RS
US

Constitutional Court of the Republic of Slovenia

Overview of the work for 2011

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 2011

7 FOREWORD BY THE PRESIDENT OF THE CONSTITUTIONAL COURT

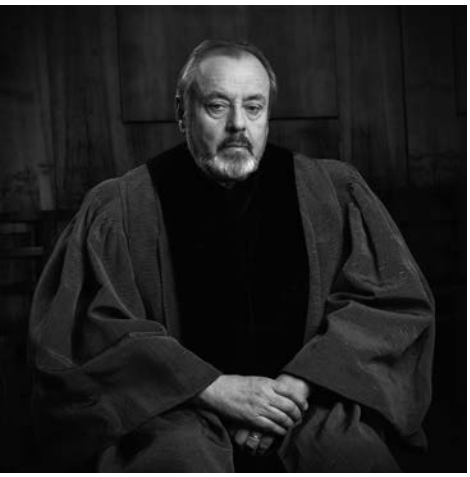
11 1. ABOUT THE CONSTITUTIONAL COURT

13 1. 1. **Introduction**
14 1. 2. **The Position of the Constitutional Court**
15 1. 3. **Constitutional Court Jurisdiction**
16 1. 4. **The Procedure for Deciding**
16 1. 4. 1. The Constitutional Review of Regulations
16 1. 4. 2. Constitutional Complaints
17 1. 4. 3. Consideration and Deciding
18 1. 5. **The Composition of the Constitutional Court**
18 1. 5. 1. The Judges of the Constitutional Court
25 1. 5. 2. The Secretary General of the Constitutional Court
26 1. 5. 3. The Judges of the Constitutional Court of the Republic of Slovenia since Independence, 25 June 1991
27 1. 6. **The Organisation of the Constitutional Court**
27 1. 6. 1. The President of the Constitutional Court
27 1. 6. 2. The Secretariat of the Constitutional Court
27 1. 6. 3. Sessions
28 1. 6. 4. The Internal Organisation of the Constitutional Court
29 1. 6. 5. Advisors and Department Heads
31 1. 7. **Publication of the Decisions of the Constitutional Court**
31 1. 7. 1. Official Publication of Decisions
31 1. 7. 2. Other Publications
32 1. 8. **Plečnik's Palace – the Seat of the Constitutional Court**

35 2. The Report on the Work of the Constitutional Court

37 2. 1. **Introduction**
40 2. 2. **Important Decisions Adopted in 2011**
40 2. 2. 1. Guarantees for the Purpose of Maintaining Financial Stability in the Euro Area
41 2. 2. 2. A Review of the Admissibility of a Referendum
44 2. 2. 3. Naming Tito Street
46 2. 2. 4. Establishing Ankaran Municipality
48 2. 2. 5. Incompatibility of the Office of Deputy of the National Assembly with the Office of Mayor
48 2. 2. 6. The Prohibition on Publishing Public Opinion Polls Seven Days before an Election
49 2. 2. 7. The Regulation of Parliamentary Inquiry
50 2. 2. 8. Determining the Public Service of Higher Education
51 2. 2. 9. Authentic Interpretation of the Takeovers Act
51 2. 2. 10. Deciding on Granting Leave to Appeal
52 2. 2. 11. Declaratory Judgments in Proceedings for Judicial Review of Administrative Acts
52 2. 2. 12. The Credibility of an Applicant for International Protection
53 2. 2. 13. Criminal Law Cases
58 2. 2. 14. Abrogation of the Age Limit for a Child to Challenge Paternity
59 2. 2. 15. Labour and Social Law Disputes
62 2. 3. **Respect for the Decisions of the Constitutional Court**
64 2. 4. **The Constitutional Court in Numbers**
67 2. 5. **Summary of Statistical Data for 2010**
68 2. 5. 1. Cases Received
74 2. 5. 2. Cases Resolved
78 2. 5. 3. Unresolved Cases
80 2. 6. **International Activities of the Constitutional Court in 2011**
82 2. 7. **Special Editions of the Constitution of the Republic of Slovenia on the Occasion of the Twentieth Anniversary of Its Adoption**

Foreword by the President of the Constitutional Court



As the highest and independent guardian of constitutionality, human rights, and fundamental freedoms, the Constitutional Court is a pillar of a state governed by the rule of law. At a time when doubts have arisen whether a state governed by the rule of law and especially the judiciary still exist in an effective form in Slovenia, effective and, if necessary, courageous deciding by the Constitutional Court is of tremendous importance. The Constitutional Court could surmount the present condition wherein every year it is buried under nearly two thousand cases, the majority of which are not important from either the perspective of constitutionality and the protection of human rights and fundamental freedoms, nor in terms of their precedential importance or the harmonisation of jurisprudence, if within the framework of the planned amendments to the Constitution also the position of the Constitutional Court is reorganised. The 20th anniversary of its existence and operation is the right moment to do so – also due to the fact that in the previous year the Constitutional Court achieved everything that it could achieve within the existing regulation by means of successful internal measures and extreme effort.

The Constitutional Court hopes to see further reinforcement of the understanding that its decisions are binding on all authorities and everyone, as proceeds from the Constitution. Constitutional Court decisions, which are often not and never will be universally accepted by the public nor unanimously adopted by the Constitutional Court judges, have been and should be subject to professional criticism and debate. Criticism of decisions, especially when generalised, unsubstantiated, and written carelessly and published in the mass media or voiced by bearers of political office, is often merely a manifestation of a low legal culture. There is no benefit from such criticism; it does, however, strengthen the conviction in people that the state is not governed by the rule of law. Such criticism, particularly the generalised opinions of politicians, can furthermore be understood also as being pressure exerted on the Constitutional Court and the judiciary in general.

In the previous year there were several decisions of the Constitutional Court which generated great interest in the public and provoked much comment and criticism. There was also a lack of understanding, especially with reference to Constitutional Court decisions concerning referenda. The Constitutional Court did not decide and was not called on to decide on the merits of the matters for which the referenda were proposed. The Constitutional Court merely decided whether the dismissal of a law at a referendum would cause or maintain an uncon-

stitutional situation. It was not called on to decide and was not allowed to decide whether pension reform, access to archives, and the substance of the Family Code were reasonable.

The public expects a great deal from the Constitutional Court, which, I dare say, enjoys a good reputation with the people. However, it must also be kept in mind that according to the Slovenian legal order the Constitutional Court cannot itself, i.e. *ex officio*, initiate proceedings for the review of the constitutionality of regulations or violations of human rights and fundamental freedoms. The Constitutional Court can only interfere on the basis of a request from a qualified proposer or the constitutional complaint of an individual whose human rights and fundamental freedoms have been violated.

Allow me to once again underline what I pointed out in last year's annual overview. The Constitutional Court must respect the values enshrined in the Constitution. Respect for these values renders our society decent, honourable, and noble and thus creates a space for the free development of thought, ideas, and personalities, and, which is of primary importance, for human dignity. The values enshrined in the Constitution, if they are fully implemented, ensure that our democratic and social state, a constitutional parliamentary democracy based on the separation of three equal branches of power and respect for human rights and fundamental freedoms, functions successfully to the benefit of the welfare and security of the people.

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[1], 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.

[1] 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 Cons7titutional 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
Mag. Marta Klampfer
Ass. Prof. Dr. Mitja Deisinger
Jasna Pogačar
Jan Zobec
Mag. Jadranka Sovdat
Ass. Prof. Dr. Etelka Korpič - Horvat
Dr. Dunja Jadek Pensa

Prof. Dr. Ernest Petrič, the President,

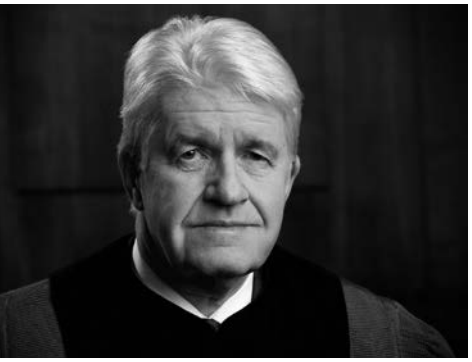
graduated from the Faculty of Law of the University of Ljubljana in 1960, winning the Prešeren University Award and was awarded a Doctorate in Law from the same Faculty in 1965. After taking a position at the Institute for National Issues, he was first an Assistant Professor, then an Associate Professor, 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.

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.



Ass. Prof. Dr. Mitja Deisinger

graduated from the Faculty of Law of the University of Ljubljana and was subsequently employed as an intern at the District Court in Ljubljana. In 1970 he became a deputy municipal public prosecutor, and in 1976 a deputy republic public prosecutor. In 1988 he became a judge at the Supreme Court, where he was, inter alia, the head of the Criminal 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. As the President of the Supreme Court, he co-founded the Permanent Conference of Supreme Courts of Central Europe and, in cooperation with the Minister of Justice, the Judicial Training Centre. He also participated in negotiations on Slovenia's accession to the European Union. He was awarded a Doctorate in the field of criminal law. 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 also lectures; he lectured at the Faculty of Law of the University of Ljubljana and from 2007 to 2008 he was the head of the Criminal Law Department of the European Faculty of Law in Nova Gorica. He 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. After internship at the District Court in Ljubljana and passing the state legal examination, she was employed in the state administration, where she worked the next 18 years in the Government Office for Legislation, mainly dealing with constitutional law, administrative law, and legal drafting. In 1992 she was appointed advisor to the Government Office for Legislation of the Republic of Slovenia, and in 1996 she was appointed state undersecretary. While holding the same title, in 1997 she was employed in the Office for the Organisation and Development of the State Administration at the Ministry of the Interior, where she participated in the project of reforming Slovenia's public administration and in other projects dealing with Slovenia's accession to the European Union. In 2000 she was elected Supreme Court judge and in 2007 was appointed senior judge of the Supreme Court. From 2003 to 2008 she was the head of the Supreme Court's Administrative Department. As a representative of the Supreme Court, she participated in the work of the Expert Council for Public Administration, and was a member of the Council for the Salary System in the Public Sector and a member of the Commission for the Control of the Activities of Free-of-Charge Legal Aid. She has taken part in professional and other legal conferences, and judicial school seminars with papers on civil service law and administrative procedural law. She is a member of the state legal examination commission (in the field of administrative law), and an examiner for constitutional law and the foundations of EU law for the civil service examination (in the fields of constitutional system, the organisation of the state, legislative procedure, and administrative law). She is a co-author of the Commentary on the Judicial Review of Administrative Acts Act. She 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, and lectured to judges of the civil and business law departments of the higher courts on the topic of amendments to the civil procedure and reform of the appellate procedure. As a lecturer he has often participated in judicial school seminars for civil and 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 from 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.

Ass. 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.

Dr. Dunja Jadek Pensa

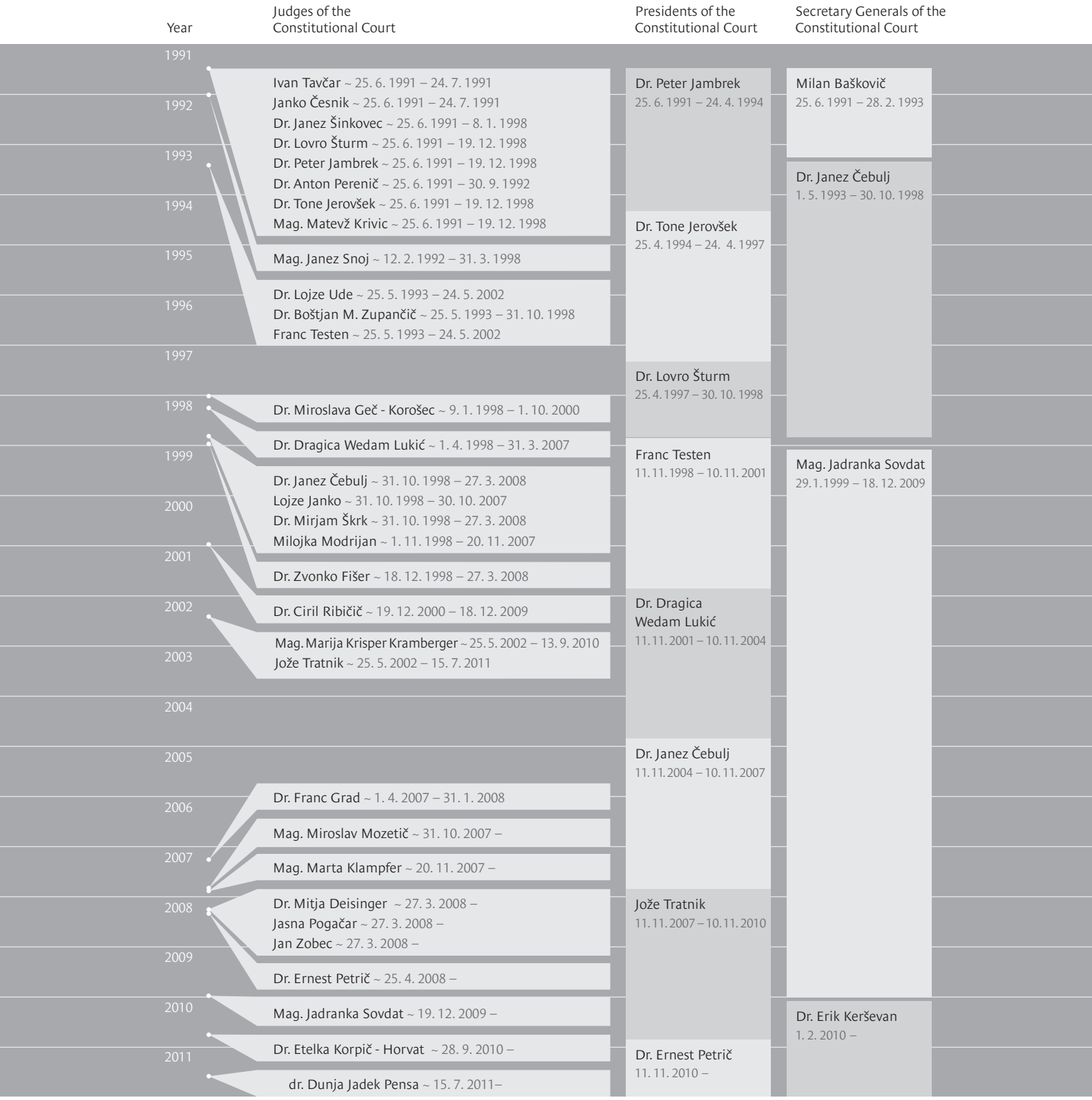
graduated from the Faculty of Law of the University of Ljubljana. After completing an internship at the Higher Court in Ljubljana, she passed the state legal examination in 1987. The following year (1988) she completed postgraduate studies at the Faculty of Law, where she also obtained a doctorate in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

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 still 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
Vesna Božič
Diana Bukovinski
Mag. Tadeja Cerar
Uroš Ferjan
Dr. Aleš Galič
Nada Gatej Tonkli
Mag. Marjetka Hren, LL.M.
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
Tina Prešeren
Mag. Polona Primožič
Maja Pušnik
Vesna Ravnik Koprivec
Heidi Starman Kališ
Dr. Katja Triller Vrtovec, LL.M.
Nataša Skubic
Katarina Vatovec, LL.M.
Igor Vuksanović
Mag. Renata Zagradišnik, LL.M.
Mag. Lea Zore
Mag. Barbara Žemva

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

On the occasion of the publication of this Overview of the Work of the Constitutional Court for 2011 the principal finding hereof must be underlined, namely the fact that with regard to the possible scope of resolving cases the Constitutional Court has directed its capacities towards cases in which a decision entails the resolution of an important constitutional issue and towards establishing positions which are intended to provide a direction to courts and other state authorities in accordance with constitutional requirements with reference to deciding cases in their jurisdiction. The fact remains that the Constitutional Court is still overburdened by an exceptionally high number of cases, of which only a small proportion were accepted for further consideration and deciding on the merits; nevertheless, naturally within the existing legal frameworks, every application received was examined and reviewed by the legal advisory department, the competent panel of Constitutional Court judges, or all Constitutional Court judges in a plenary session before a final decision was reached, although such was expressed merely in the form of an order without a statement of reasons. With reference to the above-mentioned, it can be determined also for 2011 that the Constitutional Court functioned effectively. This fact is confirmed not only by the work results, but also by an analysis of the effects of hitherto measures to improve the efficiency of procedures for deciding cases falling within the jurisdiction of the Constitutional Court. In the past year certain solutions based on the models of other European constitutional courts were introduced, and they have already produced some positive results, while further results can still be expected, however, such merely concern solutions which are possible within the frameworks of the hitherto constitutional and statutory legal basis; this entails that within such restrictive legal frameworks substantial changes could not be established. It must be underlined here that the work of the Constitutional Court can be quantitatively assessed through the hundreds and thousands of cases received and resolved in an individual calendar year, however, the functioning of the Constitutional Court also has an important effect elsewhere, namely in building a state governed by the rule of law, legal certainty, and the fundamental legal principles which protect individuals and their human dignity and free self-realisation not only in professional but also in private life. This is what the Constitutional Court was building on also in 2011 through numerous important and precedential decisions that entail a direction for and limitation on the exercise of power by all other authorities: the legislature, the government, the state administration, the judiciary, municipal authorities, and other bearers of public authority. The protection of the constitutional order, fundamental human rights and freedoms, and justice in the fundamental meaning of the word is the key mission which the Constitutional Court is aware of and which it will make every effort to pursue every year, to the limits of its capacity.

Precisely because of this goal – and only because of it – the Constitutional Court once again underlines the need for the adoption of appropriate constitutional and statutory amendments

that would render it impossible for the Constitutional Court to be burdened by unnecessary procedures and an exceptionally high number of less important cases as well as cases in which the protection of human rights and fundamental freedoms of citizens can be effectively ensured in other judicial and legal proceedings. Several times the Constitutional Court has expressed the position that its active participation in formulating such amendments is necessary and that it is willing to support all the above-mentioned efforts by providing its expert knowledge.

All state and municipal authorities, all bearers of public authority, must respect and protect the constitutional order and the constitutionally recognised rights of individuals. In such system the Constitutional Court is called upon to resolve only the most difficult questions of constitutionality and by its decisions provide a direction for these authorities in the common effort to ensure that the Constitution of the Republic of Slovenia be respected. Thus, also from this perspective it must once again be underlined that regarding the position and role of the Constitutional Court it is neither needed nor reasonable that it is still faced with hundreds of applications nor is it appropriate that the Court would have to prove that its work is successful merely by means of adopting an exceptionally large number of decisions and orders.

In order to ensure the rule of law, the position of the Constitutional Court, as the bearer of one of the three branches of power, together with the regular judiciary, which limits the joint functioning of the executive and legislative branches of power in contemporary parliamentary democracies and prevents the accumulation of power and its abuse, must be accepted and understood. The experience of many European democratic countries with a longer tradition of protecting human rights and fundamental freedoms has shown and historically proven that the contemporary role of the constitutional court and the judiciary in general is that, by brave, independent, and authoritative interpretation of the constitution and law, they function on a par with the other branches of power, which in a state governed by the rule of law are precisely thereby included in the system of checks and balances, so that their arbitrariness and limitless scope in pursuing political and sometimes also narrower partial interests is prevented. Also in Slovenia it has already become evident that such limitation of power by the Constitutional Court is not always accepted as an obvious constituent part of a state governed by the rule of law by certain bearers of political offices, which has resulted in certain inappropriate reactions and even public appeals for the powers of the Constitutional Court to be limited or even revoked. This phenomenon reached a level which was worrying enough that it must also be emphasized in this annual overview, particularly because such criticism occasionally came from the highest levels of the state power, thus from where efforts to protect constitutionality in contemporary democracies are the most and first expected.

This Overview of the Work of the Constitutional Court for 2011 first presents a number of the most important decisions whose significance for the future case law and whose value and symbolic significance contributed to strengthening the legal order as well as the feeling of individuals that they live in a state governed by the rule of law which strives to protect their legal position. Among them are a number of cases which did not result in a particular response from the public, however, they can undoubtedly be deemed to entail an important contribution to building a state governed by the rule of law. The above-mentioned decisions of the Constitutional Court are naturally the most important achievement of its constitutional review in 2011, however, attention must also be drawn to the fact that working on these cases in many aspects burdened the Constitutional Court to the extent that certain less favourable numbers resulted for the first time after a long period. Due to the fact that numerous important and demanding cases in terms of content were reviewed, it can be observed that the total number

of resolved cases of certain panels of the Constitutional Court somewhat decreased. It is true that such concerns less important cases, which is nevertheless an indicator of the fact presented already at the outset that with its existing capacity the Constitutional Court will no longer be able to constantly increase the number of resolved cases in an individual calendar year.

In general, statistical indicators show a positive picture regarding the work of the Constitutional Court; with practically the same number of incoming cases as one year earlier, the Constitutional Court managed to resolve the same number of cases also in 2011, regardless of many cases which burdened the work of the Constitutional Court substantially more than in the previous year (in 2011 the Constitutional Court, for instance, resolved as many as three cases concerning the constitutional admissibility of referendums; it resolved nearly six per cent more cases decided in plenary sessions, etc.). The statistical review now includes a new general register (i.e. register R) for applications which, in accordance with the law and the rules of procedure of the Constitutional Court, are answered by the Secretary General. The above-mentioned solution is intended to place additional emphasis on the principle of transparent adjudication and judicial deciding. Every applicant whose application is unclear or incomplete receives an explanation from the Secretary General with instructions on how to remedy the established deficiencies. In addition, with regard to the circumstances of the case, an applicant is also provided an explanation stating that, in light of the hitherto case law of the Constitutional Court, a certain application has no possibility of success, whereas an applicant can notify the Constitutional Court that despite the above-mentioned fact he or she still requires the Constitutional Court to decide on the application; alternatively, the applicant can decide that he or she will not reply to the Constitutional Court and then it is deemed that his or her application was not filed. In cases in which an applicant does not insist that proceedings be continued after receiving an explanation, such thus results in the Constitutional Court being relieved of the burden of deciding on manifestly unfounded applications. With reference to such, attention must be drawn to the fact that the Constitutional Court started to conduct such “pre-proceedings” only in December, therefore register R is statistically already included in this overview, however, such does not yet reflect its real scope and effect.

2. 2. Important Decisions Adopted in 2011

2. 2. 1. Guarantees for the Purpose of Maintaining Financial Stability in the Euro Area

At the beginning of the year, by Decision No. U-I-178/10, dated 3 February 2011, the Constitutional Court decided upon the constitutionality of the act on guarantees adopted for the purpose of maintaining financial stability in the euro area. The review of the act was requested by a group of deputies. The Constitutional Court stated in the decision that the challenged act was adopted due to the participation of the Republic of Slovenia in a special company. The Constitutional Court stated in the decision that the challenged Act was adopted due to the participation of the Republic of Slovenia in a special company. As it concerns the single currency, coordination among participating Member States of the euro area is necessary, which is also in keeping with the principle of sincere cooperation among Member States. It therefore follows that in a case such as the case under consideration, which involves the interdependence of the Member States and their economies, concerted action among euro area Member States is required even though the conduct of the Member States is based on their national competences. It therefore follows that in a case such as the case of the challenged act, which involves the interdependence of the Member States and their economies, concerted action among euro area Member States is required even though the conduct of the Member States is based on their national competences. As the long-term economic impacts and their consequences on the stability of money cannot be evaluated based on a single intervention, but must be monitored on an on-going basis and continually verified, and since it is impossible to predict with certainty how the market will react and what the future development will be, the political actors responsible for such monitoring need to be given broad enough discretion. As a consequence, constitutional review of such issues is by necessity reserved.

The Constitutional Court answered the complaints of the applicants that from a constitutional law perspective the decisive issue is not the permissibility of borrowing but its limits. The legislature may not disregard, despite the absence of an explicit constitutional provision on a borrowing ceiling, that the state must ensure a social minimum that comprises not only minimum subsistence but a minimum which ensures opportunities for the fostering of human interactions and for participation in social, cultural, and political affairs an upper limit and may not encumber the state with so much debt that it would jeopardise the social state.

The terms used in Article 149 of the Constitution must be given an independent meaning and defined as a constitutional law category. Such must be based on the intention of the constitu-

tion framers and the nature of state borrowings and guarantees must be taken into account. The guarantees for loans need to be defined as any category of security or guarantee under which the state assumes the risk of (potential) liability for third-party liabilities, thus affecting the scope of borrowing (public debt) and, by extension, the amount of state assets. The fundamental difference between loans and guarantees in the sense of Article 149 of the Constitution is that loans create a direct and unconditional liability to repay the funds, whereas guarantees create a conditional liability incumbent upon the state which is realised only in the event of a third party reneging on its liability. Article 149 of the Constitution is a procedural provision which requires a special legislative decision under which the financial burden is actually or potentially transferred to the future, while at the same time providing for the fundamental power of the National Assembly to decide on state revenue and expenditure, taking into account the fundamental human rights and freedoms of the present and future generations, as well as the principles of a state governed by the rule of law and a social state, and in addition also the special disclosure of state borrowings and guarantees in accordance with the principles of democracy and a state governed by the rule of law. It does not follow from the linguistic meaning of Article 149 of the Constitution that it determines substantive (material) limitations or conditions to which state borrowings and guarantees might be bound. However, this does not entail that an act on the basis of which a state guarantee is assumed may be devoid of substance or that the National Assembly may give the Government unlimited power to assume state guarantees or to borrow. The constitutional requirement for the adoption of a law on the basis of which the state may borrow needs to be understood as a requirement that (future) obligations be precise or at least determinable. The decision on participation in the European Financial Stabilization Mechanism and hence the decision on assuming the guarantee was adopted by the National Assembly by an act that precisely defines what kind of guarantee is being granted, in what amount, to whom, and for what purpose. The range of movement that the Government has is thus clearly and precisely defined. Therefore, the challenged Act is not inconsistent with Article 149 of the Constitution. Since a loan guarantee is a conditional obligation (its enforcement is a future, uncertain fact), it does not have immediate direct financial consequences, but such arise at some time in the future. It is for this reason that in every budget, payments for enforced guarantees are budgeted only in the amount corresponding, according to the legislature's estimate, to the expected enforcement of guarantees or securities in the budget period. Thus, the allegation of the applicants that the challenged Act is inconsistent with the first paragraph of Article 148 of the Constitution, which stipulates that all revenues and expenditures of the state and local communities for the financing of public spending must be included in their budgets, is unsubstantiated as well.

2. 2. 2. A Review of the Admissibility of a Referendum

Pension System Reform

In 2011, the Constitutional Court decided three times whether unconstitutional consequences would occur due to the rejection of an act already adopted by the National Assembly at a referendum, on basis of which the Constitutional Court should interfere with the right to a referendum. In Decision No. U-II-1/11, dated 10 March 2011, the Constitutional Court decided for the first time in 2011 to refuse the request of the National Assembly with reference to such. The National Assembly namely requested that the Constitutional Court decide whether unconstitutional consequences would occur due to the suspension of the implementation of the act on the pension system reform or due to the rejection of the act on pension reform at a referendum. The National Assembly should have demonstrated that the applicable statutory

regulation was manifestly unconstitutional and that such unconstitutionality existed at the time of deciding of the Constitutional Court.

The National Assembly first alleged the unconstitutionality of the existing regulation by previous decisions of the Constitutional Court adopted in 2006 and 2010 which referred to the review of the differentiation between employed persons, on one hand, and self-employed persons and farmers, on the other, as regards acquiring rights from pension insurance. The new act should have remedied such unconstitutionality.

Within this scope, the unconstitutionality of the statutory regulation in force was manifestly demonstrated. However, the Constitutional Court decided that this was not a sufficient enough reason to substantiate an interference with the right to a referendum. Namely, it cannot be overlooked that the existing statute regulates the entire system of pension and disability insurance. Harmonising this statute with the Constitutional Court decisions in terms of its content entails only a small part of the regulation of the pension system. The Constitutional Court decided that such could be regulated by amending the statute and without amending other, fundamental elements of the pension system. In cases in which it implements Constitutional Court decisions, the legislature may also regulate other important questions that may also be of a systemic nature. With reference to such conduct of the legislature, it cannot be deemed that the legislature abused its legislative function. However, in such cases the legislature cannot expect that merely because of such harmonisation the Constitutional Court will "prohibit" a referendum on the entire new regulation. Furthermore, the possible rejection of the new statute at a referendum would not terminate the duty of the National Assembly to immediately implement the relevant decisions of the Constitutional Court.

The National Assembly substantiated the unconstitutionality of the existing regulation by also alleging that in the event the pension system reform was rejected at a referendum, inability to pay pensions on the basis of the existing regulation could result. Consequently, unconstitutional consequences due to the violation of the right to social security guaranteed in Article 50 of the Constitution would allegedly occur. The reason for such is the alleged fiscal unsustainability of the pension system, which allegedly would need to be increasingly financed from the state budget or for which means could be ensured only by additional state borrowing. The question for the Constitutional Court was thus whether the existing statute already interferes with the constitutionally protected right to a pension.

The Constitution leaves the regulation of the right to a pension entirely to the law. However, from the Constitution it nevertheless follows that the right to a pension must primarily be based on the insurance principle. In this sense, a pension is a property right, as it mainly depends on the duration and amount of the payment of social contributions. This entails that a pension must to a certain degree ensure the continuity of a standard of living which insured persons had in their active period. Such concerns income security, as a pension to a certain extent substitutes for the income of retired persons from which they paid social contributions for pension insurance. As the Constitution defines pension insurance as a type of social insurance, also elements of reciprocity or solidarity are constitutionally admissible. Regardless of the fact that the right to a pension primarily has a property nature, this does not entail that the Constitution ensures a pension of a certain amount. However, the lowest pension must ensure a social minimum, which does not only entail a living minimum survival income, as is ensured by payments from the system of social security. Pensions must ensure retired persons a certain standard of living with regard to their work and payment of contributions during their active period.

The allegations and data which the National Assembly and the Government submitted in their applications and stated at the public hearing did not demonstrate that the existing pension system already today interferes with the right to social security. The allegations and data by which the National Assembly and the Government can substantiate that changes in the pension system in the future are needed or even necessary for macroeconomic, public-finance, or demographic reasons cannot at this time substantiate the unconstitutionality of the existing regulation. The Constitutional Court cannot establish such unconstitutionality only because the existing pension system will not be able to be implemented in the future due to reasons which lay outside the scope of the constitutional subject matter. The Constitutional Court cannot decide on the basis of demographic and economic projections and criteria which are justifiably taken into consideration by the Government and the National Assembly and on the basis of which they formulate socio-economic policy. Consideration of public finance, economic, and demographic movements and predictions falls within the scope of the executive and legislative branches of power. Responsibility for the adoption of such measures lies with the Government and the National Assembly, as well as with the proposers of such referendum and voters when deciding at a referendum. However, these measures are not assessable from a constitutional point of view and it is precisely for this reason that the Constitutional Court cannot take such into consideration in a constitutional review and cannot assess whether they are substantiated, as such does not fall within its competence. Namely, a review of constitutionality by no means entails a review of the appropriateness, usefulness, necessity, or other type of suitability of a statutory regulation.

As regards the above-mentioned, the Constitutional Court did not establish that the regulation in force is unconstitutional and that its abrogation was necessary in order to protect other important constitutional values which should be given priority over the constitutional right to a referendum.

A Referendum on Documents and Archives

The Constitutional Court adopted its second decision on a referendum in 2011 on 14 April. In Decision No. U-II-2/11, the Constitutional Court dismissed the request of the National Assembly to decide that unconstitutional consequences would occur due to the rejection of an amendment to the Protection of Documents and Archives and Archival Institutions Act at a referendum.

The Constitutional Court reiterated that it can establish that unconstitutional consequences would occur as a result of the possible rejection of a statute at a referendum if the allegations of the National Assembly manifestly demonstrate an existing unconstitutionality that must be remedied in order to protect important constitutional values which must be given priority over the constitutional right of voters to decide on a statute at a referendum. However, in the request of the National Assembly there were no specific allegations with reference to the question of how the existing regulation of the question of access to the archives of the former social-political organisations, internal affairs authorities, judicial authorities, and intelligence and security service established before 17 May 1990 could in any manner harm such values, namely the interests of the Republic of Slovenia. Furthermore, the National Assembly did not specifically substantiate a violation of the human rights and fundamental freedoms of individuals. The regulation in force namely limits access to archives which contain sensitive personal data obtained by means of a violation of human rights and fundamental freedoms and which concern persons who were not public officeholders. In addition, the personal data

contained in archives are also protected on the basis of the general regulation of the protection of personal data, as determined in the Personal Data Protection Act. The Constitutional Court furthermore took into consideration that the disputable provision in the statute in force was implemented already in April 2006. In its request the National Assembly did not allege that in this period there was already a specific case which would confirm the National Assembly's abstract allegations that state interests were threatened and that the human rights and fundamental freedoms of individuals were violated. On the basis of the above-mentioned, the Constitutional Court decided to allow a referendum on the amendment to the Protection of Documents and Archives and Archival Institutions Act.

Family Code

At the beginning of December, the Constitutional Court decided on a referendum for the final time in 2011. Once again, in Decision No. U-II-3/11, dated 8 December 2011, it dismissed a request of the National Assembly, in this instance regarding the Family Code. In the decision the Constitutional Court stated that due to the fact that the Family Code is to enter into force not earlier than one year following its implementation, the outcome of the referendum would not influence the possible occurrence of unconstitutional consequences. In the event of the rejection of the Family Code at the referendum, as well as in the event of its confirmation, the relevant legal position will remain the same, and thus one year after the promulgation of the decision adopted at the referendum, the Marriage and Family Relations Act and the Registration of Same-Sex Civil Partnership Act will still apply. This period is the same, with minor deviations, as the period in which the National Assembly is bound by a referendum decision in accordance with the Referendum and Public Initiative Act. The possible rejection of the Family Code at the referendum therefore could not result in unconstitutional consequences. Thus, due to the fact that deciding at a referendum cannot result in unconstitutional consequences, the Constitutional Court did not have to review the reasons which might substantiate such consequences.

2. 2. 3. Naming Tito Street

In Decision No. U-I-109/10, dated 26 September 2011, the Constitutional Court decided that a provision of the ordinance by which Ljubljana Municipality determined that the name of a street would be Titova cesta [Tito Street] is inconsistent with the Constitution.

When reviewing the constitutionality of the ordinance naming Tito Street, the Constitutional Court proceeded from the principle of respect for human dignity. Human dignity is at the centre of the constitutional order of the Republic of Slovenia. Its ethical and constitutional significance already proceeds from the Basic Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia, wherein certain principles that demonstrate the fundamental constitutional quality of the new independent and sovereign state are outlined. By adopting the independence documents, not only the fundamental relationship entailing state sovereignty between the Republic of Slovenia and the Socialist Federal Republic of Yugoslavia was severed, but there was also a fracture with the fundamental value concept of the constitutional order. Differently than the former Socialist Federal Republic of Yugoslavia, the Republic of Slovenia is a state governed by the rule of law whose constitutional order proceeds from the principle of respect for human rights and fundamental freedoms. Human dignity is the fundamental value which permeates the entire legal order and therefore it also has an objective significance in the functioning of authority, not only in individual proceedings but also when adopting regulations.

As the fundamental value, human dignity has a normative expression in numerous provisions of the Constitution; it is especially concretised through provisions which ensure individual human rights and fundamental freedoms. As a special constitutional principle, the principle of respect for human dignity is directly substantiated in Article 1 of the Constitution, which determines that Slovenia is a democratic republic. The principle of democracy in its substance and significance exceeds the definition of the state order as merely a formal democracy, but substantively defines the Republic of Slovenia as a constitutional democracy, thus as a state in which the acts of authorities are legally limited by constitutional principles and human rights and fundamental freedoms. This is because individuals and their dignity are at the centre of its existence and functioning. In a constitutional democracy, the individual is a subject and not an object of the functioning of the authorities, while his or her (self)realisation as a human being is the fundamental purpose of the democratic order.

In the case at issue, the question is raised whether reintroducing a Tito Street in Ljubljana is inconsistent with the principle of respect for human dignity. With reference to such, the Constitutional Court stressed in the Decision at issue that the objective of the proceedings was not a review of the personality and individual actions of Josip Broz Tito, nor a historical review of facts and circumstances, but that only the symbolic dimension of his name was constitutionally relevant. It can be stated that a regulation or other act of the authorities which has symbolic significance is unconstitutional in cases in which such symbol, through the power of the authority, expresses values which are incompatible with fundamental constitutional values, such as human dignity, freedom, democracy, and the rule of law. Due to the fact that naming public spaces is an official act, this entails that the authority gives such values recognition, supports them, or identifies with them.

The symbolic dimension of Tito Street is inseparably connected with the symbolic significance of Tito's name. The name Tito does not only symbolise the liberation of the territory of present-day Slovenia from the Fascist occupation in World War II, as alleged by the opposing party, but it also symbolises the post-war totalitarian communist regime, which was marked by extensive and gross violations of human rights and fundamental freedoms, especially in the decade directly following World War II. The fact that Josip Broz Tito was the leader of the former state entails that it is precisely his name that to the greatest extent symbolises the former totalitarian regime. Tito's symbolic significance cannot be divided such that only the significance of the actions that the opposing party attributes to his historical role and personality are considered. Once again naming a street after Josip Broz Tito, who is a symbol of the Yugoslav communist regime, can be understood as support not only for him as a historical figure or his individual actions, but also as support for the entire historical period of his rule and for his rule as such. Therefore, it is not important what the municipal authority wished to achieve by introducing Tito Street or which objectives it pursued; it is important that the challenged Ordinance must objectively be understood as a form of recognition conferred on the former undemocratic regime.

In the Republic of Slovenia, where the development of democracy and a free society based on respect for human dignity began with the break with the former state and its system, the glorification of the communist totalitarian regime by the authorities by naming a street after the leader of such regime is unconstitutional. Such new naming of a street no longer has a place here and now, as it is contrary to the principle of respect for human dignity, which is at the very core of the constitutional order of the Republic of Slovenia. Naming a street after Josip Broz Tito namely does not entail preserving a name from the former system and which today

would only be a part of history. The challenged Ordinance was issued in 2009, eighteen years after Slovenia declared independence and established the constitutional order, which is based on constitutional values that are the opposite of the values of the regime before independence. Not only the victims or opponents of the former regime, but also other members of the public can understand such act of the authority at issue in the present time as newly emerged official support for the former communist regime.

On the basis of the above-mentioned, the Constitutional Court decided that the challenged provision of the above-mentioned Ordinance is inconsistent with Article 1 of the Constitution, as it violated the principle of respect for human dignity and therefore it annulled such.

2. 2. 4. Establishing Ankaran Municipality

In Decision No. U-I-114/11, dated 9 June 2011, the Constitutional Court decided on a petition for the review of the constitutionality of the statute and act which regulated elections in Koper Municipality. The petition was filed by Ankaran Locality, the Ankaran Italian Community, and others. The Constitutional Court decided that Ankaran Municipality be established and that elections in Koper Municipality be allowed.

In Decision No. U-I-137/10, dated 26 November 2010, the Constitutional Court determined that the Establishment of Municipalities Act is inconsistent with the Constitution. The Constitutional Court decided that the National Assembly acted arbitrarily in not establishing the municipalities of Ankaran and Mirna. Such conduct entailed a violation of the principles of a state governed by the rule of law and the general principle of equality before the law, and consequently a violation of the constitutional provisions which refer to local self-government. The Constitutional Court determined a two-month time limit for the National Assembly to remedy the established unconstitutionality and imposed on the President of the National Assembly the duty to ensure that elections to the municipal councils and of the mayors of all four affected municipalities be called within twenty days following the establishment of the municipalities of Ankaran and Mirna.

The National Assembly responded to the Constitutional Court decision as regards Mirna Municipality. However, as regards the locality of Ankaran, the National Assembly has not yet adopted a law by which the unconstitutional state of affairs would be harmonised with the Constitution. This fact demonstrates that the National Assembly respects the Constitutional Court decision in a selective and arbitrary manner. Due to the conduct of the National Assembly, the unconstitutional state of affairs regarding local self-government in the locality of Ankaran has continued and in fact deepened, as not carrying out the due legislative activities has resulted in a situation wherein also elections in Koper Municipality could not be carried out in the time limits determined in the decision adopted in 2010. Every additional postponement of the election of the authorities of Koper Municipality therefore infringes upon the right to the exercise of local self-government of the residents of Koper Municipality.

Constitutional Court decisions are binding. The content of such obligation is that all state authorities must respect and implement decisions adopted by the Constitutional Court, as the highest body of judicial power for the protection of constitutionality and legality as well as human rights and fundamental freedoms. Only if Constitutional Court decisions are binding and as such, in fact, have effect, can the Constitutional Court ensure affected individuals effec-

tive protection of their constitutional position. Due to the fact that the National Assembly did not respond to Constitutional Court Decision No. U-I-137/10, the petitioners were left without effective constitutional protection against arbitrary conduct by the National Assembly. Therefore, the Constitutional Court had to ensure such protection in the case at issue.

One way for the Constitutional Court to have ensured effective constitutional protection of the petitioners' rights in the case at issue would have been to interfere with the elections called in Koper Municipality and abrogate the challenged statute determining the calling of local elections in this municipality. Instead, the Constitutional Court decided on an approach which effectively ensures not only the right to elections and the right to local self-government of the residents of Koper Municipality, but also the right to the exercise of local self-government of the residents of Ankaran. For such purpose, in the case at issue the Constitutional Court determined a new manner of the implementation of Decision No. U-I-137/10, adopted in November 2010, and thereby ensured all affected persons exercise of their constitutional rights.

The substance of Constitutional Court Decision No. U-I-137/10 cannot be implemented in a different manner other than to establish Ankaran Municipality. As regards the fact that all hitherto legislative procedures for the implementation of this decision in the National Assembly were unsuccessful, the Constitutional Court itself decided that Ankaran Municipality be established and determined all the necessary elements for carrying out the first local elections in this municipality. With reference to such, the Constitutional Court reiterates that the establishment of Ankaran Municipality should be carried out by taking into consideration the criteria and established practice as regards establishing municipalities which had been applied until the Act amending the Local Self-Government Act adopted in July 2010 was adopted.

By establishing Ankaran Municipality the Constitutional Court finally protected the constitutional position of the petitioners and residents of Ankaran. However, establishing Ankaran Municipality does not also require the immediate operative constitution of the bodies of this municipality. The Constitutional Court determined that the first elections in Ankaran Municipality be carried out within the framework of regular local elections in 2014, as in the case of the establishment of a new municipality elections to a municipal council and the election of the mayor of a new municipality are namely carried out in the first regular elections after its establishment. Consequently, the Constitutional Court decided that the challenged regulations are not inconsistent with the Constitution, which entails that elections in Koper Municipality can be carried out. Until such elections, the residents of Ankaran are to exercise their right to local self-government in Koper Municipality, whereas in the intermediate period the competent authorities will be able to prepare all the necessary measures for the commencement of the operation and financing of Ankaran Municipality.

In the case at issue, the Constitutional Court also devoted special attention to the Italian national community and its members who reside in Ankaran Municipality. In the procedure for the establishment of Ankaran Municipality the National Assembly has indeed already established that all conditions for the establishment of this municipality have been met, thus also the conditions for ensuring the special position and rights of the autochthonous Italian national community, and in the decision at issue the Constitutional Court particularly emphasised that the Italian national community and its members in Ankaran Municipality enjoy all rights which proceed from the international obligations of the Republic of Slovenia and all special rights determined in Article 64 of the Constitution.

2. 2. 5. Incompatibility of the Office of Deputy of the National Assembly with the Office of Mayor

In Order No. U-I-317/11, dated 15 December 2011, the Constitutional Court dismissed a petition to initiate a procedure for the review of the constitutionality of the provision that a deputy of the National Assembly may not hold the office of mayor of a municipality. The petitioners, who hold the office of non-professional mayors and were elected at the last parliamentary elections, alleged that such regulation is inconsistent with the right to vote, as ensured in the first and second paragraphs of Article 43 of the Constitution.

In the Order dismissing the petition, the Constitutional Court stated that the right to be elected determined in the second paragraph of Article 43 of the Constitution ensures that individuals can stand for election to state or local authorities under the same conditions. The right to be voted for also contains the right to be elected, which entails the right of an individual to take office in accordance with the prescribed rules on the basis of election results. The third aspect of the right to vote entails the right to hold an office gained in an election. The second paragraph of Article 82 of the Constitution gives the legislature broad authorisation to regulate by law the incompatibility of the office of deputy with other offices and activities. In light of the case at issue, such authorisation granted to the legislature entails two aspects: first, the Constitution does not ensure individuals the right to concurrently hold the office of deputy and the office of mayor, and second, the termination of one office due to gaining such other office on the basis of a voluntary decision of the individual in and of itself does not entail an interference with the right to hold the office that was gained first. This entails that by such authorisation the constitution framers imposed on the legislature the duty to regulate a manner that individual elected offices may be held concurrently. Within this framework, such thus concerns the manner of exercising the right to vote (the second paragraph of Article 15 of the Constitution), and not its possible restriction (the third paragraph of Article 15 of the Constitution). As regards the fact that from the legislative materials there follow sound reasons for the implementation of the incompatibility of the office of deputy of the National Assembly with the office of mayor, the petitioners' allegation of an unconstitutional interference with the right to be elected is manifestly unfounded.

2. 2. 6. The Prohibition on Publishing Public Opinion Polls Seven Days before an Election

In Decision No. U-I-67/09, Up-316/09, dated 24 March 2011, the Constitutional Court decided that the prohibition on publishing public opinion polls seven days before an election is not consistent with the Constitution. Until the above-mentioned unconstitutionality is remedied, for which the National Assembly was given a six-month time limit, the Constitutional Court determined that such polls may not be published twenty-four hours before the day of voting.

The first paragraph of Article 39 of the Constitution guarantees freedom of expression of thought, freedom of speech and public appearance, and within this framework it particularly protects freedom of the press and other forms of public communication and expression. The significance of the right to freedom of expression is multi-dimensional: its purpose is to protect the freedom

to impart information and opinions (i.e. the active aspect) and the freedom to receive such, thus the right to be informed (i.e. the passive aspect). Within the framework of freedom of expression, freedom of the press and other forms of public communication has a particularly important role. Free, i.e. independent from the government, mass media are the *conditio sine qua non* for creating a pluralistic and consequently impartially informed pubic. The freedom to inform the public is a condition for the public to be able to supervise the authorities and for the effective functioning of the political opposition of the government to be ensured. Only a free mass media can ensure the balanced conduct of political power in the state and continuous supervision over state (governmental) authorities. An indispensable role of the mass media with reference to the supervision of authorities entails that their free functioning is important also when monitoring processes in which the people establish state power (i.e. elections) or directly exercise such power (i.e. via referendum). We can only speak of fair elections or voting when the true will of the people is expressed if also during such processes the public is extensively and comprehensively informed. The challenged provision prohibits the mass media from publishing any public opinion polls during the period of seven days before voting takes place. Inasmuch as such prohibition refers to publishing their own public opinion polls, which the mass media publish on their own initiative with the objective of informing the public, such entails an interference with the first paragraph of Article 39 of the Constitution. Inasmuch as this prohibition also refers to the publication of polls that are ordered and paid for by other subjects, such could also entail an interference with the first paragraph of Article 74 of the Constitution. As regards the amount of time, the seven-day prohibition is an excessive limitation that excessively interferes with the free functioning of the mass media. Therefore, the challenged provision is inconsistent with the first paragraph of Article 39 of the Constitution and the Constitutional Court abrogated such.

2. 2. 7. The Regulation of Parliamentary Inquiry

In Decision No. U-I-50/11, dated 23 June 2011, the Constitutional Court decided that the Parliamentary Inquiries Act and the Rules of Procedure on Parliamentary Inquiries are inconsistent with the Constitution. The Constitutional Court imposed on the National Assembly the duty to remedy the established inconsistency within one year of the publication of the decision at issue.

The Constitutional Court held that the institution of parliamentary inquiry is directly guaranteed in Article 93 of the Constitution and that the legislature must regulate such in detail in a law. With reference to such, it must ensure that the parliamentary inquiry procedure is efficient. This entails that the procedural provisions of the Act and of the Rules of Procedure must ensure that a parliamentary inquiry can be initiated, conducted, and terminated within a reasonable period of time and that important facts clarifying the subject of inquiry can be established, and that such is not rendered impossible due to the abuse of rights, or the avoidance or concealment of information of any participant in proceedings. The requirement that a parliamentary inquiry must be efficient is furthermore protected by the constitutional right of a third of the deputies of the National Assembly to require that the National Assembly order a parliamentary inquiry. Article 93 of the Constitution guarantees these deputies appropriate means for effective participation in inquiries, especially in deciding which evidence should be presented. One third of the members of an inquiry commission may always require that certain evidence be presented against the will of the majority. With reference to such, it does not proceed from the Rules of Procedure or from the Act that a motion for evidence of a minority of the members of the commission should be particularly substantiated nor that any other body, authority, or a certain number of members of the commission can decide whether it is

needed and rational or if such motion entails the abuse of rights. Therefore, the requirement of at least a third of the members of the inquiry commission that the president or a member of the commission be heard as a witness inevitably causes this person to be excluded from the commission. The repetitive, continuous, and systematic exclusion of certain members of the inquiry commission with the objective to hinder the work of the commission may lead to longer delays in the work of the parliamentary commission. Thereby, it is possible that the commission does not conclude its work until its mandate expires. The effectiveness of parliamentary inquiry may be ensured only by a procedural mechanism which promptly, objectively, predictably, reliably, and with the main objective to ensure the integrity of the legal order ensures that motions for presenting evidence which are manifestly intended to delay proceedings, to mob the participants, which are malicious or entirely irrelevant to the subject of the parliamentary inquiry be dismissed. The Act and the Rules of Procedure do not contain such a procedural mechanism. Due to the fact that there is no such specific regulation, the effective nature of parliamentary inquiry, which is determined in Article 93 of the Constitution, is reduced.

2. 2. 8. Determining the Public Service of Higher Education

In Decision No. U-I-156/08, dated 14 April 2011, the Constitutional Court abrogated a provision of the Higher Education Act and established the inconsistency of other provisions of this Act, as it did not determine the funding criteria [of state universities and state institutions of higher education], but the Act left such to other acts.

The abrogated provision of the Higher Education Act is inconsistent with Articles 2 and 87 of the Constitution as it does not define the public service of higher education, but it leaves the regulation of such in its entirety to the national programme for the field of higher education. Therefore, the Constitutional Court abrogated such provision. A resolution by which the National Assembly adopts a national programme in the field of higher education is not a general (legal) act, but a political and partly professional act, by which the rights and obligations of natural persons and legal entities cannot be regulated. Statutes must regulate such. On the basis of Article 87 of the Constitution, the National Assembly may determine the rights and duties of citizens and other persons only by law. Furthermore, the principles of a state governed by the rule of law determined in Article 2 of the Constitution require that fundamental relations between the state and citizens and other persons be regulated by generally applicable and abstract statutes and not by resolutions.

The provisions which the Constitutional Court established are inconsistent with Article 2 of the Constitution are not clear, as the public service of higher education is not defined in the Act and therefore it is also not defined whether extramural studies are a part of this public service or not. The second paragraph of Article 58 of the Constitution requires the state to regulate by law the manner of the funding of state universities and state institutions of higher education. The Act did not regulate the substance of the manner of the funding of state universities and state institutions of higher education, especially not the manner of state budget funding. State universities and state institutions of higher education do not know what their position is regarding the funding of their activities and such is also not predictable on the basis of the Act. As the Act did not determine the funding criteria as a statutory framework for a more detailed regulation of the manner of funding by an implementing regulation, it entails a mere authorisation granted to the executive branch of power, i.e. the Government, to itself determine the manner of the funding of state universities and state

institutions of higher education and is therefore inconsistent with the second paragraph of Article 58 of the Constitution.

2. 2. 9. Authentic Interpretation of the Takeovers Act

In Decision No. U-I-103/11, dated 8 December 2011, the Constitutional Court abrogated two provisions of the Takeovers Act regarding the content attributed to them by an authentic interpretation, after it suspended their implementation on 4 July. In accordance with the established case law of the Constitutional Court, an authentic interpretation of a regulation is a constituent part thereof from its implementation onwards. An authentic interpretation in and of itself cannot be a subject of review of constitutionality or legality, as it only explains the meaning of the provision to which it refers. By the disputed authentic interpretation, conditions were determined which do not proceed from the interpreted legal norms by applying linguistic, logical, systematic, historical, and theological interpretation of the text. As such authentic interpretation in its substance does not interpret the legal norms contained in these two provisions, but rather has the nature of an act amending the above-mentioned provisions, in its substance it entails an amendment of the Act. However, amendments of statutes cannot be the subject of an authentic interpretation, but amendments of statutes can be the subject of amendments which must be carried out in the legislative procedure. Consequently, the National Assembly violated the first paragraph of Article 91 of the Constitution, which determines that laws are promulgated by the President of the Republic, and the second paragraph of Article 91 of the Constitution, which regulates the right of the National Council to require the National Assembly to decide again on a law within seven days of the adoption of the law and prior to its promulgation.

2. 2. 10. Deciding on Granting Leave to Appeal

In Order No. U-I-302/09, Up-1472/09, U-I-139/10, Up-748/10, dated 12 May 2011, the Constitutional Court reviewed the new regulation of the procedure for granting leave to appeal before the Supreme Court determined in the act governing civil procedure. The main reason put forward in the petitions and constitutional complaints in this case was the fact that in a decision dismissing a leave to appeal the Supreme Court does not state reasons on the merits for such. The Constitutional Court specified that the purpose of the human right to the equal protection of rights determined by Article 22 of the Constitution, which also includes the requirement to ensure appropriate reasoning of decisions, is to protect individuals in proceedings regarding their rights, obligations, and legal interests. The assessment of to what extent the proceedings refer to the individual position of the party is thus an important factor which determines the scope of the protection of the right to appropriate reasoning ensured by the Constitution. The Constitutional Court stated that deciding on granting leave to appeal is a sui generis preliminary procedure in which the Supreme Court reviews whether the case involves legal issues relevant to the legal order as a whole which go beyond the specific case and interests of the parties to the specific proceedings. Therefore, it does not follow from the right to make statements and the right to a fair trial determined by Article 22 of the Constitution that the Supreme Court must provide a statement of reasons on the merits as to whether based on the criterion of public interest it will grant a legal remedy that human rights do not demand. From the standpoint of this procedural guarantee, it suffices that in such an order the Supreme Court merely makes a general reference to the legal reasons for dismissing the leave to appeal. Requiring a statement of reasons on the merits of orders dismissing leaves to appeal would undermine the purpose

of the regulation of the appeal to the Supreme Court and consequently the significance of the Supreme Court would be weakened, which is important for the development of the law, the protection of the human right to equality before the law, and, in a broader sense, the foundations of constitutional democracy.

2. 2. 11. Declaratory Judgments in Proceedings for Judicial Review of Administrative Acts

In Decision No. U-I-181/09, Up-860/09, and Up-222/10, dated 10 November 2011, the Constitutional Court established that the Judicial Review of Administrative Acts Act was not in accordance with the Constitution and ordered the National Assembly to remedy the established unconstitutionality within one year of the publication of the decision. The Judicial Review of Administrative Acts Act namely did not enable the judicial protection of the petitioner, who had intervened in proceedings for issuing a permit for the organisation of a public event. The relevant procedure is organised in such a way that, due to the nature of a public event and the nature of a permit for the organisation of a public event, a plaintiff, even if he acts with the greatest possible diligence and files all legal remedies as soon as possible, cannot obtain a court review of his action challenging the issuance of an administrative permit (i.e. a decision issued for a limited period of time against which an appeal has no suspensory effect) before the relevant public event concludes. However, once the public event ends, the annulment of the permit can no longer improve the plaintiff's legal position and, therefore, the court has to reject his lawsuit.

A regulation which does not provide the plaintiff with a legal remedy in order to ensure judicial review of the legality of a final administrative act entails a hollowing out of the right to judicial protection and is therefore inconsistent with the first paragraph of Article 23 of the Constitution. The decisions of the courts rejecting the petitioner's action due to a lack of legal standing are also inconsistent with the first paragraph of Article 23 of the Constitution as they are based on a regulation which does not provide for judicial review of the legality of administrative acts.

The Constitutional Court also determined the manner in which the established unconstitutionality must be remedied. A plaintiff may lodge a lawsuit to obtain a declaration that an illegal administrative act has interfered with his rights or legal interests (an action for a declaration) if he can demonstrate a legal benefit. The lawsuit is subject to the same conditions and may be filed for the same reasons as the law prescribes for a lawsuit by which the annulment of the administrative act can be sought (an action for annulment). The Administrative Court may reject an action for a declaration for the same reasons that the law prescribes for the rejection of an action for annulment. If it establishes that the action for a declaration is substantiated, it establishes in a judgement that an illegal administrative act interfered with the rights or legal benefits of the individual. There is no right to appeal against the decision of the Administrative Court; it is, however, possible to appeal to the Supreme Court or to request a reopening of the proceedings, subject to the conditions laid down by law.

2. 2. 12. The Credibility of an Applicant for International Protection

In Decision No. U-I-292/09, Up-1427/09, dated 20 October 2011, the Constitutional Court abrogated a provision of the International Protection Act that, in cases in which the general

credibility of the applicant had not been established, allowed the competent authority to reject an application for international protection without taking into account the information regarding the applicant's country of origin. In the case at issue, the complainants did not present any evidence to support their applications for international protection but based their applications solely on their own statements. With regard to the overall assessment of the applicants' statements as well as their conduct during the procedure, the Ministry of the Interior concluded that they had failed to establish their general credibility. On the basis of the challenged statutory provision, the Ministry did not take into account the information about the complainants' country of origin when processing their applications.

The Constitutional Court clarified that an analysis of the circumstances which are important from the perspective of the principle of non-refoulement is necessary when processing applications for international protection. The procedure for assessing applications for international protection must be organised in such a way as to ensure that the applicants can benefit from the safeguards of Article 18 of the Constitution (the prohibition of torture). By allowing the competent authority to disregard information regarding the country of origin if the general credibility of the applicant has not been established, the legislature interfered with Article 18 of the Constitution. In the view of the Constitutional Court, the challenged statutory provision enabled the competent authority to reject applications for international protection without taking into account all the circumstances that could have influenced the assessment of the existence of a justifiable reason for concluding that there would be an actual danger of a breach of Article 18 of the Constitution if the applicant were to be forcibly returned. Taking into account that the right determined in Article 18 of the Constitution enjoys absolute protection and may, therefore, not even be limited on the grounds of the third paragraph of Article 15 of the Constitution, the Constitutional Court assessed that the aforementioned interference is inadmissible. The Constitutional Court also decided that the Supreme Court judgment adopted pursuant to the mentioned statutory regulation was not in accordance with Article 18 of the Constitution.

2. 2. 13. Criminal Law Cases

The right of the defence counsel to appeal against a decision on an order of detention

In Decision No. Up-487/10, dated 20 January 2011, the Constitutional Court annulled two decisions of the regular courts, the first rejecting an appeal of the complainant's defence counsels, and the second confirming the rejection. In the case at issue, the defence counsels had appealed against an order of detention against the complainant even before the order had been served on the complainant himself. After the order had been served on him, the defence counsels filed another appeal together with the defendant. This appeal was rejected.

When reviewing the case, the Constitutional Court considered the particularity of the statutory regulation in force regarding the service of decisions and the right to a legal remedy in criminal proceedings according to which both the defendant and his defence counsel have the right to appeal against a decision ordering detention. An interpretation of this Act whereby the court decides on the complaint of the defence counsel before the decision on the order of detention is served on the defendant is consistent with the Constitution since issues regarding an interference with the defendant’s right to personal freedom must be decided swiftly. The

standpoint of the courts that the defendant may file an appeal only on his own after the court has already decided on the appeal filed by his defence counsel before the decision was served on the defendant violates the right of the defendant to defend himself with the assistance of a defence counsel. It is inherent in this right that the counsel is able to provide legal assistance on the basis of his consultation with the defendant. Denying the counsel the right to appeal in cases in which the reasons stated in the appeal are based on factual circumstances obtainable solely on the basis of a consultation with the defendant therefore violates the right to a defence and the right to appeal, which ensures respect for the principle of appellate review.

A Punitive Norm Inconsistent with the Principle of *Lex Certa*

In Decision No. Up-456/10, U-I-89/10, dated 24 February 2011, the Constitutional Court established that a provision of the Aliens Act determining the minor offence of illegal residence in the Republic of Slovenia was inconsistent with the Constitution and ordered the National Assembly to remedy the inconsistency within six months of the publication of the decision.

The crucial question for the decision of the Constitutional Court was whether the time limit by which an alien whose request for international protection was dismissed by a final decision must leave the country is predictable to such an extent that it satisfies the requirement of the determinability of punitive norms. The answer to the question as to when a person is illegally residing in the country is decisive for an assessment of the conduct of the competent authorities as well as the conduct of the affected person. The setting in motion of the powers of the authorities authorised by law to execute the forcible return of an alien and, if applicable, also to sanction forbidden conduct depend upon the clear and definite determination of this moment. This ensures the prevention of the arbitrary use of the state's system of punitive sanctions. On the other hand, this definition is also important for an individual ordered to leave the country so that he can be aware of the fact of up to which moment he may legally remain in the territory of the Republic of Slovenia and at what moment his conduct amounts to a minor offence.

The Constitutional Court found that the result of interpretation of the relevant statutory provisions is uncertain and unpredictable to such a degree that it does not meet the requirement that the moment when it can be deemed that an alien is residing in the country illegally must be determinable. As the substance of one of the statutory elements of the punitive norm is indefinite, such entails that the punitive norm is indefinite as such. As a result, the Constitutional Court concluded that the reviewed statutory regulation does not meet the requirements stemming from the principle of *lex certa* and is therefore inconsistent with the first paragraph of Article 28 of the Constitution. At the same time, the Constitutional Court also found that the judicial decision issued in the minor offence proceedings based on the challenged statutory provision violates the aforementioned provision of the Constitution.

Regulation of the Disclosure of Information Related to Police Work

In Decision No. U-I-271/08, dated 24 March 2011, the Constitutional Court abrogated a provision of the Police Act regarding the conditions and decision-making procedure for relieving individuals of the duty to maintain the confidentiality of information with regard to the taking of evidence by means of the examination of a police employee in criminal proceedings. The relevant provision made the disclosure of certain information necessary for the defence in criminal proceedings dependant on a decision made at the discretion of the Minister of the Interior. As the right to judicial protection determined in the first paragraph of Article 23 of the

Constitution guarantees everyone the right to have a decision regarding the charges brought against him made by an independent and impartial court and not by the executive branch of power, the Constitutional Court held that the challenged provision is inconsistent with this right of the defendant. The non-disclosure of information related to police work is without a doubt legitimate and pursues constitutionally admissible aims, such as state security, the protection of individuals from interferences with their life or person, and the protection of the tactics and methods of police work. In order to achieve these aims it is admissible to interfere with the defendant's right to a defence determined in Article 29 of the Constitution, which takes into account the equality of arms in criminal proceedings and ensures that prosecuting authorities disclose to the defence the evidence for the benefit or to the detriment of the defendant which they possess. The duty to maintain the confidentiality of sources and undercover agents and withholding such from the defence (and consequently from the public as well) is an appropriate measure for achieving the constitutionally admissible aim, namely the protection of a witness if his life or person are in danger. However, such a measure is necessary and proportionate only if serious danger to the life or person of the witness exists or if there are other substantial reasons in the public interest, while at the same time the possibility to examine such a witness upon the application of protective measures is ensured. It is the duty of the state authorities who ensure the efficiency of prosecution to assess any threats that would follow from the disclosure of confidential information. It is the duty of the courts, who must ensure the fairness of proceedings against the defendant, to decide to apply the measure which, upon weighing the constitutionally protected values, is found to be the least burdensome regarding the interference with the right of the defendant to a defence. This issue requires careful weighing of the interests of the public order and/or individuals' personal safety against the right of the defendant to a defence. Upon weighing such appropriately, whether it is demonstrated that such disclosure is well-founded depends on the circumstances in the individual case, taking into consideration the criminal offence with which the defendant is charged, possible manners of defence, the importance of testifying, and other important elements. Such may be reviewed in an individual case only by an independent and impartial tribunal. The challenged regulation did not provide for such a procedure, especially because it did not define the criteria for the decision-making sufficiently clearly and because it left the final decision to the minister responsible for internal affairs. The Constitutional Court, therefore, concluded that the statutory regulation is not only inconsistent with the right to judicial protection, but it also interferes with the defendant's right to a defence in an inadmissible manner.

As a result, the Constitutional Court abrogated the challenged provision and determined the manner in which its decision is to be executed until a different statutory regulation is adopted. Until such time, the minister responsible for internal affairs can relieve a police employee of the duty to maintain the confidentiality of the information referred to in the challenged provision. If the Minister deems that there are reasons why a police employee cannot be partially or entirely relieved of the duty to maintain the confidentiality of information, he shall inform the president of the competent Higher Court thereof and of the reasons for such an opinion. After examining the criminal file and the confidential information which the Minister deems cannot be disclosed, the president of the Higher Court may order that the confidential information be disclosed and determine the scope and conditions of the disclosure thereof as well as the use of protective measures, if applicable. The police must enable the president of the Higher Court to have access to the confidential information that is the subject of the court order. In its decision, the Constitutional Court also stated that the disclosure of personal information or the identity of a source of information is not admissible if the safety of the witness or someone close to him is in evident and serious danger.

The Search of a Vehicle, Use of One's Mother Tongue in Proceedings, and Privilege against Self-incrimination with regard to Statements Given to a Customs Officer

In Decision No. Up-1293/08, dated 6 July 2011, the Constitutional Court reviewed the constitutional complaint of a foreign national. He was sentenced to six years in prison because illegal drugs had been found in his vehicle when crossing the state border. In his constitutional complaint the complainant alleged that the search of his vehicle had been conducted without a prior judicial decision, that the provisions of the Criminal Procedure Act had not been observed with regard to the interference with his privacy, that the investigation should have been conducted in accordance with procedural safeguards from the moment it focused on him as the main suspect, that the evidence obtained during the search of his vehicle should have been excluded, and that the statement of the customs officer should have been excluded as well, because the complainant had given certain statements to this witness without having been previously informed of his rights.

When deciding on this constitutional complaint, the Constitutional Court adopted the standpoint that even though a vehicle in general does not constitute a space enclosed in such a manner as to justify an expectation of privacy in the sense of Article 36 of the Constitution, a search of a vehicle can constitute an interference with the right to privacy determined in Article 35 of the Constitution. For cases of the most serious interferences with this right the requirement of a prior judicial decision stems already from the principle of proportionality, which is a criterion for the assessment of the admissibility of interferences with a constitutional right. In the case of a vehicle search at a border crossing, the assessment of whether a prior judicial decision is required for such an interference depends on the degree of justified expectation of privacy of the individual concerned. A lesser degree of expected privacy stems already from the purpose and nature of a vehicle, which is intended for use in traffic, which is a dangerous activity and as such requires adequate regulation. This is substantially reinforced by the conditions at the national border which call for more intensive interferences with the right to privacy in order to ensure effective control enabling the protection of persons and territory. With regard to such, the Constitutional Court decided that the standpoint of the courts according to which a court order is not required for the search of a vehicle at the national border does not interfere with an individual's right to privacy determined in Article 35 of the Constitution.

The privilege against self-incrimination originates in the requirement to respect human dignity in criminal proceedings, the decisive moment being the actual beginning of the criminal proceedings and not the moment when such are formally initiated. The scope of the privilege against self-incrimination therefore includes all those proceedings in which in the framework of inspection or supervisory procedures a criminal procedure is de facto being conducted or in which the actions of the officials are aimed at collecting data for later criminal proceedings. A different standpoint would amount to a circumvention of constitutional safeguards. The fact that a certain constitutional safeguard does not apply to non-criminal proceedings does not entail that evidence which has been legally obtained in such proceedings may be used without any restrictions also in criminal proceedings. Ensuring effective constitutional safeguards in criminal proceedings dictates greater caution regarding the use of evidence that has been collected under lesser constitutional safeguards or even in their absence. This also applies to the statements which the defendant gave in the pre-trial procedure without being informed beforehand of his right to remain silent.

The Constitutional Court decided that the critical point at which suspicion was already focused on the complainant occurred after he had given his statement to the customs officer, i.e. at a stage when the customs procedure was not yet actually part of the criminal proceedings. As a result, the customs officer was not obliged to inform the complainant of his right to remain silent. Nevertheless, due to the aforementioned reasons, the statements of the complainant may not be used in criminal proceedings if they do not reflect his free will. As the complainant did not claim that inappropriate official force had been used or that he had not answered the customs officer's questions voluntarily, the Constitutional Court decided that the complaint that there had been a violation of the privilege against self-incrimination was not substantiated.

An interpretation of the privilege against self-incrimination such as proposed by the complainant, namely that it extends to all the facts and circumstances which the court assesses as decisive (including the personal information of the defendant), cannot be inferred from the constitutional scope of this right. In general, giving information regarding one's identity does not amount of itself to giving statements regarding a criminal offence.

The Constitutional Court deems that the standpoint of the Supreme Court according to which the defendant is not guaranteed the right to a translation of all the evidentiary materials before the main hearing is in itself not disputable in light of Articles 22 and 62 of the Constitution. The main hearing is the stage for the admission and presentation of evidence – this is the essence of all criminal proceedings and the core of the requirement of adversarial proceedings and it is, therefore, logical that a defendant who does not speak the language of the court must be provided an oral translation at the main hearing. The option of an oral translation must also be ensured with regard to official investigative measures for the collection of testimonies and statements from persons that may be used as evidence in criminal proceedings. In general, ensuring an oral translation during other investigative measures through which evidentiary material for the criminal proceedings is collected is not necessary as there are no obstacles preventing the suspect or defendant from expressing his observations, doubts, and comments subsequently or at the trial (unless the affected person is required to immediately object to potential irregularities of an investigative measure). The complainant's allegations that he had not been given enough time before the main hearing to learn of the content of the evidence are, in the view of the Constitutional Court, too general and therefore the complainant cannot substantiate the alleged violation therewith. The complainant only made concrete assertions in relation to the investigative measure of inspection, as he states that he was not able to comment on the minutes of the inspection. Such statement of the complainant is, however, not recorded in the minutes and the complainant also does not allege that he gave such a statement. At the same time, he fails to demonstrate that since he was present at the investigative measure which did not concern the collection of testimonial evidence he did not have an opportunity to state his comments at a later stage of the proceedings (in person or with the assistance of a defence counsel) or that the subsequent expression of the comments would have been ineffective and that, consequently, his position as a party to the proceedings had not been respected. In the light of the foregoing, the Constitutional Court dismissed the complaint.

Seizure of a Truck

In Decision No. U-I-186/09, Up-878/09, dated 28 September 2011, the Constitutional Court decided the petition and constitutional complaint of a Turkish company that was the owner of a seized truck in which a driver (i.e. an offender) transported illegal drugs. The Constitutional Court decided that the challenged regulation, which determines the mandatory seizure

of vehicles if they have been used for the transportation and storage of illegal drugs, also in cases in which an offender is not the owner, entails an interference with the owner's right determined in Article 33 of the Constitution, however, the legislature had a constitutionally admissible objective in adopting such regulation. The National Assembly justifiably proceeded from the supposition that in order to prevent criminal offences concerning illegal drugs and consequently to lower the degree of threat to important legal values for society, such as health and life, especially of young people, the seizure of vehicles as a mandatory measure also in cases in which an offender is not the owner of such vehicles could be determined. Thereby, the legislature wished to prevent precisely such criminal offences in order to lower the threat to the most important objectives in society – human health and life – which is a constitutionally admissible objective. When the state combats organised crime and cannot properly protect the highest values in human society, in order to achieve this objective it is necessary to also interfere with the ownership rights of those who are the owners of such vehicles as are determined in the challenged provision, although they are not offenders. The Constitutional Court held that the measure at issue is appropriate, as the prevention of such criminal offences can be achieved thereby. As the vehicles determined in the challenged provision are means for committing such grave criminal offences and a necessary condition without which such criminal offences could not be committed, the mandatory seizure of such vehicles does not entail an excessive interference with the ownership rights of a third person who is not the offender. When such highly protected values in society are threatened, the ownership rights of third persons to vehicles which were the means for the commission of the criminal offence at issue cannot (any longer) be a circumstance which prevents the state from being successful in preventing such criminal offences and consequently from protecting the health and lives of individuals and also from determining the mandatory seizure of the vehicles of third persons. Therefore, the mandatory seizure of vehicles of owners who are not offenders does not entail an excessive interference with their right to private property determined in Article 33 of the Constitution.

Due to the above-mentioned reasons, it can also not be substantiated that the position stated in the challenged judgments violates the complainant's right determined in Article 33 of the Constitution, therefore the Constitutional Court dismissed the constitutional complaint.

2.2.14. Abrogation of the Age Limit for a Child to Challenge Paternity

In Decision No. U-I-85/10, dated 13 October 2011, the Constitutional Court abrogated the age limit for a child to file a legal action by which he or she challenges paternity. In Decision No. U-I-328/05, dated 18 October 2007, the Constitutional Court had decided that limiting a child's right to know of his or her biological father to a preclusive time limit of five years after he or she has reached the age of majority disproportionately limits the child's right to know of his or her origin. The current legal situation is such that there is no preclusive time limit for a child to file a declaratory legal action, whereas the challenged provision that regulates a legal action to challenge paternity limits challenging paternity to five years after a child has reached the age of majority. If a child does not learn in time of the circumstances that are decisive for a determination of who his or her biological parents are, missing the time limit for challenging paternity will in fact also prevent a declaratory legal action from being successful.

From the right to know one's own origin, which is protected by Article 35 of the Constitution, there follow the right of individuals to know the identity of their biological parents and the right to create legal ties with their biological parents by a legal action. From this right there further-

more arises the right to sever or challenge the possible legal ties between a child and his or her alleged parents which are not in accord with reality. The determination and challenging of one's paternity or maternity are thus indivisibly interwoven parts of the same constitutionally protected whole. Imposing a preclusive time limit for a child to file a legal action for the determination of paternity entails an interference with the child's personality right to know his or her origin determined in Article 35 of the Constitution, as after the expiry of the statutorily determined time limit a legal action may no longer be filed. The legislature disproportionately limited the child's right to challenge legally recognised parental relationships which are not in compliance with biological facts, as it limited the possibility to judicially exercise this right to an objective five-year time limit after a child has reached the age of majority. The interests of a child who has learned of circumstances which could be legally relevant for the determination of paternity after the expiry of the five-year time limit after he or she has reached the age of majority outweighs the interests of protecting confidentiality and the permanence and unchangeable nature of the existing family relations. In accordance with the above-mentioned, the Constitutional Court decided that the challenged statutory regulation is inconsistent with Article 35 of the Constitution.

2. 2. 15. Labour and Social Law Disputes

Unequal Treatment of Insured Persons who Voluntarily Joined the System of Disability Insurance

On the basis of the requirements of the Supreme Court and the Labour and Social Court in Ljubljana, in Decision No. U-I-287/10, dated 3 November 2011, the Constitutional Court reviewed the constitutionality of the provision of the Pension and Disability Insurance Act according to which insured persons who are unemployed and voluntarily join the system of disability insurance acquire rights from disability insurance only in cases falling within disability categories I or II.

The Constitutional Court established that this provision is inconsistent with the general principle of equality before the law determined in the second paragraph of Article 14 of the Constitution, inasmuch as it refers to persons who voluntarily joined the compulsory insurance system as unemployed persons who are registered in the register of unemployed persons and chose insurance coverage for all types of insurance, as there exists no sound reason deriving from the nature of the matter for their different treatment.

The above-mentioned regulation, from which it proceeds that persons who voluntarily joined the compulsory insurance system on such basis and chose insurance coverage for the narrower scope of rights, whereas most of the time before that they had compulsory or voluntarily insurance coverage for all types of insurance, acquire rights from disability insurance only in cases falling within disability categories I or II, whereby it limits the acquisition of rights from disability insurance to only one criterion, i.e. the manner of joining the compulsory insurance system, entails an interference with the right to social security determined in the first paragraph of Article 50 of the Constitution. Such is an excessive interference with this right, as in the event of cases falling within disability category III none of the rights from disability insurance are ensured.

The Constitutional Court imposed on the National Assembly the duty to remedy the established inconsistency within one year after the publication of the decision at issue. Until the established inconsistency is remedied, the competent authority, when deciding whether the

request of an insured person to acquire rights on the basis of disability in the event of cases falling within disability category III is substantiated, also establishes, in addition to the determined statutory conditions for the acquisition of the above-mentioned rights, for what scope of rights an insured person was insured before disability arose. If an insured person had insurance coverage for all types of insurance, he or she acquires rights on the basis of disability if he or she meets the statutory conditions for the acquisition of such rights. However, if an insured person had insurance coverage for the narrower scope of rights, he or she acquires the above-mentioned rights, provided that other statutorily determined reasons are fulfilled, if before the disability arose he or she had insurance coverage for all types of insurance for the majority of the total compulsory insurance period.

The Unequal Treatment of Persons Employed in the Field of Culture

In 2011, the Constitutional Court once again reviewed unequal treatment in the field of labour and social relations. Upon the request of the Higher Labour and Social Court, in Decision No. U-I-210/10, dated 1 December 2011, it established that the provision of the Act Regulating the Realisation of the Public Interest in the Field of Culture which denied the right to severance pay to certain workers in the field of culture, was inconsistent with the Constitution.

The Constitutional Court established that workers in the field of culture whose employment contracts were terminated due to a business reason and who met retirement conditions were, upon the termination of their employment contracts, in essentially the same position as the workers of all other professions or activities whose employment contracts were terminated for the same reason and also met retirement conditions. The statute that denies workers who meet retirement conditions upon the termination of an employment contract due to a business reason the right to severance pay regulates the same positions differently without a sound reason existing for such deriving from the nature of the matter. Such statute is therefore inconsistent with the second paragraph of Article 14 of the Constitution.

The Write-Off and Phased Payment of Pension and Disability Insurance Contributions

In Decision No. U-I-281/09, dated 22 November 2011, the Constitutional Court decided that the regulation in accordance with which the Tax Administration of the Republic of Slovenia may write off or partly write off [obligations arising from] compulsory pension and disability insurance contributions and which allows the suspension or phased payment of contributions interferes with the right of insured persons (i.e. workers) to private property determined in Article 33 of the Constitution. Within the scope of the test of legitimacy, the Constitutional Court not only reviews whether the objective pursued by the state is in and of itself admissible, but also whether the means which the state applies in order to achieve such objective and the manner in which such are applied are constitutionally admissible. The means which the legislature applied in order to achieve the alleged objectives (i.e. the continuation of the activities of legal entities and retaining employed workers) are not constitutionally admissible, as upon the interference of the state in the ownership rights of the workers to the benefit of the employers, only the workers bear all the risks and harmful consequences. The challenged regulation therefore does not fulfil the conditions determined in the Constitution for a limitation of human rights. As the challenged regulation inadmissibly interferes with the right of workers determined in Article 33 of the Constitution, the Constitutional Court abrogated such inasmuch as it refers to insured persons who are employed. As the Constitutional Court abrogated

the statutory provision which was the basis for the adoption of the challenged Order adopted by the Pension and Disability Insurance Institute of Slovenia that determined the criteria for the write-off, suspension, and phased payment of [obligations arising from] contributions, the statutory basis on which the Order was adopted no longer exists. Thereby, inasmuch as it refers to insured persons who are employed, also the mentioned Order ceased to apply. Therefore, the Constitutional Court rejected the request in the part which referred to the Order at issue.

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 or other regulation unconstitutional or illegal as it does not regulate a certain issue which it should regulate or it regulates such in a manner that 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 or illegal act must remedy the established unconstitutionality or illegality. By remedying the unconstitutionality or illegality in accordance with the decision of the Constitutional Court, the issuing authority demonstrates respect for the decisions of the Constitutional Court, as is required by the principles of a state governed by the rule of law and the principle of the separation of powers.

At the end of 2011, there remained three unimplemented Constitutional Court decisions by which statutory provisions were found to be unconstitutional and eight Constitutional Court decisions requiring action from individual municipalities. It should be noted that in several of its decisions which found the unconstitutionality or illegality of the challenged regulations the Constitutional Court also determined the manner of execution of these decisions and thus guaranteed the effective protection of the constitutional rights of the parties concerned. These Constitutional Court decisions are not included in the number of unimplemented decisions; in such case the total number of unimplemented decisions would have been greater.

The oldest decision that has still not been implemented is 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. The second oldest is Decision No. U-I-358/04[2], dated 19 October 2006 (Official Gazette of the Republic of Slovenia, No. 112/06 and OdlUS XV, 72), by which the Constitutional Court established the unconstitutionality of the first paragraph of Article 58 and the second paragraph of Article 178 of the Pension and Disability Insurance Act, due to the legislature's failure to provide a legitimate reason (the second paragraph of Article 14 of the Constitution) for recognising the rights stemming from the challenged provisions only to persons insured under an employment relationship and excluding self-employed persons from these rights. Decision No. U-I-40/09[3], dated 4 March 2010 (Official Gazette of the Republic of Slovenia, No. 27/10), in which

[2] The National Assembly of the Republic of Slovenia remedied the unconstitutionality of the two provisions of the Pension and Disability Insurance Act at issue by adopting the new Pension and Disability Insurance Act, but the latter was not confirmed in a referendum on its enactment.

the Constitutional Court established the unconstitutionality of the third paragraph of Article 66 of the Pension and Disability Insurance Act because the regulation provided farmers and self-employed persons with third-degree disabilities only the right to part-time work and partial disability pensions and thus violated the principle of equality, also remains unimplemented.

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 accordance with the Act Amending the Local Government Act, the elections of the Roma representative to the municipal council of the Grosuplje Municipality have been conducted by the State Electoral Commission instead of the municipality itself.

There further remain seven unimplemented decisions in which the Constitutional Court ordered individual municipalities to remedy the unconstitutionality of their municipal regulations regarding the categorisation of local roads. All of these decisions concern ordinances relating to the categorisation of local roads by which the municipalities have actually nationalised private plots of land without a legal basis. In a state governed by the rule of law, respect for the decisions of the Constitutional Court should require the municipalities to remedy manifest unconstitutionalities of this type even without the intervention of the Constitutional Court.

These decisions include 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 the Ordinance on the Categorisation of Local Roads in Dobrepolje Municipality was established in the part where it determines a public path that partially runs through a private plot of land for which no expropriation procedure had been conducted. 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 an ordinance of the Ivančna Gorica Municipality. In 2010, the deadline for implementation of Decision No. U-I-286/08, dated 5 November 2009 (Official Gazette of the Republic of Slovenia, No. 94/09, and OdlUS XVIII, 49), in which the Constitutional Court established the unconstitutionality of the Ordinance on the Categorisation of Local Roads in Ljubno Municipality, expired. In 2011, the deadline to remedy the unconstitutionality of the Ordinance on the Categorisation of Local Roads in Šmarješke Toplice Municipality, established in Decision No. U-I-106/09, dated 23 September 2010 (Official Gazette of the Republic of Slovenia, No. 83/10), expired as well.

[3] The National Assembly of the Republic of Slovenia remedied the established unconstitutionality by adopting the new Pension and Disability Insurance Act, but the latter was not confirmed in a referendum on its enactment.

2. 4. The Constitutional Court in Numbers

The statistical data contained in this report demonstrate that the Constitutional Court made a substantial effort to solve the majority of its older cases from previous years. As a result, only five cases from the year 2009 and only 143 cases from the year 2010 were still pending as of 31 December 2011. The Constitutional Court intends to treat these cases as absolute priority cases and they will presumably be resolved in the first half of 2012. All other pending cases are from 2011. Constitutional complaints filed by individuals and legal persons (designated as Up cases) represented 72.7% of the entire caseload in 2011 and were thus the prevailing component in the structure of cases resolved by the Constitutional Court. In comparison to the previous year, there was an increase in the number of petitions challenging statutory and other abstract norms by affected persons and requests filed by competent bodies, which together amounted to 17% of the caseload. In 9% of the total number of applications the parties were sent an explanatory note by the Secretary General before the Constitutional Court actually reviewed the given case under the relevant procedures. Otherwise, following the 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 regarding matters of lesser importance), and the renewed increase in the caseload in 2010, the number of cases lodged remained at the same level as in 2011 (Table 4). In spite of a stricter interpretation of the legal interest necessary for lodging a petition, the number of petitions increased by 12.5% compared to the previous year, and again reached the same level as in 2008 (Figure 4). The number of requests submitted by entitled applicants (40 requests, as shown in Table 5) is also notable as such cases normally entail a constitutional review of laws and other regulations based on serious and complex constitutional issues whose solution requires a significant amount of the time and resources of the Constitutional Court.

In 2011, constitutional complaints in cases originating from civil proceedings represented the greatest share of all constitutional complaints (24.4%) and exceeded the number of constitutional complaints related to minor offences, which ranked second (23.3%). The persistence of the numerous constitutional complaints in cases of minor offences comprising the second largest share remains surprising since the amendment to the Constitutional Court Act in 2007 excluded the possibility of filing a constitutional complaint in cases relating to minor offences (except in certain exceptional instances). Despite this restriction, individuals continue to file complaints, in some cases even through attorneys, and frequently on standardised applications, "forms" into which they merely enter their data, even though these standardised applications are completely unsuccessful and may even constitute an abuse of procedural rights in proceedings before the Constitutional Court as they represent an unnecessary burden on the functioning of the Court. These applications are followed by constitutional complaints in judicial disputes over administrative acts (the different types of disputes together accounted for

19.4% of all constitutional complaints) and criminal cases (9.3%). The number of constitutional complaints related to disputes regarding employment relationships also increased (7%).[4] According to the statistical data, the Constitutional Court resolved an equal number of cases as in the previous year (Table 11). The distribution of resolved cases was, of course, similar to that of the newly received applications (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 found to be substantiated, remains very limited. In 2011, out of the 311 petitions and requests resolved (an almost 6% increase in comparison to 2010) only eight led to the abrogation of statutory provisions and only an additional eleven concluded with the establishment of the unconstitutionality of statutory provisions and the determination of a deadline for remedying such unconstitutionality. Challenges to regulatory provisions were somewhat more successful as the Constitutional Court annulled, abrogated, or established the unconstitutionality of regulations in 30 cases, a majority of which, however, concerned unconstitutional or illegal interferences with the property rights of individuals through the categorisation of local roads (Table 12). With regard to the success of constitutional complaints, it should similarly be noted that of the total of 1356 constitutional complaints received only 26 (less than 2%) were accepted for review on the merits of the case and only 21 constitutional complaints were eventually successful (less than 1.5%). Due to the greater number of U-I cases resolved and the burden of "referendum" related U-II cases in 2011, there was, on the other hand, a decrease in the number of cases decided by panels. It must, however, be emphasised that this is the result of a shifting of existing capacities to ensure the faster resolution of important cases, which required a reduction in the amount of decision-making in cases of lesser importance in the respective panels. The statistical data, therefore, do not imply a decrease in the caseload or efficiency of the work of the Constitutional Court in 2011, but, as pointed out in the introduction, the fact that the Constitutional Court concentrated its efforts mainly on the resolution of important and precedential constitutional issues.

On the basis of the statistical data it can also be noted that the average length of time it took to resolve a case in 2011 was 260 days, which is longer than in the previous year, and, to be more specific, it took an average of 350 days for abstract review (U-I) cases and 240 days for constitutional complaints (Tables 17 and 18). This statistical prolongation of the duration of proceedings, however, is in fact only seeming, because the Constitutional Court (as already emphasised in the introduction) devoted much of its efforts to the resolution of older cases from previous years. This increased number of older cases resolved, which took a longer period of time to review, entailed that a greater number of cases requiring a longer period to resolve were included in the figures and, consequently, created the distorted impression that the Constitutional Court decided cases more slowly than previously.[5] Finally, it can be added that 1242 cases from previous years remain pending, which is at the same level as in the previous year and includes 265 priority cases and 146 absolute priority cases, such that of the cases pending from previous years about one third have priority status.

---

[4] When considering the presented changes in 2010 and 2011, it should be noted that at the end of 2011 a certain percentage of cases were entered into the general registry (R-I) and that these cases will have to be resolved as constitutional complaints if the parties remedy their applications or insist on the continuation of the proceedings after receiving an explanatory note from the Secretary General.

[5] In other words, if the Constitutional Court had not been solving older cases and only concentrated on the resolution of new cases from 2011, whose review on average took less than 100 days, the statistical analysis would have shown that the average time needed for the Constitutional Court to arrive at a decision in a case was actually less than 100 days, i.e. 2.5 times shorter than the actual result for 2011, when a greater number of older cases were resolved.

2. 5. Summary of Statistical Data for 2011

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 of the National Assembly and the election of members of the National Council
Register Op	cases involving the impeachment of the President of the Republic, the President of the Government, or ministers
Register Ps	cases involving the review of the constitutionality of the acts and activities of political parties
Register R-I	general register

The Constitutional Court examines constitutional complaints in the following panels:

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

Register	Cases Pending as of 1 January 2011	Cases Received in 2011	Cases Resolved in 2011	Cases Pending as of 31 December 2011
Up	904	1358	1476	786
U-I	267	323	311*	279
P	8	20	16	12
U-II	0	3	3	0
R-I	0	165	0	165
Rm	0	0	0	0
Mp	0	0	0	0
Ps	0	0	0	0
Op	0	0	0	0
TOTAL	1,179	1,869	1,806	1,242

Table 1: Summary Data on All Cases in 2011

*Including 10 joined applications.

Panel	Cases Pending as of 1 January 2011	Cases Received in 2011	Cases Resolved in 2011	Cases Pending as of 31 December 2011
Civil Law	274	441	575	140
Administrative Law	273	410	433	250
Criminal Law	357	507	468	396
TOTAL	904	1,358*	1,476	786*

Table 2: Summary Data regarding Up Cases in 2011

*R-I cases excluded.

Year	2009	2010	2011	Total
U-I	1	44	234	279
P	/	/	12	12
Up	4	99	683	786
R-I	/	/	165	165
TOTAL	5	143	1,094	1,242

Table 3: Pending Cases according to Year Received as of 31 December 2011

2. 5. 1. Cases Received

Year	U-I	Up	P	U-II	Rm	Mp	Total
2005	347	1,310	220	/	/	/	1,877
2006	474	2,546	32	1	/	/	3,053
2007	367	3,937	47	/	/	3	4,354
2008	323	3,132	107	/	/	/	3,562
2009	308	1,495	39	2	1	/	1,845
2010	287	1,582	10	1	/	/	1,880
2011	323	1,523*	20	3	/	/	1,869
2010/2011	+12.5%	-3.73%*	100%	200%	/	/	-0.58%

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

* Including 165 applications that are temporarily still in the R-I register (until transferred to the Up register).

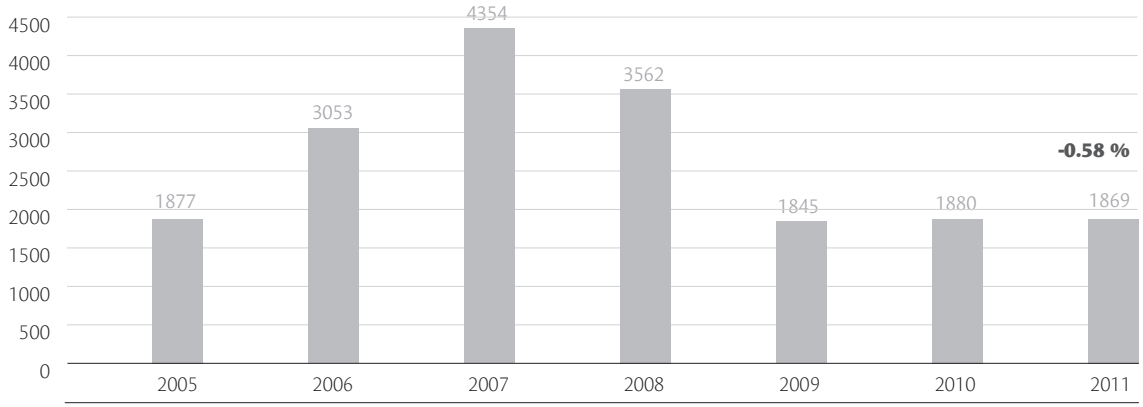


Figure 1: Total Number of Cases Received by Year

Figure 2: Distribution of Cases Received in 2011

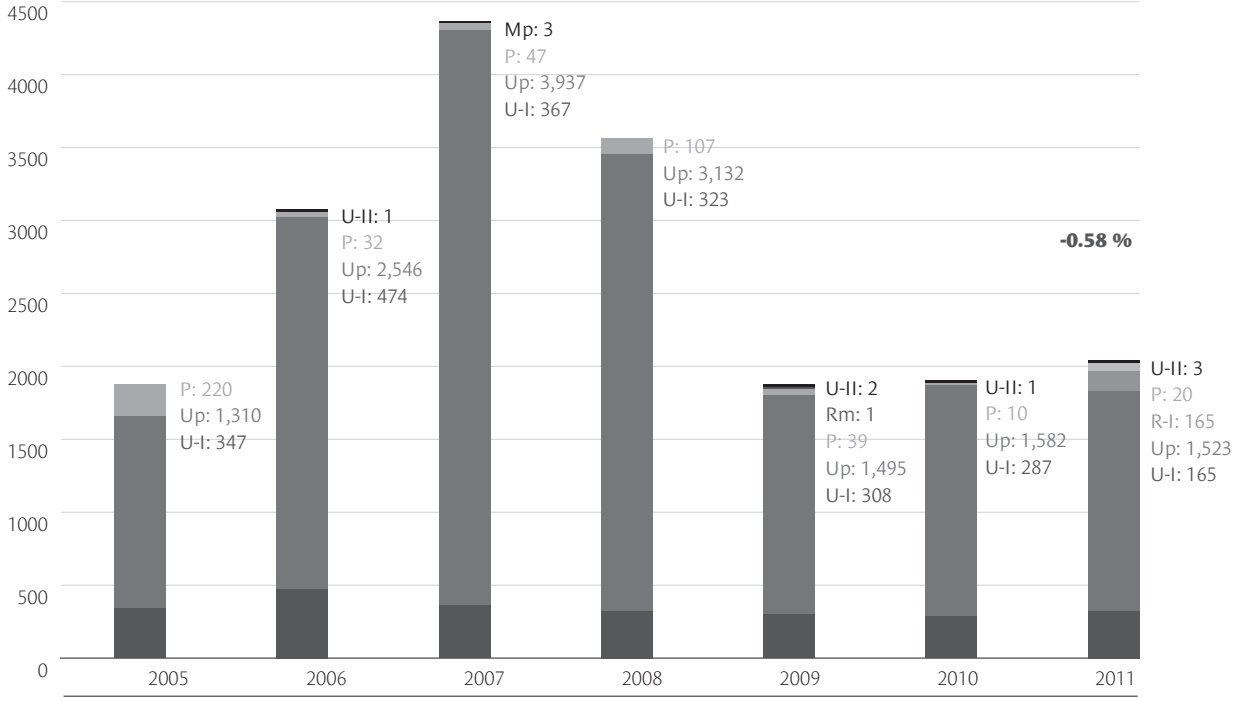


Figure 3: Distribution of Cases Received by Year

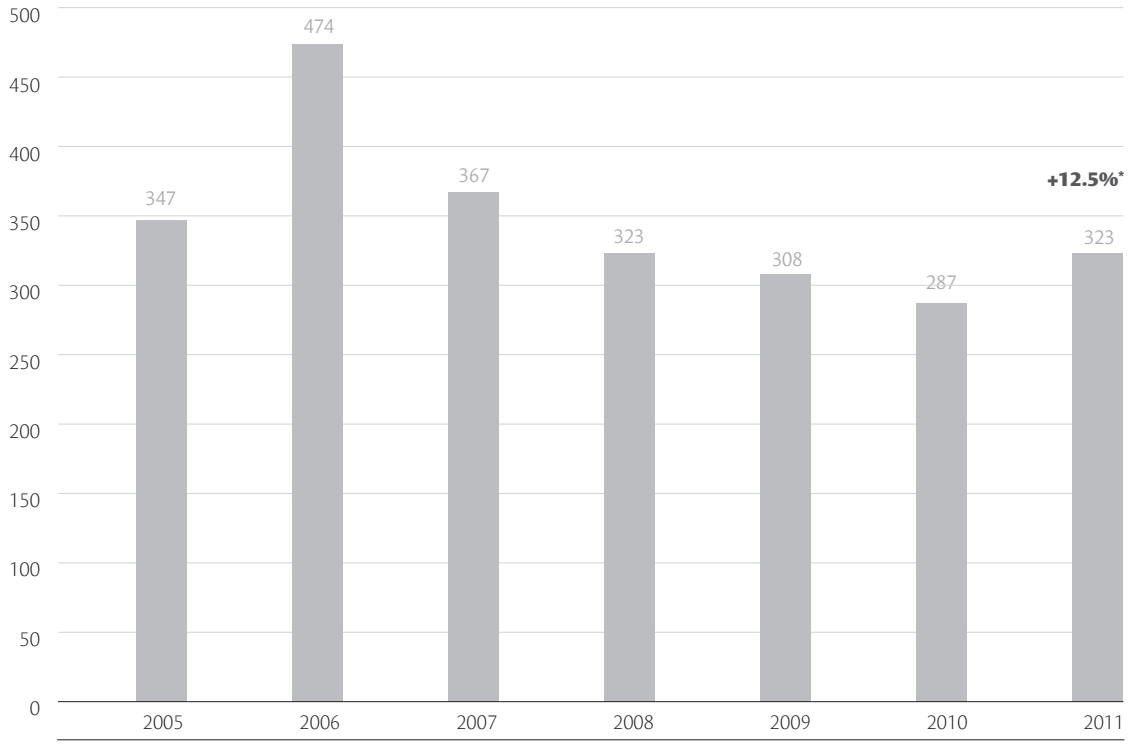


Figure 4: Number of U-I Cases Received by Year

*Excluding R-I Cases.

Applicants Requesting a Review	Number of Requests Filed
Government of the Republic of Slovenia	7
Upravno sodišče (Administrative Court)	4
Deputy Groups of the National Assembly of the Republic of Slovenia	4
National Council of the Republic of Slovenia	3
Ombudsman of the Republic of Slovenia	3
Information Commissioner	2
Vrhovno sodišče Republike Slovenije (Supreme Court of the Republic of Slovenia)	2
Združenje občin Slovenije (Association of Municipalities of Slovenia)	1
Agencija za trg vrednostnih papirjev (Securities Market Agency)	1
FIDES, sindikat zdravnikov in zobozdravnikov Slovenije (FIDES, Trade Union of Physicians and Dentists of Slovenia)	1
Sindikat kulturnih in umetniških ustvarjalcev RTV Slovenija (Trade Union of Art Professionals at Radio-Television Slovenia)	1
Mestna občina Celje (Celje Urban Municipality)	1
Mestna občina Murska Sobota (Murska Sobota Urban Municipality)	1
Okrajno sodišče v Slovenski Bistrici (Local Court in Slovenska Bistrica)	1
Okrožno sodišče v Ljubljani (District Court in Ljubljana)	1
Court of Audit of the Republic of Slovenia	1
Sindikat delavcev v pravosodju (Trade Union of Employees in the Judiciary)	1
Sindikat kmetov Slovenije (Trade Union of Farmers of Slovenia)	1
Sindikat občinskih redarjev Slovenije (Trade Union of Municipal Traffic Wardens of Slovenia)	1
Sindikat veterinarjev Slovenije – Pergam (Trade Union of Veterinarians - Pergam)	1
Višje delovno in socialno sodišče (Higher Labour and Social Court)	1
TOTAL	40

Table 5: Number of Requests for Review Received in 2011 according to Applicant

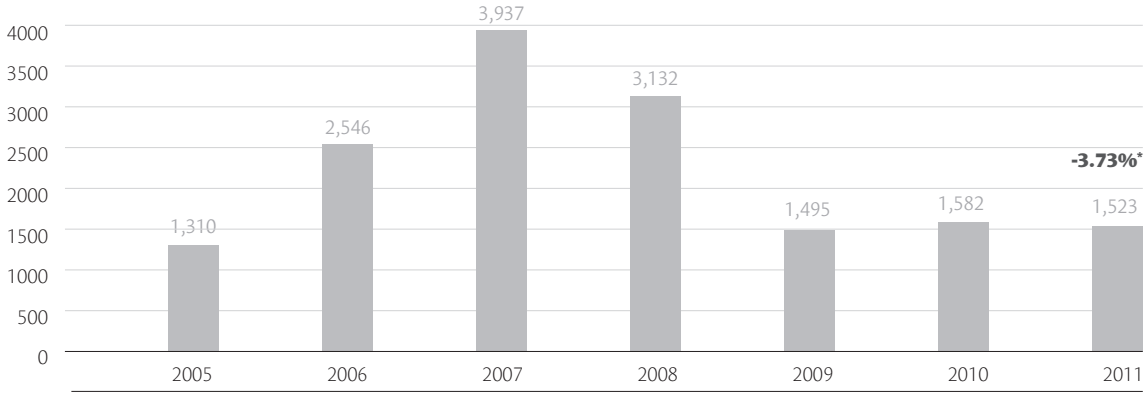


Figure 5: Number of Up Cases Received by Year

*Including 165 applications that are temporarily still in the R-I register (until transferred to the Up register).

Year	Civil	Administrative	Criminal	Skupaj
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
2011*	541	500	482	1,523
2011/2010	-7.36%	-0.20%	-3.02%	-3.7%

Table 6: Up Cases Received according to Panel

* Including 165 applications that are temporarily still in the R-I register (until transferred to the Up register).

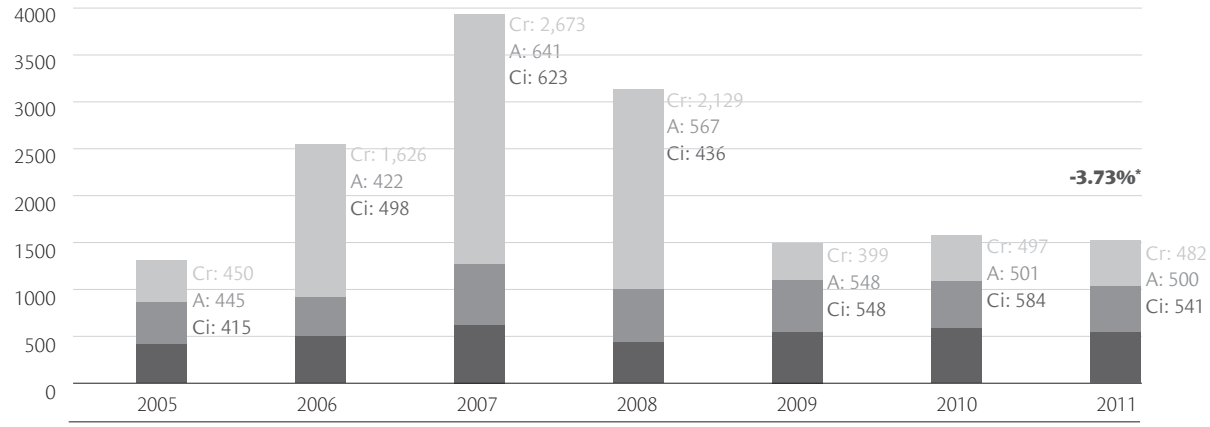


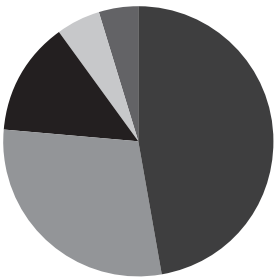
Figure 6: Up and R-I Cases Received according to Panel

Cr = criminal A = administrative Ci = civil

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
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
2011	81	23	9	50	8

Table 7: Legal Acts Challenged in 2011



Laws and Other Acts of the National Assembly: 81 (47.4%)

Ordinances and Other Acts of Self-Governing Local Communities: 50 (29.2%)

Decrees and Other Acts of the Government: 23 (13.5%)

Rules and Other Acts of Ministries: 9 (5.3%)

Regulations Issued by Other Bodies: 8 (4.7%)

Figure 7: Distribution of Legal Acts Challenged (U-I Cases Received in 2011)

The Act Challenged	Number of Cases
Civil Procedure Act	17
Personal Income Tax Act	8
National Assembly Elections Act	7
Act Regulating the Protection of the Right to a Trial without Undue Delay	5
Companies Act	5
General Administrative Procedure Act	4
Excise Duty Act	4
Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act	4
Takeovers Act	4
Elections and Referendum Campaign Act	4
Radio-Television Slovenia Act	4
Minor Offences Act	3
Tax Procedure Act	3
Criminal Procedure Act	3
Integrity and Prevention of Corruption Act	3
Public Sector Salary System Act	3
International Protection Act	3
Energy Act	3
Public Roads Act	3
Judicial Review of Administrative Acts Act	2
Execution of Judgments in Civil Matters and Securing of Claims Act	2
Act on International Co-operation in Criminal Matters between the Member States of the European Union	2
Exercise of Rights to Public Funds Act	2
Republic of Slovenia Budget for 2011 and 2012 Implementation Act	2
Proceedings on the Enforcement or Release therefrom of Shareholders' Liability for the Obligations of Companies Erased from the Companies Register Act (ZPUOOD)	2
Agricultural Land Act	2

Table 8: Acts Challenged Multiple Times in the Cases Received in 2011

Type of Dispute	Received in 2011	Percentage of All Up Cases	Received in 2010	Change 2011/2010
Civil Law Litigations	331	24.4%	377	-12.2%
Minor Offences	316	23.3%	382	-17.3%
Other Administrative Disputes	143	10.5%	187	-23.5%
Criminal Cases	126	9.3%	114	10.5%
Labour Law Disputes	95	7.0%	81	17.3%
Execution of Obligations	82	6.0%	103	-20.4%
Social Law Disputes	49	3.6%	61	-19.7%
Denationalisation	44	3.2%	59	-25.4%
Commercial Law Disputes	39	2.9%	39	0.0%
Taxes	27	2.0%	51	-47.1%
Matters concerning Spatial Planning	25	1.8%	24	4.2%
Non-litigious Civil Law Proceedings	20	1.5%	28	-28.6%
Civil Status of Persons	15	1.1%	16	-6.3%
Proceedings Related to the Land Register	12	0.9%	8	50.0%
Elections	11	0.8%	2	450.0%
Insolvency Proceedings	10	0.7%	8	25.0%
Registration in the Companies Register	5	0.4%	2	150.0%
Succession Proceedings	5	0.4%	16	-68.8%
No Dispute	2	0.1%	3	-33.3%
Other	1	0.1 %	21	-95.2%
TOTAL	1,358	100.0%	1,582	-14.2%

Table 9: Up Cases Received according to Type of Dispute (Excluding R-I Cases)

Initiators of the Dispute (P)	Filed
Policijska postaja Ljubljana Center (Ljubljana Center Police Station)	2
Okrajno sodišče v Radovljici (Local Court in Radovljica)	2
The Ministry of Justice	2
Postaja prometne policije Maribor (Maribor Traffic Police Station)	2
Agencija za trg vrednostnih papirjev (Securities Market Agency)	1
EMWE, d. o. o.	1
Marjanca Grum	1
Postaja prometne policije Ljubljana (Ljubljana Traffic Police Station)	1
Mestna občina Ljubljana (Ljubljana Urban Municipality)	1
Policijska postaja Ravne na Koroškem (Ravne na Koroškem Police Station)	1
Ministry of Finance, State Office for Gaming Supervision	1
Okrajno sodišče v Ljubljani, Oddelek za prekrške (Local Court in Ljubljana, Minor Offences Division)	1
Policijska postaja Hrastnik (Hrastnik Police Station)	1
Policijska postaja Trbovlje (Trbovlje Police Station)	1
Petra Bagon	1
Občina Domžale (Domžale Municipality)	1
TOTAL	20

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

2. 5. 2. Cases Resolved

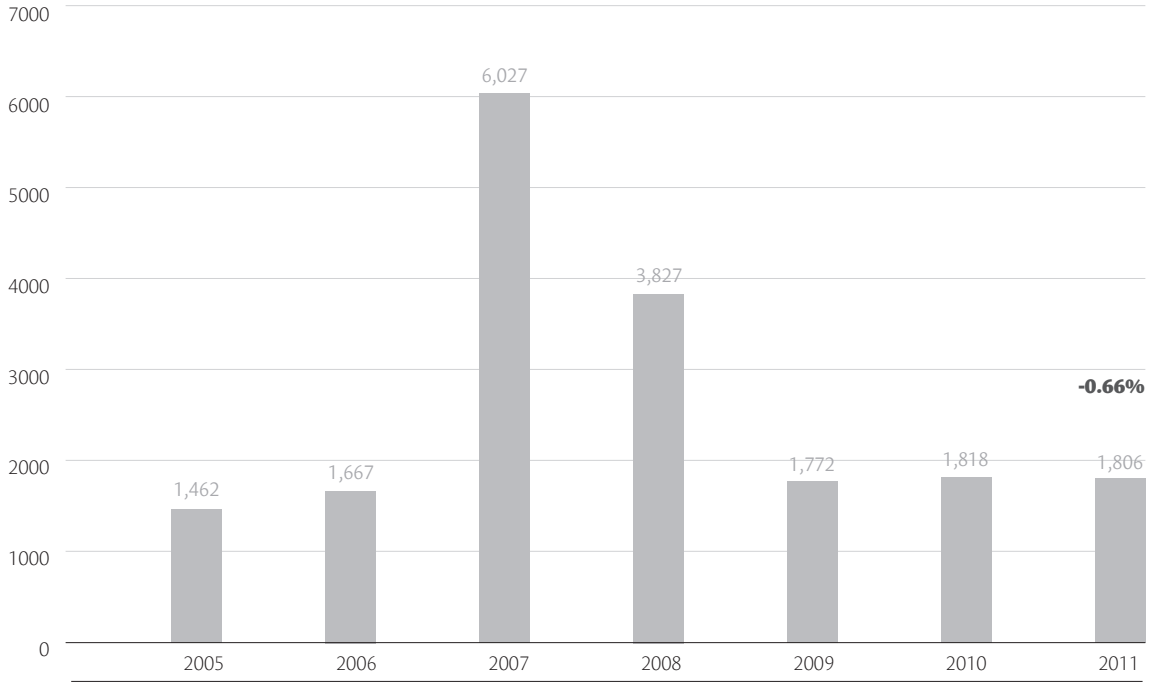


Figure 8: Number of Cases Resolved according to Year Resolved

Year	U-I	Up	P	U-II	Ps	Rm	Mp	Total
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	1,500	22	1	/	1	/	1,818
2011	311	1,476	16	3	/	/	/	1,806
2011/2010	5.8%	-1.6%	-27.3%	/	/	/	/	-0.66%

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

Figure 9: Distribution of Cases Resolved in 2011

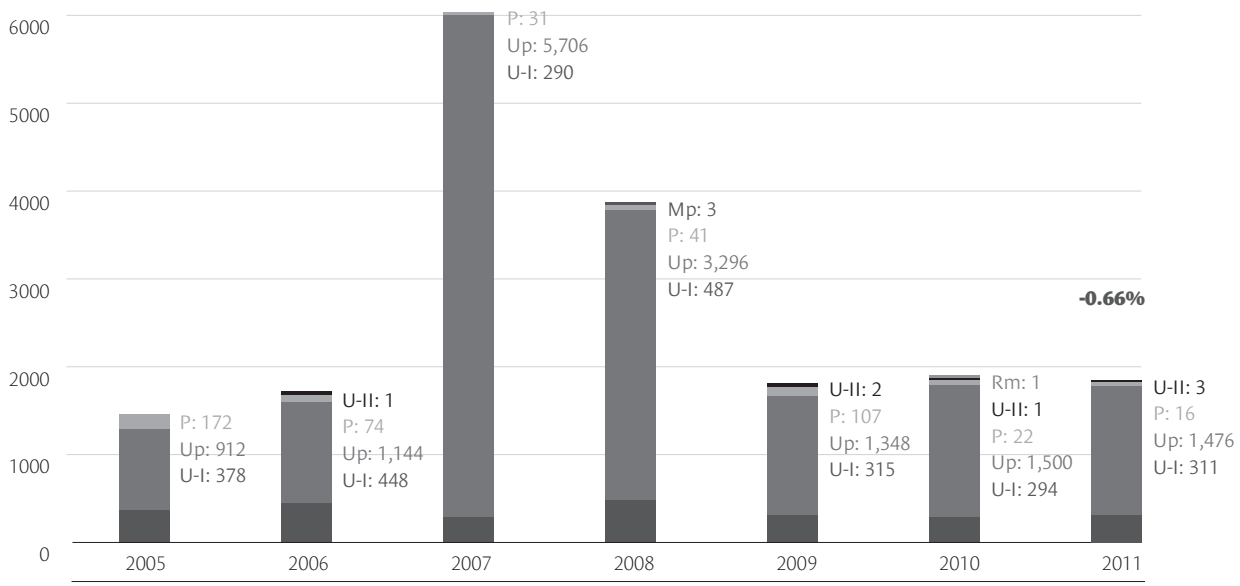


Figure 10: Distribution of Cases Resolved according to Type of Case and Year Resolved

Type of Resolution of the Case	2011	2010	2009	2008	2007	2006	2005
Abrogation of statutory provisions	8	8	5	4	10	18	17
Inconsistency with the Constitution – statutory provisions	3	0	2	4	2	4	1
Inconsistency with the Constitution and determination of a deadline – statutory provisions	8	7	14	18	11	15	22
Not inconsistent with the Constitution – statutory provisions	19	17	18	15	16	14	24
Inconsistency, abrogation, or annulment of provisions of regulations	30	2	11	6	12	18	28
Not inconsistent with the Constitution – provisions of regulations	7	0	1	1	0	1	2
Dismissed	50	26	49	41	78	79	100
Rejected	205	185	223	360	116	89	117
Proceedings were stayed	9	4	10	17	28	32	26

Table 12: Types of Resolution of U-I Cases by Year

Year	Civil Law	Administrative Law	Criminal Law	Total
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
2011	468	433	575	1,476
2010/2011	-13.5%	-12.3%	+23.7%	-1.6%

Table 13: Number of Up Cases Resolved according to Panel and Year

*Due to the large number of so-called formulaic constitutional complaints concerning minor offences, these are not included in the years 2007 and 2008.

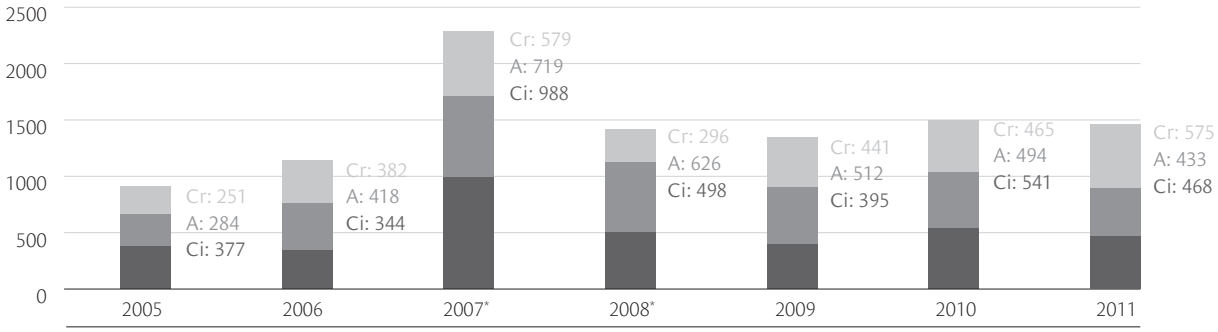


Figure 11: Distributiona of Up Cases Resolved according to Panel

*Due to the large number of so-called formulaic constitutional complaints concerning minor offences, these are not included in the years 2007 and 2008.

Cr = criminal A = administrative Ci = civil

Type of Dispute	2011	2010	Change 2010 / 2011
Minor Offences	412	359	14.76%
Civil Law Litigations	297	366	-18.85%
Criminal Cases	162	106	52.83%
Other Administrative Disputes	148	181	-18.23%
Execution of Obligations	82	82	0.00%
Labour Law Disputes	75	87	-13.79%
Denationalisation	72	52	38.46%
Social Law Disputes	50	57	-12.28%
Taxes	37	51	-27.45%
Commercial Law Disputes	37	37	0.00%
Non-litigious Civil Law Proceedings	20	23	-13.04%
Civil Status of Persons	20	23	-13.04%
Matters concerning Spatial Planning	20	19	5.26%
Elections	12	1	1100.00%
Succession Proceedings	11	7	57.14%
Proceedings Related to the Land Register	8	14	-42.86%
Registration in the Companies Register	7	0	-
Insolvency Proceedings	5	9	-44.44%
No Dispute	1	3	-66.67%
Other	0	23	-100.00%
TOTAL	1,476	1,500	-1.60%

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

Year	All Up Cases Received	Up Cases Accepted for Consideration	Percentage Up Cases Accepted/Received	All Up Cases Resolved
2011	1,358	26	1.9%	1,476
2010	1,582	74	4.7%	1,500
2009	1,495	58	3.9%	1,348
2008	3,132	78	2.5%	3,296
2007	3,937	52	1.3%	5,706
2006	2,546	96	3.8%	1,144
2005	1,310	66	5.0%	912

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

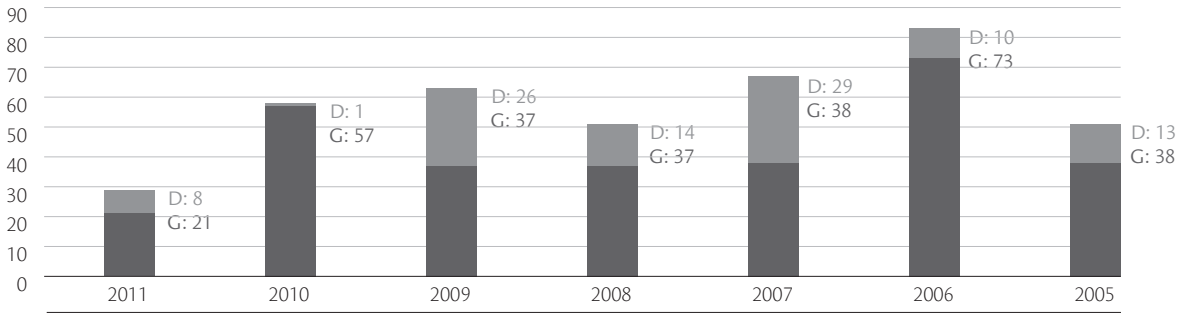


Figure 12: Distribution of Decisions regarding Up Cases Accepted

D= dismissed G= granted

Year	Number of Up Cases Received	Number of Up Cases Accepted for Consideration	Number of Up Cases Resolved	Number of Up Cases Granted	Number of Up Cases Dismissed
2011	1,358	26	26*	21	8
2010	1,582	74	58	57	1
2009	1,495	58	63	37	26
2008	3,132	78	51	37	14
2007	3,937	52	67	38	29
2006	2,546	96	83	73	10

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

* A particular case can involve a number of (partial) different decisions.

Register	Average Duration
U-I	349.4
Up	240.9
P	260.8
U-II	69.7
Rm	0
R-I	8.7
Mp	0
Ps	0
Op	0
TOTAL	259.3

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

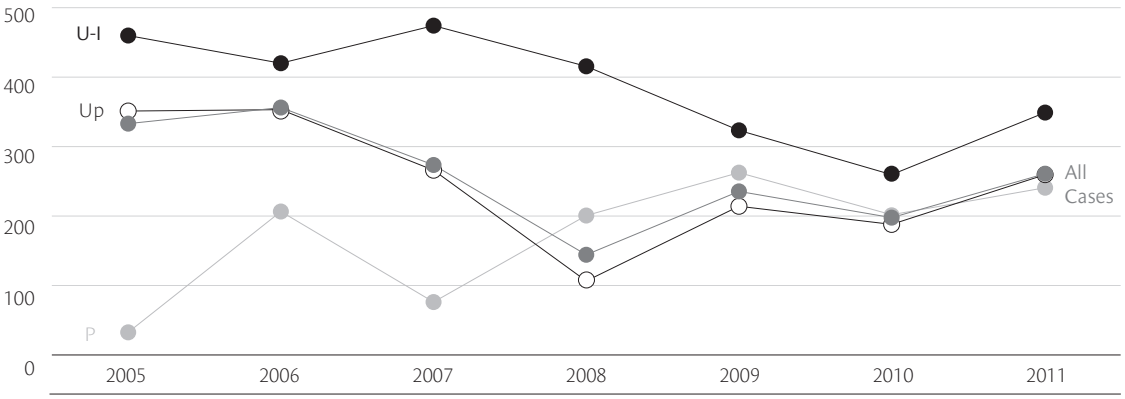


Figure 13: Average Duration in Days of Cases Resolved according to Type of Case and Year

Panel	2011	2010	Change
Civil Law	223.3	211.4	5.6%
Administrative Law	274.6	175.7	56.3%
Criminal Law	231.3	173.9	33.0%
TOTAL	240.9	188	28.1%

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

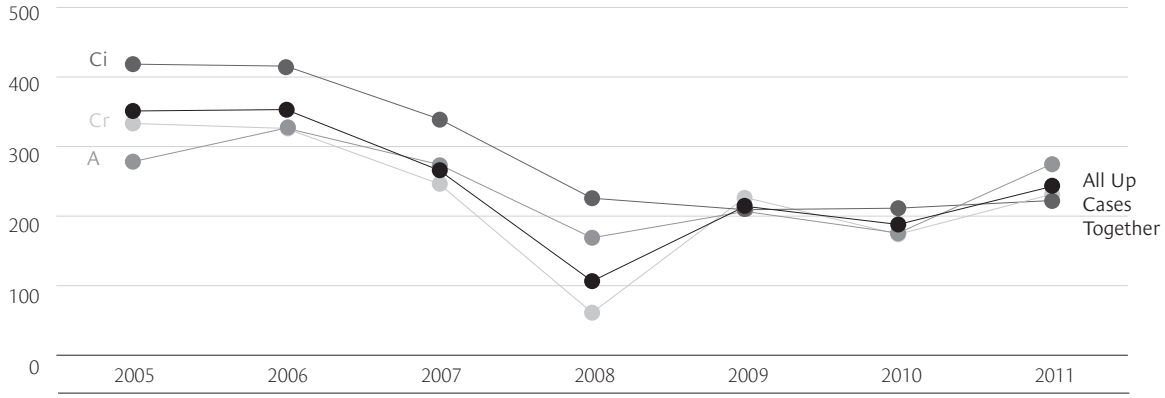


Figure 14: Average Duration in Days of Up Cases Resolved by Year Cr = criminal A = administrative Ci = civil

2. 5. 3. Unresolved Cases

Year	2009	2010	2011	Total
U-I	1	44	234	279
P	/	/	12	12
Up	4	99	683	786
R-I	/	/	165	165
TOTAL	5	143	1,094	1,242

Table 19: Unresolved Cases according to Year Received as of 31 December 2011

Register	Temporary Suspensions
U-I	6
Up	6
P	0
U-II	0
Rm	0
Mp	0
Ps	0
Op	0
TOTAL	12

Table 20: Temporary Suspensions as of 31 December 2011

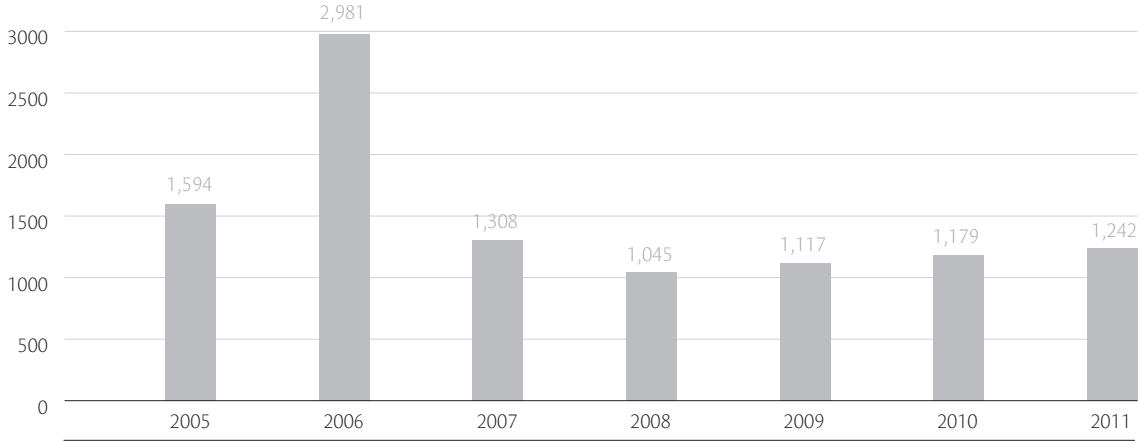


Figure 15: Number of Cases Pending at Year End

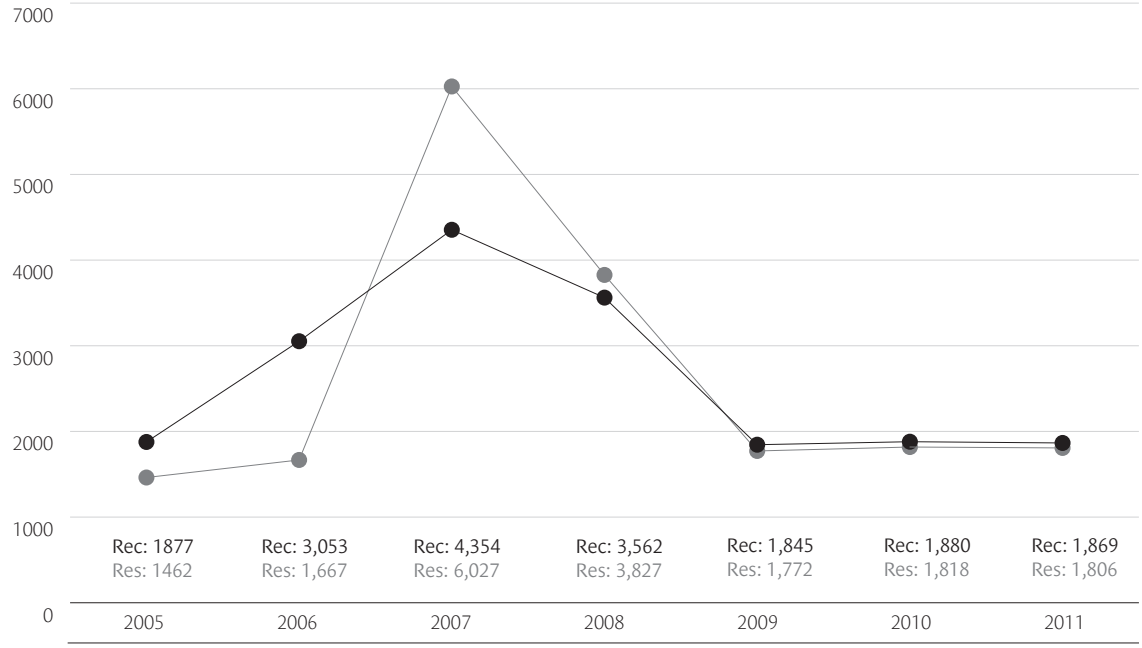


Figure 16: Comparison of Cases Received and Cases Resolved by Year Rec = received Res = resolved

Type of Case	Absolute Priority Cases	Priority Cases	Total
Up	99	207	306
U-I	45	23	68
P	/	11	11
R-I	2	24	26
TOTAL	146	265	411

Table 21: Priority Cases Pending as of 31 December 2011

2. 6. International Activities of the Constitutional Court in 2011

International cooperation and the exchange of experiences at the supranational level are gaining increased significance in the contemporary world. In light of the internationalisation of human rights and the increasing role of European Union law, cooperation with other national courts and international courts is also an important factor in the efficient functioning of the Constitutional Court of the Republic of Slovenia. Last year the Constitutional Court participated in major international events in its area of work, promoting, by participation in official visits and several expert meetings, the establishment of new as well as the strengthening of existing relations with other constitutional courts. At the end of the year it organised, in cooperation with the Faculty of Law of the University of Ljubljana, an international conference on the occasion of the 20th anniversary of the independence of the Republic of Slovenia and the adoption of the Constitution.

The beginning of 2011 was marked by the 2nd Congress of the World Conference on Constitutional Justice in Rio de Janeiro, which brought together a considerable number of delegations of courts exercising constitutional justice from all over the world. The central focus of the Congress, in which a delegation from the Slovene Constitutional Court also participated, was the principle of the separation of powers and the independence of constitutional courts. Congress participants also discussed the draft statute of the World Conference on Constitutional Justice. As regards the participation of Slovene Constitutional Court representatives in other important international events, the XV Congress of the Conference of the European Constitutional Courts in Bucharest should be mentioned. The discussions were particularly focused on the relationship between constitutional courts, on one side, and the legislature and government on the other, on the powers of constitutional courts in competency disputes between the highest state authorities, and on problems regarding the implementation of adopted decisions. The judges of the Slovene Constitutional Court participated, inter alia, also in the solemn session marking the opening of the judicial year of the European Court of Human Rights in Strasbourg, attended international conferences marking the twentieth anniversary of the Constitutional Court of Bulgaria and the twentieth anniversary of the Constitutional Court of the Russian Federation, and a ceremony marking the opening of the judicial year of the Constitutional Court of Kosovo. In the past year, the Constitutional Court also received visits from several foreign ambassadors and other high-level representatives from different countries.

In 2011, the Constitutional Court of the Republic of Slovenia hosted two official visits by foreign delegations, namely from the Constitutional Court of the Republic of Serbia and from the Constitutional Court of the Italian Republic. In their discussions, the judges focused on

the issue of the independence of constitutional courts and the decision-making methods of constitutional courts. Furthermore, they also discussed possible solutions to the overburdening of constitutional courts. The visit of the Italian delegation provided an opportunity for the respective Constitutional Courts to exchange perspectives and standpoints regarding the constitutional review of referenda. Also noteworthy was the traditional annual working meeting between the judges of the Constitutional Courts of Croatia and Slovenia, who exchanged views on the exercise of effective constitutional review, respect for the decisions of constitutional courts, and the possibilities to enhance the effectiveness of solving matters within their competence. At these meetings the judges devoted special attention to the relationship of constitutional courts to the European Court of Human Rights as well as to the application of European Union law in constitutional case law.

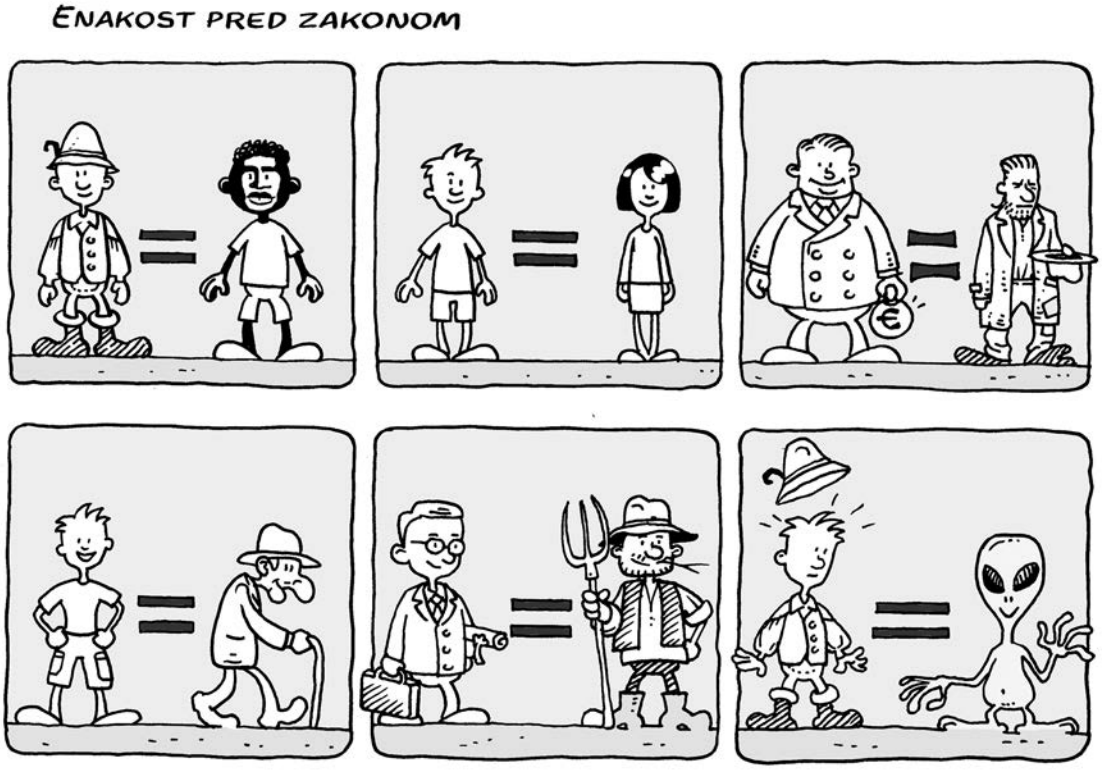
In June, a delegation from the Constitutional Court of the Republic of Slovenia paid its first official visit to the Constitutional Court of the Republic of Albania. In the discussions, the judges exchanged information on the powers, procedures, and organisation of the respective Constitutional Courts, placing particular focus on the impact of the case law of the European Court of Human Rights on the case law of the respective Constitutional Courts, and on solving cases that are related to infringement of the right to a fair trial as a consequence of the non-execution of final court decisions. Delegations from the Constitutional Court of the Republic of Slovenia also visited the Constitutional Courts of the Czech Republic and the Republic of Hungary. In these meetings the judges exchanged their rich experiences regarding the case load of their respective Constitutional Courts, while in the course of the visit by colleagues from the Czech Republic they also discussed issues regarding constitutional complaints.

In the framework of the Court's international activities, a working visit of the Secretary General of the Constitutional Court to the Constitutional Court of the Federal Republic of Germany and a study visit to the Constitutional Court of Lithuania should also be mentioned. Legal advisors of the Constitutional Court attended several international conferences and broadened their knowledge at seminars abroad on such topics as European criminal justice, European non-discrimination law, and the recent case law of constitutional courts in the field of social security, including during a one-month study visit to the European Court for Human Rights in Strasbourg.

2. 7. Special Editions of the Constitution of the Republic of Slovenia on the Occasion of the Twentieth Anniversary of Its Adoption

On the occasion of the twentieth anniversary of the adoption of the Constitution of the Republic of Slovenia, the Constitutional Court, in cooperation with the National Assembly, published special editions of the Constitution of the Republic of Slovenia in Braille for visually impaired persons as well as in audio form, created with the assistance of RTV Slovenija (Radio-Television Slovenia). Furthermore, with the intention to educate and raise the awareness of the younger generation concerning the significance of the Constitution, an illustrated guide to the Constitution in the form of a comic strip was also published, in which selected individual provisions of the Constitution are presented in a humorous and illustrated manner. All illustrations were made by the artist Zoran Smiljanić. The Illustrated Guide to the Constitution is accessible at http://www.us-rs.si/strip/.

Picture 1: Let's explore the Slovenian Constitution!



Picture 2: Equality before the law

Picture 3: Powers of the constitutional court

Marko: The Constitutional Court has a lot of demanding work.

Metka: Yes, in addition to numerous other powers, it decides on the conformity of laws with the Constitution and on constitutional complaints stemming from the violation of human rights and fundamental freedoms.

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

REPUBLIKA SLOVENIJA
USTAVNO SODIŠČE

Beethovnova ulica 10,
p. p. 1713, 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

The Constitutional Court of the Republic of Slovenia
An Overview of the Work for 2010

Publisher The Constitutional Court of the Republic of Slovenia
Ljubljana, 2012

Text The Constitutional Court of the Republic of Slovenia
Translation Tina Prešeren, Nataša Skubic, Vesna Božič in Lidija Novak
Translation Editing Dean J. DeVos
Photographs Danijel Novakovič / STA, Miran Kambič
Design and Layout Ajda Bevc and Petra Bukovinski

Printing r-tisk

Number of Copies 200

ISSN 2232-3163