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Constitutional Court of the Republic of Slovenia

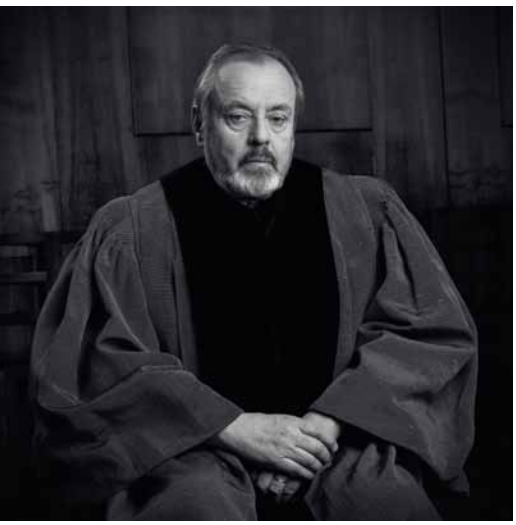
An overview of the work for 2010

The Constitutional Court is the highest body of the judicial power for the protection of constitutionality, legality, human rights, and fundamental freedoms.

Constitutional Court Act, Article 1

Constitutional Court of the Republic of Slovenia

An overview of the work for 2010



Foreword by the President of the Constitutional Court

This year, constitutional democracy in the Republic of Slovenia will attain twenty years existence. Although the consolidation of the rule of law sometimes also faces various obstacles and doubts, at this time Slovene citizens have undoubtedly accepted the rule of law as one of the highest values and goals. They believe in and want a state governed by the rule of law; therefore, they are all the more bothered if doubts, which are often justified, arise regarding its effectiveness. The Constitution of the Republic of Slovenia requires all public bodies to protect the values of a state governed by the rule of law and to strive to achieve this aim. The role of the Constitutional Court regarding this is of particular importance, crucial even, because as a guardian of constitutionality, human rights, and fundamental freedoms it is a pillar of Slovenia as a state governed by the rule of law. With the substantial powers vested in it and with its independent stance, the Constitutional Court significantly contributes to respect for human dignity and other foundations of the law. Its extremely extensive, effective, and also successful work continued in 2010, as is reflected in the present Annual Report. It is also evident that the Constitutional Court reduced the backlog to an acceptable level by exerting great effort. Due to the lack of success in securing the political consensus to amend the Constitution in order to allow the Constitutional Court to perform its work with more quality and more effectively, this extraordinary effort will be essential even in the future. The Constitutional Court will continue to vigorously demand respect for its decisions, as respect for the decisions of the Constitutional Court constitutes respect for the Constitution itself and for the values enshrined in it. It is these values that render our society decent, honourable, and noble and thus create a space for the free development of thought, ideas, and personalities, and ensure that our democratic and social state, a constitutional democracy based on the separation of three equal branches of power and respect for human rights, functions successfully.

Dr. Ernest Petrič

About the Constitutional Court

1. 1. Introduction

On 25 June 1991, the Republic of Slovenia became a sovereign and independent state and on 23 December 1991 the Constitution of the Republic of Slovenia was adopted, thus ensuring the protection of human rights and fundamental freedoms, as well as the principles of a state governed by the rule of law and of a social state, the principle of the separation of powers, and other principles that characterise modern European constitutional orders. Inclusion in the Council of Europe in 1993 and the thereby related ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms and accession to the European Union in 2004 confirmed Slovenia's commitment to respect contemporary European legal principles and to safeguard a high level of protection of human dignity.

In order to protect the constitutional system of the Republic of Slovenia as well as the abovementioned fundamental principles, rights, and freedoms of Europe, the Constitutional Court of the Republic of Slovenia has a special position and an important role, developed and confirmed also in the process of transition to a modern democratic social order.

Within the judicial branch of power, the Constitutional Court is the highest body for the protection of constitutionality, legality, human rights, and fundamental freedoms. The Constitutional Court is the guardian of the Constitution, therefore, by virtue of its powers and responsibilities it interprets the content of particular constitutional provisions. Thereby it determines the limits of admissible conduct of the bearers of authority, while at the same time protecting individuals against the arbitrariness of the authorities and violations of constitutional rights due to the actions of state authorities, local communities bodies, and other bearers of public authority. The decisions of the Constitutional Court thus contribute to the uniform application of law and to the highest possible level of legal certainty.

With consistent and decisive enforcement of the most important principles in practice, which reinforce the structure of the legal system, the Constitutional Court is engraved in the Slovene legal culture as one of the key elements for the enforcement and development of a state governed by the rule of law.

In order to honour the day when the Constitution was adopted and promulgated, the Constitutional Court celebrates Constitutionality Day every year on 23 December.

1. 2. The Position of the Constitutional Court

The position of the Constitutional Court as an autonomous and independent body derives from the Constitution, which determines its fundamental competences and functioning,* its position being regulated in more detail in the Constitutional Court Act. 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 and the constitutional rights of individuals and legal persons in relation to any authority.

The Act, which entered into force in its original form on 2 April 1994, regulates the mentioned issues in more detail, *inter alia*, the procedure for deciding in cases falling under the jurisdiction of the Constitutional Court, the procedure for the election of the judges and President of the Constitutional Court and of the General Secretary, as well as their position, rights, and responsibilities.

It stems from the principle that the Constitutional Court is an autonomous and independent state authority that the Constitutional Court alone determines its internal organisation and mode of operation and that it determines in more detail the procedural rules provided for by the Act. Among these documents, the Rules of Procedure of the Constitutional Court, which were first adopted by the Constitutional Court in 1998 on the basis of the new statutory regulation, are the most important. The competence of the Constitutional Court to independently decide on the appointment of legal advisors and the employment of other staff in this institution is crucial in ensuring its independent and impartial work. In accordance with this principle, the Constitutional Court also independently decides on the use of the funds for its work, which are determined by the National Assembly of the Republic of Slovenia upon the proposal of the Constitutional Court.

* The Constitutional Court acted as the Constitutional Court of the Republic of Slovenia in the former Socialist Federative Republic of Yugoslavia from 1963.

1. 3. Constitutional Court Jurisdiction

The Constitutional Court exercises extensive jurisdiction intended to ensure effective protection of constitutionality and for the prevention of violations of human rights and freedoms. The main part of its jurisdiction is explicitly determined in the Constitution, which, however, permits that additional jurisdiction also be determined by law.

The basic jurisdiction of the Constitutional Court concerns the protection of constitutionality and measures to be adopted in the event that any branch of power, legislative, executive, or judicial, exercises its competences and takes decisions contrary to the Constitution. Therefore, the Constitutional Court decides on the conformity of laws with the Constitution, ratified treaties, and generally accepted principles of international law. The Constitutional Court also decides on the conformity of treaties with the Constitution in the process of their ratification. In addition, under certain conditions, the Constitutional Court reviews the conformity of regulations inferior to law with the Constitution and laws.

The Constitutional Court also decides on jurisdictional disputes (for example, between the highest bodies of the State: the National Assembly, the President of the Republic, and the Government), on impeachment against the President of the Republic, the Prime Minister, or a Minister, on the unconstitutionality of the acts and activities of political parties, on the constitutionality of the decision to call a referendum, on matters concerning the confirmation of the election of deputies, and other similar disputes intended to ensure the constitutional order regarding the relationships between the different bearers of authority in the framework of a democratic regime.

The Constitutional Court also has jurisdiction to decide on constitutional complaints when the human rights or fundamental freedoms of an individual or a legal person are violated by individual acts of public authorities.

The decisions of the Constitutional Court are binding. With regard to its role in the legal system, the Constitutional Court must have the "last word", although it itself does not possess any measures by which it can enforce its decisions. The obligation, but also the responsibility, to respect its decisions is borne by the addressees (if the decision has *inter partes* effect) or by everyone, including the legislature (if the decision has *erga omnes* effect). It is also important that the ordinary courts respect the standpoints of the Constitutional Court in their case-law, because this is the only way to ensure the primacy of constitutional principles, human rights, and fundamental freedoms.

1. 4. Procedure for Deciding

1. 4. 1. The Constitutional Review of Regulations

The procedure to review the constitutionality or legality of regulations or general acts issued for the exercise of public authority is initiated upon the request of one of the entitled applicants (a court, the National Assembly, one third of the deputies of the National Assembly, the National Council, the Government, etc.). Anyone can lodge a petition to initiate such proceedings if they prove they have the appropriate legal interest, which is assessed by the Constitutional Court in every individual case.

In the proceedings, the Constitutional Court first reviews whether the procedural requirements for the consideration of the case are met (regarding the jurisdiction of the Constitutional Court, the request or petition having been filed in time, demonstrating legal interest, etc.). Regarding the petitions, this is followed by the procedure for deciding whether the Constitutional Court will accept the constitutional complaint for consideration.

In the next part of the proceeding, the Constitutional Court reviews the constitutionality or legality of the provisions of the regulations challenged by the request or by the petition accepted for consideration. The Constitutional Court may suspend the implementation of a challenged regulation until a final decision in the case is adopted.

By a decision, the Constitutional Court in whole or in part abrogates laws that are not in conformity with the Constitution. In addition, the Constitutional Court abrogates or annuls regulations or general acts issued for the exercise of public authority that are unconstitutional or unlawful (with *ex tunc* effects). If a regulation is unconstitutional or unlawful as it does not regulate a certain issue which it should regulate or it regulates such in a manner which does not enable abrogation or annulment, the Constitutional Court issues a declaratory decision thereon. The legislature or authority which issued such unconstitutional or unlawful regulation must remedy the established unconstitutionality or unlawfulness within the period of time determined by the Constitutional Court.

1. 4. 2 Constitutional Complaints

Constitutional complaints are intended to protect human rights and fundamental freedoms. A complaint can be lodged by anyone who deems that his rights or freedoms were violated by individual acts of state authorities, bodies of local communities, or other bearers of public

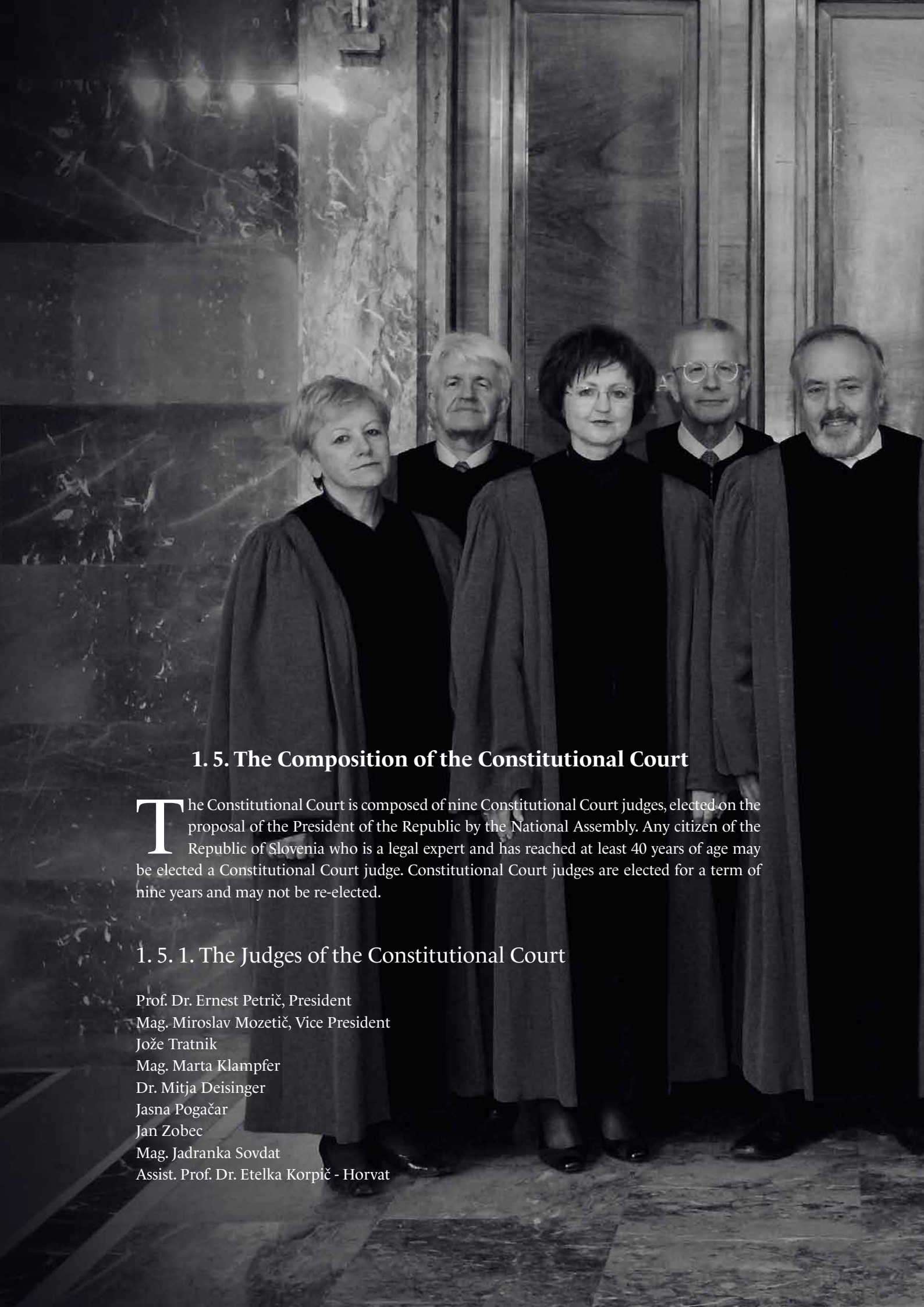
authority, however, except for some special instances, only after all legal remedies have been exhausted. The purpose of the constitutional complaint is not to review the irregularities concerning the establishment of the facts and application of substantive and procedural law, since the Constitutional Court is not an appellate court in relation to the courts deciding in a judicial proceeding. The Constitutional Court assesses only whether the challenged decision of the state authority (e.g. a judgment) violated any human right or fundamental freedom. Constitutional complaints against acts issued in matters of lesser importance (e.g. in small-claims disputes, in trespass to property disputes, and in minor offence cases), are as a general rule not admissible.

A constitutional complaint is accepted for consideration if the procedural requirements are met (i.e. with regard to the individual legal act, legal interest, the constitutional complaint having been filed in time, the exhaustion of all legal remedies, etc.) and if the substance of the matter is such that it is necessary and appropriate that the Constitutional Court decide on it. The Act thus determines that a constitutional complaint is accepted for consideration if the violation of human rights or fundamental freedoms had serious consequences for the complainant or if a decision in the case would decide an important constitutional question which exceeds the importance of the concrete case.

If the Constitutional Court decides that the constitutional complaint is substantiated, it annuls or abrogates the individual act by a decision and remands the case for new adjudication to the competent court or other body; however, under conditions defined by law, the Constitutional Court can also itself decide on the disputed right or freedom.

1. 4. 3. Consideration and Deciding

The Constitutional Court considers cases within its jurisdiction at a closed session or a public hearing which is called by the President of the Constitutional Court on his own initiative or upon the proposal of three Constitutional Court judges; he may also call one upon the proposal of the parties to the proceedings. After consideration has concluded, the Constitutional Court decides at a closed session by a majority vote of all Constitutional Court judges. A Constitutional Court judge who does not agree with a decision or with the reasoning of a decision may submit a dissenting or concurring opinion. No appeal is allowed against decisions and orders issued in cases within the jurisdiction of the Constitutional Court.



1. 5. The Composition of the Constitutional Court

The Constitutional Court is composed of nine Constitutional Court judges, elected on the proposal of the President of the Republic 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.

1. 5. 1. The Judges of the Constitutional Court

Prof. Dr. Ernest Petrič, President
Mag. Miroslav Mozetič, Vice President
Jože Tratnik
Mag. Marta Klampfer
Dr. Mitja Deisinger
Jasna Pogačar
Jan Zobec
Mag. Jadranka Sovdat
Assist. Prof. Dr. Etelka Korpič - Horvat

Prof. Dr. Ernest Petrič, the President,

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 National Issues, he was first an Assistant Professor, then an Associate Professor, and finally a Full Professor of International Law and International Relations at what is presently the Faculty of Social Sciences of the University of Ljubljana. At this Faculty he was the director of its research institute, the Vice Dean, and the Dean (1986–1988). He has occasionally lectured at the Faculty of Law of the University of Ljubljana and as a guest also at numerous prestigious foreign universities. For three years (1983–1986) 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 (particularly with Prof. A. Verdross and Prof. S. Verosta), 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 (the International Law Association), the IPSA (the International Political Science Association), the Yugoslav Society of International Law, and currently the Slovene Society of International Law. He is a member of the ILC (the International Law Commission), whose membership comprises only 34 distinguished members from the entire world, representing different legal systems. In the ILC he actively participates in the 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 that extend to the area of several states, and regarding the problem of extradition and adjudication. He served as President of the Commission from 2008 to 2009. Between 1967 and 1972 he was a member of the Slovene Government (the Executive Council), in which he was responsible for the areas of science and technology. Subsequent to 1989 he was the ambassador to India, the USA, and Austria, and the 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 a state secretary at the Ministry of Foreign Affairs. In 2006 and 2007 he presided over the Council of Governors of the IAEA (International Atomic Energy Agency). 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 five books, four in the field of international law (Mednarodno pravno varstvo manjšin [The International Legal Protection of Minorities], Pravica narodov do samoodločbe [The Right of Nations to Self-Determination], Pravni status slovenske manjšine v Italiji [The Legal Status of the Slovene Minority in Italy], and Izbrane teme mednarodnega prava [Selected Topics of International Law]) and a fundamental work on foreign policy: Zunanja politika - Osnove teorije in praksa [Foreign policy - The Basics of Theory and Practice]. He has contributed papers to numerous conferences and seminars. He still occasionally lectures on international law at the European Faculty of Law in Nova Gorica, the Faculty of State and European Studies in Brdo near Kranj and the Faculty of Social Sciences. He commenced duties as judge of the Constitutional Court on 25 April 2008 and assumed office as the President of the Constitutional Court of the Republic of Slovenia on 11 November 2010.

Mag. Miroslav Mozetič, Vice President,

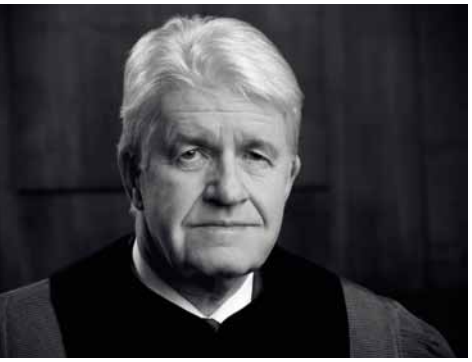
graduated from the Faculty of Law of the University of Ljubljana in 1976. Prior to that he had worked in the private sector, and in 1979 he passed the state legal examination. While working in the private sector he dealt with various legal fields, in particular with company law, labour law, and, mainly towards the end of this period, with foreign trade and the representation of companies before courts. At that time he continued his education by studying international and comparative business law at the Faculty of Law of the University of Zagreb. He also worked as a lawyer for one year. With short interruptions in 1990 and 1992 he continued to work in the private sector until 1992, when he was elected deputy of the first sitting of the National Assembly. During that term of office he was also Vice President of the National Assembly and actively participated in the drafting of its Rules of Procedure and the act which regulated the institute of parliamentary inquiry. In 1996 he was re-elected deputy of the National Assembly. During his second term of office he was a member of the delegation to the Parliamentary Assembly of the Council of Europe, where he was predominantly engaged in the work of the Legal Issues and Human Rights Committee. In 1999 he was awarded a Master's Degree in Constitutional Law by the Faculty of Law of the University of Ljubljana. In February 2000 he was employed by the Constitutional Court as a senior advisor, and was appointed deputy secretary general of the Constitutional Court in 2001. In mid 2005 he was appointed director general of the Directorate for Legislation of the Ministry of Justice, and at the beginning of 2006 head of the Legislative and Legal Service of the National Assembly. He is also currently deputy president of the state legal examination commission, and an examiner for constitutional law and the foundations of EU law for the civil service examination. His master's thesis, entitled Parlamentarna preiskava v pravnem redu Republike Slovenije [Parliamentary Inquiry in the Legal System of the Republic of Slovenia], was published as a book (Uradni list, 2000). He is one of the authors of the Commentary on the Constitution of the Republic of Slovenia. He commenced duties as judge of the Constitutional Court on 31 October 2007. Since 11 January 2010 he has been Vice President of the Constitutional Court.

Jože Tratnik

graduated from the Faculty of Law of the University of Ljubljana, and passed the state legal examination in 1975. He was a public prosecutor in Kočevje and a deputy district public prosecutor in Ljubljana. In 1979, with the reorganisation of the Slovene judiciary, he was appointed secretary of the Public Prosecutor's Office of the Republic of Slovenia. In 1985 the National Assembly of the Republic of Slovenia appointed him deputy republic secretary for the judiciary and public administration, in which position he served two terms. Between 1993 and 1997 he was a state secretary at the Ministry of Justice, and during the subsequent year a state undersecretary at the Ministry of Finance. As state secretary, he participated in drafting the Denationalization Act, the Elections Act, the Political Parties Act, the Public Notary's Office Act, the Penal Code, the Criminal Procedure Act, the Judicial Review of Administrative Acts Act, etc. He is currently deputy president of the state legal examination commission. He became a judge of the Supreme Court of the Republic of Slovenia in 1998, and commenced duties as judge of the Constitutional Court on 25 May 2002. He was President of the Constitutional Court between 11 November 2007 and 10 November 2010.

Mag. Marta Klampfer

graduated from the Faculty of Law of the University of Ljubljana in 1976, and passed the state legal examination in 1979. Subsequently she was employed as a legal advisor at the Court of Associated Labour of the Republic of Slovenia. In 1991 she was elected judge of the same court. Following the transformation of the courts of associated labour into labour and social courts, she was elected higher court judge with life tenure, and in 1997 she became head of the Labour Disputes Department. Subsequently she was appointed senior higher court judge. By a decision of the Ministry of Justice, she was appointed examiner for labour law for the state legal examinations. In 1994 she was appointed to the position of research associate at the Institute of Labour at the Faculty of Law of the University of Ljubljana. She has been president of the Labour Law and Social Security Association of the Faculty of Law of the University of Ljubljana for two terms. In 2001 she was appointed Vice President of the Higher Labour and Social Court, and on 6 May 2004 the Minister of Justice appointed her President of the Higher Labour and Social Court for a six-year term, a position she held until she was elected judge of the Constitutional Court. She commenced duties as judge of the Constitutional Court on 20 November 2007.



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 of the Republic of Slovenia, where he was, *inter alia*, the head of the Criminal Department and president of the panel for auditing administrative disputes. In 1997 he was appointed President of the Supreme Court and performed this office until 2003. From 2003 until he was elected judge of the Constitutional Court, he was a senior judge in the Criminal Department of the Supreme Court and the president of the appellate panel for cases involving the insurance, auditing, and securities markets. 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. From 1984 he led several working groups drafting criminal-law legislation, and as an advisor he also participated in the work of various working groups dealing with the drafting of laws. 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 (The Penal Act of SR Slovenia with Commentary and Case Law, 1985 and 1988; The Penal Act with Commentary – Special Provisions, 2002; The Responsibility of Legal Entities for Criminal Offences, 2007) and co-author (The Commentary on the Constitution of the Republic of Slovenia; The Responsibility of Legal Entities for Criminal Offences Act with Commentary, 2000) of several monographs. He teaches Business Criminal Law at the Faculty of Law of the University of Ljubljana, where he occasionally also teaches at the postgraduate level. In 2007 and 2008 he was the head of the Criminal Law Department of the European Faculty of Law in Nova Gorica. He occasionally cooperates with the Faculty of Economics of the University of Ljubljana and lectures at conferences and judicial school seminars. He commenced duties as judge of the Constitutional Court on 27 March 2008.

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. Two years later she passed the state legal examination and 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. She began her work in the state administration as an advisor to the then Republic Committee for Legislation. 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. In the Office for the Organization 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 from 2003 to 2008 she was the head of it's Administrative Department. As a representative of the Supreme Court, she participated in the work of various expert councils and commissions. In 2007 she was appointed senior judge of the Supreme Court. 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 long-standing member of the state legal examination commission, and an examiner for constitutional law and the foundations of EU law for the civil service examination. As a representative of the Supreme Court of the Republic of Slovenia, she participated in the working group drafting the new statutory regulation of the judicial review of administrative acts, and is a co-author of the Commentary on the Judicial Review of Administrative Acts Act. She commenced duties as judge of the Constitutional Court on 27 March 2008.

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 twenty-six 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 business 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. As a lecturer he has among other often participated in judicial school seminars for civil and business law departments. In 2003 he became a member of the state legal examination commission in civil law. His bibliography includes thirty-one publications, mainly in the field of civil (procedural) law, including, inter alia, as co-author, Pravdni postopek [The Civil Procedure - volumes 1 and 2 of a commentary on the Civil Procedure Act]. He commenced duties as a judge of the Constitutional Court on 27 March 2008.

Mag. Jadranka Sovdat

graduated from the Faculty of Law of the University of Ljubljana in 1982. After graduation, she was employed at the Ministry of Justice. In 1983 she passed the public administration examination, and in 1984 the state legal examination. At the Ministry of Justice she worked in the field of justice, for the final five years particularly in relation to drafting new legislation in this field. In 1994 she was appointed legal advisor to the Constitutional Court. At the same time she also assumed the duties of Deputy Secretary General of the Court. In 1998 she was awarded a Master's Degree in Law, following the completion of her master's thesis entitled Sodno varstvo volilne pravice pri državnih volitvah [Judicial Protection of the Right to Vote in State Elections]. She has published numerous articles and is the co-author of the Commentary on the Constitution of the Republic of Slovenia. In 1999, she was appointed Secretary General of the Constitutional Court and held this office until her election as judge of the Constitutional Court. She commenced duties as judge of the Constitutional Court on 19 December 2009.

Assist. Prof. Dr. Etelka Korpič - Horvat

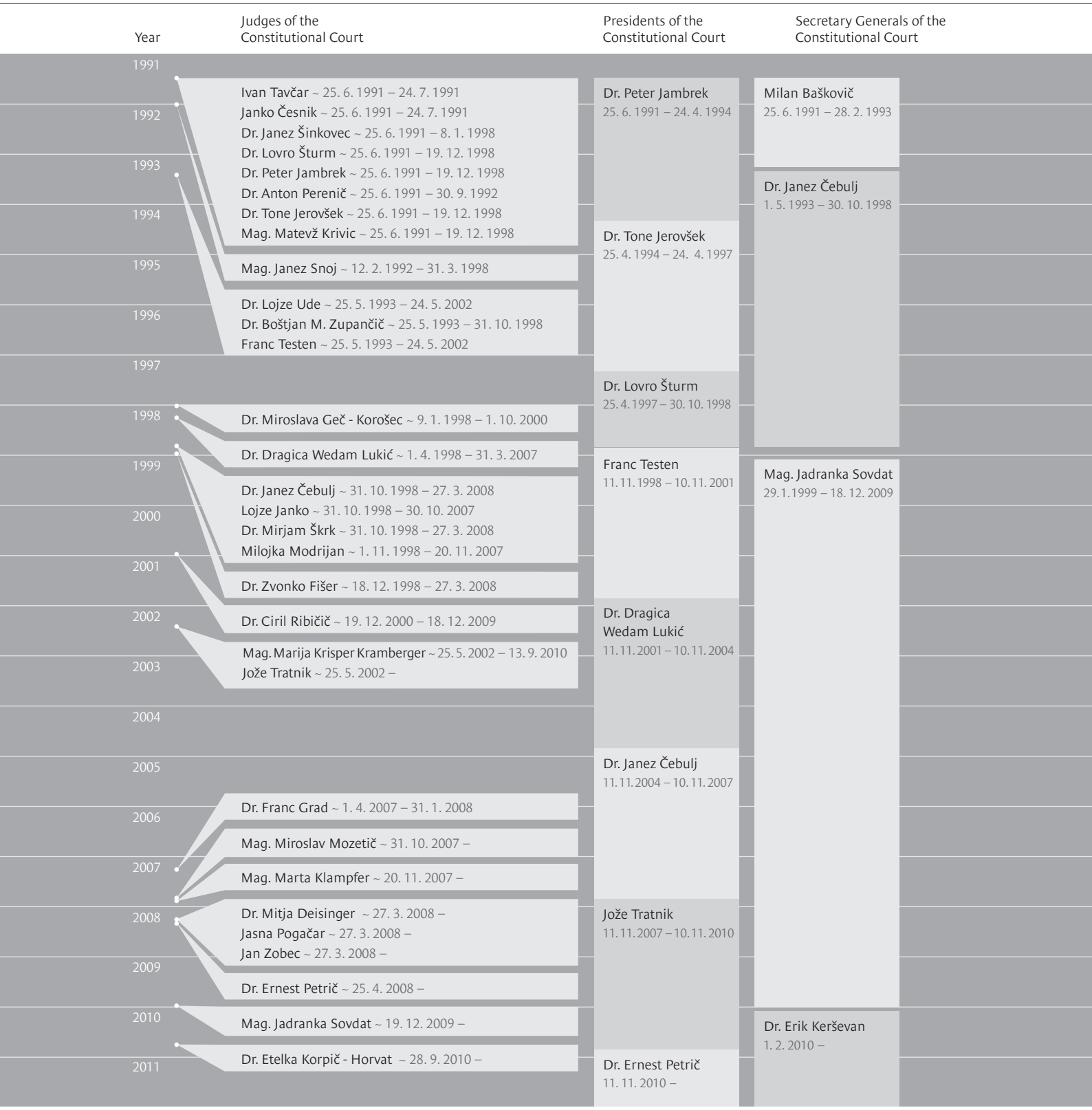
graduated from the Faculty of Law of the University of Ljubljana, where she also completed a Master's Degree. In 1991 she successfully defended her doctoral dissertation, entitled "Vpliv zaposlovanja doma in v tujini na deagrarizacijo pomurske regije" [The Impact of Home-country and International Employment on Deagrarization in the Pomurje Region], which was also published. After graduation, she started working at ABC Pomurka as an intern and subsequently became a manager with the same company. In that time she also passed the state bar examination. She was employed as Director of the Murska Sobota subsidiary of the SDK [Public Audit Service] for 8 years and subsequently worked for 9 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 lead lecturer for the subjects Budget Law and State Revision as part of the Master's Degree programmes in tax and labour law, and was additionally lead lecturer in individual labour law. She was a member of the Judicial Council and the President of the Commission for the KPJS [The Interpretation of the Collective Agreement for the Public Sector], and held other positions. She has published several bibliographic works. She commenced duties as judge of the Constitutional Court on 28 September 2010.

1. 5. 2. Secretary General of the Constitutional Court

Prof. Dr. Erik Kerševan

graduated from the Faculty of Law of the University of Ljubljana in 1998. After graduation, he was active in the reform of the Slovene public administration in the framework of the Ministry of the Interior. At the end of 1999 he took a position at the Department of Administrative Law of the Faculty of Law and has since taught and performed academic research at this institution. In 2001 he was awarded a Master's Degree in Law and in 2003 a Doctorate in Law, following the completion of his doctoral thesis entitled "Sodni nadzor nad upravo" [Judicial Control of Administration]. He has published numerous academic articles and a number of academic monographs in the field of public law. In 2004 he was elected Assistant Professor for the field of administrative procedure and administrative disputes, administrative law, and public administration. In 2005 he passed the state legal examination. In the years 2006 and 2007 he worked at the administrative division of the Supreme Court of the Republic of Slovenia as a judicial councillor. He held the position of Legal Adviser to the President of the Republic from 2007 to 2010. In 2009 he was elected Associate Professor for the field of administrative law and public administration law. He assumed the office of Secretary General on 1 February 2010. He continues to teach at the Faculty of Law of the University of Ljubljana.

1. 5. 3. Judges of the Constitutional Court of the Republic of Slovenia since Independence, 25 June 1991



1. 6. Organisation of the Constitutional Court

1. 6. 1. The President of the Constitutional Court

The President of the Constitutional Court, who officially represents the Constitutional Court, is elected by secret ballot by the judges of the Constitutional Court from among their own number for a term of three years. When absent from office, the President of the Constitutional Court is substituted for by the Vice President of the Constitutional Court, who is elected in the same manner as determined above. In addition to performing the office of judge, the President also performs other tasks: coordinating the work of the Constitutional Court, calling and presiding over hearings and sessions of the Constitutional Court, signing decisions and orders of the Constitutional Court, and managing relations with other state authorities and cooperation with foreign constitutional courts and international organisations, etc.

1. 6. 2. The Secretariat of the Constitutional Court

In order to carry out its legal advisory work, judicial administration tasks, and financial tasks and in order to provide administrative technical assistance, the Constitutional Court has a Secretariat composed of different 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 of the Constitutional Court coordinates the work of all services of the Secretariat and also directly manages and organises the work of the first four organisational units, whereas the work of the latter unit is managed by the Director of the Department.

1. 6. 3. Sessions

The Constitutional Court decides on matters within its jurisdiction at sessions, presided over by the President, at which all the Constitutional Court judges as well as the Secretary General are present. The sessions of the Constitutional Court are determined by the work schedule for the spring (between 10 January and 15 July) and autumn (between 10 September and 20 December) terms. Cases within the jurisdiction of the Constitutional Court are as a general rule assigned to a Judge Rapporteur who prepares drafts of a decision or order and in more demanding cases also presents reports on disputed issues. The cases are assigned to Constitutional Court judges according to a predetermined order (the alphabetical order of their last names). The Constitutional Court decides on questions that are connected with its organisation and work at administrative sessions.

1. 6. 4. The Internal Organisation of the Constitutional Court

The Constitutional Court – *the Constitutional Court judges*

The Secretariat – *the Secretary General*

Legal Advisory Department (legal advisors)	Analysis and International Cooperation Department	Documentation and Information Technology Department *- Constitutional Court Records Unit* *- Information Technology Unit* *- Library*	Office of the Registrar	General and Financial Affairs Department *- Financial and Human Resources Unit* *- Administrative Unit* *- Technical Unit* *- Canteen*

1. 6. 5. Advisors and Department Heads

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
Diana Bukovinski
Mag. Tadeja Cerar
Uroš Ferjan
Dr. Aleš Galič
Nada Gatej Tonkli
Tamara Kek
Andreja Kelvišar
Andreja Krabonja
Dunja Kranjac
Jernej Lavrenčič
Marcela Lukman Hvastija
Maja Matičič Marinšek
Mag. Tea Melart
Katja Mramor
Lilijana Munh
Dr. Sebastian Nerad
Constanza Pirnat Kavčič
Andreja Plazl
Janja Plevnik
Ana Marija Polutnik
Mag. Polona Primožič
Maja Pušnik
Vesna Ravnik Koprivec
Heidi Starman Kališ
Dr. Katja Triller Vrtovec, LL.M.
Igor Vuksanović
Mag. Renata Zagradišnik, spec., LL.M.
Mag. Lea Zore
Mag. Barbara Žemva
Mag. Marjetka Hren, LL.M.
Tina Prešeren
Nataša Skubic
Katarina Vatovec, LL.M.

Department Heads
Ivan Biščak, *Director of the General and Financial Affairs Department*
Nataša Lebar, *Head of the Office of the Registrar*
Mag. Miloš Torbič Grlj, *Head of the Documentation and Information Technology Department*
Urška Umek, *Acting Head of the Analysis and International Cooperation Department*

1. 7. Publication of the Decisions of the Constitutional Court

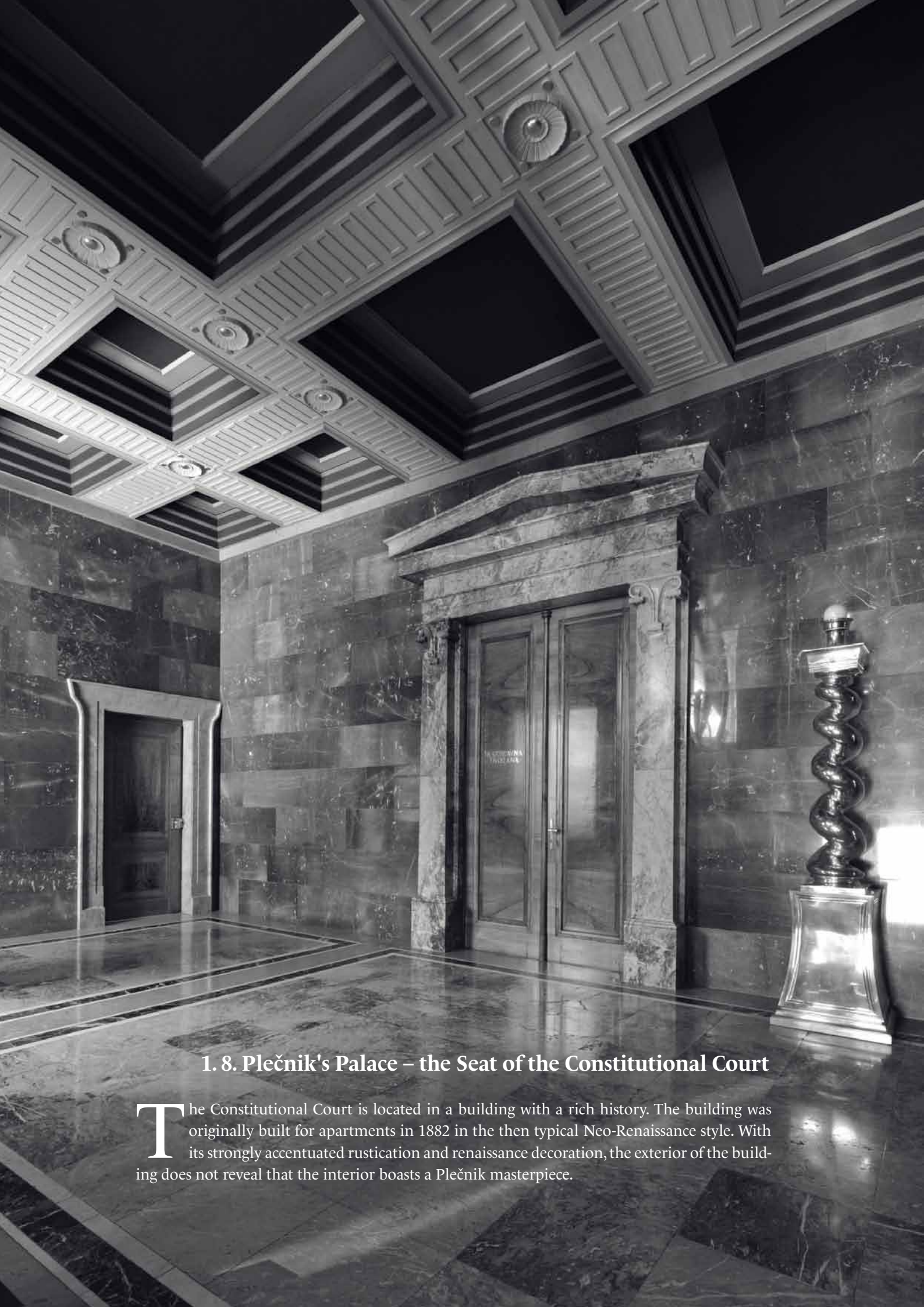
1. 7. 1. Official Publication of Decisions

Decisions and those orders of the Constitutional Court which the Constitutional Court or an individual panel of the Constitutional Court so decides are published in the Official Gazette of the Republic of Slovenia or in the official publication of the local community in question if a decision or order refers to a regulation of the local community.

1. 7. 2. Other Publications

In addition to the official publication, the decisions and orders of the Constitutional Court are also published:

- in the Collected Decisions and Orders of the Constitutional Court (full texts of the more important decisions and orders with separate opinions);
- on the website of the Constitutional Court at www.us-rs.si;
- in the IUS-INFO web databases at www.ius-software.si and in other legal databases;
- in the legal journal *Pravna praksa* [Legal Practice];
- in the CODICES web database, on CD-Rom, and in the Bulletin on Constitutional Case-law of the European Commission for Democracy through Law (the Venice Commission) of the Council of Europe (summaries of selected decisions and orders in Slovene, English, and French, together with the full texts of some decisions and orders in Slovene and English).



1. 8. Plečnik's Palace – the Seat of the Constitutional Court

The Constitutional Court is located in a building with a rich history. The building was originally built for apartments in 1882 in the then typical Neo-Renaissance style. With its strongly accentuated rustication and renaissance decoration, the exterior of the building does not reveal that the interior boasts a Plečnik masterpiece.

At the beginning of the 20th century the building became the property of the Chamber of Commerce and Trade of Carniola, later renamed the Chamber of Commerce, Trade, and Industry, for which the rooms of the former tenant house were no longer adequate. The Chamber needed a large conference hall and several representative offices for its top officials. In 1925 they entrusted the reconstruction of the building to architect Jože Plečnik (1872–1957), who was at the height of his creative powers at that time. Due to a number of other projects that Plečnik was engaged in at the time, he assigned this task to his assistant France Tomažič, who completed it following Plečnik's precise instructions.

Plečnik drew architectural elements of the ingeniously designed interior from the art of antiquity. Each detail has a deep symbolic meaning linking modern architecture to its classical foundations, the heirs of which are, in Plečnik's firm belief, also Slovenes. Despite many technical problems arising in the course of the renovation, in the end Plečnik managed to create a symbolically, aesthetically, and functionally balanced whole, representing a foundational work of modern Slovene architecture.

The inner staircase adjoined to the existing building is a hymn to the classical column. The downward-tapering Minoan columns made of polished Pohorje tonalite granite and stone-clad walls create the archaic, dim look of the staircase. Richly profiled stone portals, carefully designed landing ceilings, and brass candelabra reminiscent of ancient torches give individual parts of the staircase a highly solemn emphasis. As in many of Plečnik's creations, classical forms are intertwined with motifs from folk tradition. Folk proverbs engraved on the reddish decorative column on the last landing are eloquent proof thereof.

A mighty portal above the entrance to the large conference hall, nowadays called the session hall, is modelled on the pattern of temples. The walls of the hall are panelled high with dark walnut wood, the ceiling is made of wood as well, while the space on the wall between the ceiling and the wall panelling is covered with golden leaves. Plečnik used gilt loops on the wall panelling and the ceiling to create an image of sheets of cloth tied to one another. The hall thus symbolically depicts a solemn tent in which people would gather on particularly solemn occasions in ancient times.

Plečnik used classical patterns also in furnishing the large hall. The carefully designed presidency platform with a podium and nine armchairs is set against the longer, windowed side of the hall, while plain wooden desks with white marble desk tops were originally positioned in a line in front of the podium. The relatively simple construction of the furniture complemented with brass accessories and the leather upholstery of the seats contributes to the elegant, archaic appearance of the hall. Apart from the presidency platform with the armchairs, of the other original furniture only the desks which stood in the hall until the renovation in 1997 were partially preserved.

As a significant part of Slovene cultural heritage, Plečnik's palace became the seat of the Slovene Constitutional Court in 1964, which proudly continues to use it as its home up to the present day.

The Report on the Work of the Constitutional Court

2. 1. Introduction

In a number of its annual reports, the Constitutional Court of the Republic of Slovenia has warned of its extremely high workload, which is reflected in the Annual Report for 2010 as well. Following the legislative amendments in 2007, which excluded the possibility of challenging decisions in minor offence cases and in other less important matters, the caseload is once again increasing, and an increasing number of applications relate to complex legal issues. The Constitutional Court has thus found itself in a dilemma with regard to how to resolve this situation, such that, on the one hand, it ensures the trust of the citizens in effective constitutional protection, and, on the other, that these cases are resolved as soon as possible, which will thus also ensure efficient and timely redress for the consequences of established violations of human rights and fundamental freedoms. To this can be added the need for the Constitutional Court to decide as soon as possible also on matters that are of general importance and concern fundamental questions with regard to the functioning of the State and the public interest; in the past year, such were *inter alia* the decisions in case No. Rm-1/10 (the Arbitration Agreement) and in case No. U-II-1/10 (the referendum regarding the regulation of the position of the "erased persons").

The answer to this challenge is not easy to find, as also other European courts are striving to answer such in their work. With this objective, the Constitutional Court is constantly improving its internal organisation, the qualifications of its legal advisors, and state-of-the-art information-technology support, which, due to the significant efforts invested, allows for relatively efficient work. However, as is vividly emphasised in medicine, the mentioned measures only treat the symptoms and do not remove the causes of the overburdening resulting from exceptionally broad access to the Constitutional Court, both due to the legally determined exceptionally broad scope of applicants who may request that the Constitutional Court decide on the constitutionality of a particular regulation, as well as the broadly determined right to file a constitutional complaint enjoyed by anyone who claims a violation of his constitutional rights by an act of the State or other bearer of public authority. As one of the possible solutions to this situation, in recent years amendments to the Constitution have been proposed that would further relieve the Constitutional Court with regard to having to decide on matters of minor importance; unfortunately this solution has not received sufficient political support in the National Assembly. Therefore, based on the data regarding the workload in 2010, it can also be establish that this problem remains unresolved and that it will be necessary to introduce changes if the Constitutional Court wishes to continue to effectively accomplish the tasks arising from its fundamental constitutional competences.

Although this is a generally accepted legal standpoint, it is still important at this point to emphasise again that the effectiveness and success of the work of the Constitutional Court are not

reflected in the number of its decisions and in the ratio between the cases received and those resolved. The work of the Constitutional Court is successful if it can provide answers to the most important constitutional issues in its decisions and thus provide the necessary guidance for both the legislature and the bearers of the executive and the judicial powers, which take these standpoints into account when exercising their powers in the future. Thus, the relationship between respect for Constitutional Court decisions and respect for the principle of a state governed by the rule of law is clearly expressed. This of course cannot be reflected in numbers and charts, but in the feeling of legal security of all the citizens and in the level of confidence in a state governed by the rule of law, as reflected in everyday business, life, and work. The Constitutional Court strives and will continue to strive to achieve this goal with undiminished enthusiasm, diligence, and respect for the Constitution and the law.

Considering all of the above, it is still worth highlighting the importance of some quantitative indicators that are evident in this report and show the work of the Constitutional Court in 2010. Many of these data must namely be accompanied by an adequate explanation in order for both their importance and consequences to be demonstrated. Thus, for example, in 2010 only one case involving the conformity of a treaty with the Constitution (such cases are assigned the abbreviation Rm) was resolved, which at first glance might be statistically unremarkable – perhaps even seemingly insignificant; however, it was precisely the review of the compatibility of the Arbitration Agreement with the Constitution that additionally burdened the Constitutional Court for several months, as it was discussed at many plenary sessions and comprehensively reviewed, and various fundamental constitutional questions were weighed before the decision was arrived at. There was, of course, a great number of such significant cases in the last year, concealed behind an individual number, and this report itself lists them among the most important decisions – so that the scope and intensity of the work of the Constitutional Court cannot be seen (merely) from the statistics. Also, it can be noted in this respect that a minimal increase in the number of complex cases, especially those put forward by state authorities or entitled applicants, might overburden the Constitutional Court in such a manner that the statistical results might, in fact, deteriorate significantly within a relatively short time frame, as is shown by the present numerical trend. In the current legal framework, placing additional complicated cases on the agenda of the panel and plenary sessions of the Constitutional Court may consequently increase the workload of the constitutional judges to such an overburdened extent that it will immediately be reflected in all areas, also in the delayed resolution of a large number of "less complex" cases, and this would result in a completely different statistical picture of the work of the Constitutional Court. Therefore, the current situation cannot be characterised as stable, sustainable, and well-prepared for possible further changes and challenges, although it is possible to conclude on the basis of the statistical indicators that in 2010 the Constitutional Court worked well and successfully.

In 2010, the Constitutional Court held 35 plenary sessions and a total of 30 panel sessions, all dealing with extensive agendas. In addition, in many cases the decisions were adopted by so-called "correspondence decisions", i.e. in cases where a decision can be taken without debate at a session by means of the written statements of constitutional judges whereby they vote for or against adopting a certain decision.

2. 2. Important Decisions Adopted in 2010

2. 2. 1. A Priori Review of the Constitutionality of a Treaty – the Arbitration Agreement

In March 2010, in Opinion No. Rm-1/09, dated 18 March 2010 (Official Gazette of the Republic of Slovenia, No. 25/10), within its competence to carry out an *a priori* review of the conformity of treaties with the Constitution, the Constitutional Court decided upon the conformity of the Arbitration Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Croatia on establishing the border between the two states. When reviewing the provisions of the Arbitration Agreement, the Constitutional Court proceeded from the fact that issues concerning the state territory and state borders are issues which are primarily in the domain of international law; however, in the Republic of Slovenia, the state borders are also regulated by national law, namely in Section II of the Basic Constitutional Charter and in Article 4 of the Constitution.

The Basic Constitutional Charter is the fundamental constituting state act of the Republic of Slovenia. With its adoption the Republic of Slovenia definitively broke its ties with the Socialist Federal Republic of Yugoslavia and established itself as a sovereign state. The constitutional power of the Basic Constitutional Charter, however, was not limited only to the moment of its adoption, but the Charter is a formally applicable constitutional act and as such a permanent and inexhaustible constitutional foundation of the statehood of the Republic of Slovenia.

One of the essential elements of statehood is the territory in which the state acts as the highest authority. For this reason, Section II of the Basic Constitutional Charter defined the territory of the Republic of Slovenia, namely such that it constitutionalised its state borders. The constitutionalisation of the state borders does not merely entail a definition of the territory on which the Republic of Slovenia became a sovereign state on 25 June 1991, but together with Article 4 of the Constitution it entails an applicable and relevant constitutional definition of the state territory. In a territorially small state, as is the Republic of Slovenia, such provisions also have a guarantee function; by these provisions the constitution framers established the state territory and state borders as one of the fundamental values which must be protected at the constitutional level.

After independence, the administrative border between Slovenia and Croatia within the former Socialist Federal Republic of Yugoslavia became the border between the states. On land, this border is substantiated by the international law principle of *uti possidetis iuris* and is where the border between the respective republics within the former Yugoslavia had been. The mari-

time border between the republics within the former common state had not been legally determined; however, the Republic of Slovenia exercised *de facto* authority in the Bay of Piran and beyond. Until a different agreement between the states is reached, the international law principle of *uti possidetis de facto* protects the *de facto* situation before the day of achieving independence.

Section II of the Basic Constitutional Charter must be interpreted within the meaning of these two international law principles. The latter section is a constitutional expression of international law that determined the issue of the borders at the moment when the Republic of Slovenia became a sovereign state. The Slovene-Croatian state border on land was known within the former Yugoslavia, and namely its course ran along the borders of the frontier municipalities or cadastral municipalities. This border is today protected on the constitutional level by Section II of the Basic Constitutional Charter through the principle of international law *uti possidetis iuris*. Considering the maritime border, what should be taken into consideration is that the Republic of Slovenia is a coastal state and it was a coastal republic already as a part of the former Yugoslavia and *de facto* exercised its authority in a part of the Adriatic Sea and also had access to the High Sea. This entails that Section II of the Basic Constitutional Charter must be interpreted in such a manner that the maritime border between the Republic of Slovenia and the Republic of Croatia is along the line to where Slovenia *de facto* exercised its authority before its independence.

The constitutional protection of state borders does not entail that also their precise course demarcated in nature be determined. On land as well as at sea, the constitutionally determined border must be concretised at the level of international law. Common consent regarding the course of the border demarcated in nature must be reached, either directly by a treaty or by transferring this task to an international judicial body. This is precisely the purpose of the Arbitration Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Croatia.

The Government proposed that the Constitutional Court determine whether Article 3 (1) (a) of the Arbitration Agreement is consistent with Article 4 of the Constitution in conjunction to Section II of the Basic Constitutional Charter. However, the Constitutional Court decided that this provision of the Agreement is inseparably connected with Articles 4 (a) and 7 (2) and (3) of the Agreement, which determines what the Arbitral Tribunal will have to apply when determining the course of the border. Therefore, the Constitutional Court decided to extend the procedure for the review of constitutionality and interpreted and reviewed the abovementioned provisions of the Agreement as a whole. In doing so, it did not assess whether the Agreement is appropriate, nor provided a value judgment thereon, as such is not within the competence of the Constitutional Court.

Article 3 (1) (a) of the Agreement, in accordance with which the Arbitral Tribunal is to determine the course of the disputed parts of the land and maritime border, entails that the Arbitral Tribunal will have to describe the course of the border line demarcated in nature and determine such by geographic coordinates. When determining the course of the border, the Arbitral Tribunal is bound by the subject-matter of the dispute as specified by the Parties to the Agreement, whereby the Parties are not limited in specifying the dispute. Article 4 (a) of the Agreement, in accordance with which the Arbitral Tribunal is to apply "the rules and principles of international law" for the determination of the maritime and land border, will be of key importance for the deciding of the Arbitral Tribunal. The Arbitral Tribunal

will thus have to consider only the circumstances of law and fact as they existed in the disputed areas before 25 June 1991, which is determined in the Agreement as the critical date. It will also have to consider the preamble to the Agreement, in which the Parties to the Agreement affirmed the relevance of their vital interests. The legal effects of the award of the Arbitral Tribunal are determined in Article 7 (2) and (3) of the Agreement, namely they determine that the award is binding and that the Parties are required to take all necessary steps to implement it.

As the course of the border between Slovenia and Croatia has never been determined in such a precise manner as is usual at the level of international law, the Arbitral Tribunal will determine the course of the disputed parts of the border originally. The award of the Arbitral Tribunal regarding the land border will entail the concretisation of the border in international law, whereas regarding the maritime border such will entail a division of the former legally unilateral, although *de facto* divided, Yugoslav sea in the north Adriatic at the international level.

It is clear from the reviewed provisions of the Arbitration Agreement that the Agreement does not determine the course of the state borders between the Parties to the Agreement. The Agreement is an instrument whose purpose is to establish a mechanism for the peaceful settlement of the border dispute. In other words, the aim of the Agreement is to establish the Arbitral Tribunal and to determine its organisation and operation. The provisions of the Agreement which regulate these issues are not unconstitutional. Therefore the Constitutional Court decided that the reviewed provisions of the Agreement are not inconsistent with Article 4 of the Constitution in conjunction with Section II of the Basic Constitutional Charter.

In Decision U-I-180/10, dated 7 October 2010 (Official Gazette of the Republic of Slovenia, Nos. 73/10 and 6/11), the Constitutional Court again dealt with the Arbitration Agreement, namely, upon a request of a group of deputies of the National Assembly it reviewed the Act on the ratification of this Agreement. It decided that the Act on the ratification of this Agreement is not inconsistent with the Constitution, as the Constitutional Court had already established in Opinion No. Rm-1/09 that the reviewed provisions of the Arbitration Agreement do not contain international law obligations that are inconsistent with the Constitution. In the Opinion, the Constitutional Court also stated that questions of constitutionality might arise only after the award of the Arbitral Tribunal becomes known, and even then only in relation to the domestic legislation which Slovenia will have to adopt in order to enforce the award. As the applicants did not state any other or additional reasons that the Constitutional Court had not taken into account in Opinion No. Rm-1/09 that could have led to a different decision, the Constitutional Court decided that the request was unfounded.

2. 2. 2. Religious Freedom

In Decision No. U-I-92/07, dated 15 April 2010 (Official Gazette of the Republic of Slovenia, No. 46/10), at the request of the National Council, the Constitutional Court reviewed the manner of regulation of the registration and activities of religious communities in the Republic of Slovenia. In the Decision it primarily elaborated what the subject of the protection of freedom of conscience is and in more detail also that of freedom of religion. These are theistic, atheistic, and non-theistic convictions in the sphere of ethics and morality, the internal and external characteristics of which indicate their consistency, cogency, seriousness, cohesiveness, and importance.

At the deepest level, freedom of religion entails the right of a natural person to have a religion and freely change it (the positive aspect) and the right not to belong to any religion (the negative aspect). Owing to their nature, these inner convictions cannot be subject to any regulations or restrictions (i.e. *forum internum* as a special form of the freedom of thought). The right to the free profession of one's religion (as a special form of the freedom of expression) and the freedom to exercise one's religion (as a special form of the freedom of practice) entail an external manifestation of one's inner personal decisions (i.e. *forum externum*). Freedom of religion may be manifested individually or collectively.

At the same time, the Constitutional Court also expressed what the relationship between the freedom of religion and the principle of the separation of the State and religious communities is. It stated that the human right to freedom of conscience is the basis of the regulation of the position of religious communities and, in that respect, it takes precedence over the constitutional principle of the separation of the State and religious communities, as the principle of separation in relation to freedom of religion is of an instrumental nature, a tool intended for the full implementation of the latter freedom. The aim of this principle of separation is to ensure, through the neutral attitude of the State, true freedom of conscience and the equality of individuals – believers and nonbelievers – and religious communities. This entails that everything that falls within the scope of the exercise of the right to freedom of religion determined in Article 41 of the Constitution cannot be inconsistent with the principle of the separation of the State and religious communities.

In the broad sense, the principle of the separation of the State and religious communities has three core elements: the religious and philosophical neutrality of the State, the autonomy of religious communities in their own domain, and the State's equal relation to all religious communities. The religious and philosophical neutrality of the State does not constitute an impediment to cooperation with religious communities. The autonomy and equality of religious communities, which are determined in the Constitution as independent principles, are the mirror images of the requirement of the neutrality of the State and the tools for ensuring freedom of religion.

The State does not have the duty to fund religious communities on the basis of Article 41 of the Constitution. Nevertheless, the State may provide financial support to religious communities while respecting the equality of religious communities, provided this does not run counter to the principle of the separation of the State and religious communities. The State must not test the acceptability of the values of the substance of religious convictions and financially support only those religious communities whose substantive convictions are aligned with those of the State. The requirement that a religious community must be registered if it is to receive financial support from the State is reasonable and substantively justified, therefore, differentiating between registered and unregistered religious communities for the purpose of providing them with financial support is not inconsistent with the aspect of the principle of the equality of religious communities (the second paragraph of Article 7 of the Constitution), which is a special expression of the general principle of equality before the law as regards the relation of the State to religious communities. When funding not-for-profit activities, the State must treat all types of associations equally: religious, philosophical, and other.

The Constitutional Court decided that the regulation of the registration of religious communities is inconsistent with the right of the religious communities to freedom of religious action in conjunction with the freedom of association. This regulation, which required that

an individual religious community have at least 100 adult adherents (citizens or permanent residents of the Republic of Slovenia) and that it have been active in Slovenia for at least the last ten years (or have been recognised in the world for over 100 years), namely interferes with the human right of religious communities to acquire a proper legal personality and is not a necessary measure to attain the legislative aim that specific rights be accorded only to some (i.e. registered) religious communities.

Although state funding of religious spiritual care in prisons and hospitals does not fall within the scope of the religious freedom referred to in the first paragraph of Article 41 of the Constitution, the State may provide religious communities with the necessary financial resources for the performance of such care to such an extent and in such a manner which is not inconsistent with the principle of the separation of the State and religious communities. It is constitutionally inadmissible to provide support in such a manner that priests would be employed by the State to perform religious services in prisons and hospitals. Being inconsistent with the principle of the separation of the State and religious communities, such would namely undermine the autonomy of religious communities and their priests (in the performance of their work they would be, according to the nature of their employment relationship, loyal to their employer - the State as well) on the one hand, while on the other hand it would lead to a symbolic identification of the State and religion, which is a negation of neutrality (the institutionalised incorporation of priests into the corpus of the State symbolises that it is the State, with its apparatus, which would directly exercise religious spiritual care in such institutions).

The statutory regulation of religious spiritual care in the Army that does not concern only those members of the Army who are in fact unable to ensure such care for themselves, is not inconsistent with negative religious freedom as it does not entail a forced confrontation with the profession or exercise of one's religion. Negative religious freedom is already ensured in whole by the fact that members of the Army are free to choose whether or not they will exercise their right to religious spiritual care. The same regulation is not inconsistent with the principle of the separation of the State and religious communities either, as even if the extent required by the first paragraph of Article 41 of the Constitution is exceeded, this does not in itself entail a violation of such principle.

The different frequency and intensity of the circumstances necessitating religious spiritual care are reasonable aims for differently determining the scope of such care, therefore the regulation that determines that religious spiritual care is provided to members of the Army to a broader extent than that provided to police officers is not inconsistent with the general principle of equality.

The right to build facilities for the profession and exercise of one's religion, stemming from positive religious freedom (and from the principle ensuring that religious communities may act freely, which is a constituent part thereof) presupposes the duty of the authorities not to overlook the constitutionally protected needs of all religious communities in land use planning, but the consent of the religious community in such land use planning is not required.

Since general regulations ensure that everyone (and consequently also unregistered religious communities and spiritual, philosophical, and other associations) may take part in land use planning, which is, in its substance, essentially similar to the challenged provisions, the latter are not inconsistent with the principle of equality.

That the legislature take into account the holocaust and the consequences of this extreme crime against humanity as differential grounds for waiving the condition concerning the number of believers with regard to the Jewish community applying for financial support for one employee is reasonable and substantiated by the nature of things, therefore it is not inconsistent with the principle of the equality of religious communities.

2. 2. 3. Local Self-Government – Establishment of the Ankaran and Mirna Municipalities

The fundamental question which the Constitutional Court had to answer in Decision No. U-I-137/10, dated 26 November 2010 (Official Gazette of the Republic of Slovenia, No. 99/10), is whether the National Assembly of the Republic of Slovenia, subsequent to calling a referendum in which the people decided in favour of the establishment of a municipality, has the power to not adopt the law regarding such decision.

It follows from the hitherto interpretations of the Constitutional Court that Articles 138 and 139 of the Constitution, which refer to local self-government, must be interpreted as ensuring the people of Slovenia the right to exercise local self-government in a municipality established in accordance with the conditions and according to the procedure determined by law, and that the National Assembly is – regarding the establishment of municipalities and any change in their territory – bound by the will of the voters expressed in a referendum on the establishment of the municipality or a change in its territory, except in two cases: when respecting the will of the voters expressed at a referendum would lead to the establishment of communities that do not meet the constitutional and statutory provisions on municipalities and when it is objectively not possible to respect the will of the voters expressed at a referendum due to the conflicting results of referenda.

The Constitutional Court emphasised that the National Assembly was entitled to determine the conditions under which it assessed specific proposals for the establishment of municipalities and the principle of a state governed by the rule of law requires that the legislature follow the rules it has itself created and that it does not act arbitrarily in its decisions regarding the establishment of municipalities. Conduct contrary to these principles entails a violation of the principle of a state governed by the rule of law (Article 2 of the Constitution) and the general principle of equality before the law (the second paragraph of Article 14 of the Constitution).

The right to local self-government is a constitutional right of the residents residing in a certain territory who are connected by common needs and interests to govern their local affairs themselves. An integral part of this right is also the possibility that the residents of a certain territory exercise this right in a municipality that they establish independently in accordance with statutory conditions. This is the purpose of the constitutional provision that requires that the National Assembly establish the municipality on the basis of the prior determination of the will of the residents. At the end of this process, the National Assembly decides exactly on the exercise of this constitutional right, namely on the grounds of the determination that, according to the procedure carried out, the documents submitted, and the established facts, as well as on the basis of the outcome of the referendum, the constitutional and statutory conditions for the establishment of the municipality as a fundamental self-governing local community are fulfilled.

An essential condition for the exercise of the constitutional right to local self-government is that a municipality be established in accordance with the constitutionally and statutorily defined procedure. While this constitutional right does not ensure an abstract right to establish a municipality in whatever territory chosen, it does ensure the right of the residents residing in a certain territory that are connected by common needs and interests to govern local affairs themselves.

Following the prescribed procedure, which is directed by the National Assembly, municipalities are established by a law. In adopting the laws by which it regulates social relations in a general and abstract manner, the legislature is completely autonomous and bound only by the Constitution. It undoubtedly exercised this broad autonomy concerning the establishment of municipalities when adopting the laws by which it prescribed the conditions and the procedure for the establishment of municipalities in accordance with the Constitution. However, this autonomy is not so broad when adopting the law by which the National Assembly decides on the establishment of a municipality.

The statutory regulation of the conditions and the procedure for the establishment of municipalities and for ensuring judicial protection in this procedure do not require only that the legislature respect it (Article 2 of the Constitution), but also the equal treatment of all citizens (petitioners) who wish to establish a municipality in a certain territory (the second paragraph of Article 14 of the Constitution). The principle of equality undoubtedly requires that the National Assembly apply the prescribed conditions equally in all cases. If a territory meets the conditions, the National Assembly must proceed in the same manner as it has done in cases where the conditions were met.

The Constitutional Court therefore held that the Establishment of Municipalities and Municipal Boundaries Act is inconsistent with the Constitution, as, by failing to establish the Ankaran and Mirna municipalities, the National Assembly acted in an arbitrary manner. By such it violated the general principle of equality (the second paragraph of Article 14 of the Constitution), the principle of legality, and the principle of trust in the law (Article 2 of the Constitution). The aim of the procedures for establishing municipalities is the exercise of local self-government in a certain territory and this is ensured only through the election of mayors and municipal councillors. One consequence of the determination of the unconstitutionality of the Establishment of Municipalities and Municipal Boundaries Act is also the determination of the unconstitutionality of the decree of the President of the National Assembly regarding the calling of the elections in the Koper and Trebnje municipalities, as the unconstitutional state of affairs established by this decision would just be extended and the residents of the new municipalities would be prevented from exercising their right to local self-government in these municipalities.

2. 2. 4. "Erased" Citizens of Other Successor States to the Former SFRY

In Decision No. U-II-1/10, dated 10 June 2010 (Official Gazette of the Republic of Slovenia, No. 50/10), the Constitutional Court again addressed the issue of the status of the so-called "erased" persons, namely the issue of the admissibility of a referendum on the Act amending the Act regulating their status. The Constitutional Court first established the unconstitutionality of the statutory regulation concerning the legal status of citizens of other republics of the former SFRY who were removed from the register of permanent residents in 1999 by Decision No. U-I-284/94, dated 4 February 1999 (Official Gazette of the Republic of Slovenia, No. 14/99, and OdlUS VIII, 22).

The National Assembly responded to this Decision of the Constitutional Court quickly and within the deadline determined by the Constitutional Court by passing the Amendments to the Act. By this Act, it was possible for the citizens of other republics of former SFRY who were removed from the register of permanent residents to obtain a permanent residence permit. In accordance with the subsequent amendments to the Citizenship Act, such persons even had the possibility to obtain citizenship of the Republic of Slovenia under more favourable conditions. On the basis of these two acts, the citizens of other republics of the former SFRY who actually lived in Slovenia could regularise their legal status and regain rights that they might have lost. This is significant as it entails that the human rights of these persons ceased to be violated. However, none of these rights could be asserted by those individuals against whom the measure of the forcible removal of an alien from the country was pronounced or who left the Republic of Slovenia for other reasons that were directly connected with their erasure from the register of permanent residents and were not able to return. Therefore, in 2003 the Constitutional Court decided by Decision No. U-I-246/02, dated 3 April 2003 (Official Gazette of RS, No. 50/10, and OdlUS XII, 24), that the Act regulating the status of erased persons was unconstitutional.

Concerning the decision on the recognition of permanent residence retroactively, the Constitutional Court at that time explicitly stated that a permanent residence permit does not determine a new legal status for these persons, but only establishes, in accordance with the existing situation, the legal status which had already existed. This finding applied only to persons who actually lived in the Republic of Slovenia continuously after their erasure from the register and were able to regularise their legal situation prospectively. In point 8 of the operative provisions the Constitutional Court precisely determined for these persons the manner of the execution of the Decision, namely that the permanent residence permits to be issued establish permanent residence status retroactively, and ordered the Ministry of the Interior to issue supplementary decisions on the establishment of permanent residence status from the individual's erasure onwards as an official duty. On these grounds, everyone that had actually lived in the Republic of Slovenia could regularise their status, including with the establishment of permanent residence status retroactively, and this would be applicable even if the National Assembly did not react to Decision No. U-I-246/02. However, the special statutory regulation is still necessary to regulate the legal status of persons that were removed from the country as aliens and those who left the Republic of Slovenia for other reasons that were directly connected to their erasure from the register of permanent residents and were not able to return. By adopting the amendments to the Act, the legislature reacted to the unconstitutionality of the regulation in force that was established by the Constitutional Court seven years ago.

The proposed amendments to the Act eliminate, in a manner consistent with the Constitution, the unconstitutionality found in Decision No. U-I-246/02, namely that the status of permanent residence should be retroactively recognised to the persons removed from the register of permanent residents if they meet the condition of actually residing in Slovenia. As each resident of the Republic of Slovenia must register their permanent residence, the legislature recognised permanent residence status to these persons retroactively by establishing a legal fiction that they had a permanent residence permit and were registered at their former address even during the period from their erasure from the register of permanent residents until they obtained a permit for permanent residence. This legal fiction was established for the purpose of eventual proceedings that were or could be initiated by individuals regarding the assertion of their rights conditional upon their permanent residence, but cannot have any other legal consequences on its own, in particular, it cannot be used to retroactively establish legal relationships that could have existed had it not been for their erasure from the register of

permanent residents. The proposed amendments to the Act eliminate, in a manner consistent with the Constitution, also other unconstitutionalities found in Decision No. U-I-246/02. In eliminating the unconstitutionalities the National Assembly justifiably regulated certain other related issues (in particular, the status of the children of the persons removed from the register of permanent residents), since such prevented the emergence of new unconstitutionalities.

It is of special importance that by adopting the amendments to the Act the National Assembly established moral satisfaction as a special form of remedy for the consequences of the violations of human rights due to erasure from the register of permanent residents. If damage was caused to individuals due to their erasure from the register of permanent residents because they were deprived of the rights that were conditional on permanent residence in Slovenia, the question of eventual state liability could arise, but only if the conditions for the establishment of this liability pursuant to Article 26 of the Constitution and pursuant to the statutory regulation are fulfilled. Without considering the question whether those conditions are fulfilled, the Constitutional Court found that the National Assembly can at any time adopt an act by which it would limit eventual state liability in a constitutionally admissible manner. However, the claim that this question should also be regulated by the proposed amendments and that they are unconstitutional because they do not regulate this question, is unfounded.

It should be emphasised that the retroactive recognition of permanent residence, as required by Decision No. U-I-246/02, does not create new rights for individuals and does not retroactively create legal relationships. In addition, the issuance of the decisions "retroactively" does not by itself interfere with earlier decisions of the competent authorities in respect of individual rights associated with permanent residence. Such administrative decisions became final and if individuals did not challenge them, they can no longer be interfered with.

By enforcing the amendments on the Act and issuing decisions on this basis, all identified unconstitutionalities which occurred due to the erasure of persons from the register of permanent residents will be remedied. The National Assembly thus meets all the obligations of constitutional law stemming from the decision of the Constitutional Court.

In light of the above, in order to determine whether unconstitutional consequences exist, the Constitutional Court proceeded to weigh the constitutional values – on the one hand, the right to a referendum, and on the other hand, other constitutional values that do not support it being conducted. Due to the fact that for seven years the National Assembly failed to respond to Constitutional Court Decision No. U-I-246/02 by remedying the unconstitutionalities found by this decision, it violated the principle of a state governed by the rule of law (Article 2 of the Constitution) and the separation of powers (the second sentence of paragraph 3 of Article 3 of the Constitution), as the Constitutional Court has repeatedly emphasised in its decisions. Due to this violation, violations of human rights to equality before the law (the second paragraph of Article 14 of the Constitution), to obtain redress for human rights violations (the fourth paragraph of Article 15 of the Constitution), and to personal dignity and safety (Article 34 of the Constitution) also continue to exist. In weighing these constitutional values, the Constitutional Court took into account that by the proposed regulation the National Assembly would redress, in a manner consistent with the Constitution, the unconstitutionalities already established; that the referendum should not entail a decision on whether or not unconstitutionalities established by a decision of the Constitutional Court are to be eliminated at all; that by the amendments, the National Assembly regulated only remedies for the unconstitutionalities at issue as well as some related and urgent issues; therefore, there was no abuse of legislative

powers; that the amendments are not unconstitutional as alleged by the proposers of the referendum, and that the National Assembly could not eliminate most of the unconstitutionalities in a different manner; this holds even if the amendments were to be rejected in a referendum.

On the basis of weighing the constitutional values at issue and in the light of the mentioned circumstances, the Constitutional Court decided that the principles of a state governed by the rule of law, the right to equality before the law, the right to personal dignity and safety, the right to obtain redress for violations of human rights, and the authority of the Constitutional Court have to be given priority over the right to decision-making at a referendum. Therefore, it agreed with the petitioner that unconstitutional consequences would occur due to the rejection of the amendments to the Act at a referendum.

2. 2. 5. Constitutional Position of the Roma Community

In its decisions in 2010, the Constitutional Court decided on a number of aspects of the constitutional position of the Roma community living in the Republic of Slovenia.

In Decision No. U-I-267/09, dated 11 February 2010 (Official Gazette of the Republic of Slovenia, No. 14/10), the Constitutional Court unanimously decided upon the request of the municipal council of the Grosuplje Municipality that the challenged provisions of the Local Self-Government Act which govern the right of the Roma community residing in the municipality to have one representative in the municipal council are not inconsistent with the Constitution. The applicant requesting a constitutional review of the contested provisions of the Local Self-Government Act claimed that the legislature arbitrarily classified the Grosuplje Municipality among those municipalities which in accordance with Article 39 of the Local Self-Government Act must ensure that one member of the municipal council is a member of the Roma community. The applicant supported its allegations by referring to expert literature, to data from the population census of 2002, and to the fact that there was a small number of eligible voters.

The Constitutional Court studied the evidence and established that the data to which the applicant referred when challenging the finding that the Roma community has been traditionally settled in its territory is not comprehensively presented. Also the legislature established that the Roma community is traditionally, i.e. autochthonously, settled in the Grosuplje Municipality; moreover, the results of the successfully carried out election of a representative of the Roma community in this municipality also show the existence of the Roma community in the territory of the Grosuplje Municipality. This finding cannot be negated by the assessment that there are few eligible voters considering the total number of inhabitants, i.e. eligible voters in the Grosuplje Municipality. The applicant's allegations therefore did not demonstrate that the applicant's obligation to ensure the election of a representative of the Roma community to the municipal council would be determined arbitrarily. Consequently, the challenged regulation is not inconsistent with Article 2 of the Constitution.

The existence of an autochthonous Roma community in an individual municipality is demonstrated by various circumstances and in order to establish the right of the Roma community to a representative in a municipal council, in addition to the criterion of the autochthonous nature of the Roma community in an individual municipality, also other criteria are important (e.g. its organisation, the number of members it has), as the Constitutional Court has already emphasised in its decisions. The legislature must also consider such if it directly determines

specific municipalities that are obliged to ensure this right. On the basis of Article 65 of the Constitution, the right to a representative in a municipal council, and the right to vote in local elections, can be exercised only by those members of the Roma community who are Slovene citizens and have their permanent residence in the territory of the municipality at issue. If the circumstances change, the legislature could change or abrogate the above-mentioned obligation of an individual municipality. However, such change may be made only on the basis of comprehensive and convincing arguments, based particularly on studying changes in the population of the Roma in the territory of the municipality in question.

In Decision No. U-I-15/10, dated 16 June 2010 (Official Gazette of the Republic of Slovenia No. 54/10), the Constitutional Court reviewed the first paragraph of Article 10 of the Roma Community in the Republic of Slovenia Act, which determines the composition of the Council of the Roma Community in the Republic of Slovenia. The Constitutional Court emphasised in its decision that the legislature has a wide field of discretion when choosing the type and the substance of measures by which it ensures special rights, in addition to the rights that are enjoyed by everyone, to the Roma community and in this framework also concerning the determination of the manner of cooperation with the Roma community at the state level.

The Constitutional Court explained that the constitutional review of such regulation is therefore very restricted and that the principle of equality before the law in such cases requires that the legislature adopt a reasonable solution that is not arbitrary and that there be a reasonable connection between the chosen measure and the pursued aim. Given the particular characteristics of the members of the Roma community and the differences between them, it adopted the standpoint that the solution under which the State, in regulating and improving the situation of the Roma community, cooperates with a body which is relatively stable, in which the vast majority of Roma associations are involved, and which is therefore representative and able to represent the interests of the members of the Roma community is sound. It held that the decision of the legislature, by which two thirds of the members of the Council of the Roma Community, which currently represents the interests of the Roma community in relation to the state authorities, are proposed by the Union of Roma of Slovenia as the current representative body of the Roma community, is a reasonable measure for achieving the pursued aim – the adequate regulation and improvement of the position of the Roma community in the Republic of Slovenia. Therefore, the Constitutional Court decided that the alleged inconsistency of the challenged provision with the second paragraph of Article 14 of Constitution was unfounded.

Concerning the allegations of the applicant (the Ombudsman) that the challenged regulation does not ensure adequate representation of all segments of the Roma community (i.e. of all social organisations and associations of the Roma community), that the criteria for the representativeness of the Union of Roma of Slovenia are not determined and that all the Roma communities of the individual municipalities in which the representation of their interests is ensured and which are already constituted as political subjects, should be represented in the Council of the Roma Community, the Constitutional Court stated that these allegations constitute a question of the adequacy or appropriateness of the determination of the manner of representation in the Council of the Roma Community. As a review of the adequacy of statutory regulation lies with the legislature, the Constitutional Court would decide on the question of the adequacy and appropriateness of the determination of the manner of representation of the relevant social groups of the Roma community in the Council of the Roma Community only if the challenged regulation or its actual exercise interfered with constitutional rights. However, the applicant did not prove such.

The Constitutional Court emphasised that the Council of the Roma Community represents the common interests of the Roma community, that it primarily concerns the representation of interests concerning the regulation of matters of general application to all the members of the Roma community in the territory of the Republic of Slovenia, even those who do not have their own representative in the Council of the Roma Community, and not of partial or political interests of only those social groups of Roma communities which are represented in the Council of the Roma Community. It is in the nature of the matter that not all social groups of the Roma community, which have differing viewpoints, can be represented in the Council of the Roma Community as the representative body.

As having a representative in the Council of the Roma Community of the Republic of Slovenia is not a human right or fundamental freedom, nor can membership in the Union of Roma of Slovenia be regarded as "any other personal circumstance", on the basis of which the Constitution forbids discrimination in the first paragraph of Article 14, the Constitutional Court decided that the allegations of the applicant regarding discrimination are manifestly unfounded. It dismissed as such also the allegations that the challenged regulation is inconsistent with the second paragraph of Article 42 of the Constitution. It emphasised that the contested provision, which determines the composition of the Council of the Roma Community, does not interfere in any way with the freedom of association of various Roma associations. Each Roma association is free to decide whether to join the Union of Roma of Slovenia (and thus acquire the possibility to participate in the nomination of the members of the Council of the Roma Community). The Roma Community in the Republic of Slovenia Act does not guarantee individual Roma groups (i.e. associations or unions of associations) the right to be represented in the Council of the Roma Community, nor does such a requirement follow from Article 65 of the Constitution.

In case No. U-I-176/08, Decision dated 7 October 2010 (Official Gazette of the Republic of Slovenia, No. 84/10), which the Constitutional Court also reviewed upon the request of the Ombudsman, the statutory criterion on the basis of which the municipalities where the Roma community must be ensured the right to political representation in the municipal council was disputed.

The ombudsman alleged that the criterion of there being an autochthonous settlement of the Roma community in a given territory systematically excludes the "non-autochthonous" Roma community living in Slovenia from enjoying special rights. She stated that therefore the "non- autochthonous" Roma are deprived of adequate protection against racial and ethnic discrimination and that such regulation allegedly leads to discrimination on the basis of birth or origin and inequality before the law among the Roma communities and the individuals who live in them.

The Constitutional Court emphasised that the fifth paragraph of Article 39 of the Local Self-Governance Act can no longer be interpreted and implemented independently, but only in relation to its specific concretisation in the sixth paragraph of the same Article of the Local Self-Governance Act, which determines the municipalities where the Roma community must be ensured the special right to political representation in the municipal council by taking into account the actual circumstances and the details regarding the settlement of the Roma community in an individual municipality. As the legislature granted such a right to the Roma communities in only some municipalities, there must exist a reasonable cause for such different treatment with regard to the general principle of equality before the law.

The Constitutional Court decided that the legislature had such a reasonable cause. By determining the circumstance of traditional or historical settlement, referred to as "autochthonous settlement" in the Act, the legislature created a link between a certain territory of the municipality and the Roma community which indicates the community settled in a certain area and is therefore connected with it and the other residents who live in the area, and the establishment of common and specific (related to origins of the Roma) needs in the area. This circumstance is a reasonable cause for different treatment of Roma communities, therefore the legislature by granting special rights determined in the fifth paragraph of Article 39 of the Local Self-Government Act did not violate the principle of equality before the law.

The challenged regulation entails the so-called collective protective rights. These are not granted to individuals as such, but to the Roma communities as special local communities in order to protect their ethnic characteristics. As such is not an individual human right or a fundamental freedom, the eventual different situation of the individual Roma regarding this issue cannot itself constitute discrimination concerning the requirement determined in the first paragraph of Article 14 of the Constitution that human rights are equally ensured.

2. 2. 6. Placement of Children with Special Needs

In Decision No. U-I-118/09, dated 10 June 2010 (Official Gazette of the Republic of Slovenia, No. 52/10), the Constitutional Court abrogated the provision of the Placement of Children with Special Needs Act, which provides that the National Education Institute of the Republic of Slovenia must issue a decision concerning such placement not later than six months from the date of the beginning of the proceedings, and the ministry competent for the field of education must issue a decision on an appeal within six months from the date it received the complete appeal. It decided that this provision is inconsistent with the right of children with special needs to education and training for an active life in society.

2. 2. 7. Exercise of the Right to a Trial without Undue Delay

In 2010, the Constitutional Court addressed a number of constitutional complaints and requests that concerned the right to a trial without undue delay and in this regard the possible unconstitutionality of the Act Regulating the Protection of the Right to a Trial without Undue Delay.

By Decision No. U-I-207/08, Up-2168/08, dated 18 March 2010 (Official Gazette of the Republic of Slovenia, No. 30/10), the Constitutional Court established that the transitional regulation pursuant to Article 25 of the Act Regulating the Protection of the Right to a Trial without Undue Delay is inconsistent with the fourth paragraph of Article 15 of the Constitution in conjunction with the first paragraph of Article 23 of the Constitution, to the extent that it does not regulate the position of the injured parties with regard to whom the violation of the right to a trial without undue delay had already ceased before 1 January 2007, but who had not submitted a request for just satisfaction before an international court by that date. In order to ensure effective judicial protection of the right to a trial without undue delay also to this group of injured parties, in the period until this inconsistency with the Constitution is remedied, the Constitutional Court decided that in civil litigation proceedings concerning the payment of monetary compensation for non-pecuniary damage as a result of alleged violations of the right to a trial without undue delay, the courts must apply the relevant provisions of the Act Regu-

lating the Protection of the Right to a Trial without Undue Delay also to this group of injured parties regarding the criteria for establishing a violation of the right to a trial without undue delay as well as regarding the amount and the determination of just satisfaction.

The central standpoint of the challenged judgments reviewed by the Constitutional Court was that the merits of the claim for damages, as the Act Regulating the Protection of the Right to a Trial without Undue Delay does not regulate the situation of the complainant, must be reviewed on the basis of Article 26 of the Constitution and, *mutatis mutandis*, the general rules of law on damages. This entails that for the recognition of just satisfaction all the elements of the general tort must be established.

The Constitutional Court held that the Act Regulating the Protection of the Right to a Trial without Undue Delay primarily ensures the parties protection of the right to a trial without undue delay with so-called accelerating legal remedies by which a party can already at the time of the alleged violation effectively influence the fact that judicial proceedings do not last unreasonably long. If the party is nevertheless not ensured the right to a trial without undue delay, the Act Regulating the Protection of the Right to a Trial without Undue Delay gives them the possibility that (if certain conditions are fulfilled) they obtain just satisfaction for the violation that already occurred during the judicial proceedings, *inter alia* in the form of monetary compensation for non-pecuniary damage.

The Constitutional Court further held that in this Act the legislature regulated, in accordance with the requirements derived from the principle of a state governed by rule of law (Article 2 of the Constitution), the protection of the right to a trial without undue delay prospectively, i.e. from 1 January 2007 onward. However, the transitional provision of Article 25 of the Act Regulating the Protection of the Right to a Trial without Undue Delay regulated also some factual situations, i.e. the instances in which the violation of the right to a trial without undue delay had already ceased before 1 January 2007. For these cases this provision prescribed that the provisions of the Act Regulating the Protection of the Right to a Trial without Undue Delay apply *mutatis mutandis* regarding just satisfaction.

However, the legislature excluded from the statutory regulation a particular group of injured parties. Article 25 of the Act namely did not govern cases in which the violation of the right to a trial without undue delay had already ceased before 1 January 2007 and the party had not filed a request for just satisfaction before the European Court of Human Rights before that date, but who decided to demand judicial protection of this right before domestic courts. The Constitutional Court found that the transitional regulation in the Act Regulating the Protection of the Right to a Trial without Undue Delay is therefore tainted by an unintentional legal gap. The legislature's declaration that this legal gap will be closed by case-law proved to be mistaken. The parties were namely not ensured effective judicial protection of the right to a trial without undue delay through the case-law. According to the settled standpoint of the European Court of Human Rights, a legal remedy must be effective not only in theory but also in practice. That this group of injured parties should all the more be provided judicial protection of the right to a trial without undue delay by the awarding of damages was, in the view of the Constitutional Court, especially evident with regard to the fact that these injured parties, differently than those whose position is regulated comprehensively by the Act Regulating the Protection of the Right to a Trial without Undue Delay, had none of the effective accelerating legal remedies at their disposal at the time of the alleged violations of the right in question.

In case No. Up-2965/08, Decision dated 13 May 2010 (Official Gazette of the Republic of Slovenia, No. 45/10), the courts reviewed the complainant's claim for compensation for non-pecuniary damage which he allegedly sustained due to the violation of the right to a trial without undue delay and which allegedly occurred before 1 January 2007, on the basis of Article 26 of the Constitution and with *mutatis mutandis* application of the general rules of the law of damages. The claim was dismissed since the courts established the absence of unlawful conduct. The review of the existence of unlawful conduct was carried out in accordance with the criteria established for such cases by the European Court of Human Rights. In the view of the Constitutional Court, this entails that the decision of the courts would not have been different even if it had been based on the provisions of the Act Regulating the Protection of the Right to a Trial without Undue Delay, which, following the example of the case-law of the European Court of Human Rights, prescribes the measures to be observed in reviewing the existence of a violation of the right to a trial without undue delay.

The Constitutional Court therefore decided that the dismissal of the complainant's claim for damages does not constitute a violation of the right to effective judicial protection of the right to a trial without undue delay, a violation that otherwise vitiated the transitional regulation of the Act Regulating the Protection of the Right to a Trial without Undue Delay, which does not cover situations such as the complainant's. In light of the right to the effective judicial protection of the right to a trial without undue delay, the Constitutional Court deemed as acceptable the standpoint whereby the State cannot be held responsible for a standstill in the procedure if it is evident that speedy consideration of the case was not in the interest of this party and therefore he or she, although acting as a claimant in the proceedings, did not propose the speeding up of the procedure in which such standstills occurred because, due to the negative case-law, from the perspective of this party, the court waited for the decision of the Supreme Court in the precedence case or waited for the decision of the Constitutional Court regarding the constitutionality of the legally relevant regulation in the aforementioned case. Such applies in particular upon establishing that such conduct of the court was reasonable and that waiting for the decisions in the precedence case (due to perhaps unreasonably lengthy adjudication in the precedence case itself) did not cause an unreasonably lengthy delay in the procedure either, and upon establishing that, after the adoption of the decision in the precedence case, the court decided the case quickly.

2. 2. 8. Acceleration of Civil Proceedings

In 2010, the Constitutional Court dealt with a number of legal instruments intended for the acceleration of civil proceedings, and concerning this also the proceedings before the labour and social courts. Firstly, in Decision No. U-I-164/09, dated 4 February 2010 (Official Gazette of the Republic of Slovenia, No. 12/10), at the request of the Ljubljana District Court, the Constitutional Court reviewed a provision under which a court issues a default judgment if the defendant was unjustifiably absent from the settlement hearing or the first hearing in the case. The Constitutional Court established that the challenged provision of the second paragraph of Article 282 of the Civil Procedure Act requires that courts not consider and not take a position on a procedural action of a defendant which was performed in due time and correctly, as a consequence of the defendant subsequently and unjustifiably not participating in another procedural action. Thereby, and because it entails a departure from the principle of a fair judicial trial, the challenged provision interferes with the defendant's right to the equal protection of rights determined in Article 22 of the Constitution.

The inaction of a defendant cannot cause that a plaintiff is not able to exercise his or her right to judicial protection. The state must ensure that sanctions be imposed due to the inaction of parties to civil proceedings. By the challenged provision the legislature aimed at ensuring that civil proceedings be focused, expeditious, and economic. As regards the fact that the reviewed interference pursues a constitutionally admissible aim, it is not inadmissible from this point of view.

When reviewing whether an interference with human rights is appropriate, the Constitutional Court assesses whether the interference is at all appropriate in order to achieve the constitutionally admissible pursued aim resulting in the limitation of human rights. With reference to such, it must review statutory provisions in their context or as regards their practical mutual effect, together with other provisions of the same regulation, as well as of other regulations.

The Act Amending the Civil Procedure Act contains a number of new institutes whose purpose is to ensure that procedural materials can be collected in the shortest time possible so that proceedings can be concluded already at the first hearing, as well as to increase the possibilities for the court to adapt the frame and manner of conduct of proceedings to the circumstances and characteristics of each individual case.

From this amendment of the Civil Procedure Act onwards, this Act, even more than previously, underlines the principle that parties also have the responsibility or burden to contribute to ensuring focused and expeditious proceedings, as well as to the substantive quality of judicial protection. On the basis of the new regulation, courts can transfer measures for organising the procedure to a written stage of proceedings; thereby the significance of the main hearing and the oral part of the proceedings is in general diminished to a certain extent.

The legislature's aim of ensuring the greater activity of the parties to proceedings is sensible only if the parties' activity is reasonable and efficient, if this contributes to proceedings being focused, expeditious, and economic. The Constitutional Court established that the indirect forcing of defendants to participate in the first hearing of a main trial or at a settlement hearing, which follows from the challenged provision, in the existing legislative context, does not have any additional beneficial effect as regards attaining the legislature's aims. Therefore, the challenged regulation is inconsistent with Article 22 of the Constitution.

A few months later, by Decision No. U-I-65/10, dated 20 May 2010 (Official Gazette of the Republic of Slovenia, Nos. 33/10 and 47/10), the Constitutional Court abrogated a substantially similar provision of the Labour and Social Courts Act on the basis of the same reasons.

Subsequently, by Decision No. U-I-200/09, dated 20 May 2010 (Official Gazette of the Republic of Slovenia, No. 50/10), the Constitutional Court abrogated a provision of the Civil Procedure Act which required the court to immediately dismiss an incomplete or incomprehensible application lodged by an attorney. This provision entails an interference with the right to the judicial protection of the persons on whose behalf the attorney in question lodged an incomprehensible or incomplete application.

Due to its general nature, the challenged provision is a basis for a large number of interferences of differing intensity with the right pursuant to the first paragraph of Article 23 of the Constitution. The effect is particularly severe on holders of material rights whose judicial protection is limited by preclusive time limits, where the reinstatement of the case is not possible. If a formally incomplete application lodged on behalf of such persons by an attorney

is rejected, they might never be able to exercise their rights. In addition, the preclusive time limits are often short and occur in sensitive areas where the need for the protection of weaker parties is strongly expressed or where the claim for damages against the attorney does not entail adequate protection.

Speeding up the civil procedure, ensuring the constitutionally guaranteed right to a trial without undue delay, and increasing the responsibility of attorneys with regard to ensuring the quick and efficient conduct of proceedings as well as regarding quality and professional representation of clients are constitutionally admissible aims with regard to limiting the human right to judicial protection. They are substantively related to effectively ensuring the right to judicial protection of the opposing party.

The challenged provision may give rise to serious interferences with the human right to judicial protection. The immediate rejection of an attorney's application may result in the permanent loss of the right to judicial protection of the client, the holder of a substantive right, if a preclusive time limit for the protection of such right has already expired. This may also happen where the attorney cannot be held responsible for a lack of due professional care (e.g. in the event of typographical mistakes, force majeure, errors occurring through no fault of the attorney, etc). The importance of the consequences of the challenged provision is manifestly disproportionate to its possible benefits or its positive impact on speeding up the procedure. On the basis of these reasons, the Constitutional Court abrogated this provision as well.

At the end of 2010, in Decision No. U-I-161/10, dated 9 December 2010 (Official Gazette of the Republic of Slovenia, No. 107/10), at the request of the Higher Court in Celje, the Constitutional Court also abrogated the provision under which the court issues a judgment on the basis of a waiver, i.e. on the basis of the legal fiction that the claimant has waived all his claims, if a duly summoned claimant does not come to a settlement hearing or to the first hearing of a main trial or settlement, because such provision entails an excessive interference with the claimant's right to judicial protection. The efficient and effective guarantee of the right to judicial protection requires that the rules of the procedure do not prevent or disproportionately limit the first instance civil courts' powers in what is naturally the essence of the legal decision-making, i.e. to establish (substantively and procedurally) the legally relevant facts and to apply the substantive and procedural law concerning such facts, which are only then followed by the imposition of legal consequences. The judicial proceedings must be regulated in such a way that they ensure the protection of the true holders of civil rights. A mechanical decision on the merits of claims in order to impose a sanction, regardless of the factual and legal state of the matter, entails seemingly substantive decision-making and an interference with the human right to judicial protection.

The Constitutional Court repeated its position that promoting that the parties to proceedings have stricter procedural discipline in order to ensure the acceleration of proceedings, the improvement of their efficiency, and the enforcement of the principle of the concentration of proceedings, are constitutionally admissible objectives for the limitation of the right of the claimants to judicial protection. These objectives are in their substance related to the protection of the human right to a trial without undue delay of defendants in those proceedings where a party is unjustifiably absent from a hearing, as well as of parties in civil proceedings in general.

The imposed sanction of issuing a judgment on the basis of a waiver strongly interferes with the legal position of the claimant; however, the extent of its actual usefulness and effectiveness in achieving the legislature's objectives is impaired due to the possibilities of prolonging the

proceedings by filing legal remedies and above all due to the fact that the claimant's absence from the hearing does not significantly impede the prompt and effective conclusion of the proceedings. The absence of the claimant from a hearing does not on its own entail that a court cannot hold the hearing and decide on the claim in accordance with the rules regarding the allegations of facts and rules on the burden of proof. The weight of the consequences of the reviewed interference with the affected human right is greater than the actual benefits arising due to the interference (i.e. it is not proportional to them). On the basis of these reasons, the Constitutional Court abrogated this provision.

In Decision No. U-I-8/10, dated 3 June 2010 (Official Gazette of the Republic of Slovenia, No. 49/10), the Constitutional Court decided that the provisions of the Civil Procedure Act which stipulate that an incomplete appeal is not returned for completion but is immediately dismissed and that the parties should be informed of such consequences in the legal caution of the first instance judgment are not inconsistent with the Constitution. The Constitutional Court stated in the reasoning that by this regulation the legislature determined the manner of exercising the right to legal remedies and did not interfere with this right. This is due to the fact that the reviewed provisions do not affect the substance of the human right to legal remedies itself or its constitutionally protected core. A party in civil proceedings still enjoys the right to appeal and is also able to exercise this right effectively despite these two provisions. The aim of this regulation is to avoid prolonging the proceedings and increasing the workload of the courts.

The need for statutory regulation of the manner of exercising human rights is of particular importance regarding the right to legal remedies. Due to the nature of the matter, this right requires relatively precise regulation of the procedure in which this right is enacted and in which the legislature must clearly determine several important issues.

Appellants achieve that their appeals are treated on the merits already if they meet the criteria for a so-called "bare appeal". At the same time, they are warned in advance of the possibility that their appeal may be rejected. The contested provisions of the Civil Procedure Act cannot be deemed unreasonable. Therefore, they are not inconsistent with the right to legal remedies.

2. 2. 9. The Right to Correction

By Decision No. U-I-95/09, Up-419/09, dated 21 October 2010 (Official Gazette of the Republic of Slovenia, No. 90/10), the Constitutional Court established that the second paragraph of Article 26 of the Media Act, which determines that the right to correction must be exercised within thirty days of the publication of the information or the date on which the interested party became aware of the publication if he was not able to learn of the publication within the given deadline due to objective reasons, is inconsistent with the right to correction determined by Article 40 of the Constitution.

The Constitutional Court emphasised that the right to correction is a positive status right, which imposes upon the state the obligation to adopt appropriate measures that enable the affected individual to exercise this human right effectively. When defining the content and the scope of the right to correction in the law, the legislature must balance the weight of the conflicting rights and interests. In performing this balancing, it must be taken into the account that the right to correction limits the freedom of expression (Article 39 of the Constitution), as well as the right of media owners and publishers to free enterprise (Article 74 of the Constitution).

The text of the Constitution binds the right to correction to the injury of the person demanding the correction. The essence of the right to correction is that everyone has the right to respond to information published in the media which contains inaccurate facts about him and by such affects his rights or benefits. The principal purpose of the right to correction is to protect private interests of the affected individual, who in the reply to the published information asserts that the facts presented were inaccurate and thus protects his personality rights (the right to honour, good name, reputation, privacy, and dignity). At the same time, this right also protects the public interest to be informed in a balanced, comprehensive, and objective manner. By providing the affected person the option to publish the correction, his position vis-a-vis the media is more balanced, equilibrium is created, and the principle of the equality of arms is protected.

In this decision the Constitutional Court established that on the basis of the challenged regulation affected persons may find themselves in substantially different positions concerning the possibility to exercise the right to correction. The legislature namely determined that the right to correction must be exercised within thirty days of the publication of the information, i.e. the objective deadline, but did not establish a subjective deadline. The affected individual may be substantially deprived of the possibility to exercise the right to correction, especially if he becomes aware of the published information on the final days (or even on the last day) before the 30-day deadline expires, which starts to run on the date of publication, and must exercise the right to correction by the end of this deadline (regardless of the reasons that led to such delay).

The Constitutional Court held that the legislature interfered with the core of the right ensured by Article 40 of the Constitution by determining the deadline for the exercise of the right to correction in such a manner. As the right to correction can be effectively exercised and can achieve its purpose only by a rapid and timely reply to the published information, by determining a deadline for the exercise of this right the legislature, in the view of the Constitutional Court, pursued a constitutionally admissible and legitimate aim.

However, the Constitutional Court established, without reviewing the suitability and necessity of such measure, that the challenged statutory regulation is not proportional in the narrow sense. In this context, the Constitutional Court estimated that the potential benefits of the challenged regulation in terms of timeliness with regard to informing the public and the fact that the published correction is up-to-date cannot outweigh the consequences such regulation has for the affected individual, who in some cases may be significantly deprived of the possibility to exercise the right to correction. The Constitutional Court derived its review from the principal purpose of the right to correction, which is to protect private interests of the affected individual. In the view of the Constitutional Court, by adopting the challenged regulation the legislature disproportionately rendered it difficult for an eligible persons to exercise the right to correction in certain cases.

2. 2. 10. Labour and Social Law Disputes

Suspension of the Right to Unemployment Benefits

In Decision No. U-I-159/07, dated 10 June 2010 (Official Gazette of the Republic of Slovenia, No. 51/10), the Constitutional Court abrogated two indents of the Employment and Insurance Against Unemployment Act which determined the suspension of the right to unemploy-

ment benefits for those unemployed persons who receive compensation on the basis of a non-compete clause or a severance payment upon termination of the employment contract in an amount higher than determined by labour law statutes.

The Constitutional Court decided that the contested provisions concerning the suspension of the right to unemployment benefits are not unclear and therefore do not violate the principles of a state governed by the rule of law, namely the principle of clarity, but it concluded that the challenged regulation is inconsistent with other provisions of the Constitution.

Regarding the rules on the suspension of the right to unemployment benefits due to receiving compensation on the basis of a non-compete clause allowance, the Constitutional Court decided that such constitutes an interference with the right to social security determined by the first paragraph of Article 50 of the Constitution which is not proportional in the narrow sense. The provisions regarding the suspension of the right to unemployment benefits due to the individual receiving certain income on the basis of previous employment could otherwise entail only a manner of determining the exercise of the human right to social security, but only under the condition that the principal purpose of this income is the same as the purpose of the suspension of unemployment benefits (i.e. the substitution of the revenue forgone due to loss of employment). As compensation on the basis of a non-compete clause does not constitute income which would be paid for the same purpose as unemployment benefits, the challenged regulation entails an interference with the right to social security. As regards the reasons for adopting the challenged regulation, which allegedly lie in the fact that persons whom it may be assumed receive satisfactory income may on their own deal with the loss of income at the time unemployment occurs, which are intended to take into account the need for rational use of insurance community funds and therefore to ensure the sustainability of the system, the Constitutional Court considered that such reasons might otherwise constitute a constitutionally admissible aim for the interference with a human right. When reviewing the proportionality of the interference in the narrower sense, the Constitutional Court adopted the position that the potential benefits the unemployment insurance system could derive from such regulation cannot outweigh the consequences of such regulation for the affected individuals. Such are namely not ensured social security in terms of the substitution of the forgone income in the period of suspension and there is no reason why these persons should be the ones that bear (to an increased extent) the burden of the sustainability of the system. Compensation on the basis of a non-compete clause is namely income paid for an entirely different purpose than unemployment benefits. One of the fundamental features of the social insurance systems entails that the rights under such systems are based on the assumption of the (anticipated) need for payment at the moment the social circumstances occur and as such are not conditional upon the income and assets of the beneficiary and his family members. The legislature did not clarify why it departed from this fundamental characteristic of social insurance systems precisely in cases of compensation on the basis of a non-compete clause.

Regarding the regulation determining the suspension of the right to unemployment benefits in cases of entitlement to a severance payment upon termination of employment in an amount determined by a collective agreement, the Constitutional Court established that a severance payment as a possible form of income maintenance in the event of termination of employment could to a certain extent also replace the right to unemployment benefits on the basis of obligatory unemployment insurance. Therefore, the suspension of the right to unemployment benefits due to an entitlement to a severance payment does not in itself

affect the right to social security determined by the first paragraph of Article 50 of the Constitution. However, such regulation entails an interference with the right to the freedom of trade unions. In accordance with the challenged regulation, the suspension of the right to unemployment benefits is caused (already) by the amount of the severance payment which exceeds the level determined by labour law statutes, whereas a severance payment equal to the minimum amount determined by law is not burdened by such a "disadvantage". Following the challenged regulation, employees will therefore always be entitled only to the amount of statutory severance payment, and the part of the severance payment agreed by a collective agreement will always and in full be intended solely to provide income security during the period of the suspension of the right to unemployment benefits. This entirely negates the efforts of the unions in the process of collective bargaining to achieve a higher severance payment (while receiving unemployment benefits at the same time), which entails not only an interference, but completely denies the right to the freedom of trade unions.

The Unequal Treatment of Insured Persons in the Pension and Disability Insurance Act

In Decision No. U-I-40/09, dated 4 March 2010 (Official Gazette of the Republic of Slovenia, No. 27/10), on the basis of two requests of the Labour and Social Court in Ljubljana, the Constitutional Court established that the provision of the Pension and Disability Insurance Act according to which persons entitled to third degree disability status are treated differently according to whether they are insured as farmers and self-employed or not is inconsistent with the Constitution.

On the basis of the payment of contributions [to the national pension and disability scheme], insured persons are in the same position regardless of whether they are insured as workers, farmers, or self-employed persons. The same position of insured persons requires that they are treated in the same manner regarding the acquisition of compulsory pension and disability insurance rights. In the event of the occurrence of a third-degree disability, the scope of the rights to which insured workers are entitled is considerably larger than the scope of the rights to which insured farmers or self-employed persons are entitled. On the basis of the third paragraph of Article 66 of the Pension and Disability Insurance Act, a farmer or self-employed person may exercise the right to a third-degree disability pension only if reduced work ability is established. If limited work ability is established, the aforementioned Act does not provide any rights to them. It is therefore evident that the level of protection of the compared insured persons is considerably different.

There is no sound reason for such differentiation that follows from the nature of the matter. The Constitutional Court therefore found that the regulation, pursuant to which, in the event of a third-degree disability, farmers and self-employed persons are entitled only to the right to part-time work and partial disability pension, is inconsistent with the general principle of equality before the law. The Constitutional Court ordered the National Assembly to remedy the established inconsistency within six months of the day the decision was published.

Payment of Social Security Contributions

In Decision No. U-I-214/09, Up-2988/08, dated 8 July 2010 (Official Gazette of the Republic of Slovenia, No. 62/10) the Constitutional Court decided that the third paragraph of Article 3 of the Social Security Contributions Act, according to which a severance payment paid upon

termination of employment due to incompetence is subject to the payment of social security contributions, whereas such does not hold for a severance payment paid upon termination of employment due to business reasons, is inconsistent with the principle of equality before the law determined by the second paragraph of Article 14 of the Constitution.

The Constitutional Court decided that employees whose employment contracts are terminated for business reasons and employees whose employment contracts are terminated due to incompetence are in positions that are in their essence equal. Both are left with no employment and consequently without pay, i.e. an income to support themselves. Under the prescribed conditions, both are entitled to unemployment benefits. Both are also entitled to a severance payment paid upon termination of employment, which to a certain extent ensures their social security upon loss of employment.

When assessing whether there exist reasonable grounds for the challenged different treatment of employees, the Constitutional Court rejected the arguments of the National Assembly and the Government that the reason that social security contributions are not paid only with regard to a severance payment paid upon termination of employment due to business reasons is the fact that only those employees are exempt from the payment of contributions whose employment has been terminated for reasons beyond their control. With regard to the formation of the circumstances entailing reasons of incompetence, it emphasised that the employee cannot have been accused of conduct constituting a violation of contractual or other obligations arising from the employment relationship, but these reasons of incompetence entail that due to his physical and mental characteristics, abilities, and knowledge the employee can no longer perform duties which he undertook under the employment contract. In the view of the Constitutional Court, there are no reasonable grounds for differentiating solely on the basis of from whose sphere the grounds for terminating the employment contract arise without taking into account whether the employee is at fault for conduct which constitutes grounds for termination of the employment contract. Not recognising an advantage such as being exempt from having to pay social security contributions with regard to a severance payment merely on the basis of the fact that the grounds for termination arise from the sphere of the employee, namely has the effect of imposing a sanction for termination of employment due to such grounds, but given that these reasons are beyond the employee's control, such is not reasonable.

The Constitutional Court also rejected the arguments that the reason for the different regulation of the obligation to pay contributions with regard to a severance payment paid upon termination of employment due to business reasons or due to incompetence is to relieve employers who dismiss employees for business reasons. In this respect, the Constitutional Court established that such cannot be substantiated regarding the part of the social contributions that employees are liable to pay. Namely, to the extent to which the exemption relates to the social contributions employees are liable to pay, such exemption does not entail a reduction in the employer's obligations, but just that this part of the income that would otherwise be paid as contributions, would be left to the employee.

In the light of the foregoing considerations, the Constitutional Court decided that there were no reasonable grounds for the different regulation of the obligation to pay contributions with regard to a severance payment paid upon termination of employment due to business reasons and a severance payment paid upon termination of employment due to incompetence.

2. 2. 11. Criminal Law Cases

Searches Conducted on the Premises of a Lawyer's Office

In Decision No. Up-2530/06, dated 15 April 2010 (Official Gazette of the Republic of Slovenia, No. 42/10), the Constitutional Court reviewed the role of a representative of the Bar Association in the investigation of a law firm regarding the issue of the protection of privacy and the confidential relationship between a lawyer and his clients.

The complainant filed a constitutional complaint because by the challenged decision the Disciplinary Court of the Bar Association of Slovenia held the complainant responsible for a violation of the professional duties of a lawyer due to his unjustifiable refusal to carry out his duty to be present during the search of a lawyer's office as a representative of the Bar Association. It imposed upon him a disciplinary measure, i.e. a warning.

The Constitutional Court emphasised that the inviolability of a lawyer's office is ensured within the framework of the spatial aspect of privacy determined by Article 36 of the Constitution. The search of a lawyer's office entails a severe interference with this constitutionally protected living space. In a search of a lawyer's office it is not possible to observe only this aspect of privacy but also the aspects related to the nature of the lawyer-client relationship. As an independent and autonomous adviser and assistant, a lawyer is bound to engage in legal acts for the benefit of his clients within the limits of the law. A prerequisite for the performance of this task is a confidential relationship between a lawyer and his client.

Due to the protection of the confidential relationship and privacy of the lawyer's clients, an act must determine the conditions under which a search of a lawyer's office is admissible. The presence of a representative of the Bar Association is intended to protect the human rights of third parties who reasonably expect that the protection of their privacy will be ensured. The representative of the Bar Association must ensure that the secrecy of documents and objects which are not the subject of the search is respected. When a search is conducted on the premises of a lawyer's office, the scope of the search must be strictly limited in the warrant to the case files and objects which, in order to provide evidentiary material relating to a particular criminal offence, make the search of the lawyer's office admissible. The reasoning of the warrant must not lead one to conclude that all the documentation in the lawyer's office should be examined or that one should search in the lawyer's office for whatever one wishes to find.

The complainant could not substantiate the alleged violation by stating that the case files and objects subject to search were defined only in the reasoning of the warrant and not in its operative provisions. What is essential is whether the subject of the search is described accurately. A representative of the Bar Association must respect judicial decisions and does not have the right to assess whether a warrant was drawn up in accordance with the law. Therefore, the Constitutional Court decided that the Supreme Court's standpoint, according to which the complainant does not have the right to refuse to be present during a search of a lawyer's office which is to be conducted on the basis of a court warrant, cannot be deemed unconstitutional.

Extension of Pre-Trial Detention on the Motion of the Investigating Judge

In Decision No. U-I-50/09, Up-260/09, dated 18 March 2010 (Official Gazette of the Republic of Slovenia, No. 29/10), the Constitutional Court reviewed for the first time the constitutionality

of the statutory regulation which permits that during the judicial inquiry stage detention can be extended until the filing of the indictment also on the motion of the investigating judge.

The Constitutional Court preliminarily emphasised that the conduct of the investigating judge under the challenged statutory regulation depends on his assessment of whether there are grounds for extension of the detention. The law does not expressly determine the actions of the investigating judge if he assesses that there are no grounds for the extension of the detention. Regarding the decision on the extension of the detention, in the stage where an extension can be requested there are, on the one side, the defendant against whom the investigation is being conducted, and, on the other side, the state prosecutor and the investigating judge, the latter being the one who leads the investigation against the defendant and collects incriminating as well as exculpatory evidence, on the basis of which the state prosecutor decides whether to file the indictment. There are thus two state authorities standing in opposition to the defendant – the state prosecutor and the investigating judge. The investigating judge also has the function of prosecuting perpetrators of criminal offences.

The Constitutional Court therefore decided that such a regulation entails an interference with the constitutional right of a defendant to the equal protection of rights, namely with respect to that substance of the right which ensures the defendant so-called "equality of arms" in the criminal procedure. The Constitutional Court found no constitutionally admissible aim for the interference with the equality of arms principle, which ensures the defendant that at all times he is placed on an equal footing as the other party to proceedings – the state prosecutor. The Constitutional Court did not need to review whether the fact that, according to the assertions of the Government and the Ministry, such regulation is necessary because the investigating judge is most familiar with the objective reasons due to which the investigation is not completed constitutes a constitutionally admissible aim. It is clear that such fact cannot be considered in the first place because exactly the same situation also occurs when the investigating judge does not file a motion for the extension of detention as he considers that there is no reason for the extension. Also in such instances, the investigating judge must inform the public prosecutor of all information that is relevant in light of future decisions on the extension of detention and that concerns the conduct of the investigation or the investigative acts to be undertaken.

As there was no constitutionally admissible aim for the limitation of the defendant's right to the equality of arms determined by Article 22 of the Constitution, the Constitutional Court abrogated the terms "the investigating judge or" in the fourth sentence of the second paragraph of Article 205 of the Criminal Procedure Act.

Disqualification of a Judge

In case No. Up-2422/08, Decision dated 1 July 2010 (Official Gazette of the Republic of Slovenia, No. 61/10), the complainant alleged a violation of the first paragraph of Article 23 of the Constitution, because the three-judge panel for pre-judgement appeals which ruled on the complainant's request for a retrial in the criminal proceedings included a judge who had already cooperated in the regular criminal proceedings as a member of the three-judge panel for pre-judgement appeals deciding on the objection to the indictment and on the motions of the state prosecutor for the order of detention.

The Constitutional Court emphasised that one of the fundamental conditions for ensuring a fair trial is the prohibition on a person carrying out the judicial function regarding whom

circumstances exist that cast doubt on his impartiality and objectivity. When ensuring the right determined in the first paragraph of Article 23 of the Constitution, the courts must take into consideration the reasons why an individual judge should not perform the duties of a judge and should therefore be disqualified from decision-making in a particular case. The court must respect this constitutional requirement also when assessing whether an individual judge can be a member of a panel deciding on a complainant's request for a retrial in criminal proceedings.

The Constitutional Court decided that the Supreme Court adopted a standpoint which is inadmissible with regard to the right determined by the first paragraph of Article 23 of the Constitution. The situation where there already exists one of the reasons for the disqualification (exclusion) of a judge from the main trial is equal in terms of the requirements determined by the first paragraph of Article 23 of the Constitution to the situation in which the court, pursuant to the third paragraph of Article 412 of the Criminal Procedure Act, reviews whether a judge (a member of the panel deciding on the request for a retrial in criminal proceedings) took part in adopting the judgment in the initial proceedings. When interpreting the third paragraph of Article 412 of the Criminal Procedure Act, the Supreme Court must, therefore, also consider the grounds determined by Article 39 of the Criminal Procedure Act due to which the judge must not perform judicial duties as a judge deciding on the case at the main trial. If, however, there exist such circumstances regarding this judge on the basis of which he should not take part in adopting the judgment at the first instance, such judge for the same reasons should not be a member of a panel determined by the first paragraph of Article 412 of the Criminal Procedure Act.

As the Supreme Court did not follow these requirements, it interpreted the provisions of the Criminal Procedure Act inconsistently with the complainant's right to a trial by an impartial judge and thus violated the first paragraph of Article 23 of the Constitution.

2. 3. Respect for the Decisions of the Constitutional Court

In this Annual Report, the Constitutional Court again draws attention to due respect for those decisions adopted pursuant to Article 48 of the Constitutional Court Act. Thereby, when the Constitutional Court deems a law, other regulation, or general act issued for the exercise of public authority unconstitutional as it does not regulate a certain issue which it should regulate or it regulates such in a manner which does not enable abrogation, a declaratory decision is adopted on such and the Constitutional Court determines a deadline by which the legislature or other authority which issued such unconstitutional act must remedy the established unconstitutionality. If the legislature fails to respond by remedying the unconstitutionality within this deadline, it thereby violates the principles of a state governed by the rule of law and the principle of the separation of powers.

At the end of last year, there remained thirteen unimplemented decisions of the Constitutional Court by which statutory provisions were found unconstitutional and seven Constitutional Court decisions requiring action from municipalities.

The oldest decision that has still not been observed dates from 1998, i.e. Decision No. U-I-301/98, dated 17 September 1998 (Official Gazette of the Republic of Slovenia, No. 67/98, and OdlUS VII, 157), by which the unconstitutionality of provisions of the Establishment of Municipalities and Municipal Boundaries Act defining the territory of the Koper Urban Municipality was established. Listed generally according to date of deciding, Decision No. U-I-358/04, dated 19 October 2006 (Official Gazette of the Republic of Slovenia, No. 112/06 and OdlUS XV, 72), established the unconstitutionality of certain provisions of the Pension and Disability Insurance Act; Decision No. U-I-332/05, dated 4 October 2007 (Official Gazette of the Republic of Slovenia, No. 94/07, and OdlUS XVI, 73), established the unconstitutionality of Articles 1 and 3 of the Act Amending the National Council Act; and Decision No. U-I-295/07, dated 22 October 2008 (Official Gazette of the Republic of Slovenia, No. 105/08 and OdlUS XVII, 56), established the inconsistency of the sixth paragraph of Article 4 of the Elections and Referenda Campaigns Act with the Constitution to the extent that it refers to the National Council. The following more recent decisions also still await implementation: Decision No. U-I-146/07, dated 13 November 2008 (Official Gazette of the Republic of Slovenia, No. 111/08 and OdlUS XVII, 59), in which the unconstitutionality of the Civil Proceedings Act was established; Decision No. U-I-425/06, dated 2 July 2009 (Official Gazette of the Republic of Slovenia, No. 55/09), in which the Constitutional Court found an inconsistency with regard to Article 22 of the Registration of a Same-Sex Civil Partnership Act; Decision No. U-I-238/07, dated 2 April 2009 (Official Gazette of the Republic of Slovenia, No. 32/09), in which the unconstitutionality of the second sentence of the fourth paragraph of Article 22 of the Auditing of Public Procurement Procedures Act was established; Decision No. U-I-284/06, dated 1 October 2009 (Official Gazette of Republic of

Slovenia, No. 83/09), in which the Constitutional Court established the unconstitutionality of certain provisions of the Employment Relations Act; and Decision No. Up-3871/07, U-I-80/09, dated 1 October 2009 (Official Gazette of the Republic of Slovenia, No. 88/09), regarding the inconsistency of the Criminal Proceedings Act with Article 2 of the Constitution.

Three Constitutional Court decisions from 2010 have also not yet been observed; namely, Decision No. U-I-40/09, dated 4 March 2010 (Official Gazette of the Republic of Slovenia, No. 27/10), in which the Constitutional Court established the unconstitutionality of the third paragraph of Article 66 of the Pension and Disability Insurance Act, Decision No. U-I-207/08, Up-2168/08, dated 18 March 2010 (Official Gazette of the Republic of Slovenia, No. 30/10), in which the unconstitutionality of the provisions of the Act Regulating the Protection of the Right to a Trial without Undue Delay was established, and Decision No. U-I-27/10, dated 10 June 2010 (Official Gazette of the Republic of Slovenia, No. 51/10), in which the Constitutional Court established the unconstitutionality of two provisions of the Chambers of Commerce and Industry Act. Constitutional Court Decision No. U-I-7/07, Up-1054/07, dated 7 June 2007 (Official Gazette of the Republic of Slovenia, No. 54/07, and OdlUS XVI, 63), on the unconstitutionality of the Local Elections Act and of the National Assembly Elections Act, remains partly unimplemented, as the National Assembly Elections Act remains inconsistent with the Constitution. Constitutional Court Decision No. U-I-345/02, dated 14 November 2002 (Official Gazette of the Republic of Slovenia, No. 105/02 and OdlUS XI, 230), regarding the inconsistency of certain municipal statutes with the Local Self-Government Act as they did not provide that representatives of the Roma community be included as members of the respective municipal councils, also remains partly unimplemented. While other municipalities have harmonised their statutes with the mentioned decision, the Grosuplje Municipality has still not enacted it.

In addition, there are still six decisions by which municipalities were ordered to remedy the unconstitutionality of their respective municipal regulations but who have not yet done so. All of the decisions concern ordinances relating to the categorisation of local roads by which the municipalities have nationalised private plots of land without a legal basis. Namely, Decision No. U-I-21/04, dated 9 June 2005 (Official Gazette of the Republic of Slovenia, No. 59/05, and OdlUS XIV, 48), in which the unconstitutionality of such ordinance in Dobrepolje Municipality was established, has not yet been observed; in Decisions Nos. U-I-42/06, dated 20 March 2008 (Official Gazette of the Republic of Slovenia, No. 33/08, and OdlUS XVII, 14), U-I-304/06, dated 15 May 2008 (Official Gazette of the Republic of Slovenia, No. 53/08, and OdlUS XVII, 18), and U-I-202/08, dated 9 July 2009 (Official Gazette of Republic of Slovenia, No. 57/09), ordinances on the categorisation of local roads of the Ljubljana Urban Municipality were found to be unconstitutional for the same reason; in Decision No. U-I-142/08, dated 9 July 2009 (Official Gazette of the Republic of Slovenia, No. 57/09), the Constitutional Court established the unconstitutionality of such ordinance of the Ivančna Gorica Municipality; and by Decision No. U-I-286/08, dated 5 November 2009 (Official Gazette of the Republic of Slovenia, No. 94/09), the Constitutional Court established the unconstitutionality of the Ordinance on the Categorisation of Local Roads in Ljubno Municipality.

2. 4. The Constitutional Court in Numbers

Looking at the numerical indicators, it can first be observed that the number of cases pending remains at virtually the same level as at the beginning of the year 2010, which entails that in the last year the Constitutional Court resolved nearly as many cases as it received; however the influx of new cases compared with the previous year increased again, although for the first time since 2007 (Table 1). From previous years, as of 31 December 2010 there remain pending only a minimal number (six) of cases from 2008 and quite a few from 2009 (a total of 206), but the Constitutional Court is resolving such as absolute priority cases. All other unresolved cases are from 2010.

Among the cases reviewed by the Constitutional Court, constitutional complaints filed by individuals and legal persons (designated as Up cases) prevail, representing 84% of the entire caseload in 2010, thus petitions filed against statutory and other abstract norms by affected persons and requests filed by competent bodies constitute a little over 15% thereof. Such is reflected also in the distribution of the cases resolved (Figure 1 and 2). After a visible reduction in the caseload in the years 2008 and 2009 due to the amendment of the Constitutional Court Act (i.e. due to the exclusion of access to the Constitutional Court in matters of lesser importance), in 2010 the number of constitutional complaints filed again started to increase (Table 4). The number of petitions filed is slightly decreasing (Figure 5), also due to the stricter interpretation of legal interest required for filing such an application, but the number of requests (52) submitted by entitled applicants (Table 5) is also of significance as such cases normally entail a review of the constitutionality of laws and other regulations, based on serious and complex constitutional issues whose solution requires of the Constitutional Court more time and resources.

Most constitutional complaints are related to disputes concerning minor offences, which is interesting because the amendment to the Constitutional Court Act in 2007 excluded (apart from in certain exceptional instances) the possibility of filing a constitutional complaint in cases relating to minor offences. Despite the very clear constitutional case-law regarding this issue, it is evident that individuals are not acquainted with such restrictions. Furthermore, despite unsuccessful attempts, they continue to frequently use the same standardised applications, "forms" into which they only enter their data (Table 9). This, in turn, in almost all cases unnecessarily burdens the work of the Constitutional Court. Statistically, such are followed by constitutional complaints in civil law relating to civil proceedings (23.8%), judicial disputes of administrative acts (the different types of disputes together account for 20.8%), and criminal cases (7.2%).

The Constitutional Court resolved more cases in 2010 than in 2009 (Table 11). The distribution of the cases resolved is, of course, similar to that of the new cases received by the Constitutional Court (Table 14). It must be emphasised, however, that according to the statistical

data the success of complainants and petitioners, i.e. whether constitutional complaints and petitions (as well as requests) to initiate proceedings for the review of the constitutionality of laws and other regulations are substantiated, is very limited. Thus, in 2010, out of 294 cases of complaints and requests resolved only eight led to the abrogation of statutory provisions and only an additional seven concluded with the establishment of the unconstitutionality of the law and the determination of a deadline for remedying such unconstitutionality; the Constitutional Court adopted the same type of decision regarding the provisions of regulations in only two cases. In total, this entails that something less than 6% of applications in U-I cases were substantiated (Table 12). Similar figures also hold with regard to the success of constitutional complaints, where out of 1500 constitutional complaints resolved only 74 (less than 5%) were reviewed on the merits of the case and only 57 constitutional complaints were then successful (less than 4%).

On the basis of statistical data, it can also be noted that the average length of time it took to resolve a case in 2010 was approximately 200 days, with regard to which it took an average of 260 days for abstract review (U-I) cases and 188 days to resolve constitutional complaints. The latter is 12% faster than in 2009, when the average time needed to resolve a case was 214 days (Tables 17 and 18).

Finally, it can be added that 1179 cases from previous years remain pending, which includes 457 priority cases and 213 absolute priority cases, such that among the cases pending from previous years more than half have priority status.

2.5. Summary of Statistical Data for 2010

Key

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

Registers	
Register U-I	Cases involving a review of the constitutionality and legality of regulations and general acts issued for 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 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.

The Constitutional Court examines constitutional complaints in the following panels:

Panel	
Ci - Civil Law Panel	Panel for the examination of constitutional complaints in the field of civil law
Cr - 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

Register	Cases Pending as of 1 January 2010	Cases Received in 2010	Cases Resolved in 2010	Cases Pending as of 31 December 2010
U-I	274	287	294[1]	267
Up	822	1,582	1,500[2]	904
P	20	10	22	8
U-II	0	1	1	0
Rm	1	0	1	0
Mp	0	0	0	0
Ps	0	0	0	0
Op	0	0	0	0
TOTAL	1,117	1,880	1,818	1,179

Table 1: Summary Data on All Cases in 2010

[1] Including 58 joined applications.
[2] Including 2 joined applications.

Panel	Cases Pending as of 1 January 2010	Cases Received in 2010	Cases Resolved in 2010	Cases Pending as of 31 December 2010
Civil Law	314	584	541	357
Administrative Law	266	501	494	273
Criminal Law	242	497	465	274
TOTAL	822	1,582	1,500	904

Table 2: Summary Data regarding Up Cases in 2010

Year	2007	2008	2009	2010	Total
U-I	/	3	75	189	267
P	/	/	1	7	8
Up	/	3	130	771	904
TOTAL	/	6	206	967	1,179

Table 3: Pending Cases According to Year Received as of 31 December 2010

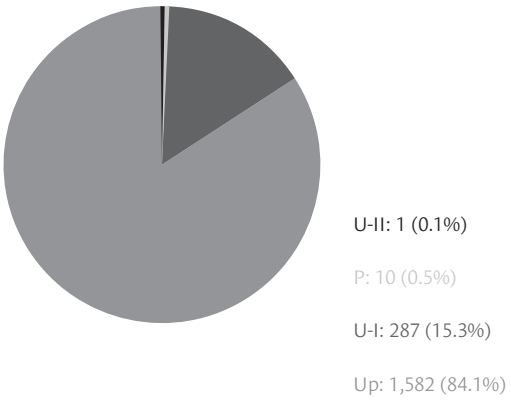


Figure 1: Distribution of Cases Received in 2010

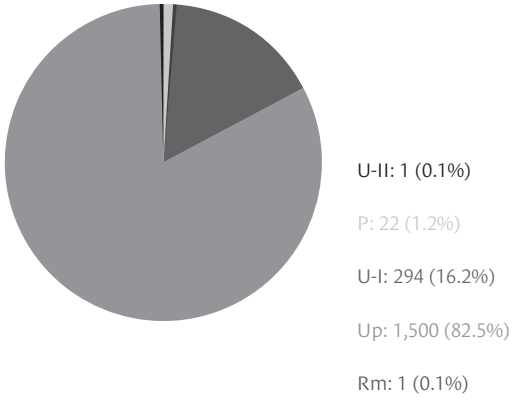


Figure 2: Distribution of Cases Resolved in 2010

2. 5. 1. Cases Received

Type	2004	2005	2006	2007	2008	2009	2010	2009/2010
U-I	373	347	474	367	323	308	287[3]	-6.8%
Up	883	1,310	2,546	3,937	3,132	1,495	1,582	+ 5.8%
P	10	220	32	47	107	39	10	-74.4%
U-II	5		1			2	1	-50.0%
Rm						1		/
Mp				3				/
TOTAL	1,271	1,877	3,053	4,354	3,562	1,845	1,880	+1.9%

Table 4: Cases Received According to Type of Case and Year

[3] Including 6 joined applications.

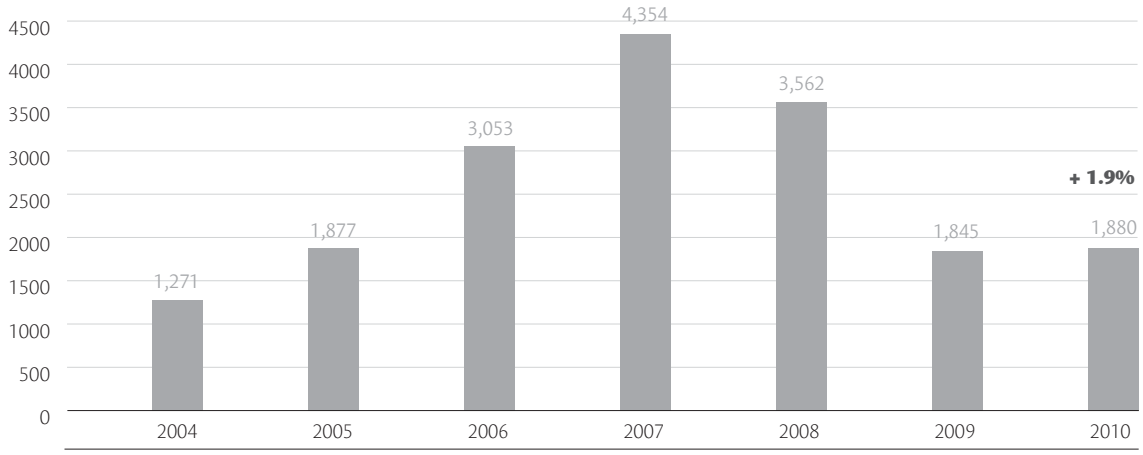


Figure 3: Total Number of Cases Received by Year

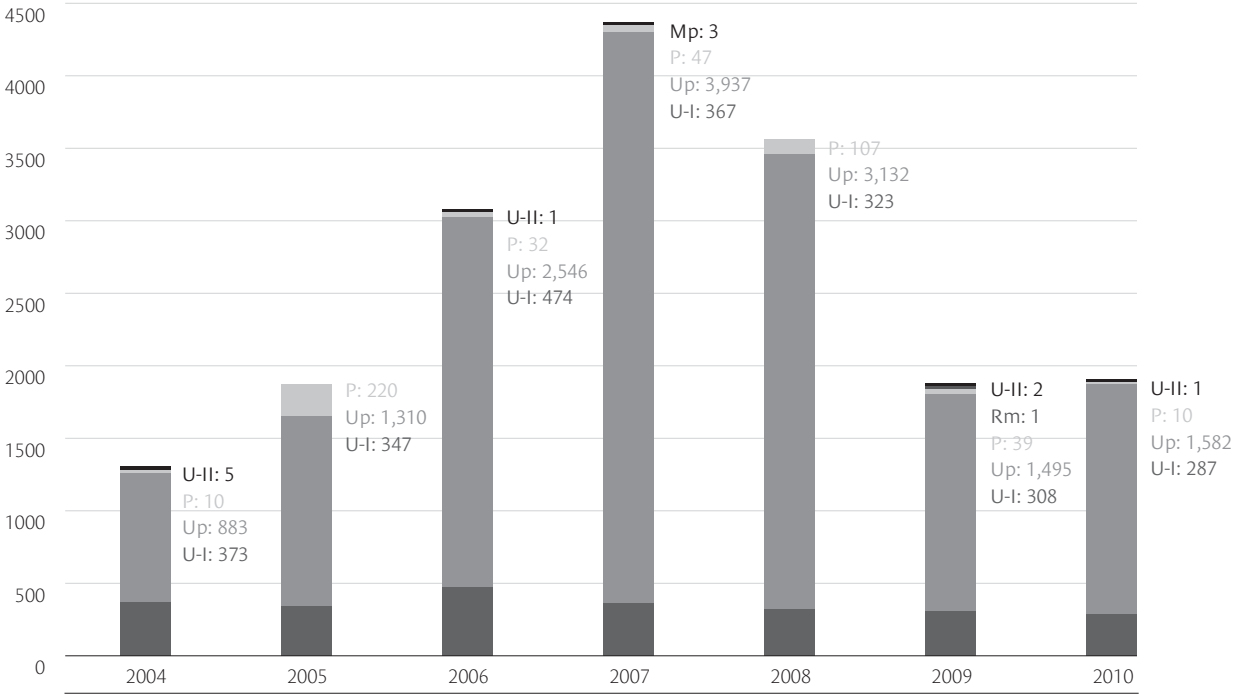


Figure 4: Distribution of Cases Received by Year

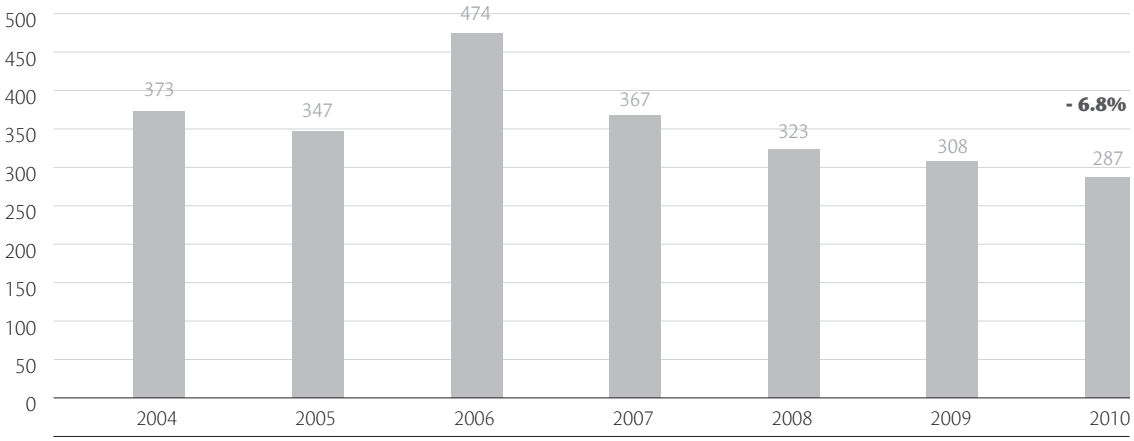


Figure 5: Number of **U-I Cases** Received by Year

Applicants Requesting a Review	Number of Requests Filed
Deputy Groups of the National Assembly of the Republic of Slovenia	8
Višje delovno in socialno sodišče (Higher Labour and Social Court)	6
Višje sodišče v Mariboru (Higher Court in Maribor)	3
Government of the Republic of Slovenia	3
Pergam, Konfederacija sindikatov Slovenije (Confederation of Trade Unions of Slovenia)	2
Višje sodišče v Ljubljani (Higher Court in Ljubljana)	2
Konfederacija sindikatov 90 Slovenije (The '90' Confederation of Trade Unions of Slovenia)	2
Court of Audit of the Republic of Slovenia	2
Delovno in socialno sodišče v Ljubljani (Labour and Social Court in Ljubljana)	2
Občina Domžale in drugi (Domžale Municipality et al.)	2
Konfederacija novih sindikatov Slovenije - Neodvisnost (The Independence Confederation of New Trade Unions of Slovenia)	1
Upravno sodišče (Administrative Court)	1
Mestna občina Celje (Celje Urban Municipality)	1
Mestna občina Velenje (Velenje Urban Municipality)	1
Okrožno sodišče v Ljubljani (District Court in Ljubljana)	1
Združenje občin Slovenije (The Association of Municipalities of Slovenia)	1
Sindikat sevalcev Slovenije (The Radiologists Trade Union of Slovenia)	1
Sindikat vzgoje, izobraževanja, znanosti in kulture Slovenije (Education, Science, and Culture Trade Union of Slovenia)	1
Občina Gorenja vas - Poljane (Gorenja vas – Poljane Municipality)	1
Okrožno sodišče v Mariboru (District Court in Maribor)	1
National Council of the Republic of Slovenia	1
Sindikat slovenskih diplomatov (Trade Union of Slovenian Diplomats)	1
Ombudsman of the Republic of Slovenia	1
Okrožno sodišče v Kopru (District Court in Koper)	1
Višje sodišče v Celju (Higher Court in Celje)	1
Okrajno sodišče v Slovenj Gradcu (Local Court in Slovenj Gradec)	1
Občina Sežana (Sežana Municipality)	1
Vrhovno sodišče Republike Slovenije (Supreme Court of the Republic of Slovenia)	1
Mestna občina Ljubljana (Ljubljana Urban Municipality)	1
Okrajno sodišče v Ljubljani (Local Court in Ljubljana)	1
TOTAL	52

Table 5: Number of Cases Received in 2010 according to Applicant

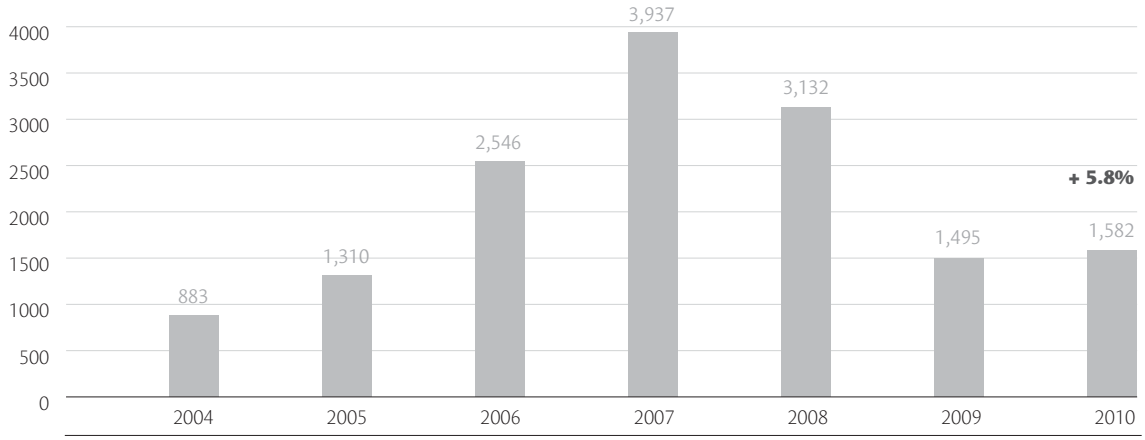


Figure 6: Number of **Up Cases** Received by Year

Year	Civil Law	Administrative Law	Criminal Law	Total
2004	342	281	260	883
2005	415	445	450	1,310
2006	498	422	1,626	2,546
2007	623	641	2,673	3,937
2008	436	567	2,129	3,132
2009	548	548	399	1,495
2010	584	501	497	1,582
2010/2009	+6.6%	-8.6%	+24.6%	+5.8%

Table 6: Cases Received according to Panel

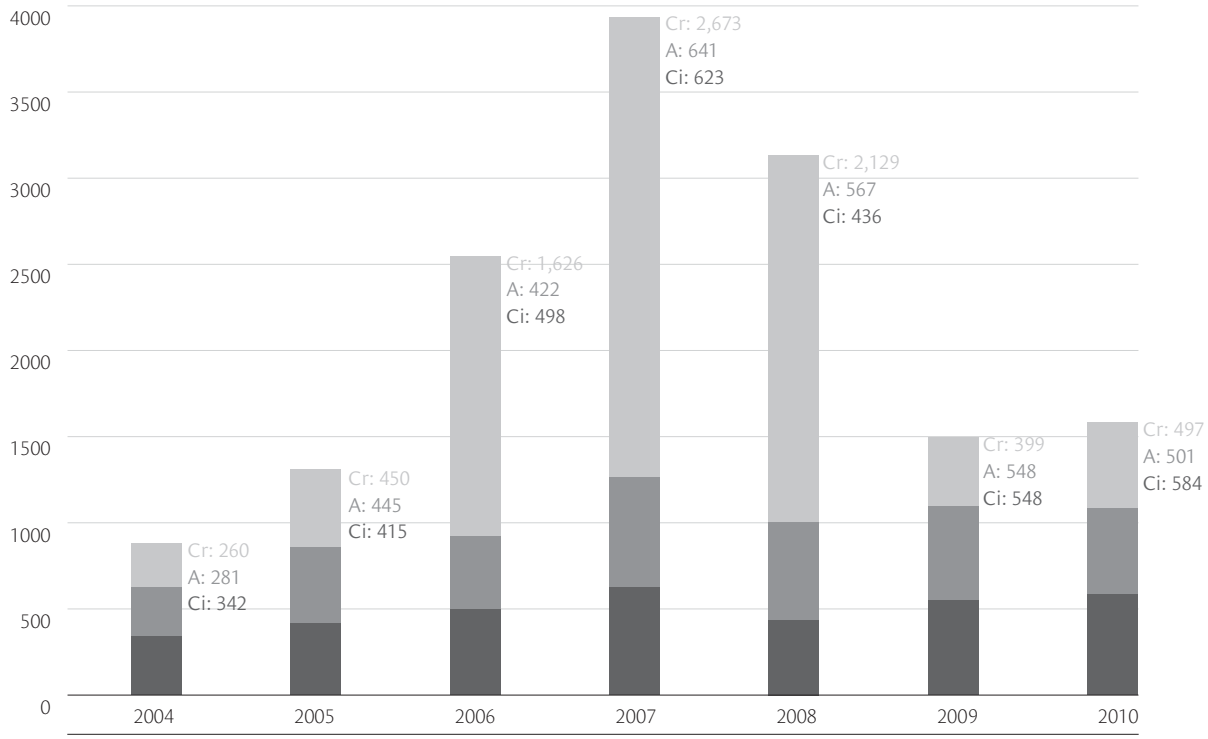
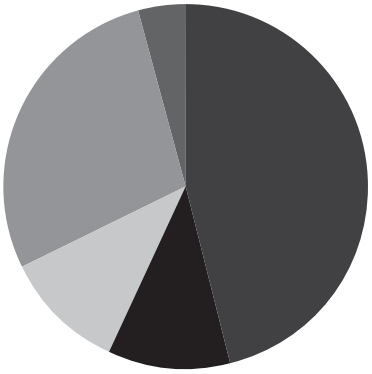


Figure 7: Cases Received according to Panel

Cr = Criminal Law Ci = Civil Law A = Administrative Law

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 Issued by Other Bodies
2004	249	7	10	77	17
2005	249	16	22	66	
2006	348	30	31	71	9
2007	125	16	17	45	
2008	116	22	15	49	18
2009	219	27	16	60	16
2010	101	24	24	61	9

Table 7: Legal Acts Challenged by Year



Laws and Other Acts of the National Assembly: 46.1%

Ordinances and Other Acts of Self-Governing Local Communities: 27.9%

Decrees and Other Acts of the Government: 11.0%

Rules and Other Acts of Ministries: 11.0%

Regulations Issued by Other Bodies: 4.1%

Figure 8: Distribution of Legal Acts Challenged (**U-I Cases** Received in 2010)

The Law Challenged	Number of Cases
Civil Procedure Act	21
Minor Offences Act	19
Pension and Disability Insurance Act	14
Act Regulating the Protection of the Right to a Trial without Undue Delay	10
Judicial Review of Administrative Acts Act	10
Obligations Act	9
Code of Obligations	9
Road Traffic Safety Act	6
Criminal Procedure Act	6
General Administrative Procedure Act	5
Execution of Judgements in Civil Matters and Securing of Claims Act	4
Denationalisation Act	3
Personal Income Tax Act	2
Organisation and Financing of Education Act	2
Civil Servants Act	2

Table 8: Laws Challenged Multiple Times in the Cases Received in 2010

Type of Dispute	Received in 2010	Percentage of All Up Cases	Received in 2009	Change 2010/2009
Minor Offences	382	24.1%	254	+50.4%
Civil Law Litigations	377	23.8%	372	+1.3%
Other Administrative Disputes	187	11.8%	198	-5.6%
Criminal Cases	114	7.2%	145	-21.4%
Execution of Obligations	103	6.5%	81	+27.2%
Labour Law Disputes	81	5.1%	73	+11.0%
Social Law Disputes	61	3.9%	55	+10.9%
Denationalisation	59	3.7%	88	-33.0%
Taxes	51	3.2%	50	+2.0%
Commercial Law Disputes	39	2.5%	48	-18.8%
Non-litigious Civil Law Proceedings	28	1.8%	16	+75.0%
Matters concerning Spatial Planning	24	1.5%	37	-35.1%
Other	21	1.3%	3	+600.0%
Civil Status of Persons	16	1.0%	41	-61.0%
Succession Proceedings	16	1.0%	8	+100.0%
Insolvency Proceedings	8	0.5%	6	+33.3%
Proceedings Related to the Land Register	8	0.5%	15	-46.7%
No Dispute	3	0.2%	4	-25.0%
Elections	2	0.1%	0	/
Registration in the Companies' Register	2	0.1%	1	+100.0%
TOTAL	1,582	100.0%	1,495	+5.8%

Table 9: Cases Received according to Type of Dispute

Initiators of the Dispute	Number of Applications Filed
Policijska postaja Radovljica (Radovljica Police Station)	1
Policijska uprava Celje, Postaja mejne policije Rogatec (Celje Police Directorate, Rogatec Border Police Station)	1
Okrajno sodišče v Novem mestu (Local Court in Novo mesto)	2
Policijska postaja Ptuj (Ptuj Police Station)	1
Postaja prometne policije Ljubljana (Ljubljana Traffic Police Station)	3
Policijska postaja Ljubljana - Vič (Ljubljana-Vič Police Station)	1
Generalna policijska uprava, Specializirana enota za nadzor prometa (General Police Directorate, Specialised Traffic Control Unit)	1
TOTAL	10

Table 10: Jurisdictional Dispute Cases Received according to Initiator of the Dispute

2. 5. 2. Cases Resolved

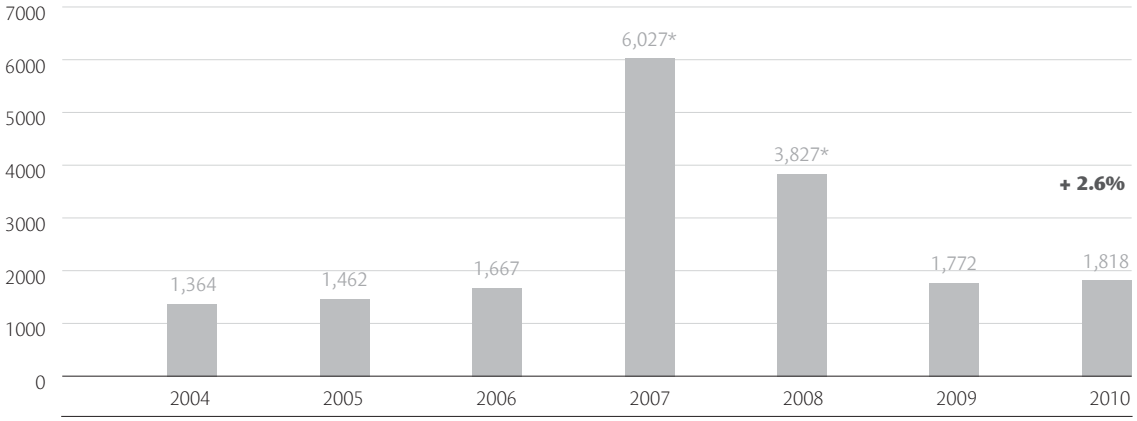


Figure 9: Number of Cases Resolved according to Year Resolved

* In these years, Up Cases involving minor offences which were excluded after the law was amended were predominant

Year	U-I	Up	P	U-II	Ps	Rm	Mp	Total
2004	394	952	12	5	1			1,364
2005	378	912	172					1,462
2006	448	1,144	74	1				1,667
2007	290	5,706	31					6,027
2008	487	3,296	41				3	3,827
2009	315	1,348	107	2				1,772
2010	294[4]	1,500	22	1		1		1,818
2010/2009	-6.7%	+11.3%	-79.4%	/	/	/	/	+2.6%

Table 11: Number of Cases Resolved according to Year Resolved and Type of Case

[4] Including 58 joined applications.

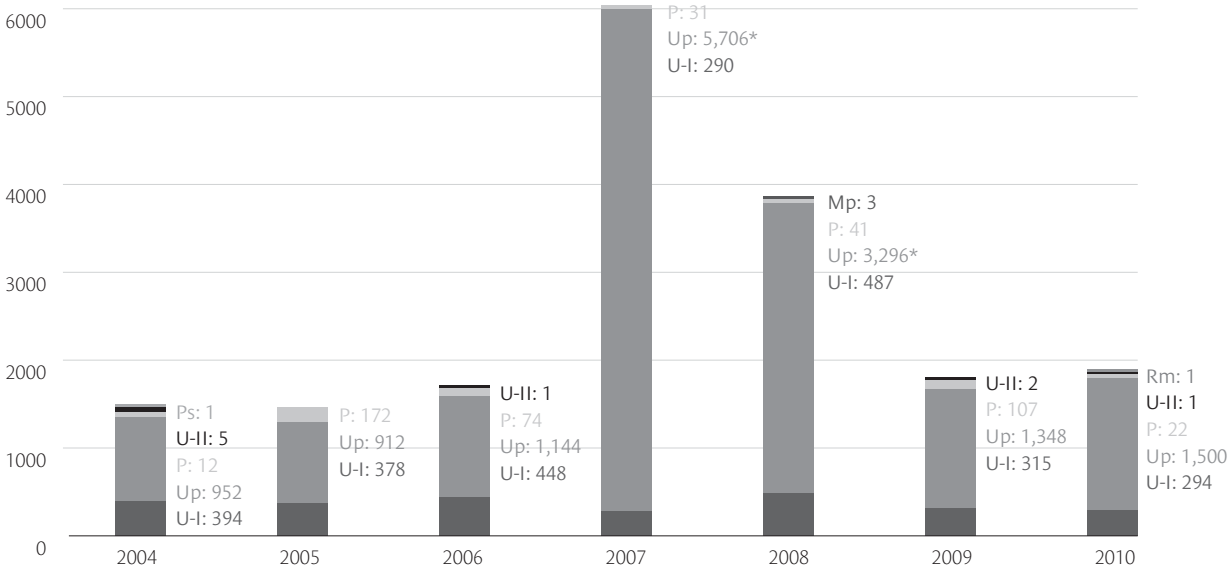


Figure 10: Distribution of Cases Resolved according to Year Resolved and Type of Case

* In these years, Up Cases involving minor offences which were excluded after the law was amended were predominant

Type of Resolution of the Case	2010	2009	2008	2007	2006	2005	2004
Abrogation of statutory provisions	8	5	4	10	18	17	8
Inconsistency with the Constitution – statutory provisions	0	2	4	2	4	1	9
Inconsistency with the Constitution and determination of a deadline – statutory provisions	7	14	18	11	15	22	6
Not inconsistent with the Constitution – statutory provisions	17	18	15	16	14	24	23
Inconsistency, abrogation, or annulment of provisions of regulations	2	11	6	12	18	28	92
Not inconsistent with the Constitution – provisions of regulations	0	1	1	0	1	2	7
Dismissed	26	49	41	78	79	100	100
Rejected	185	223	360	116	89	117	144
Proceedings were stayed	4	10	17	28	32	26	26

Table 12: Types of Resolution of **U-I Cases** in 2010

Year	Civil Law	Administrative Law	Criminal Law	Total
2004	388	369	195	952
2005	377	284	251	912
2006	344	418	382	1,144
2007	988	719	579	2,286
2008	498	626	296	1,420
2009	395	512	441	1,348
2010	541	494	465	1,500
2010/2009	+37,0 %	-3.5%	+5.4%	+11.3%

Table 13: Number of **Up Cases** Resolved in 2010 according to Panel

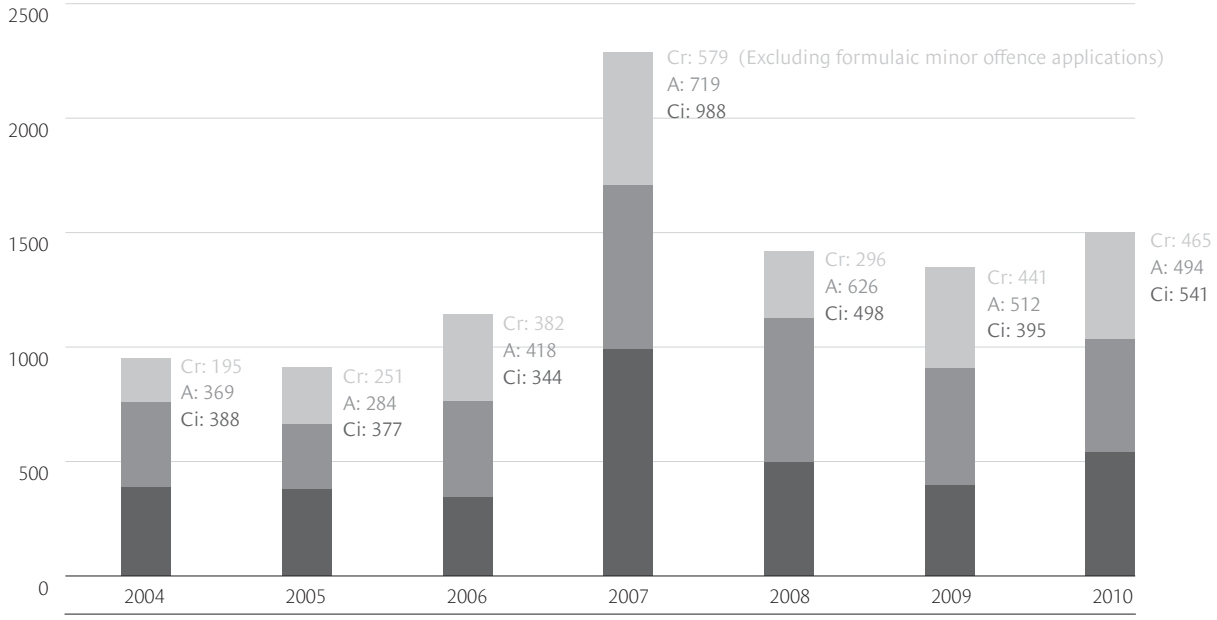


Figure 11: Distribution of Challenged Legal Acts (**U-I Cases** Received in 2010)

Cr = Criminal Law Ci = Civil Law A = Administrative Law

Type of Dispute	Resolved in 2010	Percentage	Resolved in 2009	Change 2010/2009
Civil Law Litigations	366	24.4%	254	+44.1%
Minor Offences	359	23.9%	311	+15.4%
Other Administrative Disputes	181	12.1%	163	+11.0%
Criminal Cases	106	7.1%	130	-18.5%
Labour Law Disputes	87	5.8%	49	+77.6%
Execution of Obligations	82	5.5%	79	+3.8%
Social Law Disputes	57	3.8%	54	+5.6%
Denationalisation	52	3.5%	96	-45.8%
Taxes	51	3.4%	56	-8.9%
Commercial Law Disputes	37	2.5%	44	-15.9%
Non-litigious Civil Law Proceedings	23	1.5%	12	+91.7%
Civil Status of Persons	23	1.5%	49	-53.1%
Other	23	1.5%	1	+2200.0 %
Matters concerning Spatial Planning	19	1.3%	33	-42.4%
Proceedings Related to the Land Register	14	0.9%	3	+366.7%
Insolvency Proceedings	9	0.6%	2	+350.0%
Succession Proceedings	7	0.5%	6	+16.7%
No Dispute	3	0.2%	4	-25.0%
Elections	1	0.1%	0	/
Registration in the Companies' Register	0	0.0%	2	-100.0%
TOTAL	1,500	100.0%	1,348	+11.3%

Table 14: Number of **Up Cases** Resolved according to Type of Dispute

Year	All Up Cases Resolved	Up Cases Accepted for Consideration	Percentage
2010	1,500	74	4.9%
2009	1,348	58	4.3%
2008	3,296	78	2.4%
2007	5,706	52	0.9%
2006	1,144	96	8.4%
2005	912	66	7.2%
2004	952	47	4.9%

Table 15: Comparison of the Percentage of **Up Cases** Accepted and All **Up Cases** Resolved

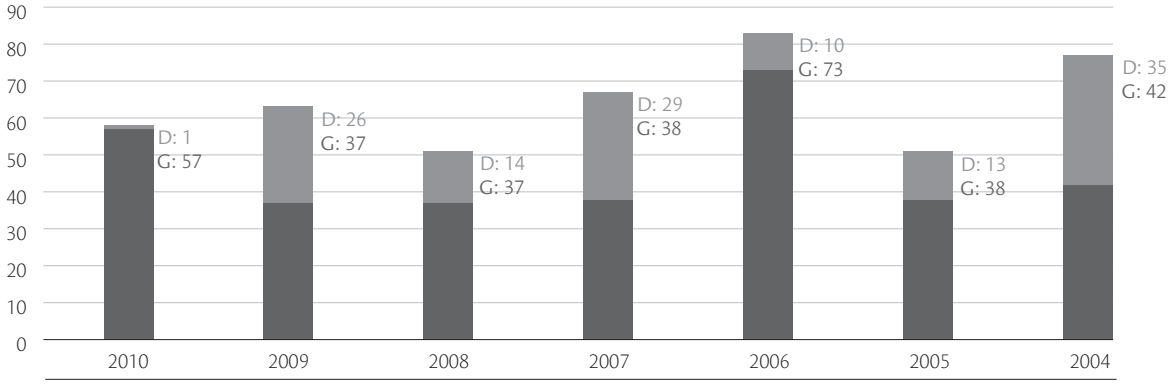


Figure 12: Decisions regarding **Up Cases** Accepted D= Dismissed G= Granted

Year	Resolved Up Cases	Accepted	Percentage	Decided	Granted	Dismissed
2010	1,500	74	4.9%	58	57	1
2009	1,348	58	4.3%	63	37	26
2008	3,296	78	2.4%	51	37	14
2007	5,706	52	0.9%	67	38	29
2006	1,144	96	8.4%	83	73	10
2005	912	66	7.2%	51	38	13
2004	952	47	4.9%	77	42	35

Table 16: Comparison of **Up Cases** Accepted and Type of Decision

Type of Case	2010	2009
U-I	259.6	323.4
Up	188	214.1
P	201.9	262.5
U-II	83	30
Rm	120	0
Mp	0	0
Ps	0	0
Op	0	0
TOTAL	197.7	235.5

Table 17: Average Duration of Cases Resolved in Days according to Type of Case

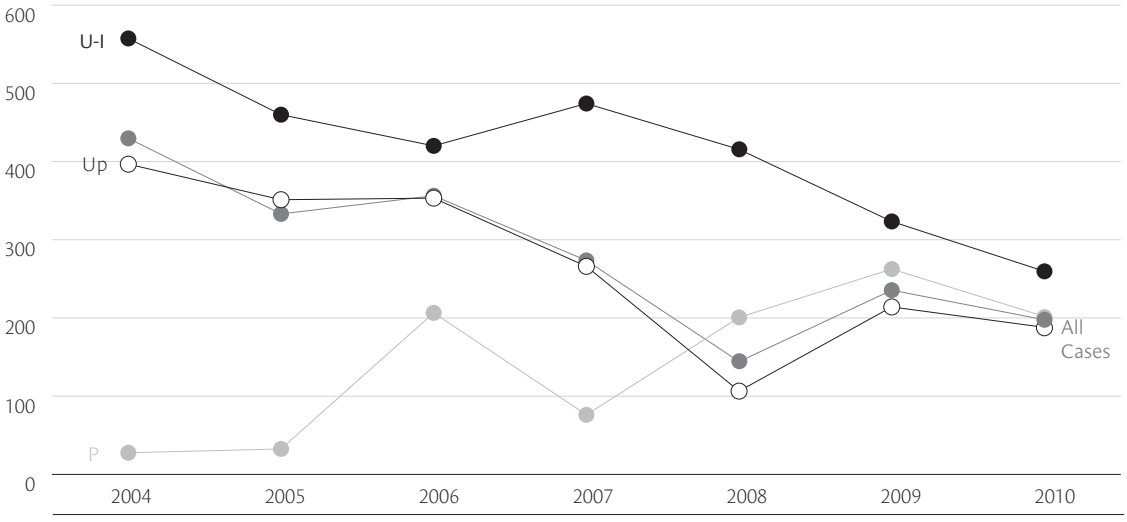


Figure 13: Average Duration of Cases Resolved in Days according to Type of Case

Type of Case	2010	2009	Change
Civil Law	211.4	209.2	+1.1%
Administrative Law	175.7	206.9	-15.0%
Criminal Law	173.9	226.9	-23.3%
TOTAL	188	214.1	-12.2%

Table 18: Average Duration of **Up Cases** Resolved in Days according to Panel

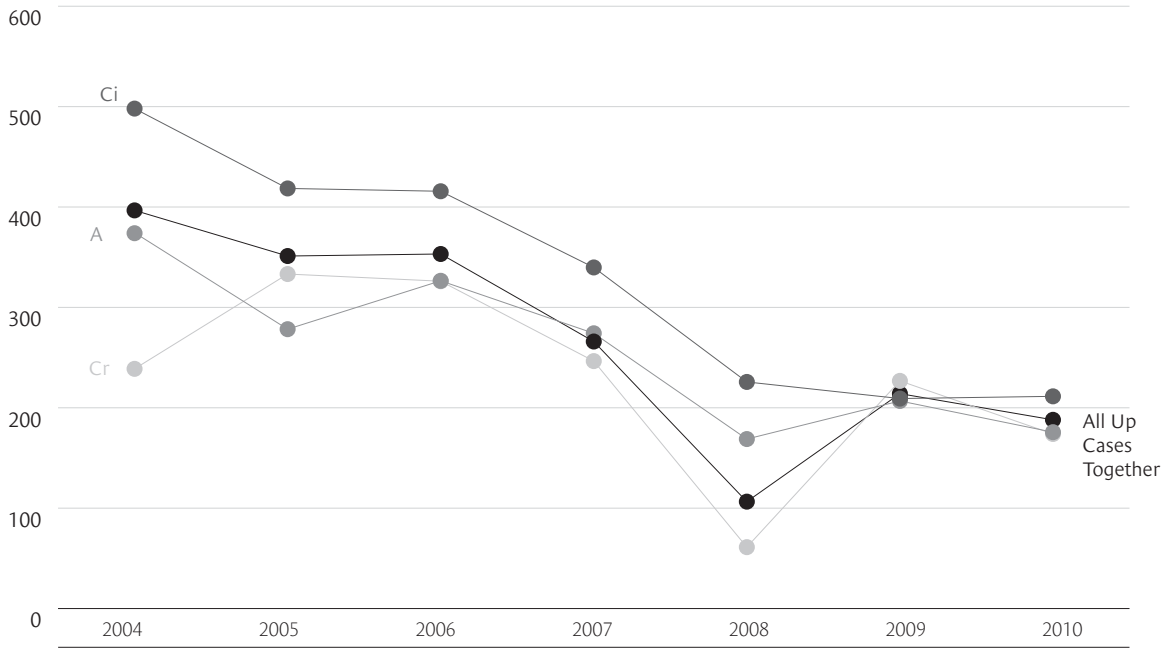


Figure 14: Average Duration of **Up Cases** Resolved in Days according to Year

Cr = Criminal Law Ci = Civil Law A = Administrative Law

2. 5. 3. Unresolved Cases

Year	2007	2008	2009	2010	Total
U-I	/	3	75	189	267
P	/	/	1	7	8
Up	/	3	130	771	904
TOTAL	/	6	206	967	1,179

Table 19: Unresolved Cases according to Year Received as of 31 December 2010

Type of Case	Suspended
U-I	3
Up	4
P	0
U-II	0
Rm	0
Mp	0
Ps	0
Op	0
TOTAL	7

Table 20: Temporary Suspensions as of 31 December 2010

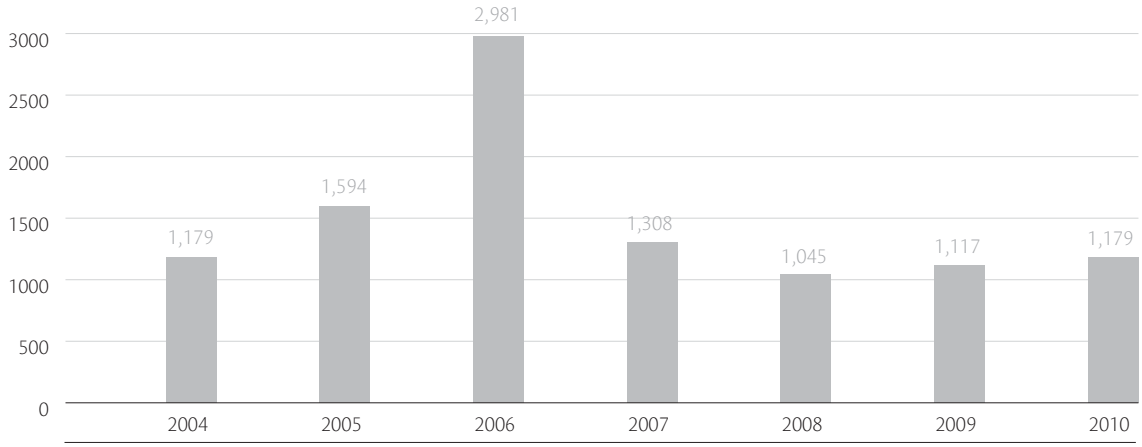


Figure 15: Number of Cases Pending at Year End

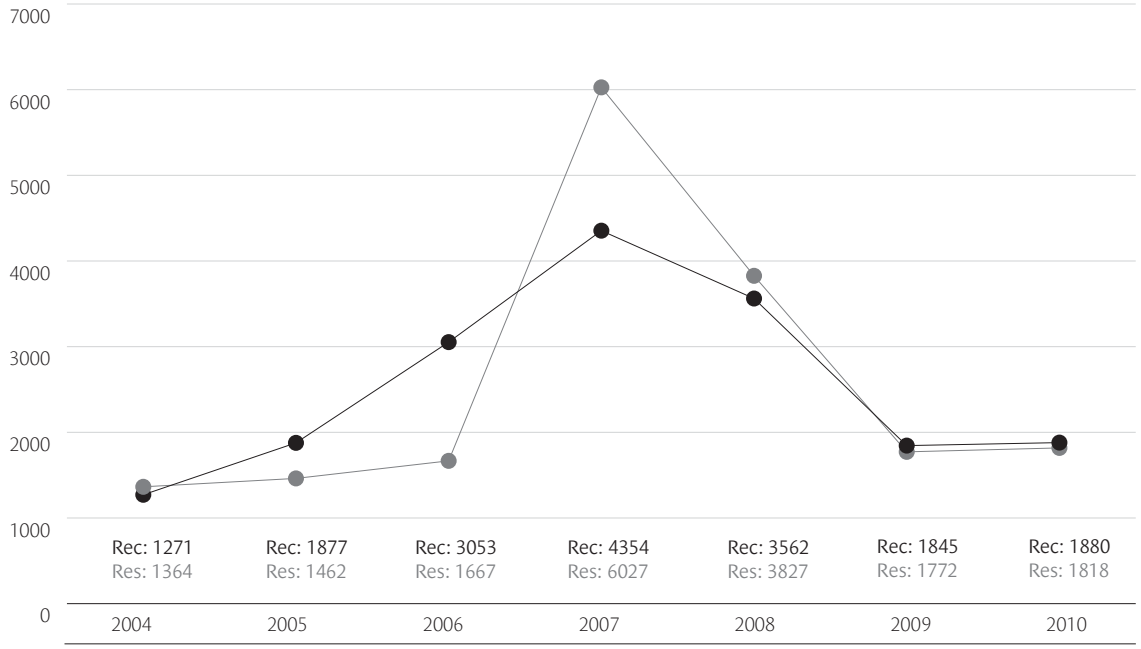


Figure 16: Comparison of Cases Received and Cases Resolved by Year

Rec = Received Res = Resolved

Type of Case	Priority Cases	Absolute Priority Cases	Total
U-I	60	68	128
Up	372	144	516
P	24	0	24
U-II	1	0	1
Rm	0	1	1
Mp	0	0	0
Ps	0	0	0
Op	0	0	0
TOTAL	457	213	670

Table 21: Priority Cases Pending as of 31 December 2010

2. 6. International Cooperation

In light of the increasing harmonisation of the European constitutional area and the internationalisation of human rights and fundamental freedoms, international cooperation between national courts and cooperation between national and international courts provide an opportunity to exchange valuable knowledge and experiences, which can contribute to the greater efficiency of judicial decision-making. In 2010, the Constitutional Court of the Republic of Slovenia devoted considerable attention to international contacts in the form of attending conferences, visits and meetings abroad, as well as receiving visits from foreign delegations.

In 2010, the Constitutional Court hosted two official delegations from foreign constitutional courts, namely from the Constitutional Court of Hungary and the Federal Constitutional Court of Germany. In addition to formal discussions on current constitutional review case-law, the judges also focused on a comparison of the organisation of work and the exchange of experiences with regard to reducing the considerable overburdening of those constitutional courts which, inter alia, deal with individual complaints of individuals concerning violations of human rights or fundamental freedoms. Also noteworthy was the study visit of a delegation from the Constitutional Court of Montenegro. The delegation learned more about the powers of the Slovenian Constitutional Court, individual procedures, particularly the procedure for deciding constitutional complaints, as well as about the internal organisation and operations of the Constitutional Court. In the framework of a monitoring visit, the Constitutional Court was visited by a delegation from the Congress of Local and Regional Authorities of the Council of Europe, which prepared a report on the state of local self-government with respect to the requirements of the European Charter of Local Self-Government. In addition to the constitutional framework on local self-government and the status of the Charter in Slovenian domestic law, the representatives of the Congress were particularly interested in the case-law of the Constitutional Court in this field, especially the implementation of human rights at the local level. In addition, several foreign ambassadors and other high-level representatives from different countries also visited the Constitutional Court in the past year.

As regards the participation of Slovenian Constitutional Court representatives in meetings outside Slovenia, two visits by delegations from the Slovenian Constitutional Court should be mentioned first, namely the delegations that visited the European Court of Human Rights in Strasbourg and the Court of Justice of the European Union in Luxembourg, two international courts whose case-law has a significant impact on the decision-making of the national courts of the members of the Council of Europe and of the European Union, and therefore also on Slovenian constitutional review case-law. In the framework of their visit to the European Court of Human Rights, the representatives of the Constitutional Court, among other

things, attended two public hearings. In connection with the mechanisms for the protection of human rights at the European Union level, the entry into force of the Treaty of Lisbon on 1 December 2009 is of particular importance for the work of the Constitutional Court. On the basis of the Treaty, the Charter of Fundamental Rights of the European Union, i.e. the catalogue of civil, political, and social rights, became a binding international legal source. In the implementation of European Union law, also the courts in Slovenia will henceforth apply this catalogue. In the course of the visit to Luxembourg, the judges of the Slovenian Constitutional Court and the judges of the European Court of Justice exchanged views on the significance of the Charter of the European Union in the future case-law of both courts.

Delegations of the Constitutional Court also paid official visits to the Constitutional Courts of Austria and Portugal. In Austria the judges discussed the principle of proportionality in constitutional review and asylum issues, whereas in Portugal they learned more about the Portuguese model of constitutional review. The judges of the Slovenian Constitutional Court also visited the Constitutional Court of the Republic of Serbia and exchanged information with their Serbian colleagues on the powers, procedures, and organisation of their respective constitutional courts, devoting special attention to the issue of constitutional complaints and possible solutions to the overburdening of the constitutional court. Furthermore, they also presented the experience of the Constitutional Court of the Republic of Slovenia in deciding cases associated with ensuring the right to a trial without undue delay and the relation to the European Court of Justice and the European Court of Human Rights. In the past year, the judges visited, individually, a few other institutions, for example the International Labour Organisation in Geneva and the International Maritime Court in Hamburg, while as is traditional, the President of the Constitutional Court participated in the solemn hearing marking the opening of the judicial year of the European Court of Human Rights in Strasbourg and attended the 20th Anniversary of the Venice Commission for Democracy through Law.

The legal advisors of the Constitutional Court broadened their knowledge and expertise by means of seminars and visits abroad as well, with regard to which a study visit to Brno and Prague should be highlighted. In the framework of this visit, the advisors, led by the Secretary General, met with the legal advisors of the Czech Constitutional Court, and constitutional law professors at the Faculty of Law of Charles University in Prague. They exchanged their experiences regarding the organisation of the work of legal advisors and discussed a few current issues of constitutional review with the former, while they discussed the powers of their respective constitutional courts and respect for the decisions of the constitutional court with the latter.

2. 7. Projects in the Framework of e-Justice (e-pravosodje)

Information technology at the Constitutional Court has for some time importantly contributed to the better and more efficient work of the Court, as it supports the majority of work processes and the review and decision-making procedures, both in cases within the jurisdiction of the Constitutional Court as well as in other areas. The aim is to enable all employees to work as easily and as efficiently as possible by means of the latest technologies. The most important part of the information system is naturally the system for managing cases and documents within the jurisdiction of the Court. Thus, since 2004 all incoming and outgoing documents within the jurisdiction of the Constitutional Court are in electronic form and all the more important work processes have been computerised.

Due to changes in the computer environment and the relevant legislation, as well as to technological development and the shortcomings of the old information system, in 2010 the case management information and documentation system was successfully renovated and upgraded. In addition to the implementation of more current technology, the new system also supports those parts of the work processes that have hitherto not been adequately computerised (e.g. decisions by correspondence), and enables faster and more efficient work to an even greater extent. In this manner, essentially the whole process involving working on documents and cases is now computerised, aside from the filing of applications and the serving of documents, for which there currently still exist some objective reasons to delay full digitisation.

The project of digitising all documents (scanning and converting the documents and archives into digital form) in all resolved cases within the jurisdiction of the Constitutional Court since independence (until the year 2007) was also successfully carried out. Thus, the entire archive of the Constitutional Court until 2007 now exists in digital form as well.

Both projects were carried out with due consideration of the requirements regarding the storage of documents and archives in electronic form, in accordance with the regulations and legislation in this field.

The two projects were carried out on the basis of a cooperative agreement to implement the e-Justice project entered into by the Ministry of Justice and the Constitutional Court. The e-Justice project is 85% co-financed by the European Union.

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 share, and we will not find justice, if there is no justice inside us.

Leonid Pitamic

REPUBLIC OF SLOVENIA
CONSTITUTIONAL COURT

Beethovnova ulica 10, SI - 1001 Ljubljana
t 01 477 64 00, 01 477 64 15
f 01 251 04 51
e info@us-rs.si
w www.us-rs.si

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