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Constitutional Court of
the Republic of Slovenia

An Overview of the Work for 2013

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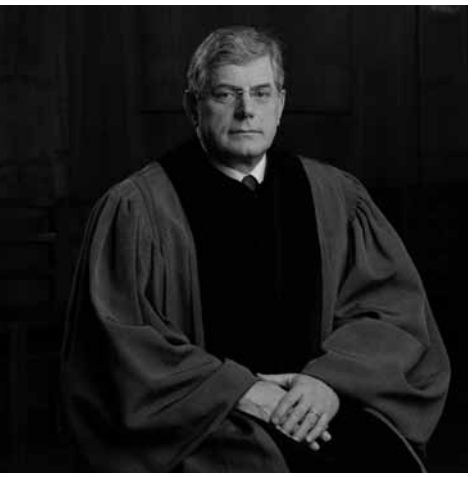
The Constitutional Court is the highest body of
the judicial power for the protection of constitutionality,
legality, human rights, and fundamental freedoms.

Constitutional Court Act, Article 1



Foreword by the President of the Constitutional Court

I would like to extend my warm greetings to everyone taking the time to read this Overview of the Work of the Constitutional Court for the year 2013. At the outset, I would like to stress that for the greater part of the year covered by the present Overview the Constitutional Court exercised its tasks under the Presidency of Prof. Dr. Ernest Petrič. I assumed the position of President on 11 November. However, the composition of the Constitutional Court, consisting of nine judges (five women and four men), has not changed during the year.

More important than statistics, which can certainly tell us a great deal if only we know how to read them, are the short presentations of the most important decisions of the Constitutional Court issued in the past year. The Overview is a kind of mirror. On one side of the mirror is the image of the Constitutional Court that is reflected in the number of resolved cases and, which is more important, in the significance of the constitutional issues (the substance) that were the subject of constitutional review. I leave the assessment of whether the Constitutional Court was successful to you – the readers of the Overview. Are you not satisfied? We at the Constitutional Court also wish more could have been done. We will therefore attempt to improve our achievements, but our abilities and capacities are subject to purely human limitations. On the other side of the mirror is a reflection of the attitude towards the Constitution of the legislature (the National Assembly), the Government, local communities, and ordinary courts. We must concern ourselves with both sides of the mirror. The side of the mirror that reflects the image of the Constitutional Court provides the answer to the question of whether human rights and freedoms and constitutional rights enjoy sufficient and effective constitutional protection. The other side answers the question of whether the bearers of authority take human rights and fundamental freedoms and constitutional rights seriously. Both sides are important.

The Constitutional Court is undeniably the highest body of judicial power for the protection of constitutionality and legality and the protection of human rights and fundamental freedoms. However, we must (or at least should) be aware that the Constitutional Court is not the only guardian of the Constitution and that it cannot and should not be its only guardian. It is merely its highest and ultimate guardian within the state, and it should be clear to us that it is not a political or a moral guardian, but a judicial one.

In its decisions, the Constitutional Court has emphasised several times that Slovenia is a constitutional democracy, hence a state in which the activities of the authorities are legally limited

by constitutional principles and human rights and fundamental freedoms. Within such a legal order, all state authorities, all three branches of power – the legislative, executive, and judicial branches – are obliged to respect the Constitution and exercise their powers in conformity with the Constitution. They all are thus also guardians of the Constitution.

The legislature must therefore be the first to respect the Constitution. The rights and obligations of citizens, the manner of exercising or restrictions of human rights and fundamental freedoms may only be prescribed by law. Laws are adopted by the legislature – the National Assembly. In accordance with the Constitution, the National Assembly is thus the first guardian of the Constitution, as the laws it adopts must be consistent with the Constitution. It is therefore extremely important that in the legislative procedure all constitutional dilemmas are clarified and that considerable attention is devoted to the issue of the constitutionality of draft legislation. The Government, which is the pinnacle of the executive branch of power, within which the most important duties are exercised by the state administration, has an equal responsibility to respect the Constitution. The Government is the most important holder of the right to propose new laws, which, of course, are prepared by the administration. Whether draft legislation is consistent with the Constitution should be the Government's fundamental concern. Obviously, the Government must respond to the situation in society, which at the moment is neither rosy nor easy, but complicated and hard. However, this response must always, also in such times, be consistent with the Constitution. We must always seek solutions that are consistent with the Constitution. Taking shortcuts or citing the public interest or urgent needs arising in times of crisis while neglecting constitutionality is not admissible. It is always possible to find a solution that will be consistent with the Constitution. If this statement were not true it would mean that something is wrong with the Constitution, or even worse, that human rights and fundamental freedoms can only be respected and exercised or ensured in times of prosperity, when we are doing well.

Ordinary courts have a very large and important role in ensuring respect for the Constitution (constitutionality). The Constitution states that they shall adjudicate in accordance with the Constitution and laws. Such entails, as the Constitutional Court has stressed several times in its decisions, that judges must constantly have the Constitution before their eyes, they must interpret and apply the law that needs to be applied in proceedings in accordance with the Constitution, and that in judicial proceedings particular consideration should be given to respect for human rights and fundamental freedoms. Ordinary courts are therefore the first and foremost guardians of constitutionality and the first and foremost "supervisors" of the legislature, as pursuant to the Constitution they are obliged to lodge a request before the Constitutional Court for a review of the constitutionality of an act or its individual pro-

visions that should be applied in proceedings when they are of the opinion that such are inconsistent with the Constitution.

Thereby I do not wish to say that the Overview reveals that the bearers of authority have completely abandoned their duty to respect the Constitution. I am convinced that the data in general do not evidence such a bad picture, particularly as far as the ordinary courts are concerned, as the number of abrogated judgments (court decisions) is small compared to the number of constitutional complaints filed. The above-said should serve as some sort of reminder that all bearers of authority, and not only the Constitutional Court, are responsible for respect for and the implementation of the Constitution. When referring to respect for the Constitution, I have in mind primarily the protection of and respect for human rights and fundamental freedoms. Let me rephrase the first indent of the Preamble to the United Nations' Universal Declaration of Human Rights by replacing the words "in the world" with the words "in Slovenia". The passage thus rephrased would read as follows: Recognition of the inherent dignity and of the equal and inalienable rights of all members of Slovene society is the foundation of freedom, justice, and peace in Slovenia. And the Preamble to our Constitution also states that it (the Constitution) is based on respect for fundamental human rights and freedoms.

Convinced that all of us who have various duties and powers within the bodies of the different branches of power are committed to respecting the common constitutional values, which are and must be our common aim, and furthermore convinced that we are also aware of this fact, I present to you, for review and assessment, this overview of the Constitutional Court for the year 2013, highlighting the "fruits of the work of the Constitutional Court".

Mag. Miroslav Mozetič

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

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

Mag. Miroslav Mozetič, President,

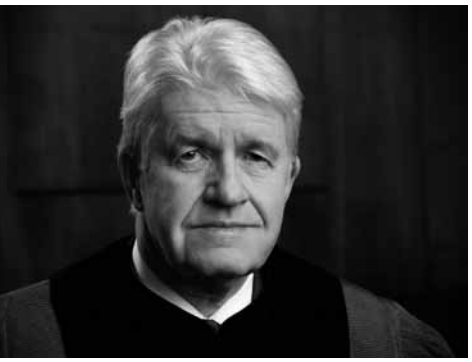
graduated from the Faculty of Law of the University of Ljubljana in 1976. Prior to that he had worked in the private sector, and in 1979 he passed the state legal examination. While working in the private sector he dealt with various legal fields, in particular with company law, labour law, and, mainly 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 while performing the office of secretary of the Assembly of the City of Ljubljana and the office of director of its legal department, 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. His master's thesis, entitled *Parlamentarna preiskava v pravnem redu Republike Slovenije* [Parliamentary Inquiry in the Legal System of the Republic of Slovenia], was published as a book (Uradni list Republike Slovenije, 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. He was Vice President of the Constitutional Court from 11 January 2010 until 10 November 2013. He assumed the office of President of the Constitutional Court on 11 November 2013.

Dr. Jadranka Sovdat, Vice President,

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

Mag. Marta Klampfer

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



Dr. Mitja Deisinger

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

Jasna Pogačar

graduated from the Faculty of Law of the University of Ljubljana in 1977. In 1978 she was employed as an intern at the District Court in Ljubljana. After passing the state legal examination, she was employed in the state administration, where for 18 years she worked in the Government Office for Legislation, mainly dealing with constitutional law, administrative law, and legal drafting. In 1983, she was appointed advisor to the president of the Republic Committee for Legislation, and in 1989 assistant president thereof. In 1992 she was appointed advisor to the Government Office for Legislation of the Republic of Slovenia, and in 1996 she was appointed state undersecretary. While holding the same title, in 1997 she was employed in the Office for the Organisation and Development of the State Administration at the Ministry of the Interior, where she participated in the project of reforming Slovenia's public administration and in other projects dealing with Slovenia's accession to the European Union. In 2000 she was elected Supreme Court judge and in 2007 was appointed senior judge of the Supreme Court. From 2003 to 2008 she was the head of the Supreme Court's Administrative Law Department. As a representative of the Supreme Court, she participated in the work of the Expert Council for Public Administration, and was a member of the Council for the Salary System in the Public Sector and a member of the Commission for the Control of the Activities of Free-of-Charge Legal Aid. She has taken part in professional and other legal conferences, and judicial school seminars with papers on civil service law and administrative procedural law. She is a member of the state legal examination commission (in the field of administrative law), and was an examiner for constitutional law and the foundations of EU law for the civil service examination (in the fields of constitutional system, the organisation of the state, legislative procedure, and administrative law). She is a co-author of the Commentary on the Judicial Review of Administrative Acts Act. She 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 on the topic of amendments to the civil procedure and reform of the appellate procedure. As a lecturer he has often participated in judicial school seminars for civil and commercial law departments. In 2003 he became a member of the state legal examination commission in civil law. His bibliography includes thirty-one publications, mainly in the field of civil (procedural) law, including, *inter alia*, as co-author, *Pravdni postopek* [The Civil Procedure - volumes 1 and 2 of a commentary on the Civil Procedure Act]. He commenced duties as a judge of the Constitutional Court on 27 March 2008.

Prof. Dr. Ernest Petrič

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

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

Dr. Dunja Jadek Pensa

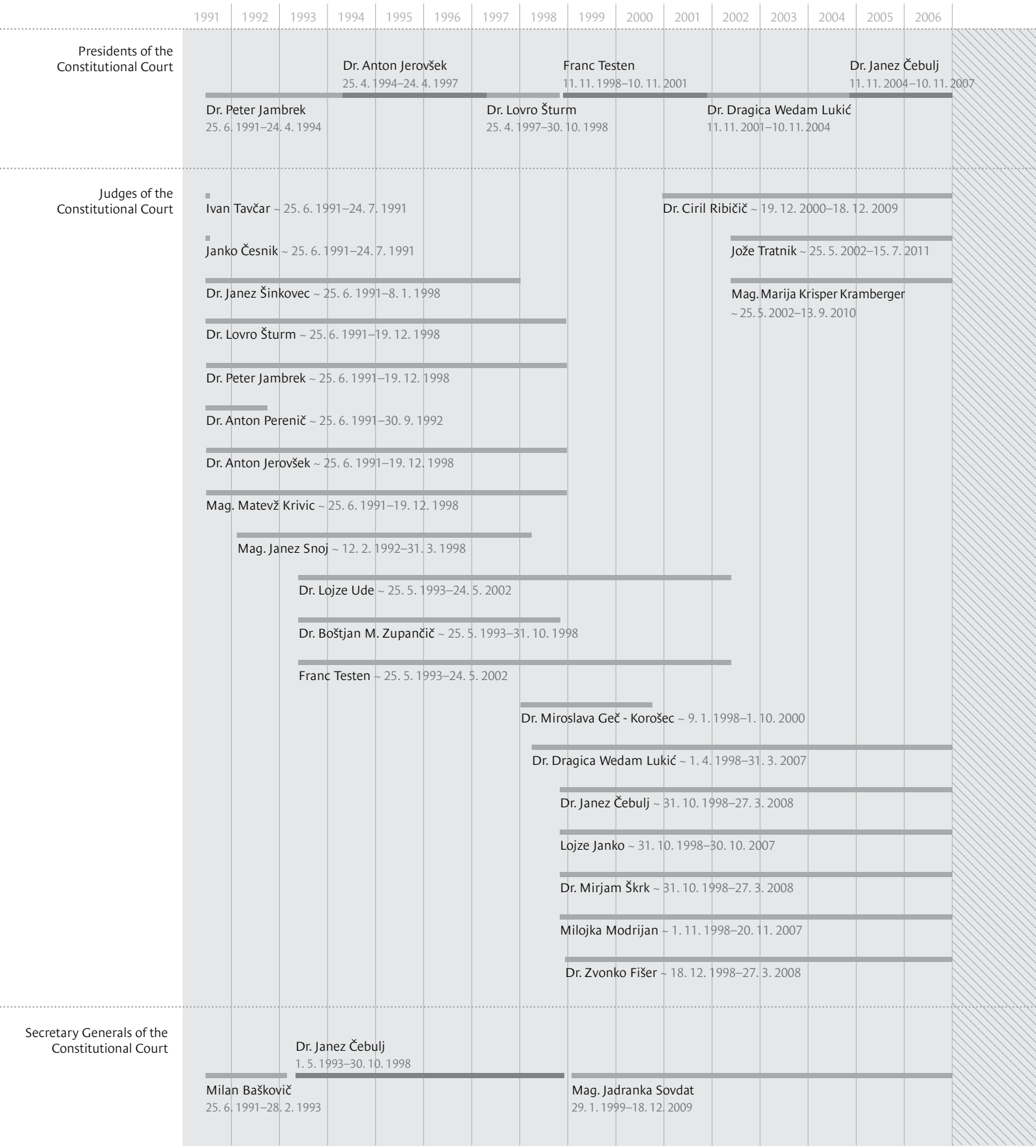
graduated from the Faculty of Law of the University of Ljubljana. After completing an internship at the Higher Court in Ljubljana, she passed the state legal examination in 1987. The following year (1988) she completed postgraduate studies at the Faculty of Law, where she also obtained a doctorate in 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 department of the Basic Court in Ljubljana and subsequently for the Supreme Court of the Republic of Slovenia in the records department and the civil law department. In 1995 she was elected district court judge, assigned to work at the Supreme Court of the Republic of Slovenia, while continuing to work as a district court judge in the commercial department of the District Court in Ljubljana. In 1997, she was appointed higher court judge at the Higher Court in Ljubljana, where she worked in the commercial department. In 2004, she became a senior higher court judge. During her time as a judge of the Higher Court in Ljubljana, she was awarded a scholarship by the Max Planck Institute for Foreign and International Patent, Copyright and Competition Law in Munich; she presided over the specialised panel for commercial disputes concerning intellectual property, and in the period from 2006 to 2008 she was the president and a member of the personnel council of the Higher Court in Ljubljana. In 2008, she became a Supreme Court judge. At the Supreme Court of the Republic of Slovenia she was on the panels considering commercial and civil cases, as well as the panel deciding appeals against decisions of the 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.

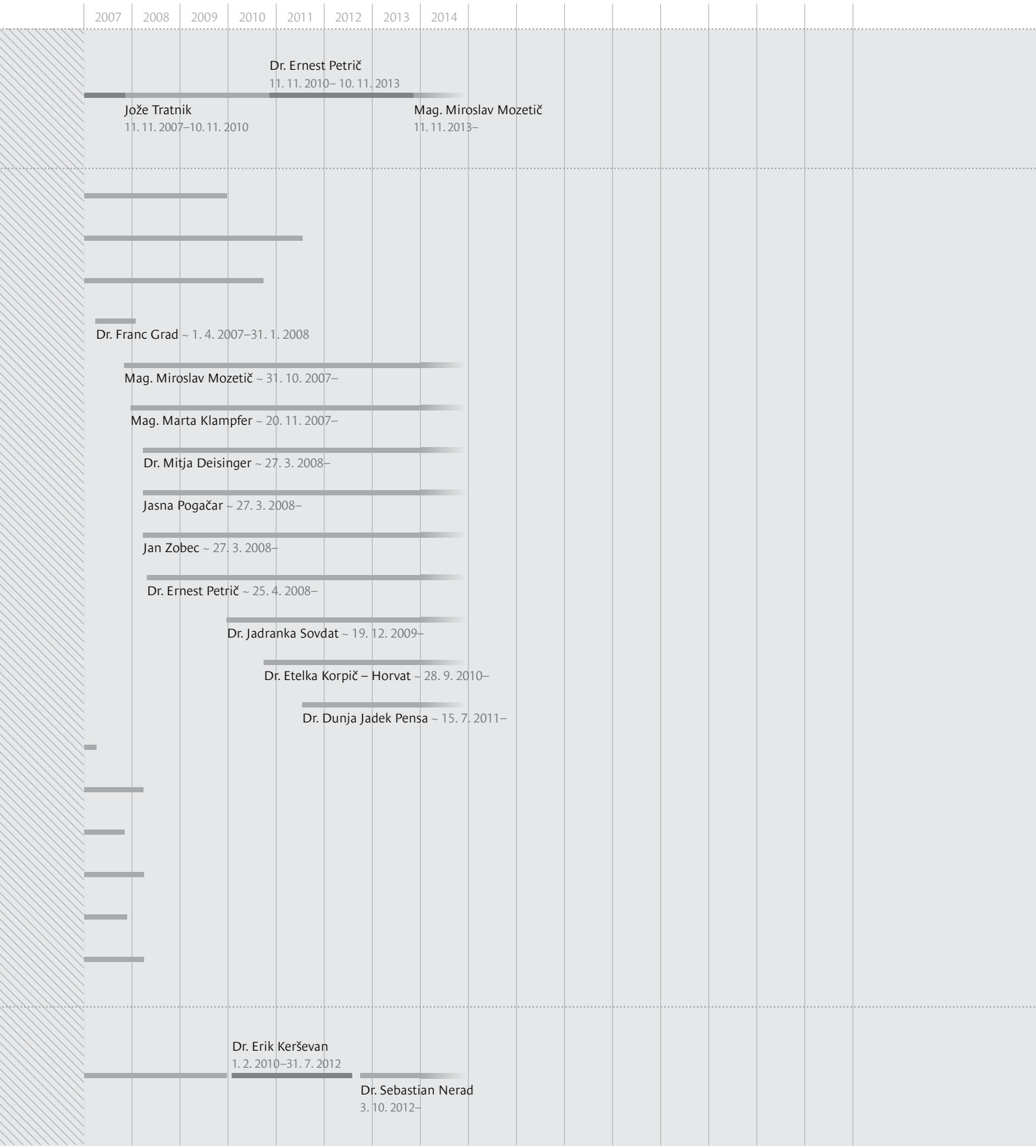
1. 5. 2. The Secretary General of the Constitutional Court

Dr. Sebastian Nerad

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

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
2014
Dr. Ernest Petrič
11. 11. 2010– 10. 11. 2013
Jože Tratnik
11. 11. 2007–10. 11. 2010
Mag. Miroslav Mozetič
11. 11. 2013–
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
Uroš Ferjan
Dr. Aleš Galič
Nada Gatej Tonkli
Mag. Marjetka Hren, LL.M.
Andreja Kelvišar
Andreja Krabonja
Dunja Kranjac
Jernej Lavrenčič
Simon Leohar
Marcela Lukman Hvastija
Rada Malijanska
Maja Matičič Marinšek
Katja Mramor
Lilijana Munh
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.
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*
Tina Prešeren, *Head of the Analysis and International Cooperation Department (since 4. 2. 2013)*
Mag. Miloš Torbič Grlj, *Head of the Documentation and Information Technology Department*

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

1. 7. 1. Official Publication of Decisions

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

1. 7. 2. Other Publications

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

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

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

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

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

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

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

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

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

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

The Report on the Work of the Constitutional Court

2. 1. The Constitutional Court in Numbers

A review of the numerical indicators for 2013 indicates a continuation of the decrease in the number of cases received, a trend that started in 2008. In comparison with past years, in 2013 the decrease in the number of new cases was substantial. The Constitutional Court received 1,509 cases, which is 12.8% fewer than in 2012, when it received 1,731 cases. The number of cases received assigned to the U-I register (which concern a review of the constitutionality and legality of regulations) has in fact remained more or less constant for a few years already. In 2012, the Constitutional Court received 324 requests or petitions for a review of constitutionality and legality, whereas in 2013 this number rose to 328, amounting to a 1.2% increase. Within the distribution of all cases received, U-I cases represent 21.7% of all cases received. The decrease in the total number of cases received in 2013 is again due to a substantial decrease in the number of constitutional complaints received. While in 2012 the Constitutional Court received 1,203 constitutional complaints, last year it only received 1,031, which is 14.3% fewer. The number of constitutional complaints received accounts for the most significant proportion of all cases received, amounting to 68.3% of all cases received. Another characteristic of the Up cases received is that they are connected to U-I cases to a high degree: out of 1,031 constitutional complaints, 149 were filed together with a petition for the review of the constitutionality of a regulation. These are the so-called joined cases, on which the Constitutional Court decides by a single decision. The lower number of constitutional complaints can only partially be explained by cases entered into the general R-I register; in 2013, the Constitutional Court entered 364 cases received into the general R-I register, however 221 of them were subsequently transferred into the Up and U-I registers, while 143 of them remained in the general R-I register. Therefore, in the distribution of the total number of cases received, R-I cases represent less than one tenth (9.5%) of them.

When interpreting and understanding the statistical data from this report, it has to be taken into consideration that in addition to the ordinary registers (especially the Up register, for constitutional complaints, and the U-I register, for a review of the constitutionality and legality of regulations), the Constitutional Court also has the general R-I register. The Constitutional Court introduced this register at the end of 2011 and fully implemented it in 2012. The applications entered into this general R-I register are either so unclear or incomplete that they cannot be reviewed or they manifestly have no chance of success in light of the 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 the applicant to state within a certain time limit whether they nonetheless request the Constitutional Court to decide on their application even though it has no chance of success. If the applicant eliminates the deficiencies thereof or requests that the Constitutional Court decide upon the application, the application is transferred to the Up

register (constitutional complaints) or the U-I register (petitions for a review of constitutionality or legality). Upon being transferred into another register, these cases are statistically no longer registered in the general R-I register, but rather in the respective Up or U-I register. The general R-I register thus statistically contains only cases in which an applicant can still request, within a certain time limit, a decision of the Constitutional Court (i.e. R-I cases 'pending') 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').

In the annual report statistics, data in individual tables and graphs that refer to R-I cases are depicted separately. In such a manner, comparisons between individual years can be made by either taking into consideration R-I cases as well, or by not considering them. For instance, if together with cases received we do not consider cases entered into the general R-I register, the Constitutional Court received, in 2013, 11.5% fewer cases than in 2012 (a decrease from 1,544 to 1,366 cases).

Data on the individual panels of the Constitutional Court show that in comparison to 2012, the number of constitutional complaints received decreased for all three panels. The highest decrease in constitutional complaints received was with regard to the Administrative Law Panel (by 26.1%), followed by the Criminal Law Panel (15.7%), whereas the decrease regarding the Civil Law Panel was the lowest (2.1%). In absolute figures, the Civil Law Panel still had the highest number of cases received (466 cases) and was followed by the Administrative Law Panel (340 cases) and the Criminal Law Panel (225 cases). The lower number of constitutional complaints dealt with by the Criminal Law Panel can be partially attributed to the several years' decrease in minor offence cases received. Already in 2012, the number of such cases sharply decreased (compared to 2011 by 56.3%), and in 2013 the decrease continued: in comparison to 2012, the number of constitutional complaints received from the field of minor offences decreased by 35.5%.

Once again in 2013, of the constitutional complaints received, the most frequent disputes were those linked to civil proceedings. In comparison to 2012, their number decreased by 3.4%, whereas their share among all constitutional complaints amounted to 27.2%. Constitutional complaints from the field of criminal law rose to second place. In comparison to 2012, their number rose by 5.4%, and they account for 13.2% of all constitutional complaints. Criminal cases are followed by labour disputes (9.3%), administrative disputes (8.7%), and minor offences (8.6%). Therefore, with regard to minor offences, a significant decrease in new cases received is evident. In comparison to 2012, the Constitutional Court received 35.5% fewer cases from the field of minor offences. On the one hand, this can be attributed to the fact that since the 2007 amendment of the Constitutional Court Act, constitutional complaints in minor offence cases are, as a general rule, inadmissible. Since extraordinary assessments of constitutional complaints from the field of minor offences are very rare, complainants can be virtually certain that they have no chance of success. On the other hand, what undoubtedly contributed to the decrease in constitutional complaints from the field of minor offences is that the Constitutional Court imposes fines on complainants whom it considers abused the right to a constitutional complaint by filing a constitutional complaint. This concerns so-called standard applications regarding which it is absolutely clear that they cannot succeed and which create an unnecessary burden on the work of the Constitutional Court. In 2013, the Constitutional Court penalised 26 complainants in such a manner. In the distribution of constitutional complaints, we must also mention constitutional complaints in execution procedures (with a 5.9% share), social disputes (4.8%), and commercial disputes. The share of commercial disputes amounted to 4.5%, but this share increased by 39.4% in comparison to 2012.

Among proceedings for the review of the constitutionality and legality of regulations (U-I cases), regarding which the number of cases received in 2013 was approximately the same as in 2012 (an increase of 1.2%), it should be underlined that of 328 cases received, 81 (24.7%) were initiated on the basis of requests submitted by entitled applicants (in 2012 only 54 requests were filed, which amounted to 16.7% of all U-I cases), the remainder were the petitions of individuals (247 petitions). In this context, the activity of the regular courts must be highlighted; courts filed as many as 38 requests for a review of constitutionality, 29 of which were filed by the Administrative Court (in 2012, courts filed 26 requests). Among the requests for a review of constitutionality and legality, also the share of requests filed in different forms by trade unions is significant (18 requests). Out of 247 petitions for a review of constitutionality, in as many as 149 cases (in 75.7% of all petitions) the applicants concurrently filed a constitutional complaint. Applicants thus to a great extent take into consideration the established case law of the Constitutional Court, in conformity with which, as a general rule, applicants are only allowed to file a petition together with a constitutional complaint. With regard to regulations that do not have direct effect, first all judicial remedies must be exhausted, and only then can the constitutionality or legality of the act on which the individual act is based be challenged, together with a constitutional complaint against the individual act. By taking into consideration the type of challenged regulations, it is possible to point out that in 2013 most often it was the regulations of local communities that were challenged, as 68 different local regulations were challenged. They were followed by laws adopted by the National Assembly – 49 different laws were challenged – and acts of the Government and Ministries, as 33 different implementing regulations were challenged. Of course, it is necessary to take into consideration, especially with regard to laws, that many regulations were challenged multiple times, some were even subject to several tenfold challenges. If we limit the discussion to laws only, it is evident that, for instance, the provisions of the Civil Procedure Act were challenged 52 times, the provisions of the Fiscal Balance Act 28 times, the provisions of the Court Fees Act 25 times, the provisions of the Administrative Dispute Act 20 times, the provisions of the Free Legal Aid Act 12 times, and the provisions of the Enforcement and Securing of Civil Claims Act 8 times.

With regard to the stated statistical data, it would not be superfluous to point out that the lower total number of cases received and in this framework especially the substantial decrease in constitutional complaints does not in any manner entail a lower burden on the Constitutional Court. Such burden cannot be measured by quantitative data, as it always depends on the nature of individual cases, on their difficulty, and on the importance and complexity of the constitutional questions that they raise. Furthermore, the number of proceedings for a review of constitutionality and legality has not decreased, and among them there are even more and more requests from applicants (especially courts) that, as a rule, refer to laws and require an in-depth assessment of the most demanding constitutional questions.

With regard to cases resolved it should be pointed out that in 2013 the Constitutional Court resolved 16.7% fewer cases than in 2012 (1,553 cases in 2013 compared to 1,865 cases in 2012). If the cases in the general R-I register are disregarded, the Constitutional Court resolved 13.7% fewer cases than the previous year (1,431 cases compared to 1,659 cases). The decrease in the number of cases resolved is to be attributed to the fact that in 2013 the Constitutional Court assessed several extremely extensive and constitutionally demanding cases. These cases required a broader and more in-depth approach, and more time for their resolution as well. For instance, among the cases that in the annual report are presented as the most important decisions of the past year, the assessment of the constitutionality of the

provisions of the Fiscal Balance Act, the Prevention of Restriction of Competition Act, the Companies Act, the Act on Additional Taxation of a Part of Managers' Incomes in the Period of Financial and Economical Crisis, the Personal Income Tax Act, the Civil Procedure Act, and the Classified Information Act deserve to be highlighted. Those cases in which a question of the interpretation and implementation of European Union law was raised proved to be particularly complex. In 2013, the Constitutional Court intensively dealt with the issue of the effects of European Union law in the national legal order. In this regard, it adopted several important positions. As one of the key positions for understanding the relation between European Union law and national law, the position in Decision No. U-I-146/12, dated 14 November 2013 (Official Gazette RS, No. 107/13), should be mentioned, according to which the fundamental principles that define the relation between national and European law are – in conformity with the third paragraph of Article 3a of the Constitution – at the same time also internal constitutional principles that have the binding force of the Constitution. The principle of consistent interpretation, in conformity with which the Constitutional Court must interpret national law (the Constitution and other regulations) in light of European Union law in order to ensure full effectiveness of the latter, is particularly important for the activity of the Constitutional Court.

The distribution of cases resolved (without considering R-I cases) was similar to the distribution of cases received. In 2013, the Constitutional Court resolved 349 cases regarding the constitutionality and legality of regulations (U-I cases), amounting to a 24.4% share of cases resolved. In comparison to 2012, when it resolved 350 petitions and requests for a review of constitutionality, this number remained at the same level. In 2013, as every year thus far, constitutional complaints represented the majority of cases resolved. The Constitutional Court resolved 1,074 such cases, amounting to a 75.1% share of cases resolved. With regard to the individual panels of the Constitutional Court, the highest number of constitutional complaints were resolved at the Civil Law Panel (453), followed by the Administrative Law Panel (385) and the Criminal Law Panel (236). In terms of content, the Constitutional Court resolved the highest number of cases from the field of civil disputes (26.6%), followed by administrative disputes (13.1%), criminal cases (12.4%), and labour cases (9.6%).

In 2013, the success of complainants, petitioners, and applicants was, from the statistical point of view, again at approximately the same level as in previous years. Of the 349 resolved petitions and requests for a review of constitutionality and legality, in fourteen cases the Constitutional Court established that the law was unconstitutional (4%), of which it abrogated the relevant statutory provisions in six cases, whereas in eight cases it adopted a declaratory judgment; in five of these declaratory judgments it imposed on the legislature a time limit for the elimination of the established unconstitutionality. Applicants were similarly successful at challenging implementing regulations, as the Constitutional Court established the unconstitutionality or illegality of an implementing regulation in twelve cases (3.4%), with regard to which, once again in 2013 a significant share of the implementing regulations found to be unconstitutional were connected to the acts of municipalities which in an unconstitutional manner interfered with the private property of individuals on their plots of land by categorising municipal roads. The combined rate of success in U-I cases was thus 7.4%.

With regard to the rate of success of constitutional complaints, similar conclusions can be drawn as with regard to proceedings for a review of constitutionality or legality. The Constitutional Court only granted 18 of all the constitutional complaints resolved in 2013 (1,074), (i.e. 1.7%). The relatively modest success of constitutional complaints (and other applications)

must, of course, be interpreted carefully, as the numbers do not reflect the true importance of these cases. These cases refer to matters that offer answers to important constitutional questions, therefore their importance for the development of (constitutional) law far exceeds their statistically expressed quantity.

With regard to the successful constitutional complaints, it can be concluded that the Constitutional Court most often (eleven times) assessed the question of a violation of Article 22 of the Constitution. This provision of the Constitution ensures a fair trial and includes a series of procedural rights that in practice entail, above all, the right to make a statement and the right to a substantiated judicial decision. Also violations of Article 23 of the Constitution (the right to judicial protection) stand out to some degree; the Constitutional Court established such a violation four times. The remaining violations of human rights and fundamental freedoms are more or less evenly distributed and refer to the principle of equality (the second paragraph of Article 14 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 legal remedies (Article 25 of the Constitution), the right to compensation (Article 26 of the Constitution), legal remedies in criminal proceedings (Article 29 of the Constitution), the right to social security (Article 50 of the Constitution), and the rights of children (Article 56 of the Constitution).

The average length of time it took to resolve a case in 2013 was approximately the same as in 2012. On average, the Constitutional Court resolved a case in 239 days (as compared to 246 days in the previous year) – or in 198 days if also the time necessary for resolving R-I cases, which as a general rule is very short, is taken into consideration (as compared to 188 days in the previous year). The average duration of proceedings for a review of the constitutionality or legality of regulations (U-I cases) was 269 days, whereas constitutional complaints were resolved by the Constitutional Court on average in 232 days. These figures are comparable to previous years.

At the end of 2013, the Constitutional Court had a total of 949 unresolved cases remaining (or 897 unresolved cases, if R-I cases are not taken into consideration), of which 16 were from 2011 and 183 from 2012. All other unresolved cases are from 2013. Among the unresolved cases, 292 are priority cases and 42 are absolute priority cases. Although the number of cases resolved in 2013 was lower in comparison to 2012, it must be pointed out that in 2013 the Constitutional Court nonetheless resolved more cases than it received (it received 1,509 cases and resolved 1,553 cases). At the end of 2012, the Constitutional Court had 1,041 unresolved cases, whereas at the end of 2013 it only had 949 remaining, which entails an 8.8% decrease. Despite the lower number of cases resolved, the backlog of cases at the Constitutional Court is diminishing. In this context, it must be kept in mind that this data on the decrease in the backlog of cases does not take into account the complexity of these cases and the consequent burden on the Constitutional Court. With regard to the trend that can be noticed during recent years, namely that the Constitutional Court has been receiving an ever greater number of requests for a review of the constitutionality of regulations filed by entitled applicants (courts, the Ombudsman, the National Council, the Information Commissioner, and others), the decrease in the backlog of cases does not entail a lesser burden on the Constitutional Court, as many of these cases are demanding cases that form a predominant part in the overall burden on the Constitutional Court.

As in 2012, in 2013 the functioning of the Constitutional Court was marked by a reduction in the expenditure of public resources. In past years the operations of the Constitutional Court had already been economically efficient; however in 2013 additional ways to cut expenditures had to be found internally. The realised budget of the Constitutional Court in 2012 amounted

to EUR 4,096,901, but only EUR 3,659,075 in 2013. Therefore, the Constitutional Court cut its total expenditure of public resources by an additional 10.7%. However, if 2013 is compared to 2010, when the realised budget amounted to EUR 4,751,442, it is evident that in recent years the Constitutional Court reduced its expenditures by 23%.

As of 31 December 2013, 81 judicial personnel were employed, 36 of whom were advisors at the Constitutional Court. These figures are, in fact, at approximately the same level as the year before, however the Constitutional Court was faced with several longer leaves from work taken by advisors, which were not filled by temporary substitutes.

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

2. 2. Important Decisions Adopted in 2013

2. 2. 1. Unequal Treatment Regarding a Decrease in Pensions

By Decision No. U-I-186/12, dated 14 March 2013 (Official Gazette RS, No. 25/13), in proceedings initiated upon the request of the Ombudsman for Human Rights, the Constitutional Court reviewed the provisions of Article 143 of the Fiscal Balance Act on the basis of which pensions were decreased that were not obtained according to the general rules (i.e. they were in part or in their entirety not based on contributions paid), but were acknowledged and determined under special conditions and their payment was provided by the Republic of Slovenia from the state budget. The decrease, however, did not apply to certain specifically listed groups of beneficiaries. The Constitutional Court assessed that the challenged regulation was inconsistent with the general principle of equality (the second paragraph of Article 14 of the Constitution), as the beneficiaries of the pensions had been treated arbitrarily in the determination of the decrease in their pensions.

In its assessment, the Constitutional Court deemed that the legislature must respond to the needs arising in all fields of social life with the adoption of appropriate statutory regulations. Such is required by the principle that the law must adapt to social conditions, which is one of the principles of a state governed by the rule of law (Article 2 of the Constitution). At the same time, however, the principle of trust in the law, which is also one of the principles of a state governed by the rule of law, guarantees individuals that the state will not worsen their position arbitrarily, without an objective reason which is justified by an overriding and legitimate public interest. With regard to a decrease in pensions, such objective may also entail the economic inability of the state to provide for social expenses. The state's economic inability to provide for social expenses may thus constitute a constitutionally admissible reason on the basis of which the legislature may diminish acquired rights determined by statute for the future. In doing so, however, the legislature must respect the principle of equality before the law.

In the Decision, the Constitutional Court on the one hand established that by the challenged regulation the legislature treated essentially similar positions of beneficiaries of pensions differently, although they should have been treated equally. It namely decreased pensions that were allegedly not based on the payment of contributions also in relation to beneficiaries who paid their contributions to pension and disability insurance funds of other former Yugoslav Republics or to one of the federal funds that existed at that time. With regard to the criterion that pensions depend on contributions paid, such thus concerned essentially similar positions. The legislature did not demonstrate a sound reason for the different treatment of these pension beneficiaries; therefore, such regulation is inconsistent with the Constitution.

On the other hand, there was a violation of the principle of equality also due to the fact that the legislature treated some essentially different positions of beneficiaries of pensions equally without a sound reason for their equal treatment that would derive from the nature of the matter. Firstly, such concerns beneficiaries of pensions that enjoy special protection with regard to social protection according to the Constitution (war veterans and victims of war). With regard to such beneficiaries, the circumstance that their pensions are not entirely based on contributions paid does not entail a constitutionally admissible reason that could justify their equal treatment regarding the decrease in pensions in relation to other beneficiaries of pensions who do not enjoy special constitutional protection. The same applies to beneficiaries of pensions who had a period of unjustified deprivation of their liberty included in their pension-qualifying period and who during this time did not pay any contributions. Article 30 of the Constitution namely ensures to everyone who has been unjustly deprived of his or her liberty the right to rehabilitation, compensation, and other rights provided by law. One of these rights is also the right to have the duration of a period of deprivation of one's liberty included in the pension qualifying period, even though contributions were not paid due to the deprivation of one's liberty during such period. Therefore, the fact that the pension of these beneficiaries is not entirely based on contributions paid does not entail a constitutionally admissible reason for their equal treatment in relation to other beneficiaries of pensions.

There was also a violation of the principle of equality, because the challenged regulation also encompassed other groups of beneficiaries of pensions with regard to whom the state is responsible for the reasons that their pensions are not entirely based on contributions paid. Such concerns beneficiaries whom the former state of Yugoslavia prevented from joining the general system of old-age insurance or beneficiaries who upon the fulfilment of certain conditions had to retire early in accordance with the laws which in the past determined mandatory retirement. Even though their contributions were not paid, the legislature should have treated these persons differently and exempted them from the pension decrease.

Finally, the Constitutional Court established that the legislature also did not establish sound reasons for the different treatment of certain groups of beneficiaries of pensions whom it had exempted from the pension income decrease. The exemptions namely also included beneficiaries of pensions who, as regards the criterion of the non-payment of contributions, were in an equal position in relation to those affected by the measure of decreasing pensions.

2. 2. 2. The Termination of an Employment Contract due to the Fulfilment of Retirement Conditions

By Decision No. U-I-146/12, dated 14 November 2013 (Official Gazette RS, No. 107/13), upon the request of the Ombudsman for Human Rights, the Constitutional Court again reviewed the Fiscal Balance Act. In the Case at issue, the applicant challenged the provisions according to which the employment contract of a public servant is terminated due to the fulfilment of the statutory conditions for obtaining an old-age pension. The Constitutional Court reviewed the challenged regulation from several viewpoints, with the main emphasis on an assessment of whether the regulation violated the prohibition of discrimination on grounds of age or sex (the first paragraph of Article 14 of the Constitution).

The prohibition of discrimination is a universal principle of international law. In addition to the Constitution, it is protected by a number of international instruments that are binding on the Republic of Slovenia. The prohibition of discrimination on grounds of age and sex is also regulated by European Union law. In addition to the Treaty on the Functioning of the European Union, two Directives in particular are important, i.e. Directive 2000/78/EC and Directive 2006/54/EC, which are implemented into the national order *inter alia* by the challenged provisions of the Fiscal Balance Act. When reviewing the constitutionality of national regulations which entail the implementation of European Union law, the Constitutional Court must consider the primary and secondary legislation of the European Union and the case law of the Court of Justice of the European Union. It follows from the third paragraph of Article 3a of the Constitution that all authorities of the state, including the Constitutional Court, must apply European Union law in accordance with the legal regulation of this organisation, namely in accordance with the fundamental principles of European Union law, which are determined in the primary legislation of the European Union or developed in the case law of the Court of Justice of the European Union. As a consequence of the third paragraph of Article 3a of the Constitution, the fundamental principles that define the relationship between the internal legal order and European Union law are at the same time also constitutional principles of internal law and have the same binding power as the Constitution. Of particular importance is the principle of consistent interpretation, according to which the Constitutional Court must interpret national law (the Constitution and other regulations) in the light of European Union law in order to ensure its full effectiveness.

The Constitutional Court firstly reviewed the termination of an employment contract due to the fulfilment of the conditions for obtaining an old-age pension with regard to discrimination on grounds of age. On the basis of the first paragraph of Article 14 of the Constitution and considering European Union law, including the case law of the Court of Justice of the European Union, the Constitutional Court established that the challenged regulation differentiates on grounds of age, as the measure of terminating an employment contract upon the fulfilment of retirement conditions only applies to older workers; however, such differentiation is not inadmissible and does not entail prohibited discrimination. In its review, the Constitutional Court decided in accordance with the position of the Court of Justice of the European Union that the automatic termination of an employment contract upon the fulfilment of retirement conditions entails discrimination on grounds of age that, however, may be admissible if there exists a legitimate objective and the means of implementation of such objective are appropriate and necessary.

Therefore, the Constitutional Court firstly established that the main objective of the challenged measure is to ensure the sustainability of public finances (i.e. to rationalise expenditures), which by itself – also considering the standpoints of the Court of Justice of the European Union – is not a constitutionally admissible reason that could render discrimination admissible. However, the regulation also aims to achieve two additional objectives (the establishment of a balanced age structure of public servants and the prevention of disputes over whether a public servant is able to perform his or her work after a certain age) that may be constitutionally admissible reasons for differentiating public servants on grounds of age. The Constitutional Court decided that the challenged measure also passes the proportionality test. The termination of an employment contract upon the fulfilment of retirement conditions is a measure that is appropriate and necessary in order to achieve the outlined objectives simultaneously and to the greatest extent possible. The measure is further not disproportionate, as the affected persons are entitled to the full amount of their old-age

pension, and apart from that, the challenged regulation in fact did not introduce mandatory retirement, as it does not prevent the affected persons from finding new employment or continuing their professional activities elsewhere. With regard to such, the Constitutional Court decided that the challenged regulation is not inconsistent with the prohibition of discrimination on grounds of age.

The Constitutional Court then proceeded to review the termination of an employment contract due to the fulfilment of retirement conditions with regard to discrimination on grounds of sex. As the conditions for obtaining an old-age pension are determined differently for men and women (which is not an issue with regard to voluntary retirement), the measure of the mandatory termination of an employment contract also treated men and women differently. Such different treatment, however, entails a violation of the prohibition of discrimination on grounds of sex. When reviewing the admissibility of such discrimination in light of the first paragraph of Article 14 of the Constitution, the Constitutional Court took into account European Union law and the relevant case law of the Court of Justice of the European Union. It established that the interference with the right of female public servants was already inadmissible because it was not supported by a constitutionally admissible objective. Therefore, it decided that the challenged measure was inconsistent with the prohibition of discrimination on grounds of sex.

Apart from the review with regard to discrimination, the Constitutional Court also reviewed the challenged provisions of the Fiscal Balance Act from the viewpoint of the principle of the clarity and precision of regulations (Article 2 of the Constitution), the unequal treatment of public servants in relation to workers in the private sector (the second paragraph of Article 14 of the Constitution), the principle of trust in the law (Article 2 of the Constitution), and the autonomy of universities and other institutions of higher education with regard to the freedom of science and the arts (Articles 58 and 59 of the Constitution). It found no unconstitutionalities regarding such.

2. 2. 3. The Constitutional Position of the System of State Prosecution

By Decision No. U-I-42/12, dated 7 February 2013 (Official Gazette RS, No. 17/13), upon the request of a group of deputies of the National Assembly, the Constitutional Court reviewed the constitutionality of Articles 34 and 37 of the Public Administration Act. In accordance with these two provisions, the competence for the system of state prosecution was transferred from the ministry in charge of the judiciary to the ministry in charge of internal affairs.

The Constitutional Court first clarified that the fact that the system of state prosecution is a part of the system of justice in the broader sense does not entail that it is a part of some system-of-justice branch of power. The system of justice is namely not a term that designates that the system of justice is a special branch of power. From the second sentence of the second paragraph of Article 3 of the Constitution it clearly follows that in the Republic of Slovenia state power is exercised under the principle of the separation of powers into the legislative, executive, and judicial branches of power, therefore it is not possible to speak of a system-of-justice branch of power in either an organisational or functional sense. An understanding of the system of state prosecution as a part of the system of justice in the broader sense also does not entail that the system of state prosecution is a part of the judicial branch of power. The essence of the judicial power is namely in the performance of the judicial function, while

the essence of the function of the system of state prosecution is the prosecution of criminal offences, as is determined in Article 135 of the Constitution. In accordance with the constitutional content of the function of the system of state prosecution, the system of state prosecution is a part of the executive branch of power.

Even though the system of state prosecution is a part of the executive branch of power, the Constitutional Court highlighted that in the first paragraph of Article 135 the Constitution determines the principle of the functional independence of state prosecutors in the exercise of the function of the system of state prosecution, which also requires the independence of state prosecutor offices as authorities of the state. State prosecutors must be ensured independence when performing their function in concrete cases. A statutory regulation according to which a state prosecutor is bound by orders, prohibitions, or other instructions when filing or presenting criminal charges would be inconsistent with the Constitution. A regulation that allows state prosecutors to be inadmissibly influenced or for inadmissible pressure to be exerted upon them such that they proceed in a particular manner in a concrete case would also be inconsistent with the Constitution. Even though it is a part of the executive branch of power, the system of state prosecution cannot be viewed as an authority that could be subordinated to the Government or a specific ministry. State prosecutors decide only on the basis of the Constitution and laws.

The Constitution thus requires that within the executive branch of power the system of state prosecution is organised as a system of independent authorities of the state, while state prosecutors are ensured independence in the exercise of the function of prosecution. The mere transfer of the competences concerning the system of state prosecution from the Ministry of Justice to the Ministry of the Interior in itself does not interfere with the principles of the independence of state prosecutor offices or state prosecutors. As long as there is no interference with the constitutional guarantee of the independence of state prosecutor offices or state prosecutors, the decision with regard to which ministry is to perform the administrative tasks related to the organisation and functioning of state prosecutor offices and supervision over their operations is a matter of the legislature's discretion. Such entails a question of the appropriateness of a statutory regulation, which the Constitutional Court is not competent to assess.

Laws that regulate the office of state prosecutor and the performance of state prosecution (e.g. laws that regulate the system of state prosecution, criminal procedure, and the Police) must ensure the independence of state prosecutors in carrying out the function of prosecution. Ensuring the constitutional principles of the independence of state prosecutor offices and state prosecutors namely depends on concrete statutory competences and the authorisations of individual authorities or holders of individual positions of authority that they exercise in concrete cases in connection with the function of prosecution. Authorisations that would or could reduce the constitutionally required independence of state prosecutors in concrete cases would be constitutionally disputable regardless which ministry or minister was competent for their implementation. The Constitutional Court assessed that the challenged regulation, in accordance with which the system of state prosecution was transferred from the Ministry of Justice to the Ministry of the Interior, is not inconsistent with the Constitution, as it does not alter the concrete legal relations between the State Prosecutor's Office, state prosecutors, and the competent ministry. The transfer of competences between ministries does not, in itself, have direct legal significance with regard to the constitutionally guaranteed position of state prosecutors in concrete procedures of criminal prosecution.

2. 2. 4. The Confirmation of the Election of a Member of the National Council

By Decision No. Mp-1/12, dated 21 February 2013 (Official Gazette RS, No. 18/13), the Constitutional Court decided on the confirmation of the election of a Member of the National Council. The complainant was elected a member of the National Council at the elections in 2012, but at its first session the National Council did not confirm his election, as such was allegedly morally and ethically disputable.

In its Decision, the Constitutional Court established that a refusal to confirm the election of a member of the National Council in fact entails a refusal to confirm the officially determined election results. In accordance with the legislation in force, the National Council could only refuse to confirm a member's election if previously a complaint against such had been lodged and in consideration of such it had become evident that the carrying out of the elections entailed such irregularities that they had or could have influenced the legality of the election. The confirmation of office of an elected member of the National Council may thus only become disputable on the basis of a complaint filed by the entitled subjects and submitted evidence of essential irregularities in the election process or in the determination of the election results. If the election was not challenged by means of the prescribed legal remedies, the establishment of a candidate's moral or ethical disputability is not a matter of the National Council's discretion.

In the case at issue, no complaint was lodged before the National Council, nor did the National Council substantiate the rejection of the confirmation of the election with legally admissible reasons. The Constitutional Court established that the Decision of the National Council was arbitrary and at the same time entailed an inadmissible interference with the complainant's passive right to vote as well as the active right to vote of the persons entitled to vote who elected him (the second paragraph of Article 43 of the Constitution). The Constitutional Court abrogated the National Council Order and confirmed the complainant's election.

2. 2. 5. The Privacy of Legal Entities

By Decision U-I-40/12, dated 11 April 2013 (Official Gazette RS, No. 39/13), the Constitutional Court decided upon the request of the Supreme Court for the review of the constitutionality of provisions of the Prevention of Restriction of Competition Act regarding the search of the business premises and documentation of legal entities (companies). The key allegation of the Supreme Court was that in procedures under the Prevention of Restriction of Competition Act the search order regarding a company is issued by the Competition Protection Agency of the Republic of Slovenia. This is allegedly inconsistent with Articles 36 and 37 of the Constitution, which require a prior court order for interferences with spatial or communication privacy.

In the Decision, the Constitutional Court clarified that legal entities, which are artificial forms within the legal order, also enjoy the constitutionally protected right to privacy. It is important for the existence of a legal entity and for the normal performance of its activities that there exists a certain sheltered inner sphere that is protected to a reasonable extent from outside intrusions. However, such does not entail that a legal entity must enjoy the same level or extent of privacy as applies to the privacy of natural persons. The level of protection of the privacy

of legal entities may be lower than for natural persons. The sphere of privacy of a legal entity includes a spatial aspect, which refers to the business premises on which it exercises its activity, and a communication aspect, which refers to the possibility of free and unsurveilled communication. With regard to both aspects, the special nature of the legal entity and its functioning must be considered. The case at issue concerned legal entities established for the purpose of exercising an economic activity (companies).

As regards the spatial aspect of privacy, it is necessary to distinguish the business premises of the legal entity that are intended to be used by the public. On such premises the legal entity enjoys no privacy at all. On business premises that are not generally publicly accessible the legal entity does enjoy the constitutional right to privacy, but such is formed in two circles of privacy in which the expectations of the legal entity regarding privacy are essentially different. In the inner, narrower circle of privacy, a legal entity can expect the same constitutional protection of spatial privacy as a natural person in accordance with the first paragraph of Article 36 of the Constitution. In the wider, outer circle of expected privacy, however, the legal entity cannot expect its privacy to be equally protected as the privacy of natural persons. This sphere of privacy is not subject to special protection in accordance with the first paragraph of Article 36 of the Constitution. In it, however, the legal entity does enjoy the general protection of privacy guaranteed by Article 35 of the Constitution.

With regard to the privacy of legal entities, it is important to note that the Constitution expressly prohibits that economic activity be exercised contrary to the public benefit, and that it equally expressly prohibits acts of unfair competition, as well as acts which limit competition contrary to law (Article 74 of the Constitution). In order to ensure the effectiveness of these constitutional provisions, the legislature can envisage supervision by means of inspection, as well as other forms of supervision over the exercise of economic activity. Therefore, by itself, entry onto business premises that are otherwise not accessible to the public and visual inspection of the premises without opening hidden compartments and without the seizure of objects and equipment (e.g. supervision by means of inspection), cannot be regarded as an interference with the right protected by the first paragraph of Article 36 of the Constitution. In this wider circle of privacy, legal entities do not enjoy the same level of constitutional protection regarding their business premises as natural persons do regarding their residence.

In the narrower circle of privacy, legal entities enjoy the same level of protection as natural persons. Such no longer concerns the obligation of a legal entity to allow a certain limited inspection of its premises, but authorisations on the basis of which authorised persons of competent state authorities can, against the will of the legal entity, perform a thorough search of the business premises, including the hidden compartments thereof. According to the second paragraph of Article 36 of the Constitution, such an interference with privacy is only admissible on the basis of a prior court order.

In addition to spatial privacy, legal entities also enjoy communication privacy, which is specifically protected by the first paragraph of Article 37 of the Constitution. Also when legal entities are at issue, there are communications at a distance that the legal entity can regard as confidential and with regard to which it is therefore entitled to expect privacy. An interference with communication privacy must pursue constitutionally admissible objectives, as determined by the second paragraph of Article 37 of the Constitution. In addition, the interference is only admissible on the basis of a prior court order, which is explicitly required by this provision of the Constitution.

In the light of such constitutional-law starting points, the Constitutional Court deemed that a search such as the Prevention of Restriction of Competition Act allows is in substance equivalent to the concept of search as applied by the second paragraph of Article 36 of the Constitution. Such a search entails an invasive interference with the narrowest circle of the sphere of spatial privacy and therefore requires a prior court order. As the search can also include all data carriers and communication contained thereon, it also entails an interference with communication privacy protected by the first paragraph of Article 37 of the Constitution. The statutory regulation that allows such a search to be ordered by the Competition Protection Agency of the Republic of Slovenia without a prior court order is thus inconsistent with the right to privacy protected by Articles 36 and 37 of the Constitution.

2. 2. 6. Restrictions of the Right to Free Enterprise

By Decision No. U-I-311/11, dated 25 April 2013 (Official Gazette RS, No. 44/13), upon the request of the Government and the National Council, the Constitutional Court reviewed the regulation in the Companies Act that prescribed certain restrictions on members of the management or supervisory bodies of companies against which one of the types of insolvency or compulsory dissolution proceedings was initiated.

The Constitutional Court first reviewed the restriction according to which a person who is a member of the management or supervisory body of a company against which insolvency or compulsory dissolution proceedings were initiated – as well as a person who performed such position in the two-year period before the initiation of such proceedings – cannot be a founder, partner, or member of a management or supervisory body in another company (restriction on the establishment, management, or supervision of companies). The Constitutional Court found that such entailed an invasive interference with the right to free economic initiative (the first paragraph of Article 74 of the Constitution), as certain persons are thereby prevented from pursuing economic initiatives for a determined period of time. The measure, however, pursues a public interest (the protection of the integrity of the business environment), as the legislature intended to prevent persons who participated in the management or supervision of companies against which insolvency or compulsory dissolution proceedings were initiated from establishing, managing, or supervising new companies. However, the Constitutional Court decided that the measure was excessive (disproportionate), because the prohibition on pursuing business activities was based on the legal presumption that such person did not act with the diligence of a conscientious and honest business manager and arose on the basis of the law alone (*ex lege*). As the prohibition was a consequence of a statutory presumption, and not of judicial proceedings, wherein in accordance with constitutional procedural safeguards a court would have established whether an individual acted in a manner that was worthy of contempt and socially unacceptable, the Constitutional Court abrogated the challenged provisions.

The abovementioned measure is linked to the Court's review of the measure whereby the court deciding in insolvency or compulsory dissolution proceedings *ex officio* annuls the power or authorisation of the legal entity or natural person who was a member of the management or supervisory body of the company against which the insolvency or compulsory dissolution proceedings were initiated to manage the business or disqualifies its membership in the supervisory bodies of all the companies in which that person or entity currently performs such position (annulment of powers or authorisations to conduct business and disqualification of membership in supervisory bodies). The Constitutional Court found that such regulation interferes with the right to free

economic initiative (the first paragraph of Article 74 of the Constitution), but it entails a restriction that pursues a public interest (the protection of the integrity of the business environment) and is not disproportionate. While the measure of annulment of powers or authorisations to conduct business is also based on a legal presumption, its consequences, however, do not arise by the force of the law alone (*ex lege*), but only after the judicial decision regarding such becomes final. In judicial proceedings, the affected individual has the opportunity to make a statement and to prove that in the company against which insolvency or compulsory dissolution proceedings were initiated he or she acted with the diligence of a conscientious and honest business manager. In addition, he or she may file an appeal against the decision of the court of first instance, whereby he or she is guaranteed all the constitutional procedural guarantees of a fair trial. The Constitutional Court therefore decided that the challenged measure as such is not inconsistent with the Constitution. It only found an unconstitutionality in the fact that the Act did not define the duration of the measure with sufficient precision, as its duration (of presumably ten years) in fact depended on the duration of the insolvency or compulsory dissolution proceedings.

Apart from the restrictions in relation to insolvency or compulsory dissolution proceedings, the Constitutional Court also reviewed the restriction according to which a person cannot be a founder or partner in a company if any of the following conditions are fulfilled: (1) if the person was sentenced to prison by a final judgement due to a criminal offence against the economy, an employment relationship, or social security, (2) if the person's liability was established by a final judgment due to the piercing of the corporate veil, (3) if the person gave a false statement to the court in charge of the register of companies declaring that all corporations in which this person has a higher than 25 per cent share in the capital had paid all taxes and other mandatory charges, (4) if the person was involved as a partner with a more than 25 per cent share in the capital or was a member of the management or supervisory bodies of a company which was found to be void on the basis of the act regulating the register of companies, because the purpose of the functioning or the activity of the company was inconsistent with the Constitution, compulsory regulations, or moral principles. The Constitutional Court decided that this restriction is neither unconstitutional from the viewpoint of the right to private property (Article 33 of the Constitution), nor from the viewpoint of the right to free economic initiative (the first paragraph of Article 74 of the Constitution).

Also with regard to the above-mentioned restriction, the Constitutional Court specifically reviewed whether the duration of the measure of a prohibition on conducting business is consistent with the Constitution. The Act namely envisaged that the restriction ceases after ten years from the moment when the conditions allowing the measure to be applied arose (by a final judgment or false statement). The Constitutional Court assessed that the duration of ten years is not excessive and is not inconsistent with the Constitution. In order to protect the integrity of the business environment, the legislature excluded individuals who have acted in a manner that is worthy of contempt from the business environment for a period of ten years, and thereby re-established a high level of trust in economic relationships.

2. 2. 7. Retroactive Effects of Additional Taxation

By Decision No. U-I-158/11, dated 28 November 2013 (Official Gazette RS, No. 107/13), in constitutional review proceedings initiated upon the request of the Administrative Court, the Constitutional Court reviewed Article 12 of the Act Introducing Additional Taxation of a Part of Managers' Incomes in the Period of Financial and Economic Crisis. The Act introduced a

(provisional) obligation of the payment of an additional tax from the income of members of management and supervisory bodies of business entities who benefitted from a surety, guarantee, or financial aid from the state to mitigate the consequences of the financial and economic crisis on the basis of the so-called austerity measures. The Act entered into force on 6 October 2009, the day following its publication in the Official Gazette of the Republic of Slovenia. The challenged Article 12, however, determined that this Act applies to the income determined by this Act obtained since 1 January 2009.

The Constitutional Court reviewed the challenged Article 12 with regard to the first paragraph of Article 155 of the Constitution (the principle of the prohibition of the retroactive effect of legal acts), which determines that laws, other regulations, and general legal acts cannot have retroactive effect. However, this prohibition is not absolute. An exemption from this fundamental prohibition is envisaged by the second paragraph of Article 155 of the Constitution, on the basis of which only a law may establish that certain of its provisions have retroactive effect, if this is required in the public interest and provided that no acquired rights are infringed thereby.

The Act Introducing Additional Taxation of a Part of Managers' Incomes in the Period of Financial and Economic Crisis imposed a new tax obligation on a particular group of taxpayers. In accordance with the challenged Article 12, the taxable amount included (also) parts of the income that the taxpayer obtained before the enactment of the Act, i.e. in the period between 1 January 2009 and 5 October 2009, when these had already been taxed, namely by personal income tax in accordance with the Personal Income Tax Act. Thereby the legislature retroactively and in an aggravating manner interfered with the legal positions of the affected taxpayers, because from the moment they obtained a specific taxable income they legitimately expected that the obtained income would only be burdened by the tax as prescribed by the tax laws in force at that moment, and that they would be able to freely dispose of the rest of the income. In accordance with the second paragraph of Article 155 of the Constitution, retroactive effects of individual statutory provisions are admissible if such is required by the public interest and no acquired rights are infringed thereby.

The Constitutional Court found that the legislature did not establish that the public interest required the retroactive effect of the Act Introducing Additional Taxation of a Part of Managers' Incomes in the Period of Financial and Economic Crisis. No special justification of the public interest in the challenged statutory provision having retroactive effect can be found in the legislative materials, wherein the legislature should have specifically justified the public interest that requires a legal norm to have retroactive effect (as without it, the objective pursued by the regulation could not be attained). In addition, the National Assembly neither responded to the applicant's request, nor participated in the public hearing in the case at issue. The Constitutional Court thus assessed that already the condition of the existence of a public interest, which the second paragraph of Article 155 of the Constitution prescribes for the exceptional admissibility of the retroactive effect of a law, was not fulfilled. It therefore abrogated Article 12 of the Act Introducing Additional Taxation of a Part of Managers' Incomes in the Period of Financial and Economic Crisis.

2. 2. 8. Tax relief for Cross-Border Labour Migrants

By Decision No. U-I-147/12, dated 29 May 2013 (Official Gazette RS, No. 52/13), upon the request of the Administrative Court, the Constitutional Court reviewed the constitutionality

of the provisions of the Personal Income Tax Act which granted cross-border labour migrants special tax relief for income from employment abroad for an employer who is not a resident of the Republic of Slovenia. The regulation allegedly violated the general principle of equality under the second paragraph of Article 14 of the Constitution, because the special tax relief was introduced only for specific taxpayers.

The Constitutional Court found that in accordance with the principle of the taxation of a tax resident's worldwide income, Slovene tax residents are required to pay personal income tax on all income that originates in Slovenia or outside its borders. In the challenged statutory provisions, the legislature, in addition to measures that exist for the elimination of double taxation, also introduced special tax relief for cross-border labour migrants. It defined these as residents of the Republic of Slovenia who are required to pay personal income tax and who in order to perform work abroad leave to work abroad and return to the Republic of Slovenia daily or at least once a week. This special tax relief entailed a decrease in the taxable amount of income from their employment relationship for employment abroad for an employer who is not a resident of the Republic of Slovenia.

The Constitutional Court assessed the challenged regulation with regard to the principle of equality. It compared cross-border labour migrants with other persons required to pay personal income tax regarding the right of the former to the special tax relief and the obligation of the latter to pay proportionately higher personal income taxes. In view of the principle of the taxation of the worldwide income of residents of Slovenia and taking into account the ordinary credit method for the elimination of double taxation, the Constitutional Court established that cross-border labour migrants are in essentially the same position as other persons required to pay personal income tax. In accordance with the established case law, the legislature may regulate equivalent positions differently if it demonstrates the existence of a sound reason that follows from the nature of the matter. In the case at issue, the National Assembly and the Government demonstrated no sound and objective reasons for the privileged position of cross-border labour migrants. The Constitutional Court therefore decided that the challenged regulation was inconsistent with the general principle of equality determined by the second paragraph of Article 14 of the Constitution.

2. 2. 9. Classified Information in Litigious Civil Proceedings

By Decision No. U-I-134/10, dated 24 October 2013 (Official Gazette RS, No. 92/13), the Constitutional Court reviewed several requests of the Labour and Social Court in relation to the Civil Procedure Act and the Classified Information Act. The applicant pointed out that the challenged acts contain no special provisions on the access of parties to judicial proceedings to classified information and on how the court is to carry out the proceedings. There allegedly existed an unconstitutional legal gap, as the legislature failed to regulate questions in relation to the access of parties to civil litigious proceedings to applications containing classified information or the possibility to actively participate in proceedings when the applications or even the case file are designated as classified. The applicant thus found itself in an insoluble situation in several proceedings. Such concerned individual labour-law disputes wherein the defendant was the state (the Republic of Slovenia), who designated its reply to the legal action and/or the documents attached thereto with one of the so-called levels of classification of classified information. Thereby it did not state in what manner the other party may inform itself of the classified information, but took the standpoint that it

must be considered in accordance with the Classified Information Act. During proceedings, it became clear that neither the claimants nor their representatives in these disputes had permission to access the classified information, therefore the court could not serve them the mentioned replies to their legal actions.

The fundamental question the Constitutional Court considered in these proceedings was whether the statutory regulation of access to classified information prevents parties to proceedings from exercising their right to judicial protection (the first paragraph of Article 23 of the Constitution). The Constitutional Court found that the right to judicial protection also ensures that a court is independent in carrying out proceedings, in establishing the facts of the case, and in the application of substantive law. Such entails that a statutory provision that binds a court to the opinion of another authority of the state would be inconsistent with the right to judicial protection. This constitutional safeguard, however, extends beyond the establishment of the facts and the application of substantive law: there is also an interference with the right to judicial protection if a court's decision on the taking of evidence or on the extent of taking such depends on the prior decision of another authority of the state.

In litigious civil proceedings, a judge may access classified information that he or she requires in relation to the exercise of his or her office already on the basis of the law and without permission to access classified information. The access of a judge to classified information in accordance with the regulation in force is not in question: only the use of classified information in judicial proceedings in such a manner that the parties to the proceedings inform themselves of, have possession of, and give statements regarding the information may be legally disputable. In accordance with the regulation in the Classified Information Act, other persons (e.g. parties to proceedings, their representatives, experts) may only access classified information on the basis of the explicit written permission of the head of the authority that designated the information as classified, whereby the head is entitled to determine the manner and different conditions subject to which they may access the classified information. Thereby the Act does not determine any restrictions, which may even entail that the head does not allow parties to judicial proceedings to access the classified information at all. Such in fact entails that in proceedings where classified information is present another authority of the state (and not the court) is to an important extent competent to make the final decision on whether the court takes certain evidence and under what conditions it does so.

The Constitutional Court decided that the Civil Procedure Act should contain a special regulation for proceedings in which in order to achieve a correct and legal decision in a dispute it is necessary, in some manner, to disclose, consider, or discuss classified information. The court is namely not competent to make the final decision on what evidence is to be taken and in what manner. The general regulation of the use of classified information in accordance with the Classified Information Act actually prevents that an independent and unbiased court decide on all important aspects of proceedings, in particular on ensuring the right of the parties to give statements. It is important for the effective exercise of the right protected by the first paragraph of Article 23 of the Constitution that an independent and unbiased judge be the one to make the final decision on the right of the parties to access classified information. The Constitutional Court thus required the legislature to remedy the established unconstitutionality within one year following the publication of the Decision in the Official Gazette. Thereby the legislature must consider that the protection of classified information in the fields of defence, the military, external affairs, and in similar fields is an important value of society that is undoubtedly based on the Constitution.

2. 2. 10. Inheritance between Unregistered Same-Sex Partners

By Decision No. U-I-212/10, dated 14 March 2013 (Official Gazette RS, No. 31/13), upon the request of the District Court in Koper, the Constitutional Court reviewed the Registration of a Same-Sex Civil Partnership Act and the Inheritance Act. The mentioned laws are allegedly inconsistent with the first paragraph of Article 14 of the Constitution (prohibition of discrimination), as they do not regulate the right of legal inheritance of a partner in an unregistered same-sex partnership, while partners in a long-term different-sex partnership (common-law marriage) enjoy such a right.

In addition to the types of partnerships that are formally established in accordance with the law, such as marriage (only open to different-sex couples) and a registered partnership (only open to same-sex couples), the legal order also regulates common-law marriage, which was defined by the legislature already in 1976 as a partnership between a man and a woman. It follows from the Inheritance Act that the same rules on inheritance as apply to spouses also apply to common-law spouses. Even though such is not explicitly determined by the Act, according to legal theory and case law (in instances of testamentary inheritance), the decedent's common-law spouse is also his or her forced heir.

The Inheritance Act, however, does not ascribe any legal consequences to a long-term unregistered cohabitation of two persons of the same sex in the field of inheritance. An unregistered same-sex partner is namely not included among the legal heirs of a decedent (not even the forced heirs). An unregistered same-sex partner may only inherit from his or her partner if the latter disposes of his or her estate to the benefit of the former by will. The legal order thus evidently treats persons of the same sex and persons of different sexes who live in stable *de facto* partnerships differently as regards inheritance in the event of their partner's death.

The Constitutional Court established that the positions of common-law spouses and partners in unregistered same-sex partnerships are essentially the same. With regard to the fulfilment of the conditions for legal inheritance, it is thus clear that the differentiation in the regulation of inheritance between such partners is not based on an objective, impersonal circumstance, but on sexual orientation. Even though it is not specifically stated, sexual orientation is one of the personal circumstances encompassed by the first paragraph of Article 14 of the Constitution. As differentiation on the grounds of sexual orientation may only be justified by especially weighty reasons, which were not demonstrated in the case at issue, the Constitutional Court decided that the regulation of inheritance in force is inconsistent with the first paragraph of Article 14 of the Constitution.

2. 2. 11. The Criminal Offence of the Abduction of a Minor

By Decision No. Up-383/11, dated 18 September 2013 (Official Gazette RS, No. 85/13), the Constitutional Court decided on the constitutional complaint of a father who had been found guilty of committing the criminal offence of the abduction of a minor. The complainant allegedly committed the criminal offence by unlawfully abducting the minor from his parent to whom he had been entrusted, detaining the minor, and preventing the minor from being with the person who had rights in respect of the minor. According to the standpoint of the Supreme Court, the unlawfulness of his conduct was established by a violation of the final judgment of a District Court by which the mother had been granted custody of the underage child. Even

though the complainant later obtained custody of the child on the basis of two new judicial decisions, such allegedly did not have a retroactive effect on the unlawful act the complainant committed when the child was still entrusted to his mother.

The Constitutional Court assessed the allegations in the constitutional complaint from the viewpoint of Articles 54 and 56 of the Constitution. The first paragraph of Article 54 of the Constitution determines that parents have the right and duty to maintain, educate, and raise their children. The first paragraph of Article 56 of the Constitution determines that children enjoy special protection and care, and that they enjoy human rights and fundamental freedoms in accordance with their age and maturity. The Constitutional Court stressed that parents must exercise the rights and obligations determined in the first paragraph of Article 54 of the Constitution in the interests of their children. In proceedings regarding the relationships between parents and children, it has to be taken into accout that a child is a person who should be respected as such also within the family circle, and therefore his or her will should be considered in accordance with his or her age and maturity. In proceedings, the child should be treated as a subject; which entails that children who, in accordance with their age and maturity, are capable of understanding the circumstances and independently expressing their will regarding such should be enabled to do so. Their will should be respected, as long as it is consistent with the principle of the child's best interests.

The Constitutional Court agreed in principle with the position of the ordinary courts that parents have to act in accordance with final judicial decisions. Respect for final judicial decisions is a generally important constitutional value and *inter alia* also one of the fundamental postulates of a state governed by the rule of law (Article 2 of the Constitution). Legal relationships regulated by a final decision of a state authority can be annulled, abrogated, or amended only in such cases and by such procedures as are provided by law (Article 158 of the Constitution). However, the Constitutional Court at the same time stressed that in the field of child custody the finality of judicial decisions cannot be an absolute value. Changed circumstances on the side of the parents, but especially the development of the child's capabilities to express him- or herself, in accordance with his or her age and maturity, on issues that are crucial for his or her upbringing can lead to a situation where recognition of the absoluteness of a final judicial decision might be in contradiction with the principle of the child's best interests. This principle also has to be considered in criminal proceedings in which the criminal liability of a parent who did not respect a final judicial decision that granted custody of the child to the other parent is being decided on. The court deciding in criminal proceedings must on the one hand ensure respect for the final judicial decision, and on the other hand consider the principle of the child's best interests and strike an appropriate balance between the two. In exceptional circumstances there may be a collision between respect for a final judicial decision and the principle of the child's best interests. In the event of such, the criminal court must, depending on the content of the constitutionally protected values and circumstances of the individual case, assess which constitutionally protected value should be assigned the higher weight.

In light of the circumstances of the case at issue, the Constitutional Court established that at the time when the complainant is alleged to have committed the criminal offence the eleven-year old child had clearly expressed his will, i.e. that he would like to live with his father, not his mother. He strongly opposed being released to his mother, and the police also did not use coercive measures to execute the final judgement by which he was entrusted into the custody of his mother. While the coercive measures would have formally ensured respect for

the final judgement, they could have had severe consequences for the child's development. In addition, the complainant immediately pursued the legal path to securing the child's rights in order to achieve an amendment of the final District Court Decision, but the court only decided on his motion for a temporary injunction for a change in the child's custody after nine months. The criminal courts were also informed of all these circumstances, but they did not pay adequate attention to them. If the courts in the criminal proceedings had considered the clearly expressed will of the minor son, who was, in accordance with his age and maturity, capable of making it clear that he did not want to return to his mother, and if they had considered all the other circumstances of the case, they would have had to conclude that the complainant had acted in the child's best interests, as is also his duty in accordance with the first paragraph of Article 54 of the Constitution.

In the circumstances of the case at issue, the Constitutional Court decided that the failure to comply with the child's best interests (the first paragraph of Article 56 of the Constitution) led to a violation of the complainant's right referred to in the first paragraph of Article 54 of the Constitution. It abrogated the challenged judgments and, in accordance with the mandate of the Constitutional Court Act, acquitted the complainant of the charges, because his conduct could not be assessed as having been unlawful.

2. 2. 12. The Duty to Submit a Case to the Court of Justice of the European Union

By Decision No. Up-1056/11, dated 21 November 2013 (Official Gazette RS, No. 108/13), the Constitutional Court decided on a constitutional complaint filed against a judgment of the Supreme Court. In a tax case involving the calculation of value added tax, during the entire proceedings the applicant referred to the case law of the Court of Justice of the European Union, from which it follows, in his opinion, that he should not have been taxed for selling two plots of land that he had bought as a natural person. The applicant proposed that the Supreme Court stay the proceedings and submit the case to the Court of Justice of the European Union for a decision on the basis of the then valid Article 234 of the Treaty Establishing the European Community (now Article 267 of the Treaty on the Functioning of the European Union). The Supreme Court dismissed the applicant's reference to the case law of the Court of Justice of the European Union as unfounded, as allegedly the factual circumstances were different, and did not take a position on his motion to submit the case to the Court of Justice of the European Union.

The Constitutional Court firstly established that the regulation of the value added tax has been at least partially transferred to the European Union. Even though it is a field in which the conduct of Member States is not entirely determined by European Union law, Member States cannot regulate this field by national regulations when the European Union regulates this field by its own legal act. At the same time, such also entails that courts must interpret national regulations in light of European Union law and in conformity with its purpose (the principle of consistent interpretation).

By joining the European Union, on the basis of the first paragraph of Article 3a of the Constitution the Republic of Slovenia transferred the exercise of part of its sovereign rights to the institutions of the European Union. The third paragraph of Article 3a of the Con-

stitution binds all authorities of the state, including national courts, to take into consideration European Union law, including the case law of the Court of Justice of the European Union, when exercising their competences in accordance with the legal regulation of the European Union. The Court of Justice of the European Union has exclusive jurisdiction to give preliminary rulings on questions concerning the interpretation of the Treaties and the validity and interpretation of acts of the institutions, bodies, offices, or agencies of the European Union (Article 267 of the Treaty on the Functioning of the European Union). Its task is therefore to ensure uniform interpretation and application of (primary and secondary) European Union law and its decisions are binding on all national courts and all other authorities and [legal] subjects in Member States. When a national court is faced with a question whose resolution falls within the exclusive jurisdiction of the Court of Justice of the European Union, it must not decide thereon unless the Court of Justice of the European Union has already answered it or other conditions that allow the national court to adopt a decision are fulfilled. If the national court adopts a position inconsistent with this requirement, such entails a violation of the right to judicial protection determined by the first paragraph of Article 23 of the Constitution.

In its Decision, the Constitutional Court established that the Court of Justice of the European Union is an independent, impartial court constituted by law in the sense of the first paragraph of Article 23 of the Constitution. Deciding on a preliminary question is part of a single judicial dispute and the answer to a question regarding the interpretation of European Union law and/or the validity and interpretation of secondary legal acts of the European Union is of essential importance for the final decision in such dispute. The position of the Constitutional Court was that there is no doubt that the Supreme Court is a court in the sense of Article 267 of the Treaty on the Functioning of the European Union, because it fulfils all criteria determined by the case law of the Court of Justice of the European Union. Since the Court of Justice of the European Union is a court in the sense of the first paragraph of Article 23 of the Constitution, the right to judicial protection also guarantees that in the event a question of interpretation of European Union law and/or the validity of secondary European Union law arises in a dispute such question is answered by the court that is competent under Article 267 of the Treaty on the Functioning of the European Union to reply thereto. The right of an individual who is party to original proceedings to the judicial protection determined by the first paragraph of Article 23 of the Constitution therefore also refers to the duty of the (Supreme) Court to submit the case to the Court of Justice of the European Union if the conditions for such are fulfilled.

The conditions under which Member State courts must submit a case to the Court of Justice of the European Union are determined by the third paragraph of Article 267 of the Treaty on the Functioning of the European Union. The failure to comply with this duty must also be consistent with the case law of the Court of Justice of the European Union. Therefore, whenever a question of the interpretation of European Union law arises before a national court, this court must submit a preliminary question to the Court of Justice of the European Union, except if it is established (1) that the question is not relevant, whereby it is the national court that decides whether the question is relevant, (2) that the point of European Union law in question has already been a subject of interpretation by the Court of Justice of the European Union, or (3) that the correct application of European Union law is so obvious as to leave no room for any reasonable doubt. When what is at issue is a question of the validity of a legal act of the European Union, national courts cannot avoid submitting the case to the Court of Justice of the European Union because national courts do not have jurisdiction to establish that the legal acts of the European Union are invalid.

In order for the Constitutional Court to be able to assess whether the individual was ensured judicial protection before a court constituted by law and whether the separation of jurisdiction determined by Article 267 of the Treaty on the Functioning of the European Union was taken into consideration, there is the condition that the court at issue has adopted a sufficiently clear position with regard to the questions related to European Union law. This also includes reasoning explaining why, despite the party's motion to stay proceedings and to submit the case to the Court of Justice of the European Union, the court at issue decided not to proceed in such manner. From the established constitutional case law it follows that a substantiated judicial decision constitutes an essential part of a fair trial and that in a judicial decision courts must concretely and clearly determine the reasons on the basis of which they adopted their decision.

In the case at issue, the Constitutional Court established that, regarding European Union law, the Supreme Court adopted positions with regard to which it was not clear whether they were based on the case law of the Court of Justice of the European Union due to deficient reasoning, whereas with regard to the question of whether there was an *acte clair* it did not adopt a position at all, nor did it adopt a position regarding the party's motion to submit the case to the Court of Justice of the European Union for a preliminary ruling. With regard to the above, the Constitutional Court established a violation of the first paragraph of Article 23 of the Constitution, abrogated the challenged judgment, and remanded the case to the Supreme Court for new adjudication.

2. 2. 13. International Protection and the Concept of a Safe Third Country

By Decision No. U-I-155/11, dated 18 December 2013 (Official Gazette RS, No. 114/13), upon the request of the Ombudsman for Human Rights, the Constitutional Court reviewed certain provisions of the International Protection Act that determine the concept of a safe third country in relation to the principle of *non-refoulement*.

In the Decision, the Constitutional Court initially stressed that on the basis of Article 3a of the Constitution it has to consider the primary and secondary legislation of the European Union and the case law of the Court of Justice of the European Union when reviewing regulations that entail the implementation of European Union law. When interpreting the challenged provisions of the International Protection Act, it thus has to consider the appropriate regulations of the European Union and the case law of the Court of Justice of the European Union based thereon. The second paragraph of Article 19 of the Charter of the European Union ensures protection in the event of removal, expulsion, or extradition. On the basis of the first paragraph of Article 78 of the Treaty on the Functioning of the European Union, a common policy on asylum, subsidiary protection, and temporary protection shall be developed, which, also with regard to the decisions of the Court of Justice of the European Union, must be in accordance with the Geneva Convention.

In accordance with the starting points in relation to international law and the law of the European Union, the Constitutional Court assessed the allegations regarding the principle of *non-refoulement* from the viewpoint of Article 18 of the Constitution (the prohibition of inhuman or degrading treatment). In accordance with international law, states have the right to supervise the entry of foreigners, the issuing of permits for their residence, and expulsions

or extraditions. A state's sovereignty, however, is limited by the obligation that the state may not remove, expel, or extradite an individual to a state in which there exists serious danger that he or she will be subjected to inhuman treatment (*non-refoulement*). The principle of *non-refoulement* ensures to applicants the right to enter and reside in the state in which they applied for protection and the right of access to fair and effective proceedings in which the competent authority assesses if the applicant's removal, expulsion, or extradition could entail an infringement of this principle. The removal, expulsion, or extradition of an applicant alleging a need of protection to a third country without a consideration of his or her application on the merits entails an infringement of the principle of *non-refoulement*. The State may only act in such a manner in exceptional circumstances if it is convinced that the third country is safe (the concept of a safe third country). Only a state that ratified the Geneva Convention and the Convention for the Protection of Human Rights and Fundamental Freedoms and respects the supervisory mechanisms defined by the two Conventions can be a safe third country.

The Constitutional Court dismissed the allegation of the Ombudsman for Human Rights that the conditions which the International Protection Act prescribes for the determination of safe third countries are inconsistent with the requirements of the principle of *non-refoulement*. It decided that the criteria for the assessment of the safety of a third country determined by statute are consistent with the requirements stemming from the principle of *non-refoulement*. Therefore, it decided that the challenged provisions of the International Protection Act are not inconsistent with Article 18 of the Constitution.

The Constitutional Court, however, found that certain provisions of the International Protection Act are disputable with regard to the principle of the clarity and precision of regulations (Article 2 of the Constitution), as they do not determine the legal position of applicants for international protection with sufficient clarity and certainty, thereby enabling different applications of the law and arbitrary conduct of the authorities of the state. In addition, it also decided that as the statutory regulation does not determine that the legal remedy against an order rejecting an application for international protection due to application of the concept of a safe third country has suspensory effect, it is unconstitutional. Due to the special importance of the human right determined by Article 18 of the Constitution and the irreparability of the consequences that would occur if the applicant were to be subjected to torture or inhuman treatment, a legal remedy that does not suspend the possibility to enforce an order rejecting an application for international protection is inconsistent with the right to effective judicial protection (the first paragraph of Article 23) and the right to an effective legal remedy (Article 25 of the Constitution).

2. 2. 14. State Liability for a Backlog of Cases Conditioned by the System

By Decision No. Up-695/11, dated 10 January 2013 (Official Gazette RS, No. 9/13), the Constitutional Court decided on a constitutional complaint in which as a result of a violation of the right to a trial without undue delay the question of unlawful conduct and thus state liability on the basis of Article 26 of the Constitution arose. In its decision, the Supreme Court differentiated between the liability of the state for damage due to a backlog of cases conditioned by the system and liability for damage caused by the unlawful conduct of one of its authorities within the performance of its function. According to the *ratio decidendi* of the Supreme Court,

the failure to consider a case without undue delay that is conditioned by the system can substantiate a violation of the right to a trial without undue delay (Article 23 of the Constitution), in itself, however, it does not substantiate the unlawful conduct determined in Article 26 of the Constitution and thus the liability of the state for damage on such basis. The Supreme Court was of the opinion that a backlog of cases conditioned by the system entails an omission with regard to a circle of people undefined in advance (i.e. to the community as such), however, the unlawful conduct and thus the liability for damage in accordance with Article 26 of the Constitution can be substantiated by a violation of a duty towards a person defined or definable in advance (or towards a circle of people defined or definable in advance).

In the Decision, the Constitutional Court established that the standpoint of the Supreme Court that under Article 26 of the Constitution the state is not liable for damage caused by a backlog of cases conditioned by the system is not consistent with the Constitution and Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. It namely follows from the case law of the European Court of Human Rights that a state is held liable for a violation of the right to a trial without undue delay not only in the event of inappropriate procedural conduct by the court, but also in the event that an unreasonably long trial is a consequence of the objective state of a backlog of cases at the court.

According to the assessment of the Constitutional Court, Article 26 of the Constitution encompasses in the most general manner all forms of unlawful conduct of the state by which the state causes damage to an individual. Therefore, the liability of the state for omissions of the state which refer to a defined or definable person as well as the liability of the state for a backlog of cases conditioned by the system fall within this scope. Article 26 of the Constitution encompasses all possible forms of unlawful conduct of the state and is from this point of view a so-called *lex generalis*. According to the first paragraph of Article 26 of the Constitution, merely on the basis of linguistic interpretation it could be concluded that the state is liable only for those forms of unlawful conduct that can be attributed to a particular person or to a particular authority in connection with the performance of the function or of any other activity of a state authority, local community authority, or bearer of public authority. However, such narrow interpretation would entail that the state would not be held liable for unlawful conduct that could not be attributed to a particular person or to a particular authority, but only to the state or its apparatus as such. The unlawful conduct of the state cannot be equated with the unlawful conduct of an individual judge in a specific matter. However, a backlog of cases conditioned by the system does not entail that only the community as such is affected by it. It is namely the individual who bears the consequences of the backlog of cases conditioned by the system reflected in pecuniary and/or non-pecuniary damage. The Constitutional Court abrogated the Supreme Court judgment and remanded the case for new adjudication.

2. 2. 15. Priority Consideration Following Execution of a Claim on the Basis of an Authentic Document

By Decision No. U-I-169/10, dated 12 September 2013 (Official Gazette RS, No. 83/13), in proceedings initiated upon the request of the Local Court in Ljubljana, the Constitutional Court reviewed the constitutionality of the provision of the Enforcement and Securing of Civil Claims Act according to which in civil litigious proceedings initiated following the execution of a claim on the basis of an authentic document the settlement hearing or the first hearing of

the main trial is carried out within a period of three months. The Constitutional Court agreed with the applicant's statements that the challenged provision in fact expedites consideration of civil litigious cases initiated following execution of a claim on the basis of an authentic document. It ensures parties to such civil litigious proceedings an earlier commencement of the consideration of their case and therefore the possibility of an earlier decision thereon. The challenged provision in fact affords priority consideration to civil litigious cases initiated following the execution of a claim on the basis of an authentic document.

The Constitutional Court initially reviewed the challenged regulation from the viewpoint of the general principle of equality (the second paragraph of Article 14 of the Constitution). It decided that a regulation that differentiates between civil litigious proceedings initiated by debtors with a legal action and civil litigious proceedings that are continued following a decision of the court in charge of the execution of the claim is not inconsistent with the principle of equality. The legislature namely had a sound and objective reason for such differentiation, i.e. to prevent or diminish the negative consequences of a lack of payment discipline. The mentioned reason is sound in particular as the overall lack of payment discipline in the Slovene economy has reached such an extent that it seriously threatens the normal functioning of companies.

The Constitutional Court further reviewed the regulation from the viewpoint of the right to a trial without undue delay, which is an essential part of the right to judicial protection determined by the first paragraph of Article 23 of the Constitution. It found that the right to a trial without undue delay is, due to its nature, primarily ensured in concrete judicial proceedings. In accordance with established Constitutional Court case law as well as the case law of the European Court of Human Rights, a violation of the right to a trial without undue delay or the right to a trial within a reasonable time, respectively, are assessed with regard to a number of criteria: the complexity of the case, the conduct of the state authorities, the conduct of the complainant, and the nature of the case. The protection of this right is primarily the responsibility of the judge adjudicating in concrete judicial proceedings.

The right to a trial without undue delay, however, does not also guarantee the right to a precisely defined order of consideration of the cases before the courts. The absolute or main purpose of the rules regarding the order of precedence as well as the rules regarding priority consideration of cases (which entail a deviation from the order with regard to the time of their receipt) is not to ensure effective and speedy judicial protection, but they must be assessed together with other criteria and the circumstances of the concrete case. The consideration of cases in a certain order of precedence as well as priority consideration of cases by themselves do not ensure a trial without undue delay. Equally, the priority consideration of a concrete case does not necessarily entail that in other judicial proceedings (of the same type) a violation of this right will occur.

In light of the above, the Constitutional Court decided that the challenged provision, which regulates the order of precedence of cases, does not entail an interference with the right to a trial without undue delay (and therefore the right to judicial protection), but merely a determination of the manner of its implementation. In contrast to interferences with rights, in instances of the determination of the manner of implementation, the Constitutional Court only assesses whether the regulation is reasonable. As the legislature had a sound reason for providing for priority consideration in the challenged provision, the Constitutional Court decided that such is not inconsistent with the first paragraph of Article 23 of the Constitution.

2. 2. 16. Order of Detention together with a Second Instance Judgment of Conviction

By Decision No. Up-413/11, dated 2 April 2013 (Official Gazette RS, No. 37/13), the Constitutional Court decided on the constitutional complaint of a complainant who was party to criminal proceedings on the basis of a reasonable suspicion that he had committed the criminal offence of incitement to the criminal offence of murder. At the first instance, the complainant was acquitted of the charge that he had committed this criminal offence. The Higher Court granted the appeal of the state prosecutor and found the complainant guilty of the criminal offense he had been charged with and handed down a prison sentence of 30 years. On such basis, it also ordered the complainant's detention, which it substantiated by the adopted judgment of conviction. The complainant challenged precisely the detention order with his constitutional complaint. The Higher Court namely ordered the detention when it adopted the judgment (4 February 2011), and not upon its pronouncement (7 February 2011). The Supreme Court dismissed the complainant's allegation that the adoption and the pronouncement of a judgment must be simultaneous and that the court could have correctly ordered the detention only after the pronouncement of the judgment, when the complainant was informed thereof. In the constitutional complaint, the complainant claimed that the Higher Court had no statutory basis for ordering the detention on 4 February 2011, as it ordered his detention before the judgment of conviction adopted by this court, which at the moment when his detention was ordered had not yet been adopted and pronounced, became effective (against him). Up until the pronouncement of the second instance judgment of conviction, the first instance judgment of acquittal and thus the presumption of innocence determined by Article 27 of the Constitution were allegedly still in effect as regards the complainant.

In accordance with the first paragraph of Article 20 of the Constitution, a person for whom there exists a reasonable suspicion that he or she committed a criminal offence may only be detained on the basis of a court order when such is absolutely necessary for the course of criminal proceedings or for reasons of public safety. This provision of the Constitution namely requires three conditions for an order of detention: (1) reasonable suspicion, (2) a court order, and (3) its absolute necessity for the course of criminal proceedings or for public safety. In accordance with the second paragraph of Article 20 of the Constitution, upon detention, but not later than twenty-four hours thereafter, the person detained must be handed the written court order containing a statement of reasons. The judicial branch of state power is thus bound by the explicit constitutional requirement that upon detaining someone it must inform the detained person of the reasons for the deprivation of their liberty. The presumption of innocence determined in Article 27 of the Constitution is not an obstacle to ordering detention. This presumption namely does not produce absolute effects, as already the Constitution itself provides for the possibility to interfere with the right to personal freedom if a person has committed a crime and it does so already on the basis of reasonable suspicion and not only on the basis of a final judgment of conviction.

By a judgment of acquittal, a court decides that the charges are not substantiated. A judgment of acquittal in its essence denies the existence of a reasonable suspicion that the suspect committed the alleged criminal offence. In such a situation, the necessary, logical, and, from the viewpoint of constitutional law, only acceptable consequence of a judgment of acquittal is therefore the release of the detained person. In contrast, a judgment of conviction entails the court's finding that the charges that the defendant committed the criminal

offense he or she had been charged with are substantiated. By a judgment of conviction, the reasonable suspicion that existed throughout the entire criminal proceedings is confirmed and becomes certainty or conviction.

As the complainant in the case at issue had been acquitted of the charges, there no longer existed the fundamental constitutional condition, i.e. a reasonable suspicion on the basis of which the courts could have decided on the necessity of detention. However, this situation was significantly altered by the Higher Court judgment of conviction, by which the complainant had been found guilty of committing a criminal offence. As in appellate proceedings the Higher Court changed the judgment of acquittal by adopting a judgment of conviction imposing a prison sentence, it found itself in a position wherein it could also decide on the necessity of ordering detention. Also in such situations, however, the courts must consider all safeguards that the Constitution determines for the admissibility of detention.

In its Decision, the Constitutional Court clarified that the standpoints of the Supreme Court that the adoption of a judgment entails the adoption of a judgment following oral deliberation and voting and that it is not necessary that the adoption of the judgment and its pronouncement be simultaneous are not disputable from the viewpoint of constitutional law. The important legal issue was, however, whether, considering the requirements under the second paragraph of Article 20 of the Constitution, it sufficed that the Higher Court in the order of detention only informed the complainant that it had adopted a judgment of conviction imposing a prison sentence of 30 years (the pronouncement of which it delayed for three days), or was it obligated to also inform him of the essential reasons that led to the adoption of such a judgment.

The Constitutional Court assessed that the Higher Court fulfilled the requirements of Article 20 of the Constitution. In the reasoning of the detention order, it explicitly stated that it had granted the appeal of the state prosecution and changed the judgment of acquittal by finding the complainant guilty of committing the criminal offence of incitement to the criminal offence of murder and sentenced him to a prison term of 30 years. Thereby it informed the complainant of the existence of a new circumstance, the new legal basis for the detention order, and the reasons for the existence of reasonable suspicion. The complainant was thus informed of the reasons for his detention. As the complainant's right to personal freedom had not been violated, the Constitutional Court dismissed the constitutional complaint.

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

In its annual reports the Constitutional Court draws attention to instances of disrespect for decisions adopted on the basis of Article 48 of the Constitutional Court Act. In cases when the Constitutional Court decides that a law or other regulation is 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, it adopts a so-called declaratory decision and 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. In conformity with the constitutional principles of a state governed by the rule of law (Article 2 of the Constitution) and the principle of the separation of powers (the second paragraph of Article 3 of the Constitution), the competent issuing authority must respond to a declaratory decision of the Constitutional Court and remedy the established unconstitutionality or illegality.

At the end of 2013, there remained four unimplemented decisions of the Constitutional Court by which statutory provisions were found to be unconstitutional and two decisions of the Constitutional Court by which the unconstitutionalities or illegalities of regulations of local communities were established. The competence to remedy the unconstitutionalities of laws lies with the National Assembly as the legislature, while individual municipalities must take action when local regulations are unconstitutional or illegal. It must be noted that in several of its decisions by which the unconstitutionality or illegality of a challenged regulation was established the Constitutional Court also determined the manner of execution of its decisions and thus ensured effective protection of the constitutional rights of the participants in the concrete proceedings. These decisions of the Constitutional Court, by which also the manner of execution was determined, are in this report not included among the unimplemented decisions; otherwise the total number of unimplemented decisions would have been greater.

The oldest decision still not implemented remains Decision No. U-I-301/98, dated 17 September 1998 (Official Gazette RS, 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 Urban Municipality of Koper was established. In 2012, the time limits expired for the elimination of the unconstitutionality of three decisions of the Constitutional Court, 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 RS, 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 provisions of the Higher Education Act 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. By Decision No. U-I-257/09, dated 14 April 2011 (Official

Gazette RS, No. 37/11), 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. Since network charges are public charges, in accordance with Article 147 of the Constitution, they must be determined by law. 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 RS, No. 55/11, and OdlUS XIX, 24), found to be inconsistent with the Constitution as they fail to regulate a procedural mechanism that would ensure that motions to present evidence that 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 once again be noted that Decision of the Constitutional Court No. U-I-345/02, dated 14 November 2002 (Official Gazette RS, No. 105/02, and OdlUS XI, 230), regarding the establishment of the 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, remains partly unimplemented. While the municipalities have mainly eliminated the established illegality of their statutes, the Municipality of Grosuplje has not responded to the Decision of the Constitutional Court.

In 2013, only one decision of the Constitutional Court has remained unimplemented by which municipalities were ordered to remedy the unconstitutionalities of their municipal regulations regarding the categorisation of municipal public roads. By Decision No. U-I-42/06, dated 20 March 2008 (Official Gazette RS, No. 33/08, and OdlUS XVII, 14), the unconstitutionality of the Ordinance on the Categorisation of Municipal Roads of the Urban Municipality of Ljubljana was established. This unconstitutionality should have been remedied within six months of the publication of the Decision in the Official Gazette, however this did not happen. It should be noted that one single unimplemented decision from the field of the categorisation of municipal public roads does not entail that these problems no longer exist. A high number of individuals still turn to the Constitutional Court, however in the beginning of 2011 (Decision No. U-I-208/10, dated 20 January 2011, Official Gazette RS, No. 10/11), the Constitutional Court toughened its approach, in order to ensure more effective protection of the right to property, and for the first time abrogated a regulation regarding the categorisation of local roads. Also in 2013, the Constitutional Court did not adopt declaratory decisions on such local regulations, but immediately abrogated the regulations instead. In fact, these cases concern substantially analogous decisions of municipalities to nationalise private plots of land without a legal basis and without having acquired them beforehand by means of a legal transaction or an expropriation procedure. In a state governed by the rule of law, respect for the decisions of the Constitutional Court should entail that municipalities eliminate such unconstitutionalities on their own, without the intervention of the Constitutional Court.

2. 4. International Activities of the Constitutional Court in 2013

Due to the internationalisation of human rights and the increasing role of European Union law, the importance of the exchange of information and experiences on an international level is growing. The positioning of the Republic of Slovenia in the European and broader legal environment requires that the authorities of the state interact and cooperate at key international events in their fields of work. In the framework of its international activities, also the Constitutional Court endeavours to establish, maintain, and improve relations with other highest-level national and international courts. Within such scope, it is involved in broad multilateral cooperation and furthermore cooperates on a bilateral level with the courts of numerous other states.

In January, the President of the Constitutional Court attended a solemn session of the European Court of Human Rights in Strasbourg. He also visited the International Criminal Court and the International Court of Justice in the Hague and took part at a session of the Advisory Committee on Nominations at the International Criminal Court. In the framework of international cooperation, judges of the Constitutional Court attended a round table discussion in Montenegro regarding the role of constitutional courts in the development of the rule of law, an international conference in Romania on the constitutional judiciary 20 years after the fall of communism, a solemn ceremony opening the judicial year of the Constitutional Court of Kosovo, and an international conference held upon the 50th anniversary of the Constitutional Court of Serbia.

In the past year, the Constitutional Court hosted two official visits of foreign constitutional courts. In April, a delegation from the Constitutional Court of the Republic of Austria visited the Court. In official discussions, the judges exchanged experiences from the field of constitutional case law, as well as experiences regarding the organisation and issues related to the functioning of the two constitutional courts. The visit of a delegation from the Constitutional Court of the Republic of Croatia in October represented the continued maintenance of regular contacts, which have now existed for more than 20 years. In official discussions, the judges exchanged their most recent experiences from the field of constitutional case law and devoted special attention to the issue of the independence of constitutional courts, their overburdened state, their relations towards European courts, and the creation of the case law of European constitutional courts. Bilateral cooperation with the constitutional courts of neighbouring states can be assessed as very good. The mentioned visits from the constitutional courts of Austria and Croatia also played an important role in the maintenance and further strengthening of close relations. In December, the Constitutional Court hosted the President of the Constitu-

tional Court of the Federal Republic of Germany, Prof. Dr. Andreas Voßkuhle, who delivered a keynote speech at a ceremony held upon the occasion of Constitutionality Day, which the Constitutional Court celebrates in remembrance of the adoption of the Constitution.

In May, a delegation from the Constitutional Court had an official visit to the Constitutional Court of the Republic of Macedonia. The judges of the Slovene and Macedonian Constitutional Courts have established successful bilateral cooperation over the past decade. At this most recent meeting they exchanged experiences related to constitutional case law and presented some important decisions adopted in the past year. They devoted special attention to the issue of the constitutional protection of the privacy of legal entities. Following an interval of a few years, in July a delegation from the Constitutional Court of the Republic of Slovenia once again visited the Constitutional Court of the Russian Federation. The second official visit to the Russian Constitutional Court entails a successful step towards further cooperation and the deepening of bilateral relations. In official discussions, the judges exchanged experiences from the field of constitutional case law and devoted special emphasis to the issue of the implementation of the decisions of constitutional courts and the constitutional protection of privacy. In September, a delegation from the Constitutional Court also visited the Constitutional Court of Romania. After a break of a few years, this visit was a step towards renewing the cooperation between the two courts that started already in 2000. In official discussions, the judges exchanged their latest experiences related to constitutional case law and devoted special attention to the competences of constitutional courts, with an emphasis on the contemporary challenges that are reflected in the constitutional case law of national constitutional courts. They also addressed the issue of the independence of constitutional courts and their relation to the other branches of power.

The representatives of a renowned American legal association, The Federalist Society for Law and Public Policy Studies, namely its Director of International Affairs Jim Kelly and his deputy, Paul Zimmerman, visited the Constitutional Court. The Constitutional Court also organised a shorter working meeting with the judges of the European Court of Human Rights from the states of the former Yugoslavia. Dr. Boštjan M. Zupančič, Dr. Dragoljub Popović, Dr. Mirjana Lazarova Trajkovska, and Dr. Nebojša Vučinić attended the meeting.

The international activities of the Constitutional Court include the training of the judicial personnel of the Court, especially its advisors. An important factor in ensuring efficient judicial decision-making and the protection of fundamental rights is namely training its professionals with regard to individual fields of work. Within the framework of the Court's international activities, of particular note are the participation of its advisors at the following: an international seminar on the international protection of refugees in Portugal; a symposium of the European Union Agency for Fundamental Rights (FRA) on the promotion of the rule of law in the European Union, in Vienna; a seminar of the European Research Area (ERA) on cybercrime in Germany; and the 12th session of the Joint Council on Constitutional Justice of the Venice Commission, in Venice. Furthermore, the head of the Documentation and Information Technology Department attended an international conference entitled "Court Technology" in the United States of America.

2. 5. Summary of Statistical data for 2013

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 disputest
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 2012	Cases Received in 2013	Cases Resolved in 2013	Cases pending as of 31 December 2013
Up	703	1,031	1,074	660
U-I	252	328	349*	231
P	6	7	7	6
U-II	0	0	0	0
Rm	0	0	0	0
Mp	1	0	1	0
Ps	0	0	0	0
Op	0	0	0	0
TOTAL	962	1,366	1,431	897

Table 1: Summary Data on All Cases in 2013

* The 349 U-I cases resolved include 24 joined applications.

Register	Cases pending as of 31 December 2012**	Cases Received in 2013	Cases Resolved in 2013	Cases pending as of 31 December 2013
All R-I	83	364	395	52
R-I*		143	122	52
TOTAL (All Registers and R-I)		1,509	1,553	949

Table 1a: Summary Data regarding R-I Cases in 2013

* The total number amounted to 364 R-I cases received, 221 of which were transferred to another register in 2013, while 143 remained in the R-I register. 395 R-I cases were resolved, 122 of which were resolved by the presumption that they had not been lodged, while the rest were transferred to other registers.
** The number of cases resolved as of 31 December 2012 does not match the data provided in last year's overview as a few R-I cases were reopened and closed in 2013.

Panel	Cases pending as of 31 December 2012	Cases Received in 2013	Cases Resolved in 2013	Cases pending as of 31 December 2013
Criminal Law	93	225	236	82
Administrative Law	267	340	385	222
Civil Law	343	466	453	356
TOTAL	703	1,031	1,074	660

Table 2: Summary Data Regarding Up Cases in 2013

Year	2010	2011	2012	2013	Total
U-I		8	59	164	231
P	/	/	/	6	6
Up	/	8	124	528	660
TOTAL	/	16	183	698	897
R-I	/	/	/	52	52

Table 3: Pending Cases According to Year Received as of 31 December 2013

2. 5. 1. Cases Received

Year	U-I	Up	P	U-II	Ps	Mp	Rm	Total	R-I	Total including R-I
2006	474	2,546	32	1	/	/	/	3,053	/	3,053
2007	367	3,937	47	/	/	3	/	4,354	/	4,354
2008	323	3,132	107	/	/	/	/	3,562	/	3,562
2009	308	1,495	39	2	/	/	1	1,845	/	1,845
2010	287	1,582	10	1	/	/	/	1,880	/	1,880
2011	323	1,358	20	3	/	/	/	1,704	165	1,869
2012	324	1,203	13	2	1	1	/	1,544	187	1,731
2013	328	1,031	7	/	/	/	/	1,366	143*	1,509
2013/2012	1.2%	-14.3%	-46.2%	/	/	/	/	-11.5%	-23.5%	-12.8%

Table 4: Cases Received According to Type and Year *The total number amounted to 364 R-I cases received, 221 of which were transferred to another register in 2013, while 143 remained in the R-I register.

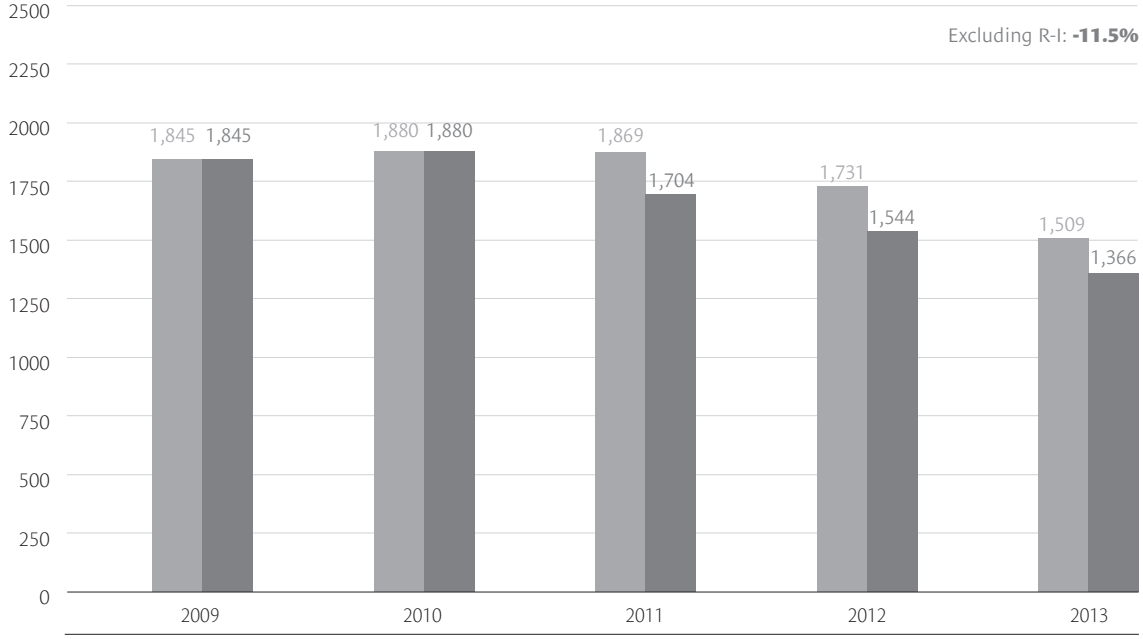


Figure 1: Total Number of Cases Received by Year

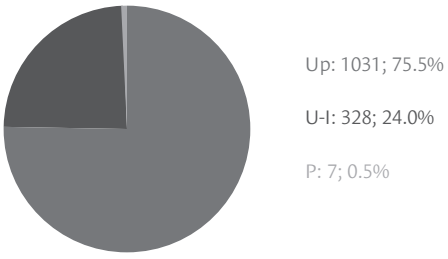


Figure 2: Distribution of Cases Received in 2013

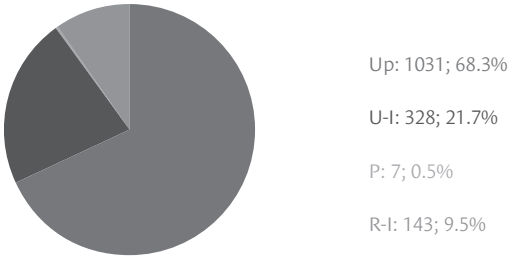


Figure 3: Distribution of Cases Received in 2013, including R-I cases

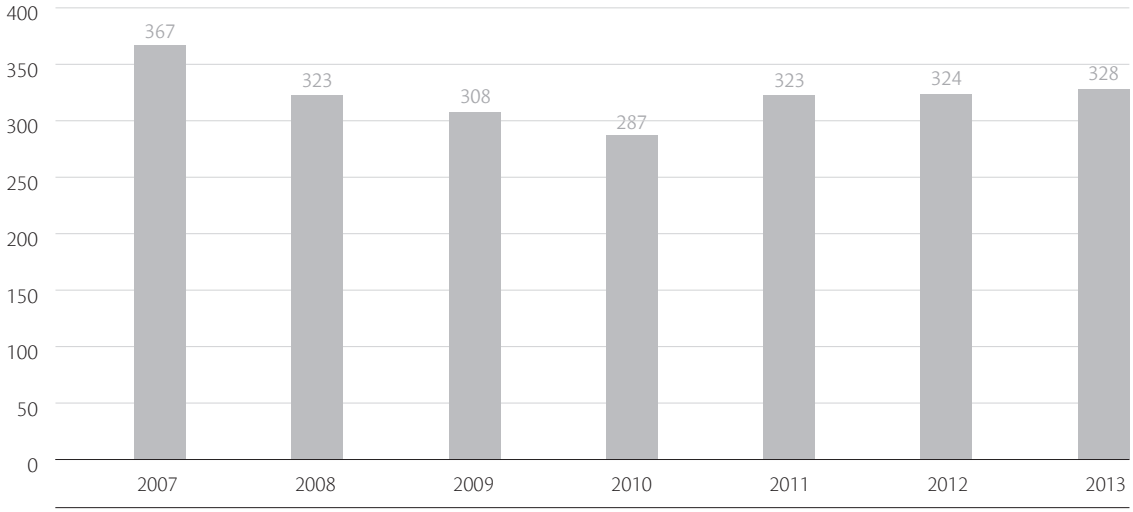


Figure 4: Number of U-I Cases Received by Year

Applicants Requesting a Review	Number of Requests
Upravno sodišče Republike Slovenije (Administrative Court of the Republic of Slovenia)	23
Government of the Republic of Slovenia	11
Sindikat vojakov Slovenije (The Soldiers' Trade Union of Slovenia)	7
Upravno sodišče, Oddelek v Mariboru (Administrative Court, Department in Maribor)	6
Deputy Groups of the National Assembly of the Republic of Slovenia	4
Delovno in socialno sodišče v Ljubljani (Labour and Social Court in Ljubljana)	2
Information Commissioner	2
Okrožno sodišče v Mariboru (District Court in Maribor)	2
Policijski sindikat Slovenije (Police Trade Union of Slovenia)	2
Sindikat policistov Slovenije (Trade Union of Law Enforcement Officers of Slovenia)	2
Višje sodišče v Ljubljani (Higher Court in Ljubljana)	2
Združenje svetov delavcev slovenskih podjetij (Association of Works Councils of Slovenian Companies)	2
National Council of the Republic of Slovenia	1
Mestna občina Ljubljana (Ljubljana Urban Municipality)	1
Občina Domžale - Občinski svet (Domžale Municipality - Municipal Council)	1
Občina Ilirska Bistrica - župan (Ilirska Bistrica Municipality - Mayor)	1
Občina Sežana - Občinski svet (Sežana Municipality - Municipal Council)	1
Okrajno sodišče v Mariboru (Local Court in Maribor)	1
Okrožno sodišče v Ljubljani (District Court in Ljubljana)	1
Pergam Confederation of Trade Unions of Slovenia	1
Sindikat delavcev radiodifuzije Slovenije (Trade Union of Broadcasting Employees of Slovenia)	1
Sindikat državnih organov Slovenije (Trade Union of State Authorities of Slovenia)	1
Sindikat gozdarstva Slovenije (The Forestry Trade Union of Slovenia)	1
Sindikat Ministrstva za obrambo (Trade Union of the Ministry of Defence)	1
Sindikat Slovenskih diplomatov (Trade Union of Slovenian Diplomats)	1
Ombudsman of the Republic of Slovenia	1
Višje sodišče v Mariboru (Higher Court in Maribor)	1
Zveza svobodnih sindikatov Slovenije (The Association of Free Trade Unions of Slovenia)	1
TOTAL	81

Table 5: Number of Requests for a Review Received in 2013 according to Applicant

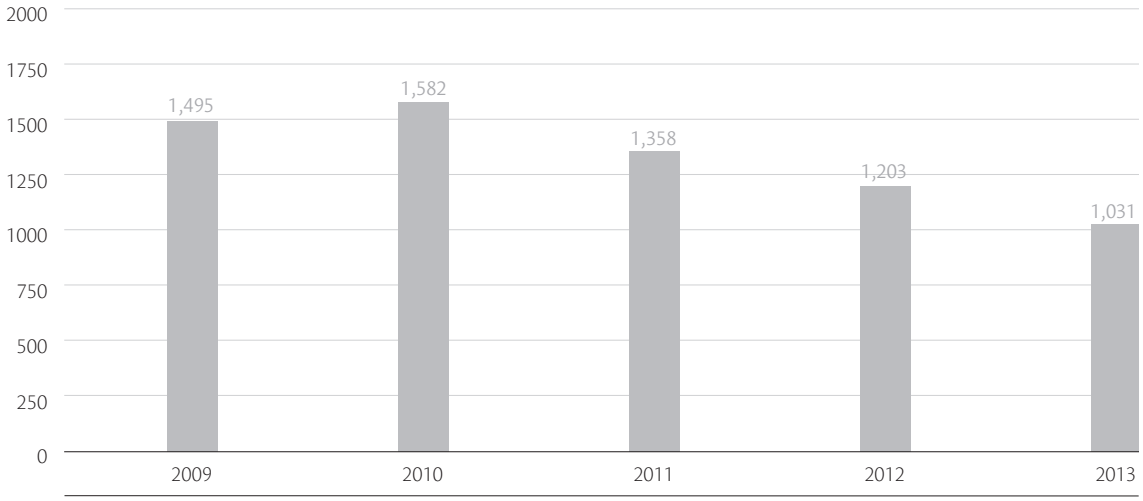
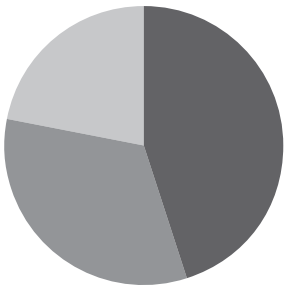


Figure 5: Number of Up Cases Received by Year

Year	Civil Law	Administrative Law	Criminal Law	Total
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	476	460	267	1,203
2013	466	340	225	1,031
2013/2012	-2.1%	-26.1%	-15.7%	-14.3%
2012 Up and R-I*	523	527	340	1,390
2013 Up and R-I*	505	386	283	1,174
2013/2012 Up and R-I*	-3.4%	-26.8%	-16.8%	-15.5%

Table 6: Number of Cases Received according to Panel (Up, for 2012 and 2013 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.



Civil Law Panel: 466; 45.2%

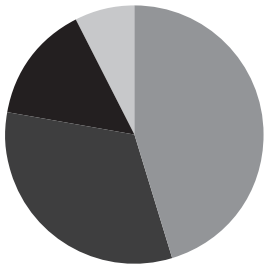
Administrative Law Panel: 340; 33.0%

Criminal Law Panel: 225; 21.8%

Figure 6: Distribution of Up Cases Received according to Panel

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	/
2013	49	22	11	68	/

Table 7: Legal Acts Challenged by Year



Ordinances and Other Acts of Self-Governing Local Communities: 68; 45.3%

Laws and Other Acts of the National Assembly: 49; 32.7%

Decrees and Other Acts of the Government: 22; 14.7%

Rules and Other Acts of Ministries: 11; 7.3%

Figure 7: Distribution of Legal Acts Challenged (U-I Cases Received in 2013)

The Acts Challenged Multiple Times	Number of Cases
Civil Procedure Act	52
Fiscal Balance Act	28
Court Fees Act	25
Judicial Review of Administrative Acts Act	20
Free Legal Aid Act	12
Enforcement and Securing of Civil Claims Act	8

Table 8: Acts Challenged Multiple Times in the Cases Received in 2013

Type of Dispute (Up Cases)	Received in 2013	Percentage of All Up Cases	Received in 2012	Change 2012/2013
Civil Law Litigations	280	27.2%	290	-3.4%
Criminal Cases	136	13.2%	129	5.4%
Labour Law Disputes	96	9.3%	125	-23.2%
Other Administrative Disputes	90	8.7%	166	-45.8%
Minor Offences	89	8.6%	138	-35.5%
Execution of Obligations	61	5.9%	75	-18.7%
Social Law Disputes	50	4.8%	54	-7.4%
Commercial Law Disputes	46	4.5%	33	39.4%
Taxes	36	3.5%	42	-14.3%
Matters concerning Spatial Planning	34	3.3%	28	21.4%
Non-Litigious Civil Law Proceedings	31	3.0%	31	0.0%
Proceedings related to the Land Register	23	2.2%	15	53.3%
Civil Status of Persons	16	1.6%	10	60.0%
Insolvency Proceedings	13	1.3%	10	30.0%
Denationalisation	10	1.0%	23	-56.5%
Other	9	0.9%	7	28.6%
Succession Proceedings	6	0.6%	13	-53.8%
No Dispute	5	0.5%	4	25.0%
Elections	0	0.0%	8	/
Registration in the Companies Register	0	0.0%	2	/
TOTAL	1,031	100.0%	1,203	-14.3%

Table 9: Up Cases Received according to Type of Dispute

Initiators of the Dispute (P)	Filed
Policijska postaja Ljubljana Bežigrad (Ljubljana Bežigrad Police Station)	2
Okrajno sodišče v Ljubljani (Local Court in Ljubljana)	1
Policijska postaja Ljutomer (Ljutomer Police Station)	1
Policijska postaja Ravne na Koroškem (Ravne na Koroškem Police Station)	1
Inšpektorat za kmetijstvo in okolje (Inspectorate for Agriculture and the Environment)	1
EMWE, d. o. o.	1
TOTAL	7

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

2. 5. 2. Cases Resolved

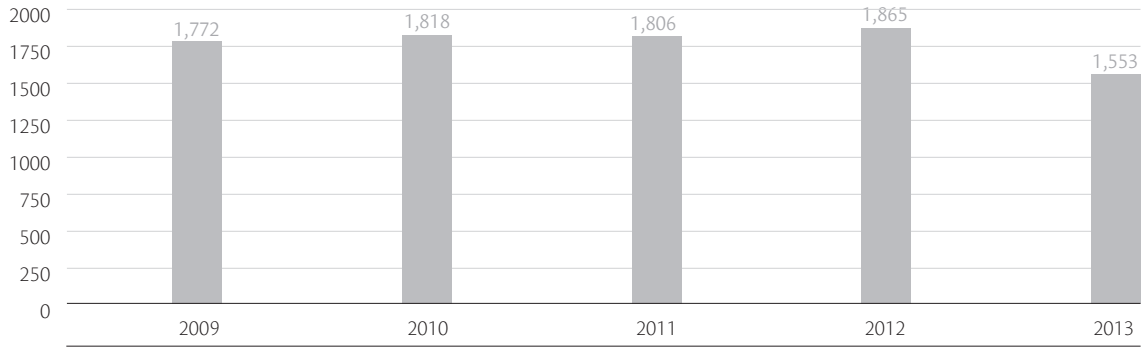


Figure 8: Number of Cases Resolved according to Year Resolved

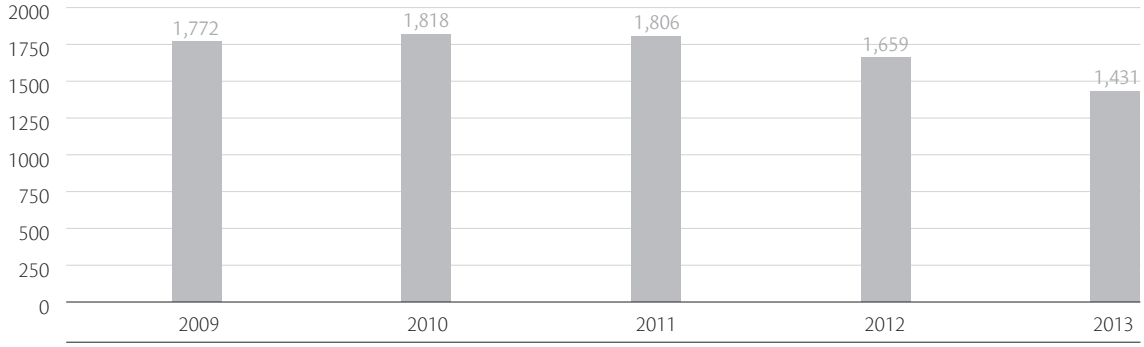


Figure 8a: Number of Cases Resolved according to Year Resolved (excluding R-I Cases)

Year	U-I	Up	P	U-II	Ps	Rm	Mp	Total	R-I*	Total (including R-I Cases)
2009	315	1,348	107	2	/	/	/	1,772		1,772
2010	294	1,500	22	1	/	1	/	1,818		1,818
2011	311	1,476	16	3	/	/	/	1,806		1,806
2012	350	1,287	19	2	1	/		1,659	206	1,865
2013	349	1,074	7	/	/	/	1	1,431	122	1,553
2013/2012	-0.3%	-16.6%	-63.2%	/	/	/	/	-13.7 %	-40.8%	-16.7%

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 2013 (excluding R-I cases)

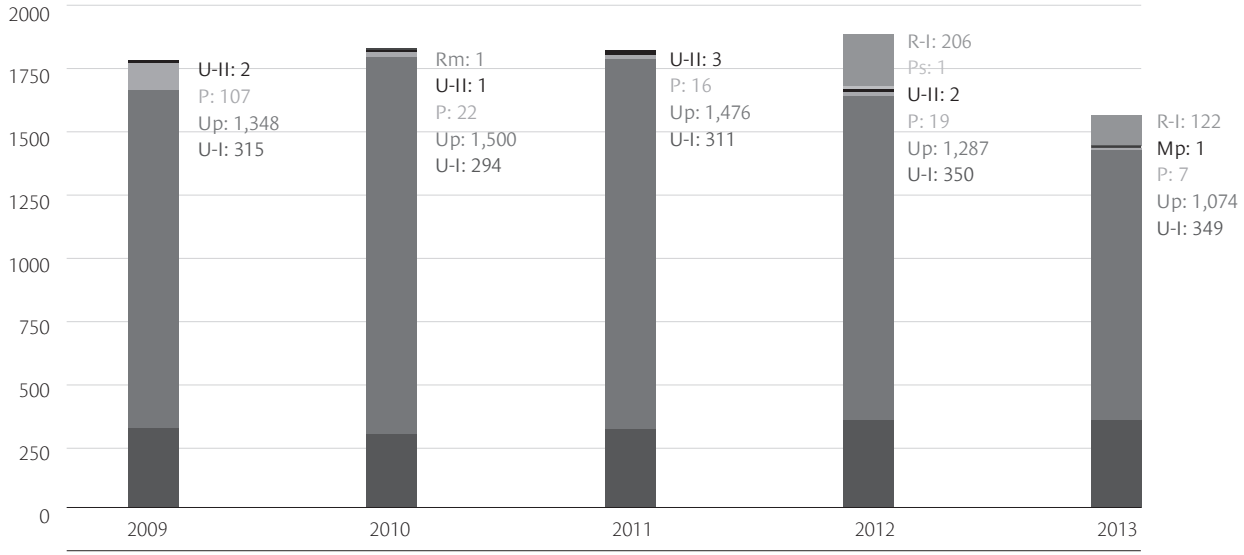


Figure 10: Distribution of Cases Resolved according to Type of Case and Year Resolved (including R-I Cases)

Type of Resolution	2013 Requests	2013 Petitions	2013	2012	2011	2010	2009	2008	2007
Abrogation of statutory provisions	6		6	6	8	8	5	4	10
Inconsistency with the Constitution – statutory provisions	3		3	2	3	4	2	4	2
Inconsistency with the Constitution and determination of a deadline – statutory provisions	5		5	1	8	7	14	18	11
Not inconsistent with the Constitution – statutory provisions	11	4	15	9	19	15	18	15	16
Inconsistency, abrogation, or annulment of provisions of regulations	2	10	12	22	30	6	11	6	12
Not inconsistent with the Constitution or the law – provisions of regulations		1	1	2	7	1	1	1	0
Dismissed		61	61	39	50	26	49	41	78
Rejected	21	217	238	187	205	185	223	360	116
Proceedings were stayed	13	9	22	82	9	4	10	17	28

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

Year	Civil Law	Administrative Law	Criminal Law	Total
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
2013	453	385	236	1,074
2013/2012	-14.2%	-13.5%	-24.8%	-16.6%

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

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

	Civil Law	Administrative Law	Criminal Law	Total
All R-I Cases	128	123	144	395
R-I Cases Resolved in the R-I Register	34	41	47	122
Up Cases Resolved	453	385	236	1,074
Up and R-I Cases	487	426	283	1,196
Compared to 2012	-14.0%	-22.5%	-24.9%	-19.9%

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)

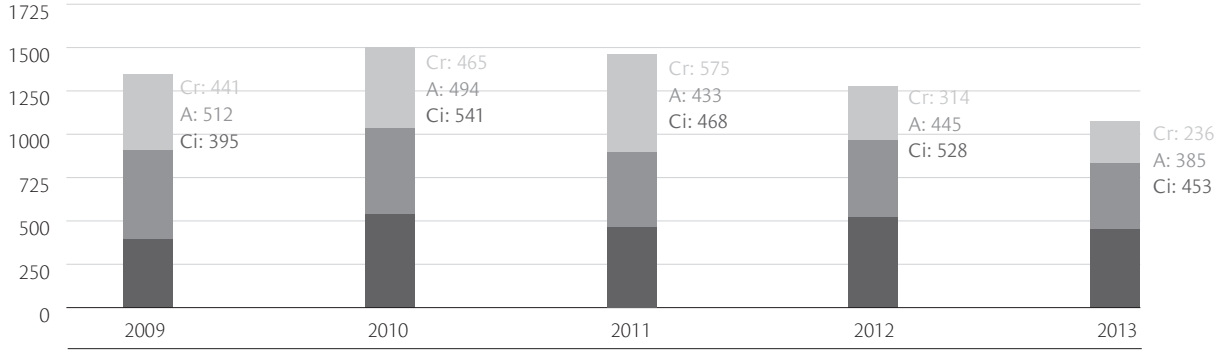


Figure 11: Distribution of Up Cases Resolved according to Panel and Year

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

Type of Dispute (Up Cases)	Received in 2013	Percentage of All Up Cases	Received in 2012	Change 2012/2013
Civil Law Litigations	286	26.6%	339	-15.6%
Other Administrative Disputes	141	13.1%	148	-4.7%
Criminal Cases	133	12.4%	169	-21.3%
Labour Law Disputes	103	9.6%	114	-9.6%
Minor Offences	103	9.6%	146	-29.5%
Execution of Obligations	65	6.1%	88	-26.1%
Social Law Disputes	45	4.2%	50	-10.0%
Commercial Law Disputes	39	3.6%	31	25.8%
Non-litigious Civil Law Proceedings	31	2.9%	26	19.2%
Matters concerning Spatial Planning	28	2.6%	34	-17.6%
Taxes	26	2.4%	48	-45.8%
Civil Status of Persons	18	1.7%	11	63.6%
Denationalisation	14	1.3%	29	-51.7%
Proceedings Related to the Land Register	14	1.3%	10	40.0%
Other	8	0.7%	5	60.0%
Insolvency Proceedings	7	0.7%	13	-46.2%
Succession Proceedings	7	0.7%	15	-53.3%
No Dispute	6	0.6%	4	50.0%
Elections	0	0.0%	6	/
Registration in the Companies Register	0	0.0%	1	/
TOTAL	1,074	100.0%	1,287	-16.6%

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*
2007	3,937	52	1.3%	67	38	29
2008	3,132	78	2.5%	51	37	14
2009	1,495	58	3.9%	63	37	26
2010	1,582	74	4.7%	58	57	1
2011	1,358	26	1.9%	26	21	8
2012	1,203	47	3.9%	44	41	3
2013	1,031	23	2.2%	22	18	4

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.

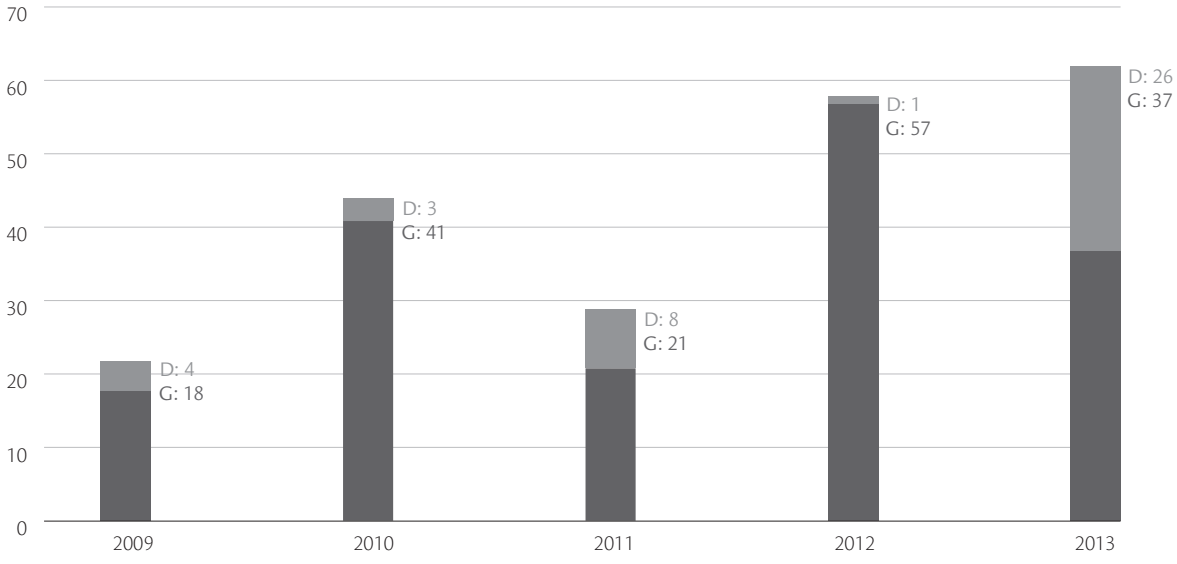


Figure 12: Distribution of Decisions in Up Cases Accepted according to Year Resolved

D = Dismissed G = Granted

Register	Average Duration in Days
U-I	269
Up	232
P	252
U-II	/
Rm	/
R-I	49
Mp	59
Ps	/
Op	/
TOTAL	198
TOTAL (excluding R-I)	239

Table 17: Average Duration in Days of Cases Resolved in 2013 according to Type of Case

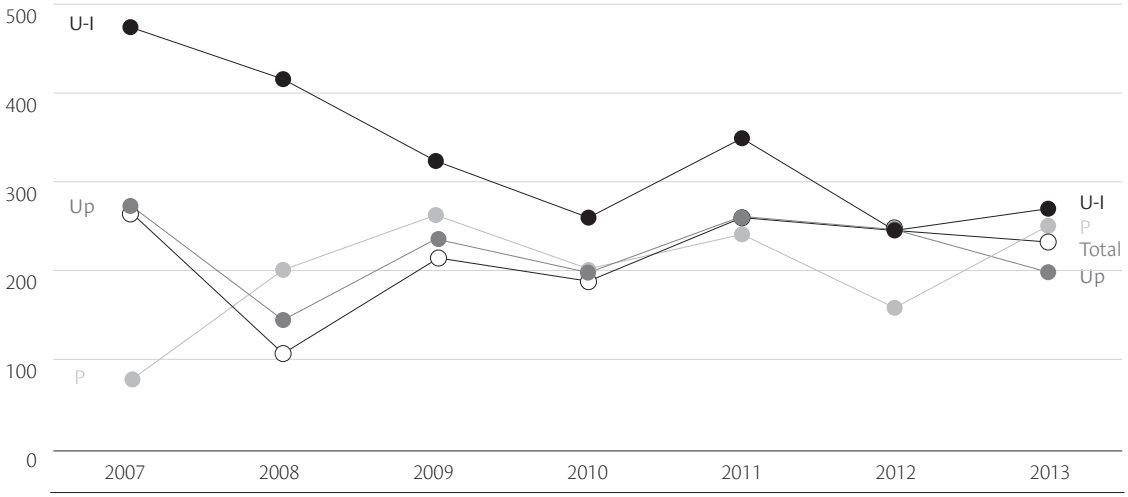


Figure 13: Average Duration in Days of Cases Resolved according to Type of Case and Year (excluding R-I cases)

Panel	2012	2013	Change 2012/2013
Civil Law	315	266	-15.5%
Administrative Law	204	241	18.1%
Criminal Law	198	151	-23.6%
TOTAL	248	232	-6.5%

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

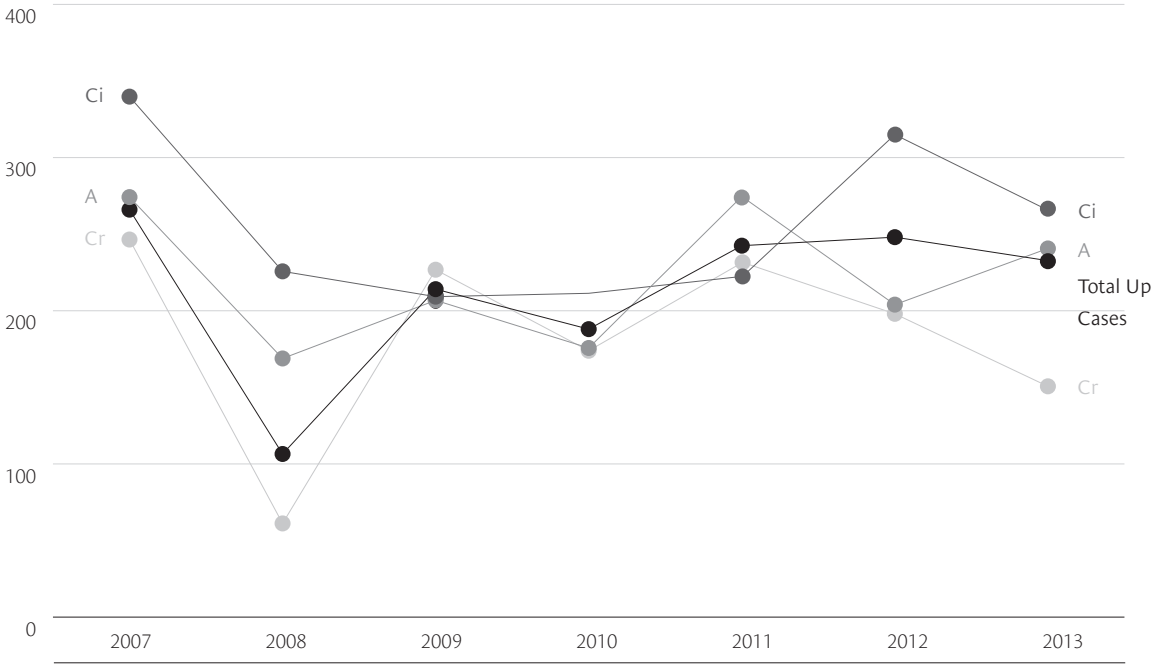


Figure 14: Average Duration in Days of Up Cases Resolved by Year (excluding R-I cases)

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

2. 5. 3. Unresolved Cases

Register / Year	2011	2012	2013	Total
U-I	8	59	164	231
Up	8	124	528	660
P	/	/	6	6
Mp	/	/	/	/
TOTAL (excluding R-I)	16	183	698	897
R-I	/	/	52	52
TOTAL (including R-I)	16	183	750	949

Table 19: Unresolved Cases according to Year Received as of 31 December 2013

Register	Temporary Suspensions
U-I	7
Up	4
TOTAL	11

Table 20: Temporary Suspensions of Regulations and Individual Acts as of 31 December 2013

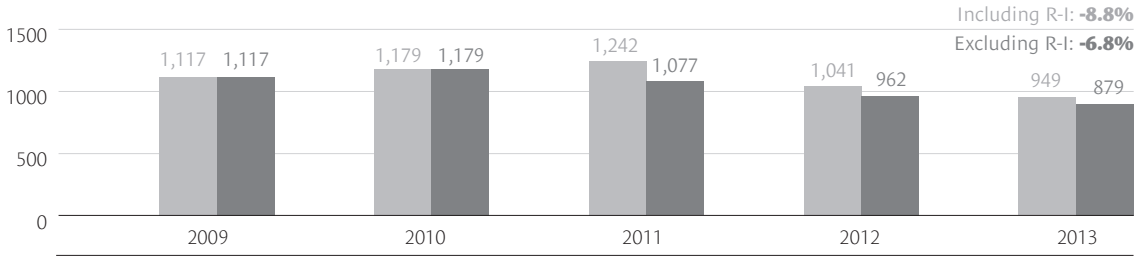


Figure 15: Number of Cases Pending at Year End Including R-I Excluding R-I

Figure 16: Comparison of Cases Received and Cases Resolved by Year (including R-I Cases) Rec = Received Res = Resolved

Register	Absolute Priority Cases	Priority Cases	Total
Up	6	239	245
U-I	36	34	70
P	/	6	6
R-I	/	13	13
TOTAL	42	292	334

Table 21: Priority Cases Pending as of 31 December 2013

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%
2013	3,092,739	503,208	63,128	3,659,075	-10.7%

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

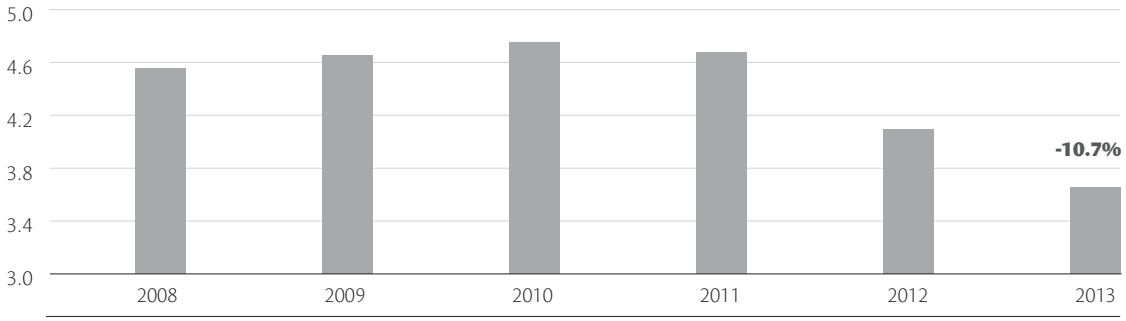


Figure 17: Realisation of the Financial Plan by Year (in EUR mil.)

Figure 18: Distribution of Expenditures in 2013

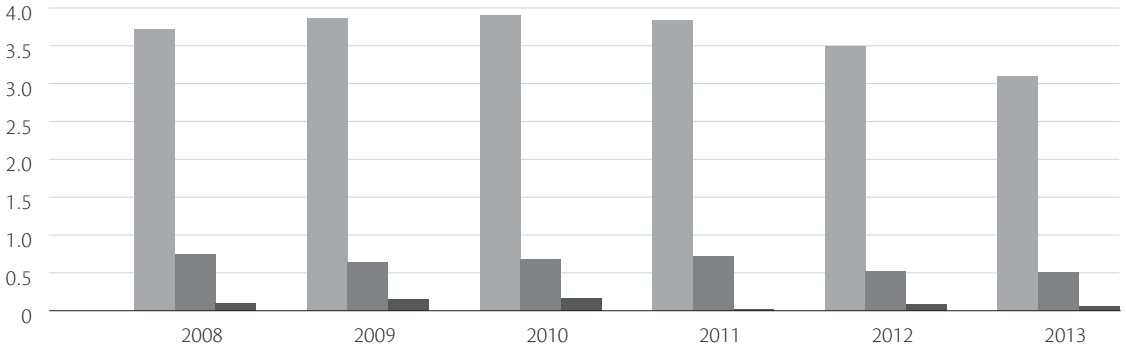


Figure 19: Distribution of Expenditures by Year (in EUR mil.)

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The Constitutional Court of the Republic of Slovenia
An Overview of the Work for 2013

Publisher The Constitutional Court of the Republic of Slovenia
Ljubljana, 2014

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

Printing r-tisk

Number of Copies 150

ISSN 2232-3163