PART II

AN OVERVIEW OF THE WORK FOR 2014

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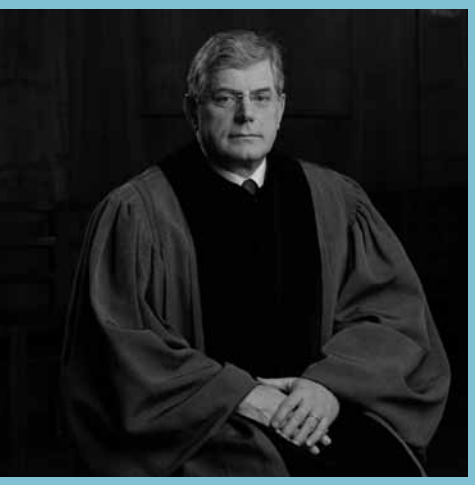


Foreword by the President of the Constitutional Court

The Overview of the Work of the Constitutional Court for 2014 is in front of you, dear readers. At the Constitutional Court we are convinced that the data on the cases resolved speak for themselves, demonstrating that in the year 2014 we put a great deal of effort into the resolution of cases and were successful in doing so. It is particularly the number of adopted decisions, i.e. those decisions of our Court decided on the merits, that confirms this. We adopted 62 decisions on the merits. However, more important than mere figures are the substance and legal issues addressed in these decisions. There were manifold constitutional issues that required considerable intellectual effort and a great deal of time. This was also the objective that we had set for ourselves: to decide as many important constitutional issues as possible. You can read about their substance in greater detail in the concise presentations of the more significant decisions given in the Overview.

The range of constitutional values and principles, human rights, and fundamental freedoms that we safeguarded through our decisions is broad. These run the gamut from the basic principles of a state governed by the rule of law and a social state, constitutional guarantees in different legal proceedings, to the right to compensation, the prohibition of torture, the presumption of innocence, the protection of personal liberty, the protection of human personality and dignity, the right to personal dignity and safety, the protection of the right to privacy and personality rights, the protection of communications, the protection of personal data, as well as of rights to social security and health care, and the rights of persons with disabilities.

Let me return to the figures. At the beginning of the year 2014 there were 949 cases pending from the previous years; in 2014 we received a total of 1,392 cases, 255 of which were petitions or requests, 1,003 constitutional complaints, and 20 requests to resolve jurisdictional disputes. We resolved 271 petitions or requests and 933 constitutional complaints. If we take a further look at the comparative data provided according to year, it can be seen that we truly endeavoured to resolve as many cases as possible, but it is also certain that our capabilities are limited. I am sure that we exhausted all human, organisational, and technical possibilities and that the only way to alleviate the situation would be to adopt the already proposed (although unsuccessful) amendment to the Constitution, which would enable the Constitutional Court to select (decide) by itself which applications to consider.

I would like to take this opportunity to stress again that the Constitutional Court is not the only guardian of constitutionality, legality, and human rights and fundamental freedoms. It is merely the highest guardian one can turn to as the last resort if everyone else has failed. It is thus the ultimate and not the first guardian of constitutionality. Every state authority, from the legislature and the government with the entire state administration, all the way to ordinary courts, must respect the Constitution and human rights and fundamental freedoms in their work and decision-making. I am afraid that this awareness is penetrating the National Assembly and the executive power only very slowly. In the legislative process, the legislature often avoids serious consideration of the constitutionality of the laws it adopts and not seldom prefers to confer the responsibility for such consideration on the Constitutional Court. By doing so it not only risks the adoption of laws burdened with unconstitutional provisions or at least with serious doubts regarding their constitutionality, but it also puts the Constitutional Court in a very difficult situation, thereby frequently "dragging" it into political processes. In the end, this makes everyone dissatisfied. If I may refer to an idea that has recently been expressed in the National Assembly, namely that by a certain constitutional amendment related to a concrete decision of the Constitutional Court the Deputies of the National Assembly merely wish to assist the Constitutional Court in its work, my answer is that the National Assembly can aid the Constitutional Court only by adopting such laws that are in conformity with the Constitution and international law binding on the Republic of Slovenia.

And yet another emphasis: I am convinced that the reproaches regarding the political partiality, weak argumentation of decisions, low level of intellectual capabilities of the current composition of the court, and many other matters that we can read in different media, are completely unjustified and often voiced with ill intent. It has lately indeed been "popular" to attack the Constitutional Court, but this does not prove that the reproaches are justified. We do not fear serious and professional criticism, nor do we shy away from such. We cannot, however, accept over-general criticism, even less so defamation aimed at the personalities of individual judges, wherever it comes from. Respect for a state governed by the rule of law requires an adequate level of legal culture.

Mag. Miroslav Mozetič

AN OVERVIEW OF THE WORK FOR 2014

1.1. The Constitutional Court in Numbers

1.1.1. Cases Received in 2014

The year 2014 saw the continuation of the trend of a decreasing number of cases received, which had started in 2009. The decrease in the number of new cases was substantial, although less than in previous years. In 2014, the Constitutional Court received 1,392 cases, which is 7.8% fewer than in 2013, when it received 1,509 cases. In comparison with past years, the decrease in the total number of cases received was not a consequence of fewer constitutional complaints received (the Up register), but a consequence of a significant decrease in the number of applications for a review of the constitutionality and legality of regulations (the U-I register). In 2013, the Constitutional Court received 328 requests or petitions for a review of constitutionality and legality, whereas in 2014 this number was 255, amounting to a 22.3% decrease. Within the distribution of all cases received, the cases entered into the U-I register represent 18.4% of all cases received. In 2014, the Constitutional Court also received fewer constitutional complaints, although the decrease was not significant. While in 2013 it received 1,031 constitutional complaints, last year it received 1,003, which is 2.7% fewer. The number of constitutional complaints received accounted for the most significant proportion of all cases received, amounting to 72.1% thereof. A characteristic of the Up cases filed is that they are connected to U-I cases to a high degree: out of 1,003 constitutional complaints, 73 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 2014, the Constitutional Court entered 373 cases received into the general R-I register, however 259 of them were subsequently transferred into another register (the Up or U-I registers), while 114 of them remained in the general R-I register. R-I cases represent 8.2% of the total number of cases received in 2014.

When interpreting and understanding the statistical data from the annual report, it has to be taken into consideration that in addition to the ordinary registers (especially the Up register, for constitutional complaints, and the U-I register, for a review of the constitutionality 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 that the Constitutional Court 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, their 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 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 2014, 6.4% fewer cases than in 2013 (a decrease from 1,366 to 1,278 cases).

The number of constitutional complaints received by individual panels of the Constitutional Court differed significantly. The criminal and administrative panel received a lower number of constitutional complaints filed compared to the previous year. The decrease with regard to the Criminal Law Panel was 9.8%, whereas with regard to the Administrative Law Panel the decrease was 7.9%. On the other hand, the Civil Law Panel again noted an increase in the number of constitutional complaints, as it received 4.5% more such complaints than the year earlier. Also in absolute figures, the Civil Law Panel had the highest number of cases received (487 cases) and was followed by the Administrative Law Panel (313 cases) and the Criminal Law Panel (203 cases). The lower number of constitutional complaints dealt with by the Criminal Law Panel can be entirely attributed to the several years' decrease in minor offence cases received. Already in 2012, the number of minor offence cases sharply decreased (compared to 2011 by 56.3%), and in 2013 and 2014 the decrease continued further, namely by 35.5% and 36%, respectively. On the other hand, the number of complicated criminal cases considered by the Criminal Law Panel increased in 2014.

With regard to the content of the constitutional complaints received, once again in 2014 the most frequent disputes were those linked to civil proceedings. In comparison to 2013, their number in fact decreased by 12.9%, whereas their share among all constitutional complaints amounted to 24.3%. In the second place were constitutional complaints from the field of criminal law, with regard to which an increase was noted for the second year in a row. In comparison to 2013, their number rose by 6.6%, and they accounted for 14.5% of all constitutional complaints. In terms of content, criminal cases were followed by administrative disputes (8.3%), execution proceedings (7.6%), labour disputes (6.9%), commercial disputes (6.3%), and social disputes (6.1%).

Among proceedings for the review of the constitutionality and legality of regulations (U-I cases), regarding which the number of cases received in 2014 was significantly lower than in 2013 (a decrease of 22.3%), it should be underlined that of 255 cases received, 53 (20.8%) were initiated on the basis of requests submitted by entitled applicants, the remainder were petitions of individuals (202 petitions). In this context, the activity of the regular courts must be highlighted; they filed 16 requests for a review of constitutionality, which amounts to 30% of all requests filed. An equal number of requests were filed by trade unions, whereas nine requests were filed by local communities or their associations. Out of 202 petitions for a review of constitutionality filed by

individuals, in 73 cases (in 36.1% 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 2014 most often it was the laws and other acts adopted by the National Assembly that were challenged; namely, as many as 89 different laws (and other acts) adopted by the National Assembly were challenged. Such laws were followed by the regulations of local communities – 42 different communal regulations were challenged – and by acts of the Government and Ministries, as 30 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. If we limit the discussion to laws only, it is evident that, for instance, the provisions of the Pension and Disability Insurance Act were challenged 19 times, the provisions of the Banking Act 13 times, the provisions of the Criminal Procedure Act 12 times, and the provisions of the Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act 11 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 applications for a review of the constitutionality or legality of regulations 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.

1.1.2. Cases Resolved in 2014

With regard to cases resolved (without the cases entered into the R-I register), it should be pointed out that in 2014 the Constitutional Court resolved 15% fewer cases than in 2013 (1,216 cases compared to 1,431 cases). The lower number of cases resolved is to be attributed to the fact that in 2014 the Constitutional Court considered multiple extremely extensive and constitutionally demanding cases. These cases required a broader and more in-depth approach, and more time for their resolution as well. Among the cases that are presented in this annual report as the most important decisions of the past year, the review of the constitutionality of the Real Property Tax Act in relation to the Real Property Mass Appraisal Act, the Police Act (the retention of DNA profiles), the Protection of Documents and Archives and Archival Institutions Act (the retention of personal data from medical records), the Electronic Communications Act (the retention of communication data), the Organisation and Financing of Education Act (the financing of primary schools), and the Minor Offences Act (imprisonment for the enforcement of fines) 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 this context, case No. U-I-295/13 must be mentioned, in which the Constitutional Court has in fact not yet adopted a final decision on the constitutionality of the provisions of the Banking Act, however it did for the first time address a preliminary question to the Court of Justice of the European Union. The question refers both to the validity and the interpretation of European Union acts.

The distribution of cases resolved (without considering R-I cases) was similar to the distribution of cases received. In 2014, the Constitutional Court resolved 271 cases regarding the constitutionality and legality of regulations (U-I cases), amounting to a 22.3% share of all cases resolved. In comparison to 2013, when it resolved 349 petitions and requests for a review of constitutionality, this represents a 22.3% decrease. In 2014, as every year thus far, constitutional complaints represented the majority of cases resolved. The Constitutional Court resolved 933 such cases, amounting to a 76.7% share of cases resolved and entailing a 13.1% decrease in comparison with 2013, when it resolved 1,074 constitutional complaints. With regard to the individual panels of the Constitutional Court, the highest number of constitutional complaints were resolved by the Civil Law Panel (437), followed by the Administrative Law Panel (361) and the Criminal Law Panel (135). While the number of cases resolved by the Civil and Administrative Panels remained at approximately the same level as in the previous year (a 3.5% and 6.2% decrease, respectively), the reason for the lower number of constitutional complaints resolved by the Criminal Law Panel (a 42.8% decrease) lies primarily in that a higher number of demanding criminal cases were considered, which required more in-depth substantive work and, consequently, more time.

In terms of content, the highest number of constitutional complaints resolved referred to the field of civil disputes (25.8%), which were followed by labour disputes (12.8%), criminal cases (10.7%), and administrative disputes (9.3%). In addition to the information regarding the aggregate number of cases resolved in 2014, also the information regarding how many cases the Constitutional Court resolved substantively, i.e. by a decision on the merits, is important. In 271 proceedings for a review of constitutionality and legality (U-I cases), the Constitutional Court adopted 29 decisions (10.7%). In constitutional complaint proceedings, it resolved, by a decision, 33 out of 933 cases (3.5%). In total, the Constitutional Court thus adopted 62 substantive decisions in these two registers, which amounts to 5.1% of all cases resolved. It is characteristic of the decisions of the Constitutional Court adopted in 2014 that they dealt with a high number of new and diverse constitutional questions, therefore these decisions have an important precedential effect. The Constitutional Court resolved the remaining cases by orders. It also adopted several decisions in the P register, which refers to the jurisdiction of the Constitutional Court to decide in jurisdictional disputes.

In 2014, the success rate of complainants, petitioners, and applicants was, from a statistical point of view, slightly higher than in previous years. Of the 271 resolved petitions and requests for a review of constitutionality and legality, in 20 cases the Constitutional Court established that the law was unconstitutional (7.4% of all U-I cases), of which it abrogated the relevant statutory provisions in 11 cases, whereas in nine 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 less successful at challenging implementing regulations, as the Constitutional Court established the unconstitutionality or illegality of an implementing regulation in only seven cases (2.6% of all U-I cases). The combined success rate in U-I cases was thus 10% (in 2013 it was 7.4%). With regard to the success rate 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 29 (i.e. 3.1%) of all the constitutional complaints resolved in 2014 (933) and dismissed four constitutional complaints as unfounded by a decision. In comparison, the success rate with regard to constitutional complaints was 1.7% in 2013. The success rate with regard to constitutional complaints (and other applications) must, of course, always be interpreted carefully, as the numbers do not reflect the true importance of these cases. These cases refer to matters that provide answers to important constitutional questions, therefore their significance 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 (15 times) dealt with 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 be heard and the right to a substantiated judicial decision. Also violations of the right to health care determined by the first paragraph of Article 51 of the Constitution stand out to some degree – the Constitutional Court established such a violation five times – as well as violations of the right to compensation (Article 26 of the Constitution), which the Constitutional Court established three times. The remaining violations of human rights and fundamental freedoms are more or less evenly distributed and refer to the right to judicial protection (the first paragraph of Article 23 of the Constitution), the right to personal dignity and safety (Article 34 of the Constitution), the protection of the right to privacy and personality rights (Article 35 of the Constitution), the prohibition of discrimination (the first paragraph of Article 14 of the Constitution), the principle of equality (the second paragraph of Article 14 of the Constitution), the inviolability of human life (Article 17 of the Constitution), the right to legal remedies (Article 25 of the Constitution), legal guarantees in criminal proceedings (Article 29 of the Constitution), the right to private property (Article 33 of the Constitution), the protection of communication privacy (Article 37 of the Constitution), and freedom of expression (Article 39 of the Constitution).

The average length of time it took to resolve a case in 2014 was slightly longer than in 2013. On average, the Constitutional Court resolved a case in 280 days (as compared to 239 days in the previous year) – or in 223 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 198 days in the previous year). The average duration of proceedings for a review of the constitutionality or legality of regulations (U-I cases) was 315 days, whereas constitutional complaints were resolved by the Constitutional Court on average in 270 days. The longer length of time it took to resolve a case must be attributed to the fact that the Constitutional Court resolved more cases on the merits, and such decisions require, by the nature of the matter, more time to decide, because, as a general rule, important constitutional questions are resolved thereby.

1. 1. 3. Unresolved Cases

At the end of 2014, the Constitutional Court had a total of 959 unresolved cases remaining (or 1,010 unresolved cases, if also R-I cases are taken into consideration), of which 21 were from 2012 and 166 from 2013. All other unresolved cases were received in 2014. Among the unresolved cases, 261 are priority cases and 46 are absolute priority cases.

In comparison with 2013, the number of unresolved cases slightly increased in 2014. At the end of 2013, the Constitutional Court had 897 unresolved cases (949 together with R-I cases), whereas at the end of 2014 this number was 959 (1,010 together with R-I cases). This means that in 2014 the backlog of cases increased by 6.9% (or by 6.4% if also R-I cases are taken into consideration) and thus was at the same level as at the end of 2012. In this context, it must be taken into consideration that 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 and 2013, also in 2014 the functioning of the Constitutional Court was marked by austerity in the expenditure of public resources. The realised budget of the Constitutional Court in 2012 amounted to EUR 4,096,901, but only EUR 3,659,075 in 2013. In 2014, it remained at approximately the same level as in 2013, and amounted to EUR 3,680,906. However, if 2014 is compared to 2010, when the realised budget amounted to EUR 4,751,442, it is evident that last year the expenditure of the Constitutional Court was 22.5% lower (the data regarding the realisation of the financial plans in individual years only include integral funds without earmarked funds).

As of 31 December 2014, 78 judicial personnel were employed at the Constitutional Court, 34 of whom were advisors. Especially worrying is the fact that the number of employees in the Legal Advisory Department and in the Analysis and International Cooperation Department, both of which are crucial for the undisturbed functioning of the Constitutional Court, was reduced by 4 persons since 2011 (from 38 to 34, which is a 10% decrease). In addition, in 2014 the Constitutional Court was faced with multiple longer leaves from work, which due to the constrained financial situation were not filled by temporary substitutes.

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

1.2. Important Decisions Adopted in 2014

1.2.1. International Protection and the Right to a Reasoned Judicial Decision

By Decision No. Up-150/13, dated 23 January 2014 (Official Gazette RS, No. 14/14), the Constitutional Court reviewed the constitutional complaint of a citizen of Afghanistan who applied for international protection in the Republic of Slovenia. The Ministry of the Interior rejected the complainant's application as unfounded, finding that the complainant did not establish the existence of the conditions for obtaining international protection. In addition to assessing his statements as unconvincing and improbable, the Ministry assessed that the level of violence in the complainant's home province of Nangarhar was not such as to constitute a serious and individual threat to the life or person of civilians. Furthermore, there existed the possibility of internal displacement, i.e. the complainant could have moved to Kabul. The Administrative Court and the Supreme Court agreed with the assessment that the complainant had not established the existence of the conditions for obtaining international protection. According to the two courts, the complainant could have chosen the possibility of internal displacement to the capital city of Kabul.

The Constitutional Court reviewed the challenged judicial decisions from the perspective of the right to a reasoned judicial decision (Article 22 of the Constitution), which is an essential element of fair judicial proceedings. The reasons on which a court bases its decision have to be provided in a concrete manner and with sufficient clarity. To ensure the constitutional right to a fair trial as well as trust in the judiciary, it is of great importance that it is clear to the parties that the court noted and considered their arguments, even if their claim or legal remedy is not successful, and that the parties do not remain in doubt as to whether the court may not have simply overlooked their arguments. In light of the prohibition of torture (Article 18 of the Constitution), the Constitutional Court has repeatedly emphasised that the rejection of an application for international protection also has to include the finding that the deportation of an alien will not result in threats to his or her life or freedom and that the applicant will not be subjected to torture or to inhuman or degrading treatment or punishment in his or her country of origin. This finding has to be supported by sound reasoning.

In the case at issue, the competent authorities were under the obligation to explain the content of the legal term "serious harm", as used to describe the harm an applicant for international protection would allegedly have suffered in the part of his or her country of origin to which he or she should have been returned. The International Protection Act defines the

term serious harm as "a serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict." This statutory definition is substantially the same as the definition contained in the European Union Qualification Directive. The case at issue therefore concerned the field of asylum policy, which is subject to joint regulation by the Member States and the European Union.

The third paragraph of Article 3a of the Constitution provides that legal acts and decisions adopted within international organisations to which the Republic of Slovenia has transferred the exercise of part of its sovereign rights are applied in the Republic of Slovenia in accordance with the legal regulation of these organisations. This provision obligates all state authorities, including the national courts, to take into account European Union law in the exercise of their powers 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 concerning the interpretation of the Treaties and the validity and interpretation of acts of the institutions, bodies, offices, or agencies of the Union (Article 267 of the Treaty on the Functioning of the European Union). When confronted with a question to which the Court of Justice of the European Union has already replied within its exclusive competence, the principle of consistent interpretation requires a national court to take such into account in its adjudication. The legal concepts that were relevant in the case at issue have already been the subject of interpretation by the Court of Justice of the European Union in Case C-465/07, *Elgafaji*, dated 17 February 2009.

In its decisions, the Constitutional Court frequently emphasises the requirement to provide reasonable and persuasive arguments for the legal positions on which a court decision is based. The Constitutional Court deemed that the Administrative Court and the Supreme Court did not meet this requirement in the case at issue. It does not follow from the reasoning of the judgments that when assessing the security situation in Kabul the courts applied the criteria that the Court of Justice of the European Union had adopted in *Elgafaji*. In conducting such an assessment, the Administrative Court did not even clarify the content of the legal terms "indiscriminate violence" and "individual threat", which are crucial for the definition of "serious harm". While the Supreme Court commented on the allegations relating to the security situation in Kabul and cited the judgment of the Court of Justice in *Elgafaji*, its reasoning indicates that the application of the positions from that judgment was merely ostensible. As with any judgment of the Court of Justice of the European Union, the *Elgafaji* judgment constitutes a source of law that does not as such provide an answer to the question of what the decision should be in a particular case in which it is to be applied. The final decision has to be made by the national court, which has to fulfil such obligation in accordance with the judgment of the Court of Justice of the European Union as well as the requirements deriving from Article 22 of the Constitution. The Constitutional Court concluded that there existed doubt as to whether the Supreme Court in fact considered the reasoning of the *Elgafaji* judgment when assessing the security situation in Kabul.

The Constitutional Court thus held that the Administrative Court and the Supreme Court failed to clarify the concepts indiscriminate violence and individual threat, which are decisive for the definition of serious harm in accordance with the criteria set out in the judgment of the Court of Justice of the European Union in *Elgafaji*, or, more precisely, that the Supreme Court did so only in an ostensible manner. The courts did not satisfy the requirement of a reasoned judicial decision and therefore violated the complainant's right under Article 22 of the Constitution.

1.2.2. Retention of DNA Profiles and Personal Data Protection (Information Privacy)

By Decision No. U-I-312/11, dated 13 February 2014 (Official Gazette RS, No. 15/14), the Constitutional Court reviewed the regulation of the retention of DNA profiles determined in the Police Act that the applicant, the Supreme Court, deemed unconstitutional. The DNA profiles of persons who were suspected but not convicted of the alleged offense by a final judgment were namely retained as part of the current Police data files until the criminal prosecution of the offence was time-barred. These data could be accessed by all policemen and also other public servants. After the criminal prosecution of the offence was time-barred, these DNA profiles could be stored permanently on the basis of the provisions regulating the collection of documents and archives.

The Constitutional Court determined that a DNA profile that enables the identification of an individual constitutes personal data that enjoys protection under the first paragraph of Article 38 of the Constitution. An interference with so-called information privacy is admissible if a law precisely determines what data may be collected and processed and for what purpose they may be used. The purpose of collecting personal data must be constitutionally admissible, but only those data may be collected that are appropriate and necessary for achieving the purpose determined in the law. The Constitutional Court established that such DNA profile retention does pursue the admissible aim of determining the perpetrators of criminal offenses for reasons of safety and effective protection against criminal activities, but the measure was excessive in terms of what is necessary.

Personal data may be retained for only as long as such is necessary to achieve the purpose of retention. The challenged statutory provision allowed for the retention of DNA profiles until criminal prosecution of the offence was time-barred, even in cases where prosecution was no longer possible due to the final dismissal of the proceedings or even a final decision of acquittal. By allowing the retention of DNA profiles even after the purpose of retention (the identification of the perpetrator) was achieved, the legislature inadmissibly interfered with the right of these individuals to information privacy. The Constitutional Court therefore held that the regulation allowing that the DNA profiles of suspects never convicted of a criminal offense were kept in the Police records until criminal prosecution of the offence was time-barred was contrary to the first paragraph of Article 38 of the Constitution.

In addition, the Constitutional Court decided that also the regulation allowing that the DNA profiles of persons not convicted of a criminal offense be permanently stored even after the criminal prosecution of the offence was time-barred on the basis of the provisions regulating the collection of documents and archives was contrary to the right to information privacy. The permanent storage of these data, even if such was performed on the basis of the regulations on archives, was not narrowed by reference to either subjective or objective criteria. These data could be accessed by policemen and all other authorised public servants; they could access them in instances of investigating any criminal offense that is prosecuted *ex officio*. The challenged regulation thus allowed the permanent storage of DNA profiles irrespective of the gravity and nature of the criminal offence of which the individual was originally suspected but was subsequently not convicted by a final judgment. The Constitutional Court held that such a general measure was not proportionate. Although the collection of DNA profiles undoubtedly contributed to the discovery of perpetrators of criminal offences, the general nature of the

authorisation for permanent storage of DNA profiles was not necessary. The legislature had at its disposal a more lenient measure that can take into account the gravity and nature of the offense, as well as the subjective characteristics pertaining to the suspect.

In this Decision the Constitutional Court did not review the issue of the retention of the DNA profiles of persons who have been convicted of a criminal offense.

1. 2. 3. IP Addresses and Communication Privacy

By Decision No. Up-540/11, dated 13 February 2014 (Official Gazette RS, No. 20/14), the Constitutional Court reviewed the constitutional complaint of a complainant who was sentenced to a six-month prison sentence for the criminal offense of the possession and distribution of child pornography. During the investigative phase, the police obtained the IP address the complainant used to exchange files on the Razorback network with other users, and then subsequently, on the basis of information obtained from the service provider, established that this IP address was assigned to the complainant's father at the time the material files were exchanged. By further investigative acts, the suspicion focused on the complainant and during the house search carried out on the basis of a court order, the complainant's computers were seized and reviewed.

The second paragraph of Article 37 of the Constitution provides a higher level of protection than Article 8 of the ECHR as it requires a court order for any interference with the right to communication privacy. Therefore, the Constitutional Court reviewed the present case on the basis of the Constitution.

With regard to access to the IP address, the Constitutional Court reiterated its standard standpoint that the subject of protection afforded by Article 37 of the Constitution, determining communication privacy, is communication regarding which an individual legitimately expects privacy. In addition to the content of communications, Article 37 of the Constitution also protects the traffic data, i.e. also an IP address. The Constitutional Court established that the complainant undoubtedly expected that his communications on the internet would remain private, but this expectation was not legitimate as by his conduct he himself waived his privacy. The complainant did not establish that the IP address through which he accessed the internet was hidden in any way, and thus invisible to other users, or that access to the Razorback network (and thus to the content of the files) was in any way restricted, for example by passwords or other means. On the contrary, anyone interested in exchanging such could have accessed the contested files. This entailed an open line of communication with a previously undetermined circle of strangers, therefore, in the view of the Constitutional Court, the complainant's expectation of privacy was not legitimate. That which a person knowingly exposes to the public, even if from a home computer and the shelter of his or her own home, cannot be a subject of the protection afforded by Article 37 of the Constitution, hence a court order was not necessary to obtain the IP address.

With regard to obtaining the identity of the user of an IP address from the service provider, the Constitutional Court also held that the complainant's right to communication privacy was not violated. This constitutional right does ordinarily protect also the traffic data of a communication, including the identity of the user of a determined IP address. However, by his conduct, the complainant himself also with regard to such waived protection of his privacy by publicly revealing both his own IP address as well as the content of his communications. The data regarding the identity thus no longer enjoyed protection in terms of the communication privacy

determined by Article 37 of the Constitution, but only in terms of information privacy determined by Article 38 of the Constitution. Therefore, the Police did not require a court order to obtain the name and address of the user of the dynamic IP address from the service provider.

On the basis of the identity of the IP address user, the Police obtained a court order for a house search, during which the complainant's computers were seized and reviewed. The Constitutional Court dismissed as unfounded the complainant's allegation that the Police should have obtained a separate court order for the review of the files on his computer. The investigating judge was aware of the fact that during the house search the Police would seize computer equipment and that they would also review such equipment. The foregoing is also clear from the search order, from which it follows that it was issued precisely with the intent to review the data stored on the computer and other data storage media (CDs and DVDs). The Police also allowed the complainant to be present in both instances when his computer was reviewed. The review of the files on the complainant's computer therefore did not violate his right to communication privacy determined in Article 37 of the Constitution.

1.2.4. The Prohibition of Discrimination of Citizens on Grounds of Residence

Upon the request of the Administrative Court, by Decision No. U-I-253/13, dated 13 February 2014 (Official Gazette RS, No. 15/14), the Constitutional Court reviewed the constitutionality of the statutory regulation of free legal aid that determined, *inter alia*, the condition that the beneficiaries of such aid must be citizens of the Republic of Slovenia who permanently reside in the Republic of Slovenia. Such regulation entailed that citizens of the Republic of Slovenia who did not permanently reside in the Republic of Slovenia were not eligible for free legal aid.

In accordance with the first paragraph of Article 14 of the Constitution, in the Republic of Slovenia everyone is guaranteed equal human rights and fundamental freedoms irrespective of personal circumstances. When reviewing whether an allegation of discriminatory treatment is justified, the Constitutional Court must answer the following questions: 1) whether the alleged difference in treatment refers to the guarantee or exercise of human rights and fundamental freedoms; 2) if it does, is there a difference in the treatment of the persons or situations compared by the applicant; 3) are the factual situations compared by the applicant essentially the same and is the different treatment thus based on the personal circumstances referred to in the first paragraph of Article 14 of the Constitution; and 4) if there exists a difference in the treatment on the basis of the circumstances determined in the first paragraph of Article 14 of the Constitution and therefore an interference with the right to non-discriminatory treatment, whether that interference is constitutionally admissible.

In accordance with the first paragraph of Article 23 of the Constitution, everyone has the right to have any decision regarding his or her rights, duties, and any charges brought against him or her made without undue delay by an independent, impartial court constituted by law. This constitutional provision does not merely ensure formal access to the courts, but the right to effective judicial protection also stems therefrom, which entails that the state must ensure everyone an opportunity to effectively exercise this right, irrespective of his or her financial circumstances and obstacles of a financial nature. The right to judicial protection determined in the first paragraph of Article 23 of the Constitution also includes the right to free legal aid

for persons who due to their financial standing cannot afford legal assistance. The allegation of inadmissible discrimination is therefore connected with the exercise of these human rights.

With regard to granting free legal aid, the challenged regulation treated the citizens of the Republic of Slovenia differently on grounds of their permanent residence, even though they were in a comparable position as regards the right to free legal aid. Both Slovene citizens permanently residing in the Republic of Slovenia as well as Slovene citizens without permanent residence in the Republic of Slovenia who apply to obtain free legal aid do so because without such aid they could not exercise their right to judicial protection due to their financial standing. The different treatment of citizens of the Republic of Slovenia as regards granting free legal aid is therefore based on their permanent residence, which is one of the circumstances referred to in the first paragraph of Article 14 of the Constitution. The Constitutional Court could not ascertain a constitutionally admissible reason for the difference in treatment of the citizens of the Republic of Slovenia on grounds of their permanent residence. It therefore abrogated the statutory regulation at issue.

1. 2. 5. Expenses for Medical Treatment Abroad

By Decision No. Up-1303/11, U-I-25/14, dated 21 March 2014 (Official Gazette RS, No. 25/14), the Constitutional Court considered the constitutional complaint of a complainant who requested approval from the Health Insurance Institute of Slovenia to be treated abroad and to have the expenses for such treatment reimbursed. The Higher Labour and Social Court concurred with the court of first instance that the complainant was not entitled to have the expenses for such medical treatment abroad reimbursed, as the possibility of receiving medical treatment in Slovenia had not been exhausted. Also according to the position of the Supreme Court, an insured person is only entitled to reimbursement of the expenses for medical treatment abroad if all the possibilities of receiving medical treatment in Slovenia have been exhausted, and even then only if one can justifiably expect an improvement in, the recovery, or the prevention of the deterioration of the person's health condition. In the assessment of the Supreme Court, it was essential that in the Republic of Slovenia medical procedures are carried out by which the same result could be achieved.

Until the amendments to the Health Care and Health Insurance Act adopted in 2013 entered into force, the scope of the rights to the medical treatment abroad and the procedure for exercising such were regulated by the special Rules on Compulsory Health Insurance adopted by the Health Insurance Institute of Slovenia. Although these Rules ceased to be in force, they were still applicable in the complainant's case. Therefore, the Constitutional Court carried out a review of their conformity with the Constitution, especially from the viewpoint of the first paragraph of Article 51 of the Constitution.

The right to health care is a positive human right, requiring active conduct from the state. The state must ensure, by appropriate measures, effective exercise of this human right. The first paragraph of Article 51 of the Constitution determines that everyone has the right to health care under conditions provided by law, which means that the Constitution ensures this right with a so-called statutory reservation. The statutory reservation authorises the legislature to regulate the right to health care, with regard to which it also can establish constitutionally admissible limitations of such right, and it is also expected that it will regulate the manner of its implementation, as this is necessary with regard to the nature of that right. On the basis of the

first paragraph of Article 51 of the Constitution, the legislature must determine the content of the right to health care by law. It must determine the subjects and the type and scope of the rights that pertain to these subjects on the basis of compulsory health insurance. It also must determine by law the rights to health care from public funds (the second paragraph of Article 51 of the Constitution), especially which types of health care and to what degree such must be ensured from public (state) funds. From the second paragraph of Article 50 of the Constitution there follows the obligation of the state to also ensure the functioning of health insurance, through which the right to social security and thus also the right to health care are exercised. The state must organise a system of compulsory health insurance, which it also is responsible for the functioning of. It also must determine by law which rights to health care are ensured by the compulsory health insurance.

The system of rights and also their limitation can thus only be regulated by law, which as a foundation must also determine the manner of exercise of these rights. An implementing regulation may elaborate a statutory norm, however it must not regulate rights and obligations without a statutory basis. Above all, an implementing regulation must not narrow the rights conferred by law. With regard thereto, only a law could thus have determined the conditions under which medical treatment abroad is ensured, as well as the manner of the exercise of the right to health care in the event of medical treatment abroad. The Rules on Compulsory Health Insurance, which were adopted by the Health Insurance Institute of Slovenia, did not elaborate in detail the content of the law, but they determined without a statutory basis the conditions under which the right to health care may be exercised by providing medical services abroad. The determination of these conditions does not entail the regulation of expert medical questions, but rather the determination of the manner of exercise of a human right, which may only be determined by law (the second paragraph of Article 15 of the Constitution). The Constitutional Court established that the challenged provision of the Rules was inconsistent with the Constitution; consequently, it also granted the constitutional complaint and remanded the case to the court of first instance for new adjudication.

1.2.6. The Real Property Tax

By Decision No. U-I-313/13, dated 21 March 2014 (Official Gazette RS, No. 22/14), the Constitutional Court reviewed, upon the requests of multiple applicants (a group of deputies of the National Assembly, the National Council, the Association of Municipalities of Slovenia, the Association of Municipalities and Towns of Slovenia, and the Urban Municipality of Koper) and upon the petition of the Municipality of Rogašovci, the constitutionality of multiple provisions of the Real Property Tax Act. Due to the fact that the this Act determined that the taxable base was the appraised market value of a real property determined by regulations on the mass appraisal of real property, the Constitutional Court extended its assessment to the Real Property Mass Appraisal Act insofar as its provisions also applied regarding the taxation of real property.

The fundamental provision of the Constitution that refers to taxes is Article 147, in accordance with which the state imposes taxes by law. The imposition of taxes lies within the competence of the legislature, which may determine them only by law. Therefore, Article 147 of the Constitution determines the principle of legality in the field of taxation. Already in 1998, the Constitutional Court adopted the position that the imposition of taxes does not entail only the introduction of a tax and the determination of its elements (the subject of taxation, the

taxable base, the taxable persons, and the tax rate), but also requires that it must be evident and predictable from the law what the state requires from taxable persons. On one hand, the principle of legality determined by Article 147 of the Constitution gives the state the authorisation to impose taxes, and on the other hand it is intended for the protection of taxable persons, because it requires that their legal position is, with regard to tax obligations, clearly and predictably evident already from the law and not only from implementing regulations.

In conformity with the Real Property Mass Appraisal Act, the value of real property was of decisive importance for the determination of the taxable base, whereby the formation of valuation models was key to the determination of this value. However, the Real Property Mass Appraisal Act determined neither individual valuation models nor which groups of real property of the same kind were joined in individual valuation models. Moreover, individual elements that determined the models (i.e. value zones, value levels, and data on real property that were applied for the calculation of the value of real property) were not determined in a sufficiently clear and precise manner. The Act also did not determine the methods of mass appraisal that were applied with regard to individual valuation models or the criteria for choosing an individual method. Moreover, the Act did not precisely determine which standards for the assessment of the value of real property were applicable, although the Act referred thereto. These questions, which should have been regulated by law, were mostly regulated only by implementing regulations adopted by the Government or the competent minister.

With regard to the above, the Constitutional Court assessed, on one hand, that the statutory regulation of real property valuation models determined by the Real Property Mass Appraisal Act does not regulate in a sufficiently clear and precise manner the legal position of taxable persons, while on the other, it leaves the regulation of questions which should lie in the exclusive competence of the legislature to implementing regulations. Therefore, it decided that the Real Property Mass Appraisal Act is inconsistent with Article 147 of the Constitution insofar as it refers to the mass appraisal of real property for the purpose of the taxation of such.

Furthermore, the Constitutional Court assessed whether different tax rates for individual groups of real property are in conformity with the principle of equality before the law determined by the second paragraph of Article 14 of the Constitution. With regard to different taxation of officially occupied residential real property and officially unoccupied residential real property, the Constitutional Court assessed that the criterion of permanent residence, which was applied by the legislature for differentiation, has no reasonable connection to the subject of regulation. The conclusion of the legislature that residential real property which is not the owner's official permanent residence can, merely because of that, be considered to be residential real property intended for rental under market conditions was namely erroneous. In addition to residential real property that is the owner's official permanent residence, for residential purposes he or she can also use, for various reasons, another residential real property or allow persons close to him or her to reside in it. It is also possible that there is no demand on the rental market for residential real property. Consequently, it is not possible to achieve by the challenged differentiation in taxation the objective pursued by the legislature, i.e. the promotion of more economically rational use of residential real property. With regard to the lower degree of taxation on real property pertaining to power plants in comparison with other commercial and industrial real property, the Constitutional Court also established that the criterion of real property pertaining to power plants bearing an additional burden due to concessions and other environmental charges has no reasonable connection to the subject of regulation.

The Constitutional Court also assessed the regulation of legal remedies against the authoritatively determined market value of real property. It established that the Real Property Tax Act ensures only an ostensible right to appeal against the appraised market value of a real property. Namely, if the allegations in a taxable person's complaint referred to the choice of the valuation model or method, the appeal would not be successful, because the appraised value of real property is only data in the real property register, which can be changed by neither geodesic nor tax authorities. Consequently, the right to appeal is in this part hollowed out, therefore the regulation is inconsistent with Article 25 of the Constitution.

The Constitutional Court also assessed the Real Property Tax Act from the viewpoint of the constitutional position of municipalities. In doing so, it proceeded from Articles 138, 140, 142, and 147 of the Constitution. It follows from these provisions of the Constitution that municipalities must be capable of fulfilling the needs and interests of the inhabitants on their territory and that it is above all the municipalities who are responsible for the implementation of local self-government. Municipalities require sufficient sources of funding of their own to finance their statutory and constitutional tasks, which ensure them autonomy and independence from the state. The Constitutional Court assessed that the rule that tax revenue is divided between municipalities and the state is not in itself inconsistent with the Constitution. However, also in this system entailing the division of tax revenue, it must be taken into consideration that the subject of taxation is real property. Real property tax is substantively connected to municipalities' expenditures that they allocate in order to provide utilities to real property and thereby for the benefit of real property owners. For such reason, it is understandable that in the Member States of the European Union and also elsewhere in the world, real property tax is, as a general rule, a municipal tax. From Article 140 of the Constitution, which determines the working field of municipalities, it follows *mutatis mutandis* that real property tax is, by its nature, incorporated in the implementation of local self-government in municipalities in which the relevant real properties are located. Such entails that it is fundamentally a municipal tax, therefore the predominant part of revenue collected by the real property tax should pertain to municipalities. How much this share should be, however, is a question of appropriateness, i.e. statutory regulation. The Constitutional Court established that the statutory regulation does not ensure municipalities sufficient authorisations to manage the real property tax so that they can efficiently carry out their constitutional and statutory tasks with their own funds. Therefore, it is inconsistent with Articles 140 and 142 of the Constitution.

On the basis of the established unconstitutionalities, the Constitutional Court abrogated the Real Property Tax Act in its entirety, because the fundamental provisions of the Real Property Tax Act, without which other provisions of this Act could not be implemented, were unconstitutional. Furthermore, the Constitutional Court also established that the Real Property Mass Appraisal Act is inconsistent with the Constitution, because the legislature failed to clearly and precisely regulate the taxable base by law.

1.2.7. The Retention of Personal Data from Medical Records

By Decision No. U-I-70/12, dated 21 March 2014 (Official Gazette RS, No. 24/14), the Constitutional Court assessed, upon the request of the Human Rights Ombudsman, whether the Protection of Documents and Archives and Archival Institutions Act is inconsistent with the Constitution, as it includes in the archives also documents of the medical service providers defined as entities of public law, which contain personal data regarding the treatment of patients.

The Constitutional Court proceeded from the prerequisite that the term "archives" from the Protection of Documents and Archives and Archival Institutions Act also includes documents and materials that originate from the framework of the medical treatment of patients. The Human Rights Ombudsman challenged the statutory provision that imposed on providers of medical services as a public service the duty to hand over to the public archive selected medical records that contain personal data. What was decisive for the assessment of the Constitutional Court in the case at issue was the question of the definition itself of the term "archives", which also included medical records.

The fundamental starting point of the review of constitutionality was respect for human dignity. The state has the duty to enable individuals to maintain their dignity during medical treatment, while living with a certain diagnosis, as well as after death. Data collected in medical records reveal information from the patient's private life; moreover, due to the stigma in society connected with certain illnesses or conditions, their disclosure jeopardises the personal dignity of the patient, his or her dependents, and even descendants. Therefore, medical records entail a peculiar collection of sensitive personal data whose need for protection is even more pronounced.

In the assessment of the Constitutional Court, the mere retention of sensitive personal data contained in medical records by medical service providers, as well as their archiving and the transfer of these materials into a public archive for the purpose of enabling public access to these archives entail an interference with patients' right to the protection of personal data (Article 38 of the Constitution) and the right to the protection of one's privacy (Article 35 of the Constitution), while at the same time they also jeopardise the inviolability of personal dignity (Article 34 of the Constitution). With respect to the interferences with such important human rights, the legislature must all the more take into account that these rights may only be limited due to constitutionally admissible objectives that are very clearly and concretely defined.

By the challenged statutory regulation, the legislature pursued the objective of maintaining the completeness of these materials and their public accessibility and usability for the purposes of science and culture, and legal certainty. In the assessment of the Constitutional Court, defining the objective of the statutory regulation in such a general manner does not evidence the due diligence and responsibility of the legislature with regard to the handling of medical data (both during the time when the medical records are created and after the death of the patient). When adopting the statutory regulation, the legislature namely failed to take into account (1) the importance of the protection of sensitive personal data contained in the medical records, the disclosure of which may also entail an interference with the personal dignity of the affected persons, (2) medical secrecy as a necessary prerequisite for the confidentiality of the relationship between patient and doctor, and (3) the constitutional guarantees that patients are ensured in order to exercise their right to the protection of personal data, with special emphasis on the prohibition of using personal data contrary to the purpose of their collection.

Therefore, the Constitutional Court could not consider the mentioned general objective of the legislature to entail a constitutionally admissible objective, which, in a state governed by the rule of law, any statutory regulation by which constitutionally protected human rights and fundamental freedoms are interfered with must have. With regard to the above, the Constitutional Court established an inconsistency of the challenged statutory regulation with the right to the protection of personal data (Article 38 of the Constitution) and indirectly also with the right to the inviolability of personal dignity (Article 34 of the Constitution).

In its Decision, the Constitutional Court also drew attention to the fact that the constitutional starting points from this Decision must apply regardless of whether who is concerned are providers of medical service within the framework of a public medical services network or within the framework of a private network. When adopting a special statutory regulation with regard to the archiving of medical records, the legislature will have to sufficiently ensure the protection of the human rights of patients and their dependents, especially from the viewpoint of the exercise of the right to the protection of personal data and the protection of the inviolability of personal dignity.

1. 2. 8. The Access of Persons with Disabilities to Polling Stations

Upon the petition of three persons with disabilities, in Decision No. U-I-156/11, Up-861/11, dated 10 April 2014 (Official Gazette RS, No. 35/14), the Constitutional Court reviewed the constitutionality of the National Assembly Elections Act, insofar as it referred to the access of persons with disabilities to polling stations. The petitioners challenged the provision that determined that each district voting commission shall select at least one polling station in the district that is to be accessible for persons with disabilities, and that the commission may further enable the use of adapted ballots or voting machines (e.g. for blind persons) at that polling station. The petitioners alleged that the regulation discriminated against persons with disabilities in the exercise of the right to vote. Persons with disabilities should have access to all polling stations and they should further be guaranteed the possibility to vote in person (and independently, i.e. without another person's assistance). The Constitutional Court conducted the review from the perspective of Article 14 of the Constitution, which prohibits discrimination on the basis of personal circumstances, including disability, in the exercise of human rights.

The Constitutional Court noted that, although most polling stations are in public buildings, the majority of which are already required to ensure accessibility to persons with disabilities according to the existing regulations on the construction of buildings, at the last elections only one-third of all polling stations were accessible for persons with disabilities. Taking into account the importance of the right to vote in democratic states, the Constitutional Court deemed it to be unacceptable that the great majority of polling stations are still in buildings that do not fulfil the requirement of physical accessibility. On the day of the election, voters exercise their active right to vote at polling stations, and an individual's free expression of his or her will is an essential element of the right to vote.

The measure according to which the district electoral commission selects one polling station in the district that is to be accessible for persons with disabilities does not ensure that the right to vote is exercised in accordance with the Constitution. In the assessment of the Constitutional Court, such a measure does not constitute an appropriate and sufficient accommodation to enable persons with disabilities to independently physically access polling stations in public buildings and thus exercise their right to vote in person. The legislature's omission therefore entailed an interference with the right of persons with disabilities to non-discriminatory treatment (indirect discrimination) in relation to the right to vote. Neither the National Assembly nor the Government established a constitutionally admissible reason that could justify the insufficient physical adaptation of polling stations for persons with disabilities. Consequently, the Constitutional Court concluded that the National Assembly Elections Act was inconsistent with the first paragraph of Article 14 in conjunction with the second paragraph of Article 43 of the Constitution.

In addition to the review from the perspective of the physical accessibility of polling stations for persons with disabilities, the Constitutional Court further reviewed the National Assembly Elections Act from the perspective of the availability of adapted ballots and voting machines at polling stations. The selection of polling stations that enable the possibility to vote with the help of specifically adapted ballots and voting machines was left entirely to the discretion of the district electoral commissions. The Constitutional Court already established that the challenged regulation was unconstitutional as it did not require the establishment of polling stations accessible for persons with disabilities or determine any criteria for the establishment of such polling stations. According to available data, all polling stations are already equipped with tactile voting devices for blind and partially sighted persons, and visually impaired persons are thus not discriminated against. However, the position of persons with disabilities who require special voting machines in order to be able to exercise their right to vote is different. As voting machines require technological updates that entail significant costs, the legislature will have to determine the appropriate number of such machines, taking into account the data on their hitherto use, in order to guarantee that the interference with the right of persons with disabilities to vote will remain proportional.

When remedying the established unconstitutionality, the legislature will have to consider that persons with disabilities have to be ensured non-discriminatory treatment in the exercise of their right to vote and therefore it will have to remove all obstacles to their physical access to the polling stations. Polling stations that do not meet this requirement may only be allowed in exceptional circumstances. As regards polling stations that will have to be equipped with voting machines, the legislature will have to consider which adaptations can be carried out in order to guarantee that persons with disabilities can exercise their right to vote equally, so as to keep costs at a reasonable level and impose a proportionate burden on the state.

Finally, the Constitutional Court emphasised that the principle of non-discrimination prohibits polling stations that have been designed and equipped in accordance with the needs of persons with disabilities in order to ensure them independent access and independent voting from being designated as polling stations at which only persons with disabilities may vote. Such would namely constitute segregation on grounds of disability, which is manifestly inadmissible and would entail a severe violation of the right to vote.

1. 2. 9. Scheduling the Date of a Legislative Referendum

By Decision No. U-I-76/14, dated 17 April 2014 (Official Gazette RS, No. 28/14), the Constitutional Court reviewed the Decree on Calling a Referendum on the Act Amending the Protection of Documents and Archives and Archival Institutions Act. By this Decree, the National Assembly determined that on 3 April 2014 the deadlines for the tasks necessary to carry out the referendum would begin to run and that the referendum would take place on Sunday, 4 May 2014. The petitioner stated that the date of the referendum was scheduled on a day following the school holidays and the May Day holidays, and due to the current statutory regulation such would significantly impede early voting. Such determination of the date of the referendum allegedly amounts to a disproportionate interference with the right to vote in a referendum determined by Articles 44 and 90 of the Constitution.

In accordance with the second paragraph of Article 3 of the Constitution, power in the Republic of Slovenia is vested in the people, who exercise it directly and through elections. The

people directly exercise the power in the known forms of so-called direct democracy, which also include the referendum. The legislative referendum, one of the fundamental forms of direct democracy, is governed by the Constitution in Article 90. The National Assembly must call a referendum on the entry into force of a law if so required by at least forty thousand voters. The right to vote in a referendum is held by all citizens who are eligible to vote in elections. A law is rejected in a referendum if a majority of voters who have cast valid votes vote against the law, provided at least one fifth of all qualified voters have voted against the law (a rejection quorum). The right to vote in a referendum is a form of direct citizen participation in the management of public affairs and is constitutionally protected by the right determined by Article 44 of the Constitution (the right to participate in the management of public affairs).

According to the first paragraph of Article 90 of the Constitution, the National Assembly shall call a referendum on the entry into force of a law that it has adopted if so required by at least forty thousand voters. The legislature must determine by law the manner of exercising the right to vote in a referendum and constitutionally admissible limitations of that right. This was done by passing the Referendum and Public Initiative Act. However, the manner of application of the statutory rules in each referendum must also be consistent with the Constitution.

In accordance with the allegations of the petitioner, the Constitutional Court first examined whether the determination of the date of the referendum entailed a determination of the manner of the exercise of the right or that, with regard to the circumstances of this case, it has perhaps developed into a limitation of the right that must be assessed more strictly. The Constitutional Court held that the determination of the date of the referendum in itself entails a manner of exercise of the right, but the legislature is bound by certain constitutional requirements also with regard to this issue. In particular, these are the requirements to ensure effective exercise of the right to vote in the referendum and a fair referendum procedure. A fair referendum procedure is a key precondition to ensure the credibility of the referendum results, as it ensures the trust of voters in the decision adopted in the referendum. With regard to the date of the referendum, this entails that the National Assembly must set the date in such a manner that the greatest possible number of eligible voters can participate in the referendum. Taking into account the quorum determined by the Constitution for the validity of the decision adopted in the referendum, voter turnout in the referendum is a decisive factor in the decision to reject or adopt a law in a referendum.

By the Decree, the National Assembly set the date of the referendum for Sunday, May 4th, 2014. This was the last day of the week in which school holidays were held; in addition, May 1st and May 2nd are public holidays. Under the current statutory regulation, early voting in the referendum, intended for those who are absent on the date of the referendum, would have been possible on April 29th, 30th, and May 1st, 2014. One of these days, therefore, would have been on a public holiday, and the other two days were during the school holidays. During this period also the referendum campaign was in its last stages.

The Constitutional Court did emphasise that the freedom to actually participate in the referendum is in any case entirely left to the voters. The National Assembly, however, must create opportunities to maximise the turnout in the referendum with the aim of ensuring the effectiveness of the right to vote for as many voters as possible. Setting the period of early voting during public and school holidays and the day of the referendum immediately after these days already in itself complicates and hinders the effective exercise of the right to vote in the referendum. The decision of the National Assembly threatened the fairness of the referendum

procedure and challenged the legitimacy of the referendum decision. The legitimacy of the referendum decision depends on whether it was adopted in a fair procedure. It must be accepted as legally binding by the voters that voted differently or did not attend the referendum. The procedural aspect is therefore crucial for the democratic quality of the referendum decision. It must be stressed that it was evident that the National Assembly had other alternatives available with regard to the date of the referendum. The Constitutional Court decided that the Decree calling the referendum was contrary to the right to vote in a referendum in conjunction with the right to participate in the management of public affairs (Article 90 in conjunction with Article 44 of the Constitution). The Constitutional Court annulled the Decree and ordered the National Assembly to adopt a new act calling for the referendum and to determine a new date for the referendum within seven days after the decision was published in the Official Gazette.

1. 2. 10. The Conflict between Freedom of Expression and Personality Rights

In Decision No. Up-584/12, dated 22 May 2014 (Official Gazette RS, No. 42/14), the Constitutional Court reviewed the constitutional complaint of a complainant who was sentenced to pay damages to the head of entertainment programming on TV Slovenia due to defamatory statements he made. In the case at issue, the Higher Court in Ljubljana separately addressed the statements made by the complainant on the satirical television show Hri-bar and the statements the complainant made in interviews with various other media. The statements made on the three satirical television shows hosted by the complainant fell, in the view of the Higher Court, within the scope of satire and are protected by the freedom of artistic endeavour determined by Article 59 of the Constitution. The Higher Court established that these statements do not constitute defamation. The Higher Court, however, assessed the statements made by the complainant in various media when he was being interviewed differently. With regard to such, the Higher Court agreed with the review of the first instance court that the statements regarding the plaintiff were not made within the scope of satire and were offensive. The complainant emphasised that his statements were a critical response to the censorship of satirical observations, which is incompatible with democratic values.

In the first paragraph of Article 39, the Constitution guarantees the freedom of expression of thought, freedom of speech and public appearance, of the press and other forms of public communication and expression. Everyone may freely collect, receive and disseminate information and opinions. The freedom of expression is a direct manifestation of one's personality in society and a fundamental constitutive element of a free democratic society. Like other human rights, the right to freedom of expression is not unrestricted, but is limited by the rights and freedoms of others in accordance with the third paragraph of Article 15 of the Constitution. The right to freedom of expression most often comes into conflict with the right to the protection of the inviolability of personal dignity (Article 34 of the Constitution) and the protection of personality rights (Article 35 of the Constitution), which also include the right to the protection of one's honour and reputation.

Given the particular importance of freedom of expression, in a conflict between human rights when weighing interests and values, freedom of expression must be given considerable weight. In cases in which this right is limited, it must be especially carefully reviewed whether constitutionally acceptable reasons for such limitation exist. In the event of a conflict between

the right to the protection of one's honour and reputation, on the one hand, and the right to freedom of expression, on the other, even very harsh, crude, and ruthless statements that the reader or listener still understands as a critique of conduct or a standpoint, and not as an attack on a personality, abuse, humiliation, contempt, or ridicule, may be outside of the scope of illegality. In the interest of preserving a free and unfettered debate on matters of general interest, the sharpness, roughness, and exaggeration of certain expressed opinions must be tolerated. Fear of sanctions for certain value judgments can have a chilling effect on the public debate such that it no longer performs the function it should in a democratic society. Due to the inviolability of the core of the rights determined by Articles 34 and 35 of the Constitution, a limit must also be drawn as regards expressions of harsh value judgments. Where the intent of the speaker is no longer to influence the debate on matters of public concern, but only to insult someone, illegality is not excluded.

In this case, the Constitutional Court had to determine whether in the civil proceedings the two courts took into account all the constitutionally relevant circumstances in the weighing of the human rights at issue and established an appropriate balance. The fundamental premise of the weighing is that the circumstances of the case must be considered as a whole. In this weighing, it is not sufficient just to consider the content of the statements at issue, but what must also be taken into account is the particular context in which these statements were made, as well as whether they were a reaction to the prior conduct of the person they relate to. In the framework of the weighing, it is therefore necessary to evaluate the prior conduct of the affected person (the censorship of the satirical television show hosted by the complainant). In addition, when weighing, the court must not overlook the status of the person the statements at issue relate to. In the case at issue, the plaintiff held a management position at a public institution as head of entertainment programming on the national television network. He, therefore, had to tolerate a greater degree of acceptable criticism for the acts committed in the course of this work, although not as great as, for instance, politicians.

The Constitutional Court established that the ordinary courts did not take into account that in the interest of preserving a free and unfettered debate on matters of general interest, the sharpness, roughness, and exaggeration of certain expressed opinions or a certain degree of exaggeration and provocation must be tolerated. In the challenged judgments, the courts also failed to establish the factual basis for the contested statements. In their review, they did not include the context in which the statements at issue were expressed. When weighing, they especially failed to evaluate the allegation that by the statements at issue the complainant was responding to the prior conduct of the plaintiff as an executive at the public television network, i.e. to the censorship of the satirical show on the national television network. They also did not take into account the fact that, in the framework of the right to freedom of expression, the style of the statements (as a form of expression), and not just the content, is also protected. These are constitutionally relevant circumstances that the courts should not have overlooked when carrying out the weighing.

The Constitutional Court therefore annulled the challenged judgments and remanded the case to the first instance court for new adjudication. It instructed the court to reweigh all the constitutionally relevant circumstances of the case at issue and on this basis decide which of the competing human rights (the right of the plaintiff to the protection of one's honour and reputation, protected by Articles 34 and 35 of the Constitution, or the right of the complainant to the freedom of expression, protected by the first paragraph of Article 39 of the Constitution) must be given priority in this case.

1.2.11. The Investigation of a Criminal Offence and the Liability of the State for Damages

By Decision No. Up-1082/12, dated 29 May 2014 (Official Gazette RS, No. 43/14), the Constitutional Court considered the constitutional complaint of a complainant who alleged a violation of his right to life. The complainant stated that in 1999 his life was endangered when he was attacked in the courtyard of his house, beaten unconscious such that his head was bleeding, and was then taken in his own van to a dump where a random passer-by found him. He alleged that the prosecution authorities and the criminal judiciary authorities failed to diligently and conscientiously carry out their tasks relating to the investigation and the consideration of the criminal offence and that they illegally refrained from carrying out their statutorily determined duties. The position of the Higher Court was that the authorities of the state cannot be reproached for having acted illegally and that therefore the prerequisites of the right to compensation determined by Article 26 of the Constitution were not fulfilled.

The Constitutional Court emphasised that with regard to the protection of human rights and fundamental freedoms, the state has negative and positive obligations. The negative obligations entail that the state must refrain from interfering with human rights and fundamental freedoms. The positive obligations, on the other hand, require the state and its individual branches of power (the judicial, legislative, and executive powers) to be active in protecting human rights and fundamental freedoms. Since the complainant was injured in the alleged criminal offence, the positive obligations of the state in the field of the prosecution of criminal offences are important for the case at hand. The two fundamental obligations of the state in this respect are: (1) to establish an appropriate legislative framework for the purposes of deterring, preventing, detecting, and prosecuting criminal offences, and (2) to take care and endeavour to effectively implement the latter in practice. The state is always burdened by the duty to ensure an effective official investigation (of the suspicion) of a violent death or any other serious violence against an individual, regardless of who the (alleged) perpetrator is. The failure of the state to fulfil its duty regarding the investigation of criminal offences can entail a violation of the procedural part of the human rights to safety and physical integrity determined by Articles 34 and 35 of the Constitution.

The Constitutional Court stressed that when conducting an investigation of criminal offences that are prosecuted *ex officio*, there exists the reasonable endeavours obligation (not the obligation of result) to find the perpetrators and to discover the circumstances of the concrete criminal offence. The reasonable endeavours obligation presupposes meticulousness and conscientiousness in efforts to find the perpetrators of a criminal offence. The criterion for assessing whether the concrete procedural steps of the Police (and also of the prosecution, which directs the Police) in the case at issue fulfilled the required standards is whether they corresponded to the conduct of "a good investigator of criminal offences". Such conduct is defined by criminology experts and the accumulated experientially developed rules of good police work, as well as by the requirement that the investigator is meticulous, conscientious, and diligent. The requirement to ensure an effective investigation includes the duty to carry out the necessary and reasonably possible actions that would lead to obtaining sufficient evidence regarding the perpetrator and the circumstances of how the criminal offence was committed, including witnesses' testimonies and forensic evidence. At issue in the complainant's case was a criminal offence against life and limb, which the Police should have considered especially seriously. By beating the complainant in his own courtyard and then taking him

away, his head bleeding and unconscious, and finally abandoning him at a dump, the perpetrators interfered with his personal liberty and in such a manner rendered helping him after the injury additionally difficult.

In the challenged judgment, the Higher Court adopted the position that the state could only be responsible for the failure to carry out an effective investigation if its conduct had been manifestly contrary to the regulations governing the conduct of the police procedure. In the assessment of the Constitutional Court, such a position is not acceptable as it does not correspond to the nature of the work of the prosecution authorities. The nature of the work of the prosecution authorities in the police procedure namely excludes the possibility that the question of whether such work attained certain standards (of expertise) would (merely) be assessed through the lens of whether it was contrary to statutory provisions. These regulations are, with regard to many questions, merely general guidelines within the framework of which an investigation must be carried out diligently, assiduously, and in conformity with the usual methods of police work. If all the circumstances of the case at issue are taken into consideration, the following two elements are important for the assessment of whether when investigating the criminal offence committed against the complainant the authorities of the state violated his rights determined by Articles 34 and 35 of the Constitution: (1) the very lengthy period that they needed to carry out certain actions in the police procedure and (2) the failure to carry out certain available investigative measures.

The Constitutional Court assessed that in the case at issue the police procedure was distinctly slow, with regard to which the prosecution authorities incomprehensively postponed the performance of important and easily realisable investigative actions. Such behaviour of the investigative authorities, which in the circumstances of the case at issue created the impression that they are incompetent, is not in conformity with the applicable standard of how a good investigator should act. When deciding on the liability of the state for damages, the Higher Court did not compare the course of the police procedure with the standard of how a good investigator should act in a case involving serious violence against an individual. Therefore, as the judgment ignored this standard, the complainant's rights determined by Articles 34 and 35 of the Constitution were violated, and consequently also the right to compensation determined by Article 26 of the Constitution, because when deciding on the existence of the prerequisites for the liability of the state for damages, courts must not adopt positions inconsistent with other human rights.

1. 2. 12. Early Elections to the National Assembly

By Order No. U-I-136/14, dated 11 June 2014, the Constitutional Court decided on a petition to initiate proceedings for a review of constitutionality filed against the Decree on the Dissolution of the National Assembly of the Republic of Slovenia and on the Calling of Early Elections to the National Assembly of the Republic of Slovenia by which the President of the Republic of Slovenia dissolved the National Assembly and scheduled early elections for 13 July 2014. The petitioners alleged that due to the holding of the parliamentary elections on 13 July 2014 and due to the fact that a significant part of the election campaign was to take place in the period of summer school holidays and vacations, the right to vote determined by Article 43 of the Constitution of all the voters who at that time would be on vacation would be violated, as the casting of their votes would be rendered actually impossible or significantly more difficult. Furthermore, the petitioners were of the opinion that the right to be elected

(the passive right to vote) of the candidates of the new political parties and political parties not in parliament would be violated, as their possibility to present themselves and their political programmes would be rendered impossible or significantly more difficult due to the fact that the most important part of the election campaign (the last three weeks of the campaign) would take place during the summer holidays and vacations, thereby also significantly reducing the chance of their success in the elections compared to the candidates of the parties in parliament. The petitioners were of the opinion that the President of the Republic of Slovenia could have scheduled the elections for September or the beginning of October.

The dissolution of the National Assembly is regulated by the fourth and the fifth paragraphs of Article 111 of the Constitution. These two provisions bind the President of the Republic to dissolve the National Assembly and to call new elections in the event a new Prime Minister cannot be elected. The time period within which he must call elections is not regulated by Article 111 of the Constitution, but by the third paragraph of Article 81 of the Constitution. This provision determines, *inter alia*: "If the National Assembly is dissolved, a new National Assembly shall be elected no later than two months after the dissolution of the previous one." This entails that the constitution-framers themselves determined a time limit that is binding on the President of the Republic. The express wording of the constitutional provision "no later than two months" does not allow for interpretative possibilities that would allow a different interpretation, as it entails a clear and unambiguous legal rule. This rule cannot be interpreted differently than that in the event of the dissolution of the National Assembly, the election day can only be scheduled within a two-month time period. Therefore, the Constitutional Court dismissed the petition as unfounded.

1. 2. 13. The Retention of Communication Data

By Decision No. U-I-65/13, dated 3 July 2014 (Official Gazette RS, No. 54/14), in proceedings to review constitutionality initiated upon the request of the Information Commissioner, the Constitutional Court assessed the constitutionality of the obligatory retention of data in the Electronic Communications Act. By the challenged provisions, the Republic of Slovenia transposed into its legal order the so-called Data Retention Directive. The statutory regulation imposed on providers of telecommunication services and networks the obligation to retain certain traffic, location, and other data necessary for the identification of an individual, namely for the purposes of criminal procedures, the functioning of the Slovene Intelligence and Security Agency, and the defence of the state. Data related to publicly accessible phone services were to be retained for 14 months following the day of a particular communication, whereas other data were to be retained for 8 months. The Constitutional Court stayed the proceedings until the Court of Justice of the European Union declared the Data Retention Directive to be invalid by the Judgment in the joined cases Nos. C-293/12 and C-594/12, dated 8 April 2014.

On the basis of the challenged statutory regulation, as a precautionary measure service providers non-selectively retained, for a determined period of time, exhaustively determined traffic data on all communications related to fixed network phone service, mobile phone service, Internet access, Internet e-mail service, and Internet phone service. As the Court of Justice of the European Union stressed in the joined cases Nos. C-293/12 and C-594/12, on the basis of all these data very precise conclusions may be drawn concerning the private lives of the persons whose data have been retained, such as the habits of everyday life, permanent or temporary places of residence, daily or other movements, the activities carried out, the social relation-

ships of those persons, and the social environments frequented by them. Consequently, the retention of these data entails an interference with the right to the protection of personal data guaranteed by Article 38 of the Constitution, Article 8 of the Charter of Fundamental Rights of the European Union, and also Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

In conformity with the established constitutional case law, any collecting and processing of personal data entails an interference with the right to the protection of privacy, i.e. with the right of individuals to keep information regarding themselves private. However, the right to information privacy is not unlimited. Individuals must accept the limitations of information privacy, i.e. allow interferences therewith that are in the prevailing public interest and if the constitutionally determined conditions are fulfilled. In the law it must be precisely determined which data may be collected and processed, and for what purpose they may be used; supervision over the collection, processing, and use of personal data must be envisaged, as well as protection of the confidentiality of the collected personal data. The purpose of the collecting of personal data must be constitutionally admissible. Only data appropriate and urgently necessary for the implementation of the statutorily defined purpose may be collected. When what is at issue is the processing of personal data for the purposes of police work, the legislature must weigh the measure by which it interferes with a sensitive area of the privacy of an individual without his or her consent in an especially meticulous manner. The same also applies to the processing of personal data by other authorities of the state for the purposes of the defence of the state, national security, and the constitutional system.

With regard to the purpose of collecting such data, the Constitutional Court assessed that the prosecution of serious forms of criminal offences, the defence of the state, and the safeguarding of the security of the state are constitutionally admissible objectives. In order for the state to be able to protect human rights and fundamental freedoms on its territory, it must primarily foster the existence and efficient functioning of the institutions of a state governed by the rule of law also in such a manner that it combats the most serious forms of criminal offences, ensures the defence of the state, the national security, and the constitutional system. However, the Constitutional Court assessed that the legislature could also have achieved the purpose for which personal data were being retained by a less intensive interference with the right determined by the first paragraph of Article 38 of the Constitution.

The challenged regulation provided for the precautionary (in advance) and indiscriminate retention of traffic data generated by electronic communications. By the precautionary and indiscriminate retention of data created daily, service providers were creating vast databases from which it was possible, at any moment, to draw very detailed conclusions concerning facts regarding the private life of every single individual. The affected persons were not informed of the retention and potential subsequent use of their data. In fact, this can generate a feeling of constant surveillance, which also influences the exercise of other rights, e.g. the right to free expression determined by Article 39 of the Constitution.

As is the case in the Data Retention Directive, the Slovene legislature also did not limit such retention to those data that have a reasonable and objectively verifiable connection to the purpose that the legislature intends the measure to achieve. Namely, by the unlimited measure also data regarding communications that would otherwise have to enjoy special protection are retained (e.g. data regarding phone services for assistance in emotional distress). Similarly, the regulation did not limit the retention of data to a certain period of time, geographical area, or

circle of persons who might have a certain connection with the purpose pursued by the measure. The retention and processing of personal data for a longer period of time than is necessary in order to achieve the purpose does not fulfil the criterion of proportionality. Furthermore, the legislature did not limit the processing of traffic data only to serious criminal offences which it had assessed justify an interference with the privacy of individuals.

By instituting the obligatory retention of traffic data, the legislature substantially interfered with the right to the protection of personal data, whereby it did not define in detail the circumstances limiting such interference to a measure truly necessary to achieve the objective pursued. The Constitutional Court established that the challenged regulation disproportionally interfered with the right to the protection of personal data determined by the first paragraph of Article 38 of the Constitution and thus abrogated it. In order to prevent further disproportionate interferences with the right to the protection of personal data, the Constitutional Court also determined the manner of the implementation of its Decision. It instructed the service providers that were retaining traffic data on the basis of the challenged regulation to immediately destroy these data.

1. 2. 14. The Legal Effects of Declaratory Decisions of the Constitutional Court

By Decision No. Up-624/11, dated 3 July 2014 (Official Gazette RS, No. 55/14), the Constitutional Court decided on a constitutional complaint in which the complainant alleged that the Supreme Court had not acted in accordance with an earlier declaratory decision of the Constitutional Court, nor with the manner of implementation determined by that declaratory decision. In light of that, two important constitutional questions arose in the case at issue that the Constitutional Court had to provide answers to: (1) What would the constitutionally consistent conduct of regular courts be when they are faced with a so-called declaratory decision of the Constitutional Court? (2) What, in concrete judicial proceedings, are the legal effects of the manner of implementation that the Constitutional Court can determine in its decisions on the basis of the second paragraph of Article 40 of the Constitutional Court Act?

The Constitution contains no provisions on declaratory decisions of the Constitutional Court. They were only introduced by the Constitutional Court Act, whose Article 48 determines that if an unconstitutional or unlawful regulation does not regulate a certain issue which it should regulate or it regulates such in a manner which does not enable annulment or abrogation, the Constitutional Court shall adopt a declaratory decision on such. The Constitutional Court stressed that a declaratory decision entails the duty of the courts to interpret the law in a constitutionally consistent manner, which is what on the constitutional level follows already from Article 125 of the Constitution, in accordance with which judges are not only bound by law when judging, but also by the Constitution. From Article 125 of the Constitution and *mutatis mutandis* application of Article 44 of the Constitutional Court Act it follows that a declaratory decision of the Constitutional Court applies to all relations that had been established before the day such declaratory decision took effect if by that day such relations had not been finally decided. In all proceedings that have not hitherto been finally decided, the courts must observe the declaratory decision of the Constitutional Court. This means that they must apply the unconstitutional statutory provision in such a manner that in concrete proceedings its application is not contrary to the reasons that led the Constitutional Court to establish its unconstitutionality.

Due to the institute of constitutional complaints, in conformity with which it is possible to affect final decisions, an established position of the Constitutional Court with regard to the legal effects of decisions to abrogate adopted in proceedings for the review of the constitutionality and legality of regulations is that the abrogation of a statutory provision must also be observed in constitutional complaint proceedings and consequently – due to the fact that in order to file a constitutional complaint also the formal and substantive exhaustion of all (including extraordinary) legal remedies is required – also in extraordinary legal remedy proceedings. Extraordinary legal remedies filed in conformity with the conditions determined by procedural laws and a constitutional complaint filed in conformity with the conditions determined by the Constitutional Court Act ensure that the effects of the abrogation of laws also extend to final cases.

What applies to decisions to abrogate also applies to declaratory decisions of the Constitutional Court. In constitutional complaint proceedings, the Constitutional Court can penalise failure to observe its declaratory decisions – especially if the unconstitutionality was established due to an inadmissible interference with human rights and fundamental freedoms. Due to the fact that in a state governed by the rule of law it is necessary to ensure the effectiveness of legal remedies, including the constitutional complaint, it is clear that declaratory decisions apply to constitutional complaint proceedings, and consequently they also must be observed appropriately in legal remedy proceedings before regular courts. In assessing legality, courts must also observe the Constitution, i.e. they must interpret laws in conformity with the Constitution and always keep questioning themselves whether the legislation in conformity with which they adjudicate is consistent with the Constitution. Therefore, what is at issue with regard to the effects of the decisions of the Constitutional Court (those to abrogate and declaratory decisions) is also the question of the effectiveness of legal remedies (regular and extraordinary legal remedies, as well as constitutional complaints) regarding constitutional issues.

In addition to adopting a decision by which it assesses the constitutionality of a law (or the constitutionality and legality of another regulation), the Constitutional Court may, on the basis of the second paragraph of Article 40 of the Constitutional Court Act, determine the manner of the implementation of a decision. In conformity with the established constitutional case law, it also may adopt, on this legal basis, a temporary legal regulation in conformity with which its addressees (individuals or state authorities) must act until the legislature regulates such question by law in an equal or some other constitutionally consistent manner. The Constitutional Court has already adopted the position that the part of the operative provisions by which the manner of the implementation of its decision is determined has the binding power of a statutory norm. Therefore, on the basis of the authorisation determined by the second paragraph of Article 40 of the Constitutional Court Act, the Constitutional Court can temporarily regulate a certain question by the same legal power as if it were regulated by the legislature. In accordance with the established position of the Constitutional Court, a regulation determined by the manner of implementation has the same legal power as law. Such entails that the interpretation and the implementation of such regulation are subject to established methods of legal interpretation that otherwise apply to the interpretation and implementation of laws, and also to certain fundamental constitutional principles that represent constitutional limitations with regard to the interpretation of laws (e.g. the prohibition of retroactive effects determined by Article 155 of the Constitution).

Failure to observe a determined manner of implementation can thus primarily entail a violation of "statutory" law. However, ignoring the manner of implementation may also reach the level of a violation of the Constitution. Refusal to apply the manner of implementation

determined by a decision of the Constitutional Court must, above all, be substantiated, especially if the party to proceedings expressly refers thereto. The absence of reasons can entail that the court acted arbitrarily or that the ignoring of a decision of the Constitutional Court was manifestly erroneous, which in itself entails a violation of Article 22 of the Constitution. However, if the court does state reasons why it considers the manner of implementation of a decision of the Constitutional Court to not be relevant to the concrete case, those reasons must, on the one hand, follow from established rules and methods of legal interpretation or from constitutional limitations that otherwise are applicable regarding the interpretation and implementation of laws. On the other hand, it is clear that when interpreting and implementing a certain manner of implementation it is also necessary to meticulously take into consideration the reasons due to which the Constitutional Court adopted the decision that the law at issue is inconsistent with the Constitution, because the reason for a "legislative" intervention by the Constitutional Court is precisely the unconstitutionality of the statutory regulation. It is admissible to ignore the manner of implementation if such does not entail a violation of human rights and fundamental freedoms or if the court can adopt, by taking into consideration the constitutional reasons from the decision of the Constitutional Court, a decision consistent with the Constitution. Otherwise a decision adopted contrary to the manner of implementation may be challenged before the Constitutional Court by a constitutional complaint.

By considering the mentioned constitutional starting points, in the case at issue the Constitutional Court did not establish the alleged violations of human rights and thus dismissed the constitutional complaint.

1. 2. 15. Compensation for Death During a Police Action

By Decision No. Up-679/12, dated 16 October 2014 (Official Gazette RS, No. 81/14), the Constitutional Court considered a constitutional complaint by which the complainants (parents, children, and a partner) demanded from the state the payment of compensation for non-pecuniary damage that occurred due to the death of their relative (son, father, and partner, respectively) during a police action. He died of an acute asthma attack triggered by the physical and emotional strain during the arrest. The applicants were opposed to the assessment of the courts that in the police action the police officers did not act in an inadmissible manner. In their opinion, the police officers acted in a violent manner, and their reaction to the asthmatic attack also allegedly entailed negligent conduct.

Article 17 of the Constitution determines that human life is inviolable. A human's right to life is an essential and the underlying element of human dignity as hierarchically the highest constitutional value that represents the value starting point of all human rights. The right to life is first and foremost a defensive right of individuals that prohibits authoritative and intentional interferences of the state with human life. In the event of the death of a person due to the use of force by the repressive authorities of the state (e.g. the Police or the military), the state must ensure an effective and independent official investigation of the circumstances of the death. Thereby, the procedural aspect of the right to life is protected. Within the framework of procedures initiated due to an event that leads to the death or injury of an individual, the state must credibly and plausibly justify the occurrence of such consequences. The state carries the burden of proof in demonstrating that in the circumstances of a concrete event it acted in conformity with the statutorily determined competences and authorisations, and in

particular also in conformity with the positive obligation to protect the inviolability of life and the physical integrity of the persons involved. Within the framework of its positive duties, the state must, by its active conduct (which also entails diligent planning and supervision of the measures taken when force is used), prevent the occurrence of fatal consequences for individuals. Whenever the state fails to act in accordance with these constitutional starting points, the question of its liability for damages determined by Article 26 of the Constitution arises.

By establishing the liability of the state for damages, affected individuals are protected in the event damage occurs due to the authoritative actions of state authorities. The basis of such responsibility is (1) the unlawful conduct of a state authority, local community authority, or bearer of public authority (2) when exercising power or in relation to such being exercised, a consequence of which is (3) the occurrence of damage. In order to assess the liability of the state for damages, the classical rules of vicarious civil liability for damages do not suffice; when assessing individual prerequisites as regards the responsibility of the state, specificities that originate from the authoritative nature of the functioning of its authorities, officials, and employees must be taken into consideration. With regard to so-called public law unlawfulness, the question regarding the due action by the state as the entity of authority arises, i.e. how a state authority or another bearer of public authority should act in an individual case and what the concrete and objectively necessary diligence of the authority is when performing the function of authority. The foundation of the liability of the state for damages thus lies in the obligations of the state and its authorities, with regard to which the state is not only obliged to refrain from taking measures by which it would interfere in an inadmissible manner with the protected interests of individuals or their human rights, but it also must protect these interests and rights by its active conduct or measures.

With regard to the fact that during the action of the repressive authorities of the state a person died, the state should carry out an independent investigation of the circumstances of the incident and enable the relatives of the deceased (the complainants) effective access to such investigation. The state did not carry out such an investigation within the framework of the criminal procedure, nor did it carry out any other investigation that would fulfil the mentioned criteria. If proceedings for damages are initiated, as occurred in the case at issue, the relatives of the deceased must have the possibility in adversarial proceedings (as an independent investigation was not carried out) to impartially and objectively investigate and determine the circumstances of the death and the possible liability of the state for the death of the individual. In proceedings for damages, it is the state that must dispel any doubt with regard to the question of whether the conduct of its authorities was in conformity with the fundamental constitutional requirements and the requirements of the Convention. If the state does not succeed in credibly and plausibly substantiating its allegations regarding its lawful and sufficiently diligent conduct (the planning and supervision over the carrying out of the action) in the circumstances of an individual case, in particular also that it has done everything in its power to prevent the occurrence of consequences fatal to persons, this suffices to conclude that there was unlawfulness as one of the fundamental conditions for the liability of the state for damages.

The Constitutional Court established that the courts that decided on the liability of the state for damages did not take into consideration to a sufficient degree the mentioned starting points. They merely limited their assessment to the question of whether in the action the police officers acted lawfully and whether there existed a lawful basis for their actions. The centre of gravity of the assessment of the courts should have been, however, in establishing whether during the performance of the investigative measure of a house search the police officers did

everything in their power to protect the life and health of the person investigated and to prevent the risk to such person. In a dispute regarding damages one must proceed from the presumption that the death occurred due to the unlawful conduct of the authorities. Consequently, the courts should have imposed on the state the burden to plausibly substantiate that it acted lawfully when carrying out the police action, that the use of force was proportionate, and that it implemented, to the highest possible degree, measures by which it was to prevent any foreseeable risk as regards the life and health of the persons investigated. Since the courts failed to do so, the Constitutional Court abrogated the challenged judgments due to a violation of the right to compensation for damage determined by Article 26 of the Constitution.

1. 2. 16. The Right to an Active Defence

By Decision No. Up-234/13, dated 27 November 2014 (Official Gazette RS, No. 89/14), the Constitutional Court decided on a constitutional complaint against a final criminal judgment by which the complainant was found guilty of committing the criminal offence of tax evasion and forging business documents. The complainant alleged that by refusing to consult the filed opinion of an expert witness summoned by the complainant himself, the court violated his right to make a statement determined by Article 22 of the Constitution and the right to take evidence to his benefit determined by the third indent of Article 29 of the Constitution.

The right to a defence is fundamental for a defendant to have an effective defence. Anyone charged with a criminal offence must, in addition to absolute equality, be guaranteed the right to have adequate time and facilities to prepare his or her defence and to conduct his or her own defence or to be defended by a legal representative. If in criminal proceedings determining a defendant's responsibility for the criminal offence with which he or she is charged the defendant is not ensured the possibility to make a statement on the entire set of documents and the possibility to appropriately cooperate in the procedure for taking evidence, this entails an inadmissible interference with his or her right to defence.

In the case at issue, the key evidence was an expert opinion drafted by a certified court-appointed economics expert. Even before the court expert was examined, the defence proposed the examination of its expert witness, also an economics expert, and that the court expert and its expert witness respond to each other's opinions in court, and entered into the case file the expert assessment drafted by the proposed expert witness. The courts proceeded from the position that the defence only filed motions for evidence (consultation of the filed opinion of the expert witness, the examination of its expert witness, and that its expert witness and the court expert respond to each other's opinions in court) and rejected such motions for evidence.

On the basis of the Criminal Procedure Act, a court engages an expert when it is necessary, in order to determine or assess a certain important fact, to obtain a finding or an opinion of a specialist possessing the necessary expertise for the task. The Constitutional Court has already emphasised that an expert opinion is not only a piece of evidence but represents assistance to the court in the exercise of its function. Courts assess the weight of the expert's opinion and his or her testimony at their own discretion, in the same manner as all the other evidence; therefore, they are not bound by his or her opinion.

The defendant has the right to make a statement on the expert opinion and, in the event it incriminates him, to draw attention to its inapplicability as evidence. He or she can do this in

such manner that he or she engages an expert witness and submits his or her opinion to the court. An expert witness is a party's assistant and acts in its interest. A privately obtained opinion of an expert witness is deemed to entail an allegation by the defence by which the party adopts a position with regard to a certain question or by which it raises doubts of a professional nature regarding the correctness of an already drafted expert opinion commissioned by the court. When what is at issue are complicated expert questions, the defendant must have the possibility to present allegations and to challenge the opposing evidence with the assistance of an expert assistant. He or she must be enabled to challenge, with the assistance of an expert witness of his or her own choice, the evidentiary value of the expert opinion provided by the court-appointed expert. With the assistance of an external expert witness, the defence tries to plant doubt regarding the correctness of such expert opinion or to demonstrate its unclarity, flaws, or internal discordances. This right of the defendant is correlative to the duty of the court to examine his or her allegations and also to adopt a position thereon if they are relevant for the case at issue. In assessing the expert opinion commissioned by the court and the expert's testimony, courts must take into consideration the allegations of the defence presented with the assistance of its expert witness and must adopt a position thereon. Failure to abide by this duty entails a violation of the right to the equal protection of rights determined by Article 22 of the Constitution and of the right to an appropriate and effective defence, which is guaranteed by Article 29 of the Constitution.

In the case at issue, the criminal court only established that the defence counsel entered into the case file the opinion of an expert witness provided by the defence. Substantively, the court did not take it into consideration in any aspect and did not adopt a position thereon as entailing allegations of the defendant. At the same time, it rejected the proposal of the defence to examine the expert witness who drafted the opinion provided by the defence. Since the defence was entirely denied the assistance of an expert witness when the evidence of the court-appointed expert was taken, the Constitutional Court established a violation of the defendant's right to a defence determined by Article 29 of the Constitution.

1. 2. 17. The Financing of Private Primary Schools

By Decision No. U-I-269/12, dated 4 December 2014 (Official Gazette RS, No. 2/15), the Constitutional Court reviewed the constitutionality of the provision of the Organisation and Financing of Education Act that ensured private primary schools carrying out state-approved education programmes only 85% of the funds that the state grants for carrying out a public school programme. The petitioners were of the opinion that state-approved education programmes in private and public schools should be financed equally.

The Constitution determines the right to education and schooling in Article 57. Freedom of education is guaranteed (the first paragraph of Article 57 of the Constitution) and the state creates the opportunities for citizens to obtain a proper education (the third paragraph of Article 57 of the Constitution). It follows from the Constitution that the right to free education is a so-called negative human right (i.e. a fundamental freedom) that does not also include the right to education free of charge. Outside the framework of compulsory primary education, which is determined separately in the second paragraph of Article 57 of the Constitution, no financial obligations of the state stem from the right to free education vis-à-vis public or private educational institutions, as the degree of public financing is entirely within the discretion of the legislature.

In conformity with the legislation, primary schools can start to carry out state-approved primary education programmes after they are entered in the register of primary schools maintained by the Ministry of Education. In order to be included therein, they must fulfil the prescribed conditions regarding the premises and equipment, provide professional staff with the prescribed education, and have a state-approved programme. The state-approved programme in public primary schools is determined by the Order on the Educational Programme for Primary Schools, whereas in private primary schools it is confirmed by the Expert Council of the Republic of Slovenia for General Education. The providers of state-approved primary education programmes are divided into public primary schools, private primary schools with a concession, and private primary schools that carry out state-approved primary education programmes without a concession. The scope of state financing for carrying out state-approved primary education programmes is different for individual providers of these programmes. Private schools that carry out state-approved primary education programmes without a concession are granted, from the budget of the state, 85% of the funds that the state grants public schools for carrying out their programmes. On the other hand, private schools that do not carry out state-approved primary education programmes are not financed from public funds.

The right to free education determined by the first paragraph of Article 57 of the Constitution is limited to the level of primary school education. The second paragraph of Article 57 of the Constitution determines that primary education is compulsory and shall be financed from public funds. According to the interpretation of the Constitutional Court, by envisaging public financing of primary education, the Constitution also ensured pupils the right to primary education free of charge. Since the Constitution connected this constitutional right of pupils to their constitutional duty, it is that aspect of primary education that is compulsory for pupils that must be financed from public funds. Therefore, the second paragraph of Article 57 of the Constitution ensures pupils the right to attend a compulsory state-approved primary education programme free of charge regardless of whether it is carried out by a public law or private law entity. However, this right does not require that the state also finance premium or extended programmes by which private schools pursue their particular interests, which depend on the value orientations of individual primary schools.

Due to the fact that the legislature failed to justify the interference with the right of pupils to primary education free of charge by a constitutionally admissible objective, the Constitutional Court decided that the regulation of the financing of private primary schools is inconsistent with the second paragraph of Article 57 of the Constitution.

1. 2. 18. Imprisonment for the Enforcement of Fines

By Decision No. U-I-12/12, dated 11 December 2014 (Official Gazette RS, No. 92/14), in proceedings initiated upon the request of the Ombudsman for Human Rights, the Constitutional Court assessed the regulation of so-called imprisonment for the enforcement of fines in the Minor Offences Act. Imprisonment for the enforcement of fines is not a measure of a punitive nature, but it strives to influence the perpetrator's will such that he or she willingly pays (by him- or herself) a fine imposed by a final decision. A court imposes such imprisonment on a perpetrator who does not pay, in part or in its entirety, the fine by a determined time limit. What is at issue with regard to imprisonment for the enforcement of fines is thus not the decision-making on the minor offence itself, as at the moment when imprisonment for the enforcement of a fine can be imposed, this procedure has already concluded finally and

the sanction for the minor offence has already been imposed finally. The purpose of imprisonment for the enforcement of fines is to ensure the observance of the final judicial decision.

Neither the Constitution nor the Convention for the Protection of Human Rights and Fundamental Freedoms excludes the possibility that the law envisages, as a means of compulsory execution of a final judicial decision, a measure that entails the deprivation of liberty. Imposing imprisonment for the enforcement of fines is thus not in itself inconsistent with the Constitution. However, imprisonment for the enforcement of fines nonetheless entails an interference with the right to personal liberty determined by the first paragraph of Article 19 of the Constitution. In conformity with the second paragraph of Article 19 of the Constitution, one may only be deprived of his or her liberty (1) in such cases and (2) pursuant to such procedures as are provided by law. Any restriction of personal liberty by means of the deprivation of liberty must thus be substantively and procedurally determined by law in advance (*lex certa*). The point of this constitutional requirement is protection from the arbitrariness of the authorities in power that decide on the deprivation of liberty. In order for an interference with the right to personal liberty to be admissible it is of key importance that the statutory regulation ensures, in every concrete case, a judicial concretisation of the constitutional admissibility of imprisonment for the enforcement of fines.

The Constitutional Court established that the regulation of imprisonment for the enforcement of fines pursues a constitutionally admissible objective. As the bearer of sovereign power on its territory, the state must namely ensure the functioning of its institutions and society, harmony between individuals, and their safety. In order to achieve these objectives, it is also entitled to use certain measures involving the use of coercion. If the responsibility of a person for a minor offence has been established by a final decision and a sanction has been imposed on him or her, the perpetrator must observe such a decision. From a broader perspective, the observance of a final decision, which outwardly is above all reflected in the execution of the sanction, strengthens the trust of people in the law and in a state governed by the rule of law. The objective of imprisonment for the enforcement of fines is thus to elicit from the perpetrator due observance of the final decision on a minor offence.

Imprisonment for the enforcement of fines entails an interference with personal freedom and can therefore only be envisaged as the last resort that may be used if the objective cannot be achieved in an equally effective manner by any other milder means. A fine entails a sanction that is directed towards encouraging the person at issue to respect the legal order in the future. Therefore, a greater degree of cooperation can be required from the perpetrator, which is reflected as requiring voluntary payment of the fine. The situation is different in the procedure of forced execution, for which it is characteristic that the payment is achieved, as a general rule, without the cooperation of the debtor. It must be taken into consideration that imprisonment for the enforcement of fines is intended for perpetrators who do not respect the final decision, therefore the state is not obliged to first use against them such means of execution (involving the use of coercion) that interfere less intensely with their rights. If we take into consideration, with regard to imprisonment for the enforcement of fines, the duty of perpetrators to cooperate in paying their fines, then forced execution cannot be deemed to be an equally effective means as imprisonment for the enforcement of fines. A fine imposed due to a committed minor offence is not a usual monetary claim and the state is not in the position of a normal creditor regarding a monetary claim. Therefore, within the framework of the assessment of proportionality, the Constitutional Court decided that imprisonment for the enforcement of fines can be deemed a necessary measure for achieving observance of a final decision.

However, the Constitutional Court established that in certain cases imprisonment for the enforcement of fines is not an appropriate means to achieve the objective pursued thereby. It is only an appropriate means to achieve this objective in situations in which perpetrators of minor offences could pay the fine but do not want to, and not in instances where perpetrators of minor offences cannot pay the fine due to their poor economic situation; in such situations, imprisonment for the enforcement of fines is not an appropriate means to achieve this objective. The Constitutional Court also established that from the viewpoint of its duration, imprisonment for the enforcement of fines is a disproportionate measure. The legislature envisaged the possibility of imprisonment for the enforcement of fines for all fines imposed in an amount higher than EUR 300. Since it prescribed that imprisonment for the enforcement of fines is to last until the fine is paid, but no longer than 30 days, it excluded the possibility that courts take into consideration, when determining the length of imprisonment for the enforcement of fines, the amount of the imposed and unpaid fine. In such manner, it excluded, at the same time, the possibility that the gravity of the interference with personal liberty would in a concrete procedure be adapted to the gravity and nature of the minor offence and the imposed fine. The Constitutional Court established that in this part, the regulation of imprisonment for the enforcement of fines was inconsistent with the right to personal liberty determined by the first paragraph of Article 19 of the Constitution.

The Constitutional Court also assessed imprisonment for the enforcement of fines from the viewpoint of the possibility of the perpetrator to participate in the procedure. Namely, the question arose whether the regulation is in conformity with Articles 22 and 23 of the Constitution, because courts determine imprisonment for the enforcement of fines by an order even before they have given the perpetrator the possibility to state reasons against such a decision. The Constitutional Court has already stressed numerous times that parties must be ensured the right to be heard (Article 22 of the Constitution) in all procedures and in all phases of a procedure. The right to be heard is based on respect for human personality and personal dignity (Article 34 of the Constitution), as it enables parties an effective defence of their rights and thus ensures them the position of a subject (and not of an object) in the procedure. Similarly, one can only speak of the impartiality of courts (the first paragraph of Article 23 of the Constitution) if before they adopt their decision courts hear the position of the party whose right they would thereby interfere with.

The Constitutional Court assessed that the regulation in conformity with which a court can issue an order on imprisonment for the enforcement of fines on the basis of data from the case file and official registers without calling on the perpetrator to state by him- or herself reasons against the imposition of imprisonment for the enforcement of fines is not in conformity with the right to be heard and the right to an impartial court (Article 22 and the first paragraph of Article 23 of the Constitution). A regulation in conformity with which the perpetrator can only state the circumstances against imprisonment for the enforcement of fines in the objection procedure excludes the possibility that when it imposed imprisonment for the enforcement of fines the court was informed of those circumstances of the case that could importantly influence the assessment of the court regarding the appropriate balance between the importance of ensuring respect for a final decision and the significance of the interference with the perpetrator's right to personal liberty.

Therefore, in the case at issue, the Constitutional Court did not establish that imprisonment for the enforcement of fines as such is unconstitutional. It did establish, however, that individual conditions and the regulation of the procedure imposing imprisonment for the

enforcement of fines are inconsistent with the Constitution as they do not provide for sufficient guarantees ensured by the Constitution. The established unconstitutionalities were such that they did not allow the abrogation of only individual statutory provisions. Consequently, the Constitutional Court abrogated the regulation of imprisonment for the enforcement of fines in its entirety.

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

Every year the Constitutional Court draws attention to instances of disrespect for its decisions adopted on the basis of Article 48 of the Constitutional Court Act. In cases when the Constitutional Court decides that a law or other regulation is unconstitutional or illegal as it does not regulate a certain issue that it should regulate or regulates such in a manner that does not enable abrogation or annulment, it adopts a so-called declaratory decision and determines a time limit by which the legislature or other authority that issued such act must remedy the established unconstitutionality or illegality. In accordance with the constitutional principles of a state governed by the rule of law (Article 2 of the Constitution) and the principle of the separation of powers (the second 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.

As of the end of 2014 there remained three unimplemented decisions of the Constitutional Court by which statutory provisions were found to be unconstitutional. In addition, a decision that requires the response of a local community remained partially unimplemented. 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 implementation of its decisions and thus ensured effective protection of the constitutional rights of the participants in the concrete proceedings. If these decisions of the Constitutional Court by which also the manner of implementation was determined were included in the above number of unimplemented decisions, the total would have been greater.

The oldest Constitutional Court decision still not implemented dates from 1998 (Decision No. U-I-301/98, dated 17 September 1998, Official Gazette RS, No. 67/98). By that decision, 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 two decisions of the Constitutional Court on which the legislature has not yet appropriately responded. By Decision No. U-I-156/08, dated 14 April 2011 (Official Gazette RS, No. 34/11), the Constitutional Court held that due to their inconsistency with the principle of the precision and clarity of regulations, certain 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. The Act further failed to regulate the manner of the funding of state universities and state institutions of higher

education, in particular their funding from the state budget. State universities and state institutions of higher education thus do not know what their position regarding the funding of their activities is and such is also not predictable on the basis of the Act. By Decision No. U-I-50/11, dated 23 June 2011 (Official Gazette RS, No. 55/11), the Constitutional Court found that the Parliamentary Inquiries Act and the Rules of Procedure on Parliamentary Inquiries are inconsistent with the Constitution as they failed to regulate a procedural mechanism that would ensure that motions to present evidence that are manifestly intended to delay proceedings, to mob the participants, which are malicious, or entirely irrelevant to the subject of the parliamentary inquiry, be dismissed promptly, objectively, predictably, reliably, and with the main objective being to ensure the integrity of the legal order. As a result, the effective nature of the parliamentary inquiry, which is required by Article 93 of the Constitution, is diminished in an unconstitutional manner.

Decision No. U-I-345/02, dated 14 November 2002 (Official Gazette RS, No. 105/02), whereby the Constitutional Court established the inconsistency of certain municipal statutes with the Local Self-Government Act as these statutes did not provide that representatives of the Roma community be included as members of the respective municipal councils, still remains partly unimplemented. While other municipalities have eliminated the established illegality of their statutes, the Municipality of Grosuplje has not responded to the Decision of the Constitutional Court.

In a number of its decisions the Constitutional Court established the unconstitutionality or illegality of challenged regulations and determined the manner of implementation of its decisions and thus protected the rights of the participants in the concrete proceedings. As the time limits set for remedying the established unconstitutionalities or illegalities expired, these decisions have to be included among the unimplemented decisions as well.

The time limit for remedying the established unconstitutionality of the Registration of a Same-Sex Civil Partnership Act (Decision No. U-I-425/06, dated 2 July 2009, Official Gazette RS, No. 55/09), which failed to provide a constitutionally admissible reason for the different regulation of inheritance between spouses and inheritance between partners in registered same-sex partnerships, expired in 2010. In 2011, the time limit for remedying the unconstitutionality of the Media Act expired. By Decision No. U-I-95/09, Up-419/09, dated 21 October 2010 (Official Gazette RS, No. 90/10), the Constitutional Court namely established that the statutory regulation does not determine a subjective deadline for exercising the right to a correction, but only determines an objective deadline as the general rule. By Decision No. U-I-212/10, dated 14 March 2013 (Official Gazette RS, No. 31/13), the Constitutional Court held that the regulation of inheritance in accordance with the Inheritance Act is inconsistent with the first paragraph of Article 14 of the Constitution, because it treats homosexual and heterosexual persons who live together in stable partnerships differently in the event of the death of one of the partners without providing a justified reason for such. In 2014, the time limit expired for remedying the unconstitutionality established by Constitutional Court Decision No. U-I-249/10, dated 15 March 2012 (Official Gazette RS, No. 27/12); such Decision determined that the regulation in the Public Sector Salary System Act according to which a collective agreement may be concluded regardless of the opposition of a representative trade union in which civil servants whose position is regulated by such collective agreement are joined interferes with the voluntary nature of such as an element of the freedom of the activities of trade unions. By Decision No. U-I-134/10, dated 24 October 2013 (Official Gazette RS, No. 92/13), the Constitutional Court established that the Civil Procedure Act is inconsistent with the right to judicial protection determined by the first paragraph of Article 23 of the Constitution, as it does not contain

a special regulation of the consideration of classified information and thus the Classified Information Act is also applied in judicial proceedings in accordance with the Civil Procedure Act even though it is not adapted to the nature of such proceedings. The legislature has not yet remedied this unconstitutional legal gap, although the time limit set for such has expired.

There remain two further decisions on which the legislature responded only in part, namely Decision No. U-I-7/07, Up-1054/07, dated 7 June 2007 (Official Gazette RS, No. 54/07), which remains unimplemented insofar as the Constitutional Court established that the National Assembly Elections Act is unconstitutional because it does not contain a detailed regulation of voting by mail, and Decision No. U-I-214/09, Up-2988/08, dated 8 July 2010 (Official Gazette RS, No. 62/10), insofar as it concerns the established unconstitutionality of the Social Security Contributions Act as regards the contributions for unemployment insurance.

1. 4. International Activities of the Constitutional Court in 2014

With a view to strengthening international cooperation, the Constitutional Court enhanced its contacts with other constitutional courts and the European Court of Human Rights in 2014. The Constitutional Court is a member of some of the major European and global associations of constitutional courts, in the framework of which representatives of the Constitutional Court attend regular meetings and exchange knowledge and experiences in the field of the protection of human rights and fundamental freedoms and other fundamental constitutional values.

In May a delegation of the Constitutional Court led by President Mag. Miroslav Mozetič participated in the XVI Congress of the Conference of European Constitutional Courts, which took place in Vienna under the auspices of the Constitutional Court of the Republic of Austria. The Conference constitutes an important pan-European forum for the multilateral exchange of opinions and experiences within the European area. The theme of this year's Congress was the cooperation of the constitutional courts in Europe – the current situation and future prospects. In September, a delegation of the Constitutional Court attended the 3rd Congress of the World Conference on Constitutional Justice entitled "Constitutional Justice and Social Integration". In addition, in January the Vice President of the Constitutional Court Dr. Jadranka Sovdat attended a solemn session of the European Court of Human Rights in Strasbourg.

The year 2014 was also marked by a number of jubilees celebrated by the constitutional courts of the countries in the neighbourhood and wider region. The judges of the Constitutional Court thus attended an international conference held in honour of the 25th Anniversary of the Constitutional Court of Hungary in Budapest, international conferences held in honour of the individual 50th anniversaries of constitutional justice in Bosnia and Herzegovina, Macedonia, and Montenegro, and the international conference marking the 20th Anniversary of the Constitution of Moldova.

In October, the judges of the Constitutional Court of the Republic of Slovenia travelled to the Republic of Croatia for an annual working visit with the Constitutional Court thereof. During the one-day meeting, they discussed the issue of national minorities in the case law of both Constitutional Courts, as well as the issue of constitutional and international standards for the protection of the dignity of persons deprived of their liberty, particularly with regard to prison conditions.

In 2014, the Constitutional Court hosted three official visits from delegations of foreign constitutional courts. In the scope of their three-day study visit in April, representatives of the Constitutional Court of Albania gained insight into the organisation and methods of work of the Constitutional Court of Slovenia. In June, a delegation of the Constitutional Court of

Kosovo, led by President Dr. Enver Hasani, visited the Constitutional Court of Slovenia for the very first time. In formal discussions, the judges exchanged their latest experiences in the field of constitutional review and devoted special attention to the issue of the incidental review of constitutionality and the relationship between the Constitutional Court and the Supreme Court. In October, the Constitutional Court received a delegation from the Constitutional Court of the Czech Republic, led by President Dr. Pavel Rychetsky. The judges of both Courts have established excellent bilateral cooperation over the last few years. In their formal discussions at the 2014 meeting they addressed the challenges faced by constitutional courts in relation to European Union law.

Constitutionality Day, which is traditionally celebrated in December by holding a solemn session of the Constitutional Court, was marked in 2014 by an official visit from a delegation from the European Court of Human Rights. The keynote speaker at the Constitutionality Day ceremony was the President of the European Court of Human Rights, Dean Spielmann. In his speech, he particularly stressed the significance of Protocol 16, which aims at the establishment of a new dialogue between the highest national courts and the European Court of Human Rights. The delegation of the European Court of Human Rights also included Dr. Boštjan M. Zupančič, a judge on the European Court of Human Rights from the Republic of Slovenia.

In addition to the official visits, some of the judges of the Constitutional Court also attended international legal conferences. The representatives of the Court thus participated in a round table on the constitutional rights of national minorities in Austria and Slovenia that took place in April in Klagenfurt, in the international conference entitled "Central European Judges Under EU Influence: The Transformative Power of Europe Revisited on the 10th Anniversary of Enlargement", which was held in May in Florence, in the International Conference of European Judges organised by the American "Federalist Society for Law and Public Policy Studies" in June in Vienna, and in the XI European Regional Congress of Labour Law, held by the International Society for Labour and Social Security Law (ISLSSL) in September in Dublin.

An important part of the Court's international activities entails regular training for legal advisors of the Constitutional Court, which is vital to ensuring efficient decision-making and the protection of human rights. The seminars attended by the Court's legal advisors that should be mentioned include the international conference "The Long-Term Future of the European Court of Human Rights" (Oslo, Norway), the seminar "Implementing the Common European Asylum System" (Brussels, Belgium), the annual conference on "Data Protection in the EU 2014" (Brussels, Belgium), the seminar "Access to Justice for Crime Victims in the EU" (Trier, Germany), the seminar "Obtaining and Transferring Evidence in Criminal Matters between Member States in View of Securing its Admissibility" (Brussels, Belgium), the XI European Regional Congress of Labour Law (Dublin, Ireland), the Annual Conference on European Public Procurement Law (Trier, Germany), the Summer School on Asylum Law (Brussels, Belgium), and the Summer School of the University of Trento (Trento, Italy). A representative of the Constitutional Court also attended a conference entitled "The Role of Constitutional Courts in Economic Crises", held by the Venice Commission (Batumi, Georgia).

STATISTICAL DATA

2. 1. Summary of Statistical data for 2014

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

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

The Constitutional Court examines constitutional complaints in the following panels:

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

Table **1** Summary Data on All Cases in 2014

REGISTER	CASES PENDING AS OF 31 DECEMBER 2013	CASES RECEIVED IN 2014	CASES RESOLVED IN 2014	CASES PENDING AS OF 31 DECEMBER 2014
Up	660	1003	933	730
U-I	231	255	271*	215
P	6	20	12	14
U-II	0	0	0	0
Rm	0	0	0	0
Mp	0	0	0	0
Ps	0	0	0	0
Op	0	0	0	0
Total	**897**	**1278**	**1216**	**959**

* The 271 U-I cases resolved include 30 joined applications.

Table **1a** Summary Data regarding R-I Cases in 2014

REGISTER	CASES PENDING AS OF 31 DECEMBER 2013**	CASES RECEIVED IN 2014	CASES RESOLVED IN 2014	CASES PENDING AS OF 31 DECEMBER 2014
All R-I	52	373	374	51
R-I*		114	82	51
Total (All Registers and R-I)	**949**	**1392**	**1298**	**1010**

***** The total number amounted to 373 R-I cases received, 259 of which were transferred to another register in 2014 (Up or U-I), while 114 remained in the R-I register. 374 R-I cases were resolved, 292 of which were resolved by transfer to other registers, while 82 cases remained in the R-I register. ****** The number of cases resolved as of 31 December 2013 does not match the data provided in last year's overview as a few R-I cases were reopened and closed in 2014.

Table **2** Summary Data regarding Up Cases in 2014

PANEL	CASES PENDING AS OF 31 DECEMBER 2013	CASES RECEIVED IN 2014	CASES RESOLVED IN 2014	CASES PENDING AS OF 31 DECEMBER 2014
Civil Law	356	487	437	406
Administrative Law	222	313	361	174
Criminal Law	82	203	135	150
Total	**660**	**1003**	**933**	**730**

Table **3** Pending Cases According to Year Received as of 31 December 2014

YEAR	2012	2013	2014	TOTAL
U-I	1	66	148	215
P			14	14
Up	20	100	610	730
Mp				0
Total	**21**	**166**	**772**	**959**
+ R-I			51	51
Total including R-I	**21**	**166**	**823**	**1010**

2.2. Cases Received

Table **4** Cases Received According to Type and Year

YEAR	U-I	Up	P	U-II	Ps	Mp	Rm	TOTAL	R-I	TOTAL INCLUDING R-I
2007	367	3937	47			3		4354		4354
2008	323	3132	107					3562		3562
2009	308	1495	39	2			1	1845		1845
2010	287	1582	10	1				1880		1880
2011	323	1358	20	3				1704	165	1869
2012	324	1203	13	2	1	1		1544	187	1731
2013	328	1031	7					1366	143	1509
2014	**255**	**1003**	**20**					**1278**	**114***	**1392**
2014/2013	**↓ -22.3%**	**↓ -2.7%**	**↑ 185.7%**					**↓ -6.4%**	**↓ -20.3%**	**↓ -7.8%**

* The total number amounted to 373 R-I cases received, 259 of which were transferred to another register in 2014, while 114 remained in the R-I register.

Figure **1** Total Number of Cases Received by Year (including and excluding R-I Cases)

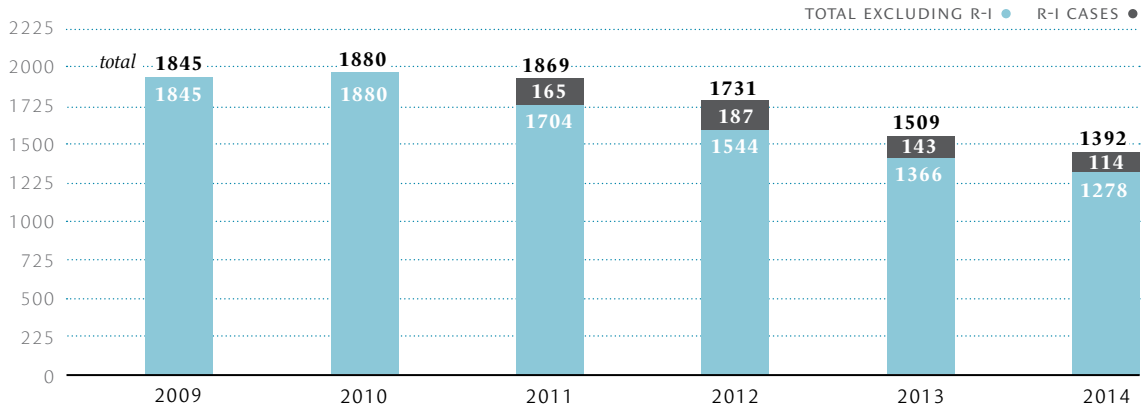


Figure **2** Distribution of Cases Received in 2014

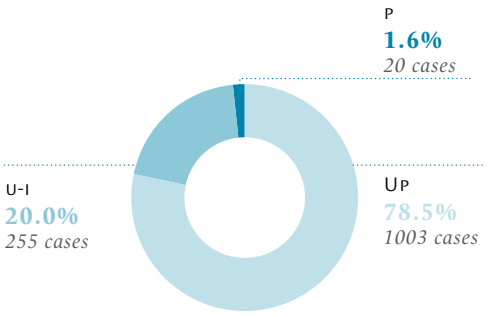


Figure **3** Distribution of Cases Received in 2014, including R-I Cases

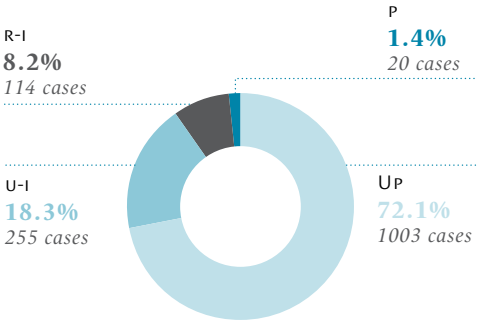
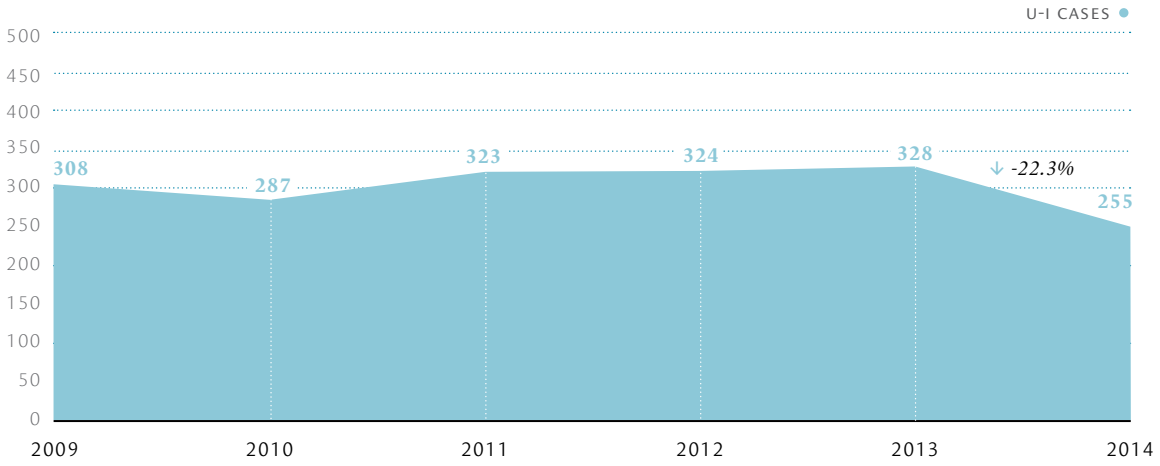


Figure **4** Number of U-I Cases Received by Year



Number of Requests for a Review Received in 2014 according to Applicant

APPLICANTS REQUESTING A REVIEW	NUMBER OF REQUESTS FILED
Sindikat vojakov Slovenije (The Soldiers' Trade Union of Slovenia)	11
Deputy Groups of the National Assembly of the Republic of Slovenia	5
Višje sodišče v Ljubljani (Higher Court in Ljubljana)	5
Upravno sodišče Republike Slovenije (Administrative Court of the Republic of Slovenia)	3
Mestna občina Koper (Koper Urban Municipality)	3
Government of the Republic of Slovenia	3
National Council of the Republic of Slovenia	2
Neodvisni sindikati Slovenije in drugi (Independent Trade Unions of Slovenia and Others)	2
Upravno sodišče RS, Oddelek v Celju (Administrative Court of the Republic of Slovenia, Department in Celje)	2
Višje sodišče v Mariboru (Higher Court in Maribor)	2
Banka Slovenije (Bank of Slovenia)	1
Občina Domžale (Domžale Municipality)	1
Občina Izola (Izola Municipality)	1
Občina Loška dolina (Loška Dolina Municipality)	1
Občina Postojna (Postojna Municipality)	1
Okrožno sodišče v Ljubljani (District Court in Ljubljana)	1
Sindikat delavcev dejavnosti energetike Slovenije - SDE (Trade Union of Employees in the Energy Industry of Slovenia - SDE)	1
Sindikat Ministrstva za obrambo (Trade Union of the Ministry of Defence)	1
Sindikat Neodvisnost - Konfederacija novih sindikatov Slovenije Regije Celje in drugi (The Independence Trade Union - The Celje Region Confederation of New Trade Unions of Slovenia and Others)	1
Skupnost občin Slovenije (The Association of Municipalities and Towns of Slovenia)	1
Ombudsman of the Republic of Slovenia	1
Višje delovno in socialno sodišče (Higher Labour and Social Court)	1
Višje sodišče v Celju (Higher Court in Celje)	1
Vrhovno sodišče Republike Slovenije (Supreme Court of the Republic of Slovenia)	1
Združenje občin Slovenije (The Association of Municipalities of Slovenia)	1
Total	**53**

Figure **5** Number of Up Cases Received by Year

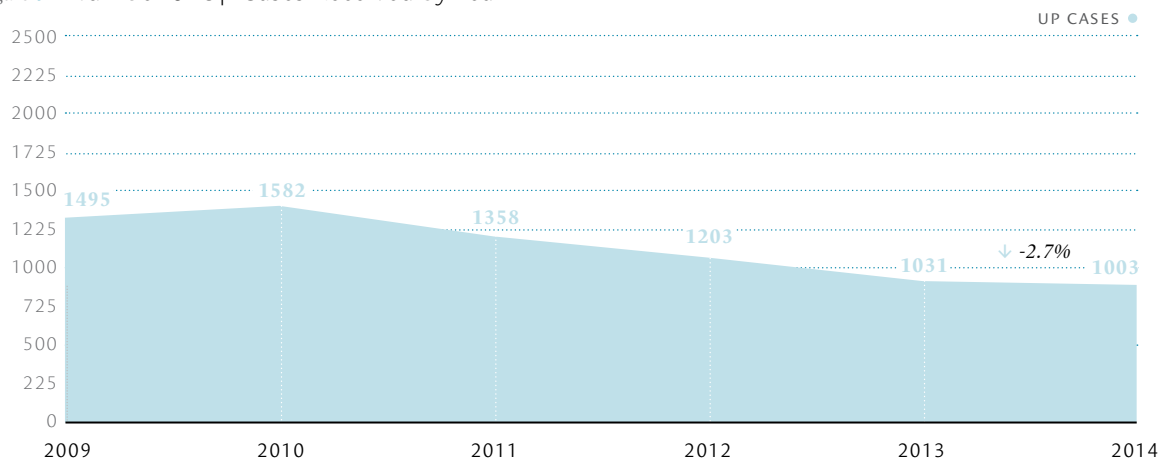


Table **6** Number of Cases Received according to Panel (Up Cases, Up and R-I Cases combined)

YEAR	CIVIL	ADMINISTRATIVE	CRIMINAL	TOTAL
2009	548	548	399	1495
2010	584	501	497	1582
2011	507	410	441	1358
2012	476	460	267	1203
2013	466	340	225	1031
2014	487	313	203	1003
2014/2013	**↑ 4.5%**	**↓ -7.9%**	**↓ -9.8%**	**↓ -2.7%**
2013 Up and R-I*	505	386	283	1174
2014 Up and R-I*	522	365	230	1117
2014/2013 Up and R-I*	**↑ 3.4%**	**↓ -5.4%**	**↓ -18.7%**	**↓ -4.9%**

***** 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.

Figure **6** Distribution of Up Cases Received according to Panel

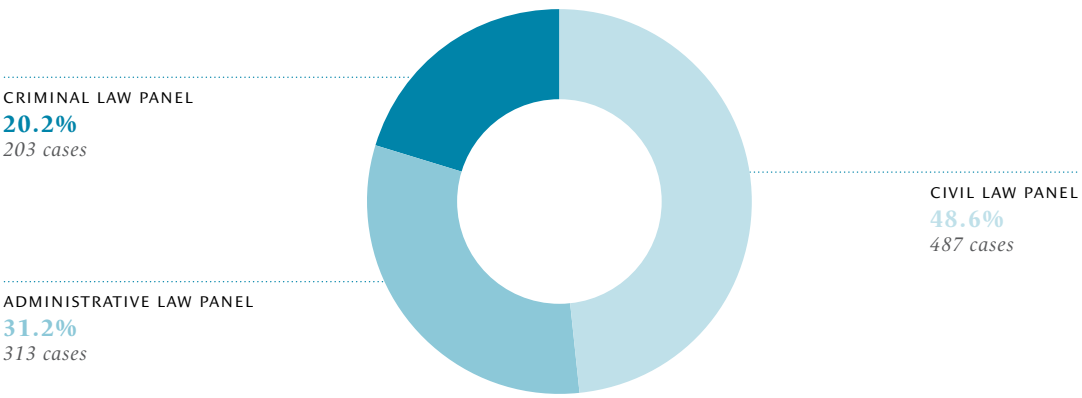
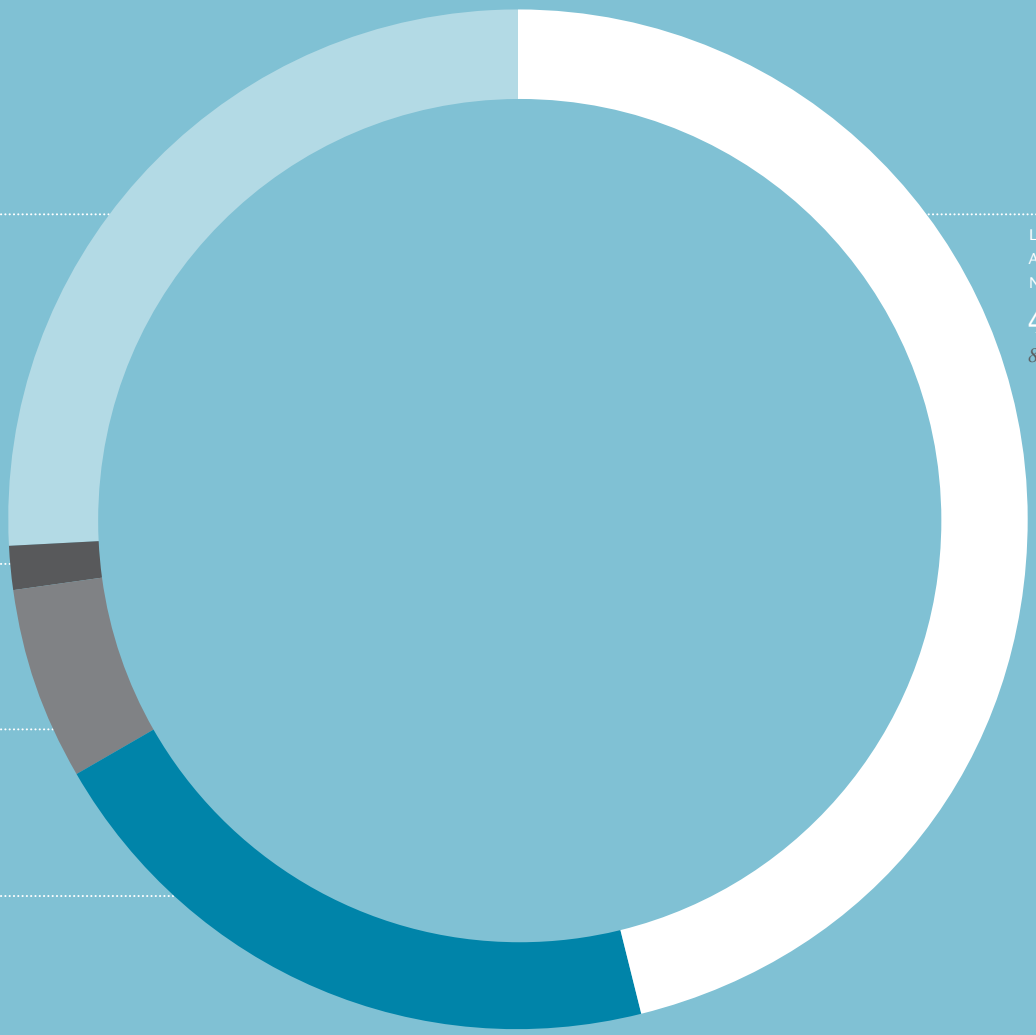


Figure 7 Distribution of Legal Acts Challenged (U-I Cases Received in 2014)



ORDINANCES AND OTHER ACTS OF SELF-GOVERNING LOCAL COMMUNITIES
25.5%
42 cases

LAWS AND OTHER ACTS OF THE NATIONAL ASSEMBLY
45.9%
89 cases

REGULATIONS ISSUED BY OTHER BODIES
2.4%
4 cases

DECREES AND OTHER ACTS OF THE GOVERNMENT
6.1%
10 cases

RULES AND OTHER ACTS OF MINISTRIES
20.1%
20 cases

Table **7** Legal Acts Challenged by Year

YEAR	LAWS AND OTHER ACTS OF THE NATIONAL ASSEMBLY	DECREES AND OTHER ACTS OF THE GOVERNMENT	RULES AND OTHER ACTS OF MINISTRIES	ORDINANCES AND OTHER ACTS OF SELF-GOVERNING LOCAL COMMUNITIES	REGULATIONS OF OTHER AUTHORITIES
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	
2014	**89**	**10**	**20**	**42**	**4**

Table **8** Acts Challenged Multiple Times in the Cases Received in 2014

ACTS CHALLENGED MULTIPLE TIMES IN 2014	NUMBER OF CASES
Pension and Disability Insurance Act	19
Banking Act	13
Criminal Procedure Act	12
Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act	11
Civil Procedure Act	10
Social Security Act	8
Enforcement and Securing of Civil Claims Act	7
Real Property Tax Act	7
National Assembly Elections Act	7
Defence Act	6
Act on Establishing Condominium Ownership on the Proposal of the Owner of a Part of a Building and on Determining the Land Pertaining to the Building	6
Referendum and Popular Initiative Act	5
Financial Social Assistance Act	5
Penal Code	4
Free Legal Aid Act	4
Deputies of the National Assembly Act	4
Personal Income Tax Act	4
Public Information Access Act	4
Construction Act	3
Minor Offences Act	3
Court Fees Act	3
Confiscation of the Proceeds of Crime Act	3
Health Care and Health Insurance Act	3
Health Services Act	3
Code of Obligations	2
Financial Services Tax Act	2
Enforcement of Penal Sentences Act	2
Tax Procedure Act	2

Table **9** Up Cases Received according to Type of Dispute

TYPE OF DISPUTE (UP CASES)	RECEIVED IN 2014	PERCENTAGE IN 2014	RECEIVED IN 2013	CHANGE 2013 / 2014
Civil Law Litigations	244	24.3%	280	-12.9% ↓
Criminal Cases	145	14.5%	136	6.6% ↑
Other Administrative Disputes	83	8.3%	90	-7.8% ↓
Execution of Obligations	76	7.6%	61	24.6% ↑
Labour Law Disputes	69	6.9%	96	-28.1% ↓
Commercial Law Disputes	63	6.3%	46	37.0% ↑
Social Law Disputes	61	6.1%	50	22.0% ↑
Minor Offences	57	5.7%	89	-36.0% ↓
Taxes	33	3.3%	36	-8.3% ↓
Non-Litigious Civil Law Proceedings	31	3.1%	31	0.0% ↑
Proceedings related to the Land Register	27	2.7%	23	17.4% ↑
Insolvency Proceedings	26	2.6%	13	100.0% ↑
Matters concerning Spatial Planning	23	2.3%	34	-32.4% ↓
Civil Status of Persons	15	1.5%	16	-6.3% ↓
Other	13	1.3%	9	44.4% ↑
No Dispute	13	1.3%	5	160.0% ↑
Denationalisation	11	1.1%	10	10.0% ↑
Succession Proceedings	9	0.9%	6	50.0% ↑
Elections	2	0.2%	0	
Registration in the Companies Register	2	0.2%	0	
Total	**1003**	**100.0%**	**1031**	**-2.7% ↓**

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

INITIATORS OF THE DISPUTE (P)	NUMBER OF CASES
Ministry of Economic Development and Technology	6
Okrajno sodišče v Piranu (Local Court in Piran)	3
EMWE, d. o. o.	1
Javna agencija Republike Slovenije za varstvo konkurence (Slovene Competition Protection Agency)	1
Medobčinski inšpektorat in redarstvo Občin Dobrepolje, Loški Potok, Ribnica, Sodražica in Velike Lašče (Intermunicipal Inspectorate and Traffic Wardens Department of the Municipalities of Dobrepolje, Loški Potok, Ribnica, Sodražica, and Velike Lašče)	1
Mestna občina Ljubljana (Ljubljana Urban Municipality)	1
Občina Vrhnika – župan (Vrhnika Municipality – Mayor)	1
Okrajno sodišče v Ljubljani (Local Court in Ljubljana)	1
Okrajno sodišče v Ormožu (Local Court in Ormož)	1
Policijska postaja Ljubljana Center (Ljubljana Center Police Station)	1
Policijska postaja Logatec (Logatec Police Station)	1
Policijska postaja Ptuj (Ptuj Police Station)	1
Višje sodišče v Kopru (Higher Court in Koper)	1
Total	**20**

2. 3. Cases Resolved

Figure **8** Number of Cases Resolved according to Year Resolved

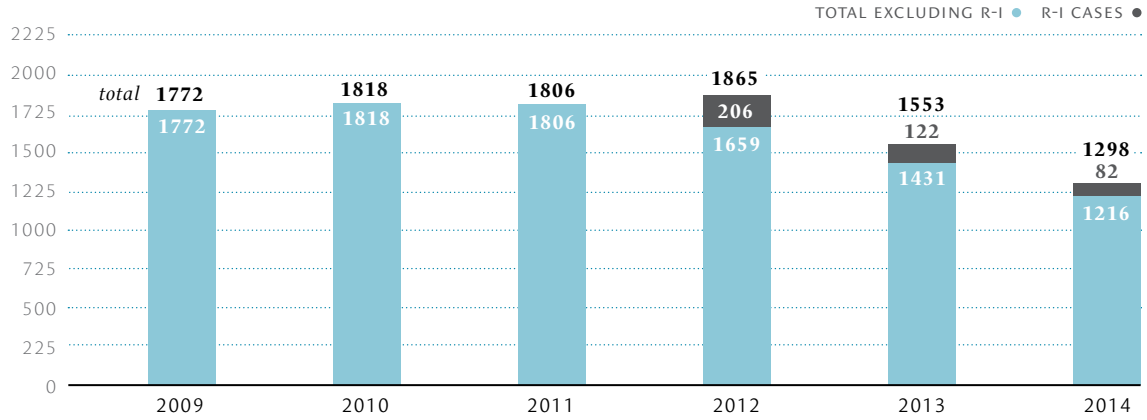


Table **11** Number of Cases Resolved according to Type of Case and Year Resolved

	U-I	Up	P	U-II	Ps	Rm	Mp	TOTAL	R-I*	INCLUDING R-I
2009	315	1348	107	2				1772		1772
2010	294	1500	22	1		1		1818		1818
2011	311	1476	16	3				1806		1806
2012	350	1287	19	2	1			1659	206	1865
2013	349	1074	7				1	1431	122	1553
2014	271	933	12					1216	82	1298
2014/2013	**↓ -22.3%**	**↓ -13.1%**	**↑ 71.4%**					**↓ -15.0%**	**↓ -32.8%**	**↓ -16.4%**

***** 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 2014 (excluding R-I cases)

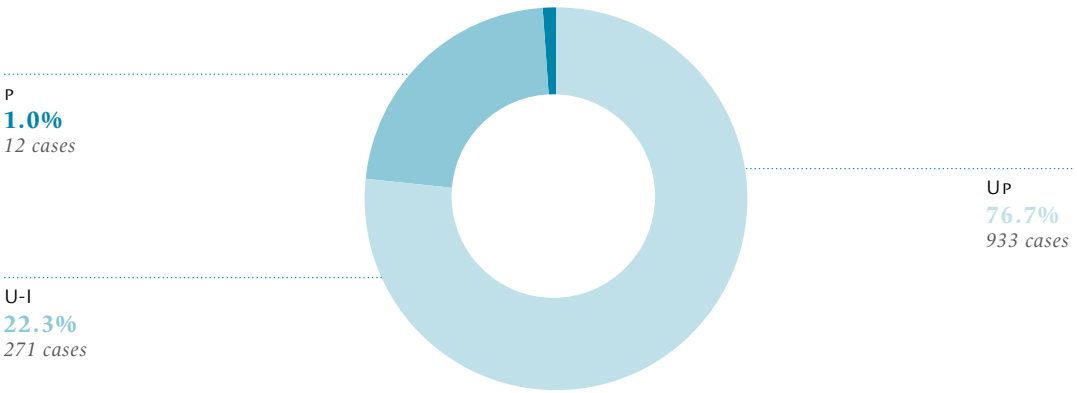


Figure **10** Distribution of Cases Resolved according to Type of Case and Year Resolved (including R-I Cases)

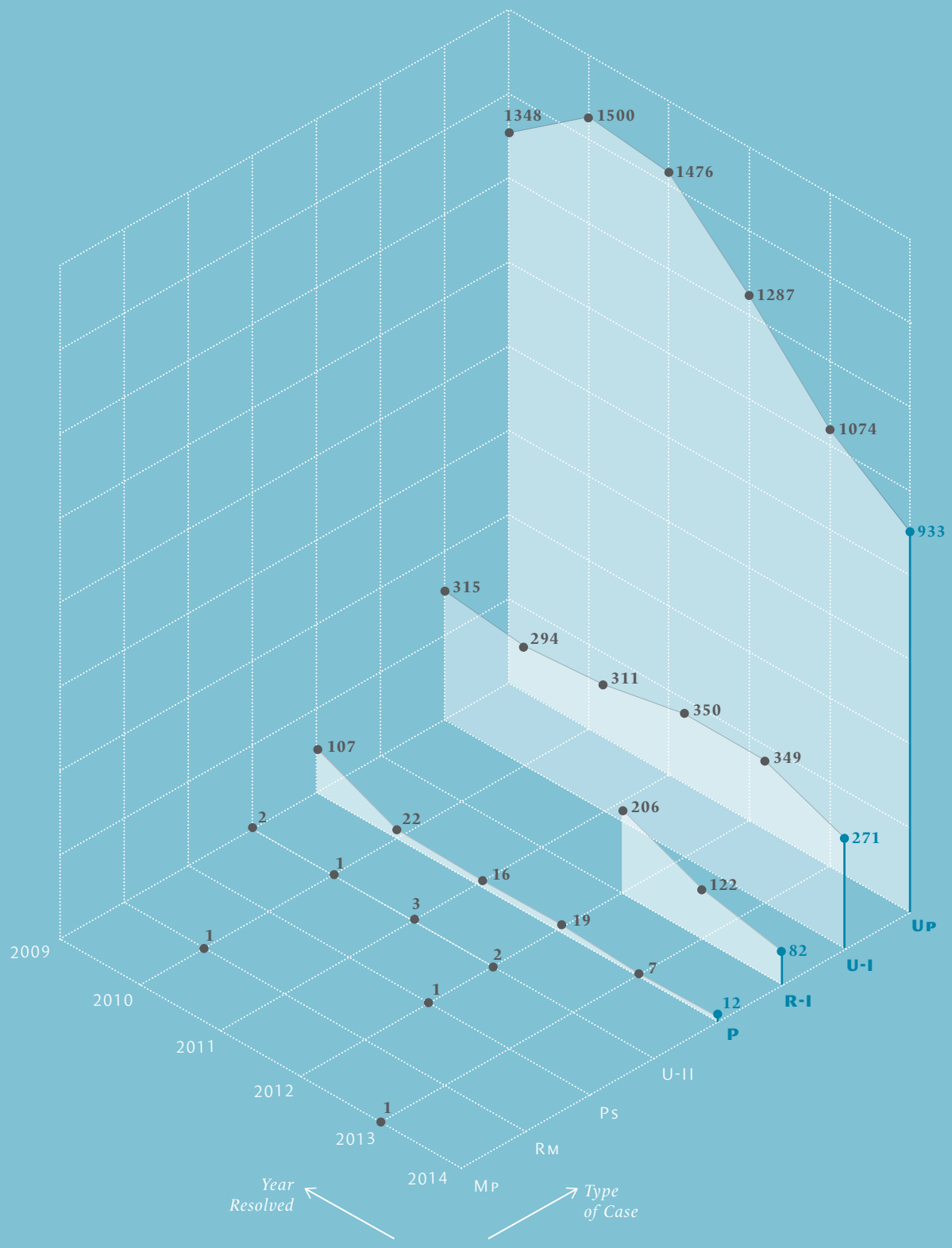


Table **12** Number of U-I Cases Resolved according to Type of Resolution and Year

TYPE OF RESOLUTION	2014 REQUESTS	2014 PETITIONS / *SUA SPONTE*	2014	2013	2012	2011	2010	2009
Abrogation of statutory provisions	7	4	11	6	6	8	8	5
Inconsistency with the Constitution – statutory provisions	3	1	4	3	2	3	4	2
Inconsistency with the Constitution and determination of a deadline – statutory provisions	3	2	5	5	1	8	7	14
Not inconsistent with the Constitution – statutory provisions	0	0	0	15	9	19	15	18
Inconsistency, abrogation, or annulment of provisions of regulations	3	4	7	12	22	30	6	11
Not inconsistent with the Constitution or the law – provisions of regulations	1	1	2	1	2	7	1	1
Dismissed	0	38	38	61	39	50	26	49
Rejected	31	125	156	238	187	205	185	223
Proceedings were stayed	4	27	31	22	82	9	4	10

Table **13** Number of Up Cases Resolved according to Panel

YEAR	CIVIL	ADMINISTRATIVE	CRIMINAL	TOTAL
2009	395	512	441	1348
2010	541	494	465	1500
2011	468	433	575	1476
2012	528	445	314	1287
2013	453	385	236	1074
2014	437	361	135	933
2014/2013	**↓ -3.5%**	**↓ -6.2%**	**↓ -42.8%**	**↓ -13.1%**

Table **14** Number of Cases Resolved according to Panel (Up and R-I Cases)

	CIVIL	ADMINISTRATIVE	CRIMINAL	TOTAL
All R-I Cases	124	140	110	374
R-I Cases Resolved in the R-I Register (by the presumption that they had not been lodged)	21	40	21	82
Up Cases Resolved	437	361	135	933
Up and R-I Cases Resolved	**458**	**401**	**156**	**1015**
Up and R-I Cases Resolved in 2013	**487**	**426**	**283**	**1196**
Compared to 2013	**↓ -6.0%**	**↓ -5.9%**	**↓ -44.9%**	**↓ -15.1%**

Figure **11** Distribution of Up Cases Resolved according to Panel

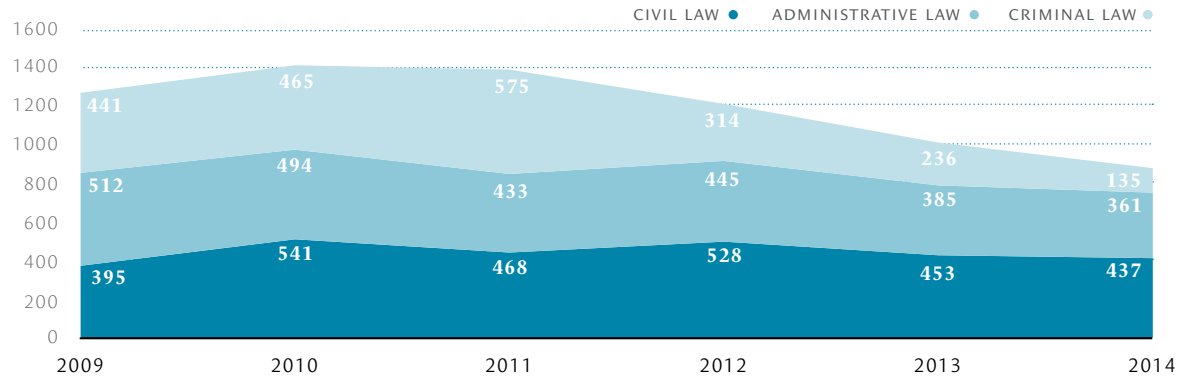


Table **15** Number of Up Cases Resolved according to Type of Dispute

TYPE OF DISPUTE	2014	PERCENTAGE IN 2014	2013	CHANGE 2013/ 2014
Civil Law Litigations	241	25.8%	286	-15.7% ↓
Labour Law Disputes	119	12.8%	103	15.5% ↑
Criminal Cases	100	10.7%	133	-24.8% ↓
Other Administrative Disputes	87	9.3%	141	-38.3% ↓
Execution of Obligations	73	7.8%	65	12.3% ↑
Taxes	51	5.5%	26	96.2% ↑
Social Law Disputes	40	4.3%	45	-11.1% ↓
Minor Offences	34	3.6%	103	-67.0% ↓
Commercial Law Disputes	33	3.5%	39	-15.4% ↓
Matters concerning Spatial Planning	32	3.4%	28	14.3% ↑
Proceedings Related to the Land Register	27	2.9%	14	92.9% ↑
Non-litigious Civil Law Proceedings	26	2.8%	31	-16.1% ↓
Insolvency Proceedings	24	2.6%	7	242.9% ↑
Civil Status of Persons	14	1.5%	18	-22.2% ↓
Other	12	1.3%	8	50.0% ↑
Denationalisation	8	0.9%	14	-42.9% ↓
No Dispute	4	0.4%	6	-33.3% ↓
Elections	4	0.4%	0	
Succession Proceedings	3	0.3%	7	-57.1% ↓
Registration in the Companies Register	1	0.1%	0	
Total	**933**	**100.0%**	**1074**	**-13.1% ↓**

Table **16** Up Cases Granted

YEAR	ALL UP CASES RESOLVED	CASES RESOLVED BY A DECISION	CASES GRANTED	PERCENTAGE UP CASES GRANTED/ UP CASES RESOLVED
2011	1476	27	21	1.4%
2012	1287	43	41	3.2%
2013	1074	19	18	1.7%
2014	**933**	**33**	**29**	**3.1%**

Table **17** Cases Resolved by a Decision

	U-I			Up			P			U-II	Mp
	RESOLVED	RESOLVED ON MERITS	PERCENTAGE	RESOLVED	RESOLVED ON MERITS	PERCENTAGE	RESOLVED	RESOLVED ON MERITS	PERCENTAGE	DECISIONS	DECISIONS
2011	311	62	19.9%	1476	27	1.8%	16	9	56.3%	3	
2012	350	45	12.9%	1287	43	3.3%	19	8	42.1%	2	
2013	349	36	10.3%	1074	19	1.8%	7	5	71.4%		1
2014	**271**	**29**	**10.7%**	**933**	**33**	**3.5%**	**12**	**8**	**66.7%**		

Table **18** Certain Types of Resolution

	U-I			Up		
	REJECTED	DISMISSED	TEMPORARILY SUSPENDED	NOT ACCEPTED FOR CONSIDERATION	REJECTED	TEMPORARILY SUSPENDED
2011	205	49	10	699	828	6
2012	187	39	4	798	537	6
2013	238	61	6	644	496	3
2014	**155**	**38**	**8**	**605**	**340**	**12**

Figure **12** Types of Decision in the Up Cases Accepted according to Year of Resolution

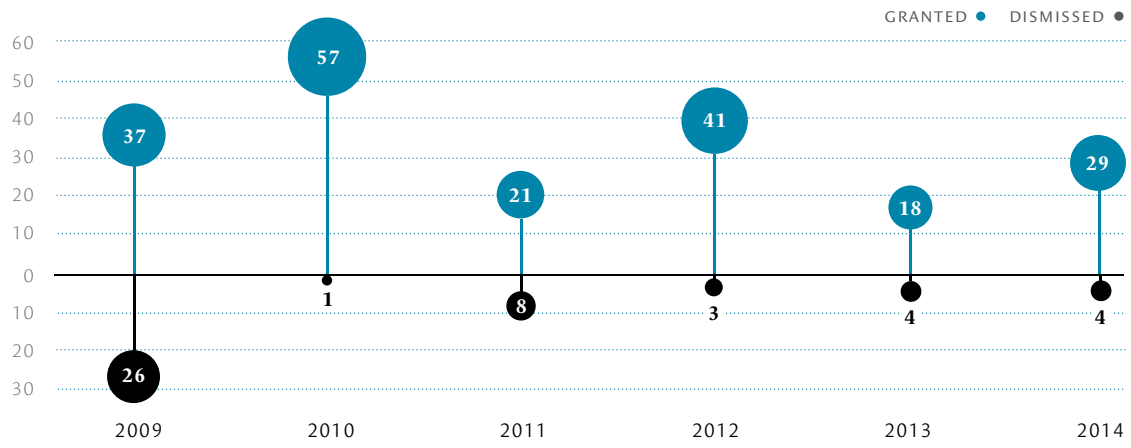


Table **19** Average Duration in Days of Cases Resolved in 2014 according to Type of Case

REGISTER	AVERAGE DURATION IN DAYS
U-I	315
Up	270
P	207
R-I	49
Total	**223**
Total excluding R-I cases	**280**

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

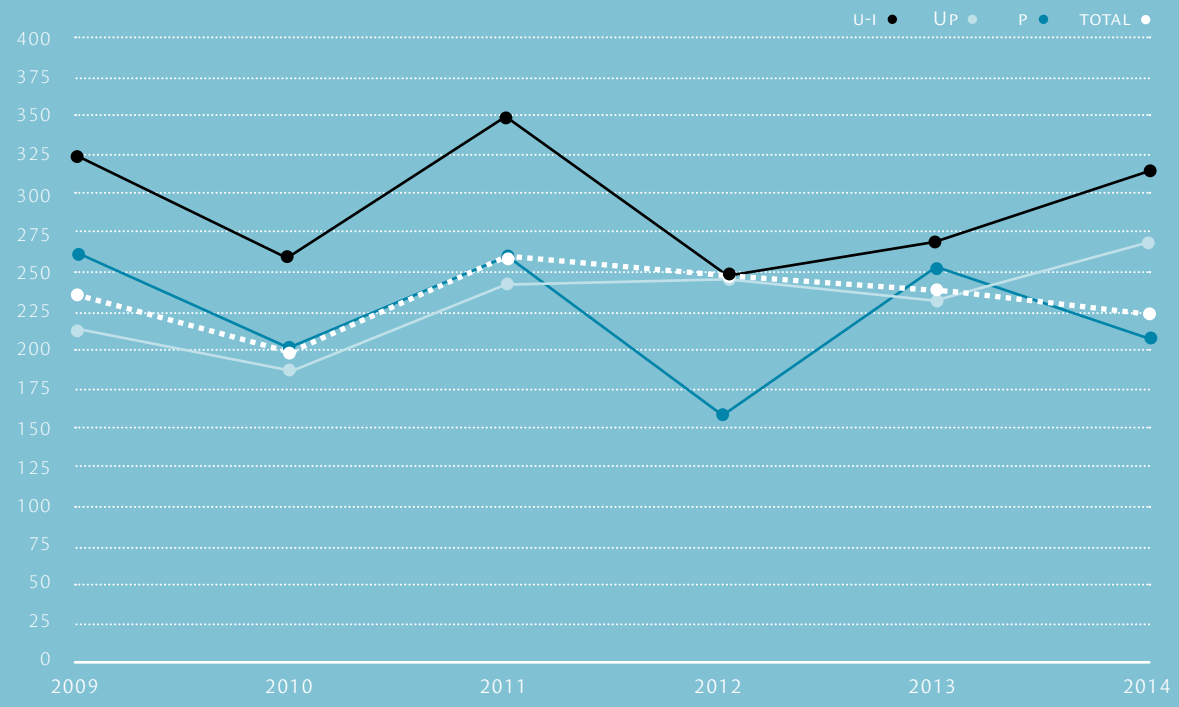


Figure **14** Average Duration in Days of Up Cases Resolved according to Year (excluding R-I Cases)

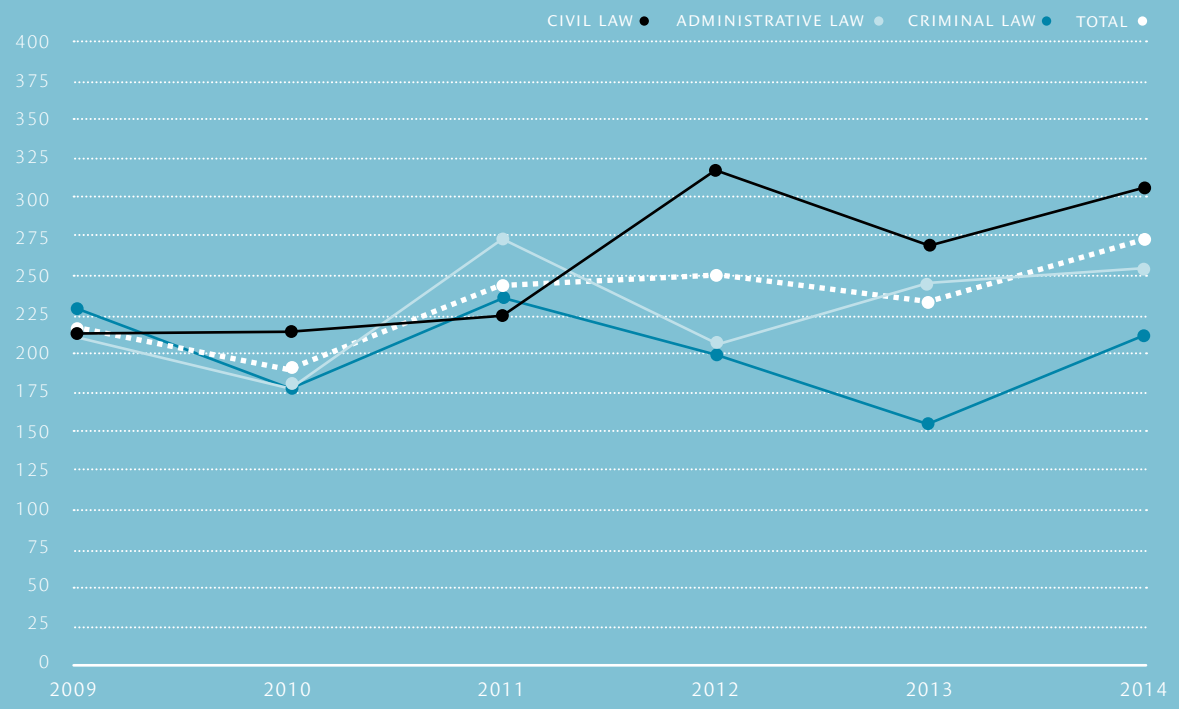


Table **20** Average Duration in Days of Up Cases Resolved according to Panel

PANEL	2014	2013	CHANGE 2013 / 2014
Civil	304	266	14.3% ↑
Administrative	252	241	4.6% ↑
Criminal	209	151	38.4% ↑
Total	**270**	**232**	**16.4% ↑**

2. 4. Unresolved Cases

Table **21** Unresolved Cases according to Year Received as of 31 December 2014

YEAR	2012	2013	2014	TOTAL
U-I	1	66	148	215
P			14	14
Up	20	100	610	730
Mp				0
Total	**21**	**166**	**772**	**959**
+ R-I			51	51
Total including R-I cases	**21**	**166**	**823**	**1010**

Table **22** Temporary Suspensions of Regulations and Individual Acts as of 31 December 2014

REGISTER	TEMPORARY SUSPENSIONS
U-I	8
Up	10
Total	**18**

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

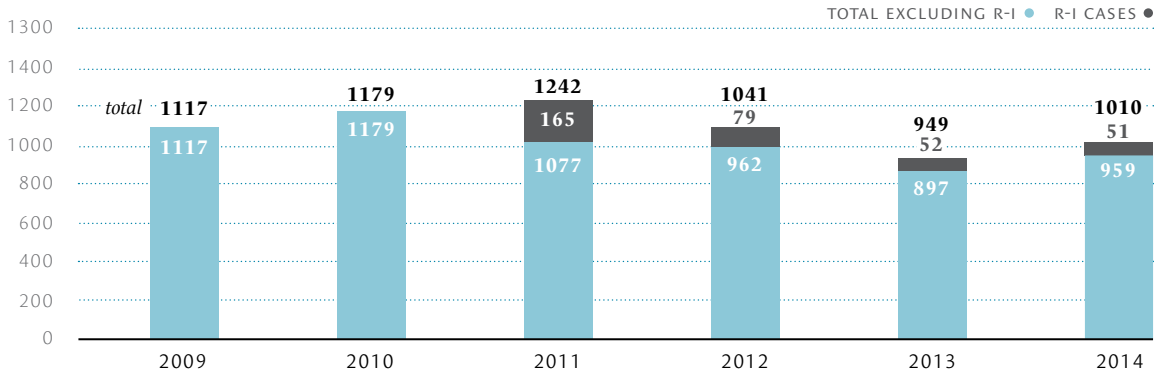


Figure **16** Cases Received and Cases Resolved

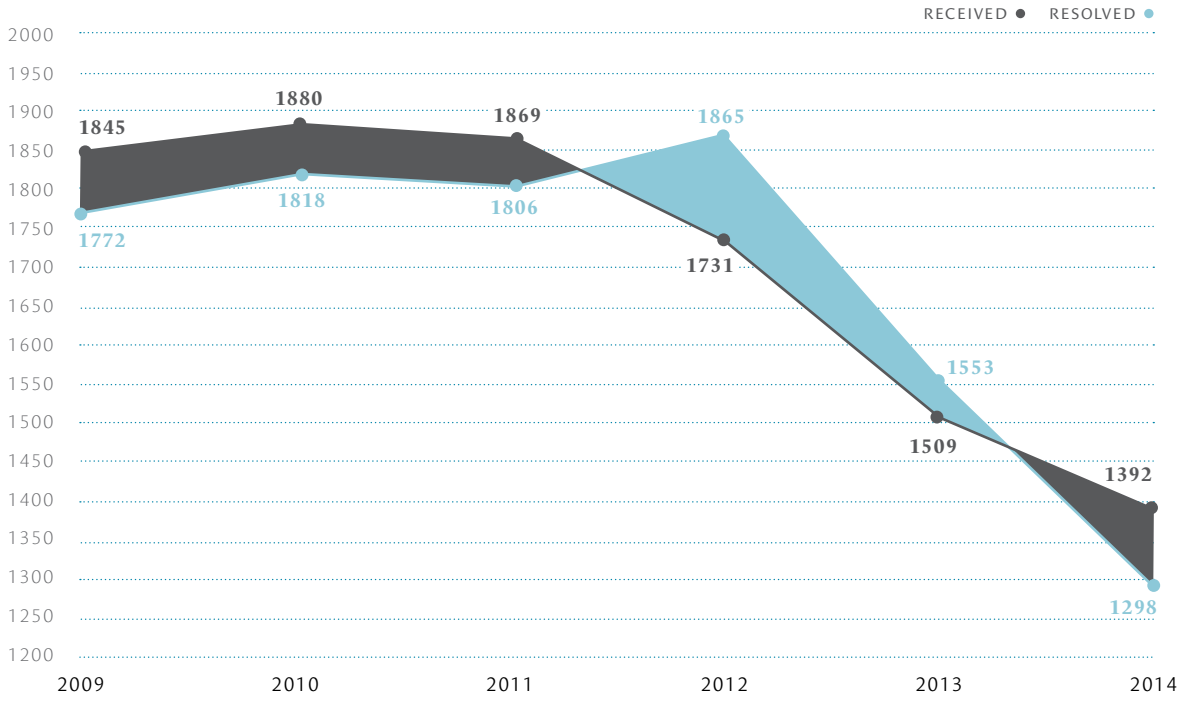


Table **23** Priority Cases Pending as of 31 December 2014

REGISTER	ABSOLUTE PRIORITY CASES	PRIORITY CASES	TOTAL
Up	31	202	233
U-I	15	30	45
P		14	14
Total	**46**	**246**	**292**

2.5. Realisation of the Financial Plan

Table **24** Realisation of the Financial Plan by Year (in EUR)

YEAR	SALARIES	MATERIAL COSTS	CAPITAL OUTLAYS	TOTAL	CHANGE FROM PREVIOUS YEAR
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% ↓
2014	**3,076,438**	**506,238**	**98,230**	**3,680,906**	**0.6%** ↑

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

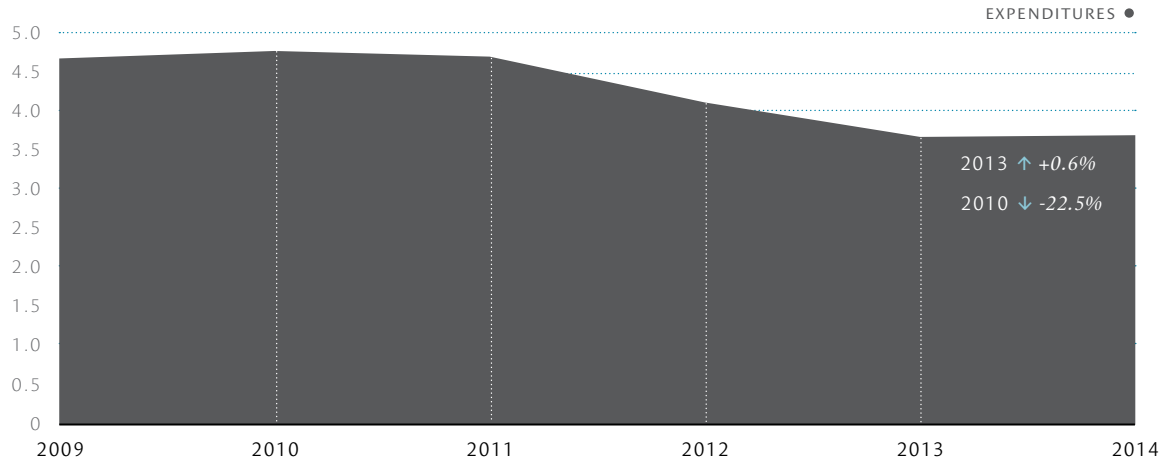


Figure **18** Distribution of Expenditures in 2014

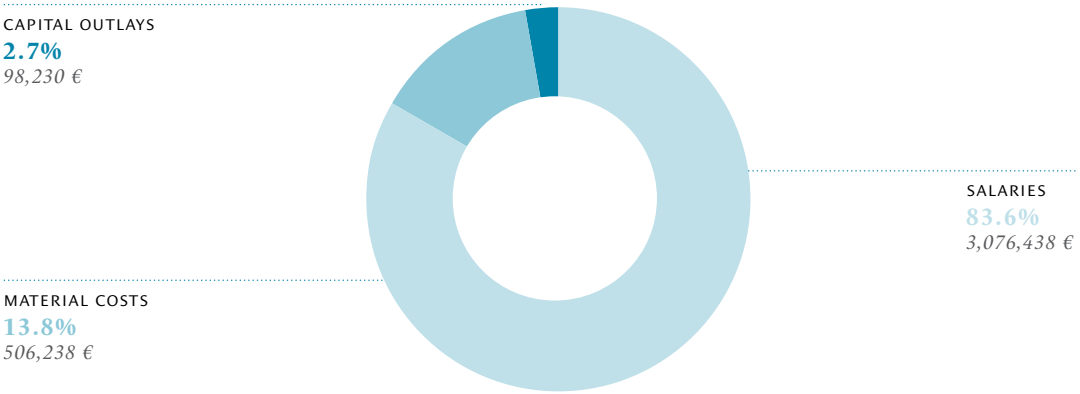
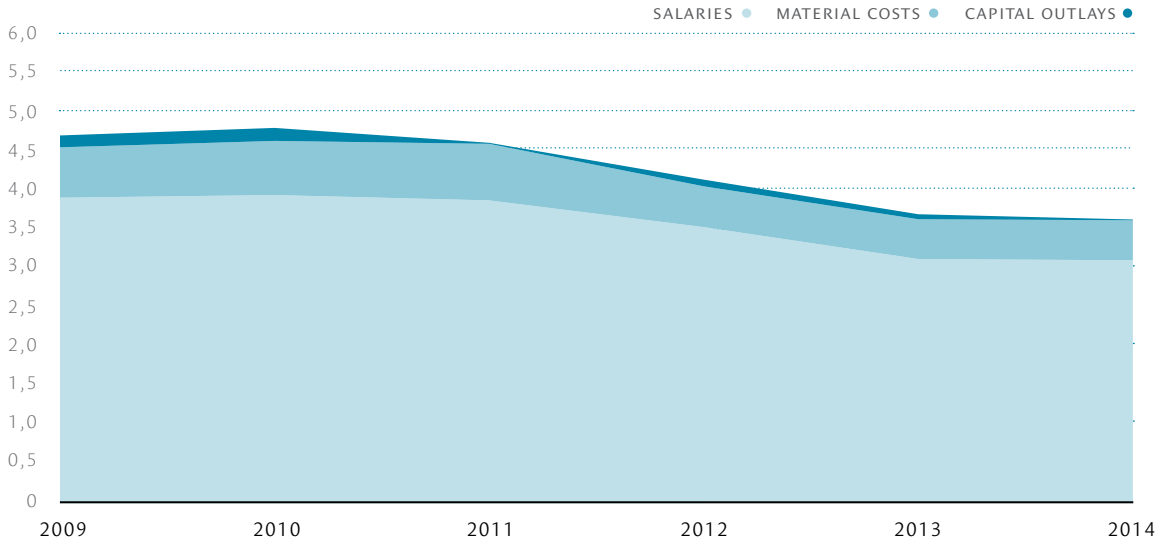


Figure **19** Distribution of Expenditures by Year (in EUR mil.)



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

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

Leonid Pitamic

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The Constitutional Court of the Republic of Slovenia
An Overview of the Work for 2014

Publisher The Constitutional Court of the Republic of Slovenia
Ljubljana, 2015

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