions for its free exercise and this also has to be taken into consideration by the legislature when adopting statutory regulations. The latter thereby has to consider that the second sentence of the second paragraph of Article 74 of the Constitution does not allow only for the possibility of statutory regulation, but also requires the legislature, by prohibiting the performance of economic

activity contrary to the public benefit, to form economic policy, and gives it the authority to adopt measures by which it will be able to ensure the realisation of the goals of such policy (The Constitutional Court took such a standpoint already in Decision No. U-I-145/95, dated 9 November 1995, Official Gazette RS No. 68/95, and OdlUS IV, 113). The Constitution thereby allows the legislature wide discretion regarding the choice of economic policy measures which it deems necessary, whereby the legislature itself is bound by the constitutional prohibition that it must not allow the performance of economic activity contrary to the public benefit. What is at the heart of the economic policy by which the conditions for exercising free economic initiative are created is undoubtedly ensuring the effective functioning of the banking sector. Precisely from this view, it is understandable that the National Assembly stresses the urgent need to eliminate the so-called credit crunch,[16] where what is at issue is a situation in which the banks fail to perform one of their basic roles in the economic system.

43. Without creating the conditions for the effective realisation of free economic initiative, it is not possible to expect stable and efficient development of the economic system that would provide sufficient financial resources for the effective functioning of the state regarding the exercise of its functions, i.e. from the functions of the state power to ensuring constitutionally protected values, including the accessibility of education (Articles 57 and 58 of the Constitution), the existence and development of cultural, scientific, and artistic life (Article 59 of the Constitution), and the establishment of stable systems in the field of social security (the second paragraph of Article 50 of the Constitution), which have to ensure the right to social security (the first paragraph of Article 50 of the Constitution), the right to health care (the first and second paragraphs of Article 51 of the Constitution), and the rights of persons with disabilities (Article 52 of the Constitution).

44. From the data that were submitted by the Ministry of Finance, it is evident that the level of available budgetary financial resources substantially diminished in 2012. In September 2012, it allegedly reached the lowest level in the past five years (215 million euro). A liquidity deficit is also predicted for the first months of 2013, due to which the state budget should borrow funds already in the first quarter of next year. In its *Economic Issues 2012*, also the Institute for Macroeconomic Analysis and Development draws attention to this fact.[17] At the same time, the Budgetary Memorandum 2013-2014 (EPA 692-VI, 693-VI) proceeds from the fact that, even if all the expected structural and other planned urgent measures are taken, in 2013 GDP will still decrease by 1.4%. At the same time, in its Autumn Forecast for the Period 2012-2014[18] the European Commission predicts a 1.6% decrease in GDP for the same year, which can, as proceeds from the credit assessments that the Ministry of Finance submitted, have an influence on its further decrease in the future. Since a simultaneous increase in the public deficit is predicted, it is not possible to doubt the allegations of the National Assembly that in 2013, as proceeds from the data submitted by the Ministry of Finance, further borrowing of at least 1.4 billion euro will be necessary to ensure the smooth functioning of the state in all the stated fields. The Constitutional Court thus has no reason to doubt the credibility of the submitted data, especially since also the

estimations and data of other appropriate domestic and international institutions confirm them. The fact that in such a situation certain urgent measures need to be adopted that concern the reorganisation of the banking system, the management of state property, further fiscal consolidation, and also certain structural reforms, proceeds not only from a few successive credit ratings issued by various credit rating agencies, but also from the concluding statement of the IMF mission[19] and from the economic prognosis of the OECD for Slovenia.[20] The urgency of the adoption of certain measures therefore has a role in ensuring the efficient functioning of the state, which also includes ensuring the human rights and fundamental freedoms to which the National Assembly draws attention.

45. The National Assembly has already adopted certain statutory measures, some of which are also already the subject of constitutional assessment by the Constitutional Court (such as the Fiscal Balance Act, Official Gazette RS No. 40/12 – FBA). The basis of the purpose of such is the same as is the purpose of the statutory measures that would be subject to deciding in a referendum. This purpose is to ensure the efficient functioning of the state in the current circumstances of a severe economic crisis, when the state already has an excessive public deficit that it has to reduce in order to ensure the performance of its functions and, at the same time, to ensure the respect of certain – even more important in the economic crisis – human rights, to which the National Assembly explicitly draws attention. Regarding the existing economic and especially financial circumstances, it is thus not possible to deny the urgency of the measures that the state has to adopt, among them especially measures regarding the reorganisation of the banking system and ensuring efficient and transparent management of state property. The SNHCA and the MSSBA entail such measures. The fact that the stated Acts introduce measures that are to a certain extent interconnected is claimed not only by the National Assembly but also by the applicant of the request for the calling of a referendum on the SNHCA by drawing attention to the fact that the capital investments of the Republic of Slovenia in the banks in need of reorganisation will also be transferred to the above-mentioned holding company.

46. Ensuring respect for the adopted international obligations and the obligations of the Republic of Slovenia which, as a Member State of the European Union, stem from full membership in this international organisation also has to be taken into consideration as constitutionally important. The TSCG is an international treaty that is formally separated from the treaties of the European Union.[21] It is to take effect on 1 January 2013, under the condition that by then the instrument of its ratification will have been deposited by twelve states party to the treaty whose currency is the euro; if such does not occur by that date, implementation occurs on the first day of the month after the instrument of ratification is deposited by the twelfth state party to the treaty whose currency is the euro (the second paragraph of Article 14 of the TSCG). At this time, the instruments of ratification of eight states party to the treaty whose currency is the euro have been submitted.[22] However, the instrument of ratification of the Republic of Slovenia is one of these. By the implementation of the act on ratification, the treaty is transposed into the internal legal order. It therefore binds the state authorities, even though such international obligation arises only by the entry

into force of the treaty. By ratifying the treaty, the state assumes obligations under the treaty that are to be interpreted in accordance with international law (The Vienna Convention on the Law of Treaties, Official Gazette SFRY No. 30/72 – hereinafter referred to as the VCLT, and rules of customary international law that are not codified therein). When a treaty becomes internationally binding, there also arises an international obligation of the state to fulfil it. Under the provision of Article 26 of the VCLT, every treaty in force is binding upon the parties to it and must be performed by them in good faith (*pacta sunt servanda*). Under Article 27 of this Convention, a particular party may, as a general rule, not invoke the provisions of its internal law as justification for its failure to perform a treaty. If the fulfilment of an international obligation from a treaty requires the adoption or amendment of the appropriate normative regulation, the state is bound by international law also to fulfil the obligation at issue in such manner. The failure to fulfil the obligation entails a violation of the treaty – it entails that the state commits an international offence resulting in a responsibility under international law (compare with Decision No. U-I-376/02, dated 24 March 2005, Official Gazette RS No. 46/05, and OdlUS XIV, 17). After at least another four states party to the treaty who are members of the euro area submit the instruments of ratification when the TSCG becomes internationally binding, Slovenia will be obliged to ensure that the budgetary position of the general government of the state is balanced or in surplus (indent (a) of the first paragraph of Article 3 of the TSCG).[23] At the latest, within one year after this treaty enters into force, the state must ensure that this rule is binding and permanent, if possible a constitutional rule, or it has to ensure its full respect and fulfilment in national budgetary procedures by some other means. In conformity with the principle of acting in good faith (*bona fide*), a state which has ratified an international treaty must immediately act in such a manner that it will be able to fulfil its obligations arising therefrom when such treaty enters into force internationally.

47. Likewise, in conformity with Article 3a of the Constitution, the state must fulfil its obligations that arise from the legal order of the European Union. Thereby, it has to be taken into consideration that economic policy, even though it does not lie in the exclusive competence of the European Union, as does, for example, monetary policy, has become a matter of common interest and is conducted in the framework of wider guidelines which are adopted by the Council (Article 120 of the TFEU), and that the Government and National Assembly must adopt economic decisions in such a manner so as to contribute to the goals which the European Union strives to achieve.[24] Regarding the obligations under the law of the European Union, the National Assembly specifically underlines the recommendations of the Council adopted on the basis of the seventh paragraph of Article 126 of the TFEU precisely due to the proceedings against the Republic of Slovenia regarding the excessive public deficit. It thereby draws attention to the fact that in 2010 and 2011 Slovenia did not reduce this deficit, wherefore in this and the next year it has to be reduced by 3% of GDP. Council Decision of 19 January 2010 on the existence of an excessive deficit in Slovenia (2010/289/EU)[25] determined that there existed an excessive deficit in Slovenia which was not only a consequence of the reference values regarding its admissibility being temporary exceeded. The determination of the fact that there exists an excessive deficit causes the

initiation of proceedings regarding the excessive deficit. The purpose of such proceedings regarding the excessive deficit is to encourage and, if necessary, compel the Member State to reduce the determined deficit.[26] The proceedings regarding the excessive deficit are multi-level proceedings which can lead to the introduction of sanctions under the eleventh paragraph of Article 126 of the TFEU.[27] Such sanctions substantially exceed the sanctions that otherwise can be imposed on a Member State that does not fulfil obligations under the law of the European Union.[28] Article 126 of the TFEU precisely determines the course of such proceedings on each individual level and the roles and powers of a particular institution.[29] Where the Council decides that an excessive deficit exists, it adopts, without undue delay, on the recommendation of the Commission, recommendations addressed to the Member State concerned with a view to bringing that situation to an end (the seventh paragraph of Article 126 of the TFEU). The Council adopted recommendations for the Republic of Slovenia on 30 September 2009 and determined therein that in 2010 the state must implement measures for fiscal consolidation, in the period 2010-2013 annually reduce the deficit by 0.75% of GDP, and determine the measures by means of which it will eliminate the excessive deficit by the end of 2013.[30]

48. If a Member State fails to follow the recommendations of the Council, the latter first has the possibility to publish the recommendations in conformity with the eighth paragraph of Article 126 of the TFEU, whereas if the Member State persists in failing to implement the recommendations of the Council, the latter can, under the ninth paragraph of Article 126 of the TFEU, demand the adoption of certain measures for decreasing the deficit which, in its opinion, could improve the situation. At the same time, until the Member State respects the order adopted in conformity with the ninth paragraph of Article 126 of the TFEU, the Council can, in conformity with the eleventh paragraph of the same Article, decide also to adopt one or more additional measures. When the Council, in conformity with the eleventh paragraph of Article 126 of the TFEU, adopts an order on the introduction of sanctions against the participating Member State, as a general rule a fine is imposed, while the Council can decide to supplement this fine with other measures under the eleventh paragraph of Article 126 of the TFEU,[31] including an appeal to the EIB to reconsider its lending policy towards the Member State concerned.[32] The National Assembly expressly draws attention to the importance of the EIB for the functioning of the Slovene banking system, therefore it is possible to agree that the failure to implement the urgent measures intended to eliminate the excessive public deficit also jeopardises the credibility of the state from the viewpoint of respecting adopted international obligations as well as the obligations that Slovenia has as a Member State of the European Union, and especially as a Member State whose currency is the euro. The credibility of the state influences its capacity to acquire financial resources on the financial markets and consequently its capacity to ensure constitutional values, which is what the National Assembly draws attention to.

49. The Treaty on European Union (consolidated version, OJ C 83, 30 March 2010 – hereinafter referred to as the TEU) binds the Member States to continue the process of reinforcing the ever closer union among the peoples of Europe. The principle of loyal

cooperation determined by Article 4 of the TEU, under which the Member States are to respect each other and assist each other in fulfilling the tasks and goals pursued by the European Union, determines the general obligation of Member States to respect the law of the European Union and to adopt general and particular measures necessary to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. One such act is Directive 2011/85/EU, regarding which the National Assembly warns that it has to be trasnposed by the end of 2013. The third paragraph of Article 288 of the TFEU determines that directives are binding, as regard the result to be achieved, upon each Member State to which they are addressed, but they leave the choice of form and methods to the national authorities. The freedom regarding the execution of directives which proceeds from the second paragraph of Article 288 of the TFEU entails nonetheless that Member States must choose their most appropriate methods and manner of execution.[33] A directive produces legal effects regarding the Member State to whom it is addressed – and consequently regarding all the authorities of the state – upon its publication or, depending on the case, upon the date of notification of it.[34] Directive 2011/85/EU entered into force on 13 December 2011 and as of this Decision, the period for its transposition has not yet expired. However, in conformity with the case law of the Court of Justice of the European Union, it stems from the usage of Article 4 of the TEU, with regard to the third paragraph of Article 288 of the TFEU, that the Member States to whom the directive is addressed must not, during the period for the transposition of the directive, adopt measures which could seriously jeopardise the attainment of the aim determined by the directive.[35] Such entails that the Republic of Slovenia must not, until the period for the transposition of the directive expires, adopt measures which would jeopardise the attainment of the aim of Directive 2011/85/EU, i.e. uniform respect for budgetary discipline, as is required by the TFEU.[36]. Therefore, the Court can concur with the National Assembly that disrespect for the aims pursued by the stated Directive could affect the credibility of the state from the viewpoint of the obligations which it carries as a Member State of the European Union.

B **– IV**

50. In the substantiation of its request regarding the inadmissibility of the legislative referenda at issue, the National Assembly thus refers to values which are specifically protected by the Constitution, and demonstrates that at this time we are already faced with them being either jeopardised or substantially limited if the state fails to adopt measures necessary for the elimination of such limitations.

51. The constitutional values that are in collision with the right to request the calling of a legislative referendum include ensuring the undisturbed functioning of the state and respect for rights guaranteed by the Constitution, among them namely those determined by the first paragraph of Article 74, Article 66, the first paragraph of Article 50, the first and second paragraph of Article 51, and Article 52 of the Constitution. Furthermore, respect for the

adopted international obligations must be ensured (Article 8 of the Constitution). It has to be taken into consideration that Slovenia is a full member of the European Union, in which, among others matters, it also shares a common currency with some members. Respect for the obligations that arise from membership in the European Union entails not only respect for the law of the European Union, but also respect for the first and third paragraphs of Article 3a of the Constitution. The National Assembly demonstrates that the functioning of such values, which are constitutionally protected, would be substantially damaged without these measures that the state must adopt as urgent measures. Thereby, in a very short period of time, i.e. next year, the situation could deteriorate, and as a consequence the constitutional protection of such values could become jeopardised.

52. The stated constitutionally protected values are those that in this Decision are placed against the right to request the calling of a legislative referendum. Therefore, it has to be assessed whether they have to be given priority over the right determined by the second paragraph of Article 90 of the Constitution in order to ensure the constitutional balance of the protected values.

53. Respect for the fundamental principles of international law and for treaties ensures the international credibility of a state; therefore this value has an important constitutional weight. Ensuring the effectiveness of the law of the European Union is also constitutionally important, to which the state has bound itself on the basis of the third paragraph of Article 3a of the Constitution. Such is true regardless whether we interpret this provision of the Constitution and the law of the European Union[37] (even in cases where what is at issue is the so-called secondary legislation[38] of the European Union) to entail that due to the principle of the supremacy of the law of the European Union such law unconditionally also prevails over the provisions of the Constitution,[39] or in a manner such that in certain exceptional cases the law of the European Union has to give way to the Constitution. In the case at issue, it is namely not necessary for the Constitutional Court to take a position on this, as the weight of the constitutional value, i.e. respect for the law of the European Union, is enormous due to the fact that the third paragraph of Article 3a of the Constitution is expressly binding with regard to the above; under this paragraph the legal acts and decisions adopted within international organisations to which Slovenia has transferred the exercise of part of its sovereign rights – in the case at issue, the acts and decisions of the European Union[40] – are applied in accordance with the legal regulation of these organisations. For such reason, what is at issue is a specifically protected good, which in any case has to be attributed a significant weight.

54. The National Assembly demonstrates the urgency of the need to adopt appropriate measures, which, with reference to the above, include the SNHCA and the MSSBA. In the assessment of the National Assembly, the Acts are urgently needed to ensure the sustainability of the functioning of the state with regard to the public finances in the current circumstances of economic crisis. In light of the reasons stated by the National Assembly and due to the generally known facts regarding the position of the state from the viewpoint of

public finances, the financial condition of the banks in state property, and also the condition of other Member States of the so-called euro area from the viewpoint of public finances, the Constitutional Court lacks sensible reasons that would cast doubt over the assessment of the National Assembly. This urgency is demonstrated by the need to ensure the efficient functioning of the state, which has to perform its functions in the public interest and for the welfare of its citizens. It must ensure respect for human rights (the first paragraph of Article 5 of the Constitution) and ensure the effective functioning of two fundamental social sub-systems (the second paragraph of Article 50 of the Constitution), it has to perform the adopted international obligations, and ensure the efficiency of the European legal order in its territory, all of which the National Assembly draws attention to.

55. In this Decision, the Constitutional Court is facing a special situation as the SNHCA and the MSSBA are two specific legislative measures among the measures which not only the Government and the National Assembly, but also important international subjects assess to be necessary to ensure the sustainability of the public finances and sufficient resources for enabling the functioning of the state and respect for human rights, which the state has to take care to efficiently ensure. Also at issue is that this concerns statutory measures that are not only important each in itself, but which are even more important as a group of measures by means of which urgent aims are pursued. Therefore, the urgency of each individual measure on the level of the system is convergent with the urgency of the adoption and realisation of other measures. As far as the SNHCA and the MSSBA are concerned, also their mutual interconnectedness is demonstrated.

56. Whether the SNHCA and the MSSBA introduce measures which by their nature constitute the correct answer to the alleged situation existing in the state is not something that the Constitutional Court can assess.[41] Whether these Acts are thus statutory measures that in terms of content are good or bad or the most appropriate for regulating the issues that obviously must urgently be regulated, depends on the suitability and appropriateness of the statutory regulation with which the legislature must respond to the existing social needs. Therefore, the suitability and appropriateness of the statutory regulation cannot have an influence on the decision regarding the existence of unconstitutional consequences itself. As the Constitutional Court has already underlined in Decision No. U-II-1/11, also responsibility for the content of statutory regulation, in the case at issue for the content of two economic policy measures that refer to the functioning of the banking system and to the management of state property, for the stated reasons falls entirely on the National Assembly and the Government.[42] A different position would inadmissibly interfere with the principle of the separation of powers (the second sentence of the second paragraph of Article 3 of the Constitution).

57. In the framework of this constitutional review of the admissibility of the referenda, what is in the foreground is neither the question of the constitutionality of the statutory regulation in force nor the question of the constitutionality of the adopted statutory regulation, i.e. the constitutionality of the SNHCA and the MSSBA, which would be submitted for approval in a

referendum. When the Constitutional Court does not permit the realisation of a referendum and thus the implementation of the newly adopted act occurs as priority must be given to other constitutionally protected values, not to the right to request the calling of a referendum, such does not entail that after the act is implemented, in the case at issue the SNHCA and the MSSBA, it will not be possible to request a constitutional review thereof and to remedy possible unconstitutionalities on the basis of an appropriate decision of the Constitutional Court.[53] In this case, the above-mentioned possibility of subsequent assessment of the constitutionality of these Acts works as an argument in favour of the other constitutionally protected values which have already been demonstrated to be substantially jeopardised or limited, in comparison to the right to request the calling of a legislative referendum.

58. Due to the mentioned constitutional values, the right to request the calling of a referendum is significantly limited, but it has to be taken into consideration that despite this fact, there exists the possibility to remedy possible unconstitutionalities in the [newly] adopted statutory regulation by applying the institute of a constitutional review to the Acts at issue. However, no efficient legal remedies exist which could, if the National Assembly fails to adopt certain measures, remedy the main limitations of the effective functioning of the state in all fields of social life at the current moment and in the period during which legislative limitations under Article 25 of the RPIA would be in force, i.e. in 2013. Therefore, the Constitutional Court must concur with the National Assembly that, regarding the principle of proportionality, in order for the protection of all constitutional values to be ensured in an appropriate constitutional balance, the right to request the calling of a legislative referendum must give way in order to ensure the reestablishment of appropriate fundamental conditions for the development of free economic initiative and of all the foundations of the functioning of the economic and social system, as well as to ensure the efficient execution of state tasks determined in the constitutional order and in a manner that ensures the sustainability of the functioning of the state regarding the public finances – i.e. to ensure the protection of the values stated in Paragraph 51 of the reasoning of the present Decision. With regard to the reasons demonstrated by the National Assembly, unconstitutional consequences would result already by the subsequent suspension of the implementation of the Acts in order to realise referendum procedures, and, with regard to Article 25 of the RPIA, also due to the rejection of these urgent statutory measures in referenda.

59. With regard to all of the above, the Constitutional Court gave priority to the constitutionally protected values underlined in the requests of the National Assembly over enforcement of the right determined by the second paragraph of Article 90 of the Constitution. On such grounds, it decided that unconstitutional consequences would occur due to the rejection of the adopted Acts in referenda.

C

60. The Constitutional Court reached this decision on the basis of the first paragraph of Article 21 of the RPIA and the third indent of the second paragraph of Article 46 of the Rules of Procedure of the Constitutional Court, composed of: Dr Ernest Petrič, President, and Judges Mitja Deisinger, Dr Dunja Jadek Pensa, Mag. Marta Klampfer, Dr Etelka Korpič – Horvat, Mag. Miroslav Mozetič, Jasna Pogačar, Dr Jadranka Sovdat, and Jan Zobec. The decision was adopted by eight votes against one; Judge Korpič – Horvat voted against and submitted a dissenting opinion. Judge Petrič submitted a concurring opinion.

Dr Ernest Petrič
President

Endnotes:
[1] *Cf.* F. Grad in: L. Šturm (Editor), *Komentar Ustave Republike Slovenije, dopolnitev – A* [Commentary on the Constitution of the Republic of Slovenia: Supplement to the Commentary – A], Fakulteta za podiplomske državne in evropske študije, Ljubljana 2011, p. 1099.
[2] *Cf.* F. Grad, Parlament in vlada, Uradni list RS, Ljubljana 2000, p. 29.
[3] *Cf.* F. Grad in: L. Šturm (Editor), op. cit., pp. 1099–1100.
[4] *Cf.* I. Kaučič in: L. Šturm (Editor), op. cit., p. 1165.
[5] *Cf.* S. Nerad in: I. Kaučič (Editor), Zakonodajni referendum, Institute for Comparative Law, GV Založba, Ljubljana 2010, p. 125.
[6] *Cf.* Decision No. U-II-1/11, Para. 14.
[7] In this Decision the Constitutional Court assessed the constitutionality of the regulation of judicial salaries in the Public Sector Salary System Act (Official Gazette RS No. 95/07 – official consolidated text, 17/08, 58/08, and 80/08 – PSSSA) and in the Judicial Service Act (Official Gazette RS No. 94/07 – official consolidated text – JSA).
[8] The Constitutional Court assessed that such values must be given priority over the right to a referendum and that unconstitutional consequences would occur by the rejection of the Acts in a referendum. It namely established that even after two Constitutional Court decisions by which disrespect for one of the fundamental principles of the Constitution was established, i.e. the principle of the separation of powers, the legislature had still not eliminated the unconstitutionality. It assessed that further continuation of the unconstitutional situation that a rejection of the Acts in a referendum would cause was constitutionally unacceptable, especially from the viewpoint of the role that the judicial authority has in a state governed by the rule of law and particularly regarding the protection of human rights and fundamental freedoms.
[9] By this Decision, the Constitutional Court assessed the constitutionality of the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia (Official Gazette RS No. 61/99 and 64/01 – ARLSCFY).

[10] For instance, in Decision No. U-II-3/04, dated 20 April 2004 (Official Gazette RS No. 44/04, and OdlUS XIII, 29).
[11] In Decision No. U-II-2/09, the Constitutional Court stated: "The purpose that the legislature followed while adopting the first paragraph of Article 21 of the RPIA was obviously to prevent, by a Decision of the Constitutional Court, that in a referendum voters could adopt a decision which would render impossible a constitutionally consistent elimination of an unconstitutional legislative regulation."
[12] The Constitutional Court already drew attention to the time limit for a constitutional review of the admissibility of a referendum in Decision No. U-II-1/11 and equally in Decision No. U-II-3/11.
[13] As the Constitutional Court stated already in Decision No. U-I-47/94.
[14] Already in Decision No. U-I-69/03, dated 20 October 2005 (Official Gazette RS No. 100/05, and OdlUS XIV, 75), the Constitutional Court stated: "The principle of adapting the law to social relations is one of the principles of a state governed by the rule of law (Article 2 of the Constitution)."
[15] See Para. 22 of Opinion No. Rm-1/02.
[16] Also the OECD in its Economic forecast for Slovenia draws attention to the need to restore the credit activity of banks. See Economic outlook, analysis and forecasts, Slovenia - Economic forecast summary (November 2012), available at: http://www.oecd.org/eco/economicoutlookanalysisandforecasts/sloveniaeconomicforecastsummary.htm (13 December 2012).
[17] Available at: http://www.umar.gov.si/fileadmin/user_upload/publikacije/izzivi/2012/EI-2012.pdf (13 December 2012).
[18] Available at: http://ec.europa.eu/economy_finance/eu/forecasts/2012_autumn/si_en.pdf (13 December 2012).
[19] See Slovenia 2012 Article IV Consultation – Concluding Statement of the Mission, available at: http://www.imf.org/external/np/ms/2012/100212.htm (13 December 2012).
[20] See Economic outlook, analysis and forecasts, Slovenia - Economic forecast summary (November 2012), available at: http://www.oecd.org/eco/economicoutlookanalysisandforecasts/sloveniaeconomicforecastsummary.htm (13 December 2012).
Also the Secretary General of the OECD, Angel Gurría, among other things, stated at the Bled Strategic Economic Forum (2012) that: "Slovenia must ensure that the framework for the governance of state-owned enterprises, which is currently being discussed, is robust enough to deal with the range of structural challenges facing the state owned sector, including competitiveness, deleveraging, and privatisation. The overall objective must be to ensure consistency, predictability, and transparency in the governance of state-owned enterprises. This will in turn help improve market and consumer confidence." Available at: http://www.oecd.org/fr/slovenie/newchallengesnewchampions.htm (13 December 2012).

[21] Some thoughts concerning the Draft Treaty on a Reinforced Economic Union – Editorial Comment, in: Common Market Law Review, Vol. 49, No. 1 (2012), p. 5; C. Calliess and C. Schoenfleisch, Auf dem Weg in die europäische "Fiskalunion"? – Europa- und verfassungsrechtliche Fragen einer Reform der Wirtschafts- und Währungsunion im Kontext des Fiskalvertrages, in: JuristenZeitung, Vol. 67, No. 10 (2012), p. 481.
[22] For two states signatories who are members of the euro area, information is already published that as far as the national legal order is concerned, the ratification is complete, but the documents have not yet been submitted. See: Table on the Ratification Process of the Amendment of Art. 136 TFEU, ESM Treaty and Fiscal Compact, Brussels, 7 December 2012, available at: http://www.europarl.europa.eu/webnp/webdav/site/myjahiasite/users/fboschi/public/art.%20136%20ESM%20fiscal%20compact%20ratprocess.pdf (13 December 2012).
[23] The rule from indent a) is deemed to be respected if the annual structural balance of the sector of the state attains the medium-term objective for a particular state, determined in the amended Stability and Growth Pact by the bottom level of the structural deficit at the level of 0.5% of GDP under market prices.
[24] As in Decision of the Constitutional Court No. U-I-178/10, dated 3 February 2011 (Official Gazette RS No. 12/11).
[25] OJ L 125, 21 May 2010, p. 46.
[26] Judgment of the Court of Justice of the European Union, dated 13 July 2004, in *Commission of the European Communities v. Council of the European Union*, C-27/04, ECR, p. I-6679, Para. 70.
[27] Ibidem, Para. 77.
[28] H. J. Hahn and U. Häde, Währungsrecht, 2nd edition, Verlag C. H. Beck, München 2010, p. 316.
[29] For a description of the course of proceedings and of the intensification of sanctions, see H. J. Hahn, The Stability Pact for the European Monetary Union: Compliance with Deficit as a Constant Legal Duty, in: Common Market Law Review, Year 35, No. 1 (1998), pp. 93–95.
[30] Recommendations of the Council, dated 30 November 2009, available at: http://ec.europa.eu/economy_finance/economic_governance/sgp/pdf/30_edps/104-07_council/2009-12-02_si_126-7_council_en.pdf (13 December 2012).
[31] Article 11 of Council Regulation (EC) No. 1467/97, dated 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure, OJ L 209, 2 August 1997, p. 6, the special edition in Slovene, Chapter 10, Volume 10, p. 89, with amendments OJ L 174, 7 July 2005, p. 5 and OJ L 306, 23 November 2011, p. 33.
[32] In conformity with Article 12 of the Regulation, the amount of the fine is composed of a fixed component equal to 0.2 % of GDP and a variable component. The variable component equals one tenth of the absolute value of the difference between the deficit as a percentage of GDP in the preceding year and the reference value of the deficit as a percentage of GDP or, if such disregard for budgetary discipline includes a measurement of the debt, between the public deficit as a percentage of GDP which would have to be,

in conformity with the appeal under the ninth paragraph of Article 126 of the TFEU, attained in the same year.
[33] Judgment of the European Court of Justice, dated 8 April 1976, in the *Royer* case, 48/75, ECR, p. 497.
[34] Judgment of the European Court of Justice, dated 4 July 2006 in *Konstantinos Adeneler and Others*, C-212/04, ECR, p. I-6057.
[35] Judgments of the European Court of Justice in *Inter-Environnement Wallonie*, dated 18 December 1997, C-129/96, ECR, p. I-7411, Para. 45; *ATRAL*, dated 8 May 2003, C-14/02, ECR, p. I-4431, Para. 58; and *Mangold,* dated 22 November 2005, C-144/04, ECR, p. I-9981, Para. 67.
[36] Paragraph 28 of the Preamble to Directive No. 2011/85/EU.
[37] Among the legal sources of European law, so-called primary law is especially important. See V. Trstenjak and M. Brkan, Pravo EU, Ustavno, procesno in gospodarsko pravo EU, GV Založba, Ljubljana 2012, pp. 169–170.
[38] The secondary law of the European Union is composed of regulations, directives, orders, recommendations, and opinions (the first paragraph of Article 288 of the TFEU), i.e. the acts adopted by the institutions of the European Union. Ibidem, p. 175.
[39] Such proceeds from the Judgments of the Court of Justice of the European Union in *Costa v ENEL*, dated 15 July 1964, 6/64, ECR, p. 585, and *Internationale Handelsgesellschaft,* dated 17 December 1970, 11/70, ECR, p. 1125. Such a position is also supported by Dr Trstenjak and Dr Brkan; see V. Trstenjak and M. Brkan, op. cit., pp. 209–211.
[40] In this case, Directive 2011/85/EU and the Council Recommendations dated 30 November 2009 (see note 30).
[41] *Cf.* also Decision No. U-I-91/98, dated 16 July 1999, (Official Gazette RS No. 40/99, and OdlUS VIII, 196), Paragraph 17.
[42] *Cf.* Decision No. U-II-1/11, Paragraph 19, and Decision No. U-I-178/10, Paragraph 9.
[43] See Order No. U-II-3/03, dated 22 December 2003, (OdlUS XII, 101).