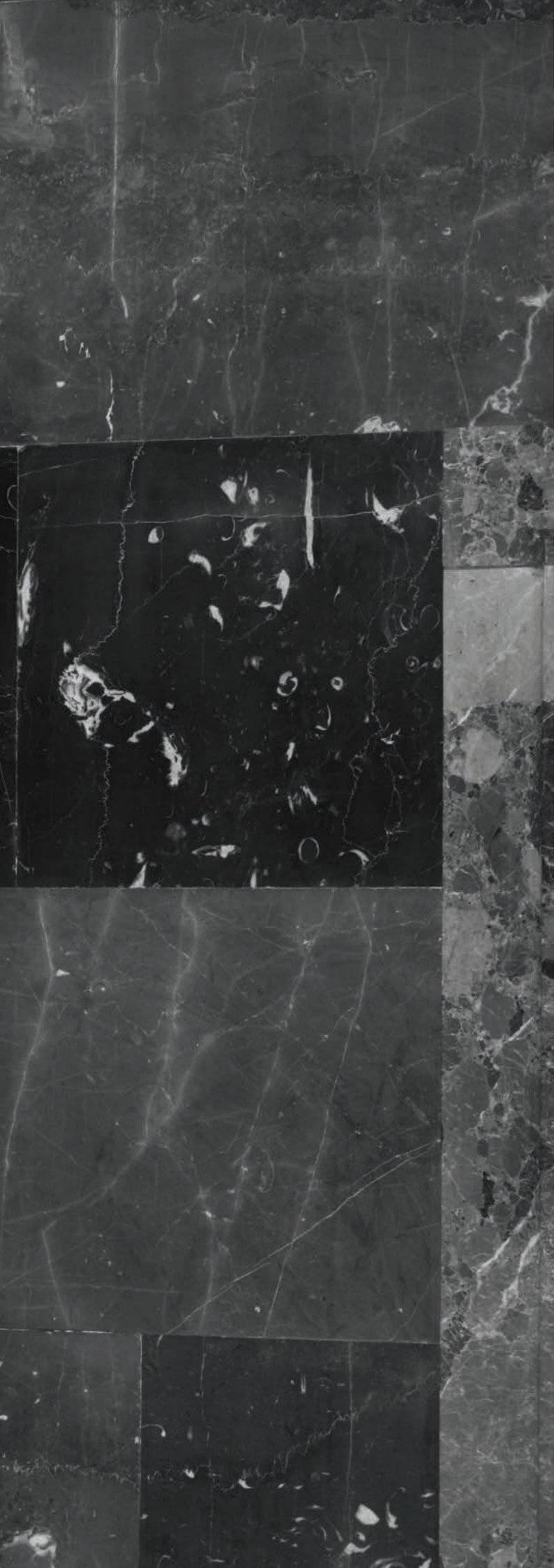

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Constitutional Court of the Republic of Slovenia

An overview of the work for 2012

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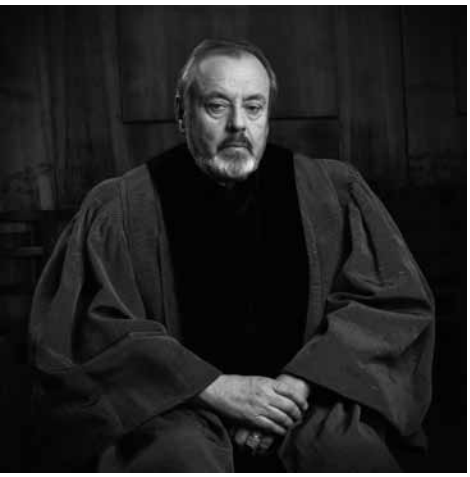
Constitutional Court of the Republic of Slovenia

An overview of the work for 2012

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

Foreword by the President of the Constitutional Court



A review of the data on the work of the Constitutional Court in 2012 allows us to make the assessment that the Court's work was successful and efficient in terms of expenditure. A detailed presentation of the individual areas of the Court's work is provided in the statistical data summary. First of all, I would like to emphasise that the number of cases received continues to remain approximately the same as in the past two years (in 2012, the Court received 1,731 cases, 1,203 of which were constitutional complaints), and that due to the extensive efforts of the judges and legal advisors, the Court was able to resolve a slightly higher number of cases than it received (the total number of cases resolved in 2012 amounted to 1,865). The number of unresolved cases is thus gradually decreasing (there were still 1,041 cases pending on 31 December 2012, i.e. 201 less than on 31 December 2011). Also the average length of proceedings is decreasing; it takes an average of 188 days for a case to be resolved, or 246 days if R-I cases, in which the Court does not decide by an order or a decision, are excluded. In comparison with proceedings before ordinary courts, which last several years before a case reaches the Constitutional Court, the duration of proceedings before the Constitutional Court does not constitute a reason for the general problem of lengthy legal proceedings in the Republic of Slovenia. Here I would like to add that, on the basis of data provided by the European Court of Human Rights in Strasbourg, Slovenia has the highest per capita number of applications lodged before that Court, in our case primarily precisely due to the long duration of proceedings before our ordinary courts. In light of the current debates on the effectiveness of the rule of law in Slovenia, this is well worth considering.

In particular, I would like to underline that the aforementioned results (reducing the Court's backlog and shortening the duration of proceedings) were achieved by the Constitutional Court because it continues, on its own accord, to pursue its backlog elimination programme despite the fact that such is no longer financially supported. The programme is carried out *ex bono* by the judges and legal advisors, who receive no additional allowance for extra work. I therefore would like to take this opportunity to express my appreciation to them.

In the framework of the efforts to cope with the current crisis – given its independent position, the Constitutional Court decided to take action on its own initiative – the Constitutional Court achieved a 12.4% reduction of funds spent in 2012 (compared to 2011, expenditure for salaries was reduced by 8.8%, for capital outlays by 34.9%, and for material costs by 27.9%). These reductions are the result of austerity measures taken by the Constitutional Court, which also include a 7.9% staff reduction, compared to 2011.

When presenting the successful work of the Constitutional Court, I must once again highlight – as I have done in previous years – the underlying problem of the work of the judges and legal advisors. This problem is their inevitable overburdening, which makes it impossible for the Constitutional Court to thoroughly consider cases that are truly significant in terms of constitutionality, important for the interpretation of the Constitution, and entail precedents. A comparison with some other constitutional courts competent to consider constitutional complaints shows that Slovenia again ranks highest with respect to the number of constitutional complaints received in proportion to the country's population. As in the past, I emphasise that the Constitutional Court of the Republic of Slovenia is not aiming to work less but to ensure the possibility to thoroughly consider the constitutionally most important cases. Unfortunately, I must note that even after four years the endeavours to implement the proposed amendment to the Constitution that would enable such have not yielded any results.

The Constitutional Court will nevertheless continue to strive to enhance the efficiency and rationalisation of its work and, particularly, to ensure the highest possible quality of its decisions, however, without the proposed changes there are obviously not many opportunities for any substantial moves.

In 2012, the Constitutional Court was subject to criticism and praise regarding some of its decisions, mainly the decisions by which it prohibited the referenda on the Slovene National Holding Company Act and the act on the so-called 'bad bank'. The Court adopted these two decisions in the framework of its constitutional powers, by a significant majority, taking into account the Constitution of the Republic of Slovenia and the constitutional case law, and provided extensive and substantiated reasoning. In a democratic world, every important decision of any constitutional court, especially if it has far-reaching political, economic, and other consequences, is subject to critical assessment and debates, and this will not change in the future. They are subject to scientific and professional assessment; they are extensively discussed and polemicised. This is useful for the work of constitutional courts, including the work of the Constitutional Court of the Republic of Slovenia, and for the development of the constitutional legal science and constitutional case law. In contrast to democratic countries similar to ours, with a well-developed legal culture and well-developed culture of dialogue, the Constitutional Court of the Republic of Slovenia has also been faced with general assessments that were not supported by arguments, with disqualifications, and even threats which could be understood as pressure. Naturally, this does not contribute to strengthening the rule of law and to the development of constitutional legal science. In the current situation, in which the rule of law in Slovenia is jeopardised, and many people have doubts about it, when phenomena such as disrespect for law and non-compliance with the obligations

and responsibilities entered into are strongly present, the careless destruction of the reputation and authority of state institutions, courts in particular, is risky and a matter of serious concern. If the Constitutional Court submitted to any kind of pressure, it would be fatal for its independence, which is, in addition to the expertise of the judges and their commitment to the Constitution, a fundamental condition for the successful work of the Court. Independence is the *conditio sine qua non* not only for the successful work of any constitutional court, but also for the very essence of its existence.

As I hand over the present overview of the work of the Slovene Constitutional Court for 2012 to the professional and wider public, I would particularly like to emphasise that the judges of the Constitutional Court of the Republic of Slovenia will continue to decide independently also in the future, only in accordance with the Constitution and laws, in accordance with their vows and their conscience, being committed to respect for the human rights of all people and to strengthening the rule of law, for the well-being and security of all residents of the Republic of Slovenia.

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 have any means 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. The Procedure for Deciding

1. 4. 1. The Constitutional Review of Regulations

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

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

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

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

1. 4. 2. Constitutional Complaints

Constitutional complaints are intended to protect human rights and fundamental freedoms. A complaint can be lodged by anyone who deems that his rights or freedoms were violated by individual acts of state authorities, bodies of local communities, or other bearers of public authority, however, except for some special instances, only after all legal remedies have

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

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

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

1. 4. 3. Consideration and Deciding

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

1. 5. The Composition of the Constitutional Court

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

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

Prof. Dr. Ernest Petrič, President
Mag. Miroslav Mozetič, Vice President
Mag. Marta Klampfer
Dr. Mitja Deisinger
Jasna Pogačar
Jan Zobec
Dr. Jadranka Sovdat
Doc. Dr. Etelka Korpič - Horvat
Dr. Dunja Jadek Pensa

Prof. Dr. Ernest Petrič, President,

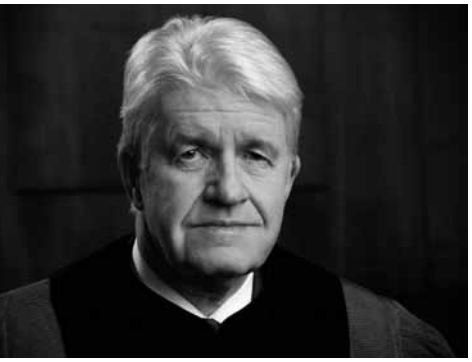
graduated from the Faculty of Law of the University of Ljubljana in 1960, winning the Prešeren University Award. He was also awarded a Doctorate in Law from the same Faculty in 1965. After taking a position at the Institute for National Issues, he was first an Assistant Professor, then an Associate Professor, 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 international legal experts 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 organizations, 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. In 2012, he was elected into the nine-member Advisory Committee on Nominations of judges of the ICC (International Criminal Court). 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 organizations 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 (The International Legal Protection of Minorities, The Right of Nations to Self-Determination, The Legal Status of the Slovene Minority in Italy, and Selected Topics of International Law) and a fundamental work on foreign policy: Foreign Policy – From Conception to Diplomatic Practice, which was published in English and Albanian, and a political science study on Ethiopia. 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 Social Sciences in Ljubljana, and the Faculty of State and European Studies in Brdo near Kranj. 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 commercial 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 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.



Asst. 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 commercial law panel. As an expert in civil law, he participated in drafting the first amendment to the Civil Procedure Act in 2002, and was the president of the working group that drafted the Act on the Amendment to the Civil Procedure Act. In 2006 he led the expert group working on the Institution of Appellate Hearings project. He has taken part in various Slovene as well as foreign professional meetings and seminars, and lectured to judges of the civil and commercial law departments of the higher courts. As a lecturer he has often participated in judicial school seminars for civil and commercial 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, 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.

Dr. Jadranka Sovdat

graduated from the Faculty of Law of the University of Ljubljana in 1982. In 1983 she passed the public administration examination, and the following year the state legal examination. At the Ministry of Justice she was involved particularly in the drafting of legislation. She is the co-author of legislation and legislative materials in the field of attorneyship, the organisation of the courts and judicial service, the state prosecutor's office, and judicial review of administrative acts that were drafted in the first years after the implementation of the new constitutional order. During her final year at the Ministry of Justice, Dr. Sovdat was head of the Justice Division. In 1994 she was appointed legal advisor to the Constitutional Court, and later she also assumed the office of Deputy Secretary General of the Constitutional Court. Following the completion of her master's thesis at the Faculty of Law of the University of Ljubljana, entitled Judicial Protection of the Right to Vote in State Elections, she was also awarded a Doctorate from the same University for her doctor's thesis, entitled Electoral Disputes. 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 has delivered papers on constitutional law at national and international legal conferences. In 1993 Dr. Sovdat spent short study periods at the French Conseil d'État focusing on judicial review of administrative acts and in 1998 at the French Conseil constitutionnel studying electoral disputes. She has published numerous articles on constitutional law and is the co-author of the Commentary on the Constitution of the Republic of Slovenia (2002) and its supplements (2011). She commenced duties as judge of the Constitutional Court on 19 December 2009.

Asst. 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 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. The Secretary General of the Constitutional Court

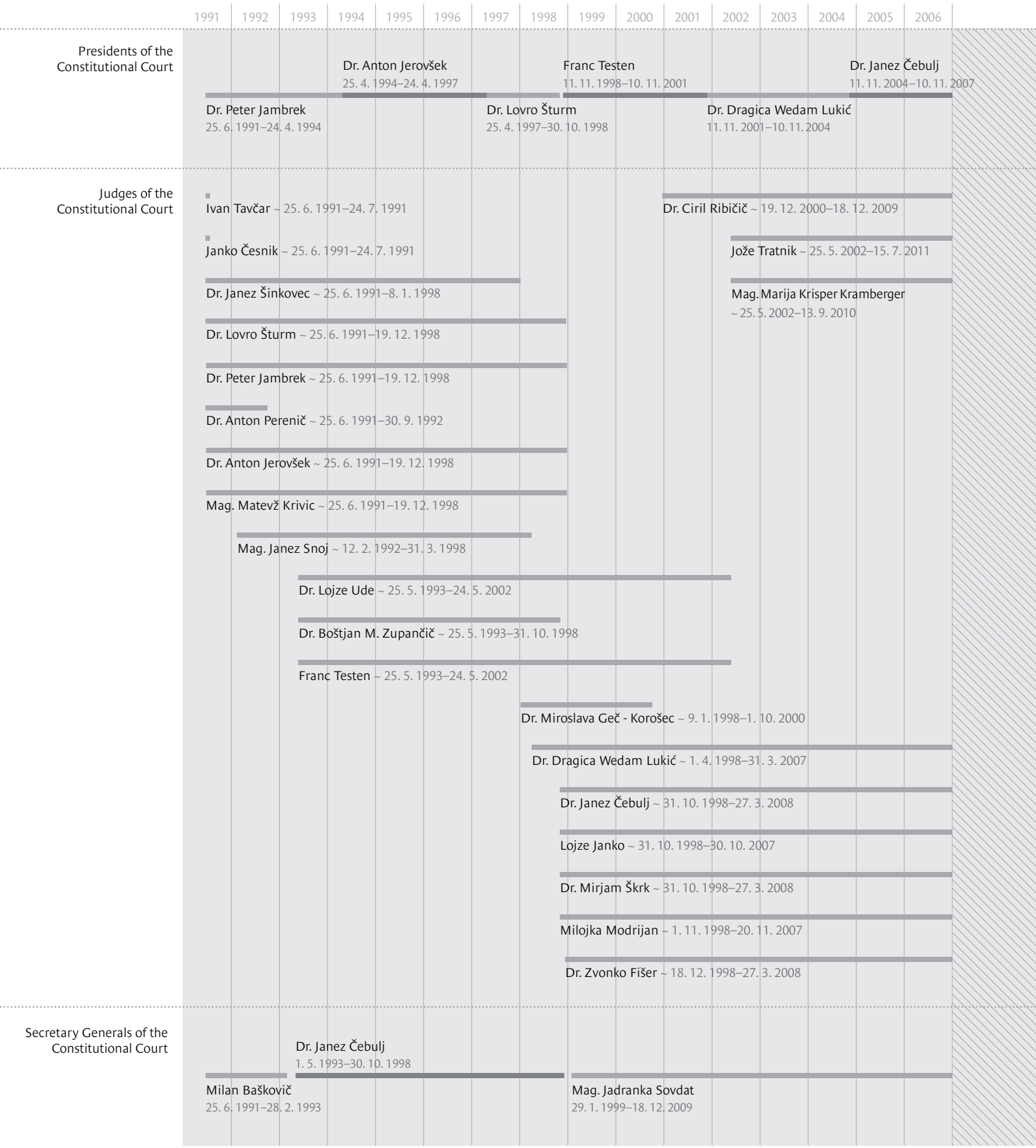
Prof. Dr. Erik Kerševan (until 31 July 2012)

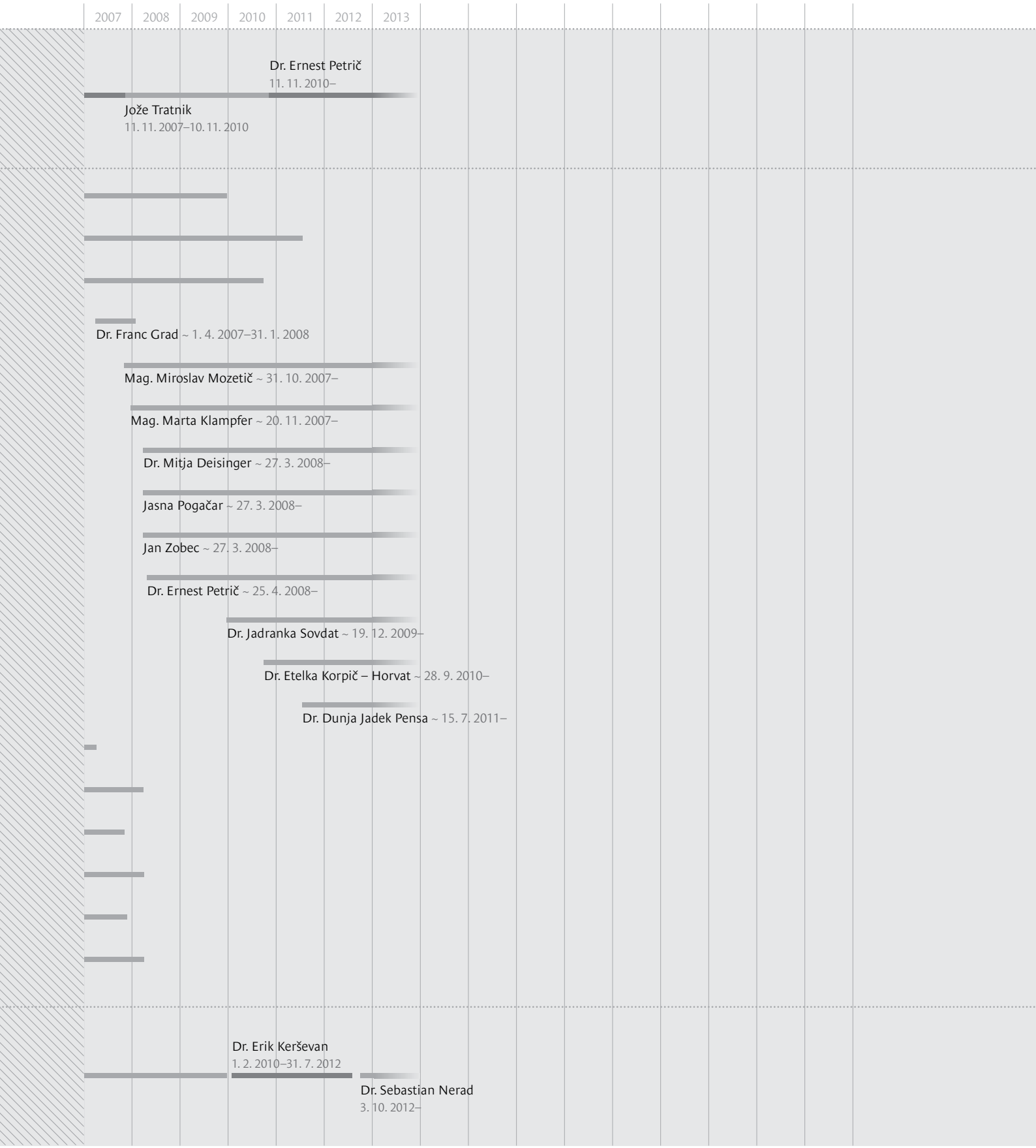
graduated from the Faculty of Law of the University of Ljubljana in 1998. After graduation, he was active in the reform of the Slovene public administration in the framework of the Ministry of the Interior. At the end of 1999 he took a position at the Department of Administrative Law of the Faculty of 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 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 and performed the function until 31 July 2012.

Dr. Sebastian Nerad (since 3 October 2012)

graduated from the Faculty of Law of the University of Ljubljana in 2000. For a short period after graduation he worked as a judicial intern at the Higher Court in Ljubljana. After becoming a Lecturer at the same Faculty of Law at the end of 2000, he concluded his internship at the Higher Court as an unpaid intern. He passed the state legal examination in 2004. From December 2000 to July 2008 he was a Lecturer at the Department of Constitutional Law of the Faculty of Law in Ljubljana. During this period his primary field of research was constitutional courts. In 2003, he was awarded a Master's Degree in Law by the Faculty of Law on the basis of his thesis entitled Legal Consequences and the Nature of Constitutional Court Decisions in the Procedure for the Constitutional Review of Regulations. He was also awarded a Doctorate in Law by this Faculty in 2006, following the completion of his doctoral thesis entitled Interpretative Decisions of the Constitutional Court. In 2007, he worked for six months as a lawyer-linguist at the European Parliament in Brussels. In August 2008, he was employed as an advisor to the Constitutional Court of the Republic of Slovenia. In this position he mainly worked in the areas of state and administrative law. In 2011, he went on a one-month study visit to the European Court of Human Rights in Strasbourg. He has published several articles on constitutional law, particularly on the functioning of the Constitutional Court. He is also the co-author of two monographs (Constitutional Law of the European Union, 2007; The Legislative Referendum: Regulation and Practice in Slovenia, 2011), and co-author of the Commentary on the Constitution of the Republic of Slovenia 2011. He has been a member of the Constitutional Law Association of Slovenia since 2001. He was appointed Secretary General of the Constitutional Court on 3 October 2012.

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




2007
2008
2009
2010
2011
2012
2013
Dr. Ernest Petrič
11. 11. 2010–
Jože Tratnik
11. 11. 2007–10. 11. 2010
Dr. Franc Grad ~ 1. 4. 2007–31. 1. 2008
Mag. Miroslav Mozetič ~ 31. 10. 2007–
Mag. Marta Klampfer ~ 20. 11. 2007–
Dr. Mitja Deisinger ~ 27. 3. 2008–
Jasna Pogačar ~ 27. 3. 2008–
Jan Zobec ~ 27. 3. 2008–
Dr. Ernest Petrič ~ 25. 4. 2008–
Dr. Jadranka Sovdat ~ 19. 12. 2009–
Dr. Etelka Korpič – Horvat ~ 28. 9. 2010–
Dr. Dunja Jadek Pensa ~ 15. 7. 2011–
Dr. Erik Kerševan
1. 2. 2010–31. 7. 2012
Dr. Sebastian Nerad
3. 10. 2012–

1. 6. The 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
Mag. Gregor Danko
Uroš Ferjan
Dr. Aleš Galič
Nada Gatej Tonkli
Mag. Marjetka Hren, LL.M.
Andreja Kelvišar
Andreja Krabonja
Dunja Kranjac
Jernej Lavrenčič
Marcela Lukman Hvastija
Maja Matičič Marinšek
Katja Mramor
Lilijana Munh
Dr. Sebastian Nerad
Constanza Pirnat Kavčič
Andreja Plazl
Janja Plevnik
Ana Marija Polutnik
Tina Prešeren
Mag. Polona Farmany
Maja Pušnik
Vesna Ravnik Koprivec
Heidi Starman Kališ
Jerica Trefalt
Dr. Katja Triller Vrtovec, LL.M.
Nataša Skubic
Katarina Vatovec, LL.M.
Igor Vuksanović
Mag. Renata Zagradišnik, spec., 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* (until 1. 2. 2012)
Tina Prešeren, *Acting Head of the Analysis and International Cooperation Department* (since 1. 2. 2012)

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

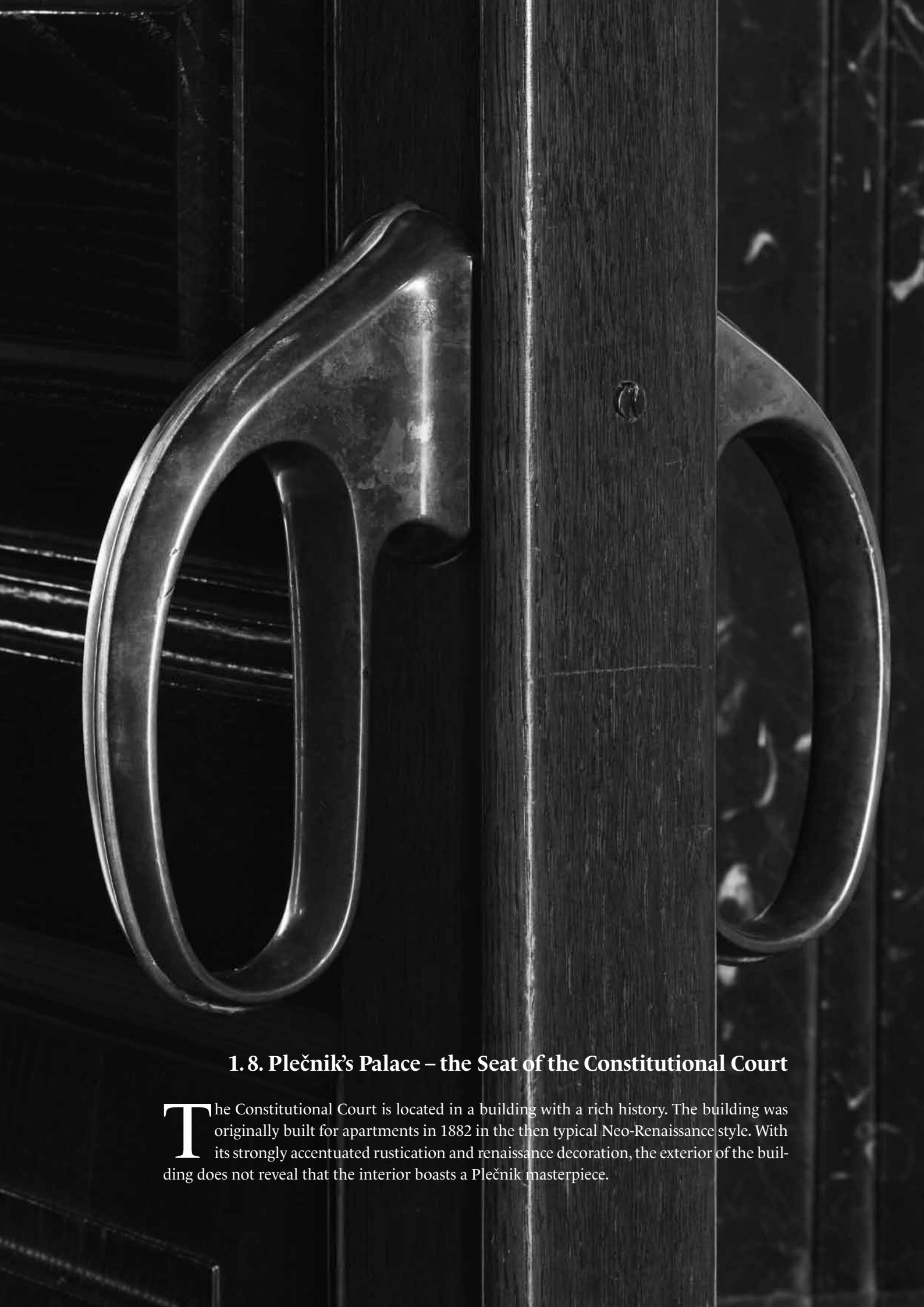
1. 7. 1. Official Publication of Decisions

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. The Constitutional Court in Numbers

In 2012, the Constitutional Court received 1,731 new cases, which is 7.4% fewer than in 2011. The number of received cases in the U-I register (referring to a review of the constitutionality and legality of regulations) remained at the level of last year (324 cases, i.e. a 0.3% increase), and represents 18.7% of all received cases. The decrease in the total number of cases received is mainly due to a significant decrease in the number of constitutional complaints received, which also in 2012 predominate in the distribution of cases received; constitutional complaints represent 69.5% of all cases received and the Constitutional Court received 1,203 thereof, a full tenth less (11.4%) than the year before. The decrease in the number of constitutional complaints could to a certain extent be explained by the higher number of cases entered into the general R-I register: In 2012, the Constitutional Court entered 611 received cases into the R-I register, but later transferred 424 of them to the Up and U-I registers. In the distribution of all cases received in 2012, R-I cases represent 10.8% of all cases received. Despite the increase in the number of R-I cases, the absolute number of constitutional complaints is significantly lower than in 2011 (155 or 11.4% less). A key characteristic of the Up cases received is that they are significantly linked to the U-I cases; 118 of 1,203 constitutional complaints were entered together with a petition for the review of the constitutionality of a regulation, i.e. they were joined cases, on which the Constitutional Court decides with one decision.

When interpreting and understanding the statistical data from this report, it has to be taken into consideration that the general register (R-I), which the Constitutional Court introduced only at the end of 2011, was fully implemented in 2012. The applications entered into this register are so unclear or incomplete that they cannot be reviewed or they have no chance of success in light of the case law of the Constitutional Court. Replies to such applications are issued by the Secretary General of the Constitutional Court, who thereby explains to the applicant how the incompleteness of the application can be remedied or calls on such to state within a certain time limit whether he or she would still want the Constitutional Court to decide on his or her application even though it has no chance of success. If the applicant eliminates the deficiency or requests that the Constitutional Court decide upon such, his or her application is transferred to the Up (constitutional complaints) or U-I registers (petitions for the review of constitutionality). By transferring a case into another register these cases are statistically no longer registered in the R-I register, but in the Up or U-I registers. The R-I register thus statistically contains only cases in which an applicant can request a decision of the Constitutional Court (i.e. R-I cases 'pending') by a certain time limit or cases in which the time limit for the applicant's request has already expired and/or the applicant did not request a decision by the Constitutional Court (i.e. R-I cases 'resolved').

Data on the individual panels of the Constitutional Court demonstrate that in comparison to the year 2011 the number of constitutional complaints received increased for the Administra-

tive Law Panel (by 12.2%), marginally decreased for the Civil Law Panel (by 6.1%), while the most significant decrease can be seen regarding the Criminal Law Panel (by 39.5%). In absolute figures, the Civil Law Panel still had the highest number of cases received (476 cases), followed by the Administrative Law Panel (460 cases). However, the significant decrease in constitutional complaints before the Criminal Law Panel (267 cases) was mainly due to the significant reduction in cases in the field of minor offences (the number of such cases received decreased by 56.3%). The stated values would differ significantly if beside the constitutional complaints entered into the Up register also cases entered into the R-I register (thereby including only the R-I cases that remained in the R-I register and were not transferred into another register) are included. Such an approach demonstrates that the total number of cases received by panels in 2012, compared to the year 2011, did not decrease by 11.4%, but increased by 2.4%.

The lower total number of cases received and in this regard the especially significant decrease in the number of constitutional complaints does not, however, entail that the burden on the Constitutional Court or on its individual panels was any smaller. This burden cannot be measured by quantitative data, as it always depends on the nature of individual cases, on their degree of difficulty, or on the importance and complexity of the constitutional issues arising therefrom.

Also in 2012, among constitutional complaints, the most frequent disputes are those linked to civil proceedings. The percentage of such among all constitutional complaints is 24.1%, although this number decreased by 12.4% compared to 2011. In second place are constitutional complaints regarding different kinds of judicial disputes of administrative acts; in comparison to the year 2011 the number of such increased by 16.1% and represents a 13.8% share of all constitutional complaints. In 2012, constitutional complaints in the field of minor offences dropped from second to third place. In comparison to the preceding year, the number of such constitutional complaints decreased by a full half (by 56.3%) and also their share in the distribution of all constitutional complaints decreased from 23.3% in 2011 to 11.5% in 2012. It is clear that people have finally become aware that following the amendment of the Constitutional Court Act in 2007 constitutional complaints in matters regarding minor offences are as a general rule not permitted. Undoubtedly, this can also be attributed to the fact that the Constitutional Court has begun to impose fees on complainants for whom it assessed that they have abused the right to a constitutional complaint by such constitutional complaints, i.e. standard applications for which it is absolutely clear that they cannot succeed and which create an unnecessary burden on the work of the Constitutional Court. With regard to the distribution of constitutional complaints, constitutional complaints in criminal matters should be mentioned, which, for the approximately same number of complaints received as in the year 2011, represent a good tenth of all constitutional complaints (10.7%), as well as constitutional complaints in labour law disputes, which also represent one tenth of all constitutional complaints (10.4%), however the number of such increased by almost one third (31.6%) compared to the year 2011.

Among proceedings for the review of the constitutionality of regulations, regarding which the number of cases received in 2012 was essentially the same as in 2011 (an increase of 0.3%), it must be underlined that of 324 cases received, 54 were initiated on the basis of a request submitted by entitled applicants (in 2011 only 40 such applications were filed), others were the petitions of individuals. Thereby, the activity of the Ombudsman has to be emphasised, since she filed five requests for a review of constitutionality, and it has to be especially stressed that the courts filed 26 requests for a review of constitutionality in 2012 (in 2011 the courts filed only nine requests). Regarding the increase in the openness of the courts to constitutional questions, it is somewhat unusual that the Supreme Court filed only one request for a review

of the constitutionality of an act this year. In 118 cases out of 270 petitions for a review of constitutionality (43.7% of all petitions), the applicants also simultaneously filed a constitutional complaint. Applicants thus to a significant extent take into consideration the established case law of the Constitutional Court, which, as a general rule, only allows applicants to file a request together with a constitutional complaint. Regarding regulations that do not have direct effect, first all judicial remedies have to be exhausted, and only then, together with a constitutional complaint against an individual act, can the unconstitutionality or illegality of an act on which the individual act is based be invoked.

Regarding the resolution of cases, it has to be underlined that in 2012 the Constitutional Court resolved 3.3% more cases than in 2011. The trend towards an increasing of the number of cases resolved has been approximately constant since 2009, when the Constitutional Court resolved 1,772 cases, followed by 1,818 cases in 2010, 1,806 cases in 2011, while in 2012 this number increased to 1,865 cases. The distribution of cases resolved is, however, similar to the distribution of cases received: proceedings for a review of constitutionality and legality (U-I cases) represent 18.8% of all cases resolved, while the percentage of constitutional complaints is 69%. When comparing individual types of proceedings with the preceding year, it can be noted that the number of U-I cases resolved increased by 12.5% compared to 2011. However, the number of constitutional complaints resolved decreased by a similar percentage, as the Constitutional Court resolved 12.8% fewer constitutional complaints in 2012 than in 2011. This has to be attributed especially to the fact that after the introduction of the general register (R-I cases), a significant portion of cases were resolved in this register (11%), which demonstrates the relative efficiency and usefulness of this preliminary procedure. It is evident from the distribution of constitutional complaints resolved (which account for a 69% share of all resolved cases) that in 2012 the Constitutional Court resolved the most cases in the field of civil proceedings (26.3%), followed by criminal law cases (13.1%), judicial reviews of administrative acts (11.5%), minor offences (11.3%), and labour law disputes (8.9%).

Statistically speaking, the success of constitutional complainants and petitioners or applicants, was relatively limited also in 2012, being primarily based on how well substantiated their constitutional complaints, petitions, and requests for a review of constitutionality were. Of 350 resolved petitions and requests for a review of constitutionality and legality, the Constitutional Court assessed that the law at issue was unconstitutional in nine cases (2.6%), and thereby abrogated the statutory provisions in six instances and adopted declaratory decisions in three instances, while in one instance it imposed on the legislature a time limit for the elimination of the established unconstitutionality. The applicants had more success when challenging implementing regulations, as the Constitutional Court established the unconstitutionality or illegality of an implementing regulation in 22 cases (6.3%), while also in 2012 a significant share of implementing regulations found unconstitutional were linked to the acts of municipalities relating to the categorisation of community roads which unconstitutionally interfered with the private property of individuals on their land. The combined rate of success in U-I cases was thus 8.9%, while applicants filing requests for a review of constitutionality and legality (courts and other authorised applicants) were relatively more successful than petitioners. The Constitutional Court established the unconstitutionality or illegality of a regulation in ten cases (21.7%) out of 46 resolved requests, while of 304 petitions resolved, the Constitutional Court established the unconstitutionality or illegality of a regulation in 21 cases (6.9%).

Compared to U-I cases, the situation is similar in Up cases (constitutional complaints). The Constitutional Court only granted 41 constitutional complaints (3.2%) out of 1,287, which is

the total number of constitutional complaints resolved in 2012. The relatively modest success of constitutional complaints (and of other applications) has to, of course, be interpreted carefully, as the numbers do not reflect the real importance of these cases. These cases concern matters that address important constitutional issues; therefore their importance for the development of (constitutional) law by far exceeds their statistically expressed quantity. In these percentages the Constitutional Court does not deviate significantly from other comparable constitutional courts.[1] It can be concluded that for more than half of the successful constitutional complaint cases (26) the Constitutional Court granted the constitutional complaint due to a violation of Article 22 of the Constitution (the equal protection of rights), while others refer more or less evenly to the prohibition of torture (Article 18 of the Constitution), the protection of personal liberty (Article 19 of the Constitution), orders for and the duration of detention (Article 20 of the Constitution), the right to judicial protection (Article 23 of the Constitution), legal guarantees in criminal proceedings (Article 29 of the Constitution), the right to private property (Article 33 of the Constitution), the freedom of expression (Article 39 of the Constitution), marriage and the family (Article 53 of the Constitution), the rights and duties of parents (Article 54 of the Constitution), the rights of children (Article 56 of the Constitution), and the prohibition of the retroactive effect of legal acts (Article 155 of the Constitution).

The average duration of resolving cases in 2012 decreased in comparison with 2011 from 260 to 246 days, or to 188 if also R-I cases are included. The average duration of proceedings for a review of the constitutionality of regulations (U-I cases) was 246 days, while on average the Constitutional Court resolved constitutional complaints in 248 days. Such figures are comparable with data from past years.

At the end of 2012 the Constitutional Court still had 1,041 unresolved cases, only five of which were from 2010 and 94 of which were from 2011. All the remaining unresolved cases are from 2012. Among unresolved cases, there are 227 priority cases and 41 absolute priority cases. It is also important that in 2012 the Constitutional Court for the first time since 2008 resolved more cases than it received in the same year, and that the number of unresolved cases decreased by 16% in comparison with 2011.

In addition to presenting the operations of the Constitutional Court in numbers, the financial operations and position of the Constitutional Court in the field of personnel also deserve to be introduced briefly.

In 2012, the operations of the Constitutional Court were marked by austerity measures. As was the case for the entire public administration, the Constitutional Court also had to take into consideration the difficult situation regarding the national public finances when planning its material operations. In past years the functioning of the Constitutional Court had already been economically efficient; however, in 2012 additional internal reserves had to be found. The realised budget of the Constitutional Court amounted to EUR 4,679,417 in 2011 and EUR 4,096,901 in 2012, meaning that the Constitutional Court reduced its total public expenditure by 12.4%. In this context, the funds for salaries were reduced by 8.8%, for material costs by 27.9%, and for capital outlays by 34.9%.

[1] In 2012, the Constitutional Court of the Federal Republic of Germany, for instance, only granted 148 of 5,327 (2.8%) constitutional complaints resolved, while from 2008 to 2011 the percentage of successful constitutional complaints was even lower than 2%. Data regarding the percentage of successful constitutional complaints from 1987 until 2012 are available at: http://www.bundesverfassungsgericht.de/organisation/gb2012/A-IV-2.html.

Beside statutory measures (the Fiscal Balance Act), the restrictive actions in the field of personnel had a decisive influence on the reduction of resources for salaries. In 2012, the Constitutional Court reduced the total number of employees by seven, representing a 7.9% decrease in comparison with 2011. As of 31 December 2011, 89 judicial personnel were employed, while as of 31 December 2012 the number of such was 82. If we take into consideration that there was another temporary employment contract that expired on 1 January 2012, the actual decrease in the number of judicial personnel in 2012 was even higher (9.0%). Regarding the continuously high number of cases received, it is somewhat alarming that the number of employees in the Legal Advisory Department and in the Analysis and International Relations Department, which are both crucial to the undisturbed functioning of the Constitutional Court, significantly decreased. In comparison with 2011, the number of employees in these two departments decreased by 7.9%. As of 31 December 2011, the Constitutional Court employed 38 legal advisors and other specialists, while by 31 December 2012 (or 1 January 2013) this number had decreased to only 35.

Detailed data and graphic representations are presented in the final part of the report.

2. 2. Important Decisions Adopted in 2012

2. 2. 1. The Assessment of the Admissibility of a Legislative Referendum

In 2012, there were two cases in which the Constitutional Court decided whether unconstitutional consequences would occur if an act that had already been adopted by the National Assembly were rejected in a referendum, entailing that deciding in a referendum should be disallowed. The first case was related to a referendum on the Slovene National Holding Company Act, which regulated anew the management of national assets, while the second case concerned a referendum on the Measures of the Republic of Slovenia to Strengthen the Stability of Banks Act, which introduced a so-called bad bank as an economic policy measure addressing the functioning of the banking system. The Constitutional Court decided on both cases by Decision No. U-II-1/12, U-II-2/12, dated 17 December 2012. It decided that unconstitutional consequences would occur by the postponement of the implementation or rejection of these two acts in a referendum.

The right to request a call for a referendum, determined in the second paragraph of Article 90 of the Constitution, is an important constitutional right enabling an individual issue regulated by a law to be decided on by voters in a referendum. This constitutional right, however, is not absolute in the sense that a referendum is always admissible if the conditions determined in the cited constitutional provision are fulfilled. In a situation in which the right to request a call for a referendum is in collision with other constitutional values, the Constitutional Court must determine, on the basis of weighing the constitutional values at issue, which of them should be given priority.

In this decision the Constitutional Court changed or upgraded to a certain extent its hitherto positions regarding the starting points of its assessment in such cases or regarding the understanding of the notion of unconstitutional consequences. In the hitherto constitutional case law regarding the admissibility of a legislative referendum, the focus of such review had been the issue of whether there existed an unconstitutionality regarding the law in force and the issue of whether the newly adopted law that was to be decided on in a referendum remedies this unconstitutionality in accordance with the Constitution. Such were mainly cases where there already existed a decision of the Constitutional Court determining the unconstitutionality of a law in force to which the legislature should have responded and thus, in fact, the referendum would entail deciding on respecting the decision of the Constitutional Court. However, the Constitutional Court assessed that the cases at issue did not concern the abrogation of an existing unconstitutionality of a law in force. Therefore, the issues of the constitutionality of

the statutory regulation in force and of the constitutionality of the newly adopted statutory regulation that was to be submitted for approval in a referendum were not in the foreground. The Constitutional Court placed in the foreground the question of whether the legislature intended to protect important constitutional values with the adopted law. The starting point of the assessment of the admissibility of the referendum at issue was thus the constitutional values that the adopted law should protect. As these constitutional values oppose the right to request a call for a legislative referendum, the task of the Constitutional Court is to assess whether these values have, on the basis of their importance and nature, such a constitutional weight that requires the urgent implementation of a newly adopted law. In such case, these constitutional values must be given priority over the right to a referendum, meaning that the Constitutional Court establishes that unconstitutional consequences would occur due to the suspension of the implementation or the rejection of the law in a referendum.

In the case at issue the Constitutional Court thus assessed that the referendum was not allowed as the right to request a call for a referendum must give way to other constitutional values that would, due to the calling of a referendum and even more so due to the possible rejection of the acts, remain unprotected to such an extent that the constitutional balance between these constitutional values would be jeopardised. The National Assembly demonstrated that in the present circumstances of economic crisis the protection of these values required the immediate implementation of the adopted acts. The values emphasised by the National Assembly that in the assessment of the Constitutional Court have priority over the right to request a call for a referendum in the present circumstances of severe economic crisis are (a) the efficient exercise of state functions, including the creation of conditions for the development of the economic system; (b) the exercise of human rights, in particular, the rights to social security, security of employment, and free enterprise; (c) respect for the binding international law obligations of the state; and (d) ensuring the effectiveness of the legal order of the European Union in the territory of the Republic of Slovenia.

2. 2. 2. The Conclusion of Collective Agreements in the Public Sector

By Decision No. U-I-249/10, dated 15 March 2012, the Constitutional Court determined that the challenged statutory regulation of the conclusion of a collective agreement for the public sector is not in harmony with the freedom of trade unions under Article 76 of the Constitution. In the Constitution, the freedom of trade unions is determined as the human right that also protects the freedom of activities of trade unions during the conclusion of collective agreements, or during their amendment. From the freedom of the activities of trade unions there arises the right of trade unions to conduct voluntary autonomous collective bargaining and conclude collective agreements on social and economic issues that refer to labour relations with the representatives of employers on behalf of workers who are joined therein.

The freedom of the activities of trade unions has a substantive and procedural aspect. The substantive aspect defines which subject (i.e. content) social partners may regulate autonomously by a collective agreement. As in the public sector labour relations are by their nature subject to an extensive one-sided authoritative regulation, the scope of the substantive aspect in the public sector is narrower than in the private sector. Furthermore, the freedom of the activities of trade unions also protects fundamental procedural elements, such as the freedom, voluntary nature, and fairness of collective bargaining procedures. An independent procedural element of the freedom of the activities of trade unions is thus the possibility of trade unions to volun-

tarily (i.e. in accordance with their own will) represent the interests of their members when concluding collective agreements, the substance of which may be the subject of autonomous collective regulation.

While the Constitution does not necessarily require the possibility of unlimited collective negotiation in the public sector, the legislature must take into consideration, when addressing collective negotiation in the public sector, the constitutional requirements of providing the freedom of activities of trade unions that refer to the procedure for the conclusion of collective agreements.

In the framework of the challenged regulation, the legislature established the possibility of collective negotiations on salaries and regulated such uniformly for all civil servants; it left it to the collective agreement for the public sector to bindingly regulate the important issue of the salaries of all civil servants, thereby excluding the possibility to implement a different regulation by a collective agreement for a lower level. However, a regulation which allows that a collective agreement may be concluded regardless of the opposition of a representative trade union in which civil servants whose position is regulated by such collective agreement are joined interferes with the voluntary nature of such as an element of the freedom of the activities of trade unions. Such interference is disproportional in cases in which it enables that a binding collective agreement be concluded for all civil servants regardless of the fact that a representative trade union which is the only one in which civil servants from individual public sector categories are joined opposes that such be concluded, and regardless of the fact that such is opposed by representative trade unions which have a greater number of members who are civil servants in an individual category than representative trade unions which also represent such category of civil servants and support the conclusion of such.

2. 2. 3. The Position of the National Assembly After Dissolution

By Decision No. U-I-23/12, dated 5 April 2012, the Constitutional Court decided on the request of the National Council in which it claimed the unconstitutionality of laws adopted by the National Assembly in the period of time from its dissolution until a new National Assembly is established. In the case at issue, the Constitutional Court had to review the issue of what the dissolution of the National Assembly entails for its constitutional position and for the continued exercise of its constitutional powers, in particular the exercise of the legislative competence.

The Constitutional Court agreed with the initial assessment of the National Council that a dissolution of the National Assembly which occurs after a vote of confidence in the Government fails is a reflection of the fundamental constitutional principle of the separation of powers determined in the second paragraph of Article 3 of the Constitution. However, it decided that it cannot concur with the standpoint that the principle of the separation of powers – that is, the relationship between the National Assembly, the Government, and the President of the Republic – is enacted in such a way upon the occurrence of the dissolution of the National Assembly and a call for early elections that upon its dissolution the term of the National Assembly expires and thus also its legislative competence ceases. The third paragraph of Article 81 of the Constitution, determining that the term of the previous National Assembly shall end on the first session of a new National Assembly, is decisive for determining when – for both regular and early elections – the term of office of the National Assembly expires. The dissolution of the National Assembly and the calling of early elections therefore do not entail the end

of the existence of the term of the National Assembly: the National Assembly still exists and its term continues until a new National Assembly is established. As the National Assembly is the bearer of the legislative branch of power and as the substance of its term – which was gained in elections in accordance with the principle of democracy – is exactly in the exercise of the legislative branch of power, a National Assembly dissolved by an act of the President of the Republic retains its legislative competence, as long as this competence is not assumed by a newly elected National Assembly at its first session. Such conclusion does not stem only from the linguistic-logical interpretation of the third paragraph of Article 81 of the Constitution, but is also confirmed by other provisions of the Constitution, in particular if they are read in conjunction with the principle of the separation of powers. On the basis of several provisions of the Constitution, it can reasonably be concluded that the Constitution presupposes that all powers of the state government are carried out continuously. There is therefore no apparent reason arising from the Constitution for interpreting an act of the President of the Republic by which he dissolves the National Assembly and calls for early elections as the immediate cessation of the term of the National Assembly or the termination of its legislative competence.

The Constitutional Court also dismissed the standpoint of the National Council that after the dissolution of the National Assembly its legislative competence is limited to the adoption of laws in urgent matters. The Constitution does not determine the scope of the legislative competence of the National Assembly in the event the President of the Republic dissolves it and calls for new elections. However, a conclusion opposite to that proposed by the National Council follows from the above-mentioned fact: the absence of specific constitutional provisions on the powers of the National Assembly following its dissolution entails that at the constitutional level there are no restrictions regarding this issue. In accordance with the principle of democracy determined in Article 1 of the Constitution, it should be noted that the National Assembly gains its term – and the essence of this term is exactly in the exercise of the legislative power – at periodic general and direct elections. The powers of each composition of the National Assembly for the exercise of the legislative power are acquired in democratic elections and continue for as long as that power is not transferred on the basis of elections to a new National Assembly. Any restriction of the legislative branch, which is one of the three fundamental branches of the state power, should have been expressly provided for in the Constitution. Since the constitution-framers did not determine such restrictions, the dissolution of the National Assembly does not affect the constitutional validity of laws and other decisions adopted in the period of time from such dissolution until a new National Assembly is established.

This does not entail, as was alleged by the National Council, that dissolution does not have any sense if at the same time it does not entail the termination of the legislative competence. The act of the President of the Republic by which the National Assembly is dissolved in the instances determined in the Constitution entails a reduction of the term of office of the National Assembly and the initiation of the procedure for early elections. Since, on the basis of the Constitution, the term of office of the National Assembly is four years, its dissolution is a constitutional precondition for the calling of early elections. The President of the Republic determines with the act on the dissolution of the National Assembly that the constitutional requirements for the calling of early elections are fulfilled. However, from a substantive point of view, the constitutional position of the National Assembly following the calling of early elections is the same as after the calling of regular elections. In accordance with the principle of democracy, the transfer of powers for the exercise of the legislative competence to the new National Assembly occurs only upon the first session of the newly elected National Assembly.

2. 2. 4. The Participation of the National Council in Matters Concerning the European Union

By Decision U-I-17/11, dated 18 October 2012, the Constitutional Court decided on a request of the National Council in which it claimed that the Cooperation Between the National Assembly and the Government in Matters Concerning the European Union Act is inconsistent with the Constitution as it fails to determine the role of the National Council in matters concerning the European Union. The applicant claimed that in the Republic of Slovenia the parliament is composed of two chambers, i.e. the National Assembly and the National Council, therefore the role of both chambers in matters concerning the European Union should have been regulated by law. The challenged Act was alleged to be unconstitutional precisely because it only regulates the relations between the National Assembly and the Government but fails to determine the role of the National Council in matters concerning the European Union.

The Constitutional Court assessed that the fourth paragraph of Article 3a of the Constitution does not determine the direct participation of the National Council in matters concerning the European Union, nor does such follow from other provisions of the Constitution. While this does not entail that the National Council cannot participate in the formulation of the positions of the Republic of Slovenia on the legal acts and decisions of the European Union, its involvement in procedures under national law occurs within the framework of its general constitutional powers determined by Article 97 of the Constitution. The treaties on which the European Union is founded do not determine how Member States should formulate and adopt their positions in matters concerning the European Union under national law or what role the national parliaments and their individual chambers should have in such procedures. The Treaty on European Union, the Treaty on the Functioning of the European Union, and Protocol (No. 2) on the application of the principles of subsidiarity and proportionality are not relevant to the question of what the constitutional relation between the National Assembly, the National Council, and the Government should be within national procedures in matters concerning the European Union.

Furthermore, the Constitutional Court assessed that the legal order of the European Union does not grant individual chambers of national parliaments active standing to directly file actions before the Court of Justice of the European Union in cases of a violation of the principle of subsidiarity, but that their legal position, as well as the position of the individual chambers of a parliament regarding the initiation of proceedings before the Court of Justice of the European Union, remains an issue of the domestic legal order.

2. 2. 5. Deciding on the Immunity of a Deputy or Judge

By Decision No. U-I-79/11, dated 19 September 2012, also adopted on the request of the National Council, the Constitutional Court decided that the provisions of the Rules of Procedure of the National Assembly that regulate proceedings with regard to immunity are not inconsistent with the Constitution. The National Council in particular alleged the unconstitutionality of the provision of the mentioned Rules of Procedure that determines that the Commission for Public Office and Elections of the National Assembly is authorised to decide on the immunity of a deputy in detention. This provision was alleged to be inconsistent with the second paragraph of Article 83 of the Constitution (the immunity of deputies) and with the second

paragraph of Article 134 of the Constitution (the immunity of judges). Based on these provisions of the Constitution, it was alleged that an authorisation for the detention of or initiation of criminal proceedings against a deputy (if he or she invokes immunity) or a judge may only be granted by the National Assembly and not by one of its working bodies.

The Constitutional Court was of the opinion that the National Assembly regulates the manner of execution of its competence by its rules of procedure. It may authorise its working bodies, which it establishes by law or by the rules of procedure, to exercise some of its powers. Thereby it also pursues the aim of promptly adopting the decisions within its competence that must be adopted in a very short time. The provision of the Rules of Procedure of the National Assembly which authorises the Commission for Public Office and Elections to decide on the immunity of a deputy who has been detained is not inconsistent with the second paragraph of Article 83 of the Constitution since in any case the final decision is made by the National Assembly, which in its first next session upholds or annuls and amends the decision of the Commission.

Contrary to the statement of the National Council, the provision of the Rules of Procedure of the National Assembly that regulates deciding on upholding the immunity of a deputy who has been detained cannot be applied in cases in which upholding the immunity of a judge is decided upon, as, pursuant to the explicit provision determined in the second paragraph of Article 134 of the Constitution, a judge may not be detained at all without the consent of the National Assembly.

2. 2. 6. Deciding on the Spatial Development of a Municipality

By Decision No. U-I-65/11, dated 19 September 2012, the Constitutional Court abrogated the provision of the Ordinance on Land Use Planning Conditions in the Vipava Municipality that regulated the Mayor's competence to decide, subject to the prior consent of the respective municipal council, on the planning of spatial interferences and spatial developments by giving his or her consent. The Constitutional Court assessed that spatial management is one of the original duties of a municipality and that a municipality independently manages such space or plans spatial development in accordance with the Constitution and laws. Such spatial interferences and spatial arrangements are planned by the municipality by spatial planning acts, which are one of more significant instruments of spatial management. Due to the difficulty of reconciling different interests, the procedure for drafting and adopting spatial acts is determined in the act that regulates spatial planning. Decisions on the spatial development of a municipality are in accordance with the legislation on local self-government adopted by the municipal council as the highest decision-making authority in all matters concerning the rights and obligations of the municipality. The transfer of this competence onto the mayor by a spatial act is thus inconsistent with the statutory regulation of spatial planning and self-government and consequently also with the third paragraph of Article 153 of the Constitution, under which implementing regulations and other general acts have to be in conformity with the Constitution and laws.

2. 2. 7. The Public Nature of Data Regarding Real Estate Owners

By Decision No. U-I-98/11, dated 26 September 2012, adopted on the request of the Information Commissioner, the Constitutional Court decided on the public nature of the Land Cadastre and the Cadastre of Buildings in the part that refers to data regarding real estate owners or

real estate managers if they are natural persons. The Information Commissioner claimed that the publication of such data on the public unified web-based portal E-prostor, or the legal provisions that allow for such publication, interfere with the right to the protection of personal data under Article 38 of the Constitution.

In its Decision, the Constitutional Court stated that the first paragraph of Article 38 of the Constitution determines the human right to the protection of personal data, while the second paragraph *inter alia* determines that the collection, processing, and designated use of personal data are provided by law. The personal data protected by Article 38 of the Constitution is any information containing a message about an identifiable individual that is relevant with regard to his or her privacy. Publicly accessible data regarding the name, address, and year of birth of a real estate owner in the Land Cadastre and the Cadastre of Buildings that indicate the state of an individual's property, provide information about where that individual lives, or even who he or she lives with, constitute constitutionally protected personal data. The fact that a certain piece of data had become publicly accessible due to its publication in a register does not entail that it thereby lost the quality of personal data and that henceforth any further processing of such data is admissible.

A law that prescribes the public accessibility of personal data without the purpose of the public accessibility of such data also being determined is inconsistent with the requirement under the second paragraph of Article 38 of the Constitution that the purpose of processing personal data be stipulated by law. The Constitutional Court thus abrogated the challenged decisions insofar as they refer to data on owners who are natural persons. However, the Constitutional Court did not accept the applicant's position on the public nature of data with regard to real estate managers, since such managers are either bodies of a state or local authority or entities under public law. Only natural persons enjoy the right to the protection of personal data, whereas by the nature of such, legal entities do not. To an even lesser extent does such apply to state authorities or legal entities under public law. Information on which public entity manages certain public properties is therefore not personal data and is thus not protected by Article 38 of the Constitution.

2. 2. 8. The Right to Personal Liberty in Proceedings for Granting International Protection

By Decision No. Up-21/11, dated 10 October 2012, the Constitutional Court abrogated the decisions of the Supreme Court and of the Administrative Court in the part which dismissed the action of the complainant alleging the unlawfulness of an act by which the defendant (the Republic of Slovenia) was alleged to have interfered with the complainant's rights under Articles 19 and 32 of the Constitution due to the unlawful deprivation of his liberty. In the assessment of the Constitutional Court, by depriving the complainant of his liberty without a decision, his right to personal liberty under the first paragraph of Article 19 of the Constitution was violated.

Since the Republic of Slovenia consented to readmit the complainant into the country pursuant to the so-called Dublin Regulation, he should have been treated as an international protection seeker from the time of his entry into the territory of the state. In this regard, it was not admissible to order measures that are determined by law for aliens who are not international protection seekers. The complainant's freedom of movement could have been restricted only under the conditions that apply to restricting the freedom of movement of international protection seek-

ers. With regard to the intensity and manner of execution of the measure of restricting freedom of movement to the premises of the Aliens Centre (i.e. having to follow a schedule of daily activities, the mandatory wearing of clothing provided by the Centre, being under surveillance during all daily activities, the possibility to leave only with the special approval of the competent Centre inspector), such measure entails a restriction of the right to personal liberty determined in the first paragraph of Article 19 of the Constitution. The assessment of the Constitutional Court was that in the complainant's case, there was no basis for such restriction of the right to personal liberty. The Constitutional Court thus established that placing the complainant in the Aliens Centre for the disputed period of time inadmissibly restricted his right to personal liberty.

2. 2. 9. Commercial Law Cases

The Right to Appoint a Special Auditor

By Decision No. Up-872/10, dated 12 January 2012, the Constitutional Court abrogated court orders by which the complainants' request to appoint a special auditor in a public limited company, of which they are a shareholder, had been dismissed. The decision of the courts was based on the position that the judicial appointment of a special auditor is only possible if a general meeting rejects a proposal for the appointment of a special auditor. The court of first instance also stated that the complainants did not claim that the general meeting rejected their proposal, but that it did not decide on it at all, whereas not deciding on a proposal does not entail its rejection.

In its starting point, the Constitutional Court repeated its established position that in Article 33 the Constitution protects all rights which entail the exercise of an individual's freedom in the field of property rights, not only private property. The right determined in Article 33 of the Constitution also provides for protection against interferences with other existing legal positions that for an individual represent, similarly as regarding private property, a financial value and as such provide the individual the freedom to act in the field of property rights. Shareholding is also such a legal position, along with the rights and entitlements derived therefrom. The right to request the judicial appointment of a special auditor is also a property right derived from shareholding. A special auditor serves for the verification of company formation procedures, of the conduct of specific business deals of the company, and of acts involving the increase or decrease in its share capital. As the majority shareholder is often not prepared to exercise control over the functioning of the management, which in fact stems from the former, the statute enabled minority shareholders to bring about the appointment of a special auditor via the court. The appointment of a special auditor via the court is therefore a right of minority shareholders, as it is intended to protect their financial interests and represents one of the keystones of a modern shareholder control system. It enables minority shareholders to establish facts or to determine the factual basis for a possible action for compensation filed subsequently against the management. As the shareholders in a public limited company have no right to have access to books and other business records of the company, they are unable to directly examine the regularity and legality of the actions of the founders and organs of the company. By themselves, they can only access such information through a special (or extraordinary) audit. For this reason, this right is guaranteed by Article 33 of the Constitution.

The position of regular courts stating that not deciding on a proposal for the appointment of a special auditor does not entail its dismissal and that the appointment of a special auditor by the court is only possible when a general meeting decides on a proposal and dismisses such,

denies the right of small shareholders safeguarded in Article 33 of the Constitution in all the instances when a small shareholder would correctly file a request for the appointment of a special auditor at a general meeting, but the latter does not add it to the agenda and decide thereon. Therefore, the Constitutional Court abrogated the challenged orders and remanded the case to the court of first instance for new adjudication.

Claims Against Partners of Companies Removed From the Register of Companies

By Decision No. U-I-307/11, dated 12 April 2012, the Constitutional Court abrogated the amended regulation of partners' liability for the liabilities of companies removed from the register of companies. The challenged provisions determined anew the question of the liability of partners for the liabilities of companies that had been removed from the register of companies without being liquidated before the new statutory regulation entered into force. All proceedings in which the creditors of companies removed from the register of companies made claims against partners of these companies that had not yet finished were halted *ex lege*, while the debtors were able to propose the discharge of such liabilities, which creditors could only prevent if they demonstrated the existence of conditions for lifting the corporate veil.

The Constitutional Court found that the position of creditors who initiated proceedings under the Financial Operations of Companies Act was essentially the same as the position of creditors who requested repayment under the Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act. As the legislature stayed all the proceedings (i.e. judicial and administrative) in which creditors filed claims against partners of companies removed from the register of companies on the basis of the regulation which was in force until the entry into force of the challenged regulation, and regulated the conditions for filing claims against partners of these companies completely differently, it resulted in a violation of several constitutionally safeguarded rights. With reference to such, the Constitutional Court differentiated between three groups of creditors. In cases involving creditors whose claims have been recognised by a final decision, it established an interference with the right to judicial protection (the first paragraph of Article 23 of the Constitution), the right to private property (Article 33 of the Constitution), and with the prohibition of the retroactive effect of legal acts (Article 155 of the Constitution). In cases involving creditors whose proceedings were pending, it established an interference with the right to a fair trial (Article 22 of the Constitution) because the legislature interfered with pending proceedings and amended the substantive law that should be used in these proceedings, thus interfering with the right to private property (Article 33 of the Constitution). In cases involving creditors who have not yet filed a claim while having a legitimate expectation to do so, the Constitutional Court established an interference with the right determined in Article 33 of the Constitution.

The Constitutional Court underlined that when interfering with existing legal relations that enjoy constitutional protection, the legislature has to demonstrate especially grounded reasons for such actions. With reference to such, it added that the reasons that justify future amendment of the regulation are not in and of themselves a constitutionally admissible reason that also justifies an interference with existing legal relations between subjects which arose with reference to the hitherto applicable regulation. As the legislature failed to demonstrate a constitutionally admissible goal for the exposed interferences with the constitutionally safeguarded rights of creditors due to the amendment of the challenged regulation, the Constitutional Court abrogated the contested statutory provisions without assessing whether the interference with the creditors' rights had been necessary, appropriate, and proportional in a narrow sense (Article 2 of the Constitution).

The Liability of the Shareholders of Companies Removed From the Register of Companies Without Being Liquidated

By Decision No. U-I-285/10, dated 7 June 2012, the Constitutional Court assessed the constitutionality of a provision on the basis of which a partner who, at the time of the termination of a company that was removed from the register of companies without it being liquidated after the entry into force of the amendment of the law regulating financial operations and insolvency proceedings, did not hold the position of an active partner but had held such a position any time in the two years before its termination, was also considered to be an active partner liable for the obligations of the company.

The Constitutional Court established that the challenged regulation interfered with retroactive effect with the position of those partners whose partnership in a company removed from the register of companies without it being liquidated after the implementation of the abovementioned amendment ceased less than two years before the moment of termination of the company. As a rule, legal regulations not only may not retroactively encroach upon rights, but also may not retroactively increase obligations or constitute them anew on the basis of facts that originate in the past. Equally, they must not hinder the legal position of the addressees of legal norms on the basis of facts from the past for which they could not have known that they at some time would produce legal effects – on the basis of a regulation that at the time when they occurred had not yet existed. The Constitutional Court reiterated that the prohibition of retroactive interference with acquired rights constitutes that part of each (acquired) right that has a constitutional nature. The acquired rights, however, are not necessarily just constitutional rights but can also be other rights provided by law, whereas the prohibition of retroactive interference with such rights is of a constitutional nature. In this sense, also the acquired rights that in and of themselves are not human rights or fundamental liberties enjoy equal protection as such and it is only admissible to interfere with them in conformity with the third paragraph of Article 15 of the Constitution.

The Constitutional Court underlined that the assessment of reasons that should justify an interference with the existing legal relations that arose with reference to the hitherto applicable law is stricter. It explained that the prevention of the circumvention of the rules regarding the liability of active partners for the obligations of the company – which was stated by the legislature as a constitutionally admissible goal of the challenged interference with the acquired rights – could only be the constitutionally admissible goal of amending *ex nunc* the regulation of the liability of active partners for the obligations of a company removed from the register of companies, and not *ex tunc*. In accordance with this, the Constitutional Court established that the challenged provision had not been based on a constitutionally admissible goal, therefore it abrogated the provision without assessing the proportionality of the measure.

Assessment of an Official Receiver's Remuneration in Bankruptcy Proceedings

By Decision No. U-I-185/10, Up-1409/10, dated 2 February 2012, the Constitutional Court decided on a petition for the constitutional review of the provision that determines usage of rules for the assessment of an official receiver's remuneration in bankruptcy proceedings, and on a constitutional complaint against the orders by which courts decided on the official receiver's remuneration for actions carried out in a bankruptcy proceeding. The challenged statutory provision required that in a bankruptcy proceeding initiated before its entry into

force, instead of the decree that was in force at the time when the actions in the bankruptcy proceeding were carried out, the regulation that entered into force only after these actions had already been carried out should be used. Therefore, the law enacted that a subsequent executive act should apply with retroactive effect.

The Constitutional Court first explained that in a petition a petitioner may also allege the occurrence of an unconstitutionality which does not refer to human rights and fundamental freedoms but rather to constitutional principles or other provisions of the Constitution, i.e. an unconstitutionality that may not be alleged in a constitutional complaint. The standpoint in the established constitutional case law is that in cases in which statutes do not have direct effect petitioners must first allege the unconstitutionality of a statutory regulation in proceedings before the competent courts and only after all legal remedies have been exhausted do they demonstrate legal interest for a Constitutional Court decision if they simultaneously file a constitutional complaint. This, however, does not entail that a petition is limited in its content such that only an unconstitutionality from the perspective of constitutional provisions which regulate human rights can be alleged therewith and not also some other unconstitutionality, such as a violation of the prohibition of legal acts having retroactive effect as determined by Article 155 of the Constitution.

The second paragraph of Article 155 of the Constitution allows for an exception to the general prohibition of retroactivity. In accordance with this exception, upon the fulfilment of expressly determined conditions (public interest and no interference with acquired rights), only individual statutory provisions may have retroactive effect and not also the provisions of other regulations. If in a retroactive statutory provision the legislature does not entirely regulate the content which should have retroactive effect but leaves the regulation of such in a certain part to a relevant executive regulation, the legislature thereby acts contrary to the second paragraph of Article 155 of the Constitution. That happened in the case at issue and thus the Constitutional Court abrogated the challenged statutory provision and determined the method for the assessment of official receivers' remuneration. It also abrogated the challenged orders by which the official receiver's remuneration had been assessed for bankruptcy actions that had been taken, as well as the order on the final partition of the bankruptcy estate, which takes into account the remuneration determined in the abrogated orders.

Limitations on Tenderers in Public Procurement Procedures

By Decision No. U-I-211/11, dated 24 May 2012, the Constitutional Court abrogated a statutory regulation that regulated the disqualification of tenderers from public procurement procedures if the members of their management body or supervisory board or their representatives have been, at any time in the two years prior to the expiry of the term for the submission of tenders in the public procurement procedure, partners or shareholders with a share higher than 25%, members of the management body or supervisory board, or the representatives of a legal entity against which bankruptcy proceedings, compulsory settlement proceedings, or compulsory dissolution proceedings have been initiated.

The Constitutional Court explained that in the public procurement procedure the state does not act in its capacity as a public authority but as a participant in the market on the demand side, therefore the position of a tenderer in a public procurement procedure is not a position which is protected by free economic initiative under Article 74 of the Constitution. However, in determining the criteria for choosing in a public procurement procedure and for manag-

ing the public procurement procedure, the state is bound by the general principle of equality under the second paragraph of Article 14 of the Constitution, which requires that public procurement procedures enable everyone under the same conditions to be selected to fulfil a public procurement order. The essence of the constitutional protection under the second paragraph of Article 14 of the Constitution is that the criteria for differentiation are substantively grounded and not arbitrary. Within the framework of the test of rationality, it is not only reviewed whether a reason leading to a differentiation between legal positions is in and of itself reasonable, but also whether it is objectively justified regarding the subject of legislative regulation and the goals which the legislature is trying to achieve.

In the case at issue, it was clear from the legislative materials that the aim of the legislature had been to prevent possible tenderers who caused bankruptcy proceedings or compulsory settlement proceedings against companies that they were owners or members of the management of from participating in public procurement procedures. The Constitutional Court assessed that such a purpose could justify the different treatment of tenderers, but as the legislature established a prescribed presumption that also applies to circumstances in which the reason for the mentioned insolvency proceedings cannot be attributed to the actions of individual persons, even though in the period of the last two years before the expiry of the time limit for the submission of tenders in public procurement procedures they had held the position of member of a management or supervisory board or they were a partner with an ownership share greater than 25%, the legislature exceeded this criterion. Therefore, as the reasons for differentiation between tenderers that apply for selection in public procurement procedures were not reasonably connected with the subject matter of legal regulation, there was no substantively justified reason for differentiation between them.

2. 2. 10. Civil Law Cases

Freedom of Expression and the Protection of Dignity and Good Reputation

By Decision No. Up-570/09, dated 2 February 2012, the Constitutional Court decided on the constitutional complaint of a journalist and news publisher who were convicted by the regular courts for publishing disputed articles and had been ordered to pay compensation for offending the dignity and good reputation of the plaintiff, namely a businessman from Carinthia. The challenged judgment of the Higher Court was based on the opinion that the public has a right to be informed of irregularities or violations of regulations on preventing money laundering in bank operations and that the media has the right to report on these irregularities. It also should be admissible to reveal that the bank violated the regulations only in the case of certain persons. The Higher Court adopted the position that the public did not have a legitimate interest in the disclosure of the full name of the plaintiff as a depositor, even though he had the status of a relatively public person. The complainants' allegations were that this position violates the right to freedom of expression under Article 39 of the Constitution and under Article 10 of the European Convention on Human Rights and Fundamental Freedoms.

The Constitutional Court assessed that the aim of the disputed article was not only to report on irregularities in bank operations, but also to reveal an influential economic network that had the power to influence banks' actions in particular instances. In this context, the journalist showed in the article the facts about the plaintiff's activity and his financial conditions,

whereas these facts were stated as support for the opinion that the journalist wished to present to the public, namely that it is not a coincidence that the bank failed to fulfil its statutory obligation to report to the authority competent to prevent money laundering, precisely in the case of a known local businessman, and that the public has a right to be informed of such. It stemmed from the challenged judgment of the Higher Court that while the allegations as such about the plaintiff were not offensive, the context in which they were published undoubtedly indicated a biased value judgment or opinion of the journalist regarding a topic that concerns the interest of the wider public. As the journalist extracted the data on bank operations from trustworthy sources, he had a basis in the facts for the opinion he wrote.

On the basis of all the circumstances that were stated, the Constitutional Court assessed that the Higher Court failed to strike a fair balance between the plaintiff's right to the protection of one's dignity and good reputation (safeguarded in the framework of Article 35 of the Constitution) and the complainants' – the journalist's and the news publisher's – right to freedom of expression (Article 39 of the Constitution). The Constitutional Court's assessment was that by its adopted position the Higher Court unjustifiably limited the margin of discretion of the journalist and of the news publisher when reporting on a topic for which there existed a high public interest in being informed. Thereby it inadmissibly interfered with the constitutionally protected core of the complainants' right to freedom of expression (Article 39 of the Constitution).

Freedom of Expression and Protection of the Privacy of Correspondence

In Decision No. Up-444/09, dated 12 April 2012, the Constitutional Court also dealt with the collision of the freedom of expression (Article 39 of the Constitution) and the protection of the right to privacy (Article 35 of the Constitution), or the protection of the privacy of correspondence (Article 37 of the Constitution). In this case, the constitutional complaint was filed by a publishing house on which the court of first instance imposed the obligation to remove from legal transactions or trade the book at issue, which on multiple pages contained quotations from two personal letters of the plaintiffs. The Court prohibited the publishing house from publishing, selling, or distributing this book or any other publication in which the plaintiffs' private letters or their summaries were published. The Higher Court changed the decision of the court of first instance and rejected the claims in their entirety. The Supreme Court, however, granted the revision to the plaintiffs and confirmed the judgment of the first instance. The decision was based on the opinion that there was an interference with their right to the privacy of correspondence because the plaintiffs had not given in advance their permission for the letters to be quoted in the book.

In its decision, the Constitutional Court repeated the position from its established case law that whenever there is a collision of two human rights, the content of both rights must be restricted. The assessment of whether the exercise of one right already excessively restricts the exercise of the other right requires a value-based weighing of the meaning of both rights against the weight of the interference. On the basis of the weighing or balancing of both rights (the right of the plaintiffs to privacy and the confidentiality of written communications, on one side, and the right of the book's author and the publishing house to freedom of expression, on the other), the Court establishes a rule regarding the coexistence of both rights, stipulating which of them should be given priority in the circumstances of the case at issue. From the viewpoint of constitutionality, it is essential that neither of the human rights is excluded from consideration by the Court. As the Constitutional Court established, it was not evident from the reasoning of the judgment that the Supreme Court had taken into consideration certain con-

stitutionally decisive circumstances that are important from the viewpoint of the protection of the plaintiffs' freedom of expression. These circumstances were especially the possible interest of the public to be informed of the functioning and interests of the association at issue, of the characteristics of the plaintiffs as officials of the association, and of the content or nature of the published letters. In the assessment of the Constitutional Court, these are constitutionally decisive circumstances that the courts may not disregard while so balancing. From the viewpoint of constitutionality, there is a crucial requirement that the courts' balancing be accomplished by taking into consideration all the constitutionally decisive circumstances resulting in one right outweighing the other. Otherwise, one of the rights in collision is deemed to have an absolute effect. In the challenged decision, the Supreme Court did not meet the requirement that imposes on courts the obligation to weigh two overlapping human rights and thereby take into account all constitutionally decisive circumstances. In this regard, the Constitutional Court assessed that the challenged judgment violated the complainant's freedom of expression.

Measures for the Acceleration of Judicial Proceedings

By Decision No. U-I-322/11, dated 24 May 2012, the Constitutional Court abrogated a provision of the Labour and Social Courts Act that determined that a plaintiff is deemed to have withdrawn a legal action if he or she does not attend a settlement hearing or the first hearing of a trial without stating a justified reason for his or her absence. In practice, this provision has often had the effect that following the fiction of the withdrawal of the legal action and consequently the staying of the proceedings, due to the strict and short time limits for filing a legal action in a great part of labour and social disputes, a plaintiff was never again able to judicially protect his or her substantive-law entitlements. Due to its factual effect with regard to the rigid and short substantive time limits, the challenged provision therefore limited the human right of plaintiffs to judicial protection determined in the first paragraph of Article 23 of the Constitution.

The discussed sanction for not attending a hearing was relatively severe and strict. As a general rule, it namely resulted in permanent and irreparable loss of judicial protection of important substantive-law rights of the plaintiffs, namely in a particularly sensitive area in which the need to protect the weaker party is strongly expressed. The positive influence of the challenged provision on the speed and efficiency of proceedings was, however, not so great as to outweigh the significant weight of the limitation of the human right to judicial protection. Imposing sanctions on plaintiffs due to their non-attendance at a hearing cannot essentially contribute to a speedy and efficient conclusion of proceedings, as in instances of non-attendance a court may also conduct a hearing and decide on a claim. In the assessment of the Constitutional Court, the challenged regulation excessively interfered with the human right of plaintiffs determined in the first paragraph of Article 23 of the Constitution, thus the Constitutional Court abrogated such.

Rejection of a Claim That Does Not Include a Power of Attorney

By Decision No. U-I-74/12, dated 8 November 2012, the Constitutional Court abrogated a part of the provision of the Civil Procedure Act that in instances where an attorney has not enclosed a power of attorney with a claim prescribed the sanction that the court may not allow the attorney to temporarily perform procedural acts for a client but rejects the claim immediately. The Constitutional Court's judgment was that such sanction interferes with the right of the persons in whose name the attorney submitted a claim for judicial protection.

One of the fundamental aims of the amendment to the Civil Procedure Act of 2008 was to achieve and invoke in practice the principle that the responsibility to contribute to the acceleration and concentration of proceedings lies also with clients and their attorneys. In this regard, it should be relevant that an attorney practices his profession as a liberal profession and is a legal expert with experience in representation before the courts, therefore a higher degree of diligence may and must be expected from him than from other parties. The proposed legal regulation should strengthen the attorney's responsibility to conduct the proceedings more swiftly and effectively, as well as the responsibility to ensure quality and professional representation of the clients before the courts. In the opinion of the Constitutional Court, the stated goals are constitutionally admissible objectives that justify the restriction of the human right of the plaintiff under the first paragraph of the Article 23 of the Constitution, because they are substantively related to the protection of the same human right of the defendant, especially in the light of a trial without undue delay.

In assessing the statutory measure from the perspective of the principle of proportionality, the Constitutional Court concluded that while the challenged regulation is an appropriate measure for achieving the objective, it does not, however, pass the test of necessity, in the framework of which the Constitutional Court assesses whether the measure is at all necessary for achieving the desired objective, meaning that the objective cannot be (to the same degree) achieved with a milder measure or even without it. The Constitutional Court assessed that the challenged sanction is not necessary for accelerating proceedings in relation to reinforcing the principle of the due diligence of attorneys. Such sanction, however, affects primarily and especially the party, while its effect on the attorney is merely secondary and conditioned by his liability for damage incurred by his client for failing to produce a power of attorney which then made deciding on the merits impossible. At least the same effect (if not a greater one) would result from the introduction of a special fine that would eventually have to be paid by an attorney and would not have any impact on the proceedings. This means that the admissible objective of limiting the human right to judicial protection can be achieved without any encroachment upon the human rights of the party.

Furthermore, the Constitutional Court also assessed that such encroachment upon the right to judicial protection is disproportionate in the narrower sense, as the weight of the consequences of the assessed interference with the affected human right is not proportionate to the value of the objective pursued or to the benefits that would result from the inference. In this regard, the decisive element was the fact that due to the contested provision, severe interferences with the right to judicial protection occurred, even when attorneys have failed to include a power of attorney due to a lapse, force majeure, blameless error, and in other instances when they could not be reproached for demonstrating insufficient professional diligence. The dismissal of a claim filed by an attorney, without the court calling for the submission of a power of attorney, entails a permanent loss of the right to judicial protection. Furthermore, in the opinion of the Constitutional Court, in assessing the scope of benefits it also has to be taken into consideration that calling for the submission of a power of attorney normally only creates a minor delay in proceedings.

The Effectiveness of Execution Proceedings

By Decision No. Up-1268/11, dated 19 September 2012, the Constitutional Court decided on an order of the Higher Court, by which this court granted the debtors' appeal in the execution proceedings, amending the order of the court of first instance, abrogating the execution order,

and dismissing the complainants' motion for execution. The Higher Court decided on the basis of the instrument authorising enforcement stipulating that the (singular) legal predecessor of the debtors should allow the complainants to obtain payment of their claim by selling the real property on which there are a residential house and a building, whereas the court determined that the property had been, before the application for execution was filed, divided into two separate condominium units, one of which belonged to the debtors. As co-ownership had ceased to exist and condominium was established, the initial real property referred to in the instrument authorising enforcement allegedly no longer legally existed. Therefore, execution against the real property at issue was allegedly rendered impossible. The Higher Court decided that the complainants' motion for execution was unfounded due to the non-existence of the object of execution. The Constitutional Court abrogated this order of the Higher Court and remanded the case to the Higher Court for new adjudication.

In deciding, the Constitutional Court proceeded from the right to judicial protection as a right of everyone to have any decision regarding his rights, duties, and charges brought against him made without undue delay by an independent, impartial court constituted by law. According to the Constitutional Court, this right ensures the possibility to present the case to a court that will decide the case on its merits in due time. The right to judicial protection, determined by the first paragraph of Article 23 of the Constitution, not only ensures the right to demand from a court a decision on the merits of a dispute, but also entails the right to demand the execution of a judicial decision by which the court decided on a right or obligation. Therefore, a party whose right has been recognised by a final court decision must be provided with the possibility and the means to actually enforce this right. Execution procedures by means of which final judicial decisions are enforced must be effective. The right to effective execution proceedings prevents the right to repayment from a certain part of the debtor's property determined in a final court decision from legally ceasing to exist due to the debtor's unilateral actions that do not entail, in either a factual or legal sense, relevant obstacles to the initiation, course, or conclusion of the execution proceedings. In execution proceedings, the courts can protect the right determined by the first paragraph of Article 23 of the Constitution of creditors who had an enforceable civil law right to repayment from a co-owner's share of a part of real property before such was converted into condominium by allowing the enforcement against the relevant individual unit of the condominium. The Higher Court adopted the opposite position and thus, in the assessment of the Constitutional Court, violated the complainants' right to judicial protection by the challenged order.

Determination of Paternity After the Death of the Alleged Father

By Decision No. U-I-30/12, dated 18 October 2012, the Constitutional Court abrogated the time limit for the determination of paternity, i.e. one year after the death of the alleged father. It also decided that the abrogation would take effect one year after the publication of the decision and that the courts are obliged, until the new statutory regulation of posthumous determination of paternity comes into effect or at most until the expiry of the time limit for the elimination of unconstitutionality, to stay proceedings for the posthumous determination of paternity in which the action was or would be filed after the expiration of the one-year time limit, starting from the death of the alleged father.

The Constitutional Court assessed that from the right to know one's own origin, which is protected by Article 35 of the Constitution, there follow the rights of individuals to know the identity of their biological parents and to create legally recognized family relations with their

biological parents by a legal action. The right to know one's own origin does not cease to exist after the death of one's alleged father. The imposition of a preclusive time limit for a child to file a legal action for the posthumous 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 interests of a child protected by Article 35 of the Constitution outweigh the interests of legal certainty and the need to protect the permanence of existing family relations. In weighing these interests, the constitutionally guaranteed equality of children born out of wedlock and of those born within a marriage also carries significant weight. An expression thereof is also the possibility to determine paternity before the court. The legal certainty, trust in the law, and good faith of persons who, before knowing that a child whose legal action regarding the determination of paternity has been successful also has claims on the inheritance at issue, had already taken possession of the assets of the probate estate and disposed of them, or had received them as a gift from the decedent before his or her death, are already protected by the legislation regulating succession.

2. 2. 11. Criminal Law Cases

The Inclusion of a Sanction for a Minor Offence in a Penalty Imposed for a Criminal Offence

By Decision No. U-I-24/10, dated 19 April 2012, the Constitutional Court assessed the constitutional validity of a legal provision regarding the inclusion of a sanction imposed on a person who committed a minor offence in minor offence proceedings that have already been halted with legal finality, in a subsequently imposed sentence for a criminal offence that also included elements of the minor offence. The request for the review was issued by a court which was of the opinion that the cited provision violated Article 31 of the Constitution and the first paragraph of Protocol No. 7 to the European Convention on Human Rights and Fundamental Freedoms, because it enabled double punishment of a person who committed a minor offence if such act was simultaneously defined as a minor offence and a criminal offence.

The Constitutional Court explained that both Article 31 of the Constitution and the first paragraph of Protocol No. 7 to the mentioned Convention provide for substantively the same right – the prohibition of a retrial in the same matter *(ne bis in idem)*. It stated that Article 31 of the Constitution is to be interpreted as prohibiting the prosecution, trial, conviction, or punishment of an individual for a second criminal offence if such derives from facts which are identical or essentially the same as those that were the factual basis of a previous criminal offence for which criminal proceedings had been halted with legal finality or for which a final judgment of rejection, conviction, or acquittal had been issued. Therefore, a court may not adopt a second decision on the merits against the same person for a criminal offence regarding which there already exists a final judicial decision *(res iudicata)* or that it may not punish the same person for the same criminal offence twice. In principle, this safeguard must also be guaranteed when minor offence proceedings have already been initiated and concluded with legal finality before the initiation of criminal proceedings against an individual, provided that the nature of the act and the severity of the sanction prescribed for the minor offence imply that it was in fact criminal conduct with the character of a 'criminal offence' and it follows from the description of the minor offence that it was based on the same historical event.

The Constitutional Court adopted the decision that the challenged statutory provision can only be interpreted in a manner consistent with the Constitution if its use is permitted in cases where minor offence proceedings against an individual were concluded with legal finality and in criminal proceedings regarding the same historical event the court finds that the criminal offence is not derived from facts which are identical or essentially the same as those that were the basis for the minor offence and, therefore, that it can be concluded that the minor offence and the criminal offence are essentially two different matters. A different interpretation of this statutory provision would namely constitute an interference with the *ne bis in idem* principle. The sentence served or fine paid by the defendant for the minor offence is included in the sentence imposed for the criminal offence that also has elements of the minor offence, provided that such does not entail a retrial for essentially the same criminal conduct. The decision whether in individual proceedings a court has decided in accordance with the *ne bis in idem* principle can only be a matter of the individual proceedings, and not a matter of a constitutional review of the challenged statutory provision. The Constitutional Court therefore established that the challenged statutory provision was not inconsistent with the Constitution.

The Deportation of an Alien and the Right to Family Life

By Decision No. Up-690/10, dated 10 May 2012, the Constitutional Court abrogated an order by which the Supreme Court had rejected the complainant's request for an extraordinary mitigation of a sentence, and remanded the case to the same court for new adjudication. The complainant based his request for the extraordinary mitigation of the sentence on the fact that he had been living for a long period of time in extramarital union with a Slovene citizen, in which a child, a Slovene citizen, was born. He claimed that the secondary sanction of deportation would prevent him from exercising his parental right, while the execution of such sanction would completely separate him from his family.

In the case at issue, the constitutional review was based on the starting point that the state is obliged to ensure the special protection of family and children. As regards the criteria adopted by the European Court of Human Rights and which also proceed from the legal order of the European Union, when imposing a sentence entailing the deportation of an alien, as well as when deciding on a request for the extraordinary mitigation of such sentence, the courts must take into consideration certain circumstances of a personal nature and ensure that by their decision they do not excessively interfere with the content of the right to one's family life. The essence of this right is that parents and children live together in a union, which enables them to enjoy this right mutually. The position of the Supreme Court according to which the complainant's paternity in the Republic of Slovenia is not a new circumstance of a personal nature which the court should have taken into consideration when deciding on the extraordinary mitigation of a sentence of deportation, due to the fact that when imposing the sentence the Court had already taken into consideration that the complainant was the father of a three-year old child living with his mother in Lithuania, violates the complainant's right to family life (Articles 53, 54, and 56 of the Constitution). According to the Constitutional Court, this position also entails a violation of the right to family life that his daughter, who lives in the Republic of Slovenia, enjoys.

The Examination of Prosecution Witnesses in Minor Offence Proceedings

By Decision No. Up-1293/10, dated 21 June 2012, the Constitutional Court decided on a constitutional complaint against a judgment of a local court, by which it rejected a request for judicial protection against a decision of a minor offence authority, by which the complainant

had been found guilty of committing three minor offences against public order and peace and against traffic safety. The Constitutional Court stressed that the provision of Article 29 of the Constitution on judicial guarantees in criminal proceedings is special in relation to rights stemming from Article 22 (the equal protection of rights) and Article 23 of the Constitution (the right to judicial protection). The stated judicial guarantees together constitute a broader concept of a fair trial and need to be, in accordance with the established view of the Constitutional Court, also guaranteed in minor offence proceedings. Equally, in accordance with the position of the European Court of Human Rights, an individual has to be ensured the possibility to challenge a decision on a minor offence adopted by an administrative (minor offence) authority, in respect of the guarantees under Article 6 of the European Convention on Human Rights and Fundamental Freedoms, which guarantees the right to a fair trial.

The Constitutional Court established that the judgment of the local court had only been based on the challenged decision on the minor offence and on an official note about the minor offences report that included a record of the facts and circumstances as they were directly perceived by the police officer and an eyewitness, or as the police officer had verbally related them to the minor offence authority. The evidentiary value of the official note therefore indirectly resulted from the statements of two witnesses who were present at the scene. The court rejected the complainant's motion for their examination on grounds that the factual basis had already been correctly established in expedited proceedings before a minor offence authority or, for that matter, that there existed no reason why the court should not accept the statement of the police officer as an official that had personally perceived the minor offences. Thus, the complainant was unable to examine the witnesses in proceedings in court and challenge their credibility.

In its reasoning, the Constitutional Court underlined that one of the guarantees of a fair trial is the right to examine prosecution witnesses, therefore in cases in which the defendant is not able to exercise his right to examine prosecution witnesses, the judgment of conviction may not be exclusively or to a decisive extent based on their statements. It concluded that the inability to exercise this judicial guarantee provided for in point (d) of the third paragraph of Article 6 of the mentioned European Convention also represents a violation of the right to a defence provided for in Article 29 of the Constitution. Therefore, it abrogated the challenged judgment and remanded the case to the court for new adjudication.

Constitutional Guarantees in Extradition Procedures

By Decision No. Up-402/12, U-I-86/12, dated 5 July 2012, the Constitutional Court abrogated the orders of two courts by which it had been decided that the conditions for the complainant's extradition to the Republic of Belarus, based on a decision on detention issued by the Belarus national prosecution service, had been fulfilled. The Constitutional Court stressed that, in accordance with Article 125 of the Constitution, courts are bound by the Constitution and laws when deciding. Therefore, also in proceedings for the extradition of defendants and convicted persons they have to interpret provisions in conformity with the Constitution and may not adopt positions which entail a violation of the human rights and fundamental liberties of an individual guaranteed by the Constitution.

In accordance with Article 20 of the Constitution, among the conditions that have to be taken into consideration when deciding on detention by which the right to personal liberty, enshrined in Article 19 of the Constitution, is limited, the requirement that a judicial decision be issued is essential, because it is precisely an independent judge who is to impartially evaluate

whether the condition of the existing reasonable cause for suspicion and the requirement of the absolute necessity of the limitation of the right to personal liberty are fulfilled. The express requirement that a judicial decision on detention be issued cannot be overlooked merely because it was established that other conditions for detention have been fulfilled.

As the extradition proceedings were being carried out on the basis of a request to which the decision on detention of the National Prosecution Service of Belarus had been attached, the Constitutional Court explained that the constitutionally consistent explanation of the term 'decision on detention' within the context of extradition proceedings involving defendants and convicted persons cannot entail an individual act on detention which has not been issued by a court. Regardless of the legal regulation and denomination in a particular legal order, it cannot entail an act of an authority operating within the framework of the state prosecutor's office, i.e. one of the parties to the criminal proceedings that at the same time acts in the capacity of the state and which is not an independent and impartial bearer of judicial power. Therefore, the Constitutional Court adopted the decision that the courts' orders that allowed the extradition of the complainant violated his right to personal liberty and thus abrogated them and remanded the case to the court of first instance for new adjudication.

The Special Protection of a Minor Defendant

By Decision No. U-I-219/12, Up-834/12, dated 19 December 2012, the Constitutional Court established that the orders of the regular courts on the prolongation of detention violated the minor complainant's right to personal liberty. The court of first instance namely imposed the corrective measure of placement in a correctional home and at the same time prolonged the detention until the order was final or until the corrective measure was executed. The Higher Court rejected the complainant's appeal. The Constitutional Court decided that when deciding on the detention of the complainant the courts did not take into account the requirements stemming from the second paragraph of Article 19 of the Constitution, namely that no one may be deprived of his liberty except in such cases and pursuant to such procedures as are provided by law. For instances when a corrective measure is imposed on a minor, the provisions of the Code of Criminal Procedure do not provide for the prolongation of detention, meaning that by adopting the challenged decisions the courts violated the complainant's right to personal liberty enshrined in the first paragraph of Article 19 of the Constitution. As the challenged orders ceased to be in force, the Constitutional Court limited its decision to establishing a violation of the right to personal liberty.

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

In its Annual Reports, the Constitutional Court repeatedly draws attention to due respect for decisions adopted pursuant to Article 48 of the Constitutional Court Act, i.e. declaratory decisions. The Constitutional Court adopts such when it 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. In a declaratory decision, the Constitutional Court determines a time limit by which the legislature or other authority which issued such unconstitutional or illegal act must remedy the established unconstitutionality or illegality. The constitutional principles of a state governed by the rule of law (Article 2 of the Constitution) and the principle of the separation of powers (the second paragraph of Article 3 of the Constitution) require the competent issuing authority to respond to a declaratory decision of the Constitutional Court and remedy the declared unconstitutionality or illegality.

At the end of 2012, there remained four unimplemented Constitutional Court decisions by which statutory provisions were found to be unconstitutional and five Constitutional Court decisions by which unconstitutionalities or illegalities of regulations of local communities were established. The competence to remedy unconstitutionalities of acts lies with the legislature, while individual municipalities must take action when local regulations are unconstitutional. It should be noted that in several of its decisions by which the unconstitutionality or illegality of challenged regulations were established 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 to the proceedings. 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. Furthermore, in 2012, a time limit expired for the elimination of the unconstitutionality of three Constitutional Court decisions, on which the legislature has not yet responded with the adoption of appropriate legislation. By Decision No. U-I-156/08, dated 14 April 2011 (Official Gazette of the Republic of Slovenia, No. 34/11), the Constitutional Court assessed that due to their inconsistency with the principle of the precision and clarity of regulations (Article 2 of the Constitution), two decisions on higher education are unconstitutional, because the public service of providing higher education is not defined in the Act and it is therefore not clear whether extramural studies are a part of this public service or not. The time limit for the elimination of the established unconstitutionality expired in February 2012. By Decision No.

U-I-257/09, dated 14 April 2011, the Constitutional Court decided that the provisions of the Energy Act that leave the regulation of network charges to an implementing regulation are inconsistent with the Constitution. Network charges are public charges and therefore, in accordance with Article 147 of the Constitution, they must be determined by law. The one-year time limit for the elimination of the unconstitutionality expired in May 2012. In July 2012 the time limit for the elimination of the unconstitutionalities of the Parliamentary Inquiries Act and of the Rules of Procedure on Parliamentary Inquiries expired, which the Constitutional Court, by Decision No. U-I-50/11, dated 23 June 2011 (Official Gazette of the Republic of Slovenia, No. 55/11), found to be inconsistent with the Constitution as they fail to regulate a procedural mechanism that would ensure 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.

With regard to the regulations of municipalities, it has to be noted that Decision of the Constitutional Court 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 establishment of inconsistency of certain municipal statutes with the Local Self-Government Act as these statutes did not provide that representatives of the Roma community be included as members of the respective municipal councils, still remains partly unimplemented. While the municipalities concerned have mainly eliminated the established illegality of their statutes, the Grosuplje Municipality has still not responded to the Decision of the Constitutional Court. In accordance with the Act Amending the Local Government Act, adopted in 2009, 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.

For a long period of time, four decisions of the Constitutional Court have remained unimplemented by which the municipalities were ordered 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 actually nationalised private plots of land without a legal basis and without having acquired them beforehand by means of a legal transaction or an expropriation procedure. Already in 2005, Decision No. U-I-21/04, dated 9 June 2005, was adopted (Official Gazette of the Republic of Slovenia, No. 59/05, and OdlUS XIV, 48), by which the unconstitutionality of the Ordinance on the Categorisation of Local Roads in Dobrepolje Municipality was established. The time limit for the elimination of this unconstitutionality expired six months after the publication of the decision in the Official Gazette. In 2008, by Decisions No. U-I-42/06, dated 20 March 2008 (Official Gazette of the Republic of Slovenia, No. 33/08, and OdlUS XVII, 14), and No. U-I-304/06, dated 15 May 2008 (Official Gazette of the Republic of Slovenia, No. 53/08, and OdlUS XVII, 18), the Ordinance on the Categorisation of Local Roads of the Ljubljana Urban Municipality was found to be unconstitutional. These inconsistencies with the Constitution should also have been remedied in six months after the publication of the Decisions in the Official Gazette. The time limit for the 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), by which the Constitutional Court established the unconstitutionality of the Ordinance on the Categorisation of Local Roads in Ljubno Municipality, expired already in 2010.

2. 4. International Activities of the Constitutional Court in 2012

Contemporary national legal systems of individual states are to an ever greater extent influenced by regional international organisations, especially by the law created in the framework of such organisations and the Slovene legal system is no exception. Due to the ever increasing Europeanisation and internationalisation of national law, it is no surprise that in its decisions also the Constitutional Court of the Republic of Slovenia must increasingly take into account the international dimension, in particular the legal system of the European Union and the case law of the European Court of Human Rights. In addition, other national legal systems and the case law of foreign courts play an increasingly important role. Consequently, the Constitutional Court endeavours to maintain a continuous mutual exchange of experiences with courts from other countries as well as international courts and to participate in major international events in its sphere of work.

In January 2012, the President of the Constitutional Court thus attended the annual session of the European Court of Human Rights in Strasbourg marking the opening of the judicial year. In addition, his participation at the preparatory meeting for the XVI Congress of the Conference of European Constitutional Courts in Vienna, at which the theme of the Congress was decided, i.e. The Co-operation of Constitutional Courts in Europe – the Current Situation and Perspectives, should be mentioned. Judges of the Constitutional Court also attended the 50th Anniversary of the Constitutional Court of Turkey, an international conference commemorating the 20th anniversary of the Constitutional Court of Albania, the festivities marking the beginning of the third judicial year of the Constitutional Court of Kosovo, the international conference of European judges in Washington, and a meeting of judges to mark the 60th anniversary of the European Court of Justice.

Last year, the Constitutional Court of the Republic of Slovenia hosted official visits by three delegations of foreign Constitutional Courts. April marked the first official visit by a delegation from the Constitutional Court of the Russian Federation. In official discussions the judges of both courts exchanged experiences in the field of constitutional review and its organisation as well as regarding the issue of the functioning of both courts, with a special focus *inter alia* on the relationship between national laws and treaties. The visit of a delegation from the Constitutional Court of the Republic of Albania in June provided an opportunity for the further promotion and deepening of the bilateral contacts established in 2011. In addition to exchanging experiences and the presentation of important decisions recently adopted by the two courts, the judges also discussed the relationship between constitutional courts and the European Court of Human Rights. In the second half of the year a delegation from the

Constitutional Court of the Republic of Macedonia paid an official visit to the Constitutional Court of the Republic of Slovenia. In official discussions, the judges discussed *inter alia* the issue of constitutional complaints and the role of constitutional courts in the application of international acts and agreements.

In March, the judges of the Constitutional Court of the Republic of Slovenia went on an official visit to the Constitutional Court of the Federal Republic of Germany. This meeting, rich in content, offered an opportunity to discuss problems regarding constitutional complaints, the protection of individuals in instances involving the direct effect of statutory provisions, and the relationship between the European Court of Justice and the European Court of Human Rights, on the one hand, and national constitutional courts, on the other. In April, a delegation from the Constitutional Court of the Republic of Slovenia officially visited the Constitutional Court of the Republic of Kosovo for the first time. Bilateral contacts between these Constitutional Courts were established during the visit and the judges exchanged experiences regarding constitutional review and its organisation, as well as the difficulties connected to the functioning of both courts, focussing in particular on the specific position of the Constitutional Court of the Republic of Kosovo, whose membership also includes three representatives of the international community. The judges of the Constitutional Court of the Republic of Slovenia also continued the tradition of meeting with their colleagues from the Constitutional Court of the Republic of Croatia. At their meeting in Zagreb they discussed in particular the pilot judgment procedure of the European Court of Human Rights and the role of constitutional courts in the review of the constitutionality of referenda and questions proposed for referenda.

In September, the Constitutional Court of the Republic of Slovenia also organised a working meeting with the Slovene Members of the European Court of Human Rights and the Court of Justice of the European Union. In discussions with Dr. Boštjan M. Zupančič – judge of the European Court of Human Rights, Dr. Marko Ilešič – judge of the Court of Justice of the European Union, Dr. Verica Trstenjak – advocate-general at the Court of Justice of the European Union, and Mr. Miro Prek – judge of the General Court of the European Union, the constitutional judges addressed issues involving the protection of human rights on the basis of the Constitution, the European Convention on Human Rights, and the Charter of Fundamental Rights of the European Union, the right to a trial without undue delay, and developments in the case law of the respective courts.

The following should also be mentioned within the framework of the Court's international activities: the attendance of the Secretary General at the 5th Conference of Secretaries General of Constitutional Courts or Courts with Equal Jurisdiction, as well as the attendance of legal advisors at a seminar on the European Charter of Fundamental Rights organised by the Fundamental Rights Agency, the 11th meeting of the Joint Council of the Venice Commission on Constitutional Justice in Brno, a seminar on the role of constitutional courts in the framework of the Eastern Partnership in Batumi, and a European Judicial Training Network seminar regarding the transfer of evidence in criminal matters between EU Member States in Sofia. A legal advisor of the Constitutional Court also successfully completed a one-month study visit to the European Court of Human Rights.

2. 5. Summary of Statistical Data for 2012

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

The Constitutional Court examines constitutional complaints in the following panels:

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 31 December 2011	Cases Received in 2012	Cases Resolved in 2012	Cases Pending as of 31 December 2012
Up	787	1,203	1,287	703
U-I*	278	324	350	252
P	12	13	19	6
U-II	0	2	2	0
R-I**	165	187	206	79
Rm	0	0	0	0
Mp	0	1	0	1
Ps	0	1	1	0
Op	0	0	0	0
TOTAL	1,242	1,731	1,865	1,041

Table 1: Summary Data on All Cases in 2012

* The 353 U-I cases resolved include 14 joined applications.
** The total number amounted to 611 R-I cases received, 424 of which were transferred to another register (Up or U-I), while 187 remained in the R-I register. 697 R-I cases were resolved, 491 of which were resolved by transfer to another register, while 206 cases remained in the R-I register.

Panel	Cases Pending as of 31 December 2011	Cases Received in 2012	Cases Resolved in 2012	Cases Pending as of 31 December 2012
Criminal Law	140	267	314	93
Administrative Law	252	460	445	267
Civil Law	395	476	528	343
TOTAL	787	1,203	1,287	703

Table 2: Summary Data Regarding Up Cases in 2012

Year	2009	2010	2011	2012	Total
U-I		5	40	207	252
P	/			6	6
Up	/		54	649	703
R-I				79	79
Mp				1	1
TOTAL	/	5	94	944	1,041

Table 3: Pending Cases According to Year Received as of 31 December 2012

2. 5. 1. Cases Received

Year	U-I	Up	P	U-II	R-I	Ps	Mp	Rm	Total
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	1,358	20	3	165	/	/	/	1,869
2012	324	1,203	13	2	187*	1	1	/	1,731
2012/2011	0.3%	-11.4%	-35.0%	-33.3%	13.3%	/	/	/	-7.4%

Table 4: Cases Received According to Type and Year

* The total number amounted to 611 R-I cases received, 424 of which were transferred to another register (Up or U-I), while187 remained in the R-I register.

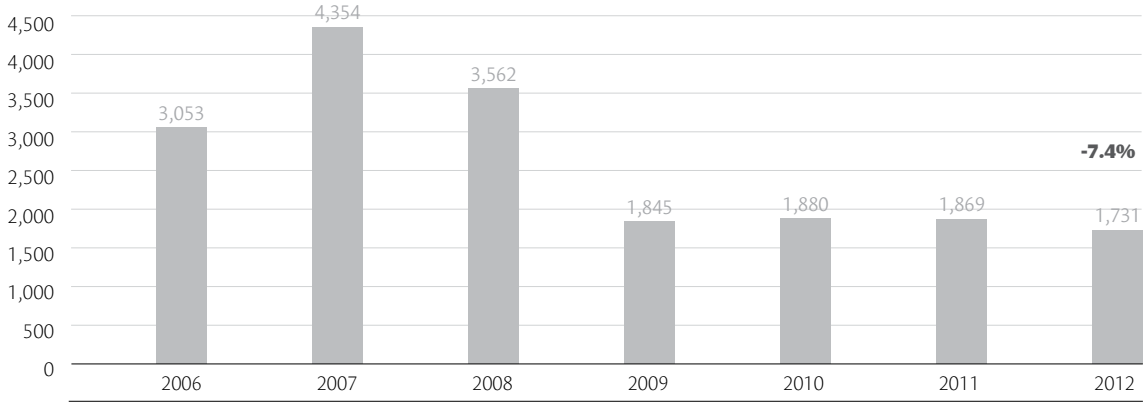


Figure 1: Total Number of Cases Received by Year

Figure 2: Distribution of Cases Received in 2012

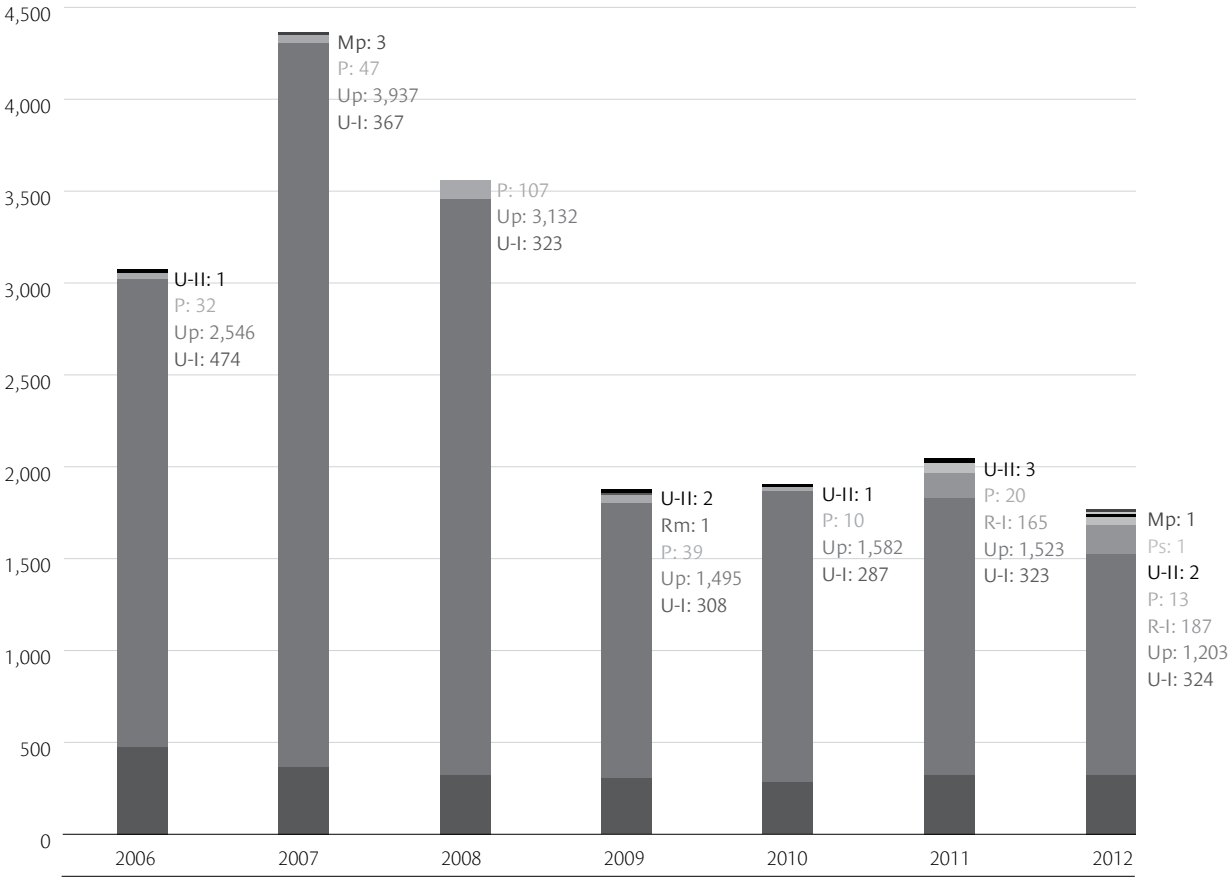


Figure 3: Distribution of Cases Received by Year

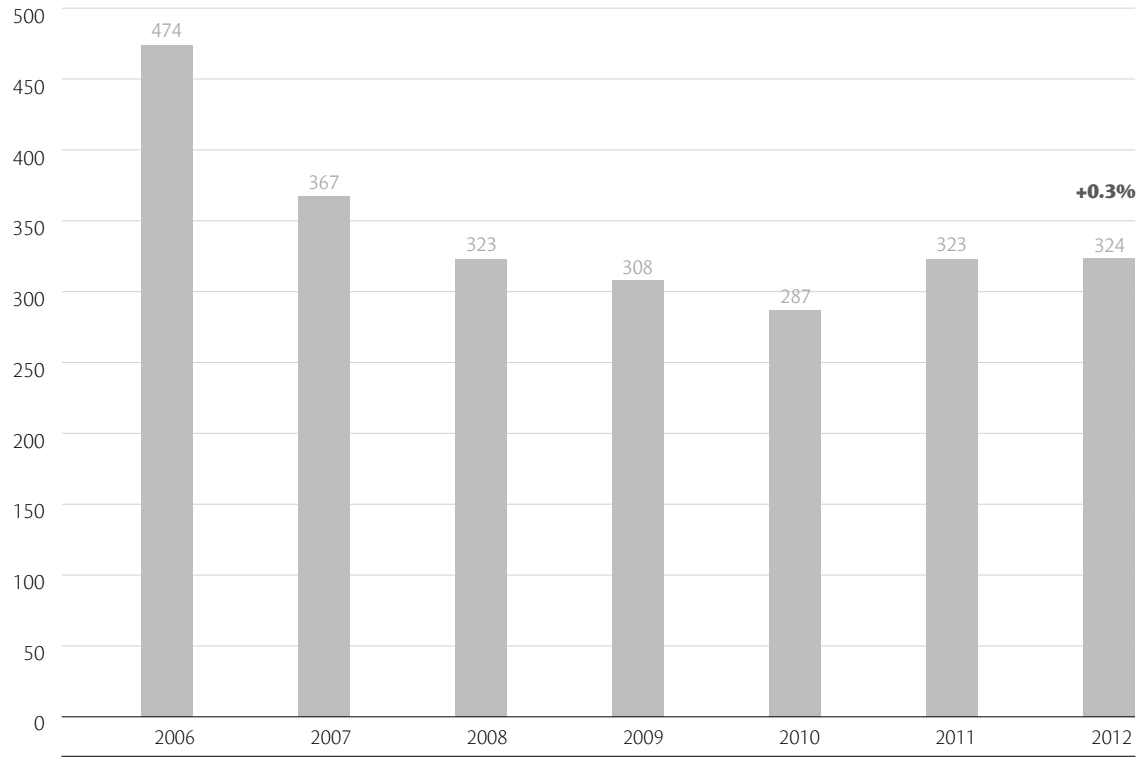


Figure 4: Number of U-I Cases Received by Year

Applicants Requesting a Review	Number of Requests Filed
Upravno sodišče Republike Slovenije (Administrative Court)	9
Okrajno sodišče v Grosupljem (Local Court in Grosuplje)	6
Ombudsman of the Republic of Slovenia	5
Deputy Groups of the National Assembly of the Republic of Slovenia	4
Zveza Svobodnih sindikatov Slovenije in drugi (The Association of Free Trade Unions of Slovenia and Others)	4
Delovno in socialno sodišče v Ljubljani (Labour and Social Court in Ljubljana)	3
Višje sodišče v Celju (Higher Court in Celje)	3
National Council of the Republic of Slovenia	2
National Assembly of the Republic of Slovenia	2
Information Commissioner	2
Government of the Republic of Slovenia	2
Mestna občina Ljubljana (Ljubljana Urban Municipality)	1
Okrajno sodišče v Celju (Local Court in Celje)	1
Okrajno sodišče v Šmarju pri Jelšah (Local Court in Šmarje pri Jelšah)	1
Policijski sindikat Slovenije (Police Trade Union of Slovenia)	1
Sindikat delavcev dejavnosti energetike Slovenije - SDE in drugi (Trade Union of Employees in the Energy Industry of Slovenia - SDE and Others)	1
Sindikat državnih organov Slovenije (Trade Union of State Authorities of Slovenia)	1
Sindikat kulturnih in umetniških ustvarjalcev RTV (Trade Union of Art Professionals at Radio-Television Slovenia)	1
Sindikat policistov Slovenije (Trade Union of Law Enforcement Officers)	1
Slovenska zveza sindikatov - Alternativa (Slovenian Association of Trade Unions - Alternativa)	1
Višje sodišče v Ljubljani (Higher Court in Ljubljana)	1
Višje sodišče v Mariboru (Higher Court in Maribor)	1
Vrhovno sodišče RS (Supreme Court of the Republic of Slovenia)	1
TOTAL	54

Table 5: Number of Requests for a Review Received in 2012 according to Applicant

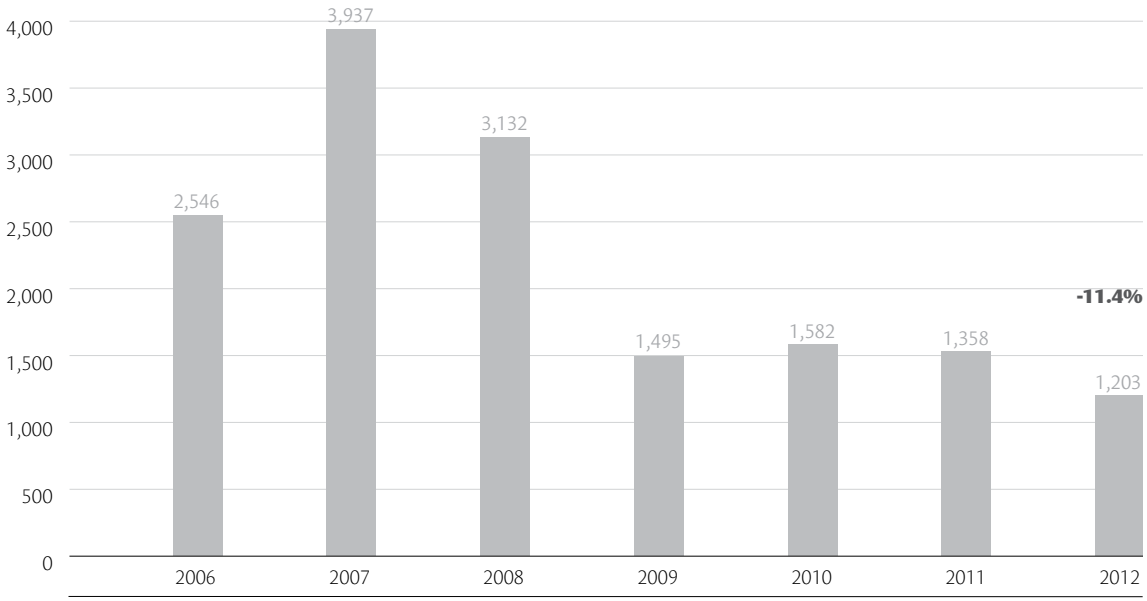


Figure 5: Number of Up Cases Received by Year

Year	Civil	Administrative	Criminal	Total
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	507	410	441	1,358
2012 Up	476	460	267	1,203
2012/2011	-6.1%	12.2%	-39.5%	-11.4%
2012 R-I*	47	67	73	187
2012 Up and R-I*	523	527	340	1,390
2012/2011 including R-I*	3.2%	28.5%	-22.9%	+2.4%

Table 6: Number of Cases Received according to Panel (Up, for 2012 Up and R-I are listed separately and combined)

* In addition to Up Cases Received, the second part of Table 6 also shows R-I cases, which are considered by the panels as well. This comparison applies to the work of the panels only, as in the total of all cases R-I cases are shown separately. A direct comparison between 2012 and 2011 is not possible as the R-I register was implemented at the end of 2011.

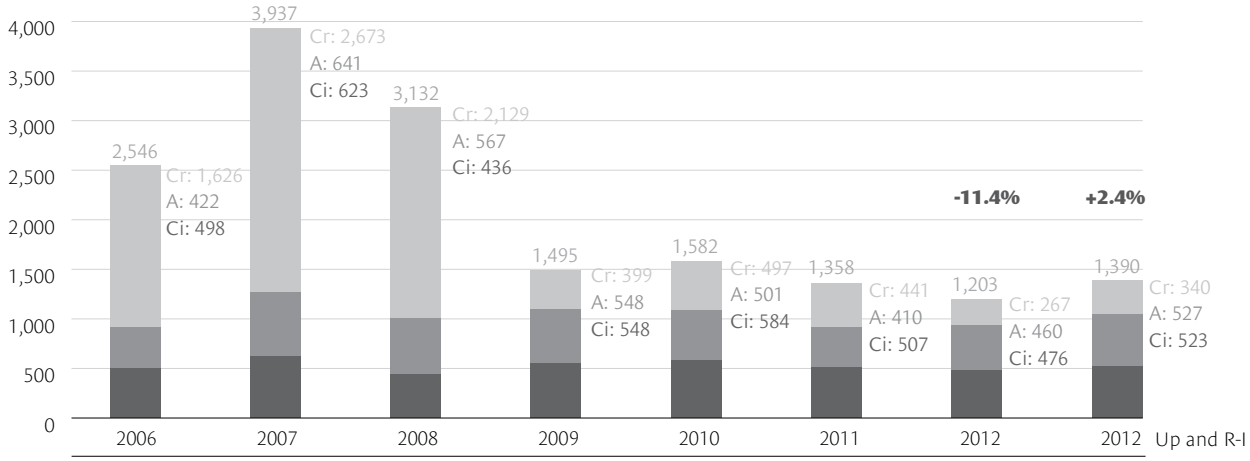
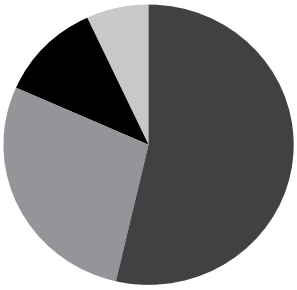


Figure 6: Number of Cases Received according to Panel (Up Cases, and Up and R-I Cases separately)

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
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
2012	95	20	12	50	/

Table 7: Legal Acts Challenged by Year



Laws and Other Acts of the National Assembly: 95; 53.7%

Ordinances and Other Acts of Self-Governing Local Communities 50; 28.2%

Decrees and Other Acts of the Government: 20; 11.3%

Rules and Other Acts of Ministries: 12; 6.8%

Figure 7: Distribution of Legal Acts Challenged (U-I Cases Received in 2012)

The Acts Challenged Multiple Times	Number of Cases
Fiscal Balance Act	41
Civil Procedure Act	39
Court Fees Act	17
Judicial Review of Administrative Acts Act	16
Free Legal Aid Act	16
Enforcement and Securing of Civil Claims Act	12
Criminal Procedure Act	12
Financial Social Assistance Act	9
Civil Servants Act	8
Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act	6
Minor Offences Act	6
Additional Intervention Measures for 2012 Act	5
Constitutional Court Act	5
Gaming Act	5
Copyright and Related Rights Act	5
General Administrative Procedure Act	4
Employment Relationship Act	4
Deputies Act	4
Pension and Disability Insurance Act	4
Non-litigious Civil Procedure Act	3
Land Register Act	3
Organisation and Financing of Education Act	3
Personal Income Tax Act	3
Prevention of Restriction of Competition Act	3

Table 8: Acts Challenged Multiple Times in the Cases Received in 2012

Type of Dispute (Up Cases)	Received in 2012	Percentage of All Up Cases	Received in 2011	Change 2011/2012
Civil Law Litigations	290	24.1%	331	-12.4%
Other Administrative Disputes	166	13.8%	143	16.1%
Minor Offences	138	11.5%	316	-56.3%
Criminal Cases	129	10.7%	126	2.4%
Labour Law Disputes	125	10.4%	95	31.6%
Execution of Obligations	75	6.2%	82	-8.5%

Social Law Disputes	54	4.5%	49	10.2%
Taxes	42	3.5%	27	55.6%
Commercial Law Disputes	33	2.7%	39	-15.4%
Non-Litigious Civil Law Proceedings	31	2.6%	20	55.0%
Matters concerning Spatial Planning	28	2.3%	25	12.0%
Denationalisation	23	1.9%	44	-47.7%
Proceedings related to the Land Register	15	1.2%	12	25.0%
Succession Proceedings	13	1.1%	5	160%
Insolvency Proceedings	10	0.8%	10	0.0%
Civil Status of Persons	10	0.8%	15	-33.3%
Elections	8	0.7%	11	-27.3%
Other	7	0.6%	1	600.0%
No Dispute	4	0.3%	2	100.0%
Registration in the Companies Register	2	0.2%	5	-60.0%
TOTAL	1,203	100.0%	1,358	-11.4%

Table 9: Up Cases Received according to Type of Dispute

Initiators of the Dispute (P)	Filed
Tax Administration of the Republic of Slovenia	1
Mestna občina Ljubljana (Ljubljana Urban Municipality)	1
Ministry of Infrastructure and Spatial Planning	1
Občina Jesenice (Jesenice Municipality)	1
Okrajno sodišče v Celju (Local Court in Celje)	1
Okrajno sodišče v Ormožu (Local Court in Ormož)	1
Policijska postaja Hrastnik (Hrastnik Police Station)	1
Policijska postaja Ljubljana Vič (Ljubljana Vič Police Station)	1
Policijska postaja Slovenj Gradec (Slovenj Gradec Police Station)	1
Policijska postaja Slovenska Bistrica (Slovenska Bistrica Police Station)	1
Postaja prometne policije Maribor (Maribor Traffic Police Station)	2
Tatjana Sitar	1
TOTAL	13

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

2. 5. 2. Cases Resolved

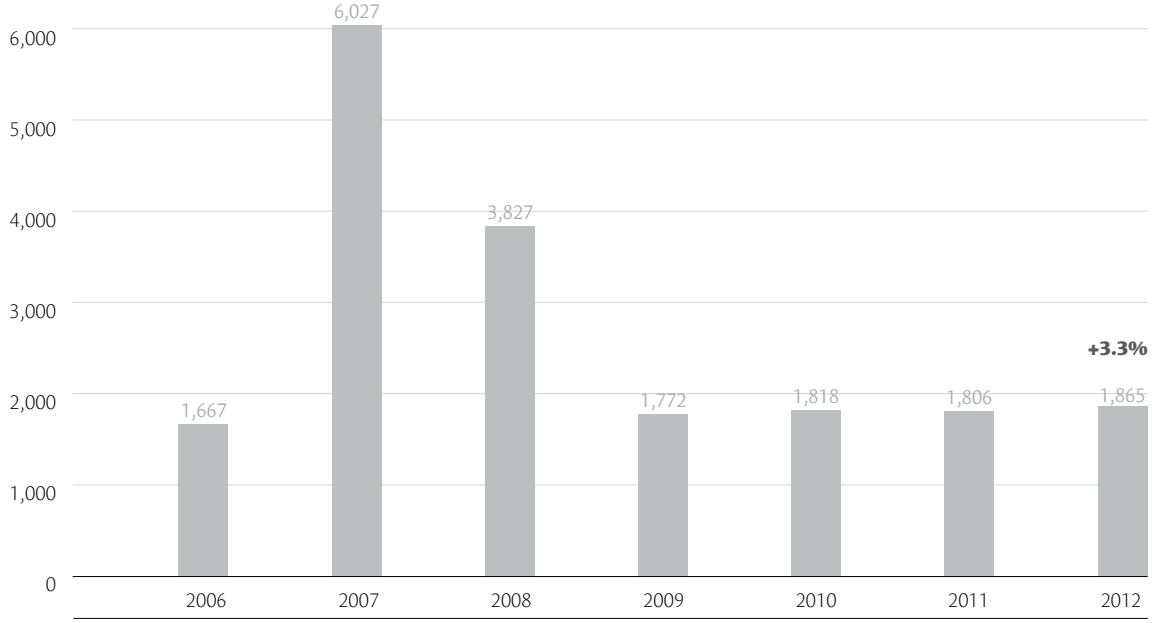


Figure 8: Number of Cases Resolved according to Year Resolved

Year	U-I	Up	P	U-II	Ps	Rm	Mp	R-I	Total
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
2012	350	1,287	19	2	1			206*	1,865
2012/2011	12.5%	-12.8%	18.8%	/	/	/	/	/	+3.3%

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

*R-I cases include only the cases resolved within the R-I register which were not transferred to another register.

Figure 9: Distribution of Cases Resolved in 2012

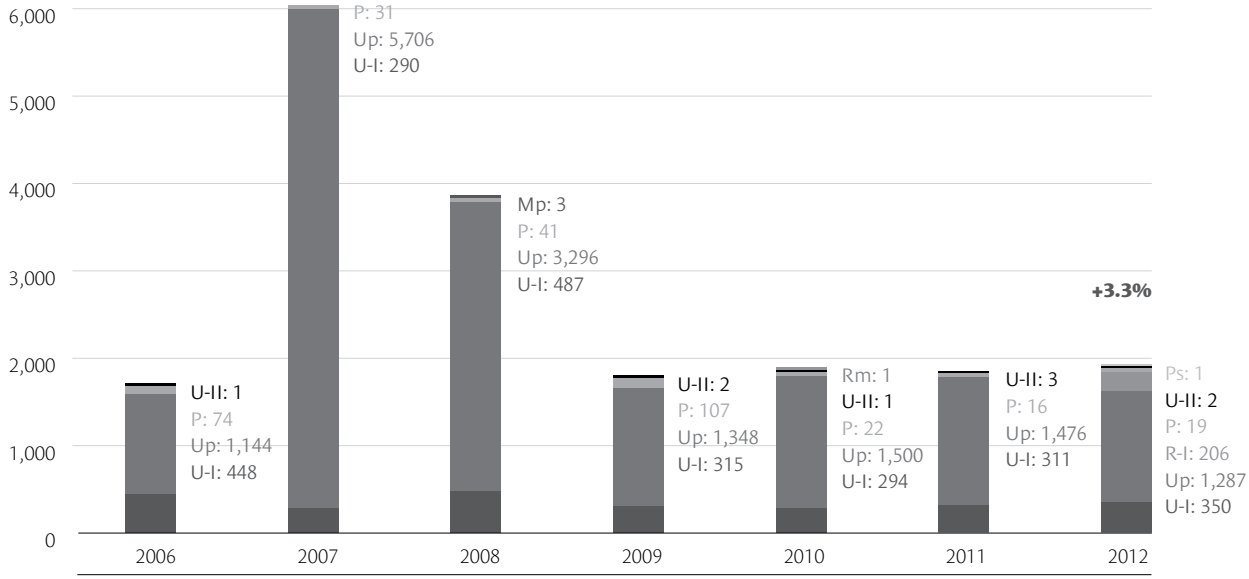


Figure 10: Distribution of Cases Resolved according to Type of Case and Year Resolved

Type of Resolution	2012	2011	2010	2009	2008	2007	2006
Abrogation of statutory provisions	6	8	8	5	4	10	18
Inconsistency with the Constitution – statutory provisions	2	3	4	2	4	2	4
Inconsistency with the Constitution and determination of a deadline – statutory provisions	1	8	7	14	18	11	15
Not inconsistent with the Constitution – statutory provisions	9	19	15	18	15	16	14
Inconsistency, abrogation, or annulment of provisions of regulations	22	30	6	11	6	12	18
Not inconsistent with the Constitution or the law – provisions of regulations	2	7	1	1	1	0	1
Dismissed	39	50	26	49	41	78	79
Rejected	187	205	185	223	360	116	89
Proceedings were stayed	82	9	4	10	17	28	32

Table 12: Number of U-I Cases Resolved according to Type of Resolution and Year

Year	Civil Law	Administrative Law	Criminal Law	Total
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
2012	528	445	314	1,287
2012/2011	+12.8%	+2.8%	-45.4%	-12.8%

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.

	Civil Law	Administrative Law	Criminal Law	Total
All R-I Cases	195	298	204	697
R-I Cases Resolved in the R-I Register	38	105	63	206
Up Cases Resolved	528	445	314	1,287
Up and R-I Cases	566	550	377	1,493
Compared to 2011	+20.9%	+27.0%	-34.4%	+1.2%

Table 14: Number of Up and R-I Cases Resolved, shown separately and combined, according to Panel (R-I cases resolved by the presumption that they had not been lodged)

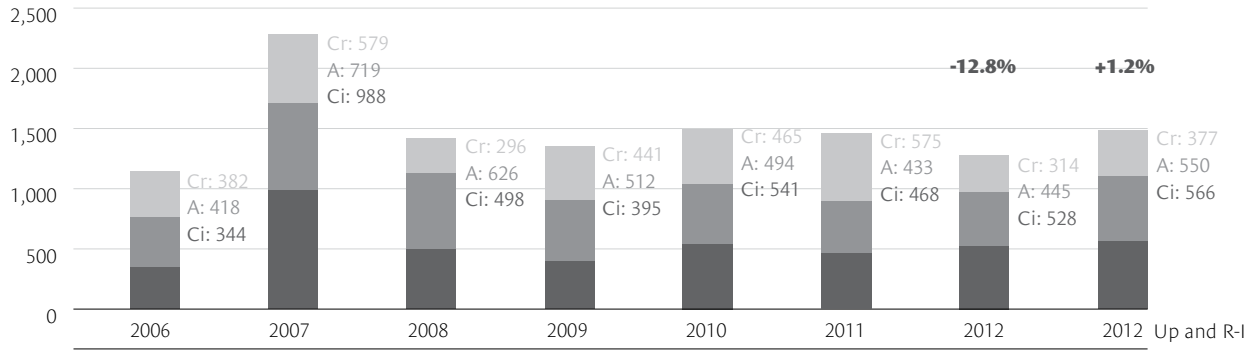


Figure 11: Distribution of Up Cases Resolved according to Panel and Year (the final column shows Up and R-I cases combined)

Cr = Criminal A = Administrative Ci = Civil

Type of Dispute	2012	Percentage in 2012	2011	Change 2011/2012
Civil Law Litigations	339	26.3%	297	14.1%
Criminal Cases	169	13.1%	162	4.3%
Other Administrative Disputes	148	11.5%	148	0.0%
Minor Offences	146	11.3%	412	-64.0%
Labour Law Disputes	114	8.9%	75	52.0%
Execution of Obligations	88	6.8%	82	7.3%
Social Law Disputes	50	3.9%	50	0.0%
Taxes	48	3.7%	37	29.7%
Matters concerning Spatial Planning	34	2.6%	20	70.0%
Commercial Law Disputes	31	2.4%	37	-16.2%
Denationalisation	29	2.3%	72	-59.7%
Non-litigious Civil Law Proceedings	26	2.0%	20	30.0%
Succession Proceedings	15	1.2%	11	36.4%
Insolvency Proceedings	13	1.0%	5	160.0%
Civil Status of Persons	11	0.9%	20	-45.0%
Proceedings Related to the Land Register	10	0.8%	8	25.0%
Elections	6	0.5%	12	-50.0%
Other	5	0.4%	0	/
No Dispute	4	0,3%	1	300.0%
Registration in the Companies Register	1	0.1%	7	-85.7%
TOTAL	1,287	100.0%	1,476	-12.8%

Table 15: Number of Up Cases Resolved according to Type of Dispute

Year	Up Cases Received	Up Cases Accepted for Consideration	Percentage of Up Cases Accepted	Up Cases Resolved	Up Cases Granted*	Up Cases Dismissed*
2012	1,203	47	3.9%	44	41	3
2011	1,358	26	1.9%	26	21	8
2010	1,582	74	4.7%	58	57	1
2009	1,495	58	3.9%	63	37	26
2008	3,132	78	2.5%	51	37	14
2007	3,937	52	1.3%	67	38	29
2006	2,546	96	3.8%	83	73	10

Table 16: Comparison of Up Cases Accepted in Proportion to the Up Cases Received and Up Cases Resolved, and Type of Resolution in the Up Cases Accepted

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

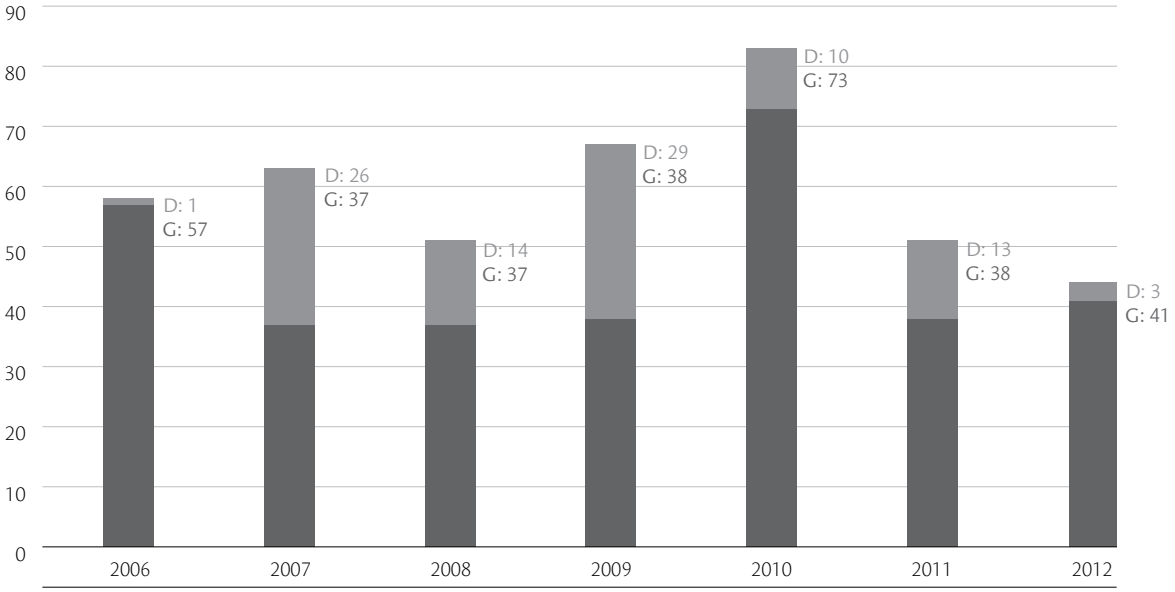


Figure 12: Distribution of Decisions in Up Cases Accepted according to Year Resolved

D = Dismissed G = Granted

Register	Average Duration in Days
U-I	246
Up	248
P	158
U-II	32
Rm	/
R-I	48
Mp	/
Ps	35
Op	/
TOTAL	188
TOTAL (excluding R-I)	246

Table 17: Average Duration in Days of Cases Resolved in 2012 according to Type of Case

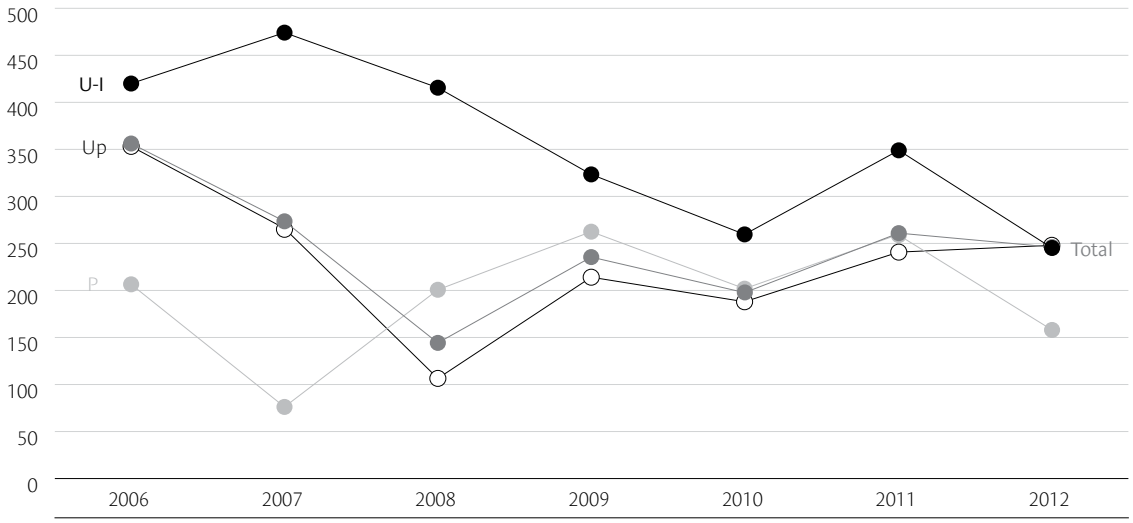


Figure 13: Average Duration in Days of Cases Resolved according to Type of Case and Year (excluding R-I cases)

Panel	2012	2011	Change 2012/2011
Civil Law	315	223	41.1%
Administrative Law	204	275	-25.7%
Criminal Law	198	231	-14.4%
TOTAL	248	240	3.t2%

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

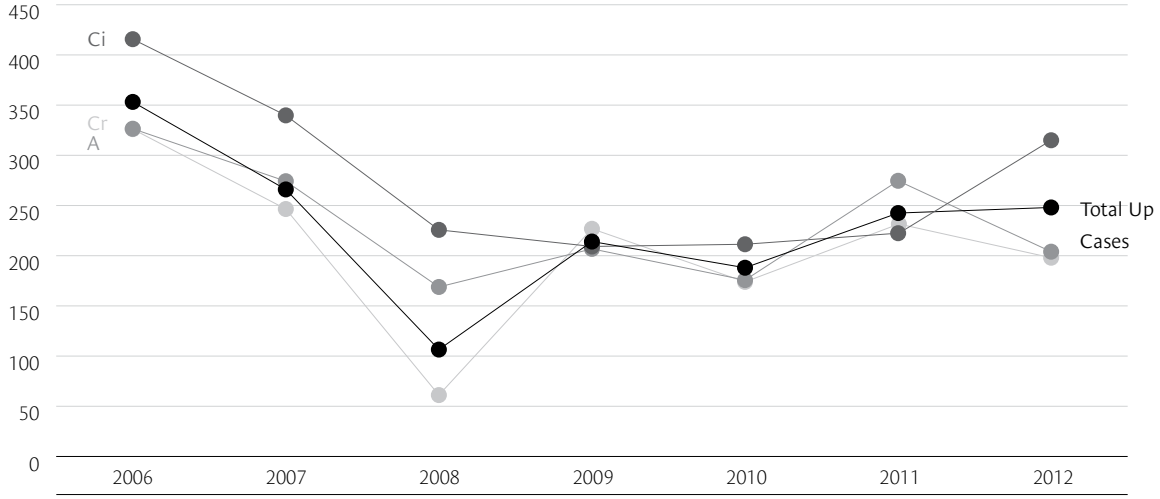


Figure 14: Average Duration in Days of Up Cases Resolved by Year (excluding R-I cases)

Cr = Criminal A = Administrative Ci = Civil

2. 5. 3. Unresolved Cases

Year / Register	2009	2010	2011	2012	Total
U-I		5	40	207	252
P	/			6	6
Up	/		54	649	703
R-I				79	79
Mp				1	1
TOTAL	/	5	94	944	1,041

Table 19: Unresolved Cases according to Year Received as of 31 December 2012

Register	Temporary Suspensions
U-I	4
Up	2
TOTAL	6

Table 20: Temporary Suspensions of Regulations and Individual Acts as of 31 December 2012

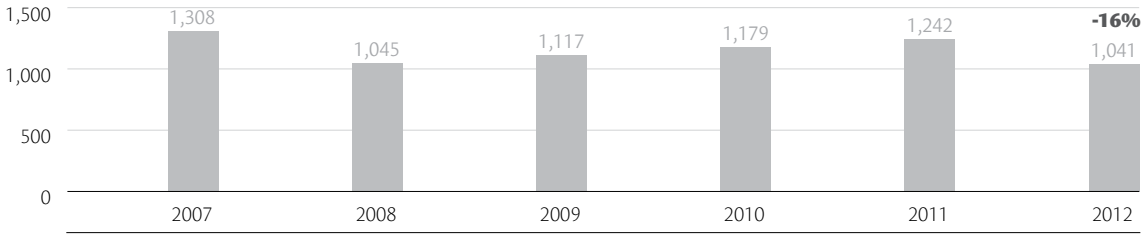


Figure 15: Number of Cases Pending at Year End

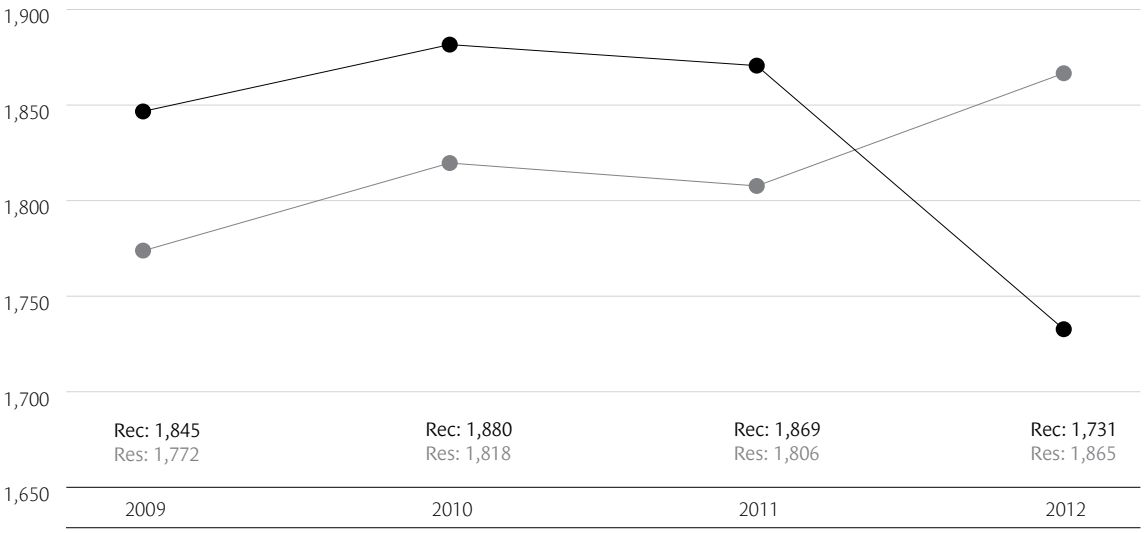


Figure 16: Comparison of Cases Received and Cases Resolved by Year

Rec = Received Res = Resolved

Register	Absolute Priority Cases	Priority Cases	Total
Up	10	190	200
U-I	29	22	51
P		6	6
R-I	2	8	10
Mp		1	1
TOTAL	41	227	268

Table 21: Priority Cases Pending as of 31 December 2012

2. 5. 4. Realisation of the Financial Plan

Year	Salaries	Material Costs	Capital Outlays	Total	Change from Previous Year
2008	3,718,255	740,324	97,739	4,556,318	
2009	3,868,412	637,501	150,063	4,655,976	2.2%
2010	3,902,162	684,842	164,438	4,751,442	2.1%
2011	3,834,448	715,479	12,949	4,679,417	-1.5%
2012	3,496,436	516,178	84,287	4,096,901	-12.4%

Table 22: Realisation of the Financial Plan by Year (in EUR)

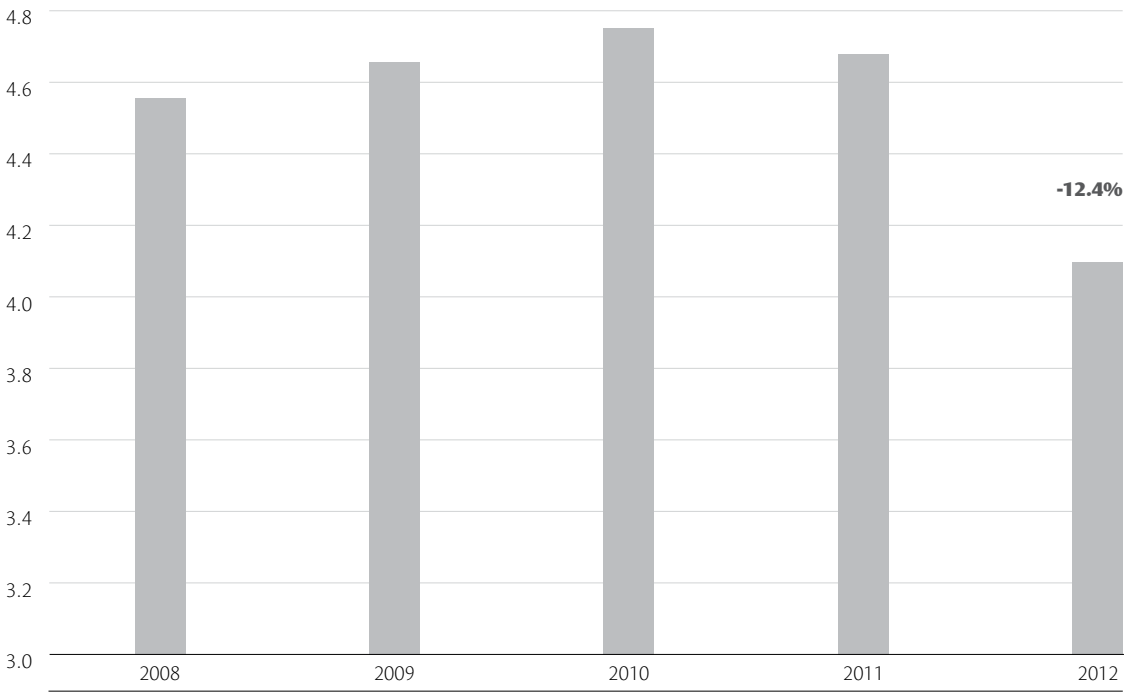


Figure 17: Realisation of the Financial Plan by Year (in EUR mil.)

Figure 18: Distribution of Expenditures in 2012

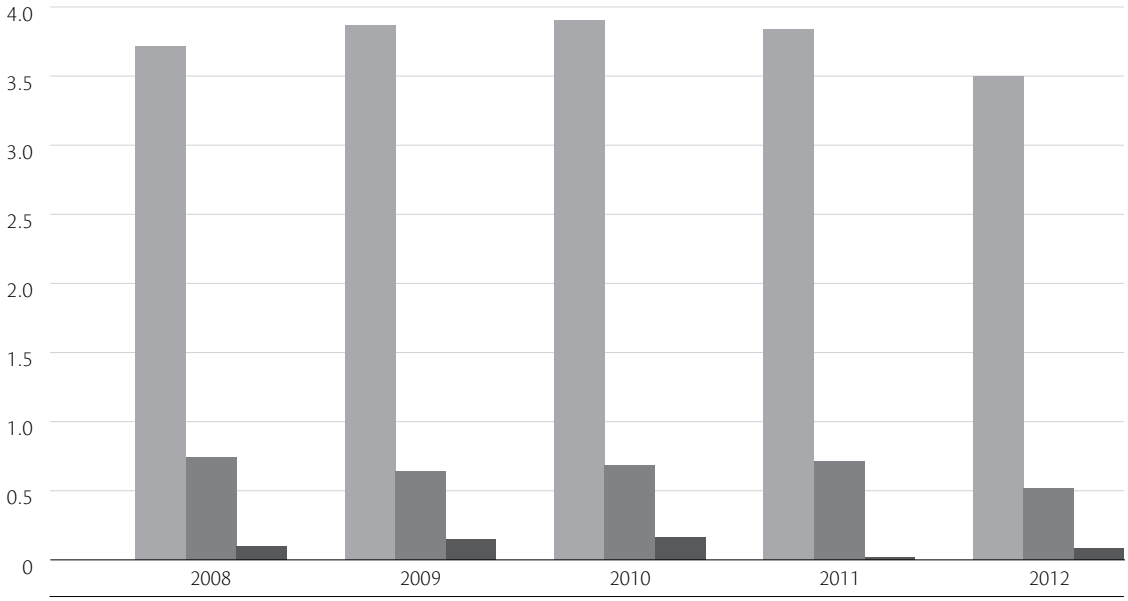


Figure 19: Distribution of Expenditures by Year (in EUR mil.)

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

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

Leonid Pitamic

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