AN OVERVIEW OF THE WORK FOR 2017

The Constitutional Court of the Republic of Slovenia

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An Overview of the Work for 2017

Foreword by the President of the Constitutional Court

Esteemed Readers,

The annual overview of the work of the Constitutional Court of the Republic of Slovenia is first of all an opportunity for the Constitutional Court to critically examine the work it has done. At the same time, it also offers an opportunity for the Constitutional Court to present an overview of its work to the public and draw attention to the legal and factual obstacles that threaten the effective exercise of constitutional justice.

The structure of the Overview of the Work for 2017 is the same as in previous years. It is divided into substantive and statistical sections. The substantive part includes a presentation of some of the more important decisions. Taken together with the remaining decisions that are not highlighted by the report, these paint a portrait reflecting how and to what extent other state authorities respected the Constitution in the exercise of their competences. In this regard, attention has to be drawn in particular to the legislature's unresponsiveness in connection with decisions from previous years to which the legislature should have responded a long time ago by remedying the established unconstitutionalities. A few more such instances accumulated in 2017 than in the year before. Until the legislature (or some other authority charged with the drafting of legal norms) responds to the establishment of an unconstitutionality, it continues to grossly violate the principles of a state governed by the rule of law and of the separation of powers. The report also provides detailed statistical data that show the situation as of the last day of the year, which, however, can also be quite misleading unless we are aware of their underlying reasons. The report therefore clarifies these data in greater detail. In this foreword, however, I only wish to outline some of the highlights of the content considered by the report that, in my assessment, are especially important.

Last year saw the completion of a considerable change as two thirds of the constitutional judges were replaced. The terms of office of judges Jasna Pogačar, Dr Mitja Deisinger, and Jan Zobec, as well as of judge and former president of the Constitutional Court Dr Ernest Petrič, expired in the spring of last year, and I wish to thank them for the work they have done. Following the expiration of their terms of office, four new constitutional judges assumed office. Already in last year's report, I predicted that in the first year following such a considerable change in the composition of the Constitutional Court the work of the Constitutional Court would inevitably be slowed down. My prediction came true, regarding which the concurrent considerable staff changes in the advisory service of the Constitutional Court must also be

noted. The new judges and the new advisors have worked hard from day one to enable the Court to accomplish as much as it did last year. However, rather than stressing this, I believe that it is important to once again draw attention to the urgent need for constitutional amendments, which, for reasons that are not completely clear, were not realised some years ago.

It is untenable that, while the legislature has been gradually closing off and narrowing access to the Supreme Court, it did not also concurrently raise the question of whether this could have negative consequences for the effectiveness of the Constitutional Court. These negative consequences have become a reality that is indicated by the significant increase in the number of constitutional complaints. The number of petitions for a review of the constitutionality or legality of regulations also fluctuated in previous years, which in many ways was due to the number of petitions filed in a short period of time regarding the same statutory provisions, as well as the characteristics of legislative activity, e.g. the introduction of new statutory norms that referred to a considerable number of addressees. While it is not excluded that certain aspects of the legislative development with regard to the Supreme Court should be reassessed, a complete reversal thereof would not entail an effective and suitable solution to this problem, which is becoming ever more acute. The solution lies in constitutional amendments that would enable the Constitutional Court to select the constitutional complaints that it is to decide and thus enable it to concentrate on the most important constitutional questions. In fact, such amendments with regard to the Constitutional Court are even more urgent today than they were at the time when the constitutional legislature failed to successfully conclude the procedure initiated to amend the Constitution. The reasons follow from this report. In my assessment, unless the constitutional amendments are adopted, we can expect an even higher number of unresolved cases filed before the Constitutional Court already by the end of this year. In the coming years the situation will only deteriorate. Pursuant to the Constitutional Court Act, the Constitutional Court is the highest body of the judicial power for the protection of constitutionality as well as human rights and fundamental freedoms in the state. Its position would be the same even if the Act did not expressly define it, as it follows already from its constitutional position that it is the final guardian of the Constitution and the values enshrined therein. It has been continuously stressed that one cannot expect that the highest court for the protection of constitutionality, composed of only nine constitutional judges, would resolve more than a thousand cases annually. This cannot be its task if we want the court to fulfil its precedential role as the court defined as the highest court in its specific field.

Constitutional amendments should also address the situation that arises following a change in two thirds of the constitutional court judges. In addition to constitutional orders, e.g. in Austria and Belgium, where constitutional judges have a permanent term of office (until they reach retirement age), other constitutions include mechanisms intended to prevent the

concurrent change of a considerable number of judges precisely in order to prevent situations such as that which is an integral and periodic feature of our system. Other constitutions also include measures for ensuring a balanced composition of the constitutional court with regard to the number of law professors, career judges, and representatives of other legal professions. This can also be of importance for the work of a constitutional court and therefore such normative changes should be contemplated as well. Until they are enacted in the Slovene legal order, these issues should be a matter of special concern for the President of the Republic as the person vested with the power to nominate candidates for the office of constitutional judge.

I would further like to emphasise the importance of the observance of the financial independence of the Constitutional Court, especially in relation to the executive branch of power. In this regard, the Constitutional Court Act contains a number of extremely important rules. The National Assembly determines the budget of the Constitutional Court, and, in accordance with an express statutory provision, use of the funds allocated to the Court may be monitored (solely!) by the Court of Audit. The latter is a constitutional institution that has to be equipped with the same independence and impartiality with regard to the performance of its tasks as are characteristic of the Constitutional Court as the highest body of the judicial power for the protection of constitutionality. The Government and the Ministries operating under its auspices do not have these characteristics. Within the designated framework, the Constitutional Court must enjoy financial independence. For some years now, the Constitutional Court has been drawing attention to the constitutionally questionable statutory regulation of public finances and its interpretations, but to no avail. It does not take into consideration the constitutional position of the Constitutional Court as reflected precisely in the mentioned provisions of the Constitutional Court Act. Any statutory regulation that could affect the work of the Constitutional Court must always be sufficiently clear so as to ensure its independence. I would therefore like to conclude this foreword by highlighting a passage from the resolution adopted by the presidents of the constitutional courts that are members of the Conference of European Constitutional Courts at the closing of last year's congress in Batumi: "The legitimacy of constitutional justice and its effectiveness necessarily depend on its independence. Only if a constitutional court is, and appears to be, independent of all other state organs as well as of political parties and other interest groups will it gain the confidence which courts in general, and a constitutional court in particular, in a democratic society must inspire in the public."

Dr Jadranka Sovdat

1. Introduction

On 25 June 1991, the Republic of Slovenia became a sovereign and independent state. The new and democratic Constitution, adopted on 23 December 1991, provided the legal basis for state power by means of the highest legal act of the state. The Constitution placed individuals and their dignity in the foreground by its extensive catalogue of human rights and fundamental freedoms. The Constitution, however, is more than merely a collection of articles; its content is, to a large extent, the result of the work of the Constitutional Court. The decisions of the Constitutional Court breathe substance and meaning into the Constitution, thus making it a living instrument and an effective legal act that can directly influence people's lives and well-being. The extensive case law of the Constitutional Court extends to all legal fields and touches upon various dimensions of individual existence as well as of society as a whole. Its influence on the personal, family, economic, cultural, religious, and political life of our society has been of extreme importance.

The Constitution and the Constitutional Court Act are the basis for the functioning of the Constitutional Court. The Constitutional Court adopts its Rules of Procedure in order to independently regulate its organisation and work, as well as to determine in more detail the rules governing the procedure before the Constitutional Court.

The Constitutional Court exercises extensive jurisdiction intended to ensure effective protection of constitutionality and legality, as well as to prevent violations of human rights and fundamental freedoms. The majority of the powers of the Constitutional Court are determined by the Constitution, which, however, also permits additional powers to be determined by law. In terms of their significance and share of the workload, the most important powers of the Constitutional Court are the review of the constitutionality and legality of regulations and the power to decide on constitutional complaints regarding violations of human rights and fundamental freedoms. A constitutional complaint may be lodged to claim a violation of rights and freedoms determined by the Constitution as well as those recognised by the applicable treaties ratified by the Republic of Slovenia.

When exercising its powers, the Constitutional Court decides by orders and decisions. From a substantive perspective, decisions on the merits, by which the Constitutional Court adopts precedential standpoints regarding the standards of protection of constitutional values, especially human rights and fundamental freedoms, are of particular importance for the development of (constitutional) law. In proceedings for a review of the constitutionality or legality of regulations, the Constitutional Court rejects a request or petition by an order, unless all procedural requirements are fulfilled. Furthermore, it can dismiss a petition by an order if it is manifestly unfounded or if it cannot be expected that it will result in the resolution of an

important legal question. The Constitutional Court decides cases on the merits (i.e. it decides on constitutionality and legality) by a decision. The situation is similar as regards constitutional complaints. If the procedural requirements are not fulfilled, the Constitutional Court rejects the constitutional complaint by an order. If they are fulfilled, it accepts the constitutional complaint for consideration if it concerns a violation of human rights or fundamental freedoms that has had serious consequences for the complainant, or if the constitutional complaint concerns an important constitutional question that exceeds the importance of the concrete case. Following consideration on the merits, by a decision the Constitutional Court dismisses as unfounded a constitutional complaint or it grants the complaint and (as a general rule) annuls or abrogates the challenged act and remands the case for new adjudication.

Other competences of the Constitutional Court include deciding on the constitutionality of treaties prior to their ratification, on disputes regarding the admissibility of a legislative referendum, on jurisdictional disputes, on the impeachment of the President of the Republic, the President of the Government, and individual ministers, on the unconstitutionality of the acts and activities of political parties, on disputes on the confirmation of the election of deputies of the National Assembly and other similar disputes, and on the constitutionality of the dissolution of a municipal council or the dismissal of a mayor.

The Constitutional Court adopts its decisions at sessions that are closed to the public. Before a decision is adopted, the cases are deliberated, as a general rule, in closed sessions; in some cases, however, in exception a public hearing is held. The Constitutional Court ensures that the public is informed of its work in particular by publishing its decisions and orders in official publications, on its website, and in the Collected Decisions and Orders of the Constitutional Court, which is periodically published in book form. In cases that are of more interest to the public, the Constitutional Court issues a special press release in order to present its decision.

The President of the Constitutional Court ensures that the work of the Constitutional Court is public also through the public presentation of the annual report on the work of the Court (the second paragraph of Article 23 of the Rules of Procedure of the Constitutional Court).

2. The Position of the Constitutional Court

In relation to other state authorities, the Constitutional Court is an autonomous and independent state authority. With regard to the principle of the separation of powers (the second sentence of the second paragraph of Article 3 of the Constitution) and the jurisdiction of the Constitutional Court (Article 160 of the Constitution), the Constitutional Court Act defines the Constitutional Court as the highest body of the judicial power for the protection of constitutionality, legality, and human rights and fundamental freedoms.

Such position of the Constitutional Court is necessary due to its role as a guardian of the constitutional order and enables the independent and impartial decision-making of the Constitutional Court in protecting constitutionality as well as the human rights of individuals and the constitutional rights of legal entities in relation to any authority. It stems from the principle that the Constitutional Court is an autonomous and independent state authority, *inter alia*, that the Constitutional Court determines its internal organisation and mode of operation by its own acts (i.e. the Rules of Procedure of the Constitutional Court), and that it determines in more detail the procedural rules provided for by the Constitutional Court Act. The competence of the Constitutional Court to independently decide on the appointment of its advisors and the employment of other staff is crucial for ensuring its independent and impartial work. The budgetary autonomy and independence of the Constitutional Court are also important.

In the Slovene legal order, which is founded on the principle of the separation of powers, it is paramount for the position of the Constitutional Court that its decisions are binding and final; no appeal or other legal remedy is allowed against its decisions. This binding nature entails that Constitutional Court decisions are to be observed and implemented in an appropriate manner.

As the Constitutional Court has stressed in a number of its decisions, the equality of all three branches of power follows from the principle of the separation of powers. Such entails that all three branches of power, and especially the highest authorities within each of the branches of power, must be granted autonomy in regulating their internal matters in relation to the other two branches of power. In this regard, the Court of Audit and the Ombudsperson for Human Rights, to whom the Constitution also guarantees a special position, are similar to the Constitutional Court. These three constitutional authorities, however, are not entirely comparable to other independent state authorities that are established on the basis of different laws.

The Constitutional Court Act, which in principle regulates the organisation and functioning of the Constitutional Court, in Article 8 also determines the autonomy of the Constitutional Court in the budgetary field. The first paragraph of Article 8 provides that the funds for the

work of the Constitutional Court are determined by the National Assembly upon the proposal of the Constitutional Court. They are thus not determined on the basis of a proposal of the Government, as applies to other direct budget users. The second paragraph of the same Article further provides that the Constitutional Court shall decide on the use of these funds. Although the funds for the work of the Constitutional Court constitute a part of the budget of the Republic of Slovenia, according to the Constitutional Court Act, the Court is autonomous as regards the preparation of its financial plan, which is to be included in the draft budget of the state, as well as in the use of the funds approved by the National Assembly. The provision of the third paragraph of Article 8 of the Constitutional Court Act explicitly states that supervision of the use of such funds shall (only) be performed by the Court of Audit, and not also by the Ministry of Finance, as the Public Finance Act determines for other direct budget users. This would follow directly from the Constitution even if it were not explicitly determined by the Constitutional Court Act as these premises are a reflection of the fundamental principle of the separation of powers and the relations between the central bearers of state power are constitutionally defined. Consequently, the use of the funds of the Constitutional Court may only be supervised by an authority that is in principle as independent from other state authorities as the Constitutional Court itself. Only in such a manner can the Constitutional Court's financial independence from the executive branch of power be ensured.

Every year, during the budgetary negotiations with the Ministry of Finance, the Constitutional Court repeatedly draws attention to the fact that the autonomy and independence of the Constitutional Court deriving from the Constitution and the Constitutional Court Act are not appropriately implemented by the regulations governing public finance. On a number of occasions it has brought this fact directly to the attention of the Government, and it also brought this to the attention of the wider public by including it in the overview of its work for 2016. From the perspective of the Constitutional Court, the relevant regulations are inconsistent with the principle of the separation of powers, and this is even accentuated as their interpretation in practice entails a derogation from the fundamental specific provisions of the Constitutional Court Act regarding the financial independence of the Constitutional Court. In Autumn 2017, the President of the Constitutional Court, the President of the Court of Audit, and the Ombudsperson for Human Rights addressed a letter directly to the Prime Minister and informed him of this issue, which for constitutional reasons has to be accorded special attention in the preparation of amendments to public finance legislation. Unfortunately, their letter remains unanswered.

From a constitutional perspective, it is particularly objectionable that the Public Finance Act determines that the Ministry of Finance reviews the financial plans proposed by direct budget users and suggests the necessary adjustments with regard to the instructions for the preparation of the draft state budget. When the Government cannot reach a consensus with direct budget users that are not administrative authorities or organisations of the state, thus also not with the Constitutional Court, it includes its own financial plan in the draft budget of the state, whereas the financial plan proposed by the Constitutional Court is only included in the explanatory notes accompanying the draft budget. Although the final decision is left to the National Assembly, it is evidently primarily a decision on the Government's proposal. Given the specific constitutional position of the Constitutional Court, this approach is not consistent with the Constitution. The law should take into account the special constitutional position of the constitutional authorities that are independent of the Government and include in the draft budget the financial plans proposed by these authorities, while the Government should have the possibility to draw the attention of the National Assembly to potential significant deviations from the envisaged scope of the

budget. Such a solution – which with regard to the Constitutional Court explicitly follows from Article 8 of the Constitutional Court Act, a provision that is included among the fundamental provisions of the Act and entails the implementation of fundamental constitutional principles – would take into consideration the fact that from a constitutional perspective the Constitutional Court is on par with the Government and its independence must to a certain degree also extend to the budgetary field. In order to ensure observance of the common budgetary objectives that are defined in accordance with the fiscal rule, the Government and the Constitutional Court must cooperate in the preparation of the budget as equal partners, as otherwise, from a constitutional perspective, we would be faced with a situation wherein the executive power exerts inadmissible pressure on an independent authority. Naturally, the same would have to apply to instances of a potential rebalancing of the state budget.

With regard to the budgetary independence of the Constitutional Court, the statutory regulation concerning measures for balancing the state budget also has to be amended. The Public Finance Act enables the Government to suspend the implementation of specific types of expenditure for up to 45 days per budget year. Within the framework of this authorisation, the Government may (1) halt the conclusion of new commitments, (2) propose that contractual payment terms be extended, or (3) discontinue the re-allocation of budget appropriations required to enter into new commitments. The Government may even decide that a direct budget user must obtain the authorisation of the Ministry of Finance before concluding a contract. This regulation is unconstitutional as it can significantly interfere with the financial autonomy of the Constitutional Court and consequently curtail the exercise of its powers. In such a manner, the constitutionally envisaged independent position of the Constitutional Court is impaired. The law should proceed from the autonomy and independence of the Constitutional Court and in this sense determine that measures involving the temporary suspension of expenditure, including the requirement to obtain prior authorisation from the Ministry of Finance, do not apply to constitutional authorities; the latter may, however, adopt the same measures following a reasoned proposal submitted by the Government.

Furthermore, the regulation in the law governing the implementation of the budget of the Republic of Slovenia is constitutionally untenable as it provides for the measure of proportionately reducing appropriations, with regard to which such reduction in appropriations is determined in the same percentage for all direct budget users, while the Government decides which appropriations are to be subject to this measure. Such measures that interfere with budgetary appropriations that were approved by the National Assembly should not apply to the Constitutional Court as they interfere with its independence and impede its regular work.

The same reasons also call into question the provision of the Public Finance Act according to which every year the Minister of Finance adopts rules on the closing of the state and municipal budgets. These rules generally also include a provision requiring direct budget users to obtain prior authorisation from the Ministry of Finance for every new commitment they make after a specific day in October (e.g. in 2017 the cut-off date was 5 October) even if they are acting in accordance with the adopted budget. Such a provision is constitutionally questionable as it interferes with the autonomous and independent position of the Constitutional Court, results in continuous uncertainty regarding its functioning, and impedes its normal work as envisaged in advance in accordance with the adopted budget. The executive power may namely not by itself limit the use of the funds that the National Assembly allocated to the Constitutional Court in the budget or in an act rebalancing the budget. The legislature should adopt a systemic regulation to prevent such interferences with the implementation of an adopted budget during the budget year.

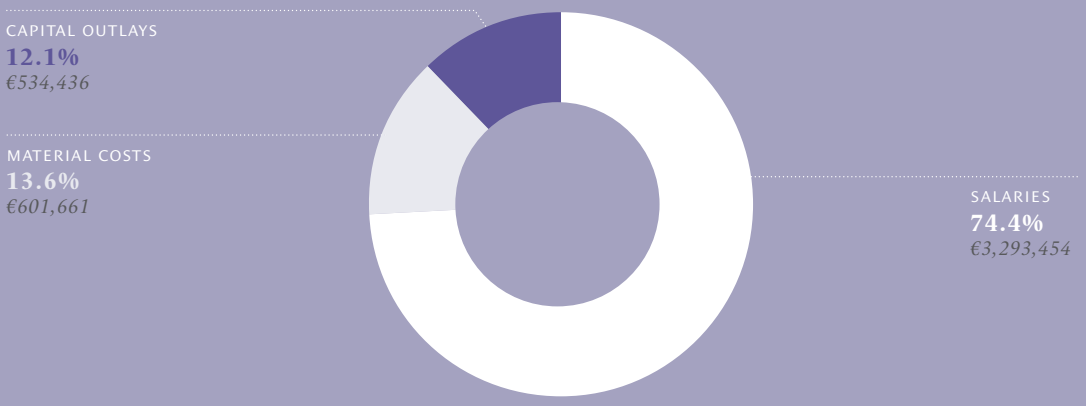
Moreover, proceeding from the constitutional position of the Constitutional Court, the constitutionally problematic provisions of the Public Finance Act in accordance with which the Ministry of Finance carries out inspections ensuring budgetary supervision under this Act and other regulations from the field of public finance have to be amended. Respect for the principle of the separation of powers can only be ensured if supervision of the use of the budgetary funds of the Constitutional Court is performed by an autonomous and independent authority, such as the Court of Audit. The Government should not have any supervisory competences or authorisations with regard to the Constitutional Court, as such entails the dismantling of the constitutionally determined relationship between these two authorities. It namely follows from the constitutional principle of the separation of powers and from the constitutionally determined independence of the Constitutional Court that the Constitutional Court does not answer to the Government concerning its work, which includes the financial aspect of its functioning. As the highest authority of the executive branch of power, the Government may not supervise the use of the budgetary funds of the Constitutional Court, as such would entail an inadmissible interference with the constitutionally guaranteed autonomy and independence of the Constitutional Court.

In light of the above, it is clear that in the preparation of amendments to the acts regulating public finance the following three questions in particular have to be considered: (1) the constitutional position of autonomous and independent constitutional authorities, such as the Constitutional Court, in the preparation of the budget or the rebalancing thereof, (2) the prohibition of any limitation – during the budget year – of the handling of resources approved by a decision of the National Assembly, and (3) the admissibility of supervision of the financial operations of these constitutional authorities only by authorities that are themselves constitutionally defined as independent and autonomous state authorities.

The budget outturn of the Constitutional Court in 2012 amounted to EUR 4,141,346, but only EUR 3,699,968 in 2013. In 2014, it remained at approximately the same level as in 2013, i.e. EUR 3,704,839. The budget outturn increased slightly in 2015, i.e. by 1.6%, and in 2016 by 3.9%, when it amounted to EUR 3,912,332. In 2017, the budget outturn increased again and amounted to EUR 4,429,551, i.e. 13.2% more than in 2016. Cohesion funds accounted for 2.71% of the budget outturn for 2017. The reasons underlying the increase in expenditure in 2017 are the relaxation of austerity measures as regards salary policy, the realisation of staff replacements that could not be effected during the period of the financial crisis even though this reduced the effectiveness of the work of the Constitutional Court, and, above all, the acquisition and installation of a new heating and cooling system for the Constitutional Court building. The bulk of the funds was used for salaries, followed, in approximately equal shares, by material costs, which, like salaries, are directly linked to the exercise of the competences of the Constitutional Court, and capital outlays. In any case, it is evident that the expenditure of the Constitutional Court in 2017 was still 11.3% lower in comparison to 2010, when the budget outturn amounted to EUR 4,993,377.

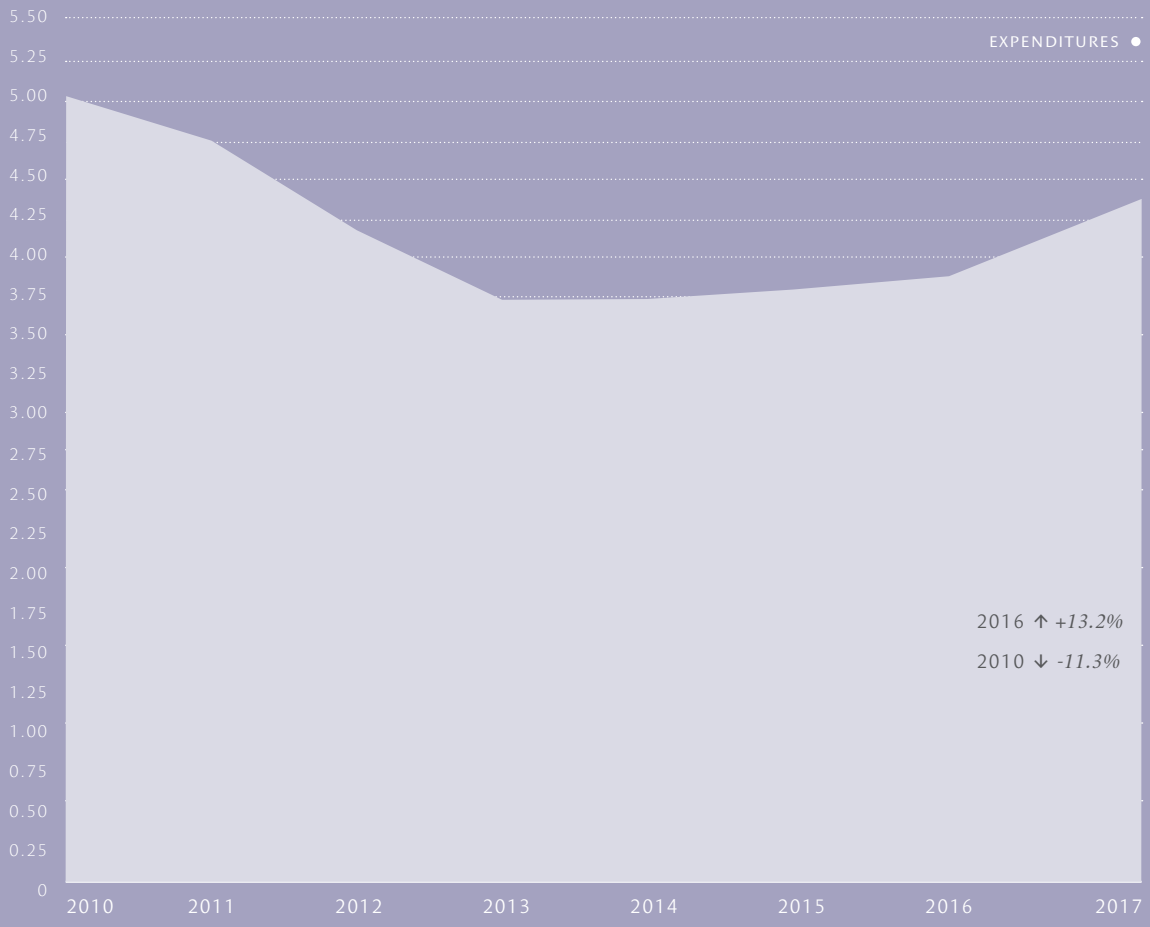
Distribution of Expenditures in 2017

(see page 101)



Financial Plan Outturn by Year (in EUR mil.)

(see page 101)



3. Respect for the Decisions of the Constitutional Court

The issue of respect for Constitutional Court decisions arises in particular with regard to so-called declaratory decisions that do not abrogate a law or other regulation, but merely establish its unconstitutionality or illegality. Every year the Constitutional Court draws attention to instances of disrespect for its decisions adopted on the basis of Article 48 of the Constitutional Court Act. In cases where the Constitutional Court decides that a law or other regulation is unconstitutional or illegal as it does not regulate a certain issue that it should regulate or regulates such in a manner that does not enable abrogation or annulment, it adopts a so-called declaratory decision and determines a time limit by which the legislature or other authority that issued such act must remedy the established unconstitutionality or illegality. In accordance with the constitutional principles of a state governed by the rule of law (Article 2 of the Constitution) and the principle of the separation of powers (the second sentence of the second paragraph of Article 3 of the Constitution), the competent issuing authority must respond to a declaratory decision of the Constitutional Court and remedy the established unconstitutionality or illegality within the specified time limit. In a number of its decisions, the Constitutional Court has stressed that the failure of a competent issuing authority to respond to a Constitutional Court decision within the specified time limit entails a serious violation of the principles of a state governed by the rule of law and the principle of the separation of powers.

At the end of 2017 there remained thirteen unimplemented Constitutional Court decisions, twelve of which refer to statutory provisions and one to a regulation of a local community. In comparison to the year 2016, the situation with regard to respect for the Decisions of the Constitutional Court has worsened, as in that year there remained ten unimplemented decisions, nine of which referred to statutory provisions and one to a regulation of a local community. While it falls within the competence of the National Assembly as the legislature to remedy unconstitutionalities in laws, the duty of the Government, as the constitutionally appointed proposer of draft laws, to prepare draft laws promptly and submit them for the legislative procedure must be stressed as well. It falls within the competence of municipal authorities to remedy the unconstitutionalities and illegalities in local regulations.

The oldest unimplemented decision remains a decision from 1998 (Decision No. U-I-301/98, dated 17 September 1998, Official Gazette RS, No. 67/98). That decision established the unconstitutionality of certain provisions of the Establishment of Municipalities and Municipal Boundaries Act defining the territory of the Urban Municipality of Koper. Decision No. U-I-345/02, dated 14 November 2002 (Official Gazette RS, No. 105/02), whereby the Constitutional Court established the inconsistency of certain municipal charters with the Local Self-Government Act as these charters did not provide that representatives of the Roma community are to be included as members of the respective municipal councils, still remains partly unimplemented. While other

municipalities have remedied the established illegality of their charters, the Municipality of Grosuplje has not responded to the decision of the Constitutional Court by amending its municipal charter. In this regard, it must be added that the state already ensured the constitutionality and legality of the composition of municipal councils through the enactment of the Act Amending the Local Self-Government Act (Official Gazette RS, No. 79/09). In accordance with the seventh paragraph of Article 39 of the Local Self-Government Act, the election of a representative of the Roma community is carried out by the State Electoral Commission if a municipality fails to implement the right of the Roma community to a representative in the municipal council.

The time limit for remedying the unconstitutionality established by Decision No. U-I-50/11, dated 23 June 2011 (Official Gazette RS, No. 55/11), expired already in 2012, and the legislature has not yet responded thereto. By that decision the Constitutional Court found that the Parliamentary Inquiries Act and the Rules of Procedure on Parliamentary Inquiries are inconsistent with the Constitution as they failed to regulate a procedural mechanism that would ensure that motions to present evidence that are manifestly intended to delay proceedings, to mob the participants, or which are malicious or entirely irrelevant to the subject of the parliamentary inquiry are dismissed promptly, objectively, predictably, reliably, and with the main objective being to ensure the integrity of the legal order. As a result of this legal gap, the effective nature of the parliamentary inquiry, which is required by Article 93 of the Constitution, is diminished in an unconstitutional manner.

In 2016, the time limits expired for the elimination of the unconstitutionality of two decisions of the Constitutional Court to which the legislature has not yet responded. By Decision No. U-I-269/12, dated 4 December 2014 (Official Gazette RS, No. 2/15), the Constitutional Court found that the regulation of the financing of private primary schools determined by the Organisation and Financing of Education Act is inconsistent with the second paragraph of Article 57 of the Constitution, which ensures pupils the right to attend compulsory state-approved primary education programmes free of charge in public or private schools. By Decision No. U-I-227/14, Up-790/14, dated 4 June 2015 (Official Gazette RS, No. 42/15), the Constitutional Court established the unconstitutionality of the Deputies Act as it did not ensure effective judicial protection against a decision on the termination of the office of a deputy of the National Assembly.

The time limit for remedying the unconstitutionality established by Decision No. U-I-246/14, dated 24 March 2017 (Official Gazette RS, No. 16/17), expired in 2017. The Constitutional Court established that a provision of the Criminal Procedure Act is inconsistent with the Constitution as the purpose for which the results of undercover investigative measures were stored for the same period as the relevant criminal file was not determined in the law. It is namely the task of the legislature to determine in the law the purpose(s) of the storage of the results of undercover investigative measures by courts clearly and in concrete terms. By Decision No. U-I-150/15, dated 10 November 2016 (Official Gazette RS, No. 76/16), the Constitutional Court decided that a provision of the Local Self-Government Act is inconsistent with the second paragraph of Article 14 of the Constitution as the legislature did not demonstrate reasonable grounds deriving from the nature of the matter for determining the same criteria for obtaining the status of a representative association of municipalities for all associations of municipalities including such associations that differ from each other.

In six decisions out of a total of thirteen decisions to which the legislature has not yet responded, although the time limit determined for remedying the established unconstitutionality or illegality has expired, the Constitutional Court determined the manner of implementation of the decision on the basis of the second paragraph of Article 40 of the Constitutional Court Act. In doing so, the Court ensured effective provisional protection of the human rights

of individuals in concrete proceedings. However, the determination of the manner of implementing a decision does not relieve the legislature of its duty to respond by adopting a law, as in adopting such a temporary solution the Constitutional Court only regulates those issues regarding which such regulation is indispensable due to the subject matter of the case at issue. Nevertheless, it is the legislature that is obliged to respond to a decision of the Constitutional Court in a comprehensive manner. The determination of a manner of implementation therefore does not entail that the legislature's competence and duty to adopt an appropriate statutory regulation have ceased. A short presentation of these Decisions follows below.

In 2014, the time limit for remedying the unconstitutionality established by Constitutional Court Decision No. U-I-249/10, dated 15 March 2012 (Official Gazette RS, No. 27/12) expired; this Decision determined that the provision of the Public Sector Salary System Act according to which a collective agreement may be concluded regardless of the opposition of a representative trade union in which civil servants whose position is regulated by such collective agreement are members interferes with the voluntary nature of such as an element of the freedom of the activities of trade unions. Remedying such an unconstitutionality should be even more urgent as the Constitutional Court determined in the manner of implementing its Decision that, due to the complexity of the subject matter, the unconstitutional statutory regulation shall continue to apply until the established inconsistency is remedied.

In 2016, the time limits for remedying the unconstitutionalities established by four Constitutional Court decisions expired and the legislature has not yet responded thereto. In Decision No. U-I-115/14, Up-218/14, dated 21 January 2016 (Official Gazette RS, No. 8/16), the Constitutional Court established that the Criminal Procedure Act and the Attorneys Act are inconsistent with Article 35, the first paragraph of Article 36, and the first paragraph of Article 37 of the Constitution as they do not regulate the specificities of investigative measures against attorneys in a manner that would prevent inadmissible interferences with the privacy of attorneys. The Constitutional Court also reviewed the challenged regulation from the perspective of the right to judicial protection and the right to a legal remedy, establishing that such regulation is inconsistent with the first paragraph of Article 23 and Article 25 of the Constitution. In Decisions No. U-I-57/15, U-I-2/16, dated 14 April 2016 (Official Gazette RS, No. 31/16) and No. Up-386/15, U-I-179/15, dated 12 May 2016 (Official Gazette RS, No. 38/16), the Constitutional Court decided that the Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act is (1) inconsistent with the second paragraph of Article 14 of the Constitution since creditors who wish to prevent a legal entity from being struck off the court register without winding up, on the grounds that the legal person does not exercise any activities at the address entered in the court register, must either prove that the legal entity is carrying out activities at that address or that it is carrying out its activities at another address at which it is allowed to carry out its activities either as the owner of the property or because it has the authorisation of the property owner to do so, and (2) is inconsistent with Article 22 of the Constitution as it does not determine that a decision to initiate bankruptcy proceedings on the proposal of the creditor is served on the shareholders of the bankruptcy debtor if that company is a limited liability company. By Decision No. U-I-295/13, dated 19 October 2016 (Official Gazette RS, No. 71/16), the Constitutional Court established that Article 265 of the Resolution and Compulsory Dissolution of Banks Act is unconstitutional as it prescribed that the unconstitutional Banking Act which did not did not provide for effective judicial protection of the holders of written-off or converted liabilities in banks continues to apply.

There remains another decision to which the legislature has responded only partially. Decision No. U-I-214/09, Up-2988/08, dated 8 July 2010 (Official Gazette RS, No. 62/10), remains unimplemented insofar as it concerns the established unconstitutionality of the Social Security Contributions Act as regards contributions for unemployment insurance.

4. The Composition of the Constitutional Court

The Constitutional Court is composed of nine judges who, on the proposal of the President of the Republic, are elected by the National Assembly. Any citizen of the Republic of Slovenia who is a legal expert and has reached at least 40 years of age may be elected a Constitutional Court judge. Constitutional Court judges are elected for a term of nine years and may not be re-elected.

4. 1. The Judges of the Constitutional Court

Assist. Prof. Dr Jadranka Sovdat, President
Assist. Prof. Dr Etelka Korpič – Horvat, Vice President
Dr Dunja Jadek Pensa
Assist. Prof. Dr Špelca Mežnar
Marko Šorli
Acad. Prof. Dr Marijan Pavčnik
Prof. Dr Matej Accetto
Dr.Dr. Klemen Jaklič
Prof. Dr Rajko Knez

Judges who completed their term of office in 2017
Dr Mitja Deisinger
Jasna Pogačar
Jan Zobec
Prof. Dr Ernest Petrič

Assumed the office of judge

19 December 2009

Held the office of Vice President

from 11 November 2013
until 30 October 2016

Assumed the office of President

31 October 2016

Assist. Prof. Dr Jadranka Sovdat, President,

graduated from the Faculty of Law of the University of Ljubljana in 1982. In 1983 she passed the public administration examination, and the following year the state legal examination. After graduation, she began working at the Ministry of Justice. At the Ministry of Justice she carried out expert work in the field of the system of justice, and after 1990 she was involved primarily in the drafting of legislation in this field. She is *inter alia* the co-author of legislation and legislative materials in the field of attorneyship, the organisation of the courts and judicial service, the state prosecution, and judicial review of administrative acts that were drafted in the first years after the implementation of the new constitutional order. During her final year at the Ministry she was head of the Justice Division, the work of which included both the drafting of legislation as well as tasks related to the financing and administration of the system of justice. In 1994 she was appointed legal advisor to the Constitutional Court, and later she also assumed the office of Deputy Secretary General of the Constitutional Court. In 1999, she was appointed Secretary General of the Constitutional Court and held this office until her election as judge of the Constitutional Court. Following the defence of her master's thesis, entitled "Judicial Protection of the Right to Vote in State Elections", she completed the postgraduate study of constitutional law at the Faculty of Law of the University of Ljubljana and obtained the Master of Legal Sciences degree. At the same university, she was also awarded the academic title of Doctor of Legal Sciences after defending her doctor's thesis, entitled "Electoral Disputes". She has delivered papers on constitutional law at national and international legal conferences. In 1993 she spent short study periods at the *Conseil d'État* of the Republic of France focusing on judicial review of administrative acts and in 1998 at the *Conseil constitutionnel* of the Republic of France studying electoral disputes. She has published scientific monographs and numerous articles on constitutional law and is the co-author of the Commentary on the Constitution of the Republic of Slovenia (2002) and its supplements (2011). She is Assistant Professor at the Faculty of law of the University of Ljubljana. As an external staff member, she lectures on constitutional procedural law and on parliamentary and electoral law. She commenced duties as judge of the Constitutional Court on 19 December 2009. She was Vice President of the Constitutional Court from 11 November 2013 until 30 October 2016. She assumed the office of President of the Constitutional Court on 31 October 2016.

Assumed the office of judge

28 September 2010

Assumed the office of Vice President

31 October 2016

Assist. Prof. Dr Etelka Korpič – Horvat, Vice President,

graduated from the Faculty of Law of the University of Ljubljana, where she also completed a Master's Degree and, in 1991, successfully defended her doctoral dissertation regarding the impact of home-country and international employment on deagrariza tion in the Pomurje Region, which was also published. She began her career as an intern, and subsequently a manager, at ABC Pomurka. She also passed the state legal examination. She was employed as Director of the Murska Sobota subsidiary of the Public Audit Service for eight years and subsequently worked for nine years as a member and Deputy President of the Court of Audit of the Republic of Slovenia until February 2004. From 1994 until she was elected judge of the Constitutional Court she taught labour law at the Faculty of Law of the University of Maribor. At the same Faculty she was head of the institute for employment relationships and social security and lead lecturer for the subjects Budget Law and State Revision as well as Individual Labour Law as part of the Master's Degree programmes in tax law and labour law, respectively. She has held several important positions: she was president of a panel of the Court of Associated Labour in Murska Sobota for two terms; for one term of office she was a deputy in the Chamber of Municipalities of the Assembly of the Republic of Slovenia; for over 20 years she was president of a panel of the Court of Honour of the Slovene Chamber of Commerce and Industry; she was a member of the Judicial Council; president of the Commission for the Interpretation of the Collective Agreement for the Public Sector; president of the Commission for the Interpretation of the Collective Agreement for the Wood Industry in the Republic of Slovenia; president of the Programme Committee of the Dr Vanek Šiftar Scientific Foundation; and president of the Žitek Agri-Tourism Cooperative in Čepinci. She is a member of the state legal examination commission and a member of the Pomurje Union of Academic Sciences. Her bibliography includes approximately 240 publications, mainly in labour law, budget law, and the field of state audit. The most important among them include the following: Zaposlovanje in deagrarizacija pomurskega prebivalstva [Employment and Deagrarization of the Residents of Pomurje], 1992; Zakon o računskem sodišču s komentarjem [The Court of Audit Act with Commentary], 1997; Zakon o delovnih razmerjih s komentarjem [The Employment Relationships Act with Commentary], 2008, co-author; Proračunsko pravo [Budget Law], 2007, co-author; Individualno delovno pravo [Individual Labour Law], 2004; Autonomnost postupka nadzora računskog suda Republike Slovenije [The Autonomy of the Supervisory Procedure of the Court of Audit of the Republic of Slovenia], 1996; and Termination of Employment Contract at the Initiative of the Employer in the Republic of Slovenia, Internationales und vergleichendes Arbeits- und Sozialrecht, 2008. She has participated in numerous national and international legal conferences and meetings. She commenced duties as judge of the Constitutional Court on 28 September 2010 and assumed the office of Vice President of the Constitutional Court on 31 October 2016.

Assumed the
office of judge

15 July 2011

Dr Dunja Jadek Pensa

graduated from the Faculty of Law of the University of Ljubljana. After completing an internship at the Higher Court in Ljubljana, she passed the state legal examination in 1987. The following year she completed post-graduate studies at the Faculty of Law, where she also obtained a doctorate in law in 2007. In the period from 1988 to 1995 she was employed as a legal advisor; in the first year she worked for the civil department of the Basic Court in Ljubljana and subsequently for the Supreme Court of the Republic of Slovenia in the records department and the civil law department. In 1995 she was elected district court judge, assigned to work at the Supreme Court of the Republic of Slovenia, while continuing to work as a district court judge in the commercial department of the District Court in Ljubljana. In 1997, she was appointed higher court judge at the Higher Court in Ljubljana, where she worked in the commercial department. In 2004, she became a senior higher court judge. During her time as a judge of the Higher Court in Ljubljana, she was awarded a scholarship by the Max Planck Institute for Foreign and International Patent, Copyright and Competition Law in Munich; she presided over the specialised panel for commercial disputes concerning intellectual property, and in the period from 2006 to 2008 she was the president and a member of the personnel council of the Higher Court in Ljubljana. In 2008, she became a Supreme Court judge. At the Supreme Court of the Republic of Slovenia she was on the panels considering commercial and civil cases, as well as the panel deciding appeals against decisions of the Slovene Intellectual Property Office. She has published numerous works, particularly in the field of intellectual property law, tort law, and insurance law. She has lectured in the undergraduate and graduate study programmes of the Faculty of Law of the University of Ljubljana and at various professional courses and education programmes for judges in Slovenia and abroad. She is a member of the state legal examination commission for commercial law. She commenced duties as judge of the Constitutional Court on 15 July 2011.

Assumed the
office of judge

31 October 2016

Assist. Prof. Dr Špelca Mežnar

graduated from the Faculty of Law of the University of Ljubljana in 1999. In 2000, she completed postgraduate specialist studies in European Communities law, and, in 2002, she obtained a Masters Degree in civil and commercial law. She passed the bar exam in 2003, and following the successful defence of her doctoral thesis entitled "Copyright in the Conflict Rules of Private International Law", which she completed under the mentorship of Assist. Prof. Dr Miha Trampuž, she obtained a doctorate in law in 2004. In the following year, she received the "Young Lawyer of the Year" award from the Association of Lawyers of Slovenia for her thesis. Between 1999 and 2008, she worked at the Faculty of Law of the University of Ljubljana as a young researcher, and subsequently as a teaching assistant and assistant professor lecturing on private international law, commercial law, intellectual property law, and law of obligations. She regularly attended courses abroad, for which she also received grants: in 2001, in the USA (Franklin Pierce Law Center: copyright law) and the Netherlands (The Netherlands School of Human Rights and Katholieke Universiteit Leuven: human rights); in 2002, in Finland (Åbo Akademi, Turku: international law) and the Netherlands (Hague Academy of International Law: private international law); and in 2003, in Germany (Deutsche Institution für Schiedsgerichtsbarkeit – DIS, Cologne: international commercial arbitration) and the Netherlands (University of Columbia and Universiteit van Amsterdam: US law). In 2006, as a Marie Curie Scholarship student she participated in the project "Unfair Suretyship and European Contract Law" (Bremen, Germany). In the years 2012–2015, she led a group of researchers from Slovenia, Croatia, and Serbia in the FP7 project "Tenancy Law and Housing Policy in Multi-Level Europe". She is the author of several expert legal studies (Analysis of the Key Decisions of Slovene Courts concerning the Enforcement of Intellectual Property Rights, Pilot Field Study on the Functioning of the National Judicial Systems for the Application of Competition Law Rules, Study on Conveyancing Services Regulations in Europe). Starting in 2007, she first worked for the Čeferin law firm (commercial law department), and then in 2015 for the Vrtačnik law firm. She specialises in the fields of contract, tort, and copyright law as well as the law of consumer protection and public procurement. She is an arbitrator at the Slovene Chamber of Commerce and Industry. As a teacher and researcher at institutions of higher education, she has been working at the International School for Social and Business Studies in Celje since 2008. She is the author of numerous articles (her bibliography comprises over 100 entries in COBISS) and a regular lecturer at workshops for judges, attorneys, and other legal professionals. She commenced duties as judge of the Constitutional Court on 31 October 2016.

Assumed the
office of judge

20 November 2016

Marko Šorli

graduated from the Faculty of Law of the University of Ljubljana. Following a period as judge at Kranj Municipal Court from 1977 to 1981, he was judge at Ljubljana Higher Court until 1996, when he was appointed Supreme Court judge. Since 1999, he was in charge of the Department for International Judicial Cooperation of the same court and in 2000 he was appointed head of the Criminal Law Department and Vice President of the Supreme Court (a position he held until 2010). He is a member of the state legal examination commission for criminal law. In 1994, he was appointed to the Judicial Council and for the last two thirds of his term of office first held the position of Vice President and then President of the Council. In addition to his work on criminal law, throughout his entire judicial career he has actively participated in solving issues regarding the organisation and democratisation of the judiciary. He has presented papers at various conferences, seminars, and discussions in Slovenia and abroad. In 1997, at an international conference of representatives of Judicial Councils held in Poland he presented a contribution with the title "The Role of the Judicial Council in ensuring the independence of the Judiciary." At the fifth meeting of the Presidents of European Supreme Courts, under the theme "The Supreme Court: publicity, visibility and transparency" organised by the Council of Europe in Ljubljana in 1999, he presented the keynote speech entitled "Publicity of the activities of the Supreme Court." In 2002, he became a member of the European Commission for the Efficiency of Justice – CEPEJ. His written work includes more than 40 articles in professional publications and reviews and he is also a co-author of the Komentar Ustave Republike Slovenije [Commentary on the Constitution of the Republic of Slovenia], Fakulteta za državne in evropske študije.

Assumed the
office of judge

27 March 2017

Acad. Prof. Dr Marijan Pavčnik

was born in 1946 in Ljubljana. In 1969 he graduated from the Faculty of Law of the University of Ljubljana. In 1971 he passed the state legal examination, in 1978 he obtained a master's degree from the Faculty of Law in Belgrade, and in 1982 a doctorate from the Faculty of Law in Ljubljana. From 1970 until 1971 he was an intern at the Ljubljana District Court, and subsequently an advisor and judge at the Municipal Court I in Ljubljana. Since May 1973 he has worked at the Faculty of Law of the University of Ljubljana, first as a teaching assistant, starting in 1982 as an assistant professor, and in 1987 as an associate professor. Since 1993 he has been a professor of Philosophy and Theory of Law and State. He retired on 31 December 2016. In 1997 he wrote Teorija prava [Theory of Law], the first comprehensive work in the field of theory of law in the Slovene language. In 2015 the 5th revised and supplemented edition of this book was issued. He is particularly interested in the interpretation of the law and the arguments underlying legal decision-making. He addresses these issues in Argumentacija v pravu [Argumentation in Law] (1991; third edition: 2013). In the eyes of critics, this monograph represents "a new way of thinking and writing in Slovene legal theory" (V. Simič). In a slightly modified form, the monograph was also published by Springer Publishing (Juristisches Verstehen und Entscheiden, 1993). In 2011 Steiner Verlag (Stuttgart) published his book Auf dem Weg zum Maß des Rechts [On the Way to a Measure of the Law]. The book consists of a selection of 14 scientific articles (in German and English) from the period 1997–2010. In 2015 GV Založba published his bilingual monograph Čista teorija prava kot izziv / Reine Rechtslehre als Anregung [Pure Theory of Law as a Challenge], and in 2017 the work Iskanje opornih mest [In Search of Points of Reference]. He is also the co-author and (co-)editor of numerous books. He is the co-author and editor of the lexicon Pravo [Law] (1987; second edition: 2003). He also published the bilingual selection of Leonid Pitamic's treatises Na robovih čiste teorije prava / An den Grenzen der Reinen Rechtslehre [At the Limits of the Pure Theory of Law] (together with an introductory study; 2005, reprint: 2009). He was a fellow of the Alexander von Humboldt Foundation for twenty three months; he spent most of this time at the Institute of Philosophy of Law and Legal Informatics at the University of Munich and the Institute for Interdisciplinary Research at the University of Bielefeld. In 2001, he received the Zois Award for outstanding achievements in legal sciences. In 2003, he was elected an associate member of the Slovenian Academy of Sciences and Arts, and a full member in 2009. He has been a member of the European Academy (Academia Europaea) since 2010, a member of the Executive Committee of the International Association for the Philosophy of Law and Social Philosophy since 2011, and an international correspondent member of the Hans Kelsen Institute in Vienna since 2012. He commenced duties as judge of the Constitutional Court on 27 March 2017. (A more detailed biography, including a bibliography, is accessible on the website of the Slovenian Academy of Sciences and Arts.)

Assumed the
office of judge

27 March 2017

Prof. Dr Matej Accetto

graduated from the Faculty of Law of the University of Ljubljana in 2000 and obtained a doctorate in law from the same Faculty in 2006. He further obtained an LL.M. from Harvard Law School in 2001. After obtaining his doctorate in law, in 2006 he received a Monica Partridge Visiting Fellowship and spent the Easter term at Fitzwilliam College of the University of Cambridge as a visiting lecturer. In 2011 he completed a longer research visit at Waseda University in Tokyo, and in 2012 he was a visiting scholar at the Faculty of Law of the University of Cambridge. From 2008 he worked at the University of Ljubljana, first as an assistant professor of EU law, and from 2013 as an associate professor of EU law. From September 2013 until August 2016 he lectured at the international graduate law school Católica Global School of Law / UCP in Lisbon as a professor with an additional research grant from the Gulbenkian Foundation, and since the beginning of the 2016/17 academic year he has been lecturing at the Faculty of Law of the University of Ljubljana. In addition to his regular lectures in Slovenia and Portugal, he taught entire courses or held a series of lectures as a guest lecturer at the Graduate School of the Chinese Academy of Social Sciences in Beijing (China), Irkutsk State University (Russia), and the ISES Foundation in Kőszeg (Hungary), and at the Católica University in Lisbon (Portugal) also before 2013. He has delivered occasional guest lectures at numerous other universities around the world. As a Constitutional Court Judge, he continues to cooperate with the Faculty of Law of the University of Ljubljana and the Católica University in Lisbon. While concentrating mainly on his research and pedagogical work, he has also cooperated with the judiciary and jurisprudence in various ways. In 2003 he spent five months at the Court of the European Union as a trainee, and in the period 2003/04, as a Fellow of the British Lord Slynn Foundation for European Law, he spent a year working with distinguished British judges (the House of Lords (which at that time still functioned as the court of last resort), the Commercial Court, the Central Criminal Court), attorneys (the Brick Court Chambers, Blackstone Chambers, Doughty Street Chambers), and law firms (Clifford Chance, Ashurst). Between 2007 and 2011 he was, *inter alia*, a member of the National Commission for the Legal Revision of the Historic Case Law of the European Court of Justice, and between 2009 and 2013 he was president of an examination board for the examination of court interpreter candidates as well as a lecturer at events organised by the Slovene Judicial Training Centre. He has participated in numerous national and international research projects that focused on different issues of fundamental rights, (constitutional) adjudication, and citizenship. He is the author of several books and numerous scientific legal papers (in Slovene, English, and Portuguese) as well as numerous editorials and columns in legal newspapers and on websites. He commenced duties as judge of the Constitutional Court on 27 March 2017.

Assumed the
office of judge

27 March 2017

Dr.Dr. Klemen Jaklič

graduated from the Faculty of Law in Ljubljana (LL.B.) and then completed his LL.M. and S.J.D. at Harvard Law School on a Fullbright Fellowship, as well as a D.Phil. at Oxford University (all in the field of constitutional law and theory). Such parallel research on both continents, and under the supervision of the world's leading authorities in this field, provided him with authentic insight into the comparative dimensions of European and US constitutional law. After completing the D.Phil. at Oxford, he began teaching at Harvard. During the subsequent ten years he taught over twenty courses from his field across five different departments at Harvard University, and received teaching excellence awards from each of them. For his research he was awarded Harvard's Mancini Prize ("best work in European law and European legal thought"). His bibliography consists of over two hundred contributions in the field of constitutional law. These include leading commentaries on the Slovene Constitution and the first Slovene translation of, and commentary on, the US Constitution. In 2014 he published his acclaimed *Constitutional Pluralism in the EU*, the first and only monograph by a Slovene legal scholar ever published by Oxford University Press. The international legal community has described it as an "important and tremendously useful" contribution that represents the first "coherent defense of the entire 'movement' [of constitutional pluralism]" (J. H. H. Weiler, EJIL), as a "contribution of great merit" by which Jaklič "lays the foundation to nothing less than a new way of understanding law" (E. Dubout, Revue française de droit constitutionnel), etc. He is a regular speaker at leading international academic fora. At the 53rd Annual Conference of Societas Ethica, the European Society for Research in Ethics, he delivered the keynote lecture on "The Morality of the EU Constitution". At the Center for European Studies, Harvard University, he delivered a talk on "The Democratic Core of the European Constitution", while at a Harvard Law School faculty workshop he was invited to speak on "Liberal Legitimacy and the Question of Respect". At Harvard College, Harvard Hall Auditorium, he delivered an invited lecture entitled "The Case For and Against Open Borders", while in 2012/13 he held a series of lectures at the Faculty of Law of the University of Ljubljana as a visiting lecturer from abroad, etc. He has been a member of numerous scholarly associations and a peer reviewer for leading international publishers and law journals, such as Hart Publishing (Oxford), Journal of International Constitutional Law (ICON), Ratio Juris, and the Harvard International Law Journal, of which he was also co-editor. He was appointed a full member of the European Commission for Democracy Through Law (the Venice Commission) for the 2008–12 term. Every year since 2013 he has been included among the top ten most influential members of the Slovene legal profession (IUS INFO), while for the last three years he has been selected the most acclaimed member of the Slovene legal profession (Tax-Fin-Lex). He commenced duties as judge of the Constitutional Court on 27 March 2017.

Assumed the
office of judge

25 April 2017

Prof. Dr Rajko Knez

graduated from the Faculty of Law of the University of Maribor in the field of civil law. He obtained a master's degree in the field of commercial law in 1996. Two years later, he passed the state legal examination. In 2000 he obtained a doctorate (following preparatory work on his doctoral thesis in the USA). He has been professor of European Union law at the University of Maribor since 2011. Since 1993 he has primarily worked at the Faculty of Law of the University of Maribor. In addition to European Union law, his research has focused on civil law and environmental law. He was also employed as a senior judicial advisor at the Supreme Court. This has enabled him to combine theory and practice and to integrate case law, judicial decision-making skills, and the procedures, organisation, and functioning of the courts into the teaching process. As a visiting lecturer, he has lectured at the Faculties of Law of the Universities of Vienna (Juridicum), Graz, and Zagreb. He has delivered individual guest lectures in Italy, Germany, Slovakia, Russia, Ukraine, etc. He was in charge of a number of EU projects, namely Free Movement of Services and Workers (2003), EU Law in the Light of the Horizontal Direct Effect of Directives (2005), European Legal Studies – Jean Monnet Chair (2007), Balancing between Fundamental Rights and Internal Market Freedoms (2008), and most recently the Jean Monnet Centre of Excellence (2013–2017). He also holds the title of Jean Monnet Professor for lectures and research on EU law. He completed two internships at the Court of Justice of the EU. He enhanced his expertise through study visits to Karl-Franzens-Universität, Graz, Institut für das Recht der Wasser; Bonn, European University Institute, Florence, Faculteit der Rechtsgeleerdheid, Universiteit van Amsterdam, Law offices Moore & Bruce, Washington DC, and Mezzullo & McCandlish, Richmond, and an internship at the Law Library of Congress, Washington DC, and Training of Trainers on EU Waste Law in Luxemburg. He is the author of numerous scientific and scholarly articles, monographs, and commentaries on law. He is also the founder and conceptual leader of the *Amicus Curiae* project, which, at the time, entailed a new form of practical co-operation of students in open judicial proceedings under the mentorship of faculty staff. The project is a synergy of providing assistance to courts, acquainting students with the work of the courts, and engaging them in practical work and the application of law, with feedback for professors who thus gain concrete insight into case law. The idea was well received by some courts. After ten years, it outgrew the framework of the Faculty of Law of the University of Maribor and has since been implemented at other faculties and institutionalised. He was a member of the International Court of Justice in The Hague until 2017. He was a member of the Presidency of the Permanent Court of Arbitration at the Chamber of Commerce of Slovenia. Between 2007 and 2011, he served as the Dean of the Faculty of Law of the University of Maribor. He commenced duties as judge of the Constitutional Court on 25 April 2017.

Assumed the office of judge

27 March 2008

Completed his term of office

26 March 2017

4. 2. Judges Who Completed Their Term of Office in 2017

Dr Mitja Deisinger

graduated from the Faculty of Law of the University of Ljubljana and was subsequently employed as an intern at the District Court in Ljubljana. In 1970 he became a deputy municipal public prosecutor, and in 1976 a deputy republic public prosecutor. In 1988 he became a judge at the Supreme Court, where he was, *inter alia*, the head of the Criminal Law Department, president of the panel for auditing-administrative disputes, and president of the second instance panel for cases regarding insurance, audits, and the securities market. In 1997 he was appointed President of the Supreme Court and performed this office until 2003. As the President of the Supreme Court, he co-founded the Permanent Conference of Supreme Courts of Central Europe and, in cooperation with the Minister of Justice, the Judicial Training Centre. He also participated in negotiations on Slovenia's accession to the European Union. He was awarded a Doctorate in the field of criminal law (his dissertation was entitled Odgovornost za kazniva dejanja [Responsibility for Criminal Offences]). He has published extensively abroad and in domestic professional journals, and is the author (Kazenski zakon SR Slovenije s komentarjem in sodno prakso [The Penal Act of SR Slovenia with Commentary and Case Law], 1985 and 1988; Kazenski zakon s komentarjem – posebni del [The Penal Act with Commentary – Special Provisions], 2002; Odgovornost pravnih oseb za kazniva dejanja [The Responsibility of Legal Entities for Criminal Offences], 2007) and co-author (Komentar Ustave Republike Slovenije [The Commentary on the Constitution of the Republic of Slovenia]; Zakon o odgovornosti pravnih oseb za kazniva dejanja s komentarjem [The Responsibility of Legal Entities for Criminal Offences Act with Commentary], 2000) of several monographs. He also lectures; he lectured at the Faculty of Law of the University of Ljubljana and from 2007 to 2008 he was the head of the Criminal Law Department of the European Faculty of Law in Nova Gorica. He was a judge of the Constitutional Court from 27 March 2008 until 26 March 2017.

Assumed the office of judge

27 March 2008

Completed her term of office

26 March 2017

Jasna Pogačar

graduated from the Faculty of Law of the University of Ljubljana in 1977. In 1978 she was employed as an intern at the District Court in Ljubljana. After passing the state legal examination, she was employed in the state administration, where for 18 years she worked in the Government Office for Legislation, mainly dealing with constitutional law, administrative law, and legal drafting. In 1983, she was appointed advisor to the president of the Republic Committee for Legislation, and in 1989 assistant president thereof. In 1992 she was appointed advisor to the Government Office for Legislation of the Republic of Slovenia, and in 1996 she was appointed state undersecretary. While holding the same title, in 1997 she was employed in the Office for the Organisation and Development of the State Administration at the Ministry of the Interior, where she participated in the project of reforming Slovenia's public administration and in other projects dealing with Slovenia's accession to the European Union. In 2000 she was elected Supreme Court judge and in 2007 was appointed senior judge of the Supreme Court. From 2003 to 2008 she was the head of the Supreme Court's Administrative Law Department. As a representative of the Supreme Court, she participated in the work of the Expert Council for Public Administration, and was a member of the Council for the Salary System in the Public Sector and a member of the Commission for the Control of the Activities of Free-of-Charge Legal Aid. She has taken part in professional and other legal conferences, and judicial school seminars with papers on civil service law and administrative procedural law. She is a member of the state legal examination commission (in the field of administrative law), and was an examiner for constitutional law and the foundations of EU law for the civil service examination (in the fields of constitutional system, the organisation of the state, legislative procedure, and administrative law). She is a co-author of the Commentary on the Judicial Review of Administrative Acts Act. She was a judge of the Constitutional Court from 27 March 2008 until 26 March 2017.

Assumed the office of judge

27 March 2008

Completed his term of office

26 March 2017

Jan Zobec

graduated from the Faculty of Law of the University of Ljubljana in 1978. Thereafter he was employed as an intern at the District Court in Ljubljana. After he passed the state legal examination in 1981, he was elected judge of the Basic Court in Koper, and in 1985 judge of the Higher Court in Koper. Starting in the beginning of 1992 he was judge at the Higher Court in Ljubljana, where he was appointed senior higher court judge by the Judicial Council's decision of 13 April 1995. In May 2003 he became a judge of the Supreme Court of the Republic of Slovenia. For all twentysix years of his hitherto judicial career he worked in litigation and civil law departments, while as a Supreme Court judge he occasionally also participated in sessions of the commercial law panel. As an expert in civil law, he participated in drafting the first amendment to the Civil Procedure Act in 2002, and was the president of the working group that drafted the Act on the Amendment to the Civil Procedure Act. In 2006 he led the expert group working on the Institution of Appellate Hearings project. He has taken part in various Slovene as well as foreign professional meetings and seminars, and lectured to judges of the civil and commercial law departments of the higher courts on the topic of amendments to the civil procedure and reform of the appellate procedure. As a lecturer he has often participated in judicial school seminars for civil and commercial law departments. He has been a member of the state legal examination commission in civil law since 2003. His bibliography includes 31 publications, mainly in the field of civil (procedural) law, including, *inter alia*, as co-author, Pravdni postopek (1. in 2. knjiga komentarja Zakona o pravdnem postopku) [The Civil Procedure - volumes 1 and 2 of a commentary on the Civil Procedure Act]. He was a judge of the Constitutional Court from 27 March 2008 until 26 March 2017.

Assumed the office of judge	Held the office of President	Completed his term of office
25 April 2008	*from* 11 November 2010 *until* 10 November 2013	24 April 2017

Prof. Dr Ernest Petrič

graduated from the Faculty of Law of the University of Ljubljana in 1960, winning the Prešeren University Award, and was awarded a Doctorate in Law from the same Faculty in 1965. After taking a position at the Institute for Ethnic Studies, he became a Professor of International Law and International Relations at the Faculty of Social Sciences of the University of Ljubljana, where he was also the Vice Dean and Dean (1986–1988), as well as director of its research institute. He has occasionally lectured at the Faculty of Law of the University of Ljubljana and also guest lectured at numerous prestigious foreign universities. From 1983 to 1986 he was a Professor of International Law at the Faculty of Law in Addis Ababa. He pursued advanced studies at the Faculty of Law of the University of Vienna, at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg, at the Hague Academy for International Law, and at the Institute for International Law in Thessaloniki. He has been a member of numerous international associations, particularly the ILA and the IPSA. He is a member of the International Law Commission, whose membership comprises only 34 distinguished international legal experts from the entire world, representing different legal systems. He has actively participated in the Commission's work on the future international legal regulation of objections to reservations to treaties, the deportation of aliens, the responsibilities of international organisations, the effects of armed conflicts on treaties, the international legal protection of natural resources, in particular, underground water resources, and regarding the problem of extradition and adjudication. He served as president of the Commission from 2008 to 2009. In 2012, he was elected to the Advisory Committee on Nominations of Judges of the ICC. Between 1967 and 1972 he was a member of the Slovene Government, in which he was responsible for the areas of science and technology. After 1989, he served as ambassador to India, the USA, and Austria, and as non-resident ambassador to Nepal, Mexico, and Brazil. He was a permanent representative/ ambassador to the UN (New York) and to the IAEA, UNIDO, CTBTO, ODC, and OECD (Vienna). From 1997 to 2000 he was State Secretary at the Ministry of Foreign Affairs. In 2006 and 2007 he presided over the Council of Governors of the IAEA. During the time of his diplomatic service he also dealt with important issues of international law, such as state succession with regard to international organisations and treaties, border issues, and issues concerning human rights and minority rights. He has published numerous articles and treatises in domestic and foreign professional journals, and six books (The International Legal Protection of Minorities, The Right of Nations to Self-Determination, The Legal Status of the Slovene Minority in Italy, Selected Topics of International Law, Foreign Policy – From Conception to Diplomatic Practice), and a politological study on Ethiopia. He has presented papers at numerous conferences and seminars. He still occasionally lectures on international law. He commenced duties as judge of the Constitutional Court on 25 April 2008, and was President thereof from 11 November 2010 until 10 November 2013. He completed his term of office on 24 April 2017.

4. 3. The Secretary General of the Constitutional Court

Dr Sebastian Nerad

graduated from the Faculty of Law of the University of Ljubljana in 2000. For a short period after graduation he worked as a judicial intern at the Higher Court in Ljubljana. After becoming a Lecturer at the Faculty of Law in Ljubljana at the end of 2000, he concluded his internship at the Higher Court as an unpaid intern. He passed the state legal examination in 2004. From December 2000 until July 2008 he was a lecturer at the Department of Constitutional Law of the Faculty of Law in Ljubljana. During this period his primary field of research was constitutional courts. In 2003, he was awarded a Master's Degree in Law by the Faculty of Law on the basis of his thesis entitled "Pravne posledice in narava odločb Ustavnega sodišča v postopku ustavnosodne presoje predpisov" [Legal Consequences and the Nature of Constitutional Court Decisions in the Procedure for the Constitutional Review of Regulations]. He was also awarded a Doctorate in Law by this Faculty in 2006, following the completion of his doctoral thesis entitled "Interpretativne odločbe Ustavnega sodišča" [Interpretative Decisions of the Constitutional Court]. In 2007, he worked for six months as a lawyer-linguist at the European Parliament in Brussels. In August 2008, he was employed as an advisor to the Constitutional Court of the Republic of Slovenia. In this position he mainly worked in the areas of state and administrative law. In 2011, he went on a one-month study visit to the European Court of Human Rights in Strasbourg. He has published several articles on constitutional law, particularly on the functioning of the Constitutional Court. He is also the co-author of two monographs (Ustavno pravo Evropske unije [Constitutional Law of the European Union], 2007; Zakonodajni referendum: pravna ureditev in praksa v Sloveniji [The Legislative Referendum: Regulation and Practice in Slovenia], 2011), and co-author of Komentar Ustave Republike Slovenije [The Commentary on the Constitution of the Republic of Slovenia], 2011. He has been a member of the Constitutional Law Association of Slovenia since 2001. He occasionally participates in lectures on constitutional procedural law at the Faculty of Law of the University of Ljubljana. He was appointed Secretary General of the Constitutional Court on 3 October 2012.

5. Important Decisions

In 2017 the Constitutional Court adopted a number of important decisions and orders. Only the decisions and orders that have a constitutional precedential value because they significantly contribute to an understanding of the Constitution are presented below. The decisions and orders are arranged in chronological order according to the date of their adoption. The full texts are also available on the website of the Constitutional Court.

5. 1. Access to Public Information

In Decision No. **U-I-52/16**, dated 12 January 2017 (Official Gazette RS, No. 5/17), upon the request of the Supreme Court, the Constitutional Court decided on the constitutionality of the statutory regulation contained in the Access to Public Information Act that provides everyone the right to obtain data regarding certain contracts from business entities under the dominant influence of public law entities (in particular, the state or municipalities). The entities required to disclose such data are (a) companies under the direct or indirect dominant influence of the state, municipalities, or other public law entities, and (b) banks that benefitted from measures to strengthen the financial stability of banks determined by the Act Regulating Measures of the Republic of Slovenia to Strengthen the Stability of Banks. The data that were accessible to the public under the challenged regulation concerned the fundamental information regarding contracts related to consulting, intellectual property, and other intellectual services (i.e. the type of contract, the contracting parties, the contract value, the date the contract was concluded, and its duration). The Constitutional Court reviewed whether the absolute and indiscriminate access to these data was constitutional, as the regulation enabled everyone, without any exceptions or any weighing of conflicting interests, to access information regarding the affected entities' contracts related to consulting, intellectual property, and other intellectual services. These entities were furthermore required to enable access to data that had been created before the challenged Act came into force. The Constitutional Court reviewed the challenged statutory regulation from the perspective of free economic initiative (the first paragraph of Article 74 of the Constitution), the principle of trust in the law (Article 2 of the Constitution), and the principle of equality before the law (the second paragraph of Article 14 of the Constitution). The review especially focused on the perspective of free economic initiative; however, an unconstitutionality was not established.

With regard to the review from the perspective of free economic initiative, the Constitutional Court clarified with precedential effect that the first paragraph of Article 74 of the Constitution also protects business confidentiality and business secrecy. This right thus also protects business secrecy referring to information and data of a business nature that (a) concern the business

operations or activity of a business entity, that (b) are not publicly known, and (c) whose content is such that there exists a probability that its free accessibility or the accessibility thereof to a business competitor would cause significant damage to the business entity. As the challenged regulation interfered with the right to free economic initiative, the Constitutional Court had to decide whether the interference was grounded in a public interest and whether the interference was in accordance with the general principle of proportionality (Article 2 of the Constitution).

The Constitutional Court identified the public interest in enabling such broad access to data concerning certain contracts of business entities that are under the dominant influence of public law entities in values such as reducing the risk of corruption, fostering conscientious, honest, diligent, and financially efficient business operations and management, and increasing the transparency of the operations of companies with connections to the public sector. As the public interest justifying the statutory regulation was thus not in dispute, the Constitutional Court had to establish whether the weight of the interference with free economic initiative was proportionate to the weight of the public interest. When assessing the proportionality of the interference, the Constitutional Court took into account that already from the outset (i.e. in an abstract sense) the free economic initiative of companies that are controlled by public law entities (as well as of banks that have endured on the market primarily due to state aid) does not carry the same weight and importance as the free economic initiative of entities that are controlled by private law entities. The fundamental premise is that the more a company is public, the less protection it enjoys in the framework of the right determined by the first paragraph of Article 74 of the Constitution. However, in the assessment of the Constitutional Court, the negative effects of the challenged regulation were limited due to specific circumstances that distinguished the case at issue from Case No. U-I-201/14, U-I-202/14 (Decision dated 19 February 2015, Official Gazette RS, No. 19/15). Firstly, as the challenged Act does not require the publication of the relevant data on the internet, an interested applicant must file a request, which in practice results in a narrowing of the circle of those who become acquainted with the data concerning the disclosed contracts. Secondly, as the regulation does not call for the disclosure of only data that by their very nature tarnish the business reputation of the relevant entities, one cannot speak of a non-discriminatory "naming and shaming" – in other words, the provisions contain no retributive or "quasi punitive" tendencies. It is, thirdly, of particular importance that the challenged Act requires the disclosure of contracts concerning auxiliary and supporting operations, and not of the contracts that constitute the core of an entity's operations, and therefore, precisely due to the auxiliary and supporting character of the relevant contracts, as a general rule their disclosure will not have significant adverse effects on the entity's competitiveness and market performance.

In light of the limited adverse effects of the challenged regulation and the significant expected public benefits attached to the efficient, honest, and diligent management of public funds, the Constitutional Court held that the benefits exceed the weight of the interference with the constitutional right to free economic initiative. Consequently, the statutory regulation is not inconsistent with the Constitution.

5. 2. Religious Holidays and Freedom of Religion

By Order No. **U-I-67/14**, dated 19 January 2017, the Constitutional Court decided on the allegation that Article 2 of the Public Holidays and Non-working Days in the Republic of Slovenia Act, which determines non-working days, is unconstitutional. The petitioner, a member of the Islamic religious community, alleged that the challenged regulation only takes into account

Christian religious holidays. He was of the opinion that the challenged regulation discriminates against him when compared to members of the Christian religious community and prevents him from exercising his right to profess his religion. The challenged regulation allegedly also discriminates against the members of other religious communities and atheists.

The review of the Constitutional Court proceeded from the premise that holidays are days that have a special significance for the lives of individuals or a community and that, as a general rule, are celebrated in some manner every year. Through holidays, communities and institutions commemorate important historic events and special local, state, or national, religious, and other cultural values, thus emphasising their own identities. Holidays have an important sociological and integrative role in the lives of individuals and families, as well as for local, professional, and national communities; they legitimise the organisation and ideology of a society and of the state. In the light of such, the holidays and non-working days in the Republic of Slovenia, as they are determined by law, are the outward expression of the identities of individuals – i.e. the citizens, who, according to the first paragraph of Article 3 of the Constitution, constitute the Republic of Slovenia, which is founded on the permanent and inalienable right of the Slovene nation to self-determination. The challenged statutory regulation differentiates between holidays and non-working days that are not holidays. The dates of the non-working days that are not holidays are an expression of the traditionally accepted values that are historically connected to life in the territory of the present Republic of Slovenia. They serve the celebrations of individuals, and the state is excluded from such celebrations. The state only commemorates holidays, irrespective of whether they are also non-working days.

The Constitutional Court held that the selection of non-working days does not touch upon the functioning of religious communities or the profession of the faith of individuals. Irrespective of the challenged regulation, all religious communities and their members are autonomous and free with regard to the individual or collective profession of their religion. Therefore, the challenged regulation does not interfere at all with the sphere protected by the right determined by Article 41 of the Constitution. The selection of the dates of the non-working days (which according to the law are not state holidays) is a matter falling within the legislature's margin of appreciation. The legislature may regulate non-working days as an expression of the identity of the persons who have historically lived in the territory of our present state and who are connected to the tradition of the European area. In accordance with the Preamble to the Constitution, national independence is one of the starting points for the establishment of the fundamental social rules of coexistence. Consequently, the petitioner's allegations concerning the discrimination and unequal treatment of religious communities and their members and the ensuing inconsistency of the challenged regulation with the first and second paragraphs of Article 14 of the Constitution are also unsubstantiated. The challenged regulation distinguished non-working days from holidays and intended them to benefit individuals who may enjoy them as they see fit. The participation of the state is excluded. Therefore, the allegation that the challenged regulation is inconsistent with Article 7 of the Constitution is also not substantiated. The Constitutional Court dismissed the petition as unfounded.

5. 3. Recalculation of Pensions

In case No. **Up-195/13, U-I-67/16** (Decision dated 26 January 2017, Official Gazette RS, No. 9/17), the Constitutional Court decided on the constitutional complaint of a retiree with regard to whom it became clear after his pension had already been determined with legal finality that its calculation did not take into account the differences in his salary from 1995 until 1997 as acknowledged by a

Labour Court Judgment. The Pension and Disability Insurance Institute rejected his request for a recalculation of his pension and this decision was also affirmed by all of the courts, including the Supreme Court, that decided in the ensuing judicial proceedings. Their decisions proceeded from the position that the complainant cannot succeed with his request for a recalculation of his pension, as neither the Pension and Disability Insurance Act (PDIA-1) nor the General Administrative Procedure Act regulate a special legal remedy that would enable an error in the calculation of a pension to be remedied. As a result, an error that occurred during the calculation of a pension cannot be remedied. During the consideration of the constitutional complaint the question arose whether, in light of the nature of the right to a pension (the first paragraph of Article 50 of the Constitution), which, as a general rule, is exercised over a long period of time, it is admissible that the PDIA-1 did not determine any mechanisms for remedying errors in the calculation of a pension with *ex nunc* effect. Therefore, the Constitutional Court initiated proceedings to review its constitutionality.

On the basis of the first paragraph of Article 50 of the Constitution, citizens have the right to social security, including the right to a pension, under the conditions provided by law. It explicitly follows from the Constitution (the second paragraph of Article 15) that, as part of the statutory regulation of the right to a pension, the legislature must also regulate the manner of its exercise. The framework of the constitutionally imposed regulation of the manner of exercise of the right to a pension also includes regulation of the procedure for granting this right, which must include establishment of the facts that constitute the basis of a concrete decision that is intended to enable the beneficiary to exercise his or her right to a pension.

In contrast to the PDIA/92, which was in force before the PDIA-1, and the PDIA-2, which succeeded the PDIA-1 and is currently in force, the PDIA-1 did not enable errors that occurred during the procedure for calculating a pension to be remedied with *ex nunc* effect. While the PDIA-1 was in force, once a decision on the calculation of a pension attained legal finality, a recalculation of the pension was excluded in all instances that did not fulfil the conditions for the lodging of an extraordinary legal remedy in accordance with the general procedural rules, regardless of the gravity of the error at issue. Such a regulation did not take into consideration the particularities of the exercise of the right to a pension.

The Constitutional Court frequently emphasises the importance of respect for the principle of legal finality. A right granted by an individual act shall no longer be interfered with, as such would weaken trust in the legal order. However, the amendment of a decision concerning the calculation of a pension in order to remedy errors and thus benefit the affected individual does not collide with any other personal interest. As a result, such a procedural possibility would not weaken trust in the legal order, but, on the contrary, it would reinforce it. Nevertheless, under the PDIA-1 the risk stemming from potential errors in the calculation of a pension had to be borne solely by the beneficiary throughout the entire time he or she was receiving the pension.

The specific characteristic of the right to a pension, i.e. the fact that it is exercised over a long period of time, substantiates the need for a specific legal remedy that enables errors to be remedied also after legal finality. As such a legal remedy already existed under the law previously in force (the PDIA/92) and the legislature reintroduced it with the PDIA-2, the Constitutional Court held that when enacting the PDIA-1 the legislature did not have any reasonable grounds for omitting this specific legal remedy. It therefore decided that the PDIA-1 was inconsistent with the first paragraph of Article 50 of the Constitution. Consequently, the Constitutional Court granted the constitutional complaint, abrogated the judgments of the courts, and remanded the case for new adjudication.

5. 4. Application of the More Lenient Criminal Law

In Case No. **Up-152/14** (Decision dated 9 February 2017, Official Gazette RS, No. 12/17), the Constitutional Court decided on the constitutional complaint of a complainant whom a local court found guilty of the criminal offence of endangerment under the first paragraph of Article 135 of the Criminal Code. The complainant was convicted under the law that was in force at the time when he committed the criminal offence. During the proceedings the Criminal Code was amended and, in his appeal to the Higher Court as well as in his request for the protection of legality addressed to the Supreme Court, the complainant claimed that the new incrimination contained in Article 135 of the Criminal Code that was in force at the time when the judgment was pronounced determined an additional (subjective) statutory element (i.e. that the perpetrator acted with a specific intent) which allegedly narrows the incrimination and therefore entails a more lenient criminal law for the complainant. In his constitutional complaint the complainant alleged a violation of the requirement that the more lenient law be applied, as determined by the second paragraph of Article 28 of the Constitution.

According to the first paragraph of Article 28 of the Constitution, no one may be punished for an act that had not been declared a criminal offence under law or for which a penalty had not been prescribed at the time the act was committed. That provision of the Constitution regulates the principle of legality in criminal law, which is also recognised by the international community as a general principle of international law (*lex certa*). The principle of legality determined by the first paragraph of Article 28 of the Constitution, *inter alia*, includes the prohibition of the retroactive effect of regulations that determine criminal offences and prescribe penalties for them (*nullum crimen, nulla poena sine lege praevia*). In addition, the second paragraph of Article 28 of the Constitution explicitly determines the prohibition of the retroactive effect of criminal law – acts that are criminal shall be established and the resulting penalties pronounced according to the law that was in force at the time the act was committed. However, this provision concurrently also requires an exception to this rule in instances where a more recent law is more lenient for the perpetrator. The essence of the second paragraph of Article 28 of the Constitution therefore lies precisely in implementing the principle that the more lenient law must be applied (*lex mitior*), which is binding for the courts when they interpret and apply laws if changes with regard to the criminal offence at issue occur in the period between the commission of the criminal offence and the pronouncement of the judgment against the perpetrator. When a court is interpreting a provision of criminal law, the second paragraph of Article 28 of the Constitution requires it to compare all statutory elements of the relevant criminal offence in the light of the established legally relevant facts of the concrete case and determine whether the amended text constitutes merely an editorial change of the Criminal Code or whether it contains amended or additional statutory elements. It must determine whether the amendment of the text also entails a substantive amendment of the definition of the criminal offence or whether, on the contrary, there exists a legal continuity with regard to the criminal offence. It must be evident from the judgment that the court has fulfilled this constitutional obligation.

In the case at issue, with regard to which Article 135 of the Criminal Code was amended during proceedings, the Constitutional Court found that neither the Higher Court nor the Supreme Court carried out a comprehensive comparison of the definitions of the criminal offence contained in the two versions of Article 135 of the Criminal Code. When assessing which statutory element would be more lenient for the complainant, both the Higher Court and the Supreme Court considered the act of commission, the prescribed penalty, and the

manner in which the criminal offence is prosecuted, but they did not consider that the amendment of the law also determined an additional (subjective) statutory element (i.e. the specific intent to intimidate or disturb) that allegedly narrows the incrimination under Article 135 of the Criminal Code and therefore entails a more lenient criminal law for the complainant. As the Courts did not fulfil the obligation that follows from the constitutional requirement determined by the second paragraph of Article 28 of the Constitution in such instances, they violated the complainant's right to the application of the more lenient law.

5. 5. The Right to be Present at Trial

In Case No. **Up-171/14** (Decision dated 9 February 2017), the Constitutional Court decided on the constitutional complaint of a complainant who was convicted of the criminal offence of abuse of position or rights under the first paragraph of Article 244 of the Criminal Code. The complaint alleged a violation of the right to a legal remedy determined by Article 25 of the Constitution as well as a violation of the procedural safeguards in criminal proceedings determined by Article 29 of the Constitution. He claimed that in the appeal he himself as well as his defence attorney requested that they be informed of the session of the appellate court, as they wanted to be present at the session. While the Maribor Higher Court informed the complainant of the session of the panel that was scheduled for 25 October 2012, the complainant only received this information on 30 October 2012, namely after the session had already been concluded.

Article 29 of the Constitution lists the rights that a defendant enjoys in criminal proceedings and which are intended to guarantee him or her a fair trial before an independent and impartial court. According to established constitutional case law, in order to ensure a fair trial it is essential that the person whose rights, obligations, or legal interests are the subject of judicial proceedings be provided appropriate and adequate possibilities to take a position regarding the factual as well as legal aspects of the case at issue and that he or she is not placed in a less favourable position with regard to the opposing party. From the mentioned constitutional provision there follows the defendant's right to be present at his or her trial as well as the defendant's right to conduct his or her own defence or to be defended by an attorney. The right to be present at trial entails a fundamental safeguard and its purpose is to enable the defendant to effectively defend him- or herself against the factual and legal aspects of the charges brought against him or her. As a general rule, the decision on whether the defendant will conduct his or her own defence, whether he or she will be defended by an attorney, or whether he or she will conduct his or her own defence as well as employ the assistance of an attorney must be left to the defendant. The defendant can waive this right, but a court may not deprive him or her of this right through its conduct. If a defendant decides to defend him- or herself (on his or her own or with the assistance of an attorney), it is difficult to imagine that he or she could exercise this right unless he or she personally attends the execution of procedural acts. In this regard, the defendant's right to conduct his or her defence is thus inevitably linked to his or her attendance. This right is not restricted to the stage of the trial before the court of first instance, but applies throughout the entire criminal proceedings and therefore also in proceedings before the appellate court.

In the case at issue, it was undisputed that in his appeal the complainant requested that he himself as well as his attorney be informed of the session of the appellate court, yet the appellate court informed only the complainant's attorney of the session in due time, but not the

complainant. Consequently, the complainant could not attend the session regarding his appeal. Although it is true that his attorney attended the session, a defence attorney cannot exercise a defendant's right to be present at the session regarding his or her appeal. The defence attorney is namely merely the defendant's assistant in criminal proceedings and appears alongside the defendant, not in his or her stead. The defendant's presence at the appellate session is ultimately important from the perspective of the right to an effective legal remedy determined by Article 25 of the Constitution, as in such a manner he or she is ensured the possibility to appear and put forward arguments in person in order to convince the court that the appeal is substantiated, a decision that the court could otherwise only reach on the basis of written materials contained in the case file. As the Supreme Court did not remedy the violations that occurred before the Higher Court, but even adopted the position that the complainant should have demonstrated that the established violation affected the legality of the judgment, it also violated the complainant's right determined by the second indent of Article 29 of the Constitution.

5. 6. Exclusion of a Judge and the Right to an Impartial Trial

In Case No. **Up-562/14** (Decision dated 2 March 2017, Official Gazette RS, No. 14/17), the Constitutional Court decided on the constitutional complaint of a complainant who lodged a request for the exclusion of two judges of the Koper Higher Court from the panel that was deciding his appeal against the order of the first instance court. The courts rejected his request, as the complainant allegedly did not lodge it in time, since it was lodged one day after the session of the appellate panel. According to Article 72 of the Civil Procedure Act, the decisive moment for assessing whether a request for exclusion has been lodged in time is allegedly the moment when a decision is issued, not the moment it is dispatched. In the assessment of the courts, this position could not be influenced by the fact that the complainant only learned of the composition of the appellate panel on the day when it adopted the decision.

In accordance with the first paragraph of Article 23 of the Constitution, everyone has the right to have any decision regarding his or her rights, duties, and any charges brought against him or her made without undue delay by an independent, impartial court constituted by law. The right to judicial protection thus, *inter alia*, includes the safeguard that a decision be adopted by an impartial court. The structural and organisational characteristics of a court are also of essential importance for a review of the impartiality of that court. It does not suffice that in proceedings the court acts and decides in an impartial manner; the court must also be composed in such a manner that there exist no circumstances that would raise doubt regarding the appearance of the impartiality of the judges. One of the most important procedural statutory institutions intended to ensure the right to an impartial trial is the institution of the exclusion of a judge. The second paragraph of Article 72 of the Civil Procedure Act determines the temporal limits of this procedural entitlement of a party by imposing upon the party the obligation to request an exclusion as soon as he or she learns of the existence of grounds for exclusion, but no later than by the end of the main hearing before the competent court, or, if no main hearing is held, up until a decision is issued.

The Constitutional Court assessed that a time limit for lodging a request for the exclusion of a judge is necessary for ensuring effective judicial protection without undue delay. Nevertheless, this limitation may prove excessive in certain instances. The Constitutional Court deduced from the judicial case file that the complainant did not know and could not have known that a specific judge would be deciding on his appeal. The Koper Higher Court namely did not

inform him of the composition of the panel beforehand. Furthermore, the complainant could not have learned who was going to decide on his appeal if he had consulted the Annual Work Schedule of the Judges of the Koper Higher Court that is published on that court's website. Immediately after the complainant had learned – on the basis of his own enquiries – that the judge in question was to participate in the panel, he requested that she be excluded. The Higher Court received the complainant's request for exclusion on the day following the session of the appellate panel, i.e. before the court dispatched the decision. Therefore, in the assessment of the Constitutional Court, in order to ensure the appearance of impartiality, the Higher Court should have deemed that the request was lodged in time. The legislation in force did not contain any obstacles to such. The second paragraph of Article 72 of the Civil Procedure Act can be interpreted as meaning that an exclusion may be requested until a decision is dispatched. Therefore, in the case at issue, a broader interpretation of the law that is constitutionally acceptable could have been applied.

In the case at issue there thus existed no obstacles to the adoption of the constitutionally acceptable position that the complainant requested the exclusion of the judge in due time. As, in light of the circumstances of the case at issue, the courts did not ensure the complainant the opportunity to effectively realise his request, they violated his right to an impartial trial determined by the first paragraph of Article 23 of the Constitution.

5. 7. The Protection of the Reputation of a Political Party

In Case No. **Up-530/14** (Decision dated 2 March 2017, Official Gazette RS, No. 17/17), the Constitutional Court decided on the constitutional complaint of the Slovene Democratic Party (Slovenska demokratska stranka – SDS) against a judgment by which a court rejected its lawsuit against a newspaper publisher. By the lawsuit the complainant demanded a public apology for the statement that the money from Patria ended up in the possession of the SDS. The complainant claimed that the title of the relevant article in itself contained false statements regarding the facts, as it undeniably attributed illegal conduct to the complainant – i.e. the taking of a bribe, whereas the only source named by the article denied that he had made the statement that the article attributed to him. The court held that due to the fact that the title of the article "The money from Patria did not end up with Janez Janša, but with his SDS party" is open to interpretation and does not carry an unequivocal message, it cannot be inadmissible on its own. Therefore, it assessed its meaning in the context of the article as a whole. It reached the conclusion that the article as a whole also does not report that an illegal act was committed, but merely that the Finnish police have sufficient evidence for such a conclusion. As the journalist modified the statement of the Finnish police officer, who in fact did not say that they have enough material for such a conclusion, but merely that "they have an enormous amount of data indicating that the money had flown into Slovenia" and that "the flow of the money to the SDS is one of the main lines of the investigation," the court held that the interference with the reputation of the SDS was inadmissible. It wrote that the attributed statement can only lead the average reader to the conclusion that enough evidence has been gathered to establish that the political party received money for concluding a contract. However, the court rejected the demand for an apology as entailing an excessively severe punishment because the title was open to interpretation and could have several meanings, and the assessment of whether the money actually ended up with the political party was not the subject matter of the civil proceedings, nor did it follow from the findings of the proceedings that there had been no connection between Patria and the political party.

In its constitutional complaint, the complainant claimed, *inter alia*, that the court violated its right to reputation that follows from Article 35 of the Constitution, as it did not strike a fair balance with the freedom of expression of the opposing party that is guaranteed by the first paragraph of Article 39 of the Constitution. In the complainant's opinion, the court failed to adequately assess the meaning of the title of the article. In its opinion, for the average reader it meant that the complainant received money from Patria, which is an allegation of corruption that is one of the most reprehensible illegal acts in politics.

The Constitutional Court first adopted a position with regard to the question of whether the Constitution protects the right of a political party to reputation. By its very nature, a legal entity, such as a political party, cannot be a holder of the right to human dignity and consequently also not of the constitutional right to the protection of (subjective, intrinsic) honour – i.e. to the protection of its perception or awareness of itself as a worthy being. Political parties do, however, enjoy the right to the protection of their reputation that follows from Article 35 of the Constitution. Unless they are protected from false (unsubstantiated) statements or statements made in bad faith that inadmissibly dismantle their reputation in public, their activities could be significantly impaired. As a structure intended for the attainment and exercise of power, a political party must be subjected to the constant critical scrutiny of the democratic public, and a public character and transparency are already integrated into its very essence. As a result, especially in a conflict with the freedom of expression, the weight of the reputation of a political party is particularly small.

The case at issue thus concerned the conflict of two constitutional rights: the right of the newspaper to freedom of expression, as determined by the first paragraph of Article 39 of the Constitution, on the one hand, and the complainant's right to reputation, protected by Article 35, on the other. In such cases the Constitutional Court verifies whether when adjudicating the court carried out a weighing of the conflicting rights, whether in doing so it considered the decisive circumstances from the perspective of constitutional law and the criteria that the Constitutional Court and the European Court of Human Rights (the ECtHR) have formulated through their constantly evolving case law, and whether the court appropriately assessed these criteria or circumstances with regard to the significance and aims of the relevant constitutional rights.

The Constitutional Court assessed that the court considered the circumstances that are important for the protection of each of the conflicting constitutional rights and the criteria that the Constitutional Court and the ECtHR have formulated through their decisions. It follows therefrom that – in instances where the reputation of a political party is in conflict with the freedom of the press and the right of the public to be informed of whether the political party was used to abuse power (which is a *par excellence* example of the subject matter of a political debate serving the public interest) – there remains extremely little room for limiting the freedom of expression.

In the assessment of the Constitutional Court, however, the court's assessment of the constitutionally significant criterion of the average reader was inadequate. It namely interpreted the meaning that the message regarding which the complainant demanded an apology conveys for an average reader considerably too broadly. The fact that the meaning (content) of the title of the article must be assessed together with the article as a whole does not entail that the title bears practically no meaning or communicative weight. In the assessment of the Constitutional Court, the statement contained in the title of the article ("The money from Patria did not end up with Janez Janša, but with his SDS party"), as understood in connection with the part

of the article printed on the front page (in particular with the statement of the Finnish police detective), implicitly conveys to the average reader the message regarding which the complainant demanded an apology, i.e. the message that the complainant received money and that it acted in a corrupt manner. The court did not specify that, in addition to this alleged message, the title (as understood in the context of the article) contained another message that would not be problematic from the perspective of the complainant's reputation. On the contrary, it defined the phrase from the title as completely open to interpretation and as such relieved of any communicative weight, and therefore it alienated it from its social context, namely from the understanding that it refers to the money in connection with the "Patria affair", i.e. an affair that entailed corruption. Through this inappropriate assessment of the meaning of the message for the average reader, the court framed the starting point of the weighing of the conflicting rights (the constitutional right to freedom of expression, on the one hand, and the right to reputation, on the other) in such a manner that it violated the right to the protection of reputation determined by Article 35 of the Constitution. In light of the above, the Constitutional Court abrogated the challenged judgment.

5. 8. The Autonomy of Municipalities regarding Housing

In Decision No. **U-I-144/14**, dated 9 March 2017 (Official Gazette RS, No. 14/17), upon the request of the Municipality of Izola, the Constitutional Court decided on the constitutionality of the first paragraph of Article 195 of the Housing Act, according to which the provisions of the second and the third paragraphs of Article 90 of that Act did not apply to tenancy agreements for non-profit apartments that had been concluded before the Act entered into force. Such a regulation entailed that the tenants from "old" tenancy agreements were not obliged to periodically provide evidence that they still fulfil the material conditions and criteria for obtaining a non-profit apartment. The Municipality of Izola alleged that the challenged regulation interfered, *inter alia*, with the constitutional position of municipalities. In accordance with the second paragraph of Article 21 of the Local Self-Government Act, the creation of conditions for the construction of housing and increasing the social rental housing fund are original tasks of municipalities. Due to the challenged regulation, a certain part of non-profit apartments remained outside the control of municipalities, which as a result were no longer able to ensure that apartments acquired with public funds were in fact only used by those inhabitants that fulfilled certain material criteria and conditions. The Municipality of Izola alleged that the Act interfered with the exercise of its original tasks, namely the task of increasing the social rental housing fund and that of formulating and implementing social policy regarding housing in the municipal territory. Therefore, the Constitutional Court had to assess the consistency of the challenged regulation with the first paragraph of Article 140 of the Constitution.

The first paragraph of Article 140 of the Constitution is a constitutional bastion preventing state interferences with the core of local self-government. The state must not interfere through its regulations with the original competences assigned to municipalities. If the state limits municipalities through its regulations or prevents them from exercising their original tasks, this would entail an interference with the constitutionally guaranteed functional autonomy of municipalities. Such an interference is constitutionally admissible if the legislature employed it to protect another constitutional value, if the measure was necessary for the attainment of this goal, and if in the case in question the importance of the protected value outweighs the importance of local self-government as a constitutional value.

In its review, the Constitutional Court took into account the legal regime regarding non-profit apartments. The acquisition and renting out of non-profit apartments on the basis of public tenders is one of the measures intended to implement the obligation of the state determined by Article 78 of the Constitution, according to which the state shall create opportunities for citizens to obtain proper housing. The non-profit rent that is paid for renting a non-profit apartment is, in terms of its content, a social right and entails implementation of the principle of a social state determined by Article 2 in conjunction with Article 78 of the Constitution. The state and municipalities must determine certain conditions that have to be fulfilled in order to obtain social rights. Ensuring the stability of tenancy agreements for non-profit apartments is also an expression of the principle of trust in the law (Article 2 of the Constitution). As it constitutes a constitutional value, the protection of trust in the law is a constitutionally admissible aim for an interference with the constitutionally guaranteed autonomy of local self-government. However, in the light of established constitutional case law, the principle of trust in the law is neither absolutely binding nor does it guarantee the inalterability of long-term contractual relations. All circumstances of an individual case have to be assessed by means of a weighing of the reasons for preserving the status quo and the reasons for enacting changes.

In the case at issue, the Constitutional Court held that the principle of trust in the law as such does not require that tenants of non-profit apartments be protected regardless of the conditions determined for obtaining such an apartment. It would be constitutionally admissible if changes in tenants' circumstances with regard to fulfilment of the required conditions were to be taken into account. However, the statutory regulation specifically excluded this possibility. While in doing so it protected the stability of the contractual right to non-profit rent for an indefinite period of time, such protection interfered with the constitutionally protected position of local self-government. As in the case at issue, in the assessment of the Constitutional Court, the Constitution does not require protection of the stability of the contractual right to non-profit rent, the challenged regulation is not a necessary measure that could justify such an interference. Protection of the stability of the contractual right to non-profit rent cannot substantiate the admissibility of an interference with the constitutionally guaranteed functional autonomy of municipalities with regard to housing. The Constitutional Court therefore decided that the challenged provision of the Housing Act is inconsistent with the first paragraph of Article 140 of the Constitution and abrogated it.

5. 9. Confiscation of Illicitly Acquired Property

In Decision No. **U-I-91/15**, dated 16 March 2017 (Official Gazette RS, No. 16/17), in proceedings initiated upon the request of the Ljubljana District Court, the Constitutional Court decided on the constitutionality of certain provisions of the Confiscation of the Illicitly Acquired Property Act (the CIAPA). Proceeding from the statements contained in the request, the Constitutional Court first reviewed whether the definition of illicitly acquired property was consistent with the requirement of the clarity and precision of regulations that follows from Article 2 of the Constitution. The confiscation of illicitly acquired property is an authoritative measure of the state that has a clear and unambiguous purpose under public law, i.e. to ensure that individuals cannot retain property that they acquired in an illicit manner or through illicit activity unless, where suspicion arises that serious criminal offences were committed, they can prove the lawfulness of its acquisition. The authoritative nature of the measure requires that the legislature regulate the substantive and procedural conditions for the confiscation of illicitly acquired property in a clear and precise manner. In accordance with established constitutional

case law, this condition is met if the content of the mentioned conditions can be construed through established methods of interpretation. The Constitutional Court held that the content of the definition of illicitly acquired property can be construed on the basis of established methods of interpretation and therefore the challenged provisions were not inconsistent with the principle of the clarity and precision of laws determined by Article 2 of the Constitution.

The Constitutional Court further reviewed whether the measure of confiscating property in its entirety in instances where such property is an inseparable mixture of illicitly acquired property and lawfully acquired property is consistent with the human right to private property determined by Article 33 of the Constitution. It held that the relevant provision of the CIAPA was unconstitutional insofar as it also defined property that has been mixed with illicitly acquired property as illicitly acquired property and hence enabled the confiscation of the mixed property in its entirety. In order to ensure the exercise of the CIAPA and concurrently protect the defendants' human right determined by Article 33 of the Constitution, the Constitutional Court determined the manner of the implementation of its decision. It held that in instances where the property at issue is a mixture of illicitly acquired property and lawfully acquired property, the mixed property is to be confiscated in its entirety if the defendant mixed the property in order to commit further illicit acts or to conceal the property's illicit origin, whereby the share of the illicitly acquired property in the mixed property must not be merely insignificant. If there exists no such intention or the share of the illicitly acquired property in the mixed property is insignificant, an ideal share of the mixed property is confiscated by establishing the co-ownership of the state in the share corresponding to the value of the illicitly acquired part of the mixed property and of the defendant in the share corresponding to the value of his or her contribution to the mixed property, provided the defendant establishes that such contribution was lawful.

In the third substantive part of the decision, the Constitutional Court reviewed the consistency of the regulation of the confiscation of illicitly acquired property with the principle of the clarity and precision of legal provisions determined by Article 2 of the Constitution insofar as it refers to the spouse of a defendant (a suspect, a convicted person, or a deceased person). It held that in this part the regulation was not unconstitutional.

The Constitutional Court also reviewed whether the regulation according to which illicitly acquired property that is the joint property of a defendant and his or her spouse is to be confiscated is consistent with Article 33 of the Constitution. It assessed that this regulation interferes with the right determined by Article 33 of the Constitution, but the interference is admissible.

5. 10. Covert Investigative Measures and Information Privacy

In Decision No. **U-I-246/14**, dated 24 March 2017 (Official Gazette RS, No. 16/17), upon the requests of the National Council and a group of deputies of the National Assembly, the Constitutional Court reviewed the constitutionality of certain provisions of the Criminal Procedure Act (the CrPA) that referred to the handling of data, messages, recordings, or evidentiary materials obtained by means of so-called covert investigative measures (e.g. secret surveillance, surveillance of electronic communications, interception of communications). The requests were mainly limited to the storage and destruction of the findings of covert investigative measures as well as the transmission of these findings, access to them, and the possibilities for the authorities to use them.

The Constitutional Court first reviewed the statutory regulation from the perspective of the principle of clarity and precision (Article 2 of the Constitution), as the applicants alleged that the challenged provisions of the CrPA lacked clarity, precision, and comprehensibility in a number of aspects. The requirement of the clarity and precision of regulations does not entail that rules should be such that they require no interpretation. The application of regulations namely always entails the interpretation thereof. The requirement that a legal rule be precise is stricter concerning a legal rule that defines a criminal act, and, within this framework, it is the strictest when defining a criminal offence. In criminal law, the principle of legal certainty is expressed particularly through the principle of the legality of substantive criminal law (the first paragraph of Article 28 of the Constitution). Although Articles 153 and 154 of the CrPA are not substantive but procedural criminal law provisions, they undoubtedly constitute a part of the broader field of penal law, in which the principle of certainty is of special importance because it prevents the arbitrary use of state coercion in situations that are not precisely determined in advance. The constitutional requirement of the clarity and precision of laws entails that interferences with human rights must be regulated in a precise and unequivocal manner. Unless a rule is clearly defined, there exists the possibility of different applications of the law and arbitrary conduct by state authorities and other bodies vested with public authority that decide on the rights of individuals. As the powers of repressive authorities may entail a significant interference with individuals' human rights, they must be based on a particularly precise regulation, consisting of clear and detailed rules. The statutory regulation must exclude the possibility of arbitrary state conduct. Unless the border between the inadmissible and admissible conduct of state authorities is determined, all safeguards against the arbitrary application of the law can be ineffective.

After conducting a meticulous and extensive analysis, the Constitutional Court decided that the challenged provisions of the CrPA fulfil the constitutional requirement of clarity and precision, as their content may be construed through established methods of interpretation and thus the conduct of the authorities who have to implement them is determinable and predictable. Consequently, they are not inconsistent with Article 2 of the Constitution.

The Constitutional Court proceeded by further assessing the challenged provisions from the perspective of the right to the protection of personal data. The Constitution protects personal data and prohibits their use contrary to the purpose of their collection (the first paragraph of Article 38). The right to information privacy is not unlimited; it is not absolute. Therefore, individuals must accept limitations of information privacy, i.e. they must allow interferences therewith that are in the prevailing public interest and provided the constitutionally determined conditions are fulfilled. An interference is admissible if a law precisely determines which data may be collected and processed and for what purpose they may be used, and if supervision over the collection, processing, and use of personal data, as well as protection of the confidentiality of the collected personal data, are envisaged. The purpose of the collection of personal data must be constitutionally admissible. Only data that are appropriate and absolutely necessary for the implementation of the statutorily defined purpose may be collected.

The transmission of personal data obtained through covert investigative measures from the police to the state prosecution and the investigating judge, and the ensuing storage of the personal data at a court for as long as the relevant criminal case file is kept, as well as access to these data or their transmission to other authorities for further use entail an interference with the human right to the protection of personal data determined by the first paragraph of Article 38 of the Constitution. Firstly, the Constitutional Court had to verify whether the law

under review fulfils the special criteria that follow from the second paragraph of Article 38 of the Constitution, which determines that the collection, processing, designated use, supervision, and protection of the confidentiality of personal data shall be provided by law.

With regard to the first paragraph of Article 154 of the CrPA, which, *inter alia*, determined that the findings of covert investigative measures are stored at a court for as long as the relevant criminal case file is kept, the question arose whether thus the purpose for which the stored personal data may be used is clearly determined by law. The purpose of the processing of personal data must be constitutionally admissible and defined in a clear, concrete, and precise manner. The Constitutional Court found that the CrPA contains no explicit statutory provisions on the purpose of the storage of the findings of covert investigative measures. Furthermore, the purpose of such storage is not substantiated in the legislative materials. Therefore, the Constitutional Court decided that the purpose of the processing of personal data is neither explicitly determined by the first paragraph of Article 154 of the CrPA (or by another provision of that law), nor can it be deemed to be "statutorily determined" in the sense of the second paragraph of Article 38 of the Constitution on the basis of legal interpretation. Therefore, it held that the regulation contained in Article 154 of the CrPA, according to which data, messages, recordings, or evidentiary materials obtained through the use of covert investigative measures are to be stored by a court for as long as the relevant criminal case file is kept, is inconsistent with the human right to the protection of personal data.

5. 11. The Principle of Legality with Regard to Minor Offences

In Case No. **Up-550/14** (Decision dated 13 April 2017, Official Gazette RS, No. 24/17), the Constitutional Court decided on the constitutional complaint of a complainant who was punished for a minor offence under the Gaming and Betting Act, as he, acting as the statutory representative of the legal entity Krim Handball Team, allegedly permitted this legal entity to promote the website of bet-at-home.com, an organiser of gaming and betting, at international handball matches although the organiser did not have a license issued by the Government of the Republic of Slovenia to organise gaming and betting activities in the Republic of Slovenia. Throughout the course of the proceedings the complainant alleged that the conduct described in the decision did not contain the elements of a minor offence, as permission to advertise entails neither advertising nor carrying out other services in connection with the organisation of gaming and betting.

The first paragraph of Article 28 of the Constitution determines that no one may be punished for an act which had not been declared a criminal offence under law or for which a penalty had not been prescribed at the time the act was committed. On the basis of this provision, a court may only convict an individual of a criminal offence if his or her conduct fulfils the statutory elements determined in accordance with the mentioned criteria. If a defendant is convicted for an act that does not fulfil all of the statutory elements of a criminal offence, such violates the principle of legality in the sense of the defendant's right determined by the first paragraph of Article 28 of the Constitution. The position that a court may only convict an individual for an act that fulfils the statutory elements of a criminal offence also logically presupposes that the judgment (either in the operative provisions or in the reasoning) must establish the legally relevant facts of the concrete case in light of the alleged criminal offence. Syllogistic reasoning is not possible unless the criminal offence is described in a concrete manner. Assessment of whether the act that the defendant allegedly committed fulfils the statutory elements of a criminal offence is only possible if the act is expressed in terms of concrete

circumstances. It follows from Constitutional Court Decision No. Up-332/98, dated 18 April 2002 (Official Gazette RS, No. 39/02), that the first paragraph of Article 28 of the Constitution also applies in the field of minor offence law.

In the case at issue, the Constitutional Court found that it does not follow from either the decision on the minor offence or the court judgment by what conduct the complainant, acting as the person in charge of the legal entity, allegedly fulfilled the statutory elements of the minor offence under the Gaming and Betting Act. Not only did the decision on the minor offence not define the complainant's act of commission in terms of concrete circumstances (the decision only lists the place and time of the minor offence, the advertised website, and the organiser of gaming and betting, but not the conduct by which the complainant allegedly fulfilled the elements of the minor offence), it was also not possible to deduce from the decision whether the complainant's conduct entailed advertising or merely permission to advertise. The complainant was thus convicted for conduct that was not defined in terms of concrete circumstances and in an unequivocal manner. A conviction for a minor offence on the basis of such a definition of the relevant conduct entails a violation of the defendant's right determined by the first paragraph of Article 28 of the Constitution.

5. 12. Sworn Interpreters and Sworn Expert Witnesses or Appraisers

In Decision No. **U-I-84/15**, dated 18 May 2017 (Official Gazette RS, No. 40/17), in proceedings initiated upon the request of the National Council, the Constitutional Court reviewed the first paragraph of Article 85 of the Courts Act, which determined when persons who are sworn expert witnesses or appraisers may invoke their status. The Constitutional Court reviewed the challenged statutory provision with regard to the freedom of work, free economic initiative, personal dignity, the general freedom of action, as well as with regard to the principles of equality and trust in the law. It held that the first paragraph of Article 85 of the Courts Act is not inconsistent with the Constitution.

The Constitutional Court adopted the position that the right to freedom of work (Article 49 of the Constitution) and the right to free economic initiative (the first paragraph of Article 74 of the Constitution) do not guarantee the right to carry out work or economic activities in a specific form or in a specific manner. Therefore, the challenged statutory regulation does not extend to the fields protected by the mentioned human rights and fundamental freedoms. Furthermore, the challenged provision cannot interfere with the right to personal dignity (Article 34 of the Constitution), as it neither restricts sworn expert witnesses and appraisers in the performance of their work or activity, nor prevents them from acquiring new skills and obtaining further education.

As part of the review with regard to the right to the general freedom of action (Article 35 of the Constitution), the Constitutional Court clarified that not every measure of the legislature that could influence the conduct of individuals hence entails an interference with the general freedom of action. The general freedom of action does not guarantee individuals the right to require that they may act in any way whatsoever at any time. By regulating the acquisition of the status of a sworn expert witness or appraiser, the Courts Act regulates neither the right to be a sworn expert witness or appraiser, nor the right to use the status of a sworn expert witness or appraiser as a special title. Therefore, the challenged provision does not extend to the field protected by the right to the general freedom of action.

The Constitutional Court further held that differentiating between sworn expert witnesses or appraisers and sworn interpreters with regard to use of their status does not violate the principle of equality before the law as determined by the second paragraph of Article 14 of the Constitution. Due to the different nature of their work and the manner in which they carry it out, as well as in order to ensure effective exercise of the rights of individuals in the Republic of Slovenia and abroad, the legal position of sworn interpreters is different than that of sworn expert witnesses or appraisers. The Constitutional Court also reviewed the position of parties to proceedings that obtain an expert opinion or appraisal on their own behalf and parties that obtain an expert opinion or appraisal on the basis of an order of a court or another state authority with regard to the principle of equality. It adopted the position that their positions differ and therefore the legislature may treat them differently.

5. 13. The Liability of the State for Damages

In Case No. **Up-239/15** (Decision dated 7 June 2017, Official Gazette RS, No. 45/17), the Constitutional Court decided on the constitutional complaint of a complainant whose lawsuit for damages against the Republic of Slovenia had been rejected because it failed to demonstrate a causal link between the established unlawful act of the state – the excessive length of judicial proceedings – and the damage it suffered. The Supreme Court explained, *inter alia*, that jurisprudence has generally accepted the theory of adequate causation, according to which lengthy adjudication by a court cannot be deemed to constitute a legally acceptable cause of damage in the form of the higher interest rates that the complainant was required to pay to its creditor. In its constitutional complaint, the complainant alleged that by the challenged judgment the Supreme Court violated a number of provisions of the Constitution, *inter alia*, that the Supreme Court nullified or essentially denied its right to compensation for damage determined by Article 26 of the Constitution, a constitutional right that is also guaranteed to legal entities.

The first paragraph of Article 26 of the Constitution determines that everyone has the right to compensation for damage caused through unlawful actions in connection with the performance of any function or other activity by a person or authority performing such function or activity within a state or local community authority or as a bearer of public authority. First and foremost, from this human right there proceeds the general prohibition of exercising authority in an unlawful manner, whereby it is irrelevant which of the branches of power caused the damage. The meaning of the right to compensation for damage is to provide compensatory protection from unlawful conduct by state authorities. In accordance with the first paragraph of Article 26 of the Constitution, the basis of such responsibility is (1) the unlawful conduct of a state authority, local community authority, or other bearer of public authority (2) during the exercise of power or in relation to the exercise of power, a consequence of which is (3) the occurrence of damage. It is established constitutional case law that the liability of the state for damages caused by the unlawful conduct of state authorities, civil servants, and functionaries is a specific form of liability and that the classic rules of vicarious civil liability for damages do not suffice for its assessment; when assessing the individual prerequisites of the responsibility of the state, the specificities that originate in the authoritative nature of the functioning of its authorities must be taken into consideration, and particular care must be taken when applying the rules of the general law of obligations in order to ensure that these rules are adapted to the characteristics of liability for *ex iure imperii* actions under public law. These specificities are particularly characteristic with regard to the prerequisite of unlawfulness, with regard to which Article 26 of the Constitution prohibits that it be interpreted in an inappropriately

narrow and rigid manner, e.g. an interpretation whereby the state would not be held liable for unlawful conduct that cannot be attributed to a particular person or to a particular authority, but only to the state or its apparatus as such, as well as in cases where there is no individualised relationship between the bearer of power and the affected individual.

In the case at issue, the Supreme Court did not interfere with the position of the first instance court that the defendant acted in an unlawful manner. In this regard, it could not be said that it disregarded the mentioned specificities of the liability of the state for damages. In addition, the Constitutional Court did not accept the extremely general and only briefly presented allegation of the complainant that from the Constitution it follows that the Supreme Court should have granted its lawsuit already due to the existence of the prerequisite of unlawfulness. Article 26 of the Constitution does not of itself guarantee compensation for damage to a subject unless there exists a causal link between the unlawful action of the state and the damage suffered. By adopting the position that in order to establish the liability of the state for damages such causal link has to be demonstrated, the Supreme Court did not violate the complainant's right stemming from Article 26 of the Constitution.

The Constitutional Court further adopted a position on the allegation that the doctrine of adequate causation had been manifestly erroneously applied in the Supreme Court judgment. The Supreme Court opined that under the theory of adequate causation the lengthy adjudication of courts cannot constitute a legally acceptable cause of the damage suffered by the complainant, as this theory attributes damage to another's goods to the action that in the regular course of things and according to general practical experience would have resulted in such damage. The theory of adequate causation or the theory of adequacy is essentially a theory of attribution: its goal is to determine whether a specific effect, which is undisputedly the consequence of the perpetrator's conduct, can also be attributed to the perpetrator from a value judgment perspective.

The Constitutional Court is not competent to decide whether the decision of the Supreme Court regarding the causal link was lawful, i.e. whether the challenged judgment is erroneous from the perspective of substantive law. It has to limit itself to establishing whether the challenged judgment is in fact "manifestly" (i.e. at first glance, evidently, without any reasonable justification) erroneous. In the case at issue, the Constitutional Court held that the exclusion of the prerequisite of the causal link under the theory of adequate causation was not manifestly erroneous. Therefore, the challenged decision did not violate the complainant's right determined by Article 22 of the Constitution.

5. 14. The Unjustified Exclusion of a Judge

In Case No. **Up-502/14** (Decision dated 15 June 2017, Official Gazette RS, No. 64/17), the Constitutional Court decided on the constitutional complaint of a complainant who claimed, *inter alia*, that his right to judicial protection stemming from Article 23 of the Constitution was violated in criminal proceedings, as the duly appointed judge unjustifiably requested that she be excluded from his trial.

The Constitutional Court reviewed the case from the perspective of the second paragraph of Article 23 of the Constitution, which determines that only a judge duly appointed pursuant to rules previously established by law and by judicial regulations (the so-called lawful judge)

may judge an individual. This provision is a special constitutional requirement ensuring the exercise of the right to impartial proceedings determined by the first paragraph of Article 23 of the Constitution. In the case at issue, the Constitutional Court restricted itself to a review of whether and in what instances a judge's unjustified exclusion from a trial can raise reasonable apprehension in the parties as well as in the general public that the case will not be decided in an impartial manner. During the review, the Constitutional Court distinguished two situations, namely (1) the situation when a duly appointed judge is unjustifiably excluded from a trial against his or her will (the reassignment of the case by the president of the court on his or her own initiative or on the motion of a head of a department of the court; the transfer of territorial jurisdiction on the basis of a motion of a court, a party to proceedings, or an injured party; the exclusion of a judge that said judge opposed), and (2) a situation where an unjustified motion for the exclusion of a judge is lodged by the judge him- or herself or when such motion is lodged by a party and the judge grants it. In the assessment of the Constitutional Court, in the first situation the unjustified reassignment of a case or the unjustified exclusion of a judge is by itself sufficient grounds for a reasonable apprehension that the case will not be decided in an impartial manner. However, the situation is different when the judge in question does not oppose his or her exclusion. In such instances, the likelihood that the exclusion of the judge will have an inadmissible effect on the outcome of the proceedings is so insignificant that this circumstance cannot by itself raise objectively substantiated doubt as to the impartiality of the proceedings. In such instances additional circumstances must exist that indicate that the unjustified exclusion was effected with the intention of influencing the outcome of the proceedings and that it was not a consequence of a mistake of the judge as regards the identity of the parties, an erroneous interpretation of the grounds for the exclusion, an erroneous assessment of the facts, or other reasons that have no functional connection to the outcome of the proceedings.

In the case at issue, the judge lodged the motion for her exclusion herself, and the Constitutional Court found no circumstances indicating that her exclusion was abused with the intention of influencing the outcome of the proceedings either in the case file or in the constitutional complaint. Furthermore, there was no dispute that the judge who subsequently tried the case was duly appointed pursuant to judicial regulations. In light of the above, the Constitutional Court concluded that there had been no violation of the right to a duly appointed judge stemming from the second paragraph of Article 23 of the Constitution, and therefore also no violation of the right to an impartial court stemming from the first paragraph of Article 23 of the Constitution.

5. 15. The Right to a Pension – the Purchase of Periods of Study and of Military Service

In Decision No. **U-I-100/15**, dated 14 September 2017 (Official Gazette RS, No. 54/17), upon the request of the Ombudsperson for Human Rights, the Constitutional Court decided on the constitutionality of a number of provisions of the Pension and Disability Insurance Act of 2012 (the PDIA-2) that regulate the conditions for obtaining the right to an old-age pension, the calculation of early pensions, and the protection of expected rights in accordance with the regulations previously in force. It conducted the review from the perspective of insured persons who purchased periods of study and of military service during the time when the Pension and Disability Insurance Act of 1992 (the PDIA/92) and the Pension and Disability Insurance Act of 1999 (the PDIA-1) were in force.

The Constitutional Court found that the regulation of the conditions for obtaining the right to an old-age pension that was enacted by the PDIA-2 did not worsen the position of insured persons, as already while the PDIA-1 was in force purchased periods of study and of military service did not enable insured persons to obtain the right to an old-age pension under the same conditions as insured persons who had completed the pension qualifying period on the basis of employment or on the basis of other pension qualifying periods that were deemed part of the so-called employment period pursuant to the law previously in force.

The concept of the pension qualifying period, excluding purchased periods, which was introduced by the PDIA-2 as a condition for obtaining the right to an old-age pension before attaining 65 years of age, also does not contradict the principle of equality before the law (the second paragraph of Article 14 of the Constitution). It was namely formulated in such a manner that it only enabled insured persons who completed their pension qualifying period or insurance period on the basis of employment, meaning that they actually worked for the prescribed period of 40 years, to obtain the right to an old age pension without reductions at an age that is lower (i.e. 60 years) than the general retirement age (i.e. 65 years).

As in accordance with the PDIA-2 insured persons who purchased periods of study and of military service in accordance with the laws previously in force can obtain the right to an old-age pension and an early old-age pension that takes into account the purchased periods and amounts to a sum that ensures their social security, the PDIA-2 does not interfere with their human rights to social security (the first paragraph of Article 50 of the Constitution) and private property (Article 33 of the Constitution).

5. 16. The Position of a Subsidiary Prosecutor, Private Prosecutor, and Injured Party in Criminal Proceedings

In Decision No. **Up-320/14, U-I-5/17**, dated 14 September 2017 (Official Gazette RS, No. 59/17), and in Orders No. **Up-776/14**, dated 22 June 2017 (Official Gazette RS, No. 59/17), No. **Up-814/14**, dated 21 September 2017 (Official Gazette RS, No. 59/17), and No. **U-I-95/14, Up-320/14, U-I-5/17**, dated 12 January 2017, the Constitutional Court considered its established case law according to which a subsidiary prosecutor, private prosecutor, and injured party lacked standing to file a constitutional complaint against a final judicial decision by which criminal proceedings were concluded. As the main purpose of criminal proceedings is to establish the existence of a criminal offence and the perpetrator's criminal liability, the established position of the Constitutional Court was that the rights of the injured party are not directly decided on in criminal proceedings, regardless of the outcome of the proceedings and regardless of whether the injured party participated in the proceedings as a subsidiary prosecutor, a private prosecutor, or merely as an injured party. If these persons filed constitutional complaints, they were rejected by the Constitutional Court.

In the cases at issue, the Constitutional Court changed this position. It held that an injured party, private prosecutor, and subsidiary prosecutor are entitled to file a constitutional complaint against a final judicial decision by which criminal proceedings were concluded. It thus provided them access to the Constitutional Court and, subject to the fulfilment of the other procedural requirements determined by the Constitutional Court Act, also to consideration of their constitutional complaint on the merits. The change in position entails that an injured

party, subsidiary prosecutor, and private prosecutor have the right to invoke constitutional judicial protection of their procedural rights in criminal proceedings by means of a constitutional complaint filed before the Constitutional Court.

The Constitutional Court also substantiated the change in its position with reference to the established case law of the European Court of Human Rights, which considers the rights of injured parties in criminal or other judicial proceedings in which the injured party lodges a civil claim within the framework of the first paragraph of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms if the outcome of such proceedings could be decisive for the relevant civil right of the injured party.

In Decision No. Up-320/14, U-I-5/17 the Constitutional Court reviewed the constitutionality of the fourth paragraph of Article 367 of the Criminal Procedure Act (the CrPA), which regulates the right of an injured party to appeal the judgment of the first instance court in criminal proceedings, and the constitutional complaint by which the complainant alleged a violation of the right stemming from Article 25 of the Constitution due to the position of the courts that as an injured party she was not entitled to lodge an appeal against the judgment of the first instance court in criminal proceedings outside the scope of the fourth paragraph of Article 367 of the CrPA. The answer to the question of whether by its judgment a criminal court of first instance (also) decides on the rights, obligations, or legal interests of the injured party was decisive for determining whether the case at issue entailed a situation in which an appeal or another legal remedy must be ensured in accordance with Article 25 of the Constitution.

The Constitutional Court held that by its judgment a criminal court decides not only on the criminal charges, but also on the interests of the injured party, including civil claims arising from the criminal offence, as well as the interest that his or her personal dignity as the victim of the criminal offence be adequately respected in the criminal proceedings. However, the standing of the injured party in criminal proceedings is not unlimited. The CrPA does not provide the injured party unlimited possibilities to protect his or her legal interests at the first instance, as the injured party only has standing within the scope of the procedural rights accorded to him or her by law. The purpose of these rights is to enable the effective enforcement of civil claims arising from the criminal offence, i.e. of the injured party's legal interests. In this context, the standing of an injured party must also be limited at the appellate stage, yet within this scope the injured party's right to appeal stemming from Article 25 of the Constitution must still be protected.

The Constitutional Court thus found that the challenged regulation, which did not provide the injured party the right to appeal a judgment of the first instance criminal court, i.e. to appeal a decision regarding his or her procedural rights and, within this scope, regarding his or her legal interests in criminal proceedings, entails an interference with the injured party's right to an appeal stemming from Article 25 of the Constitution. As in the assessment of the Constitutional Court this limitation was not necessary to attain the pursued aim – i.e. punishing the perpetrator of the criminal offence or ensuring effective criminal proceedings in which a defendant's constitutional procedural safeguards are observed – it entailed an excessive interference with the injured party's right to a legal remedy stemming from Article 25 of the Constitution.

The Constitutional Court adopted a declaratory decision and required the legislature to remedy the established inconsistency within a period of one year from the publication of the decision in the Official Gazette of the Republic of Slovenia. With regard to the constitutional

complaint, the Constitutional Court adopted a decision dismissing it. The judicial decisions that the complainant challenged with the constitutional complaint were based on a law that the Constitutional Court found to be inconsistent with the right to a legal remedy stemming from Article 25 of the Constitution. As an injured party, private prosecutor, and subsidiary prosecutor cannot exercise their right to appeal until statutory regulation of this right is adopted, the Constitutional Court dismissed the constitutional complaint.

5. 17. Denationalisation and the Principle of Equality

In Case No. **Up-282/15** (Decision dated 5 October 2017, Official Gazette RS, No. 59/17), the Constitutional Court decided on a constitutional complaint against two judgments by which the Administrative Court and the Supreme Court dismissed with legal finality the complainant's lawsuit against a decision of an administrative authority dismissing her claim for damages resulting from a decrease in the value of real property that was returned to the complainant (as the legal successor of the former owner of the real property) by a final decision on denationalisation. The courts substantiated the challenged judgments with the assessment that the complainant is not entitled to the alleged damages, as her legal predecessor already had the right to obtain compensation for the nationalised property on the basis of the Treaty on the Regulation of Damages Suffered by Exiled, Displaced, and Persecuted Persons, on the Regulation of Other Financial Issues and Issues from the Social Field (the Settlement of Disputes and Financial Issues Treaty), which was concluded between the Federal Republic of Germany and the Republic of Austria in 1961, as well as on the basis of the laws adopted by the Republic of Austria for the implementation of this treaty. The courts based this assessment on the position according to which, on the basis of the second paragraph of Article 10 of the Denationalisation Act (the DenA), a person who seeks entitlements pursuant to the DenA can be refused the right to denationalisation if in another state said person had a legal basis ensuring him or her (even if only in principle) the right to obtain compensation for the seized property.

In the constitutional complaint the complainant alleged that the courts based the mentioned legal position on an unreasonable interpretation of the second paragraph of Article 10 of the DenA that is inconsistent with the legislature's intent and thus placed her in an unequal position with regard to the possibility to seek entitlements pursuant to the DenA when compared to persons to whom the DenA provides the right to denationalisation. In light of this allegation of the complainant, the Constitutional Court reviewed the challenged legal position from the perspective of the principle of equality before the law determined by the second paragraph of Article 14 of the Constitution, which requires courts to treat essentially equal situations equally, and essentially different situations accordingly differently.

At the outset, the Constitutional Court emphasised that in the first sentence of the second paragraph of Article 10 of the DenA the legislature did not grant the right to denationalisation on the basis of the provisions of the DenA only to persons who had already obtained compensation for the seized property from a foreign state and persons who would have had the right to obtain such compensation in a foreign state if they had enforced it. Proceeding from the aim pursued by the DenA and considering the principle of equality before the law determined by the second paragraph of Article 14 of the Constitution, the legislature thus prevented these persons from also achieving a return of the nationalised property in one of the statutorily determined forms pursuant to the DenA. The Constitutional Court further emphasised that whether or not former Yugoslavia was (also) a party to the peace treaty or some other treaty

on the basis of which the competent authority (in accordance with the second sentence of the second paragraph of Article 10 of the DenA) determines if grounds for denying the mentioned right exist is irrelevant for the assessment of whether a person seeking entitlements on the basis of the DenA had the right to obtain compensation for the seized property from a foreign state. The decisive question is whether on the basis of such treaty and the regulations that the foreign state adopted for the implementation thereof the person had a right to obtain compensation precisely for the property that had been seized (i.e. confiscated or nationalised) and whose return is regulated by the DenA.

In addition to persons who obtained compensation for the seized property from a foreign state or who in fact had the right to obtain such compensation, the challenged legal position also excludes from the circle of those entitled to denationalisation persons whom a peace treaty or other treaty placed in the circle of beneficiaries who could seek compensation for the seized property from a foreign state. As this circle of beneficiaries also includes persons who did not fulfil the conditions determined by the regulations that the foreign state adopted for the implementation of such treaty and therefore could not have obtained compensation even if they had enforced it, the Constitutional Court assessed that as regards the possibility to seek entitlements pursuant to the DenA these persons are in an essentially different position than persons whom the first sentence of the second paragraph of Article 10 of the DenA excludes from the circle of those entitled to denationalisation because they obtained such compensation or in fact had the right to obtain it. In accordance with established constitutional case law, the mentioned groups could only have been treated equally if such were substantiated by reasonable grounds deriving from the nature of the matter. The Constitutional Court held that the circumstance that "there existed (even if only in principle) the right to obtain compensation for the seized property in a foreign state" cannot constitute such a reason unless it is established in individual proceedings that the person seeking entitlements on the basis of the DenA in fact would have had the right to obtain compensation from the foreign state if he or she had enforced such claim (on the basis of his or her "right in principle").

As the Administrative Court and the Supreme Court based the challenged decisions on an interpretation of the first sentence of the second paragraph of Article 10 of the DenA that required two groups of persons in essentially different positions to be treated equally without reasonable grounds deriving from the nature of the matter for such equal treatment, the Constitutional Court decided that such an interpretation is not acceptable from the perspective of the right to equality before the law determined by the second paragraph of Article 14 of the Constitution. The Constitutional Court therefore annulled the challenged judgments and remanded the case to the Administrative Court for new adjudication.

5. 18. The Right to Respect for Home

In Decision No. **U-I-64/14**, dated 12 October 2017 (Official Gazette RS, No. 66/17), the Constitutional Court decided on a request of the Administrative Court for the review of the constitutionality of Article 152 of the Construction Act (the CA-1). The challenged provision regulated the issuance of an administrative decision by which a building inspector requires a person who is subject to an inspection to remove an illegally constructed building. The Constitutional Court also initiated *sua sponte* proceedings for the review of the constitutionality of the substantively connected provisions of Article 156a of the CA-1 and Article 2 of the Act Amending the Construction Act (the CA-1E) that regulated the suspension of enforcement proceedings.

The Constitutional Court reviewed the challenged statutory provisions as regards their consistency with the right to respect for home. The Constitution does not contain any express provision regulating the right to respect for home. However, such does not entail that in the Republic of Slovenia this right is not guaranteed directly on the basis of the Constitution. The right to respect for home is protected by the first paragraph of Article 36 of the Constitution, which regulates the right to the inviolability of dwellings. The right to respect for home protects an individual's social and emotional bonds with a place that this individual considers his or her home. In inspection procedures regarding an illegal building, the right to respect for home ensures individuals that the building they live in will not be removed as long as there exist circumstances that render such an interference with the right to respect for their home disproportionate. The inspection measure of the removal of a building entails not only the entering of a private space, but also the loss of the space in which an individual lives. The right to respect for home thus protects the existence of physical space. However, the right to respect for home does not entail that in instances when the removal of an illegal building would disproportionately interfere with the right to respect for home the state has to legalise that building or that the state has to provide a substitute residence to the affected individual in all such instances.

The right to respect for home guarantees individuals a procedure in which they will be able to challenge the decision on the removal of a building due to a disproportionate interference with that right. Such entails that – before a measure entailing the loss of a home is enforced against a natural person – this person must be guaranteed prior judicial control of the proportionality of the measure entailing an interference with the right to respect for his or her home. When assessing the proportionality of a measure in individual proceedings, courts must also take into account whether the person who was subject to an inspection is a representative of a particularly vulnerable group, such as members of the Roma community. In instances concerning the illegal buildings of members of the Roma community, courts must, *inter alia*, take into account whether the special right of the Roma community in the field of spatial planning has been ensured to the members of this community.

The Constitutional Court held that the statutory regulation of the enforcement of a decision issued in an inspection procedure regarding an illegal building entails an interference with the right to respect for home. The removal of a building that is the home of a natural person is only admissible if it is based on a prior judicial decision. The Constitutional Court found that prior judicial control of the proportionality of an interference with the right to respect for the home of a person who is subject to an inspection is not ensured in either the procedure for the adoption of a decision on the removal of a building or in enforcement proceedings with a possibility to file a motion to suspend enforcement in accordance with Article 156a of the CA-1. Therefore, the Constitutional Court held that Articles 152 and 156a of the CA-1 are inconsistent with the right to respect for home.

The Constitutional Court further found that by means of Article 2 of the CA-1E the legislature placed persons who are subject to an inspection in an unequal position as regards protection of the right to respect for their home, as persons who are (or will be) subject to an inspection and who constructed (or will construct) an illegal building after 28 December 2013 do not have the possibility to propose the suspension of enforcement proceedings in accordance with Article 156a of the CA-1. As the cited statutory provision causes an inequality in connection with the exercise of a human right, it entails an interference with the right to respect for home. Given the fact that the regulation contained in Articles 152 and 156a of the CA-1 already entails a disproportionate interference with the right to respect for home, the interference with

the right to respect for home resulting from Article 2 of the CA-1E which denies a specific group of persons who are subject to inspection the possibility to propose the suspension of enforcement proceedings in accordance with Article 156a of the CA-1 is even more severe. As a result, the Constitutional Court abrogated Article 2 of the CA-1.

5. 19. Freedom of Expression and the Right to Honour and Reputation

In Case No. **Up-515/14** (Decision dated 12 October 2017), the Constitutional Court decided on the constitutional complaint of a political party against a judgment granting the lawsuit of the plaintiff (i.e. a former advisor to the President of the Republic) demanding that the complainant retract statements published on its website and that the operative provisions of the judgment be published. According to the *ratio decidendi* of the courts, although certain statements were defamatory and entailed an unlawful interference with the plaintiff's honour and reputation, the complainant failed to demonstrate that they are true or that it had reasonable grounds to believe that they are true. In its constitutional complaint, the complainant alleged, *inter alia*, that the courts violated its right to freedom of expression, which is guaranteed by the first paragraph of Article 39 of the Constitution, as they did not strike a fair balance with the plaintiff's right to the protection of honour and reputation, which is guaranteed by Article 35 of the Constitution. The complainant alleged that the right to freedom of expression was of particular importance in the case at issue as it concerned its expression as a political party regarding political events. Therefore, the statements in question allegedly entailed justified political criticism.

The Constitutional Court emphasised that, as a general rule, due to their important contribution to political debate in a free democratic society, the right of political parties to freedom of expression must enjoy a high level of protection. It found that when weighing the right of the political party to freedom of expression, on the one hand, and the plaintiff's right to the protection of honour and reputation, on the other, the courts took into account the decisive circumstances from the perspective of constitutional law and the criteria that the Constitutional Court and the European Court of Human Rights have formulated for instances of such collisions. The Constitutional Court further had to establish whether the courts adequately considered these criteria with regard to the importance and aim of the conflicting rights.

In its assessment, with regard to the statement concerning the implication of the plaintiff in the so-called "big bang" and Depala Vas affairs, when considering the kind of statements the plaintiff had to endure due to his role in society, the Higher Court partly proceeded from a too narrowly conceived starting point from the perspective of the complainant's right to freedom of expression. In the assessment of the Constitutional Court, given his role in society, the plaintiff must also endure defamatory statements interfering with his reputation that claim that he did something illegal or immoral. The limits of admissible criticism contained in such statements are only surpassed if the statements are untrue or if they are made in bad faith. Precisely due to the fact that the complainant failed to prove that the statement at issue had any kind of basis in fact, in the assessment of the Constitutional Court, the obligation to retract these statements and the publication of the operative provisions of the judgment are not unacceptable from the perspective of the complainant's right to freedom of expression. Not only journalists but also other persons who participate in public debate must namely act in good faith, i.e. they must have a sufficient basis to believe that the facts that they publish are true.

However, in the assessment of the Constitutional Court, the courts fundamentally underestimated the significance the statement had for the average reasonable reader when considering the statement regarding the plaintiff's management of Elan and consequently the courts formulated the starting point of the weighing of the conflicting rights in such a manner that it resulted in harm to the complainant's right to freedom of expression. Therefore, the Constitutional Court abrogated the challenged judgments in this part and remanded the case to the court of first instance for new adjudication.

5. 20. The Right to Personal Liberty and Personal Dignity

In Case No. **Up-563/15** (Decision dated 19 October 2017, Official Gazette RS, No. 67/17), the Constitutional Court decided on a constitutional complaint that the Ombudsperson for Human Rights filed in the name of the affected person. The Ombudsperson filed the constitutional complaint against a judicial decision issued in non-litigious civil proceedings by which the court ordered that the affected person be detained for treatment in a psychiatric hospital under special supervision on the basis of the provisions of the Mental Health Act. There were two pending non-litigious civil proceedings regarding the same subject matter (i.e. one initiated upon a motion of the family members of the affected person, and another upon a motion of the director of the psychiatric hospital). In spite of the same subject matter of the two non-litigious civil cases and although the courts applied the same substantive legal basis, the courts adopted substantively different decisions: in the first proceedings, the admission of the affected person to the psychiatric hospital for treatment under special supervision for a period of two months was ordered, while in the second proceedings the court decided that the person was to be released from treatment under special supervision in the psychiatric hospital.

In light of the allegations of the Ombudsperson for Human Rights that the conduct of the courts in this case was unacceptable from the perspective of a number of human rights and fundamental freedoms, the Constitutional Court conducted a review of whether the procedural situation at issue was acceptable from the perspective of the right to personal liberty (the first paragraph of Article 19 of the Constitution) and the right to the protection of personality and dignity in proceedings (the first paragraph of Article 21 of the Constitution).

The Constitutional Court emphasised that independent judicial control, as part of which a court verifies if all statutory conditions for the admission of a person to a psychiatric hospital for treatment under special supervision without his or her consent or his or her continued detention for treatment in such ward are fulfilled, is of fundamental importance for ensuring protection of the rights of the affected person. If this control is ineffective, this entails a failure of a key safeguard that is intended to ensure persons in pending proceedings for deciding on their admission for treatment that there will be no arbitrary interferences with their right to personal liberty, which is enshrined in the first paragraph of Article 19 of the Constitution.

In the assessment of the Constitutional Court, in such instances, in order to ensure protection of the right to personal liberty (Article 19 of the Constitution), it is necessary to prevent that two proceedings regarding the same case run at the same time. If there exist two parallel non-litigious civil proceedings in which the admission of the same person for treatment under special supervision in a psychiatric hospital is being decided on, a constitutionally consistent interpretation of the law requires that the courts join such proceedings. As in the case at issue the courts did not act in accordance with the mentioned requirement, they created a

constitutionally untenable procedural situation and rendered judicial control of the legality of the detention of persons for treatment in a psychiatric hospital ineffective. Consequently, the Constitutional Court established violations of the first paragraph of Article 19 and the first paragraph of Article 21 of the Constitution.

5.21. The Constitutional Position of Local Self-Government

By Decision No. **U-I-164/14**, dated 16 November 2017 (Official Gazette RS, No. 75/17), the Constitutional Court decided on a request of the Municipal Council of the Municipality of Postojna to review the constitutionality of the Site Selection for Spatial Projects of National Importance Act (the SSSPNIA) and the Water Act (the WA-1) and to review the constitutionality and legality of the Decree on the National Spatial Plan for the Postojna Central Training Range of the Slovene Armed Forces (the Decree). It decided that the challenged laws were not inconsistent with the Constitution; however, it abrogated the Decree, as during its adoption procedure the opinion of the agent responsible for spatial management in charge of water conservation was not adequately taken into account. The abrogation is to take effect one year following the publication of the Decision in the Official Gazette of the Republic of Slovenia.

The Constitutional Court held that the term "local public matter", which only concerns the residents of a municipality, is a legitimate criterion for differentiating the competences of a municipality from those of the state in the field of spatial management and spatial planning. According to the first paragraph of Article 140 of the Constitution, the defence of the state cannot fall within the competence of municipalities. Therefore, in the assessment of the Constitutional Court, the division of competences between the state and municipalities in the field of spatial plans intended for the defence of the state is not inconsistent with the constitutionally determined field of the competences of local self-government. The SSSPNIA grants municipalities whose territory is included in the area of a national spatial plan the position of local agents responsible for spatial management and as such includes them in the procedure for drafting the relevant national spatial plan, so that their statutorily guaranteed role and influence in such procedure are observed. While the municipality plays an important role in the adoption of national spatial plans, which must not be omitted, such role does not ensure that the municipality's spatial interests will prevail. Therefore, from the perspective of spatial management and spatial planning, in the assessment of the Constitutional Court, the SSSPNIA and the Decree are inconsistent with neither Article 138 nor the first paragraph of Article 140 of the Constitution.

The Constitutional Court further held that the WA-1 and the SSSPNIA are not inconsistent with Article 72 of the Constitution (the right to a healthy living environment). A municipality is neither competent nor responsible for all matters in relation to the protection of the environment and the protection of water sources in its territory, but only for those that are determined as such by a law. In accordance with the WA-1, the protection of bodies of water used for abstraction or intended for the public supply of drinking water falls within the competences of the State. The exercise of state competences in the field of environmental protection and water management, as long as it remains within the limits of these competences, cannot inadmissibly interfere with the constitutionally protected position of local self-government.

In the third part of the reasoning, the Constitutional Court reviewed the Decree with regard to the procedure by which it was adopted. It adopted the position that, in the light

of the overall role of the national agents responsible for spatial management in the drafting of a national spatial plan, the statutorily determined obligation to send a draft to the national agents responsible for spatial management so that they may submit an opinion regarding such is, naturally, mirrored in the obligation of the drafter to take the submitted opinions into consideration. In the assessment of the Constitutional Court, the requirement that opinions be obtained cannot be satisfied merely by the fact that the agents responsible for spatial management adopt such opinions, but reasoned positions regarding these opinions have to be adopted in the procedure for the adoption of the national spatial plan. The Constitutional Court established that in the case at issue these statutory requirements were not fulfilled and decided that the Decree is inconsistent with the law and consequently also with the third paragraph of Article 153 of the Constitution, which determines that regulations and other general acts must be in conformity with the Constitution and laws.

5. 22. Elections to the National Council

In case No. **Up-1033/17** (Decision dated 30 November 2017, Official Gazette RS, No. 72/17), the Constitutional Court decided on the constitutional complaint of a cultural interest group against a Supreme Court judgment that dismissed its appeal against a decision of the State Electoral Commission confirming the list of electors for the sports interest groups that constitute a joint electoral college together with the electors of the cultural interest groups.

The Constitutional Court established that the possibility to lodge an appeal against the decision of the State Electoral Commission confirming the lists of electors of another professional interest group under the conditions of the statutory regulation primarily intended for the protection of the voting right in the procedure for confirming candidacies (Article 105 of the National Assembly Elections Act) is exceptionally difficult or even impossible. Therefore, in the view of the Constitutional Court, the challenged position of the Supreme Court that put the burden of claim and proof regarding the alleged irregularities concerning the determination of the number of electors of other professional interest groups solely on the complainant violated the complainant's right to an effective legal remedy determined by Article 25 of the Constitution, which in the light of this case also refers to the right to judicial protection determined by the first paragraph of Article 23 of the Constitution. Consequently, the right to vote of the members of the complainant organisation determined by the first paragraph of Article 43 of the Constitution was thereby also violated. The Constitutional Court therefore abrogated the challenged judgment of the Supreme Court.

As it was necessary, in the interest of ensuring the prompt constitution of the National Council in accordance with the law, to resolve the electoral dispute as quickly as possible and as the State Electoral Commission is the electoral authority that must verify whether the number of elected representatives of an individual professional organisation is determined in accordance with the law, the Constitutional Court also annulled the challenged decisions of the State Electoral Commission determining the number of electors for sports organisations and remanded the case to this Commission for a new decision thereon. After looking into the files of cases in which the challenged decisions of the State Electoral Commission were issued, the Constitutional Court namely established that in the mentioned procedure the number of members of such organisations who are professionally active in the field of sports was not directly determined.

The Constitutional Court decided on the constitutional complaint at issue on the basis of the standpoint adopted in Decision No. Up-3564/07, dated 6 December 2007 (Official Gazette RS, No. 116/07), that the procedure for confirming electors is a constituent part of the candidacy procedure and that in the framework of National Council elections, the protection of the right to legal remedies determined by Article 25 of the Constitution requires that Articles 103 and 105 of the National Assembly Elections Act be interpreted in such a manner that they also ensure an appeal against decisions of the State Electoral Commission to (not) confirm the list of representatives in the electoral body. In deciding on the constitutional complaint, the Constitutional Court established that the appeal determined by Article 105 of the National Assembly Elections Act in disputes concerning the determination of electors in the framework of elections to the National Council is not an effective legal remedy for the protection of the right to vote of the members of professional organisations when they choose their representatives in the common electoral body, as it does not ensure adequate time and opportunity to lodge an effective appeal. Furthermore, in the view of the Constitutional Court, a multiplicity of legal remedies regarding the process of deciding on lists of electors is untenable for the legal system as it obstructs the goal of such elections, i.e. the regular election of the members of the National Council in due time, and in addition endangers the principle of periodic elections. Due to the reasons set out above, the Constitutional Court decided to depart from its position adopted in Decision No. Up-3564/07 that the procedure for confirming lists of representatives in the electoral body is a constituent part of the candidacy procedure, and instead required, for future elections to the National Council, that Articles 103 and 105 of the National Assembly Elections Act be interpreted in such a manner that they also ensure an appeal against decisions of the State Electoral Commission to (not) confirm the mentioned list of representatives in the electoral body.

A decision of the electoral authority in the procedure for confirming lists of electors can thus be challenged only after the elections end in an electoral dispute on the basis of the third paragraph of Article 10 of the National Council Act, which determines that the affected person has fifteen days to lodge an appeal against a decision of the National Council not confirming his or her mandate. Due to the objective importance of electoral disputes, only those established irregularities concerning elections can be taken into account that influenced or could have influenced the results of the elections.

5. 23. The Right to Judicial Protection regarding Limitations of Personal Liberty

In case No. **U-I-89/15** (Decision dated 30 November 2017, Official Gazette RS, No. 3/18), upon the request of the Slovenj Gradec Local Court, the Constitutional Court decided on the constitutionality of the third and fifth paragraphs of Article 24 of the Road Traffic Rules Act and the second paragraph of Article 108 of the Minor Offences Act. The fifth paragraph of Article 24 of the Road Traffic Rules Act, in conjunction with the fourth sentence of the second paragraph of Article 108 of the Minor Offences Act, determines the time limit for lodging an appeal against an order imposing police custody on a motor vehicle driver due to (the suspicion of) psychoactive substances in the driver's body. The time limit is determined by the phrasing "until the end of custody". The applicant stated that such determination of the time limit interferes disproportionately with the right to legal remedies determined by Article 25 of the Constitution.

The Constitutional Court reviewed the challenged statutory regulation from the perspective of the right to judicial protection determined by the first paragraph of Article 23 of the Constitution. In judicial proceedings deciding on an appeal against a police custody order on the basis of Article 24 of the Road Traffic Rules Act, the person in custody exercises not only his or her right to a legal remedy, but mainly his or her right to judicial protection. As police custody on the basis of the mentioned Article entails an interference by the executive branch of power with one of the most basic human rights, that is the right to personal liberty determined by the first paragraph of Article 19 of the Constitution, judicial review is of utmost importance. Anyone deprived of his or her liberty must be ensured the possibility to demand an independent judicial review of the existence of the conditions that are essential for the legality and constitutionality of such deprivation of liberty. Moreover, effective protection of the right to personal liberty also requires that the affected person have the possibility to obtain a court decision regarding an interference with this human right even if the interference has already ceased.

The Constitutional Court decided that the challenged statutory regulation regulates the right to judicial protection in an overly restrictive manner. It namely enables the person in custody to demand a judicial review of the custody only in the extremely short period (i.e. a minimum of three hours and a maximum of twelve hours) he or she is deprived of his or her liberty. In the framework of the review of whether the challenged statutory regulation constitutes an interference with the right to judicial protection, the Constitutional Court also reviewed whether a person in custody, in addition to an appeal, also has access to other possible means of effective judicial protection of the right to personal liberty. It established that the legal order does not provide for such protection. In light of the above, it decided that the challenged statutory regulation entails an interference with the right to judicial protection determined by the first paragraph of Article 23 of the Constitution. A fundamental precondition for an admissible interference with human rights and fundamental freedoms is that such interference follows a constitutionally admissible aim. The Constitutional Court established that there is no constitutionally admissible aim for limiting the period for appeal that would be evident from the opinion of the Government, the challenged acts, or the preparatory legislative materials. Therefore, it held that the statutory regulation is inconsistent with the right to judicial protection under the first paragraph of Article 23 of the Constitution.

5. 24. The Liability of the State for Damages

In case No. **Up-998/15** (Decision dated 30 November 2017, Official Gazette RS, No. 5/18), the Constitutional Court decided on the constitutional complaint of a complainant who filed an action against the state for damages caused by an allegedly illegal action of the State authorities. The complainant claimed that two inspectorate decisions (the first, verbal, one prohibited the sale of drinks until appropriate approvals had been obtained, and the second, issued in writing, prohibited the addition of cannabinoid components into drinks) prevented him from starting a commercially interesting business of brewing beer with the addition of a cannabis extract.

Regarding the verbal decision, the Constitutional Court agreed with the interpretation of the Higher Court and the Supreme Court. It established that the latter decision was issued as the complainant commenced the production of drinks prior to obtaining the required approvals or proofs that the drink in question complied with the regulatory requirements for consumer foodstuffs. In the view of the Constitutional Court, the legal argument that the inspectorate can justifiably prohibit the production of a foodstuff until the producer proves that it has obtained all the approvals or proofs required by law is not inconsistent with a human right or fundamental freedom.

The assessment of the Constitutional Court is, however, different with regard to the second, i.e. written, inspectorate decision. The viewpoint of the Supreme Court, and also of the Higher Court, was that the written inspectorate decision is not illegal as in its operative provisions it only repeated what is stated already in the law ("the addition of cannabinoid components is prohibited") and that the written decision did not prohibit the addition of a given essence nor any essential cannabis oil (including the one referred to). Therewith, the Supreme Court and the Higher Court stated basically the following: if in fact the substance added to the drink by the complainant (cannabis extract) did not contain cannabinoid substances, this decision did not limit the complainant in any way with regard to the use of the mentioned extract or to the production and sale of products containing this extract. In the view of the two courts, an administrative (inspectorate) decision that in its operative provisions only repeats the description of an action prohibited on the basis of the law cannot be illegal and therefore it also cannot constitute a basis for the liability of the state for damages.

The Constitutional Court, however, emphasised, that it is often not possible to understand the meaning of an administrative or judicial decision just from its operative provisions, the latter thus always need to be read in conjunction with the introduction of the decision and its reasoning, which should contain a description of the legally relevant facts of the concrete case together with the legal consequences and the underlying reasons for the decision. It must therefore be borne in mind that the definitive meaning of a legal ruling contained in the operative provisions of a decision can be determined to its full extent only in relation to the decision as a whole. It evidently follows from the sequence of events that unfolded in the inspectorate procedure that the controversial inspectorate decision was adopted because the drink, according to the findings of the inspectorate at that time, contained prohibited cannabinoid substances. It would be illogical that everyone – the complainant, the administrative authorities, and the court in the proceedings for a judicial review of administrative acts – would deal with the issue of ascertaining what the particular extract contained and what methods were used for its analysis if this issue were not important for this particular procedure, as the inspectorate decision allegedly did not prohibit the use of this particular substance, but only repeated what is already determined in the law.

The operative provisions of a decision that only repeats what a law already requires of a party does not entail a merely abstract ("pedagogical") instruction on the issue of the statutory regulation. When the operative provisions of a decision, be it administrative or judicial, literally repeat only what is already determined in the law, the reasoning of such decision must also be taken into account for an understanding of its true meaning. Such operative provisions namely implicitly convey, unless the reasoning shows otherwise, that the activities of the party in the particular case, the allegations of the opposing party, or the facts on the basis of which the procedure was initiated are contrary to that requirement of the law that has been repeated in the operative provisions.

In the view of the Constitutional Court, the interpretation of the Higher Court and the Supreme Court that in fact entails that an administrative decision can never be illegal if it only "repeats the norm already determined by the law" and that completely excludes from their review the reasoning of this decision, the circumstances under which it was adopted, and the fact that the administrative decision at least implicitly reproaches the affected person for acting acted unlawfully, prevents the effective exercise of the right to compensation for damage determined by Article 26 of the Constitution.

5. 25. The Constitutionality of the Actions of a State Prosecutor

In case No. **Up-326/14** (Decision dated 6 December 2017, Official Gazette RS, No. 6/18), the Constitutional Court decided on the constitutional complaint of a complainant who was found guilty by a final judgment of the criminal offence of unlawful trade in illicit drugs. In the constitutional complaint the complainant alleged, *inter alia*, that his right stemming from Article 22 of the Constitution was violated, as the order of the office of the district state prosecutor that allowed the execution of covert investigative measures against his co-defendant did not contain a reasoning and did not establish reasonable grounds for suspicion, which is a statutory condition for ordering such measures. He alleged that – as fruits of a poisoned tree – all subsequent orders concerning covert investigative measures against all of his co-defendants and all evidence obtained in the course of their execution were illegal and therefore had to be excluded.

The Supreme Court dismissed the complainant's allegations that the prosecution's order did not contain a reasoning and that the evidence obtained on its basis was therefore illegal. It adopted the position that the express statutory requirement of a prior court order containing a reasoning and an order of the state prosecution for a covert investigative measure can be substituted for by subsequent judicial control as part of which a court establishes whether the conditions for ordering the investigative measure were fulfilled. In the assessment of the Supreme Court, a judicial decision cannot rely on evidence obtained through such an investigative measure only if due to the deficient reasoning of the order authorising the measure, the request for the measure, or the documents attached thereto one cannot conclude that there existed reasonable grounds for the suspicion that a criminal offence has been committed. It held that the evidence obtained on the basis of the ordered investigative measures was not inadmissible and it was thus not necessary to exclude it from the case file.

When deciding, the Constitutional Court proceeded from the established constitutional case law, according to which the reasoning of a court order authorising an investigative measure (e.g. a search of premises) must clearly substantiate, i.e. state in a concrete manner and in clear terms, the reasonable grounds for the suspicion that a specific person committed a specific criminal offence as well as the likelihood that during the search the suspect will be apprehended or evidence of the criminal offence or objects that are important for the criminal proceedings will be found. However, the situation at issue concerned a case where the order was issued by a district state prosecutor and not by a court. Therefore, the Constitutional Court first had to assess whether such an order is also subject to the requirements stemming from Article 22 of the Constitution.

In the assessment of the Constitutional Court, the ordering and execution of covert investigative measures of secret surveillance, undercover operations, and fictitious purchases entail interferences with the constitutionally protected sphere of privacy, i.e. at least with the right to privacy determined by Article 35 of the Constitution. With regard to deciding whether these investigative measures should be allowed, the state prosecutor acts as a state authority that decides on the admissibility of an interference with an individual's human right, and therefore, as with any other state authority, the state prosecutor must also act in accordance with the Constitution.

The Constitutional Court held that a state prosecutor's order authorising covert investigative measures in accordance with Articles 149a, 155a, and 155 of the Criminal Procedure Act is subject to the same constitutional requirements concerning its reasoning as apply to court orders. Therefore, also the reasoning of such an act must comply with the safeguards stemming

from Article 22 of the Constitution. It adopted the position that in the reasoning of an order authorising the execution of covert investigative measures a state prosecutor must state the facts and circumstances that substantiate the conclusion that there existed reasonable grounds for suspicion already prior to the interference with the individual's right to privacy. In doing so, the state prosecutor also supervises the work of the police. The purpose of the reasoning is also to enable a judge to subsequently verify whether the decision on the existence of the conditions for an interference with the individual's right was in conformity with the Constitution.

In light of such, the Constitutional Court held that the challenged position of the Supreme Court, i.e. that it is irrelevant whether an order of a state prosecutor contains a reasoning that fulfils the relevant constitutional requirements as long as the Supreme Court can subsequently establish whether the conditions for its adoption were fulfilled, violated the complainant's right stemming from Article 22 of the Constitution.

6. The Personnel of the Constitutional Court

6. 1. The Judges of the Constitutional Court

The Constitutional Court is composed of nine judges elected on the proposal of the President of the Republic by secret ballot and by a majority of votes by the National Assembly. Any citizen of the Republic of Slovenia who is a legal expert and has reached at least 40 years of age may be elected a Constitutional Court judge. Constitutional Court judges are elected for a term of nine years and may not be re-elected. Judges of the Constitutional Court enjoy the same immunity as deputies of the National Assembly. The incompatibility of their office with other offices and with the performance of other work, with the exception of teaching at a university, is one important element of their independence.

The President of the Constitutional Court is elected by the judges from among their own number for a term of three years. Also the Vice President of the Constitutional Court, who substitutes for the President when he or she is absent from office, is elected in the same manner. The President represents the Constitutional Court, manages relations with other state authorities and cooperation with foreign constitutional courts and international organisations, coordinates the work of the Constitutional Court, calls and presides over its sessions, signs decisions and orders of the Constitutional Court, and performs other tasks in accordance with the law and the Rules of Procedure of the Constitutional Court.

In 2017, four judges of the Constitutional Court were replaced. On 27 March, Constitutional Court Judges Dr Matej Accetto, Dr.Dr. Klemen Jaklič, and Dr Marijan Pavčnik assumed office and replaced Constitutional Court Judges Jasna Pogačar, Dr Mitja Deisinger, and Jan Zobec. On 25 April, Dr Rajko Knez assumed the office of Constitutional Court Judge and replaced Constitutional Court Judge Dr Ernest Petrič. Taking into account that two Constitutional Court judges were replaced already in 2016, such entails that two thirds of the Constitutional Court judges were replaced in a relatively short period of time. Considering that new judges need a certain period of time to become fully engaged in their work, such an extensive change in the composition of the Constitutional Court inevitably affects the effectiveness of its work.

6. 2. The Secretariat of the Constitutional Court

The legal advisory work for Constitutional Court judges and judicial administration tasks are carried out by the Secretariat, which is composed of five organisational units: the Legal Advisory Department, the Analysis and International Cooperation Department, the Documentation

and Information Technology Department, the Office of the Registrar, and the General and Financial Affairs Department. The Secretary General, who is appointed by the Constitutional Court, directs the functioning of all services of the Secretariat. The Deputy Secretary General and Assistant Secretary Generals assist him or her in the performance of management and organisational tasks. The work of the advisors in the Legal Advisory Department is of particular importance in exercising the competences of the Constitutional Court, as is the work of the advisors in the Analysis and International Cooperation Department. Advisors are appointed by the Constitutional Court from among legal and other experts.

As of the end of 2017, in addition to nine Constitutional Court judges and the Secretary General, 73 judicial personnel were employed at the Constitutional Court, 71 of whom were employed for an indefinite period of time, one was employed for a fixed term, and one employee performed supplementary work in a one-fifth fulltime equivalent position. Among those employed for an indefinite period of time, 30 were advisors in the Legal Advisory Department of the Constitutional Court, one of them having been employed in a one-fifth full-time equivalent position, and five were advisors in the Analysis and International Cooperation Department. In 2017 the Constitutional Court employed eight new advisors due to retirements and resignations. As holds true for new Constitutional Court judges, also new advisors need a certain period of time to be initiated into their work, which, given the high employee turnover rate, has significantly affected the work efficiency of the Legal Advisory Department and, consequently, of the Constitutional Court as a whole. This effect was even accentuated as the replacement of the personnel in the Legal Advisory Department coincided with the change in a considerable number of Constitutional Court judges.

6. 3. The Internal Organisation of the Constitutional Court

6.4. Advisors and Department Heads

Mag. Tjaša Šorli, *Deputy Secretary General*

Nataša Stele, *Assistant Secretary General*

Suzana Stres, *Assistant Secretary General*

Mag. Zana Krušič - Matè, *Assistant Secretary General for Judicial Administration*

ADVISORS

Tina Bitenc Pengov

Mag. Uroš Bogša

Vesna Božič Štajnpihler

Diana Bukovinski

Mag. Tadeja Cerar

Mag. Polona Farmany

Dr Aleš Galič

Luka Grasselli

Nika Hudej

Gregor Janžek

Mag. Marjetka Hren, LL.M.

Andreja Kelvišar

Luka Kovač

Andreja Krabonja

Jernej Lavrenčič

Simon Leohar

Marcela Lukman Hvastija

Mag. Maja Matičič Marinšek

Mag. Karin Merc

Mag. Tina Mežnar

Katja Mramor

Liljana Munh

Špela Ocepek

Constanza Pirnat Kavčič

Andreja Plazl

Maja Pušnik

Mag. Vesna Ravnik Koprivec

Mag. Žiga Razdrih

Leon Recek

Mag. Heidi Starman Kališ

Mag. Jerica Trefalt

Dr Katja Triller Vrtovec

Dr Katarina Vatovec, LL.M.

Igor Vuksanović

Dr Renata Zagradišnik, spec., LL.M.

Dr Sabina Zgaga

Mag. Lea Zore

DEPARTMENT HEADS

Ivan Biščak, *Director of the General and Financial Affairs Department*

Nataša Lebar, *Head of the Office of the Registrar*

Tina Prešeren, *Head of the Analysis and International Cooperation Department*

Mag. Miloš Torbič Grlj, *Head of the Documentation and Information Technology Department*

7. International Activities of the Constitutional Court

The Constitutional Court of the Republic of Slovenia devotes special attention to international cooperation, particularly to the exchange of experiences with other international institutions concerned with the protection of human rights. An important aspect of the Court's international activity is cooperation with foreign constitutional courts and other highest national courts with constitutional jurisdiction. In the framework of its efforts to strengthen international cooperation, in 2017 the Constitutional Court deepened its existing relationships with other constitutional courts, international courts, the Council of Europe, and other institutions promoting the protection of human rights and fundamental freedoms. The Constitutional Court is also a member of a number of major European and global associations of constitutional courts, in the framework of which representatives of the Constitutional Court attend regular meetings and exchange knowledge and experiences with other institutions of equivalent jurisdiction.

In January, the Vice President of the Constitutional Court attended a solemn session of the European Court of Human Rights in Strasbourg. In March, the President of the Constitutional Court participated in the Forum of the Judges of the Member States of the EU, held on the occasion of the 60th anniversary of the Rome Treaty in Luxembourg.

In 2017, the Constitutional Court received invitations to several international conferences. Due to their work commitments, the constitutional court judges only participated in the most important ones and gave presentations in the majority of instances. In May, the President and Vice President of the Constitutional Court attended a conference entitled *Constitutional Justice: Doctrine and Practice*, held in St. Petersburg, Russian Federation. Two representatives of the Constitutional Court participated in a conference marking the 25th anniversary of the Constitutional Court of Romania in Bucharest. In June, a judge of the Constitutional Court participated in a regional conference entitled *Prohibition of Discrimination in Constitutional Court Case Law*, which was held in Budva, Montenegro. In the same month, a delegation of the Constitutional Court attended the XVII Congress of the Conference of the European Constitutional Courts in Batumi, Georgia, where participants addressed the role of constitutional courts in upholding and applying constitutional principles. In July, a judge of the Constitutional Court participated in the World Congress of the International Association for the Philosophy of Law and Social Philosophy in Lisbon. September was marked by the 4th Congress of the World Conference on Constitutional Justice, held in Vilnius, Lithuania, which was also attended by representatives of the Slovene Constitutional Court. The topic of the congress was the rule of law and constitutional justice in the modern world. A judge of the Constitutional Court also attended the annual conference of the Central and Eastern European Network of Jurisprudence entitled *Jurisprudence in Central and Eastern*

Europe: Work in Progress 2017, held in Riga, Latvia, as well as a solemn ceremony presenting a special edition of collected works to Professor Neumann in Frankfurt, Germany. In October, the judges of the Constitutional Court participated in a regional conference entitled *Constitutional Courts – Proclaimed and Actual Independence* on Mt. Jahorina, Bosnia and Herzegovina, an expert training seminar in the field of the protection of fundamental rights in the EU, held in Venice, a conference marking the 25th anniversary of the Constitutional Court of Albania in Tirana, and a final workshop in the framework of the ACTIONES project in Brussels. In November, the Association of Constitutional Courts Using the French Language (the ACCPUF) organised a solemn congress celebrating its 20th anniversary, which was also attended by the President of the Constitutional Court.

In 2017, the Constitutional Court engaged in active bilateral cooperation with other constitutional courts. In October, a delegation of the Constitutional Court led by the Court's President paid a three-day official visit to the Constitutional Court of the Czech Republic. The judges of the two courts discussed the relationship between the constitutional court and the supreme court, as well as respect for the decisions of the constitutional court. The Constitutional Court hosted two official visits from foreign constitutional courts in 2017. In October, it received its first visit from the Constitutional Court of Latvia. The judges exchanged their experiences regarding the case law of their respective constitutional courts, devoting special attention to the influence of the judgments of the European Court of Human Rights on their respective case law, and to the constitutional review of tax regulations. The Constitutional Court hosted the judges of the Croatian Constitutional Court in June at their traditional one-day working meeting. The main topic of discussion was constitutional control of adjudication, in particular the distribution and type of established violations of human rights and freedoms by regular courts in the previous three years. In November, the President of the Constitutional Court of Austria paid his last official visit to the Constitutional Court before the end of his term of office, which strengthened the excellent cooperation that has developed between the two courts in recent years.

In 2017, the Constitutional Court also hosted visits from three Slovenian judges at the European courts, i.e. the European Court of Human Rights, the Court of Justice of the European Union, and the General Court of the European Union, who shared their experiences with the judges of the Constitutional Court. The keynote speaker at the traditional Constitutionality Day ceremony held by the Constitutional Court in December was the President of the Court of Justice of the European Union.

The integration of the Constitutional Court into the European environment and the need for further training of the Constitutional Court staff in order to provide high-quality assistance to Constitutional Court judges in the performance of their role require not only international cooperation between the judges of constitutional courts but also the cooperation of the high-level state officials of constitutional courts and especially their legal advisers. In 2017, the Court's legal advisers attended several legal courses abroad. These included the Odysseus Academic Network annual conference on EU asylum law and policy (Brussels, Belgium), a conference on the freedom of expression (Strasbourg, France), a seminar on the current reflections on EU anti-discrimination law (Trier, Germany), and the annual conference of the International Society of Public Law (Copenhagen, Denmark). One of the legal advisers working in the Court's Analysis and International Cooperation Department attended a seminar on cybercrime and the English terminology regarding this field (Lublin, Poland), while the head of the same department attended a French language seminar (Spa, Belgium). Representatives of the

Constitutional Court participated in the 16th meeting of the Joint Council on Constitutional Justice of the Venice Commission (Karlsruhe, Germany), a forum of courts that are members of the Superior Courts Network at the European Court of Human Rights (Strasbourg, France), and a meeting within the framework of the Judicial Network of the European Union at the Court of Justice of the European Union (Luxembourg). The Head of the Documentation and Information Technology Department participated in the annual NCSC Court Technology Conference (Salt Lake City, Utah, USA).

8. The Constitutional Court in Numbers

8. 1. Cases Received

In 2017, the trend of an increasing number of cases received continued, as the Constitutional Court received slightly more cases than in 2016. In the last couple of years, the curve of cases received again turned upwards, as the number of new cases per year has been increasing since 2016, while for several consecutive years prior to that (i.e. from 2009 to 2015) this number was decreasing. In 2017, the Constitutional Court received 1,334 cases, which is 0.8% more than in 2016, when it received 1,324 cases. The increase in the total number of cases received was a consequence of receiving a higher number of constitutional complaints (the Up register), while the number of applications for a review of the constitutionality or legality of regulations (the U-I register) decreased significantly. In 2017, the Constitutional Court received 198 requests and petitions for a review of the constitutionality or legality of regulations – which represents a 13.2% decrease compared to 2016, when it received 228 requests and petitions – and 1,134 constitutional complaints, which represents a 3.8% increase compared to 2016, when it received 1,092 constitutional complaints.

As regards applications for a review of the constitutionality or legality of regulations, the Constitutional Court has recorded a downward trend in the number of such cases since 2012. However, as regards these cases it also has to be underlined that the number of petitions of good quality, and in particular the number of requests for a review of constitutionality, which in accordance with the Constitution and law can be filed by privileged applicants, is increasing, regarding which the ever-greater activity of the regular courts is particularly notable. It should also not be expected that the number of constitutional complaints will decrease in the coming years. On the contrary, due to the institute of granting leave to appeal before the Supreme Court, which is increasingly prescribed in procedural laws and by which the Supreme Court is *de facto* given the power to select the cases that it will consider, it is realistic to expect that the pressure on the Constitutional Court will become even greater, as the Constitutional Court does not have the possibility to select cases. However, it is questionable whether such different positions of the Supreme Court and the Constitutional Court are consistent with our constitutional legal system. In accordance with the Constitution (i.e. the first paragraph of Article 127 of the Constitution), the Supreme Court is the highest court in the state and must ensure uniform case law. The Constitution envisaged the constitutional complaint as a subsidiary legal remedy (the third paragraph of Article 160 of the Constitution), which, as a general rule, may only be filed once all other legal remedies have been exhausted, i.e. when all regular courts, including the Supreme Court, have adopted a position regarding the relevant legal (constitutional) issues. Therefore, the Constitutional Court also needs to have

some possibility to influence which constitutional complaints it will accept for consideration, depending, naturally, on the constitutional importance of the issues raised. Such can only be achieved by amending the Constitution, which is particularly necessary in view of the modified role of the Supreme Court, if the Constitutional Court is to continue to effectively carry out its role as the guardian of the constitutional order. In light of its role within the system of state power, the Constitutional Court cannot resolve thousands of disputes, but can only focus on a limited number of cases that substantively raise the most important constitutional issues.

Within the distribution of all cases received in 2017 there was, as usual, a strong preponderance of constitutional complaints, which accounted for 85% of all cases received. In some instances, constitutional complaints were filed together with petitions for a review of the constitutionality or legality of a regulation on which judicial decisions are based; in 2017 there were 97 such cases. These are so-called joined cases, on which the Constitutional Court decides by a single decision.

In 2017, the number of constitutional complaints received by the individual panels of the Constitutional Court differed significantly. The number of constitutional complaints received by the Administrative Law Panel again increased significantly, the number received by the Criminal Law Panel increased only marginally, while the number received by the Civil Law Panel was the same as in 2016. The increase regarding the Criminal Law Panel amounted to 1.2%, while for the Administrative Law Panel it reached 10.2%. In absolute figures, the Civil Law Panel still had the highest number of cases received (458 cases), which accounted for almost half (40.4%) of all constitutional complaints received. This was followed by the Administrative Law Panel, with 423 cases received (37.3%), and the Criminal Law Panel, with 253 cases received (22.3%). Constitutional complaints in the civil law field have always represented the greatest share. The relatively lower number of constitutional complaints received by the Criminal Law Panel, in particular compared to the beginning of this decade, can, on the one hand, be attributed to the decrease in minor offence cases received in recent years. On the other hand, the number of complex criminal cases considered by the Criminal Law Panel has increased significantly in recent years, therefore the statistically lower number of cases received does not in any way signify a decrease in the workload on the Constitutional Court judges.

With regard to the content of the constitutional complaints received, once again in 2017 the most frequent disputes were those linked to civil law litigation. In comparison to 2016, the number thereof remained equal, whereas the share of such in all constitutional complaints amounted to 23.5%. In second position were constitutional complaints from the field of criminal law; in comparison to 2016, the number of such decreased by 2.5% and accounted for 17.3% of all constitutional complaints. In terms of content, criminal cases were followed by administrative disputes (12.9%), execution proceedings (6.1%), labour disputes (5.8%), commercial disputes (5.6%), and tax disputes (5.6%). If these shares are compared, for example, with 2011, it can be noted that in the last six years the trend as to the number of criminal cases received compared to minor offence cases received completely reversed. In 2011, minor offences represented almost a quarter (23.3%) of all constitutional complaints received, and by 2017 this share had gradually decreased to less than 5%, with regard to which the number of minor offence cases slightly increased from 2016 to 2017. On the other hand, the share of complex criminal cases has virtually doubled – from 9.3% in 2011 to 17.3% in 2017.

As to proceedings for a review of the constitutionality or legality of regulations (U-I cases), concerning which the number of cases received in 2017 was significantly lower than in 2016 (a decrease

of 13.2%), it should be underlined that of the 198 cases received, 29 (14.6%) were initiated on the basis of requests submitted by privileged applicants (Articles 23 and 23a of the Constitutional Court Act); the remainder were petitions filed by individuals (169 petitions). In this context, the activity of the regular courts must be highlighted, as they filed 14 requests for a review of the constitutionality of laws, which amounts to 48.3% of all requests filed. In addition to the Ombudsman for Human Rights, which filed two requests, local communities filed five requests; the National Council and the Government each filed three requests, while the Bank of Slovenia and the Information Commissioner each filed one request. Of the 169 petitions for a review of constitutionality or legality, in 97 cases (57.3% of all petitions) the petitioners concurrently filed a constitutional complaint. Petitioners thus take into consideration the established case law of the Constitutional Court, according to which, as a general rule, petitioners are only allowed to file a petition together with a constitutional complaint when the challenged regulation does not have direct effect. In such instances, all judicial remedies must first be exhausted in proceedings before the competent courts, and only then can the constitutionality or legality of the act on which the individual act is based be challenged, together with a constitutional complaint against the individual act.

As regards the type of regulations challenged, it can be concluded that, as usual, also in 2017 most often laws were challenged; namely, as many as 86 different laws were challenged. Laws were followed by local community regulations (26 different municipal regulations were challenged) and by acts of the Government and governmental ministries (16 implementing regulations were challenged). In particular as regards laws as well as decrees, it must be taken into consideration that numerous regulations were challenged multiple times. If we limit the discussion to laws, it is evident that, for instance, the provisions of the Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act were challenged 18 times, the provisions of the Mining Act nine times (in fact, this Act was only challenged by one petitioner), the provisions of the Criminal Procedure Act nine times, the provisions of the Pension and Disability Insurance Act eight times, and the provisions of the Civil Procedure Act seven times. The Elections and Referendum Campaign Act should also be mentioned, as it was challenged five times.

When interpreting and understanding the statistical data from the annual report, it has to be taken into consideration that in addition to the ordinary registers (especially the Up register, for constitutional complaints, and the U-I register, for a review of the constitutionality or legality of regulations), the Constitutional Court also has the general R-I register. This register was introduced at the end of 2011 and fully implemented in 2012. The applications entered into this general R-I register are either so unclear or incomplete that they cannot be reviewed or they manifestly have no chance of success in light of the adopted positions of the Constitutional Court. Replies to such applications are issued by the Secretary General of the Constitutional Court, who thereby explains to the applicant how the incompleteness of the application can be remedied or requires the applicant to state within a certain time limit whether they insist that the Constitutional Court decide on their application even though their application has no chance of success. If the applicant remedies the established deficiencies or requests that the Constitutional Court nevertheless decide upon the application, the application is transferred to the Up register (constitutional complaints) or the U-I register (petitions for a review of the constitutionality or legality of regulations). Upon being transferred into another register, these cases are statistically no longer registered in the general R-I register, but rather in the respective Up or U-I register. The general R-I register thus statistically contains only cases in which an applicant can still request, within a certain time limit, a decision by the Constitutional Court (i.e. R-I cases "pending") or cases in which the time limit has already expired and/or the applicant did not request a decision by the Constitutional Court (i.e. R-I cases "resolved"). However, these cases do not represent a

significant burden in comparison to the overall workload of the Constitutional Court, therefore they are statistically shown only within the framework of the general R-I register.

In view of the statistical data, it should be underlined that the burden on the Constitutional Court cannot be measured by quantitative data, as the true burden always depends on the nature of the individual cases, on their difficulty, and on the importance and complexity of the constitutional questions that they raise.

8. 2. Cases Resolved

In 2017, the Constitutional Court resolved fewer cases than in 2016 (945 cases compared to 1,094 cases, a 13.6% decrease). The lower number of cases resolved can to a large extent be attributed to the fact that four Constitutional Court judges were replaced in 2017. Taking into account that two Constitutional Court judges were replaced already in 2016, such entails that two thirds of the Constitutional Court judges were replaced in a relatively short period of time. Considering that new judges need a certain period of time to become fully engaged in their work, such an extensive change in the composition of the Constitutional Court inevitably affects the effectiveness of its work. The replacement of these Constitutional Court judges coincided with changes in the personnel of the Legal Advisory Department, as eight advisors of the Constitutional Court were replaced in 2017 due to retirements and resignations. In 2017, open competitions were carried out on the basis of which new advisors were employed to replace the advisors whose employment ceased during the period in which austerity measures stemming from the economic crisis were implemented; for several consecutive years the Constitutional Court did not hire new personnel, despite such being necessary to ensure the effective work of Constitutional Court judges. As holds true for new Constitutional Court judges, also new advisors need a certain period of time to be initiated into their work, which, given the extent of the personnel replacement, has significantly affected the work efficiency of the Legal Advisory Department and, consequently, of the Constitutional Court as a whole. The improvement in work efficiency resulting from these personnel replacements will only become evident in 2018. In any case, it must also be stressed that the Constitutional Court should not be expected to increase the number of cases resolved year after year, and even less so while the share of complex cases is increasing. The reforms already initiated by the thus far unsuccessful constitutional amendments are very much needed.

The distribution of cases resolved was similar to the distribution of cases received. In 2017, the Constitutional Court resolved 156 cases relating to the constitutionality or legality of regulations (U-I cases), amounting to a 16.5% share of all cases resolved. In comparison to 2016, when it resolved 214 petitions and requests for a review of the constitutionality of regulations, this represents a 27.1% decrease. In 2017, as has been the case every year thus far, constitutional complaints represented the majority of cases resolved. The Constitutional Court resolved 784 such cases, amounting to an 83% share of cases resolved and representing a 9.9% decrease in comparison to 2016, when it resolved 870 constitutional complaints. With regard to the individual panels of the Constitutional Court, the highest number of constitutional complaints was resolved by the Civil Law Panel (333), followed by the Administrative Law Panel (321) and the Criminal Law Panel (130). The number of cases resolved by the Administrative Law Panel increased by 24.9%; the number of cases resolved by the Civil Law Panel decreased by 19.8%, while the number of cases resolved by the Criminal Law Panel decreased significantly, namely by 34.3%. That the number of cases resolved by the Criminal Law Panel decreased relatively more is mainly a consequence of the fact that the number of simple minor offence cases has continued to decrease and

the number of complex criminal cases has continued to increase, as has already been mentioned. Furthermore, the personnel problems in the Legal Advisory Department were most prominent precisely regarding the Criminal Law Panel, as the highest number of temporary absences from work were recorded among advisors carrying out expert work in cases from this legal field. At the same time, due to the cessation of the employment of some advisors, most new advisors were employed precisely in the field of criminal law. In addition to proceedings for a review of the constitutionality or legality of regulations and constitutional complaints, the Constitutional Court also resolved five jurisdictional disputes (P cases) in 2017.

In terms of content, the greatest number of constitutional complaints resolved referred to civil law litigation (26.1%), followed by administrative disputes (14.5%), criminal cases (11.7%), commercial disputes (6.1%), labour disputes (5.6%), enforcement (5.4%), and minor offences (4.7%). Similarly as with the number of cases received, also as regards the number of cases resolved a completely opposite trend in criminal cases can be noted in comparison to minor offence cases.

In addition to the data regarding the total number of cases resolved, also the information regarding how many cases the Constitutional Court resolved on the merits, i.e. by a decision, is important. Out of a total of 945 cases resolved in 2017, the Constitutional Court adopted a decision in 111 proceedings (11.7% of all cases resolved), while the others were resolved by an order. If decisions on the merits according to the individual registers are considered, it can be noted that in 156 proceedings for a review of the constitutionality or legality of regulations (U-I cases), the Constitutional Court adopted 19 decisions (12.2%), and in constitutional complaint proceedings it resolved 88 out of 784 cases by a decision (11.4%). Statistically speaking, in 2017 the Constitutional Court adopted 50% fewer decisions in proceedings for a review of the constitutionality or legality of regulations than in the previous year (19 compared to 38), while in constitutional complaint proceedings it adopted more decisions than in 2016 (88 compared to 42). However, it has to be underlined that out of 88 decisions, 33 were of the same type, therefore 32 of them – after the Constitutional Court adopted a precedential decision on the first such case by a plenary decision – were adopted by a Constitutional Court panel (i.e. panel decisions on the basis of the third paragraph of Article 59 of the Constitutional Court, whereby a panel can grant a constitutional complaint if the Constitutional Court has already decided in an analogous case). Even if we count these cases of the same type as a single decision, it can be noted that the Constitutional Court adopted more decisions in constitutional complaint proceedings than the previous year (56 compared to 42), however the total number of decisions is then a bit lower than in 2016 (79 compared to 86). It is characteristic of the decisions of the Constitutional Court adopted in 2017 that they dealt with a high number of new and diverse constitutional questions; these decisions, therefore, have an important precedential effect. Only the most important of these decisions are briefly presented in the present report. Constitutional Court judges submitted 55 separate opinions, of which 32 were dissenting, 20 were concurring, and 3 were partially concurring and partially dissenting.

In 2017, the success rate of complainants, petitioners, and applicants, taken as a whole, was, statistically speaking, higher than in 2016. This is above all due to the higher success rate in constitutional complaint cases, whereas the success rate in cases for a review of the constitutionality or legality of regulations was lower. Of the 156 resolved petitions and requests for a review of the constitutionality or legality of regulations, in 11 cases the Constitutional Court established that the law was unconstitutional (7% of all U-I cases), of which it abrogated the relevant statutory provisions in six cases, whereas in five cases it adopted a declaratory decision; in three of these declaratory decisions it imposed on the legislature a time limit by which it must remedy the

established unconstitutionality. Applicants were also less successful at challenging implementing regulations, as the Constitutional Court established the unconstitutionality or illegality of an implementing regulation in two cases (1.3% of all U-I cases). The combined success rate in U-I cases was thus 8.3% (12.6% in 2016). The success rate of constitutional complaints was higher than in previous years. The Constitutional Court granted 82 (i.e. 10.5%) of all constitutional complaints resolved in 2017 (784), and dismissed by a decision eight constitutional complaints as unfounded. Two cases were partially granted and partially dismissed. In comparison, the success rate with regard to constitutional complaints was 4.6% in 2016. A factor that influenced the higher success rate in 2017 was the already-mentioned fact that the Constitutional Court adopted 32 so-called panel decisions in cases of the same type. If these cases are not taken into account, 56 constitutional complaints were granted (i.e. a success rate of 7.1%). The success rate with regard to constitutional complaints (and other applications) must, of course, always be interpreted carefully, as the numbers do not reflect the true importance of these cases. These cases refer to matters that provide answers to important constitutional questions, thus their significance for the development of (constitutional) law far exceeds their statistically expressed quantity.

With regard to successful constitutional complaints, it can be concluded that the Constitutional Court most often (19 times) dealt with a violation of Article 22 of the Constitution. This provision of the Constitution guarantees a fair trial and includes a series of procedural rights that in practice entail, most often, the right to be heard and the right to a reasoned judicial decision. To some degree, violations of the right to judicial protection determined by the first paragraph of Article 23 of the Constitution also stand out; the Constitutional Court established such a violation eight times.

The average period of time it took to resolve a case in 2017 was approximately the same or a little longer compared to 2016. On average, the Constitutional Court resolved a case in 336 days (as compared to 299 days in the previous year). The average duration of proceedings for a review of the constitutionality or legality of regulations was 372 days, whereas constitutional complaints were resolved by the Constitutional Court on average in 328 days. When interpreting these data, one needs to be careful, as average data do not reflect the entire picture and can be misleading. Simpler cases are, as a general rule, resolved faster by the Constitutional Court, whereas the resolution of more complex cases often takes much more time than the average amount of time it takes to resolve a case. Due to the significant burden on Constitutional Court judges and advisors, individual cases can take up to a few years to resolve. The average duration of resolved cases should not be confused with the time period in which the Constitutional Court is obliged to ensure the right to a decision within a reasonable time. Naturally, the time period for ensuring this right must be adapted to the complexity of the proceedings. At the Constitutional Court the time period needed for more complex cases is in general at least two years. Consequently, only cases older than two years can be classified as backlog cases.

8. 3. Unresolved Cases

At the end of 2017 the Constitutional Court had a total of 1,609 unresolved cases remaining, of which eleven were from 2014, 101 from 2015, and 560 from 2016. The remaining unresolved cases (937) were received in 2017. Among the unresolved cases, 425 cases were priority cases and 146 cases were absolute priority cases. Such designation is primarily assigned to cases that, in light of their nature, also the regular courts must consider expeditiously. Priority cases include requests by courts for a review of the constitutionality of laws and other cases that the

Constitutional Court deems need to be considered expeditiously due to their importance to society. Among the constitutional complaints that remained unresolved as of the end of the year, in 13 cases the Constitutional Court suspended the implementation of the challenged individual acts until the adoption of its final decision. The suspension of the implementation of the challenged regulation was not ordered in any case involving a review of the constitutionality or legality of regulations that remained unresolved as of the end of the year.

The number of unresolved cases increased significantly in 2017 compared to 2016. At the end of 2016 the Constitutional Court had 1,219 unresolved cases, whereas at the end of 2017 this number was 1,609. This entails that in 2017 the number of unresolved cases increased by 32%. Such an increase can be explained by the already mentioned decrease in the number of resolved cases, on the one hand, and by the somewhat higher number of cases received, on the other. In comparison with 2016, in 2017 the number of cases older than two years – which can be classified as the backlog of the Constitutional Court – increased, and even doubled (112 compared to 48). Considering the fact that the number of decisions adopted in 2017 did not significantly differ from previous years, the total lower number of cases resolved must be attributed to the lower number of decisions adopted by orders (rejections, dismissals, inadmissibility decisions). Generally speaking, it can be noted that the trend of a decrease in the number of rejections and other simple decisions continues. To illustrate, in 2011 the Constitutional Court rejected 828 constitutional complaints and 205 petitions and requests, whereas in 2017 it rejected 338 constitutional complaints and 111 petitions and requests. This entails that the reason for the increase in the number of unresolved cases (as well as the cases that represent the backlog) is not a lower number of decisions on the merits adopted by the Constitutional Court, but a smaller share of simple cases that do not have special significance for the development of law, in particular for respect for human rights and fundamental freedoms, but which nevertheless prolong the time needed for the decision-making of the Constitutional Court in individual cases. In other words, the number of applications that need to be rejected is decreasing, while the number of quality applications that raise weighty constitutional issues and require in-depth substantive consideration by the Constitutional Court is increasing.

In addition to the changes in the structure of cases that in the long term and objectively affect the (statistical) efficiency of the work of the Constitutional Court, for 2017 it must in particular be stressed that the increased number of unresolved cases was especially the result of the mentioned extensive personnel changes, as regards both the judges and within the Legal Advisory Department. It should also be noted that the data regarding the unresolved cases and the backlog of cases does not take into account the complexity of the cases considered by the Constitutional Court or the burden placed thereon as a consequence. The data regarding the unresolved cases also does not entail that the Constitutional Court has not yet considered these cases at all; it has considered a significant number of unresolved cases, but did not adopt a decision thereon by the end of the year.

In view of the number of cases received, among which the number of constitutionally complex cases is increasing, and considering the usual fluctuations in the personnel structure (retirements, resignations), it must be underlined that both the judges of the Constitutional Court and the advisory personnel are overburdened. In light of the fact that in the next three years a further three Constitutional Court judges whose terms of office will be coming to an end will be replaced by new Constitutional Court judges – which will again affect the efficiency of the work of the Constitutional Court – it is also difficult to expect that the trend as to an increasing number of unresolved cases will reverse significantly.

9. Summary of Statistical Data for 2017

Cases within the jurisdiction of the Constitutional Court are entered into different types of registers:

Key	REGISTER
Register U-I	cases involving a review of the constitutionality and legality of regulations and general acts issued for the exercise of public authority
Register Up	cases involving constitutional complaints
Register P	cases involving jurisdictional disputes
Register U-II	applications for the review of the constitutionality of referendum questions
Register Rm	opinions on the conformity of treaties with the Constitution in the process of ratifying a treaty
Register Mp	appeals in procedures for confirming the election of deputies of the National Assembly and the election of members of the National Council
Register Op	cases involving the impeachment of the President of the Republic, the President of the Government, or ministers
Register Ps	cases involving the review of the constitutionality of the acts and activities of political parties
Register R-I	general register

The Constitutional Court examines constitutional complaints in the following panels:

Key	PANEL
Ci - Civil Law Panel	panel for the examination of constitutional complaints in the field of civil law
A - Administrative Law Panel	panel for the examination of constitutional complaints in the field of administrative law
Cr - Criminal Law Panel	panel for the examination of constitutional complaints in the field of criminal law

Table **1** Summary Data on All Cases in 2017

REGISTER	CASES PENDING AS OF 31 DECEMBER 2016*	CASES RECEIVED IN 2017	CASES RESOLVED IN 2017	CASES PENDING AS OF 31 DECEMBER 2017
Up	997	1134	784**	1347
U-I	218	198	156**	260
P	5	2	5	2
U-II				
Rm				
Mp				
Ps				
Op				
Total	**1220**	**1334**	**945**	**1609**

***** The number of cases pending as of 31 December 2016 does not completely match the data provided in last year's overview.
****** Five U-I cases were resolved by being joined together, as were three Up cases (a total of eight cases).

Table **2** Summary Data regarding R-I Cases in 2017

REGISTER	CASES PENDING AS OF 31 DECEMBER 2016	CASES RECEIVED IN 2017	CASES RESOLVED IN 2017	CASES PENDING AS OF 31 DECEMBER 2017
All R-I	43	340	336	47
R-I* (remaining in the R-I Register)	43	103	73	47
Total in all registers, including the R-I register	**1263**	**1437**	**1018**	**1656**

***** Upon being transferred into another register, these cases are statistically no longer registered in the general R-I register, but rather in the respective Up or U-I register.

Table **3** Summary Data regarding Up Cases according to Panel in 2017

PANEL	CASES PENDING AS OF 31 DECEMBER 2016*	CASES RESOLVED IN 2017	CASES RESOLVED IN 2017	CASES PENDING AS OF 31 DECEMBER 2017
Civil Law	376	458	333	501
Administrative Law	313	423	321	415
Criminal Law	308	253	130	431
Total	**997**	**1134**	**784**	**1347**

***** The number of cases pending as of 31 December 2016 does not completely match the data provided in last year's overview (the net difference is two cases).

Table **4** Pending Cases by Year Received as of 31 December 2017

YEAR	2014	2015	2016	2017	TOTAL
U-I	2	24	93	141	260
Up	9	77	467	794	1347
P	0	0	0	2	2
Total	**11**	**101**	**560**	**937**	**1609**

9. 1. Cases Received

Figure **1** Distribution of Cases Received in 2017

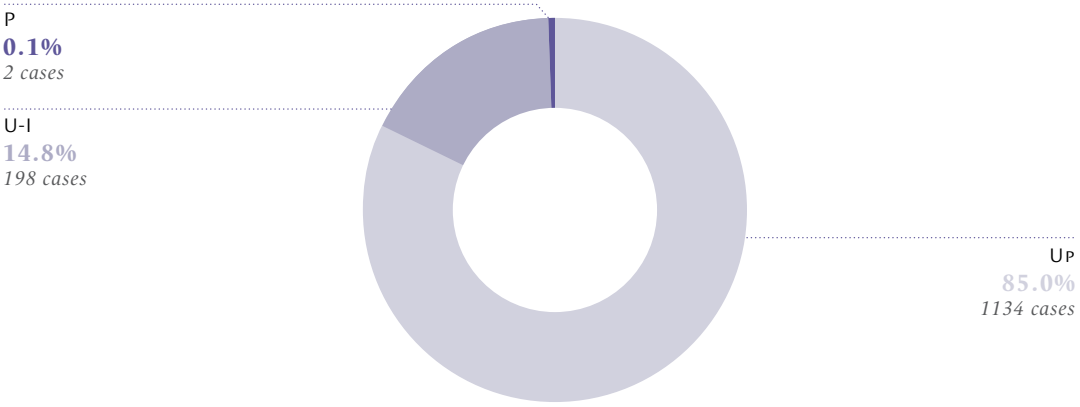


Table **5** Cases Received according to Type and Year

YEAR	U-I	Up	P	U-II	Ps	Mp	Rm	TOTAL
2012	324	1203	13	2	1	1		1544
2013	328	1031	7					1366
2014	255	1003	20					1278
2015	212	1003	7	2				1224
2016	228	1092	4					1324
2017	**198**	**1134**	**2**					**1334**
2017/2016	**↓ -13.2%**	**↑ +3.8%**	**↓ -50.0%**					**↑ +0.8%**

Figure **2** Total Number of Cases Received by Year

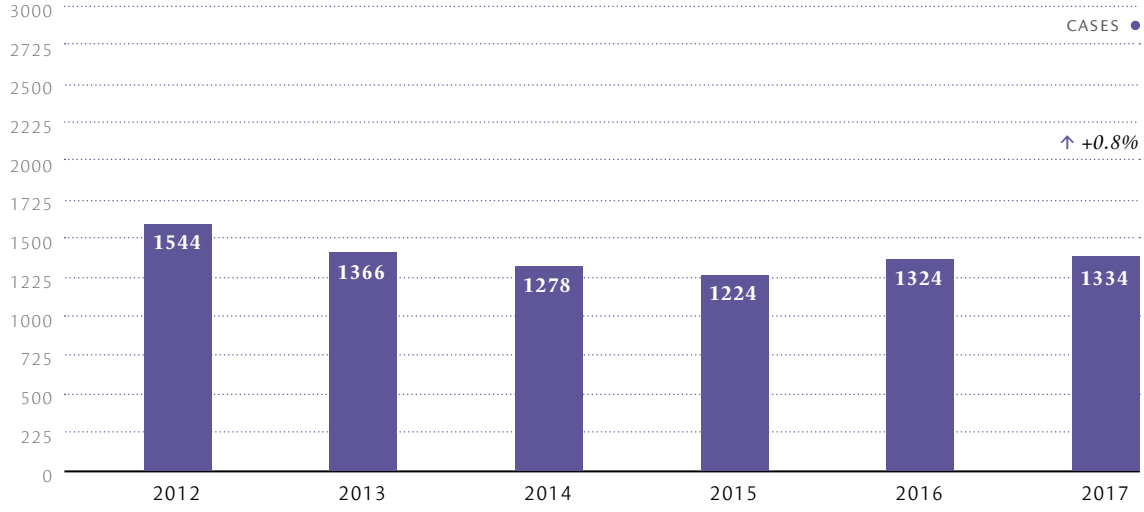


Figure **3** Number of U-I Cases Received by Year

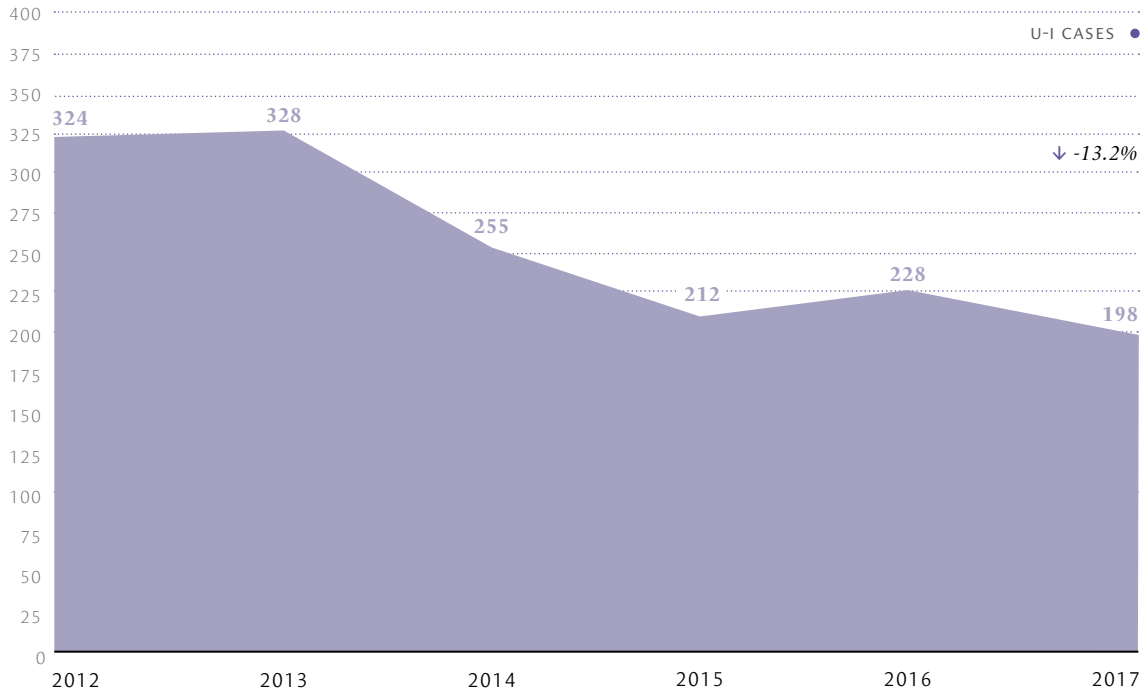


Table **6** Number of Requests for a Review Received in 2017 according to Applicant

APPLICANTS REQUESTING A REVIEW	NUMBER OF REQUESTS FILED
Vrhovno sodišče Republike Slovenije (Supreme Court of the Republic of Slovenia)	7
Upravno sodišče Republike Slovenije (Administrative Court of the Republic of Slovenia)	4
National Council of the Republic of Slovenia	3
Government of the Republic of Slovenia	3
Ombudsman of the Republic of Slovenia	2
Bank of Slovenia	1
Delovno in socialno sodišče v Ljubljani (Labour and Social Court in Ljubljana)	1
Information Commissioner	1
Mestna občina Ljubljana (City of Ljubljana)	1
Občina Dol pri Ljubljani (Dol pri Ljubljani Municipality)	1
Občina Izola (Izola Municipality)	1
Občina Tolmin (Tolmin Municipality)	1
Občina Trbovlje (Trbovlje Municipality)	1
Okrajno sodišče v Mariboru (Local Court in Maribor)	1
Okrožno sodišče v Celju (District Court in Celje)	1
Total	**29**

Table **7** Legal Acts Challenged by Year

YEAR	LAWS AND OTHER ACTS OF THE NATIONAL ASSEMBLY	DECREES AND OTHER ACTS OF THE GOVERNMENT	RULES AND OTHER ACTS OF MINISTRIES	ORDINANCES AND OTHER ACTS OF SELF-GOVERNING LOCAL COMMUNITIES	REGULATIONS OF OTHER AUTHORITIES
2012	95	20	12	50	/
2013	49	22	11	68	/
2014	89	10	20	42	4
2015	66	4	10	31	3
2016	91	17	7	36	5
2017	**86**	**8**	**8**	**26**	**5**

Table **8** Acts Challenged Multiple Times in the Cases Received in 2017

ACTS CHALLENGED MULTIPLE TIMES IN 2017	NUMBER OF CASES
Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act	18
Mining Act	9
Criminal Procedure Act	9
Pension and Disability Insurance Act	8
Civil Procedure Act	7
Elections and Referendum Campaign Act	5
Construction Act	4
Tax Procedure Act	4
Claim Enforcement and Security Act	4
Radio-Television Slovenia Act	3
Pharmacy Practice Act	3
International Protection Act	3
Attorneys Act	3
Minor Offences Act	3
General Administrative Procedure Act	3
Constitutional Court Act	3
Marriage and Family Relations Act	3

Table **9** Number of Cases Received according to Panel in 2017

YEAR	CIVIL	ADMINISTRATIVE	CRIMINAL	TOTAL
2012	476	460	267	1203
2013	466	340	225	1031
2014	487	313	203	1003
2015	472	326	205	1003
2016	458	384	250	1092
2017	458	423	253	1134
2017/2016	**0.0%**	**↑ +10.2%**	**↑ +1.2%**	**↑ +3.8%**

Figure **4** Distribution of Legal Acts Challenged (U-I Cases Received)

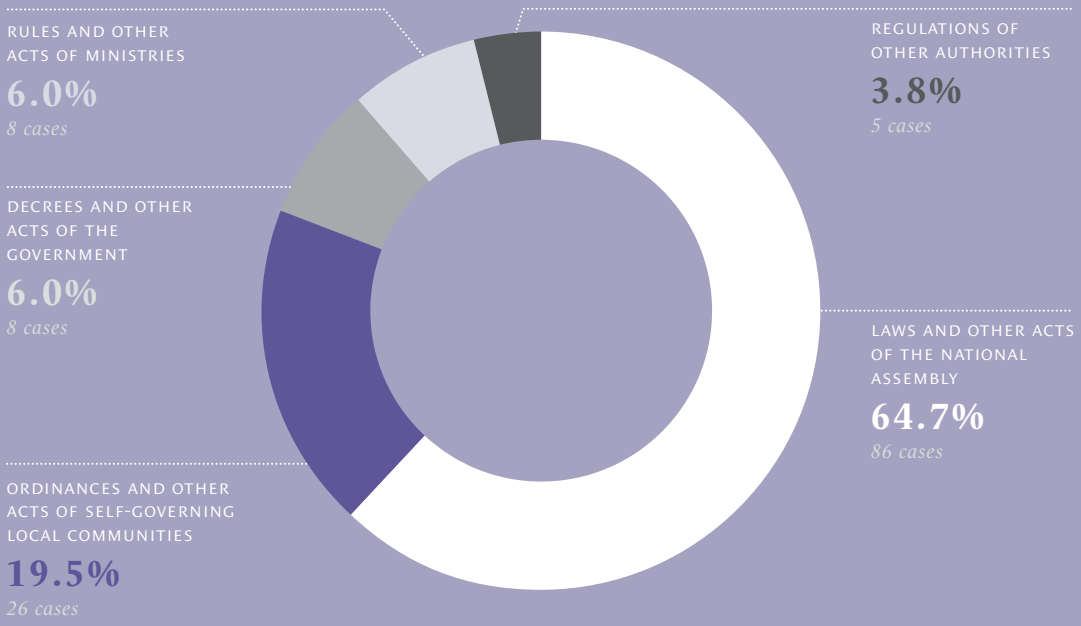


Figure **5** Number of Cases Received according to Panel in 2017

Figure **6** Number of Up Cases Received by Year

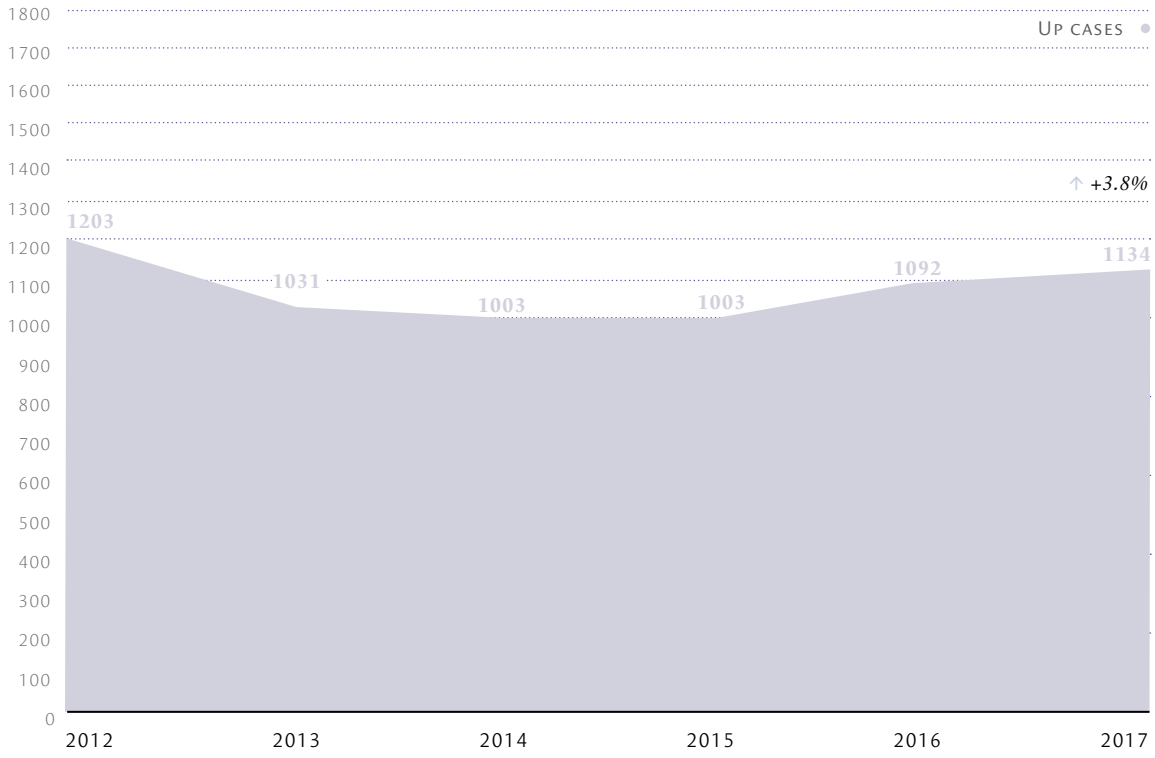


Table **10** Up Cases Received according to Type of Dispute

Type of Dispute (Up cases)	Received in 2017	Percentage in 2017	Received in 2016	Change 2017/2016
Civil Law Litigation	267	23.5%	267	0.0%
Criminal Cases	196	17.3%	201	-2.5% ↓
Other Administrative Disputes	146	12.9%	115	27.0% ↑
Execution of Obligations	69	6.1%	60	15.0% ↑
Labour Law Disputes	66	5.8%	106	-37.7% ↓
Commercial Law Disputes	63	5.6%	75	-16.0% ↓
Taxes	63	5.6%	45	40.0% ↑
Minor Offences	56	4.9%	47	19.1% ↑
Insolvency Proceedings	52	4.6%	44	18.2% ↑
Social Law Disputes	39	3.4%	30	30.0% ↑
Non-litigious Civil Law Proceedings	37	3.3%	28	32.1% ↑
Matters concerning Spatial Planning	19	1.7%	16	18.8% ↑
Civil Status of Persons	19	1.7%	18	5.6% ↑
Proceedings related to the Land Register	11	1.0%	7	57.1% ↑
Succession Proceedings	11	1.0%	9	22.2% ↑
Denationalisation	9	0.8%	15	-40.0% ↓
No Dispute	6	0.5%	3	100.0% ↑
Other	4	0.4%	6	-33.3% ↓
Election	1	0.1%	0	/
Total	**1134**	**100.0%**	**1092**	**↑ 3.8%**

Table **11** Jurisdictional Disputes – P Cases Received according to Initiator of the Dispute

INITIATOR OF THE JURISDICTIONAL DISPUTE (P CASES)	NUMBER OF CASES
Okrajno sodišče v Mariboru (Local Court in Maribor)	1
Mestna občina Ljubljana (City of Ljubljana)	1
Total	**2**

9. 2. Cases Resolved

Figure **7** Distribution of Cases Resolved in 2017

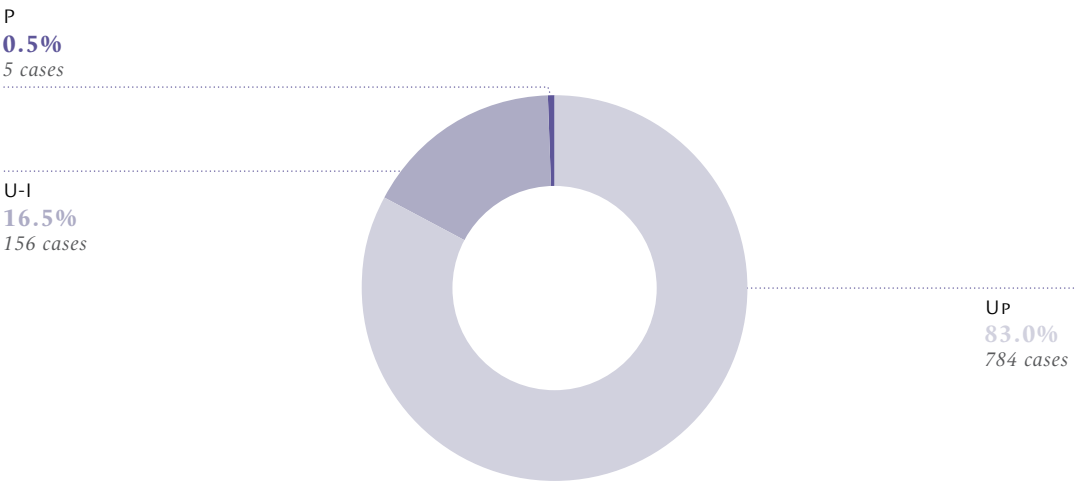


Table **12** Number of Cases Resolved according to Type of Case and Year Resolved

YEAR	U-I	Up	P	U-II	Ps	Rm	Mp	TOTAL
2012	350	1287	19	2	1	/	/	1659
2013	349	1074	7	/	/	/	1	1431
2014	271	933	12	/	/	/	/	1216
2015	221	964	10	2	/	/	/	1197
2016	214	870	10	/	/	/	/	1094
2017	156	784	5	/	/	/	/	945
2017/2016	**↓ -27.1%**	**↓ -9.9%**	**↓-50.0%**	**/**	**/**	**/**	**/**	**↓ -13.6%**

Figure **8** Number of Cases Resolved by Year Resolved

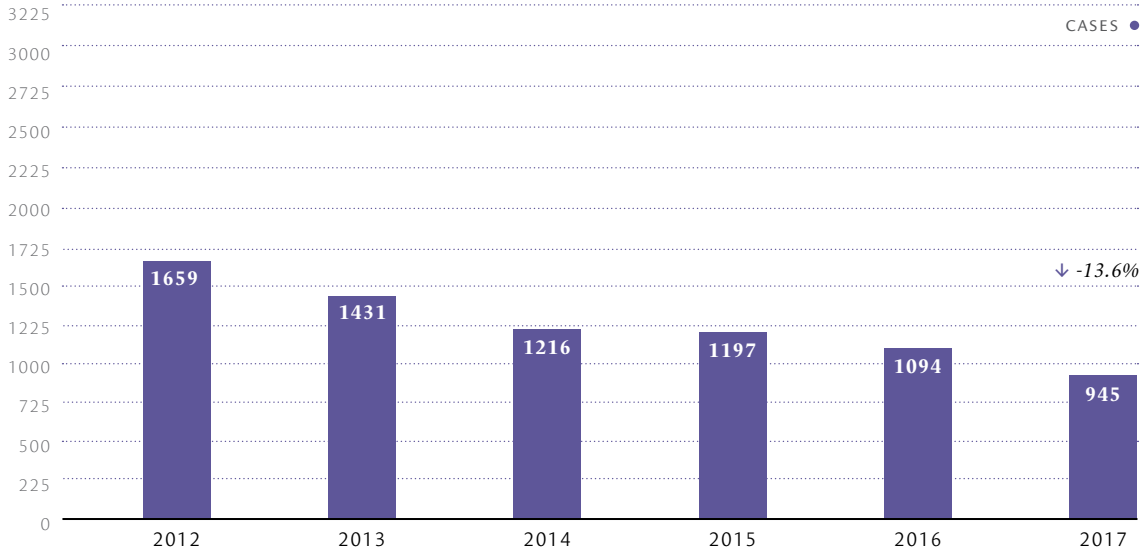


Figure **10** Number of U-I Cases Resolved by Year

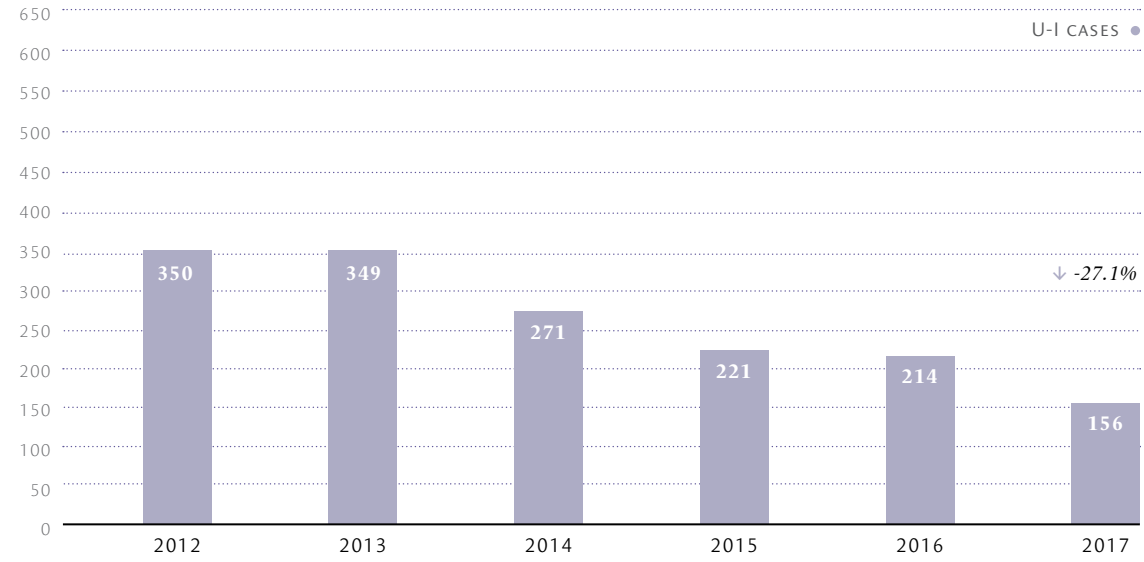


Table **13** U-I Cases Resolved on the Merits by Year

YEAR	RESOLVED	RESOLVED ON THE MERITS	PERCENTAGE
2012	350	45	12.9%
2013	349	36	10.3%
2014	271	29	10.7%
2015	221	33	14.9%
2016	214	38	17.8%
2017	**156**	**19**	**12.2%**

Figure **9** Distribution of Cases Resolved according to Type of Case and Year Resolved

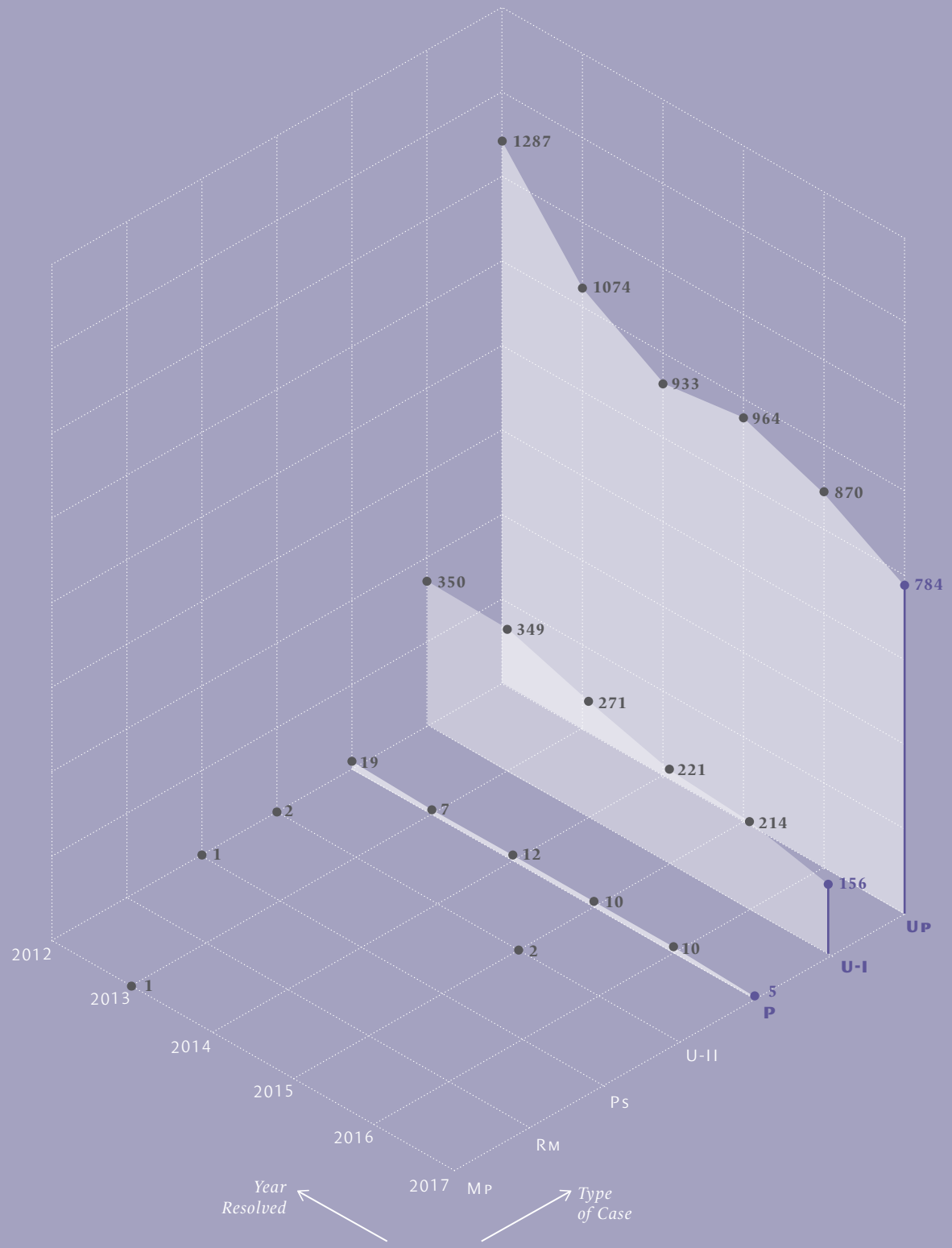


Table **14** Number of U-I Cases Resolved according to Type of Resolution and Year

TYPE OF RESOLUTION	2017 REQUESTS	2017 PETITIONS / *SUA SPONTE*	2017 TOTAL	2016	2015	2014	2013	2012
Abrogation of statutory provisions	4	2	6	5	9	11	6	6
Inconsistency with the Constitution – statutory provisions	1	1	2	5	5	4	3	2
Inconsistency with the Constitution and determination of a deadline – statutory provisions	2	1	3	9	2	5	5	1
Not inconsistent with the Constitution – statutory provisions	7	0	7	14	10	0	15	9
Inconsistency, abrogation, or annulment of the provisions of regulations	2	0	2	8	5	7	12	22
Not inconsistent with the Constitution or the law – provisions of regulations	0	0	0	1	0	2	1	2
Dismissed	0	39	39	41	37	38	61	39
Rejected	15	96	111	132	154	156	238	187
Proceedings were stayed	2	8	10	8	8	31	22	82

Figure **11** Number of Up Cases Resolved by Year

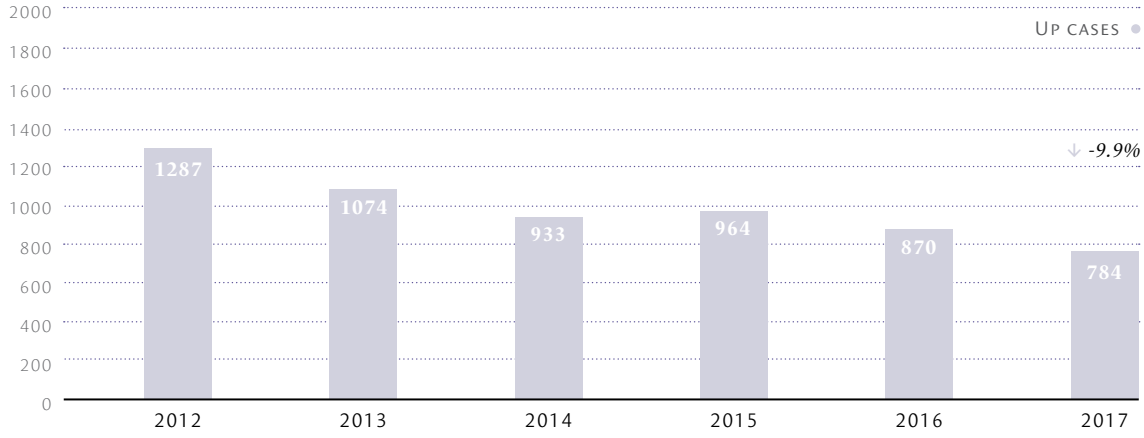


Table **15** Number of Up Cases Resolved according to Panel and Year

YEAR	CIVIL	ADMINISTRATIVE	CRIMINAL	TOTAL
2012	528	445	314	1287
2013	453	385	236	1074
2014	437	361	135	933
2015	507	357	100	964
2016	415	257	198	870
2017	333	321	130	784
2017/2016	**↓ -19.8%**	**↑ 24.9%**	**↓ -34.3%**	**↓ -9.9%**

Figure **12** Distribution of Up Cases Resolved according to Panel and Year

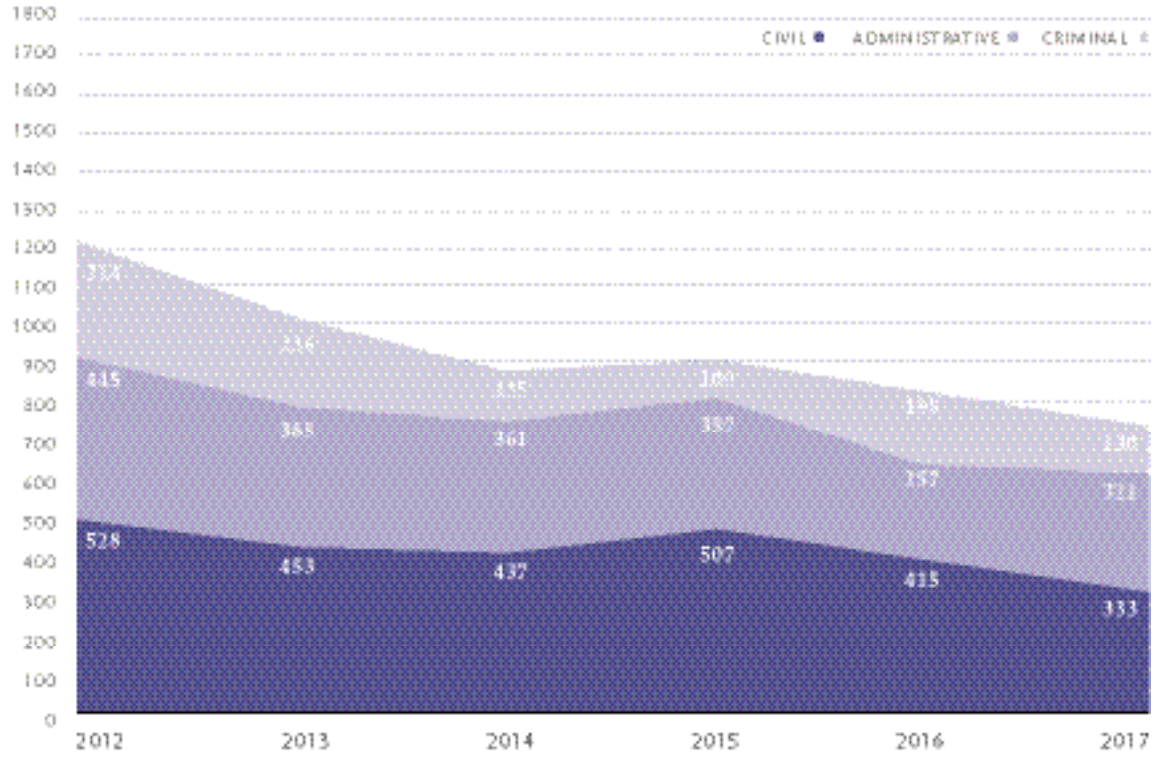


Table **16** Number of Up Cases Resolved according to Type of Dispute

TYPE OF DISPUTE	2017	PERCENTAGE IN 2017	2016	CHANGE 2017/2016
Civil Law Litigation	205	26.1%	240	-14.6% ↓
Other Administrative Disputes	114	14.5%	79	44.3% ↑
Criminal Cases	92	11.7%	149	-38.3% ↓
Commercial Law Disputes	48	6.1%	46	4.3% ↑
Labour Law Disputes	44	5.6%	60	-26.7% ↓
Execution of Obligations	42	5.4%	66	-36.4% ↓
Minor Offences	37	4.7%	48	-22.9% ↓
Denationalisation	36	4.6%	5	620.0% ↑
Insolvency Proceedings	33	4.2%	39	-15.4% ↓
Social Law Disputes	30	3.8%	23	30.4% ↑
Taxes	28	3.6%	26	7.7% ↑
Non-litigious Civil Law Proceedings	25	3.2%	38	-34.2% ↓
Civil Status of Persons	18	2.3%	12	50.0% ↑
Matters concerning Spatial Planning	13	1.7%	16	-18.8% ↓
No Dispute	6	0.8%	2	200.0% ↑
Proceedings related to the Land Register	5	0.6%	9	-44.4% ↓
Other	4	0.5%	4	0.0% ↑
Succession Proceedings	3	0.4%	5	-40.0% ↓
Election	1	0.1%	0	/
Total	**784**	**100.0%**	**870**	**-9.9%**

Table **17** Up Cases Granted (two cases were partially granted and partially dismissed)

YEAR	ALL UP CASES RESOLVED	CASES RESOLVED ON THE MERITS	PERCENTAGE OF UP DECISIONS/ UP CASES RESOLVED	CASES GRANTED	PERCENTAGE OF UP CASES GRANTED/ UP CASES RESOLVED
2012	1287	43	3.3%	41	3.2%
2013	1074	19	1.8%	18	1.7%
2014	933	33	3.5%	29	3.1%
2015	964	81	8.4%	76	7.9%
2016	870	42	4.8%	40	4.6%
2017	**784**	**88**	**11.2%**	**82**	**10.5%**

Figure **13** Type of Decision in Up Cases Accepted for Consideration (two cases were partially granted and partially dismissed)

Table **18** Certain Other Types of Resolutions in Up Cases

YEAR	NOT ACCEPTED FOR CONSIDERATION	REJECTED
2012	798	537
2013	644	496
2014	605	340
2015	633	334
2016	539	334
2017	**424**	**338**

Table **19** Number of P Cases Resolved on the Merits

YEAR	RESOLVED	RESOLVED ON THE MERITS	PERCENTAGE
2012	19	8	42.1%
2013	7	5	71.4%
2014	12	8	66.7%
2015	10	8	80.0%
2016	10	6	60.0%
2017	**5**	**4**	**80.0%**

Table **20** Average Number of Days Needed to Resolve a Case in 2017 according to Type of Case

REGISTER	AVERAGE DURATION IN DAYS
U-I	372
Up	328
P	418
R-I	46
Total	**260**
Total excluding R-I cases	**336**

Figure **14** Average Number of Days Needed to Resolve U-I and Up Cases by Year

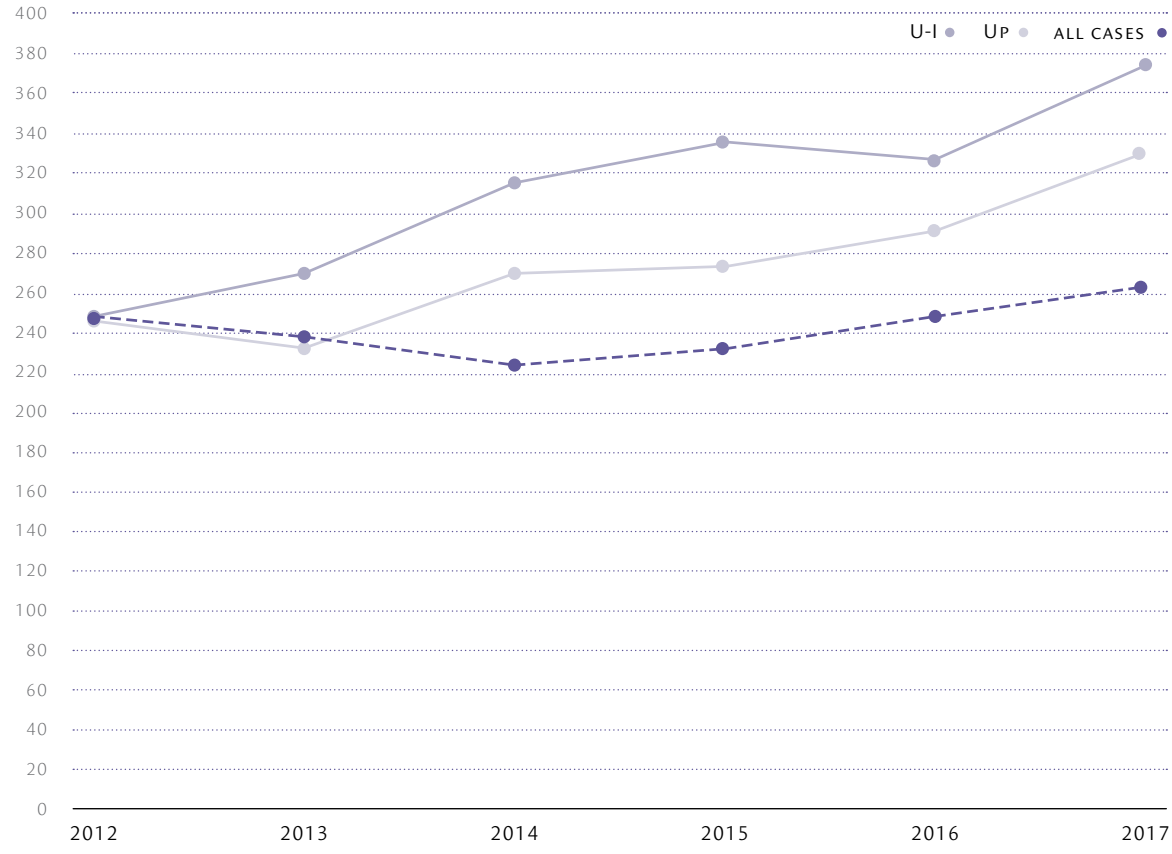


Table **21** Average Number of Days Needed to Resolve Up Cases according to Panel

PANEL	2017	2016	CHANGE 2017/2016
Civil Law	274	257	+6.6% ↓
Administrative Law	332	223	+48.9% ↑
Criminal Law	463	440	+5.2% ↑
Total	**328**	**289**	**+13.5% ↑**

9. 3. Unresolved Cases

Table **22** Unresolved Cases by Year Received as of 31 December 2017

YEAR	2014	2015	2016	2017	TOTAL
U-I	2	24	93	141	260
Up	9	77	467	794	1347
P	0	0	0	2	2
Total	**11**	**101**	**560**	**937**	**1609**

Figure **15** Number of Cases Pending at Year End

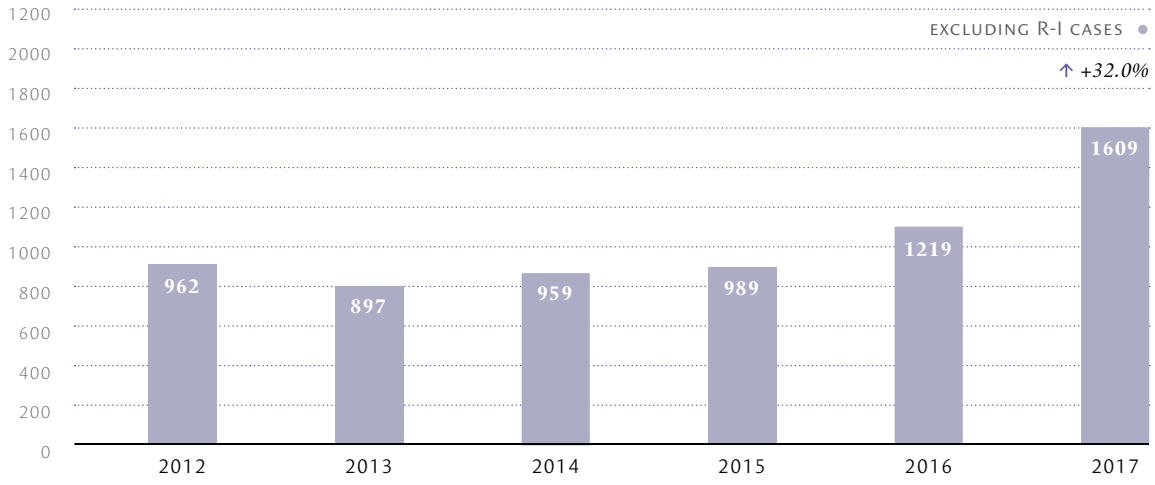
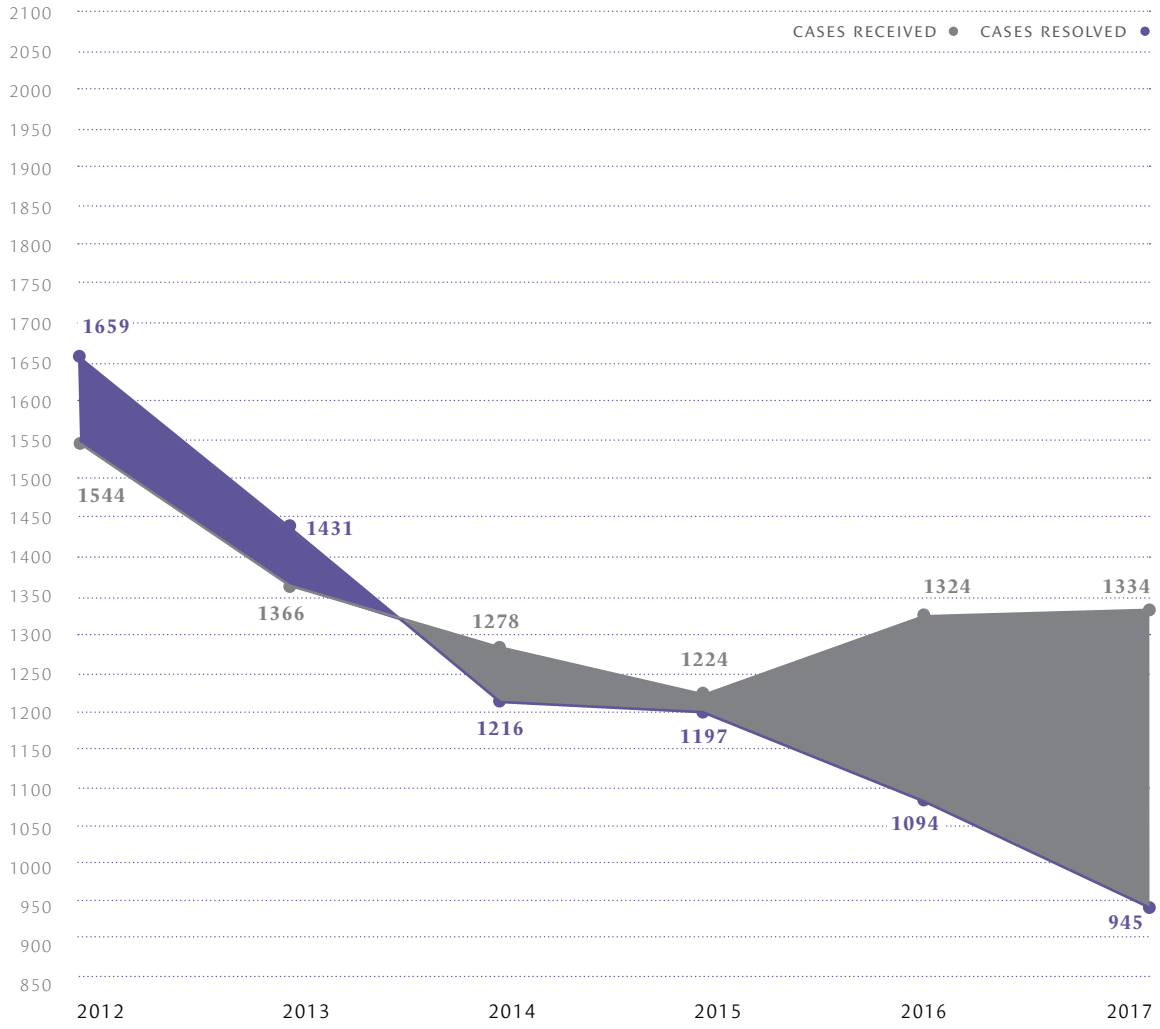


Table **23** Priority Cases Pending as of 31 December 2017

REGISTER	ABSOLUTE PRIORITY CASES	PRIORITY CASES	TOTAL
Up	105	381	486
U-I	59	42	101
P		2	2
Total without R-I	**164**	**425**	**589**

Figure **16** Figure 16: Cases Received and Resolved (excluding R-I cases)



9. 4. Financial Plan Outturn

Table **24** Financial Plan Outturn by Year (in EUR)

The data on the expenditure of public resources refer to resources from the state budget, earmarked funds, and cohesion funding, with the latter amounting to 2.71% of the outturn in 2017.

YEAR	SALARIES	MATERIAL COSTS	CAPITAL OUTLAYS	TOTAL	CHANGE FROM PREVIOUS YEAR
2010	3,902,162	704,651	386,564	4,993,377	7.2% ↑
2011	3,834,448	732,103	143,878	4,710,429	-5.7% ↓
2012	3,496,436	560,184	84,726	4,141,346	-12.1% ↓
2013	3,092,739	542,058	65,171	3,699,968	-10.7% ↓
2014	3,076,438	530,171	98,230	3,704,839	0.1% ↑
2015	3,050,664	542,833	171,010	3,764,507	1.6% ↑
2016	3,136,113	644,352	131,867	3,912,332	3.9% ↑
2017	**3,293,454**	**601,661**	**534,436**	**4,429,551**	**13.2%** ↑

Figure **17** Financial Plan Outturn by Year (in EUR mil.)

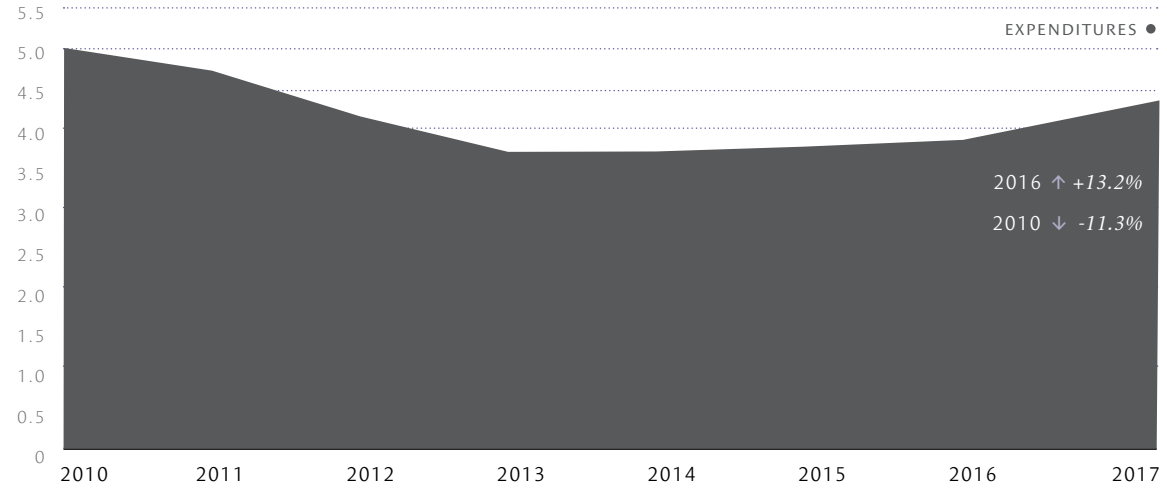


Figure **18** Distribution of Expenditures in 2017

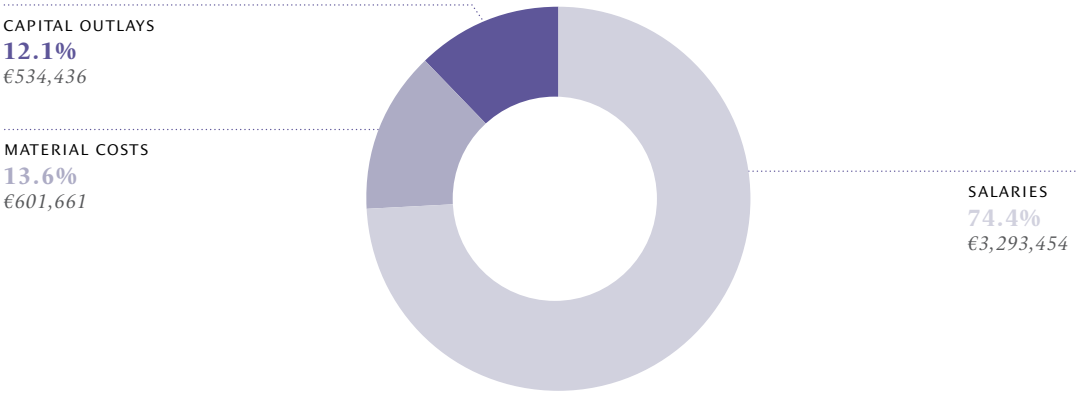
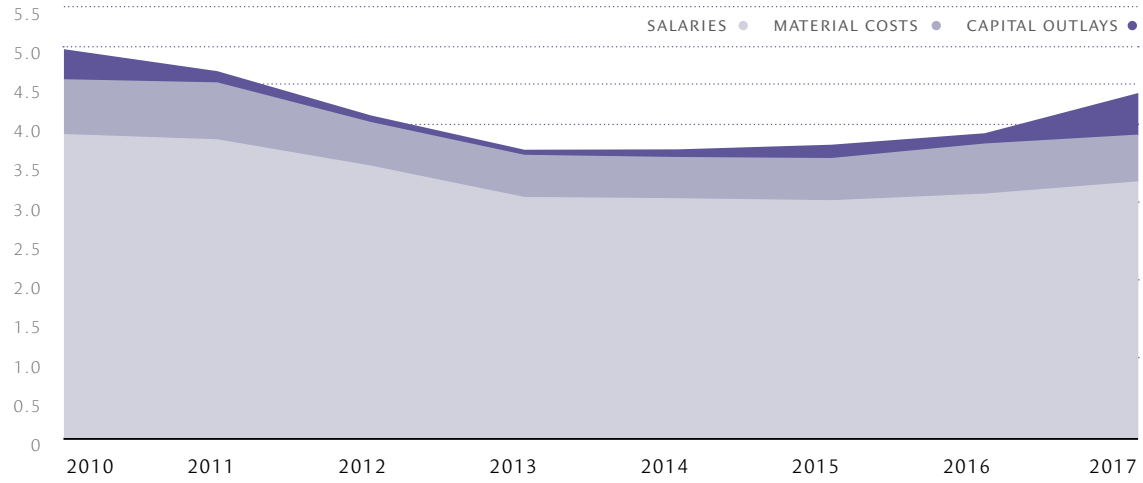


Figure **19** Distribution of Expenditures by Year (in EUR mil.)



Ne bomo je ustvarjali, ne bomo je delili in ne bomo našli pravice, če ni pravičnosti v nas!

We will not create, we will not mete out, and we will not find justice, if there is no justice inside of us.

Leonid Pitamic

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