PART II

AN OVERVIEW OF THE WORK FOR 2015

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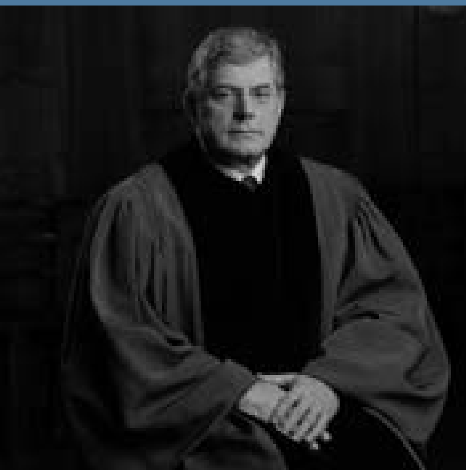

Foreword by the President of the Constitutional Court

A more or less successful judicial year 2015 is now behind us. How successful it was is for others to judge. In order to facilitate such judgment, we hereby present the Overview of the Work of the Constitutional Court for 2015. Its publication will be realised in 2016, the year in which we celebrate 25 years of the independent state of the Republic of Slovenia and 25 years of the Constitutional Court of the Republic of Slovenia.

We will no doubt ask ourselves this year whether we have succeeded in creating such a state as we had imagined and outlined in the constitutional documents 25 years ago. We have undertaken to establish a democratic, legal, and social state, a state based on respect for every person's human dignity, a state in which human rights and fundamental freedoms are protected and respected. The Constitutional Court has emphasised several times that respect for human dignity is the legal and ethical foundation of a modern state and that human dignity is at the centre of the constitutional order of the Republic of Slovenia, that human dignity is the fundamental value that should permeate the entire legal order. This same legal order, with the Constitution at the top of the hierarchical ladder, must respect these basic starting points. All state authorities have to observe the legal order when carrying out their work. The fundamental role of the Constitutional Court is that of the highest guardian of the legal and ethical foundations of society, as enshrined in the Constitution. Its duties and responsibilities are therefore of key importance for the proper functioning of a constitutional democracy. We can speak of a well-functioning legal state only if the decisions of the Constitutional Court are respected and implemented, which is, ultimately, a reflection of the legal culture.

The current overview provides, to some extent, the answer to the question of whether we (hereby I refer to all three branches of power, particularly the legislative and executive branches) take these fundamental values seriously. While there is no reason to panic, we also may not be euphoric. I must thereby highlight two, alarming in my opinion, observations. The first one is reflected in the increasing belief that respect for human rights can be ensured only in times of prosperity and in "safe" conditions. Both certainly affect the implementation and protection of fundamental freedoms, but an unfavourable economic or security situation per se cannot serve as an excuse for excessively restricting or even abolishing fundamental rights. The second disconcerting observation concerns the disregard shown for the decisions of the Constitutional Court. Although the overview indicates that there are not many unimplemented Constitutional

Court decisions, this phenomenon must not be overlooked or even excused, particularly if the non-implementation of an individual decision is based on political or ideological differences. Such conduct, as already mentioned, is unacceptable and reveals a denial of the constitutional principles of a state governed by the rule of law. It is also a fact that undoubtedly more decisions would remain unimplemented if the Constitutional Court did not avail itself of its (controversial to some) power to temporarily regulate an unregulated or unconstitutionally regulated relationship. Such conduct, however, jeopardises the principles of a state governed by the rule of law and demonstrates the unresponsiveness of the legislative and executive powers and their unwillingness to eliminate established unconstitutional regulations fully and in an appropriate manner. A regulation determined by the Constitutional Court by a decision until the unconstitutionality in question is eliminated is temporary, frequently incomplete, and does not relieve the legislature or the government of the responsibility to adopt a respective regulation that is consistent with the Constitution.

The Overview presents summaries of the most important decisions adopted in 2015. Last year may not have been a year of "great decisions", but several decisions demonstrate that the Constitutional Court protected a range of human rights and fundamental freedoms that may at first glance seem to be inconsequential, but which are nevertheless important. A few decisions have fuelled some "critics" to start counting down the days until the expiry of the terms of office of some, in their opinion, "disputable" judges, which demonstrates, in particular, that these "critics" apparently find the current composition of the Constitutional Court disturbing because "this composition was not a good choice for Slovenia, as it renamed Tito Street, allowed elections during the summer holiday period, required the State to fully fund private (Catholic) schools, allowed two referenda to be held on the rights of minorities, but did not allow a referendum on the manner of the management of state assets." Not to mention the "Patria" case. Media articles or readers' letters, although they should not be underestimated, are not as alarming as some statements by the former Minister of Justice, who also used to be a judge, and by a former judge, now a Member of the Parliament representing a political party that otherwise strongly defends respect for the ethics and principles of a state governed by the rule of law. These statements, if they were expressed in earnest, point to a complete misunderstanding of one of the fundamental principles of a state governed by the rule of law and the principle of the separation of powers, i.e. that when deciding a case, a judge is bound only by law and the Constitution. After all, before taking up his or her duties, each Constitutional Court judge takes an oath to "judge in accordance with the Constitution, laws, and his or her conscience."

In a little more than a year's time, the term of office of six of the nine Constitutional Court judges will expire, which means that the present overview is the last one under the current composition of the Constitutional Court. The appointment of six new judges will also be a particular challenge and trial for the President of the Republic and National Assembly. We wish them the best of luck!

I hope readers will enjoy and appreciate the present overview.

Mag. Miroslav Mozetič

AN OVERVIEW OF THE WORK FOR 2015

1.1. The Constitutional Court in Numbers

1.1.1. Cases Received in 2015

Although the trend of a decreasing number of cases received, which had started in 2009, continued in 2015, the decrease in the number of new cases was not as substantial as in previous years. In 2015, the Constitutional Court received 1,348 cases, which is 4.4% fewer than in 2014, when it received 1,392 cases. The decrease in the total number of cases received was not a consequence of fewer constitutional complaints received (the Up register), as in 2015 the Constitutional Court received the exact same number of constitutional complaints as in 2014 (1,003). In general, it can be concluded that the number of constitutional complaints received has been constant in recent years. The decrease in the total number of cases received thus can be attributed to the significant decrease in the number of applications for a review of the constitutionality and legality of regulations (the U-I register). While the Constitutional Court received 255 requests and petitions for a review of constitutionality and legality in 2014, it only received 212 in 2015, which represents a 16.9% decrease. Within the distribution of all cases received, there was a strong preponderance of constitutional complaints: constitutional complaints represented 74.4% of all cases received. A characteristic of the Up cases filed was that they were connected to U-I cases to a high degree: out of 1,003 constitutional complaints, 262 were filed together with a petition for the review of the constitutionality of a regulation. These are so-called joined cases, on which the Constitutional Court decides by a single decision.

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. This register was introduced at the end of 2011 and fully implemented 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 requires the applicant to state within a certain time limit whether they insist that the Constitutional Court decide on their application even though it has no chance of success. If the applicant remedies the established deficiencies or requests that the Constitutional Court nevertheless 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 we consider the cases received without considering the cases entered into the general R-I register, in 2015 the Constitutional Court received 3.2% fewer cases than in 2014 (a decrease from 1,278 to 1,224 cases).

In 2015, the number of constitutional complaints received by the individual panels of the Constitutional Court differed significantly. The number of constitutional complaints received by the Criminal and Administrative Law Panels increased slightly, while the number of constitutional complaints received by the Civil Law Panel decreased marginally compared to the previous year. The increase with regard to the Criminal Law Panel was 1%, and 4.2% with regard to the Administrative Law Panel. On the other hand, the Civil Law Panel received 3.1% fewer constitutional complaints than the year before. In absolute figures, the Civil Law Panel had by far the highest number of cases received (472 cases), which accounted for almost half (47.1%) of all constitutional complaints received. This was followed by the Administrative Law Panel with 326 cases received (32.5%) and the Criminal Law Panel with 205 cases received (20.4%). The predominant share of constitutional complaints in the area of civil law has been a constant in recent years. The relatively lower number of constitutional complaints received by the Criminal Law Panel can, on the one hand, be attributed to the several years' decrease in minor offence cases received. On the other hand, the number of complicated criminal cases considered by the Criminal Law Panel has increased in recent years.

With regard to the content of the constitutional complaints received, once again in 2015 the most frequent disputes were those linked to civil law litigation. In comparison to 2014, their number even increased by 3.7%, whereas their share among all constitutional complaints amounted to 25.2%. In second place were constitutional complaints from the field of criminal law, with regard to which an increase was noted for the third year in a row. In comparison to 2014, their number rose by 12.4% and accounted for 16.3% of all constitutional complaints. In terms of content, criminal cases were *inter alia* followed by administrative disputes (10.9%), labour disputes (7.1%), commercial disputes (6.1%), execution proceedings (6.1%), and social disputes (4%).

With regard to proceedings for a review of the constitutionality and legality of regulations (U-I cases), concerning which the number of cases received in 2015 was significantly lower than in 2014 (a decrease of 16.9%), it should be underlined that of the 212 cases received 61 (28.8%) were initiated on the basis of requests submitted by privileged applicants (Articles 23 and 23a of the Constitutional Court Act), the remainder were petitions filed by individuals (151 petitions). In this context, the activity of the regular courts must be highlighted, as they filed 38 requests for a review of constitutionality, which amounts to 62.3% of all requests filed. Nine requests for a review of constitutionality and legality were filed by the Government, five requests were filed by local communities or their associations, and the Ombudsman and various associations of trade unions each filed three requests. Out of the 151 petitions for a review of constitutionality filed by individuals, in 110 cases (72.8% of all petitions) the petitioners concurrently filed a constitutional complaint. Petitioners thus to a great extent take into consideration the established case law of the Constitutional Court, according to which, as a general rule, petitioners are only allowed to file a petition together with a constitutional complaint.

With regard to regulations that do not have direct effect, all judicial remedies must first 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 conclude that in 2015 most often it was laws and other acts adopted by the National Assembly that were challenged; namely, as many as 66 different laws (and other acts) adopted by the National Assembly were challenged. Such laws were followed by the regulations of local communities – 31 different communal regulations were challenged, and by acts of the Government and ministries, as 14 different implementing regulations were challenged. However, 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, it is evident that, for instance, the provisions of the Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act were challenged 24 times, the provisions of the Pension and Disability Insurance Act ten times, the provisions of the Criminal Procedure Act nine times, and the provisions of the Banking Act and the Confiscation of Proceeds of Crime Act seven times each.

With regard to the stated statistical data, it would not be superfluous to highlight that the lower total number of cases received, and in this framework especially the decrease in applications for a review of the constitutionality or legality of regulations, does not entail a lower burden on the Constitutional Court. Such burden cannot be measured by quantitative data, as this 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 2015

With regard to cases resolved (without the cases entered into the R-I register), it should be pointed out that in 2015 the Constitutional Court resolved approximately the same number of cases as in 2014 (1,197 cases compared to 1,216 cases, which entails a 1.6% decrease). The slight decrease is due to proceedings for the abstract review of regulations, as the number of resolved constitutional complaints in fact increased. The distribution of cases resolved (without considering R-I cases) was similar to the distribution of cases received. In 2015, the Constitutional Court resolved 221 cases regarding the constitutionality and legality of regulations (U-I cases), amounting to an 18.5% share of all cases resolved. In comparison to 2014, when it resolved 271 petitions and requests for a review of constitutionality, this represents an 18.5% decrease. In 2015, as every year thus far, constitutional complaints represented the majority of cases resolved. The Constitutional Court resolved 964 such cases, amounting to an 80.5% share of cases resolved and entailing a 3.3% increase in comparison with 2014, when it resolved 933 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 (507), followed by the Administrative Law Panel (357) and the Criminal Law Panel (100). While the number of cases resolved by the Administrative Law Panel remained at approximately the same level as in the previous year (a 1.1% decrease), the number of cases resolved by the Civil Law Panel increased by 16%. The reason for the lower number of constitutional complaints resolved by the Criminal Law Panel lies primarily in the fact that a higher number of demanding criminal cases were considered, which required more in-depth substantive work and, consequently, more time. In addition, the functionality of the Criminal Law Panel has been reduced for several months due to major staff changes in the Legal Advisory Department.

In terms of content, the highest number of constitutional complaints resolved referred to civil law litigation (28.7%), followed by administrative disputes (12%), social disputes (8.4%), criminal cases (7.7%), labour disputes (7.4%), and commercial disputes (7.4%). In addition to the data regarding the total number of cases resolved in 2015, also the information regarding how many cases the Constitutional Court resolved substantively, i.e. by a decision on the merits, is important. Out of the total of 1,197 cases resolved in 2015, the Constitutional Court adopted a substantive decision in 124 proceedings (10.4%), while the remainder were resolved by an order. If we consider substantive decisions according to the individual registers, it can be observed that in 221 proceedings for a review of constitutionality and legality (U-I cases) the Constitutional Court adopted 33 decisions (14.9%), and, in constitutional complaint proceedings it resolved by a decision 81 out of 964 cases (8.4%). With regard to constitutional complaints, it should be highlighted that out of a total of 81 decisions there were 33 decisions of the same type that were adopted by a panel of the Constitutional Court (i.e. so-called panel decisions). The Constitutional Court adopted two important decisions in the U-II register regarding the power of the Constitutional Court to decide in disputes regarding the admissibility of referenda. It is characteristic of the decisions of the Constitutional Court adopted in 2015 that they dealt with a high number of new and diverse constitutional questions; therefore, these decisions have an important precedential effect. The Constitutional Court judges submitted 18 separate opinions, of which 10 were dissenting and 8 concurring opinions.

Among the important decisions, which are presented in a separate chapter of this annual report, the decision in an extensive criminal case should be highlighted in particular; in this case the Constitutional Court for the first time comprehensively established the constitutional law premises of the principle of legality in criminal law. In light of the new regulation of the legislative referendum that was introduced in 2013, the decisions that referred to the admissibility of referenda regarding the amendments to the Marriage and Family Relations Act and the Defence Act also have a precedential character. In two decisions the Constitutional Court once again considered freedom of expression, and the decision regarding the time-barring of the state's liability for the removal of individuals from the register of permanent residents was important as well. In 2015, as in previous years, the Constitutional Court continued to stress the obligations of the courts with regard to preliminary rulings of the Court of Justice of the European Union.

In 2015, the success rate of complainants, petitioners, and applicants was, from a statistical point of view, slightly higher than in previous years, which is particularly true with regard to constitutional complaints, but not with regard to cases regarding the abstract review of regulations. Of the 221 resolved petitions and requests for a review of constitutionality and legality, in 13 cases the Constitutional Court established that the law was unconstitutional (5.9% of all U-I cases), of which it abrogated the relevant statutory provisions in nine cases, whereas in four cases it adopted a declaratory decision; in two of these declaratory decisions it imposed on the legislature a time limit by which it must remedy 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 five cases (2.3% of all U-I cases). The combined success rate in U-I cases was thus 8.1% (while in 2014 it was 10%). The success rate of constitutional complaints was significantly greater than in previous years. The Constitutional Court granted 76 (i.e. 7.9%) of all the constitutional complaints resolved in 2015 (964), and dismissed five constitutional complaints as unfounded by a decision. In comparison, the success rate with regard to constitutional complaints was 3.1% in 2014. 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. In addition, the greater success rate with regard to constitutional complaints in 2015 was influenced by the fact that the Constitutional Court issued 33 so-called panel decisions, which, in accordance with the Constitutional Court Act, are adopted by a panel, as they refer to the same subject matter.

With regard to successful constitutional complaints – without taking into account constitutional complaints with the same subject matter that were decided by a panel – it can be concluded that the Constitutional Court most often (17 times) dealt with the question of a violation of Article 22 of the Constitution. This provision of the Constitution guarantees 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. In addition, the following violations stand out to some degree: violations of the right to judicial protection determined by the first paragraph of Article 23 of the Constitution – the Constitutional Court established such a violation eight times; violations of the right to property determined by Article 33 of the Constitution – the Constitutional Court established such a violation six times; violations of the right to compensation (Article 26 of the Constitution) – the Constitutional Court established such a violation five times; and violations of legal safeguards in criminal proceedings (Article 29 of the Constitution), which the Constitutional Court established six times. The remaining violations of human rights and fundamental freedoms are more or less evenly distributed and refer to the prohibition of torture (Article 18 of the Constitution), the principle of legality in criminal law (the first paragraph of Article 28 of the Constitution), the principle of equality (the second paragraph of Article 14 of the Constitution), the right to a legal remedy (Article 25 of the Constitution), freedom of expression (Article 39 of the Constitution), the right to vote (the first paragraph of Article 43 of the Constitution), the right to personal dignity (Article 34 of the Constitution), the right to privacy and personality rights (Article 35 of the Constitution), and the right to social security (Article 50 of the Constitution).

The average period of time it took to resolve a case in 2015 was approximately the same as in 2014. On average, the Constitutional Court resolved a case in 283 days (as compared to 280 days in the previous year) or in 228 days (as compared to 223 days in the previous year) if also the time necessary for resolving R-I cases, which as a general rule is very short, is taken into consideration. The average duration of proceedings for a review of the constitutionality or legality of regulations (U-I cases) was 336 days, whereas constitutional complaints were resolved by the Constitutional Court on average in 272 days.

1. 1. 3. Unresolved Cases

At the end of 2015, the Constitutional Court had a total of 989 unresolved cases remaining (or 1,041 unresolved cases, if also R-I cases are taken into consideration), of which 22 were from 2013 and 239 from 2014. All other unresolved cases were received in 2015. Among the unresolved cases, 317 were priority cases and 58 were absolute priority cases.

In comparison with 2014, the number of unresolved cases increased slightly in 2015. At the end of 2014, the Constitutional Court had 959 unresolved cases (1,010 together with R-I cases), whereas at the end of 2015 this number was 989 (1,041 together with R-I cases). This entails that in 2015 the backlog of cases increased by 3.1%. 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 privileged applicants (the 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 represent a predominant share of the overall burden of the Constitutional Court.

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In previous annual reports, the data on the expenditure of public resources only referred to resources from the state budget. The data presented hereinafter, however, also include the Constitutional Court's own resources, and therefore the data on expenditure according to year are slightly different than in the reports on the work of the Constitutional Court in previous years.

As in 2012, 2013, and 2014, also in 2015 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 4,141,346, but only EUR 3,699,968 in 2013. In 2014, it remained at approximately the same level as in 2013, i.e. EUR 3,704,839. In 2015, the realised budget increased somewhat, more precisely by 1.6%, and amounted to EUR 3,764,507. In comparison to 2010, when the realised budget amounted to EUR 4,993,377, it is evident that in 2015 the expenditure of the Constitutional Court was 24.6% lower.

As of 31 December 2015, 78 judicial personnel were employed at the Constitutional Court, 34 of whom were advisors.

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

1.2. Important decisions in 2015

A number of the more important decisions of the Constitutional Court adopted in 2015 are presented below. The criterion for their selection was their constitutional precedential value. The presented decisions are not arranged in order of importance or in terms of the legal fields they concern, but chronologically. The only exception to this approach is where at least two decisions refer to the same or related constitutional issues.

1.2.1. International Protection and Family Reunification

In case No. U-I-309/13, Up-981/13 (Decision dated 14 January 2015, Official Gazette RS, No. 6/15), the Constitutional Court assessed the constitutional complaint of a Somali citizen who was granted refugee status in the Republic of Slovenia in accordance with the Geneva Convention. In her constitutional complaint the complainant alleged a violation of the right to family life, because the competent authorities dismissed her request to be reunited with her minor sister. The administrative authority based its decision on the position that, in accordance with Article 16b of the International Protection Act, brothers and sisters of a person who has been granted international protection are not deemed to be family members, therefore family reunification cannot be requested with respect thereto. In proceedings for the judicial review of administrative acts also the regular courts concurred with this position of the administrative authority.

The Constitutional Court considered the case from the viewpoint of the third paragraph of Article 53 of the Constitution, which provides, *inter alia*, that the state shall protect the family and create the necessary conditions for such protection. This constitutional provision in particular emphasises the positive aspect of the right to respect for one's family life, i.e. the duty of the state to enable, by an appropriate legal regulation and by creating appropriate conditions, the establishment and protection of one's family life in its territory. The negative aspect of the right to respect for one's family life, on the other hand, entails the protection of individuals from interferences by the state and its authorities. In regulating family relations, the legislature must observe both the positive and the negative aspects of the right to respect for one's family life. The third paragraph of Article 53 of the Constitution mentions the protection of the family, but does not specify the substance and scope of the right to respect for one's family life. Therefore, in interpreting the right to one's family life, the Constitutional Court also took into consideration international instruments, in particular Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the relevant European Union law.

The state is obliged to ensure that the fundamental human rights of persons to whom it grants international protection are respected. In accordance with the obligation determined by the third paragraph of Article 53 of the Constitution, it must adopt such legislation that will allow refugees to exercise their right to respect for one's family life. The constitutionally protected family life includes not only the so-called primary family (communities of spouses and of parents with minor children) but also communities of other family members that due to specific factual circumstances (for instance, their living in a common household, tight family bonds, or financial or some other forms of dependency) are essentially similar to a primary family and have the same function as a primary family. The Constitutional Court established that the statutory regulation that limits the right to family reunification to the exhaustively listed family members and does not allow for the individualisation of the assessment of requests for family reunification in a manner so as to enable the establishment of the existence of specific circumstances due to which there might exist a family life also between other family members, inadmissibly interferes with the right to respect for one's family life.

The Constitutional Court established that Article 16b of the International Protection Act, which exhaustively listed those family members regarding which refugees were allowed to invoke the right to family reunification, was inconsistent with the third paragraph of Article 53 of the Constitution. At the same time, it determined the manner of implementation of its Decision, namely that in procedures that have not yet been concluded with finality the possibility must be allowed that in exception the competent authority deem some other relative of a person who has been granted refugee status who is not listed in Article 16b of the Act to be a family member thereof if special circumstances are in favour of family reunification in the Republic of Slovenia. The Constitutional Court also granted the constitutional complaint and remanded the case for new decision-making to the Ministry of the Interior.

1. 2. 2. Professional Secrecy and Access to Public Information

By Decision No. U-I-201/14, U-I-202/14, dated 19 February 2015 (Official Gazette RS, No. 19/15), the Constitutional Court abrogated certain provisions of the Access to Public Information Act following the request of the Bank of Slovenia and the petition of a number of commercial banks and other petitioners to review the constitutionality thereof. These provisions substantively determined that banks that benefited from measures under the Measures of the Republic of Slovenia to Strengthen the Stability of Banks Act must publish information on the internet regarding the loans of defaulters (i.e. so-called bad loans) that had not been transferred to the so-called bad bank (i.e. the Bank Assets Management Company), but remained in the ownership of the banks. Information regarding bad loans included information regarding the type and value of business agreements, the date when the contract was concluded, the creditors, debtors, loan collateral, and natural persons who acted as members of the management and supervisory boards of the banks or who were employed in the bank's bodies competent to approve the business agreements at the time when the loans were approved. Failure to publish such data was punished as a minor offence. The main allegation of the applicants was that the statutory regulation excessively interfered with their right to free economic initiative determined by the first paragraph of Article 74 of the Constitution as it interfered with the substance of contractual relationships regarding bank secrecy. In view of the allegations, the Constitutional Court assessed the statutory regulation from the viewpoint of Article 74 of the Constitution.

Free economic initiative guarantees, above all, the free establishment of economic entities (under statutory conditions), their management in accordance with economic principles (and by observing mandatory regulations), the free selection of economic activities, and the selection of business partners. The Constitution does not guarantee complete freedom to act in establishing economic entities and in carrying out economic activities. The first paragraph of Article 74 authorises the legislature to determine the conditions for establishing economic entities, by which the manner of exercise of this human right is determined. In addition, the legislature can also limit certain forms of business ventures. The basis for such is the second paragraph of Article 74 of the Constitution, which expressly prohibits the pursuit of economic activities in a manner contrary to the public interest. The question of whether a particular legislative measure in the field of commercial activities entails the manner of exercise of free economic initiative or a limitation thereof is to be decided in the framework of each individual constitutional review of the regulation at issue. As the Constitutional Court has stressed a number of times, the border between them is movable and difficult to determine.

From Article 74 of the Constitution there also follows the right to business secrecy and, in the field of banking, the right to bank secrecy. Also this right can be the subject of statutory regulation, however an interference therewith is in conformity with the Constitution only if there exists a public interest therefor and if it is in conformity with the general principle of proportionality. The Constitutional Court accepted the legislature's allegation that the public interest in limiting bank secrecy is reflected in the desire to reduce the risk of corruption and to increase the efficiency of bank management, both of which are connected with greater transparency for taxpayers, who financed the reorganisation of the banking system. However, it established that the interference, such as envisaged in the Act, was not proportionate. Namely, a multitude of information regarding loans, creditors, collateral, dates of contracts, and members of bank bodies. Information pertaining to business secrecy would be accessible to everyone without a context, commentary, procedures for establishing liability, and in a manner that would blur at least as much as it would reveal. Namely, it would not be clearly evident from the data itself whether certain deals are a consequence of corruption, of other inadmissible influences on economic operations, or of negligent bank management. The disclosure of bank secrets was envisaged in the broadest terms and without a substantive value that would contribute to substantive transparency, which enables people to be informed, instructed, and acquainted with the reported business ventures. A regulation that does not distinguish ("naming and shaming them all together") between the loans that became "bad" due to possible abuses, coincidence, or the general change in economic circumstances, cannot be appropriate for reducing the risk of corruption and ensuring better bank management. The publication of information pertaining to bank secrets on banks' websites was devised in a distinctly generalised and thus manifestly excessive manner, resulting in a violation of the right determined by the first paragraph of Article 74 of the Constitution. However, as the Constitutional Court underlined, such does not entail that when reorganising banks with public funds it would be impossible to depart from the usual strictness of the institute of bank secrecy, *inter alia* to ensure an increase in the transparency and oversight of the public (i.e. taxpayers) regarding the resolution of banks with public funds. Such public interest could be pursued, for instance, by informing the public of criminal, civil, and labour proceedings against persons who caused, by their unconscientious business conduct, the need for the state to intervene in the banking sector. It would be constitutionally admissible to inform the public of the loans "burdened" with violations of laws, of ethics, and of usual professional diligence. However, such measures must be well thought-out and proportionate to the other constitutionally protected values.

1. 2. 3. The Role of a Court-Appointed Expert in Judicial Proceedings

In case No. Up-460/14 (Decision dated 5 March 2015, Official Gazette RS, No. 28/15), the Constitutional Court dealt with the question of the role that a court-appointed expert can have in ensuring a fair trial in judicial proceedings.

The first paragraph of Article 23 of the Constitution guarantees everyone that an independent, impartial court constituted by law will decide on his or her rights and duties. Such includes, *inter alia*, the requirement of independence, i.e. the freedom of courts – or judges as the bearers of judicial power – when establishing the state of the facts and when applying substantive law. Hence, this human right prohibits the transfer of the exercise of the judicial function from courts or judges to other entities. It prohibits such not only in relation to the executive and legislative branches of power, but also in relation to everyone who is not a court or a judge. Therefore, also a judge who leaves the establishment of the state of the facts, the application of substantive law, or the conduct of proceedings to a court-appointed expert, violates the right to judicial protection.

A court-appointed expert is a unique form of evidence. His or her task is to provide the judge with expertise that the judge does not possess and without which it is not possible to decide in the dispute. A court-appointed expert is an expert assistant to the court and he or she is bound by the instructions of the judge. He or she assists the judge in establishing the facts and understanding their significance, as well as in establishing the substance of legal standards when such knowledge is only accessible by applying specific expertise. However, the right of a party to judicial protection before a court prohibits the judge from simply transferring to the court-appointed expert, due to the judge's lack of specific expertise, the competence to adjudicate.

In the case at issue, a court attributed an expert opinion provided by a court-appointed expert significance that exceeded acceptable assistance provided to a court when resolving questions where expertise is absolutely necessary. This was done by *de facto* transferring to the court-appointed expert the competence to establish key elements of the state of the facts, although it was manifestly possible to establish them without any special expertise. Furthermore, the criteria for determining the burden of allegation and the burden of proof were identified and substantiated by the court in the structure of the submitted expert opinion. In doing so, the court attributed the competence to determine the burden of allegation and the burden of proof to the court-appointed expert and thus left an important element of the conduct of judicial proceedings to her. Since the court to a significant extent assigned the competence to adjudicate in a civil dispute to the court-appointed expert, it violated the complainants' right to judicial protection determined by the first paragraph of Article 23 of the Constitution.

1. 2. 4. The Duties of Courts with Regard to Preliminary Questions for the Court of Justice of the European Union

In case No. Up-797/14 (Decision dated 12 March 2015, Official Gazette RS, No. 22/15), the Constitutional Court assessed the constitutional complaint of a complainant with regard to whom the Ministry of the Interior decided that the Republic of Slovenia would not consider, in accordance with the Dublin II Regulation, his request for international protection, because

he was to be handed over to the French Republic, which was the Member State responsible for deciding on his request. The Administrative Court and the Supreme Court affirmed such position. In his constitutional complaint, the complainant alleged that the competent authorities incorrectly applied the provisions of the Dublin II Regulation. He alleged that on the basis of the second paragraph of Article 19 of that Regulation his request should have been deemed to be a new request because he had left the territory of the Member States of the European Union for more than three months. Allegedly, the Republic of Slovenia should thus have been responsible for considering his request, and not the French Republic. The complainant also alleged that the Supreme Court failed to sufficiently reason why it dismissed his motion to submit a preliminary question to the Court of Justice of the European Union regarding interpretation of the second paragraph of Article 19 of the Dublin II Regulation.

The conditions under which Member State courts must submit a case to the Court of Justice of the European Union are determined by the third paragraph of Article 267 of the Treaty on the Functioning of the European Union. If a question for a preliminary ruling is not submitted, then that must also be in conformity with the case law of the Court of Justice of the European Union. In accordance with the latter, courts must, whenever a question of *interpretation* of European Union law arises before them, fulfil their duty to submit that question to the Court of Justice of the European Union, unless they establish that (1) the question is not relevant, with regard to which it is the national courts that assess the relevance of the question; (2) the relevant provision of European Union law has already been subject to interpretation by the Court of Justice of the European Union, or (3) the correct application of European Union law is so obvious as to leave no scope for any reasonable doubt.

The Constitutional Court stressed once again that the first paragraph of Article 23 of the Constitution guarantees that in the event a question of the interpretation of European Union law and/or the validity of secondary European Union law is raised, the court that is competent to respond thereto, in accordance with Article 267 of the Treaty on the Functioning of the European Union, will respond thereto. In constitutional complaint proceedings, the Constitutional Court only assesses whether the individual concerned was provided judicial protection before the court determined by law, namely in such a manner that, considering the transfer of the exercise of part of sovereign rights of the Republic of Slovenia to the European Union (the third paragraph of Article 3a of the Constitution), also the division of competences between the courts of the Republic of Slovenia and the Court of Justice of the European Union is taken into account.

The pre-condition for the Constitutional Court to assess whether an individual has been provided judicial protection before the court determined by law and whether the division of competences determined by Article 267 of the Treaty on the Functioning of the European Union has been taken into account is that the court at issue adopts an adequate position on the questions related to European Union law. This also includes the reasoning why the court did not decide to stay the proceedings and submit a preliminary question to the Court of Justice of the European Union despite the party's motion to do so. It follows from the established constitutional case law that a reasoned judicial decision entails an essential part of a fair trial.

In the case at issue, the Supreme Court merely established that the second paragraph of Article 19 of the Dublin II Regulation was clear, however it did not verify all the criteria concerning the submission of preliminary questions. The Supreme Court also failed to substantiate why

the complainant's arguments regarding the different interpretation of the mentioned provision were unfounded. Consequently, the Constitutional Court assessed that the Supreme Court failed to substantiate in accordance with the Constitution why it dismissed the motion regarding a preliminary ruling on the interpretation of the second paragraph of Article 19 of the Dublin II Regulation, and hence violated Article 22 in conjunction with the first paragraph of Article 23 of the Constitution.

1. 2. 5. The Limits of Freedom of Expression

In case No. Up-1019/12 (Decision dated 26 March 2015, Official Gazette RS, No. 30/15) the Constitutional Court decided on the constitutional complaint of a complainant who had been found liable for damages (as a defendant) in a civil lawsuit because she had offended the plaintiff's honour and reputation with her statements in the book *Dosje Rokomavhi* [The Rokomavhi Dossier]. The court of first instance ordered the complainant to call a press conference and retract certain statements published in the book. The Higher Court upheld the judgment of the court of first instance, and leave to appeal to the Supreme Court was not granted. The *ratio decidenci* provided by the courts was that the complainant's contested statements regarding the plaintiff went beyond such statements as are protected by the right to freedom of expression enshrined in the first paragraph of Article 39 of the Constitution. According to the courts, the complainant abused her right to freedom of expression with the sole purpose of personally attacking the plaintiff, and therefore her behaviour cannot be subsumed under this right. As a result, the courts considered that it was not necessary to balance the complainant's right to freedom of expression (the first paragraph of Article 39 of the Constitution) against the plaintiff's right to the protection of his honour and reputation (Articles 34 and 35 of the Constitution).

At the outset, the Constitutional Court emphasised that the right to freedom of expression enshrined in the first paragraph of Article 39 of the Constitution is not unlimited. In accordance with the third paragraph of Article 15 of the Constitution, such is limited by the rights of others, which also include the right to the protection of one's honour and reputation. However, any restriction of freedom of expression must be carefully considered and convincingly substantiated. In each case, it is the task of the court to consider and asses the circumstances of the case at issue, to define, by taking into account the principle of proportionality, the content of the human rights in conflict, and to establish, on the basis of a weighing of these rights, a rule for their coexistence. From the perspective of the Constitution, it is essential for the court to not exclude any of these human rights from its consideration.

The fact that the statements at issue are exaggerated, critical, and offensive does not in itself constitute grounds for completely dismissing the right to freedom of expression. This right can also protect very harsh, crude, and unscrupulous statements, which, however, the reader or listener still understands as a criticism of someone's conduct or a position they expressed, and not as an attack on their personality, nor as an insult, humiliation, contempt, or ridicule. In the interest of preserving free and unfettered debate on matters of general interest, we must also tolerate sharpness, roughness, and the exaggeration of individual opinions expressed. However, where the writer's intention is no longer to influence the debate on matters of public interest, but only to offend someone, the unlawfulness of their conduct is not excluded. Statements whose sole purpose is to insult or humiliate the person concerned do not enjoy protection under the right to freedom of expression.

In the case at issue, the court of first instance assessed that the complainant's statements regarding the plaintiff constituted a personal attack on him, an attempt to humiliate and tarnish him, on both a personal and professional level. According to the Court, the complainant did not include in her book verified information obtained from authorities, but had herself generated rumours that she then passed on as verified information. A considerable part of her statements allegedly personally insulted the plaintiff, while the complainant did not demonstrate that she had made any serious attempt to verify certain statements. The court of first instance took the view that in the case at issue a weighing of the conflicting rights was inappropriate, as the case only concerned a violation of the plaintiff's personality rights with the aim of making a profit. The Higher Court upheld this view of the court of first instance. It assessed that the applicant's intention was not to initiate serious debate on matters of public interest. In her book, she highlighted the plaintiff's (negative) personality traits and allegations of (unproven) criminal offenses, whereby her contemptuous intention was clear and direct. The Higher Court also agreed with the assessment that the complainant failed to prove the facts on which her value judgments regarding the plaintiff were based, and that she was indifferent to the possibility that they were not true.

Unlike the ordinary courts, the Constitutional Court assessed that there were insufficient grounds for the conclusion that the complainant had abused her right to freedom of expression only to insult and humiliate the plaintiff and that therefore her writing was not protected by the right to freedom of expression. Although it is true that the language and terms used in the text at issue were harsh and at least some of them could be perceived as offensive, the plaintiff, as a (relatively) public figure, nevertheless has to endure broader limits of permissible criticism than if the case concerned an anonymous individual. The fact that the complainant used a very direct and provocative style of expression is not in itself sufficient grounds to conclude that she exercised the right to freedom of expression solely for the purpose of defaming or tarnishing the plaintiff. Furthermore, the finding of the courts that the disputed statements allegedly contain incorrect statements or opinions without a sufficient factual basis is not sufficient grounds for completely dismissing the right to freedom of expression. The complainant could only be said to have abused the right to freedom of expression if the courts had found that she knowingly and intentionally wrote untrue defamatory statements about the plaintiff or that she had acted with gross negligence (i.e. indifference). Therefore, the Constitutional Court abrogated the challenged judgments and remanded the case to the court of first instance for new adjudication.

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The Constitutional Court also faced the issue of the limits of freedom of expression in case No. Up-1128/12 (Decision dated 14 May 2015, Official Gazette RS, No. 37/15), in which it considered the constitutional complaint of a complainant who was convicted of the criminal offence of defamation. When the criminal offence was committed the complainant was a deputy of the National Assembly. The incriminated statement referred to the public prosecutor in a particular case and the complainant commented on his work on a television show by saying "that he would not entrust him with the care of three sheep, because he would be afraid that he would lose two, and that he does not know how this man finished law school, but it appears that nowadays anyone can finish law school and work at a court or prosecutor's office, then remain cemented there until death without anyone being able to move them, no matter what kind of nonsense they come up with." The court of first instance assessed that his words reflected devaluation and contempt, and that the complainant had publicly portrayed the injured party

as an incompetent and unprofessional public prosecutor unworthy of trust. By using such a highly derogatory manner of expression, he allegedly ascribed to him negative personality traits and expressed a value judgment that offended him, and therefore he exceeded the limits of freedom of expression. The Higher Court and the Supreme Court agreed with this assessment.

At the outset, the Constitutional Court reiterated that freedom of expression protects not only the spreading of opinions that are received favourably, but also encompasses critical and harsh statements. In order to ensure free debate on matters of general interest, the right of individuals to express their opinions must, as a general rule, be protected irrespective of whether the statements made are harsh or neutral, rational or emotionally charged, gentle or aggressive, beneficial or detrimental, right or wrong. On the other hand, there also exists the right to personal dignity, which guarantees individuals recognition of their value as persons. In a conflict of two equally important rights, such as the right to freedom of expression, on the one hand, and the right to the protection of personal dignity and personality rights, on the other, both rights, not just one, must be subject to substantive limitations. This entails that both holders of rights can exercise their right (only) to a limited (narrower) extent, i.e. in such a manner that the exercise of the right of one does not excessively interfere with the right of the other.

The Constitutional Court took into account that the complainant made the challenged statement regarding the injured party when he was a deputy of the National Assembly. All holders of public authority have to strive to behave respectfully towards those holding public authority in other branches of power, which implies that they devote the necessary attention to establishing and sustaining a culture of respectful communication, especially when they address criticism to those holding public authority in other branches of power with regard to their work. Therefore, such criticism must not evolve into an insult, defamation, or a tarnishing of those holding public authority in another branch of power. However, from a recording of the statements at issue, which was reviewed by the Constitutional Court, it was not possible to conclude that they affected the integrity of the judiciary. The complainant's contested statements were an integral part of a comprehensive criticism and in their essence a response to how a public prosecutor handled a specific criminal case. They were not an attack on the judicial system and the institution of the public prosecution service as a whole. Even though the statements exceeded the limits of respectful and decent communication and entailed insulting criticism of the injured party, the key question in the assessment of the Constitutional Court was whether the complainant's statement focused on criticism of the injured party's conduct in the function of a public prosecutor (*ad rem*) or whether its purpose was to personally humiliate and shame the injured party (*ad personam*). Namely, statements whose sole purpose is to insult or shame the person concerned do not enjoy protection under the right to freedom of expression.

In the assessment of the Constitutional Court, it is only possible to speak of contemptuous intention if the contested statement was made irrespective of the subject matter of the debate and the prior conduct of the injured party and if such is focused mainly on personally insulting or defaming the prosecutor. In this regard, the courts have to take into account the injured party's previous conduct and the context in which the incriminated statement was made. The courts have taken the view that the complainant made a value judgment regarding the injured party and his work. Therefore, his statement cannot be subject to proving that it is true, but what is essential for the assessment is whether the complainant had a sufficient factual basis for such. In determining whether there existed a sufficient factual basis for the contested statement, the context in which the incriminated statement was made, and within

this framework, the injured party's prior conduct that provoked the statement also has to be taken into consideration. In contrast to the ordinary courts, the Constitutional Court held that the complainant's value judgment, which would otherwise be characterised as offensive, had a sufficient factual basis in the prior conduct of the injured party.

The Constitutional Court further rejected the position of the courts that the criticism has to be serious, which above all entails that it has to be professional, i.e. it may only be expressed by persons who are professionally qualified to assess the correctness and legality of a state prosecutor's work. It stressed that expressing serious criticism is not reserved only for qualified professionals, but critical opinions from the lay public and individuals who comment on social phenomena can also be considered as such. As a deputy of the National Assembly, the complainant was entitled to draw attention to conduct that he considered problematic with regard to the administration of justice. The use of provocative expressions, including metaphors, does not entail that we are not dealing with serious criticism.

As the courts based their decision regarding the complainant's criminal conviction on an assessment that did not thoroughly consider the constitutional criteria for the protection of freedom of expression, especially in the interpretation of legal terms that could be the basis for the exclusion of the illegality of the complainant's statement (contemptuous intention, serious criticism), the Constitutional Court abrogated the challenged judgments and remanded the case to the court of first instance for new adjudication.

1. 2. 6. A Decrease in Judicial Salaries

In case No. U-I-15/14 (Decision dated 26 March 2015, Official Gazette RS, No. 24/15), the Constitutional Court decided, upon the request of the Supreme Court, on the constitutionality of Article 9 of the Intervention Measures Act, by which the time limit for the classification of judicial positions into the final salary grades (by which salary imbalances between the office holders of all three branches of power were to be completely eliminated) was postponed from 1 December 2010 to 31 December 2011. In the opinion of the Supreme Court, such statutory provision entailed a decrease in judicial salaries and a less favourable position of judges compared to the office holders of the other two branches of power. The Constitutional Court considered the case from the viewpoint of judicial independence (Article 125 of the Constitution) and the principle of the separation of powers (the second paragraph of Article 3 of the Constitution).

The protection of judges from a decrease in salaries while holding office is one of the fundamental principles of judicial independence, which is protected by Article 125 of the Constitution. In the case at issue, the Constitutional Court established that the challenged provision did not cause an actual decrease in judicial salaries, but only entailed an interference with the judges' legally protected expectation that they would increase on 1 December 2010. Nonetheless, judges must be protected also against measures that interfere with their legally protected expectation that from a certain date onwards they would be entitled to higher salaries. However, with regard to the weight of such interference, the protection is less strict than in the event of an actual decrease in judicial salaries. The Constitutional Court established that the challenged provision represented one of the intervention measures for limiting budgetary expenditures, which are grounds that can justify the temporary postponement of the increase in judicial salaries.

Also as regards the principle of the separation of powers, the Constitutional Court did not establish an inconsistency with the Constitution. The Constitutional Court has in fact already adopted the position that the requirement of the equality of individual branches of power also presupposes comparable pay for the office holders of different branches of power whose statuses are comparable. The classification of judges into salary grades could only be considered inconsistent with the principle of the separation of powers if it resulted in substantial imbalances between the salary grades for judicial positions compared to the salary grades for positions within the executive and legislative branches of power. Such could not be alleged in the case at issue, even though judges had not yet been classified into their final salary grades, as the final classification was in fact postponed. It is not in itself inconsistent with the Constitution if the legislature decided to gradually eliminate salary imbalances. In addition, the legislature at the same time also suspended, for the same period of time, the full implementation of the final salary grades for the bearers of the other two branches of power.

1.2.7. The Principle of Legality in Criminal Law

By Decisions No. Up-879/14, No. Up-883/14, and No. Up-889/14, all dated 20 April 2015 (Official Gazette RS, No. 30/15), the Constitutional Court established a violation of the principle of legality in criminal law when deciding on the constitutional complaints of three complainants who had been convicted of the criminal offence of accepting a gift for unlawful intervention (the first and second applicants) and of the criminal offence of giving a gift for unlawful intervention (the third applicant). The essence of the complainants' allegations as stated in the constitutional complaints was that the conduct by which they allegedly committed the criminal offences was not concretised in the description of the criminal offences in the judgment. As regards the first two complainants, such concerned the question of whether the acceptance (of the promise of a reward) was concretised in the judgment, while as regards the third complainant, such concerned the question of whether the promise (of a reward) was concretised.

In all three Decisions the Constitutional Court conducted a review from the perspective of the first paragraph of Article 28 of the Constitution (the principle of legality in criminal law), which determines that no one may be punished for an act which had not been declared a criminal offence under law or for which a penalty had not been prescribed at the time the act was committed. This constitutional provision is primarily directed at the legislature: when defining a criminal offence in a statute, the legislature must draw a completely clear distinction between conduct that is criminal and conduct that falls outside the scope of criminal liability. However, the special safeguards stemming from the principle of legality in criminal law also have to be observed by the courts when adjudicating in concrete criminal proceedings. In the cases at issue, the Constitutional Court for the first time developed and applied constitutional law positions regarding these safeguards.

The principle of legality in criminal law, which also constitutes a human right, concerns substantive criminal law and inter alia requires that when describing a criminal offence the court must describe all of the elements of the criminal offence in a concrete manner. This principle is violated if any of the elements of the criminal offence are missing in the description of the criminal offence or if the court clarifies an individual element in such a manner that it extends the scope of criminal liability beyond that which the legislature defined by law. The court must not omit the concretisation of any of the elements of the criminal offence such that it does not

clearly follow from the judgment which of the established facts concretise an individual statutory element of the criminal offence. If it omits such concretisation, it violates the principle of legality in criminal law. When reviewing if the courts acted in accordance with the constitutional requirements, the Constitutional Court does not examine whether the courts correctly established the decisive facts regarding the criminal offence or if those facts were proven. The Constitutional Court is bound by the state of the facts as established by the regular courts.

The Constitutional Court further stressed that the principle of legality in criminal law only refers to court judgments, and not to acts of indictment. The control of acts of indictment lies in the competence of the regular courts and therefore the Constitutional Court did not address such. From the perspective of the relevant constitutional provision, it is moreover irrelevant whether the description of the criminal offence is included in its entirety in the operative provisions of the judgment or whether individual decisive facts are concretised in its reasoning. What is crucial is that the criminal offence is described in the judgment in a concrete manner.

With regard to the cases at issue, the Constitutional Court emphasised that the acceptance (of the promise of a reward) and the promise (of a reward) constitute independent elements of the criminal offences and that it is not admissible to automatically infer their existence from the existence of the other elements of the criminal offences at issue. They constitute objective elements of the criminal offence that entail acts of commission and can only be concretised by the perpetrator's conduct that has to be detectable in the external world. The method of communication, i.e. the manner of accepting or promising, does not constitute a statutory element of the criminal offence, therefore the manner in which the reward was promised or in which the promise of a reward was accepted is irrelevant. Nevertheless, in the description of the criminal offence the court must define the perpetrator's conduct that was expressed in the external world and that entailed the realisation of the acceptance of the promise of a reward or the promise of a reward. The requirement of concretisation requires that courts define the perpetrator's conduct that in the context of the circumstances of a given case allows the credible conclusion that the perpetrator promised a reward or accepted the promise of a reward. If the conduct that entails the direct realisation of the acceptance of the promise of a reward or the promise of a reward was not detected, the perpetrator's conduct that, in accordance with logic and experience and in the circumstances of the given case, can substantiate that the will to promise a reward or to accept such a promise was expressed has to be concretised in the judgment.

The Constitutional Court found that already the court of first instance failed to extract from all of the established facts of the relevant past event – with regard to which, the Constitutional Court may not consider whether those facts were accurately established or proven – the facts regarding the complainants' conduct that would have enabled that the existence of the statutory elements of "acceptance" of the promise of a reward or "promising" a reward would have been established beyond a reasonable doubt. As the court did not act in accordance with the requirements stemming from the principle of legality in criminal law and those violations were not remedied by the Higher Court or the Supreme Court, the Constitutional Court abrogated all of the judgments due to a violation of the first paragraph of Article 28 of the Constitution.

In the case of the first complainant, the Constitutional Court also established a violation of the right to impartial proceedings in accordance with the first paragraph of Article 23 of the Constitution. The President of the Supreme Court, who responded to criticisms of the judiciary in a public speech and therein also criticised the complainant's conduct, namely participated in the proceedings before the Supreme Court. The Constitutional Court emphasised that there is

no dispute that the President of the Supreme Court, as the highest representative of the judicial branch of power and of all judges, must have the possibility to respond when he deems that the judiciary has to be protected against attacks. However, if in doing so he critically responds to the statements of a concrete convicted person, this may cast doubt on his impartiality in subsequent proceedings if he participates in deciding on the convicted person's legal remedy against a final judgment. This does not concern the question of the potential subjective impartiality of the President of the Supreme Court, but the question of maintaining the appearance of the impartiality of the court in order to strengthen the public's trust in the impartiality of proceedings in individual cases.

1. 2. 8. The Statute of Limitation of the Liability of the State for Damages due to Removal from the Register of Permanent Residents

In case No. Up-124/14, U-I-45/14 (Decision dated 28 May 2015), the Constitutional Court decided on the constitutional complaint of a complainant who was removed, on 26 February 1992, from the register of permanent residents of the Republic of Slovenia, and who by an action in 2000 requested from the state damages for pecuniary and non-pecuniary damage that he allegedly sustained due to his removal. The main allegation of the complainant was directed against the conclusion of courts that his claims for damages were statute-barred, as the limitation period had begun, according to the courts, when Decision of the Constitutional Court No. U-I-284/94 was published (i.e. on 12 March 1999), by which the Constitutional Court established that the removal from the register of permanent residents was unconstitutional and unlawful. In the opinion of the complainant, the limitation period began on the day when the permanent residence permit was served on him (i.e. on 12 September 2002). At that moment, the state allegedly recognised the unlawfulness of the complainant's situation that it had caused by removing him from the register of permanent residents.

In accordance with the first paragraph of Article 26 of the Constitution, everyone has the right to compensation for damage caused through unlawful actions in connection with the performance of any function or other activity by a person or authority performing such function or activity within a state or local community authority or as a bearer of public authority. The meaning of the right to compensation for damage is to provide compensatory protection from unlawful conduct by state authorities. The forms of liability for the unlawful conduct of the state include both its liability for failure to act that refers to a determined or determinable person, as well as liability for systemic deficiencies that can be attributed to the state or its apparatus as such. When assessing the substance and the scope of the right protected by Article 26 of the Constitution, it has to be taken into consideration that the liability of the state for damage caused by unlawful actions of state authorities, employees, and office holders when exercising their authority, entails a specific form of liability. The standard rules of civil liability for damages do not suffice for assessing the liability of the state for damages, as the mentioned specificities that follow from the position of authority that characterises the functioning of the state's authorities must be taken into account.

The Constitutional Court has adopted a number of decisions regarding violations of the human rights and fundamental freedoms of persons who were removed from the register of permanent residents at the beginning of 1992, when the independence legislation entered into force. It underlined therein that the question of the liability of the state for damages

determined by Article 26 of the Constitution could be raised in cases when damage was caused to individuals due to their removal from the register of permanent residents. In *Kurić and others v. Slovenia,* dated 26 June 2012, also the Grand Chamber of the European Court of Human Rights decided that the recognition of violations of human rights and the issuance of permanent residence permits to so-called "erased persons" are not sufficient measures to remedy the injustices that occurred on the national level, as also appropriate monetary compensation must be awarded.

In the case at issue, the lower courts adopted the position that on 12 March 1999 at the latest, when Decision of the Constitutional Court No. U-I-284/94 was published, the complainant learnt of the damage that occurred due to his removal from the register of permanent residents. The Supreme Court, on the other hand, stressed that the injured party's knowledge of two circumstances is important in determining the beginning of the three-year relative limitation period regarding claims for damages: knowledge of damage and of the perpetrator, with regard to which the injured party does not need to know that the perpetrator is liable or what the basis for his or her liability is. Considering the above, not even the time when Decision of the Constitutional Court No. U-I-284/94 was published is decisive for the application of the rules concerning the beginning of the limitation period, and even less decisive is the time when, three years and a half after the publication of the mentioned Decision, the complainant obtained a permanent residence permit.

The key question in the Constitutional Court's assessment was whether due to the position of the courts regarding the statute of limitation it was rendered disproportionally difficult for the complainant to effectively invoke, by an action, the right to compensation for damage due to the unlawful conduct of the state. Another important question was whether the courts included in their assessment, and also appropriately assessed, the specific circumstances of the erased persons that follow from the decisions of the Constitutional Court and from the Judgment of the European Court of Human Rights in *Kurić and others v. Slovenia*.

The Constitutional Court established that in their reasoning the courts did not take into consideration the specific situation of erased persons, who faced lengthy legal uncertainty due to the lack of response from the authorities despite the binding decisions of the Constitutional Court. Courts could well deem the circumstances of erased persons to be the basis for the suspension of the limitation period due to the existence of insurmountable obstacles. In such framework, the courts should have assessed whether the lengthy opposition to implementing the decisions of the Constitutional Court that required the adoption of general measures to remedy human rights violations in reality entailed obstacles that in fact rendered it impossible for erased persons to file claims for damages against the state. Considering the position of the courts in accordance with which the complainant had to learn of the damage and the perpetrator at the latest when Decision of the Constitutional Court No. U-I-284/94 was published (i.e. on 12 March 1999), the complainant should have already at the time when he invoked the primary method of legal protection (i.e. in the procedure in which he strove to obtain a valid legal status) also invoked claims for damages against the state. However, expecting an individual who is asking the state to grant a valid legal status (e.g. a residence permit) to simultaneously file a claim for damages against the state is not realistic. Overly strict interpretation by the courts regarding the beginning of the limitation period and disregard for the institute of the suspension of the limitation period demonstrate that the courts did not adapt their assessment to the special circumstances of the erased persons, including the complainant. With regard to the fact that the state hesitated for a number of years before it remedied

the consequences of the violations of the human rights of erased persons by paying them appropriate compensation, the position that the complainant learnt of the circumstances that were allegedly necessary in order to file a claim for damages at the latest when Decision of the Constitutional Court No. U-I-284/94 was published is not acceptable. In such context, it needs to be underlined that such conduct of the authorities of the state entailed disrespect for the decisions of the Constitutional Court and thus a violation of Article 2 and of the second sentence of the second paragraph of Article 3 of the Constitution. In such circumstances, the possibility of erased persons filing claims for damages against the state was purely hypothetical, without any real chance of success. Since by their interpretation of the rules on statutes of limitation the courts rendered the application of compensatory protection determined by Article 26 of the Constitution disproportionally difficult for the complainant, the Constitutional Court abrogated the challenged judgments and remanded the case to the court of first instance for new adjudication.

1.2.9. Termination of the Office of a Deputy of the National Assembly

In case No. U-I-227/14, Up-790/14 (Decision dated 4 June 2015, Official Gazette RS, No. 42/15), the complainant, who was a deputy of the National Assembly, filed a constitutional complaint against an Order of the National Assembly by which, on the basis of Article 9 of the Deputies Act, his office as a deputy was terminated due to the fact that he had been convicted with finality and unconditionally sentenced to imprisonment for a period exceeding six months. The complainant alleged that by that Order his right to vote (Article 43 of the Constitution) had been violated, as the statutory grounds for the termination of office are relevant if they emerge during the term of office. The challenged order, however, was based on grounds that had already existed before the complainant's term of office was confirmed and even before his candidacy in the elections to the National Assembly was confirmed.

In accordance with the first paragraph of Article 9 of the Deputies Act, a deputy's term of office shall be terminated if he or she (1) loses the right to vote; (2) becomes permanently unable to perform office; (3) is convicted with finality and unconditionally sentenced to imprisonment for a period exceeding six months; (4) does not cease, within three months following the confirmation of the office of a deputy, to perform an activity incompatible with the office of a deputy; (5) takes office or starts to perform an activity incompatible with the office of a deputy; or (6) resigns. A deputy's office shall be terminated on the day when the National Assembly establishes that one of the mentioned grounds has arisen. In the event of a conviction for a criminal offence, the office of the deputy shall not be terminated if the National Assembly decides that the deputy in question is allowed to continue to perform office.

First of all, the Constitutional Court established that the passive right to vote guarantees individuals the possibility to compete for election to state or local authorities under equal conditions. This right also includes the right to be elected, which entails the right of individuals to gain office on the basis of the election results in accordance with the prescribed rules on the allocation of offices. The third aspect of the passive right to vote – the one relevant in the case at issue – is the right to perform an office acquired in elections. In accordance with the first paragraph of Article 23 and the fourth paragraph of Article 15 of the Constitution, effective judicial protection must be ensured against an order of the National Assembly on the termination of the office of a deputy. Since the regulation determined by the Deputies Act did not provide for effective (prompt and adapted) judicial protection against the

decision that the office of a deputy be terminated – nor was it provided for by any other law – the Constitutional Court decided that the Deputies Act was unconstitutional. In doing so, it drew attention to the fact that effective judicial protection of the passive right to vote requires that disputes on the early termination of the office of a deputy be resolved in a particularly prompt manner. The time element is so important that judicial protection in such disputes, which arise within the National Assembly as the general representative body and the legislative authority of the state, must be entrusted to the highest court in the state or even to the Constitutional Court, which will, at the same time, also perform the role of the appellate authority and thus ensure the right to legal remedies (Article 25 of the Constitution). Such regulation of judicial protection is necessary in order to prevent prolonged multi-stage decision-making. The court deciding in such disputes must have a clear statutory authorisation to assess all questions on points of law and fact and to decide with finality whether the term of office of a deputy is terminated. The law must provide for short procedural time limits and determine that provisional measures may be adopted in such proceedings and that the legal remedy has suspensory effect.

In the case at issue, the Constitutional Court provided the complainant judicial protection of the right to vote in constitutional complaint proceedings; however, it drew attention to the fact that, in principle, a constitutional complaint is not an appropriate and sufficient legal remedy in such procedures. The complainant's constitutional complaint was assessed from the viewpoint of Article 43 of the Constitution, which regulates the right to vote. The right to vote is a fundamental political right and of central importance for ensuring a democratic state. It is essential for the establishment and functioning of effective democracy based on the rule of law. The exercise of the right to vote and in particular any interferences therewith must be clearly and precisely determined by law. Article 43 of the Constitution does not provide for any particular limitations of the right to vote of Slovene citizens. The second paragraph of Article 82 of the Constitution allows for a limitation of the passive right to vote regarding elections to the National Assembly, namely that the law shall establish who may not be elected a deputy of the National Assembly.

The challenged order of the National Assembly was based on the position that the office of a deputy may also be terminated early if a final criminal conviction had already existed before the term of office of the deputy is confirmed and even before his candidacy was confirmed. In assessing whether the National Assembly violated the complainant's right to perform the already acquired office of a deputy, the Constitutional Court took into consideration the second paragraph of Article 82 of the Constitution, which allows for the possibility of a law determining who may not be elected a deputy (i.e. ineligibility). Hence, the Constitution gives the legislature express authorisation to prescribe the conditions for ineligibility by law (the socalled statutory reservation). Since the National Assembly never regulated by law the issue of ineligibility, it cannot, by means of interpretation, extend the meaning of the statutory provision (indisputably) regulating the early termination of office of a deputy on grounds that only arose during his or her term of office in such a manner so as to allow the termination of office also on grounds that had already arisen in the candidature procedure. Such an interpretation would entail the covert introduction of rules that in reality would have the effect of creating ineligibility. In fact, ineligibility is an institute of electoral law of such importance and also in itself such a severe interference with the passive right to vote that it should be expressly and clearly regulated by law. Consequently, the Constitutional Court abrogated the challenged order of the National Assembly and the complainant was able to further perform the office of a deputy.

1. 2. 10. The Commitment of Legally Incapacitated Persons to a Secure Ward of a Social Care Institution

In case No. U-I-294/12 (Decision dated 10 June 2015, Official Gazette RS, No. 46/15), the Constitutional Court decided on a request of the Human Rights Ombudsman, who challenged the second and third paragraphs of Article 74 of the Mental Health Act, namely in the part regulating the procedure for committing a person deprived of legal capacity to a secure ward of a social care institution. The main allegation of the Ombudsman was that the Act does not ensure judicial protection to a person deprived of legal capacity in the event he or she is committed to a secure ward of a social care institution with the consent of his or her legal representative and does not even enable such person to participate in the procedure for commitment to a secure ward.

In accordance with the Mental Health Act, the provision of care in a secure ward of a social care institution is one form of assistance offered to persons with mental health difficulties whose (psychiatric) treatment has concluded and with regard to whom the need for acute hospital treatment no longer exists, whose needs, however, do necessitate round-the-clock care, as they are not capable of satisfying by themselves or with the assistance of a home care assistant or relatives their basic life needs, due to which their health might be in danger, and possibly their life as well. If the substantive statutory conditions are fulfilled, a person is committed to a secure ward of a social care institution with or without his or her consent. Commitment to a secure ward without a person's consent is only admissible on the basis of a court order following a special procedure in which the participation of the person concerned is ensured. In the event a person is committed to a secure ward with his or her consent, such consent must be an expression of the person's free will based on comprehension of the situation and formed on the basis of an appropriate explanation regarding the nature and purpose of care for him or her. The consent must be given in written form, whereas the person who has consented to being committed to a secure ward can, at any time, withdraw his or her consent and request that he or she be discharged from the secured ward.

In the case at issue, the Ombudsman challenged the regulation that determined that the consent, in the name of a person deprived of legal capacity, to be committed to a secure ward of a social care institution was to be given by his or her legal representative. The latter was also able to request that his or her ward be discharged, namely by withdrawing his or her consent. In such manner, the legal representative substituted for the will of the person deprived of legal capacity. It was deemed that the person concerned was being treated and cared for in a secure ward of a social care institution of his or her own volition.

In its assessment, the Constitutional Court proceeded from the fact that the challenged measure interferes with the right of such persons to personal liberty determined by the first paragraph of Article 19 of the Constitution. The second paragraph of Article 19 of the Constitution determines that no one may be deprived of his or her liberty except in such cases and pursuant to such procedures as are provided by law. Hence, an interference with the right to personal liberty is only admissible in statutorily determined cases and in accordance with statutorily determined procedures for the deprivation of liberty. When regulating these issues, the legislature must also observe other provisions of the Constitution, in particular those that regulate constitutional procedural safeguards (i.e. Articles 22, 23, and 25 of the Constitution).

The right to the equal protection of rights determined by Article 22 of the Constitution and the procedural safeguards that follow therefrom must be ensured in all procedures relating to

decision-making on the rights, duties, and legal interests of individuals. The right to make a statement is a direct and the most important expression thereof. It guarantees that everyone has the possibility to make a statement in a procedure that affects his or her rights and interests and thus prevents a person from becoming merely an object of the procedure. The procedure for the commitment of a person deprived of legal capacity to a secure ward of a social care institution did not give such person the right to make a statement or any possibility whatsoever to participate in the procedure for the deprivation of his or her liberty. This was a consequence of the erroneous presumption that persons without legal capacity also do not have the capacity to give consent to a medical procedure or another similar measure or to refuse such. The Constitutional Court adopted the position that the mere fact that a person has been deprived of legal capacity cannot entail that the person is not capable of comprehending the importance and consequences of his or her decision in other fields where legal capacity is not required in order for his or her decisions to be valid. On the one hand, even a person who has been deprived of legal capacity due to his or her mental health problems might be able to give consent to a medical or similar procedure, while on the other hand, a person might not be able to give valid consent to a medical procedure although he or she has not been deprived of legal capacity. Due to the presumption that a person deprived of legal capacity is also incapable of giving consent to his or her treatment and care in a secure ward, a mechanism was introduced that rendered the assessment of whether a person is capable of giving or refusing his or her consent completely impossible, and consequently prevented him or her from being included in the procedure for the deprivation of his or her liberty. The Constitutional Court stressed that liberty is a value so important that the deprivation thereof must be a consequence of a decision adopted in a fair procedure. When persons with mental disorders and thus who possibly also have difficulty exercising their (free) will are at issue, a fair and proper procedure is one that, despite this fact, ensures such persons as comprehensive and complete participation in the procedure as possible and thereby also the exercise of their human rights and fundamental freedoms.

Since the regulation determined by the Mental Health Act with regard to the procedure for the deprivation of liberty did not fulfil the requirements that follow from the second paragraph of Articles 19 and 22 of the Constitution, the Constitutional Court abrogated it.

1. 2. 11. The Collision of a Mortgage and Maintenance Claims in Enforcement Proceedings against a Real Property

In case No. U-I-47/15 (Decision dated 24 September 2015, Official Gazette RS, No. 76/15), the Constitutional Court decided, upon the request of the Maribor Local Court, on the constitutionality of point 3 of the first paragraph of Article 197 of the Enforcement and Securing of Claims Act. In enforcement proceedings in which a real property is sold, that provision granted maintenance claims an unlimited priority right to payment from the proceeds of the sale. The court was of the opinion that such regulation is unconstitutional insofar as also maintenance claims that became due for payment earlier than in the last year following the issuance of the order on the handing over of the real property have priority over the mortgage as to repayment. The Constitutional Court assessed these allegations from the viewpoint of Article 33 of the Constitution (private property), but only insofar as the priority right to payment of maintenance claims applies in an unlimited manner, i.e. also to claims that became due for payment more than one year prior to the handing over of the real property to the buyer.

The right to private property determined by Article 33 of the Constitution protects a person's freedom in the field of property. In accordance with the established constitutional case law, the human right to private property also protects claims, i.e. the property rights of a creditor against a debtor who is to fulfil a certain obligation. On the one hand, in the case at issue the Constitutional Court accepted as the starting point the position that also a contract-based mortgage, i.e. a priority right in rem to payment of the secured claim from the value of the mortgaged real property, and the pecuniary claim secured therewith, form a single entity of property protected by Article 33 of the Constitution. In enforcement proceedings, these two entitlements correspond to the notion of a judgment-based claim. On the other hand, the Constitutional Court accepted that the right to legal maintenance, which in enforcement proceedings competes with holders of contract-based mortgages, is also a judgment-based claim and an expression of the human right to private property determined by Article 33 of the Constitution. The two competing legal situations of private law (of mortgage creditors and maintenance creditors) are thus constitutionally protected. However, the principle of priority when repaying is a part of the very essence of a contract-based mortgage as a constitutionally protected priority right *in rem* to payment.

Considering these starting points, the Constitutional Court had to carry out, in accordance with the principle of proportionality, a weighting of whether the interests of maintenance creditors entail a disproportionate interference with the priority rights of mortgage creditors. In accordance with the challenged regulation, mortgage creditors had to give priority to the payment of all maintenance creditors, namely concerning all instalments of unpaid maintenance, i.e. in an unlimited manner. By such regulation, the state placed on mortgage creditors (in cases where enforcement against the real property of a maintenance debtor is carried out) the economic burden of unpaid legal maintenance. On average, this burden is even greater than the burden of unpaid maintenance, which is borne by the state via the Public Guarantee, Maintenance and Disability Fund of the Republic of Slovenia (hereinafter referred to as the Fund), as the allowances of the Fund are not nearly as high as the average maintenance support payments in Slovenia, in addition to which the Fund does not cover unpaid allowances of all maintenance creditors (which mortgage creditors do), but only of children. In weighing the proportionality of the regulation, the Constitutional Court took into consideration that, as a general rule, under Slovene law, legal maintenance, if the income of maintenance debtors allows it, ensures not only the basic survival and the provision of the fundamental necessities of life, but to a significant extent pursues the continuity of the standard of living of the maintenance creditor following a certain watershed moment in his or her life (a divorce, his or her parents having ceased to live together, an age-related weakness, the loss of the ability to obtain income, etc.). Legal maintenance – and with it, the scope of the advantage that maintenance creditors have in comparison with mortgage creditors in enforcement proceedings against a real property – can be high in certain cases, and the legislature did not limit the scope of the mentioned advantage. Such entailed, in the opinion of the Constitutional Court, that the entire burden of the protection of values that must be ensured above all by the state, if individuals are not able to bear such, was shifted to mortgage creditors. In such context it was not even taken into consideration whether maintenance creditors could be repaid from the possible other property of the debtor. Maintenance claims are namely not directly connected with real property, whereas a mortgage certainly is. The Constitutional Court thus decided that placing on mortgage creditors the burden to pay all maintenance claims due for payment, *inter alia* without any time limit, entails a disproportionately severe interference with the rights of mortgage creditors relating to an individual real property. Due to the inadmissible interference with the right to private

property (Article 33 of the Constitution) of mortgage creditors, the Constitutional Court abrogated the challenged regulation. Following the decision of the Constitutional Court, only legal maintenance that became due for payment within one year prior to the issuance of the order on the handing over of the real property to the buyer retained priority in payment.

1. 2. 12. The Admissibility of a Legislative Referendum

On a Law Eliminating an Unconstitutionality

In case No. U-II-1/15 (Decision dated 28 September 2015, Official Gazette RS, No. 80/15), the Constitutional Court decided in a dispute concerning the admissibility of a post-legislative referendum on the Act Amending the Marriage and Family Relations Act. By this Act, which the National Assembly adopted on 3 March 2015, the definition of marriage was changed, so that (if the Act entered into force) it would no longer be limited to two persons of different sex, i.e. to a man and a woman, and instead any two persons could marry, irrespective of their gender. By such approach, the National Assembly intended to eliminate with one stroke all the differences in the legal system that were based on sex or sexual orientation. A group of voters requested a legislative referendum on that Act, however the National Assembly rejected the calling of the referendum, stating that the Act concerned a law referred to by the fourth indent of the second paragraph of Article 90 of the Constitution, in accordance with which a referendum may not be called on laws eliminating an unconstitutionality in the field of human rights and fundamental freedoms or any other unconstitutionality. The applicants challenged the Order of the National Assembly before the Constitutional Court.

In this case, the Constitutional Court did not assess whether the Marriage and Family Relations Act that is (still) in force was in conformity with the Constitution, nor did it assess whether the new legislative regulation, which was to be decided on in a referendum, was in conformity with the Constitution. The only subject of decision-making in these Constitutional Court proceedings was the matter in dispute between the National Assembly and the applicant of the request for the calling of the referendum, namely whether the referendum on the mentioned Act was admissible. Considering the new constitutional regulation of the legislative referendum, which was introduced in 2013, the Constitutional Court had to assess whether the situation at issue entailed a situation referred to by the fourth indent of the second paragraph of Article 90 of the Constitution, i.e. whether the Act amending the Marriage and Family Relations Act was a law by which the legislature eliminated an unconstitutionality in the field of human rights and fundamental freedoms. The key question raised in such context was which unconstitutionality the mentioned constitutional provision refers to and who may establish such unconstitutionality.

In a system of the separation of powers (and on the basis of the first paragraph of Article 160 of the Constitution), the body entrusted with the authority to review with finality the constitutionality and legality of the regulations of the other branches of power is the Constitutional Court. Therefore, the Constitutional Court interpreted the wording of the fourth indent of the second paragraph of Article 90 of the Constitution, which refers to the elimination of an unconstitutionality, in a manner such that it is not admissible to call a referendum only with regard to laws eliminating an unconstitutionality that the Constitutional Court has already established by its decisions (and also with regard to laws eliminating an unconstitutionality that has been established by the European Court of Human Rights).

Such does not entail that the National Assembly may not at its own discretion amend statutory regulations that it deems inconsistent with the Constitution. In performing the legislative function, it is bound only by the Constitution and in such framework it alone decides which matters it will regulate by law and in what manner. However, the existence of the legislative referendum necessarily entails that the representative body is not the only lawgiver, since the people, too, are lawgivers. The competence of the two holders of the legislative power is limited when the implementation of the decisions of the Constitutional Court and the judgments of the European Court of Human Rights is at issue. The Constitution, the decisions of the Constitutional Court, and the judgments of the European Court of Human Rights are not binding only on the National Assembly as the legislature, but also on the citizens when they exercise power directly by deciding on a particular law in a referendum. In other instances, where the National Assembly at its own discretion eliminates an alleged unconstitutionality in the field of human rights or fundamental freedoms, the will of the representative body cannot outweigh the right of the people to perform the legislative function directly by voting in a referendum. To prevent the possibility that, on the basis of the will of the people, allegedly unconstitutional statutory solutions would enter into force, the Constitution determines another effective mechanism by means of which such solutions can be eliminated from the legal order – namely by a decision of the Constitutional Court in proceedings to review the constitutionality of a regulation.

According to the position of the Constitutional Court, the fourth indent of the second paragraph of Article 90 of the Constitution also cannot be interpreted in a manner such that it is not admissible to call a referendum in cases where the National Assembly adopts a statutory regulation by which it indirectly, by means of the effects such statutory regulation produces in other legal fields, eliminates an unconstitutionality that the Constitutional Court has already established. Such cases namely concern the regulation of issues that are not directly connected with the established unconstitutionality. In fact, the National Assembly may well autonomously choose how and by which law it will eliminate an unconstitutionality established by the Constitutional Court, but if it does so in an indirect manner by amending a regulation whose unconstitutionality has not been established, such cannot entail grounds for prohibiting a referendum. By the new definition of marriage the legislature did in fact also indirectly eliminate the unconstitutionality that the Constitutional Court established by Decision No. U-I-425/06, dated 2 July 2009 (concerning inheritance between same-sex partners), but at the same time it also interfered with a substantial number of sectoral laws (reportedly around 70 laws). Hence, such legislative approach did not entail direct elimination of the already established unconstitutionality but concerned the regulation of something that significantly exceeded what was imposed by the mentioned Decision of the Constitutional Court. Namely, the Constitutional Court has never established that the definition of marriage currently in force and the conditions for entering into marriage are unconstitutional.

On the basis of the above, the Constitutional Court assessed that the Act Amending the Marriage and Family Relations Act, the subject of which was a new definition of marriage, was not a law referred to by the fourth indent of the second paragraph of Article 90 of the Constitution. Therefore, it abrogated the challenged Order of the National Assembly and consequently enabled the calling and carrying out of the legislative referendum.

On a Law Concerning the Field of Security

In case No. U-II-2/15 (Decision dated 3 December 2015, Official Gazette RS, No. 98/15), the Constitutional Court decided in a dispute on the admissibility of a post-legislative referendum

on the Act Amending the Defence Act, by which the National Assembly granted the army new, exceptional powers. The voters filed a petition for the calling of a post-legislative referendum regarding this Act. By an Order, the National Assembly dismissed the calling of a legislative referendum, as it established that the petition for the calling of the referendum referred to a law concerning which, in accordance with the first indent of the second paragraph of Article 90 of the Constitution, a referendum is not admissible. The petitioner of the referendum initiated proceedings before the Constitutional Court regarding the admissibility of the referendum on the entry into force of the amendment to the Defence Act.

The legislative referendum as a form of direct democracy is regulated by Article 90 of the Constitution. The National Assembly calls a referendum on the entry into force of a law if so required by at least forty thousand voters; however, a referendum may not be called, *inter alia,* on laws on urgent measures to ensure the defence of the state, security, or the elimination of the consequences of natural disasters (the first indent of the second paragraph of Article 90 of the Constitution). By the amendment to the Defence Act, the National Assembly enabled that, under certain conditions and following a special procedure, the armed forces be granted additional, exceptional powers when protecting the state border together with the police. The National Assembly substantiated the need for such law by the ongoing refugee and migrant crisis. The large number and variety of persons entering the territory of the state as refugees and migrants have allegedly resulted in exceptional circumstances. Allegedly, the Act is a law on urgent measures to ensure security, with regard to which, in accordance with the first indent of the second paragraph of Article 90 of the Constitution, a legislative referendum is not admissible.

The powers that the members of the Slovenian Armed Forces may exceptionally exercise together with the police when protecting the state border are the following: issuing warnings, directing and temporarily limiting the movement of persons, and cooperating in controlling groups of people and crowds. Substantively, these powers are essentially similar to police powers. Consequently, the Constitutional Court established that, manifestly, this Act is a law concerning the field of security. The amendment to the Defence Act created a statutory basis for the adoption of measures with regard to which the National Assembly assesses that, with respect to the existing circumstances as to controlling the state border, they are likely to become urgent very soon. The Constitutional Court stressed that the authority competent to assess the risks and threats to (national) security, and the connected elements of the urgency of measures, is the National Assembly, while the Constitutional Court may merely assess whether its findings and its substantiation of the urgency of the measures are reasonable.

The key question in the case at issue was whether the National Assembly reasonably justified the urgency of the measures that it made possible by the Defence Act. When demonstrating the urgency of the measures, the National Assembly relied on the data on the number of persons entering the Republic of Slovenia daily. In the assessment of the National Assembly, in order to carry out the necessary administrative tasks related to the procedures required to protect the Schengen border, controlling such a vast number of refugees and migrants and guiding their further movement in a controlled manner across the Slovenian territory to the point where they leave the state requires efforts exceeding the normal capacities of the authorities who are to direct persons so entering the country. In the assessment of the National Assembly, the large number and variety of groups of refugees and migrants entering and crossing the state territory, coupled with an insufficient number of the Slovene police officers who must provide security in these exceptional circumstances, necessitate that urgent measures be taken in order to ensure security.

In view of the mentioned circumstances, the Constitutional Court had no doubt as to the reasonableness of the assessment of the National Assembly that the application of the measures enabled by the Defence Act may well prove to be urgently necessary very soon in order to ensure security. Furthermore, the petitioner of the referendum failed to rebut such assessment by her general allegations. Therefore, the Constitutional Court established that the challenged Order of the National Assembly was not inconsistent with the Constitution, which consequently entailed that it was not admissible for the legislative referendum to be held.

1. 2. 13. The Inheritance of a Claim due to Non-Material Damage

In case No. U-I-88/15, Up-684/12 (Decision dated 15 October 2015, Official Gazette RS, No. 82/15), the Constitutional Court decided on the question of when a claim due to non-material damage is inherited. In a civil procedure, the court of first instance imposed on the defendant (i.e. the Republic of Slovenia) the obligation to pay the plaintiff certain compensation for non-material damage. The defendant appealed against the judgment, and while the appellate proceedings were pending, the plaintiff died. The Higher Court assessed that his death during the appellate proceedings had no effect on the decision. Namely, at the time of the last main hearing, the plaintiff was still alive, whereas the court of first instance decided on the compensation for non-material damage on the basis of such circumstances as existed when the main hearing finished. The Supreme Court did not concur therewith. In accordance with Article 204 of the then applicable Obligations Act, it decided that a claim due to non-material damage loses its personal nature only when a final judgment is issued (or a written agreement concluded). Such entailed that, at the time of the plaintiff's death, i.e. during the appellate proceedings, the claim could not have passed to the heirs and had been extinguished; consequently, the heirs were unable to take the place of the decedent in the proceedings. The heirs of the plaintiff filed a constitutional complaint against the decision of the Supreme Court. In accordance with the principle of connectivity, the Constitutional Court also decided to initiate, *ex officio*, proceedings for the review of the constitutionality of Article 204 of the Obligations Act.

The Constitutional Court carried out the review of the constitutionality of the Act from the viewpoint of the general principle of equality (the second paragraph of Article 14 of the Constitution), which requires that essentially equal states of the facts must be treated equally. If such situations are treated differently, there must exist reasonable grounds for their differentiation that follow from the nature of the matter. The Constitutional Court established that the statutory regulation in accordance with which a claim for compensation for non-material damage is linked to the moment the judgment by which the injured party is awarded monetary compensation becomes final can lead to a differentiation between the positions of heirs based on how lengthy the judicial proceedings are. Namely, even if two injured parties express their will concurrently, i.e. they request monetary compensation for non-material damage (either by an extrajudicial action or by filing an action), as regards damage that in fact was strictly personal, and even if the damage arose simultaneously, it is possible that the circumstance of whether the injured party died while the lawsuit was pending or only after the judgment by which the compensation was awarded has become final can result in a differentiation of the position of heirs.

In fact, it does not follow from the Constitution that differentiation between the legal positions of persons with respect to the moment when the judgment in their case becomes final is in general constitutionally inadmissible. However, the particularity of the situation at issue

and the nature of the non-material damage have to be taken into consideration nonetheless. Damage that is reflected in the injured party's suffering cannot be directly remedied by restoring the previous situation, therefore courts award the payment of just compensation in the event non-material damage is incurred. The purpose of such compensation is to provide satisfaction. Non-material damage is of a strictly personal nature; however, the compensation that the injured party is entitled to is expressed in a monetary value. Therefore, the question is when, in the mentioned situations where the damage is strictly personal, a claim for compensation sufficiently materialises to be deemed to have a pecuniary – and, hence, inheritable – value. Since the damage is personal, it is necessary to take into consideration the circumstances that refer to the injured party in order to conclude that the positions are essentially equal. In order to assess the equality of the positions regarding the question of whether a strictly personal claim is transformed into a pecuniary value (and thus becomes inheritable), the circumstances that follow from the injured party's wilful conduct are decisive. This applies to both a comparison of the positions of injured parties as well as to a comparison of the positions of their heirs in the event of the death of an injured party. If an injured party dies, the essential element for assessing whether the heirs' positions are equal is the circumstances regarding the time when the decedent incurred non-material damage and when he or she expressed in an appropriate manner his or her desire to receive satisfaction in the form of monetary compensation.

Considering the above, the Constitutional Court deemed that heirs of injured parties who incur non-material damage at the same time and who also at the same time express their will to receive satisfaction in the form of monetary compensation for the incurred damage are in essentially equal positions. The statutory regulation that links the inheritability of claims for non-material damage to the moment when the judgment by which the injured party is awarded monetary compensation becomes final thus treats equal positions unequally. The Constitutional Court then also had to assess whether there existed reasonable grounds for such differentiation that followed from the nature of the matter. In this respect, it established that the regulation was susceptible to cause that the treatment of the injured parties' heirs, all of whom were initially in an equal position (by filing an action, they expressed their will to receive the payment of just compensation for non-material damage), then depended on events and conduct that were entirely or at least predominantly excluded from the sphere of the injured party. The duration of judicial proceedings often depends on circumstances on which a party can have no influence. What was even more problematic was that the inheritability of claims for compensation for non-material damage depended mostly on the actions of the opposing party, i.e. the person liable for payment who caused the damage. Such regulation cannot be advocated to entail a reasonable unequal treatment of equal positions that follows from the nature of the matter. Therefore, the Constitutional Court decided that the statutory regulation was inconsistent with the principle of equality determined by the second paragraph of Article 14 of the Constitution. In doing so, it indicated that the inheritability of claims due to non-material damage should be linked to the moment when an injured party outwardly and indisputably expresses his or her will that the perpetrator pay him or her a certain sum of money as compensation for the sustained non-material damage, or when he or she files an action with a view to asserting such claim. Consequently, the Constitutional Court also granted the constitutional complaint and remanded the case to the Supreme Court for new adjudication.

1. 2. 14. Challenging the Paternity of a Child

In case No. U-I-251/14 (Decision dated 21 October 2015, Official Gazette RS, No. 82/15), the Constitutional Court assessed the constitutionality of the second paragraph of Article 96 of the Marriage and Family Relations Act, which limited by a preclusive time limit the right of a husband who believes that he is not the father of a child to challenge before a court his paternity, namely by a time limit for filing an action expiring five years following the birth of the child. The petitioner alleged that due to the expiration of the time limit he was unable to challenge his paternity of a daughter, which allegedly constituted a disproportionate interference with his right to personal dignity and safety (Article 34 of the Constitution) and with the right to protection of the rights to privacy and personality rights (Article 35 of the Constitution). On the contrary, the petitioner did not find disputable the second (i.e. relative) time limit in which the presumed father may challenge his paternity – namely, he must file an action within one year from the date he learnt of the circumstances giving rise to the suspicion that the child is not his.

In the case at issue, the Constitutional Court adopted the position that Article 35 of the Constitution also protects the personality right of presumed fathers to obtain, in judicial proceedings, recognition by a court that their legally recognised (formal) paternity does not conform with the actual biological origin of the child and that, consequently, such legal relationship shall cease. The knowledge of the facts regarding the actual existence or non-existence of presumed biological parenthood is of decisive importance for the development of an individual's personality. It is an element that is key to the creation of an image about oneself. An individual's doubt regarding whether the children who are formally his are truly his children and whether he actually is genetically and as a relative connected with them can constitute a grave psychological burden and uncertainty. The existence of doubt whether his paternity is real can also cause trouble for the presumed father in social relations, which gives rise to feelings of humiliation and significantly influences his reputation and image in society. A correct factual basis for the key personal legal relations is – in particular in the field of parenthood – one of the decisive elements of the identity of a person as a social being. Furthermore, a father's legally recognised paternity has significant legal consequences for him in fields unrelated to property and in the field of property as well. The issue concerns the existence of mutual rights and obligations between parents and children.

The Constitutional Court assessed that ensuring the permanence, stability, and unchangeability of parent-child relationships, and the protection of children's interests, are indeed constitutionally admissible and legitimate grounds for the challenged statutory regulation. However, it decided that the measure of a preclusive time limit for challenging one's paternity has been shown to be an excessive interference with the personality right determined by Article 35 of the Constitution. In the opinion of the Constitutional Court, the five-year preclusive time limit for filing an action to challenge one's paternity was too stiff, inflexible, and rigid; it started at an objectively determined point in time (when the child was born) and it could well expire at a time when the presumed father did not know – and it often could not be stated that he was not duly diligent in this respect – that the child deemed to be his was in fact, in the biological sense, not his.

The Constitutional Court decided that the interference with the personality right of presumed fathers to obtain, in judicial proceedings, recognition that their formal paternity does not conform with the actual biological origin of the child and that the legal relationship with the child that is presumably theirs shall cease (Article 35 of the Constitution), is excessive. The manner of the determination of the objective preclusive time limit for filing an action to challenge one's

paternity is inadmissible, as it disproportionally limits the right of the presumed father to reconcile the legal status of parenthood with the biological reality; also the weight of the consequences of the assessed interference is not proportionate to the benefits that the challenged statutory regulation provides. It is unconstitutional that the presumed father can no longer challenge his paternity if the relative time limit of one year from the moment when he learns of the circumstances giving rise to the suspicion that the child was not his has not yet expired, but the time limit of five years from the birth of the child has. Consequently, the Constitutional Court in part abrogated the second paragraph of Article 96 of the Marriage and Family Relations Act.

1. 2. 15. The Right to Examine a Court-Appointed Expert as the Incriminating Witness

In case No. Up-657/13 (Decision dated 12 November 2015, Official Gazette RS, No. 91/15), the Constitutional Court decided on the constitutional complaint of a complainant who was found guilty, by a final judgment, of two criminal offences of causing minor bodily injury. At the main hearing, the Local Court dismissed the motion of the defence to examine the medical expert already appointed by the court, who would allegedly in such a manner have been able to explain in more detail the bodily injury of the injured party. The court assessed that, in light of the procedure for taking evidence that had hitherto been carried out, taking such evidence was unnecessary, uneconomical, and would also not significantly contribute to the clarification of the state of the facts. Furthermore, the court was of the opinion that, in his submitted expert opinion, which the court had publicly read with the consent of the parties, the court-appointed expert had already answered all the relevant questions on points of law regarding the gravity, type, and nature of the bodily injuries. The court stated that the expert in particular explained the mechanism of how the injured party's injuries had been caused. Thus, the evidence of the defence was unnecessary, according to the court. The Higher and the Supreme Court upheld such decision.

The positions by which the competent courts dismissed the motion for the examination of the court-appointed medical expert after his submitted expert opinion had already been read with the consent of the parties to the criminal proceedings at the only session of the main hearing before the court of first instance refer to the right of the defendant to exercise, in criminal proceedings, his right to a defence. The essence of the complainant's allegations was his claim that in the criminal proceedings he was not given the opportunity to confront the court-appointed medical expert who in the phase of individual investigative acts submitted an expert opinion that incriminated the complainant. The Constitutional Court assessed these allegations of the complainant from the viewpoint of the right to a defence determined by Article 29 of the Constitution.

The defendant exercises the right to a defence, *inter alia*, by examining incriminating witnesses. This is a separate element of the right to a defence protected by Article 29 of the Constitution. Whenever during proceedings a defendant is not able to assert his or her right to examine incriminating witnesses, the judgment of conviction may not exclusively or to a decisive degree be based on the statements thereof. The right to examine incriminating witnesses is also one of the guarantees of a fair trial, as well as a constituent part of the obligation to ensure a fair trial as follows from Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

In addition to the examination of a witness, the expert opinion of a court-appointed expert is another traditionally recognised means of evidence. The findings and results presented by an expert in his or her opinion entail one piece of evidence among all those that are taken by a court in criminal proceedings. In contrast to a witness, a court-appointed expert plays a very active role in criminal proceedings. The court needs a court-appointed expert in order to be able to determine, on the basis of his or her expertise, the legally relevant decisive facts, i.e. the facts that will enable the court to make an assessment of the existence of a criminal offence. If a defendant has the right to examine an incriminating witness, his or her right to examine the author of the submitted expert opinion that incriminated him or her must be all the more emphasised, precisely due to the active role of the court-appointed expert. The defendant must always have the possibility to orally examine the court-appointed expert who submitted an expert opinion that incriminated him or her, i.e. to confront the expert and to present, in an adversarial cross examination, his or her doubts and to rebut the credibility of the expert's findings. The right of the defendant to orally question the expert at the main hearing is a separate aspect – a component part – of his or her right to a defence determined by Article 29 of the Constitution.

In the case at issue, the Constitutional Court established that the competent courts inadmissibly conditioned the complainant's motion to directly examine the court-appointed expert by assessing that such motion entails an additional motion for evidence and that in order for such examination to be allowed the complainant should have stated what the court-appointed expert would have additionally explained and what questions he would have been asked to reply to. The Constitutional Court assessed that the situation at issue did not concern a new piece of evidence – a new motion for evidence – but (merely) the continuation of the taking of evidence, namely, that of the expert opinion. From the viewpoint of the complainant's defence, it is inadmissible that a further examination of the court-appointed expert be conditional upon the fulfilment of the requirement that the defence bear the burden of allegation regarding the relevance of the examination of the expert in the same manner as when the defence submits new motions for evidence. The absence of the possibility that the complainant examine the court-appointed expert also cannot be retroactively substantiated by an assessment – as the Supreme Court did – that the final judgment is not decisively based on the submitted expert opinion. The defendant must always be given the possibility to also orally examine a court-appointed expert.

1. 2. 16. Withdrawal of Parental Authority

By Decision No. Up-70/15, dated 10 December 2015 (Official Gazette RS, No. 3/16), the Constitutional Court decided on the constitutional complaint of a complainant whose parental authority over a minor child had been withdrawn by a final judicial decision. The courts found that, due to her mental illness, the complainant was incapable of raising and caring for her minor daughter, it being unlikely that her health condition would sufficiently improve for the minor daughter to be returned to her in order for the complainant to raise the child and care for her. The complainant alleged that the courts violated her right to family life (Articles 53 and 54 of the Constitution and Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms). In her view, only the existence of exceptional circumstances can justify such an extreme measure as the withdrawal of parental authority entails. Such exceptional circumstances cannot exist *a priori* merely due to the mother suffering from a (mental) illness, as continuing damage to the child needs to be established for such circum-

stances to exist. The complainant was also opposed to the position in accordance with which in instances where there is no realistic possibility for the parents to ever assume the upbringing and care of their child in the future, and where, due to the lengthy surrogate care of the latter, the child has become attached to his or her foster parents, it must be ensured that such relationship becomes permanent (by an adoption).

The Constitutional Court assessed the case in particular from the viewpoint of Article 54 of the Constitution, which protects parenthood. In conformity with the first paragraph of that Article, parents have the right and duty to maintain, educate, and raise their children; this right and duty may be revoked or restricted only for such reasons as are provided by law in order to protect the child's interests. Parents are first and foremost entitled and obliged to maintain, educate, and raise their children. They are entrusted with parental authority for the benefit of the child. It is presupposed that they are willing and capable of exercising such authority to the child's benefit. The right and duty of parents at the same time entails the right of children to be cared for and raised by their parents. This parental authority has a correlative in the duty of the state to assist parents in raising and caring for children. Such duty of the state follows from the third paragraph of Article 53 of the Constitution and in particular also from the first paragraph of Article 56 of the Constitution, which determines that children enjoy special protection and care. The Constitution thereby draws attention to the intertwinement of parental authority, on the one hand, and the rights of children, on the other. By protecting the relationships between parents and children, the right to the protection of family life of parents and children is protected. On the basis of the third paragraph of Article 56 of the Constitution, the state has the obligation to provide special protection to children and minors who are not cared for by their parents or who are without proper family care. By means of the special protection of children, the positive aspect of the right to respect for family life is implemented. The Constitution does not prescribe the measures the state must choose to this end, but leaves the matter to be regulated by law.

In conformity with the first paragraph of Article 54 of the Constitution, the only legitimate grounds for limiting parental authority can be the protection of a child's interests. The weighing of rights – even when the protection of parental authority and of other rights of parents enshrined in the Constitution and the Convention is at issue – must be subordinated to the principle of the child's best interests. The notion of a child's interests is an indeterminate legal term; its substance must be determined by courts by considering the circumstances of each concrete case. Therefore, what is essential is that the courts in each concrete case individually assess how to protect the child's interests in the most appropriate manner.

In order to assess the case at issue, the key question was whether the measure of the withdrawal of the complainant's parental authority was absolutely necessary, i.e. justified by exceptional circumstances requiring that the protection of the child's best interests prevail over the rights of the parent – i.e. the complainant. The courts ascertained the existence of such circumstances in the fact that there were no real indications that the complainant could ever again assume the upbringing and care of the child, or that there would ever be a reunification of the family. The courts were of the opinion that, in a situation where there is no realistic chance that the parents could ever again assume the raising and care of the child, while the child is, due to the lengthy surrogate care, attached to his or her foster family, it has to be ensured that such relationship becomes permanent. Precisely the assessment of the probability that the circumstances of the parents would improve to such a degree so as to allow the children to be returned to them, so that the parents would be able to proceed with raising and caring for them, was, in

the assessment of the courts, of key importance in deciding which measure to choose: either the measure of taking the child from his or her parents or the measure of the withdrawal of parental authority. In a situation where reunification, i.e. restoration, of the family is possible, the measure of taking a child from his or her parents is more appropriate. The measure of the withdrawal of parental authority, on the other hand, is an option in instances where it follows from the circumstances of the case that there is no possibility or indications that a parent could ever again be able to assume care of the child.

The Constitutional Court assessed that the position of the courts that the interests of the minor child can only be sufficiently protected by ensuring her permanent and stable surrogate care and upbringing, did not violate the complainant's right determined by the first paragraph of Article 54 of the Constitution. The assessment of the courts was justified by concern for protecting the child's best interests. The circumstances of the case at issue, which were sufficiently reasoned by the courts, indicate that the parental bond between the complainant and her minor daughter has never been established. Due to the circumstances of her parents, the child was taken from her mother already at the age of four weeks, and placed with a foster family. Family ties were *de facto* created between the child and her foster parents. Also the contacts that arose during the judicial proceedings did not contribute to the establishment of a mutual bond between the complainant and her child. The protection of the child's best interests thus required that the mentioned relationship become permanent, thus ensuring the child healthy mental and physical development.

The Constitutional Court also dismissed as unfounded the complainant's allegation regarding discriminatory treatment (the second paragraph of Article 14 of the Constitution). It underlined that the assessment of the courts was not based on the position that the complainant's parental authority should be withdrawn due to her illness, but that establishing her permanent inability to care for her minor child was of key importance. With regard to the above, the Constitutional Court dismissed the constitutional complaint as unfounded.

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 where 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 2015, there remained three unimplemented decisions of the Constitutional Court by which statutory provisions and an implementing regulation were found to be unconstitutional. The competence to remedy the unconstitutionalities of laws lies with the National Assembly as the legislature, while the government must take action when implementing regulations are found to be unconstitutional. The unimplemented decisions include two decisions to which the authorities that issued the unconstitutional regulations responded only in part. 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 be even greater.

The oldest Constitutional Court decision still not fully 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. With the establishment of the Municipality of Ankaran, the unconstitutionality of the aforementioned Act was eliminated in the part at issue, while the Constitutional Court decision still remains unimplemented regarding other settlements forming part of the Urban Municipality of Koper. 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 charters with the Local Self-Government Act as these charters did not provide that representatives of the Roma community are to be included as members of the respective municipal councils, still remains partly unimplemented. While other mu-

nicipalities have eliminated the established illegality of their charters, the Municipality of Grosuplje has not responded to the Decision of the Constitutional Court.

In 2012, the time limits expired for the elimination of the unconstitutionality of two decisions of the Constitutional Court to 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 is regarding the funding of their activities 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, or 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 of this legal gap, the effective nature of the parliamentary inquiry, which is required by Article 93 of the Constitution, is diminished in an unconstitutional manner. The time limit for remedying the unconstitutionality of the Decree on the Categorisation of National Roads established by Constitutional Court Decision No. U-I-156/13, dated 4 June 2015 (Official Gazette RS, No. 43/15) expired in 2015.

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 decision 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 as 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 for remedying the unconstitutionality established by Constitutional Court Decision No. U-I-249/10, dated 15 March 2012 (Official Gazette RS, No. 27/12) expired; this 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 to 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 regulate in detail 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 contributions for unemployment insurance.

1.4. International Activities of the Constitutional Court in 2015

The Constitutional Court of the Republic of Slovenia devotes special attention to international cooperation, particularly to the exchange of experiences with other international institutions concerned with the protection of human rights. With a view to strengthening international cooperation, in 2015 the Constitutional Court deepened existing relationships and developed new contacts with other constitutional courts and courts of equivalent jurisdiction, international courts, the Council of Europe, and other institutions promoting the protection of human rights and fundamental freedoms. The Constitutional Court is also 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 with other institutions of equivalent jurisdiction.

In May, a delegation of the Constitutional Court paid a three-day official visit to the Constitutional Court of Austria. The topics of discussion between the judges of both courts were the relationship between constitutional courts and the Court of Justice of the European Union, the role of constitutional courts in deciding electoral disputes, and access to the constitutional court in procedures to review the constitutionality of statutes. The Vice President of the Constitutional Court participated in the 7th Congress of the ACCPUF – the Association of Constitutional Courts Using the French Language. The participants of the Congress discussed the supremacy of the constitution and the relationship between the constitution and international law. In September, a delegation of the Constitutional Court attended the Preparatory Meeting of the XVII Congress of the Conference of European Constitutional Courts, held in Georgia. The participants of the meeting chose the following theme of the next CECC Congress: "The Role of Constitutional Courts in Upholding and Applying Constitutional Principles". A delegation of the Constitutional Court also attended the solemn opening of the judicial year of the Constitutional Court of Kosovo. In addition, some of the judges of the Constitutional Court attended the Economics Institute for Judges held in the USA by the School of Law of George Mason University, Virginia, the 18th International Judicial Conference (IJC) in Turkey, the International Conference on European Constitutionalism in the Context of Judicial Dialogue held in the Czech Republic, an International Conference of Chief Justices of the World in India, and the National Lawyers Convention and the European Judicial Network Conference held in the USA. A judge of the Constitutional Court also participated in a conversation with the US Supreme Court Justice Antonin Scalia, which took place in the framework of an exhibition on the 800th anniversary of the Magna Carta in London.

In 2015, the Constitutional Court hosted six official visits, four of which were from delegations of foreign constitutional courts. In May, the Constitutional Court received its first visit from a delegation of the Constitutional Court of Belgium. The judges discussed in particular the rela-

tionship between constitutional courts and the Court of Justice of the European Union and other issues related to EU law faced by national constitutional courts. The judges of the Constitutional Court also met with their Croatian counterparts at their annual working meeting in October. They discussed the most significant decisions adopted by each of the Constitutional Courts in 2015, devoting special attention to the constitutional aspects of granting leave of appeal to the Supreme Court in accordance with the Civil Procedure Act. Representatives of the Constitutional Court of Montenegro and the Constitutional Court of Macedonia gained insight into the organisation and work procedures of the Constitutional Court in the framework of their two-day study visits in June and December, respectively. In June, the Court also hosted legal advisers of the Graz Higher Regional Court. A delegation from Montenegro led by the Minister of Justice visited the Constitutional Court in September.

The Court's legal advisers attended several legal courses abroad. These included a seminar on the recent case law of the European Court of Human Rights in asylum law matters (Strasbourg, France), a seminar on protecting fundamental rights in the European Union (Trier, Germany), and a summer course on EU tax law (Trier, Germany). The Court's legal advisers working in the Analysis and International Cooperation Department attended two legal English workshops (Wustrau, Germany; Bucharest, Romania). A representative of the Constitutional Court participated in the 14th meeting of the Joint Council on Constitutional Justice of the Venice Commission, which took place in Bucharest, Romania. And finally, one of the Court's legal advisers attended a public hearing of the Court of Justice of the European Union in Luxembourg in the case of the first reference for a preliminary ruling from the Constitutional Court of the Republic of Slovenia in accordance with Article 267 of the Treaty on the Functioning of the European Union.

STATISTICAL DATA

2. 1. Summary of Statistical Data for 2015

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 2015

REGISTER	CASES PENDING AS OF 31 DECEMBER 2014*	CASES RECEIVED IN 2015	CASES RESOLVED IN 2015	CASES PENDING AS OF 31 DECEMBER 2015
Up	734	1003	964	773
U-I	214	212	221**	205
P	14	7	10	11
U-II	0	2	2	0
Rm	0	0	0	0
Mp	0	0	0	0
Ps	0	0	0	0
Op	0	0	0	0
Total	**962**	**1224**	**1197**	**989**

***** The number of cases pending as of 31 December 2014 does not match the data provided in the 2014 Overview, which indicated that the number of Up cases pending at the end of the year was 730, as some Up cases were reopened and closed in 2015.
****** 221 U-I cases resolved include 9 joined applications.

Table **1a** Summary Data regarding R-I Cases in 2015

REGISTER	CASES PENDING AS OF 31 DECEMBER 2014*	CASES RECEIVED IN 2015	CASES RESOLVED IN 2015	CASES PENDING AS OF 31 DECEMBER 2015
All R-I	52	365	365	52
R-I**(cases that remained in the R-I register)		124	117	
Total (All Registers and R-I)		**1348**	**1314**	

* The number of cases pending as of 31 December 2014 does not match the data provided in last year's overview, as a few R-I cases were reopened and closed in 2015.
** 365 R-I cases were received, 241 of which were transferred to another register (Up or U-I) in 2015, while 124 remained in the R-I register. The total number amounted to 365 R-I cases resolved, 248 of which were resolved by transfer to other registers, while 117 cases remained in the R-I register.

Table **2** Summary Data regarding Up Cases in 2015

PANEL	CASES PENDING AS OF 31 DECEMBER 2014*	CASES RECEIVED IN 2015	CASES RESOLVED IN 2015	CASES PENDING AS OF 31 DECEMBER 2015
Civil Law	406	472	507	371
Administrative Law	177	326	357	146
Criminal Law	151	205	100	256
Total	**734**	**1003**	**964**	**773**

* The number of cases pending as of 31 December 2014 does not match the data provided in last year's overview, in which the number of Up cases pending at the end of the year was 730, as some of the Up cases were reopened and closed in 2015.

Table **3** Pending Cases according to Year Received as of 31 December 2015

YEAR	2013	2014	2015	TOTAL
U-I	14	58	133	205
P		5	6	11
Up	8	176	589	773
Total	**22**	**239**	**728**	**989**
+R-I			52	52
Total Including R-I	**22**	**239**	**780**	**1041**

2.2. Cases Received

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

YEAR	U-I	UP	P	U-II	PS	MP	TOTAL	R-I	TOTAL INCLUDING R-I
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
2015	**212**	**1003**	**7**	**2**			**1224**	**124***	**1348**
2015/2014	**↓ -16.9%**	**0.0 %**	**↓ -65.0%**				**↓ -3.2%**	**↑ 8.8%**	**↓ -4.4%**

*The total number amounted to 365 R-I cases received, 241 of which were resolved in 2015 by transfer to other registers, while 124 cases remained in the R-I register.

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

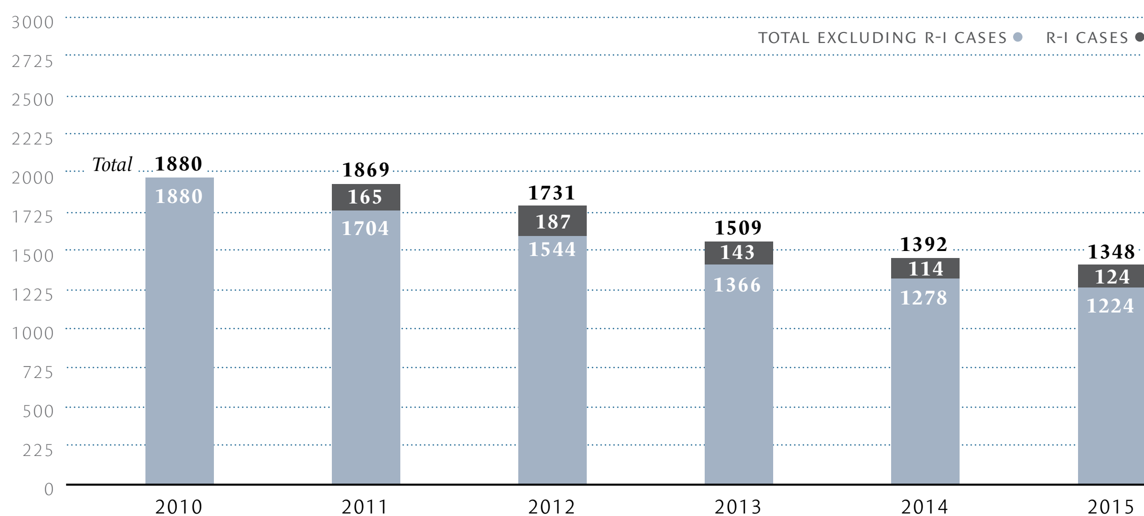


Figure **2** Distribution of Cases Received in 2015

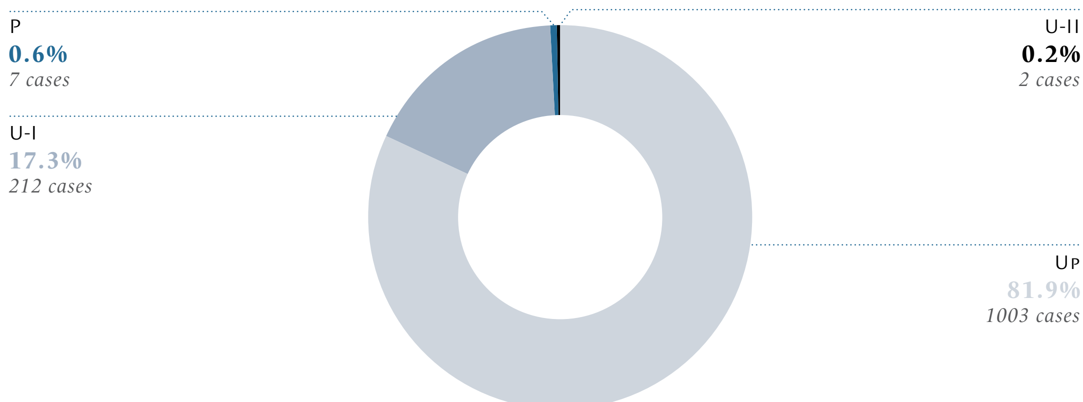


Figure **3** Distribution of Cases Received in 2015, Including R-I Cases

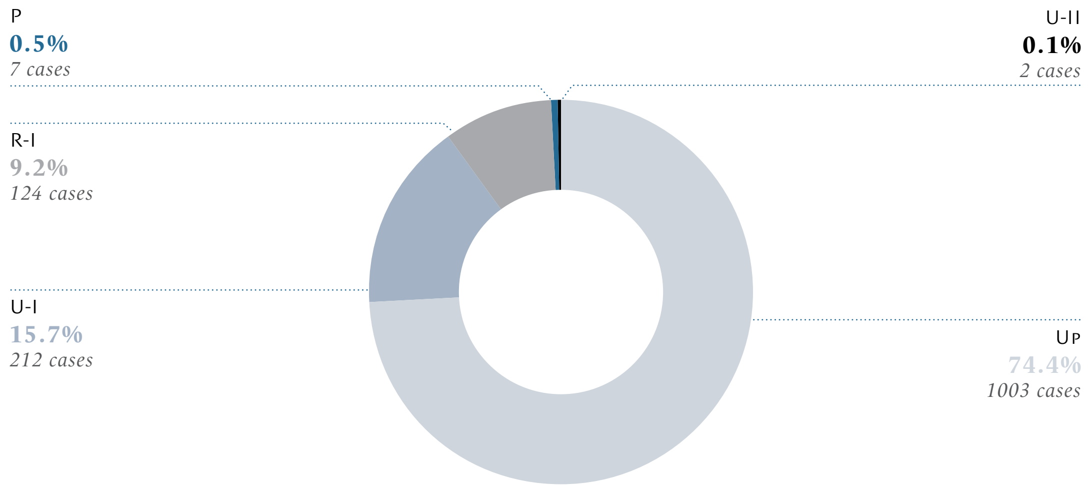


Figure **4** Number of U-I Cases Received by Year

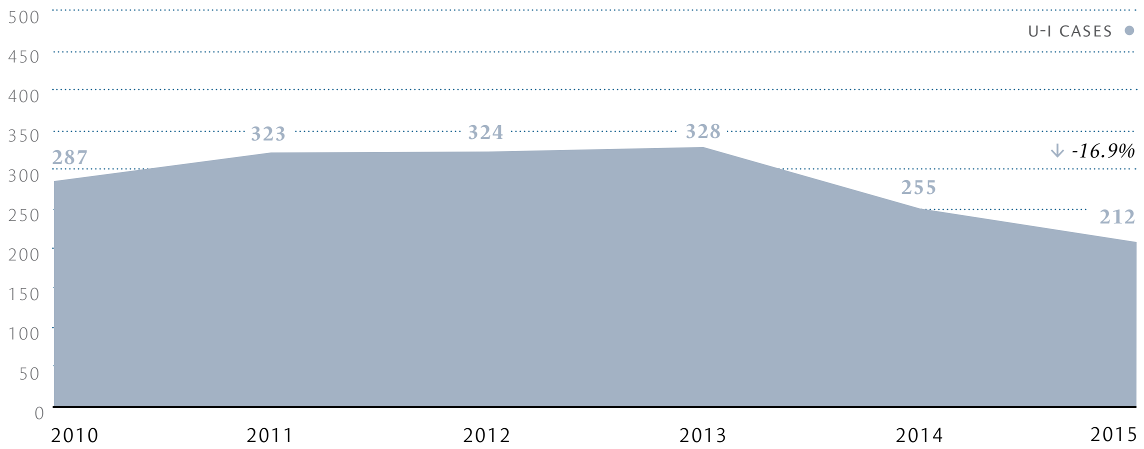


Figure **5** Number of Up Cases Received by Year

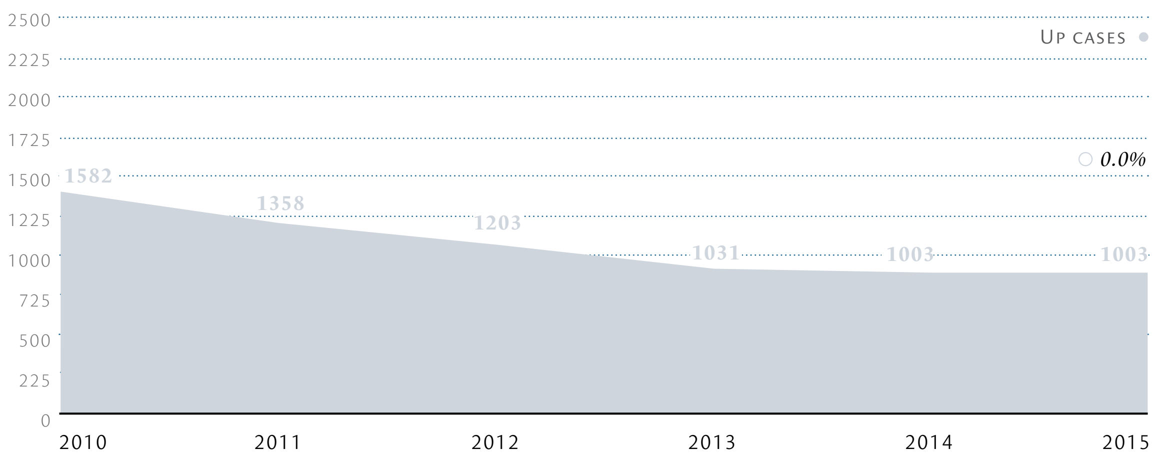


Table **5** Number of Requests for a Review Received in 2015 according to Applicant

APPLICANTS REQUESTING A REVIEW	NUMBER OF REQUESTS FILED
Government of the Republic of Slovenia	9
Višje sodišče v Ljubljani (Higher Court in Ljubljana)	8
Okrajno sodišče v Mariboru (Local Court in Maribor)	6
Delovno in socialno sodišče v Ljubljani (Labour and Social Court in Ljubljana)	4
Vrhovno sodišče Republike Slovenije (Supreme Court of the Republic of Slovenia)	4
Upravno sodišče Republike Slovenije (Administrative Court of the Republic of Slovenia)	4
Okrožno sodišče v Kopru (District Court in Koper)	3
Okrožno sodišče v Ljubljani (District Court in Ljubljana)	3
Ombudsman of the Republic of Slovenia	3
National Council of the Republic of Slovenia	2
Okrajno sodišče v Slovenj Gradcu (Local Court in Slovenj Gradec)	2
Višje sodišče v Celju (Higher Court in Celje)	2
Barbara Zobec, Supreme Court Judge – Counsellor	1
Konfederacija slovenskih sindikatov (Confederation of Slovenian Trade Unions) and others	1
Mestna občina Celje (Celje Urban Municipality) and others	1
Občina Dol pri Ljubljani (Dol pri Ljubljani Municipality)	1
Občina Ilirska Bistrica (Ilirska Bistrica Municipality), other municipalities, and Vojko Tomšič	1
Občina Izola – Občinski svet (Izola Municipality – Municipal Council) and others	1
Občina Tolmin (Tolmin Municipality)	1
Okrajno sodišče v Celju (Local Court in Celje)	1
Sindikat državnih organov Slovenije (Trade Union of State Authorities of Slovenia)	1
Višje sodišče v Mariboru (Higher Court in Maribor)	1
Zveza reprezentativnih sindikatov Slovenije (Association of Representative Trade Unions of Slovenia)	1
Total	**61**

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

YEAR	CIVIL	ADMINISTRATIVE	CRIMINAL	TOTAL
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
2015	472	326	205	1003
2015/2014	**↓ -3.1%**	**↑ 4.2%**	**↑ 1.0%**	**0.0%**
R-I**	40	38	46	124
2015 Up and R-I*	527	351	249	1127
2014 Up and R-I*	522	365	230	1117
2015/2014 Up and R-I*	**↑ 1.0%**	**↓ -3.8%**	**↑ 8.3%**	**↑ 0.9%**

* 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.
** In 2015, out of 365 R-I cases received, 241 were transferred to another register (Up or U-I), while 124 remained in the R-I register.

Figure **6**

Distribution of Up Cases Received according to Panel

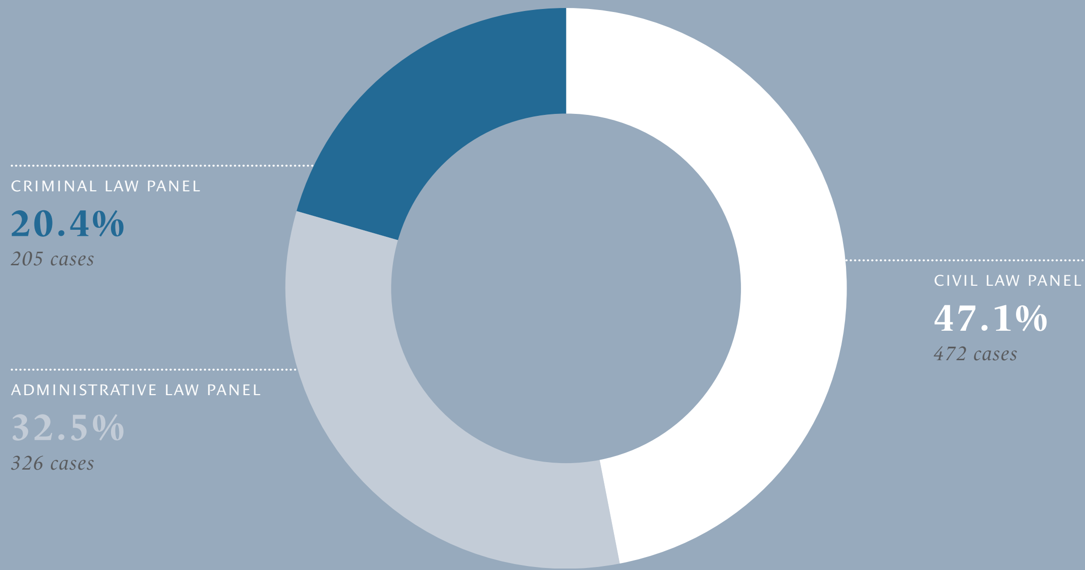


Figure **7**

Distribution of Legal Acts Challenged*

* In Figure 7, each type of legal act is represented only once. It may have been challenged in several different 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
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
2015	**66**	**4**	**10**	**31**	**3**

Table **8** Acts Challenged Multiple Times in the Cases Received in 2015

ACTS CHALLENGED MULTIPLE TIMES IN 2015	NUMBER OF CASES
Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act	24
Pension and Disability Insurance Act	10
Criminal Procedure Act	9
Banking Act	7
Confiscation of the Proceeds of Crime Act	7
Enforcement and Securing of Civil Claims Act	6
Fiscal Balance Act	5
Code of Obligations	4
Administrative Dispute Act	4
Exercise of Rights from Public Funds Act	4
Civil Procedure Act	3
Tax Procedure Act	3
National Assembly Elections Act	3
Financial Social Assistance Act	3
Penal Code	3
Free Legal Aid Act	3
Construction Act	3
Minor Offences Act	3
Court Fees Act	3
Courts Act	3
Housing Act	3
Public Guarantee, Maintenance, and Disability Fund of the Republic of Slovenia Act	3
Slovene Sovereign Holding Act	2
Attorneys Act	2

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

TYPE OF DISPUTE (UP CASES)	RECEIVED IN 2015	PERCENTAGE IN 2015	RECEIVED IN 2014	CHANGE 2015 / 2014
Civil Law Litigation	253	25.2%	244	3.7% ↑
Criminal Cases	163	16.3%	145	12.4% ↑
Other Administrative Disputes	109	10.9%	83	31.3% ↑
Labour Law Disputes	71	7.1%	69	2.9% ↑
Commercial Law Disputes	61	6.1%	63	-3.2% ↓
Execution of Obligations	61	6.1%	76	-19.7% ↓
Non-litigious Civil Law Proceedings	45	4.5%	31	45.2% ↑
Minor Offences	41	4.1%	57	-28.1% ↓
Social Law Disputes	40	4.0%	61	-34.4% ↓
Taxes	37	3.7%	33	12.1% ↑
Denationalisation	36	3.6%	11	227.3% ↑
Insolvency Proceedings	35	3.5%	26	34.6% ↑
Matters concerning Spatial Planning	13	1.3%	23	-43.5% ↓
Civil Status of Persons	11	1.1%	15	-26.7% ↓
Proceedings related to the Land Register	8	0.8%	27	-70.4% ↓
Other	7	0.7%	13	-46.2% ↓
Registration in the Companies Register	5	0.5%	2	150.0% ↑
No Dispute	4	0.4%	13	-69.2% ↓
Succession Proceedings	3	0.3%	9	-66.7% ↓
Elections	0	0.0%	2	-100.0% ↓
Total	**1003**	**100.0%**	**1003**	**0.0%**

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

INITIATORS OF THE DISPUTE (P)	NUMBER OF CASES
Finančni urad Murska Sobota (Murska Sobota Financial Office)	1
Marijan Bunc	1
Medobčinski inšpektorat in redarstvo Maribor (Maribor Intermunicipal Inspectorate and Traffic Wardens Department)	1
Ministrstvo za okolje in prostor, Inšpektorat za okolje in prostor, Območna enota Ljubljana (Ministry of the Environment and Spatial Planning, Inspectorate for the Environment and Spatial Planning, Ljubljana Regional Unit)	1
Občina Dobrepolje (Dobrepolje Municipality)	1
Policijska postaja Ljubljana Bežigrad (Ljubljana Bežigrad Police Station)	1
Uprava uniformirane policije, Specializirana enota za nadzor prometa (Uniformed Police Directorate, Specialised Unit for Traffic Control)	1
Total	**7**

2. 3. Cases Resolved

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

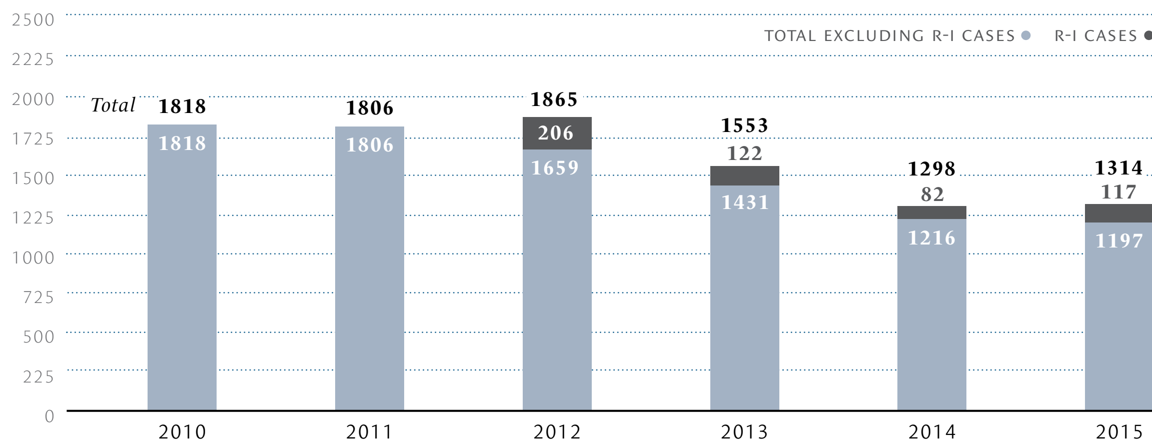


Table **11** Number of Cases Resolved according to Type of Case and Year Resolved

	U-I	UP	P	U-II	PS	RM	MP	TOTAL	R-I*	INCLUDING R-I
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
2015	221	964	10	2	/	/	/	1197	117	1314
2015 / 2014	**↓ -18.5%**	**↑ 3.3%**	**↓ -16.7%**					**↓ -1.6%**	**↑ 42.7%**	**↑ 1.2%**

* 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 2015 (excluding R-I)

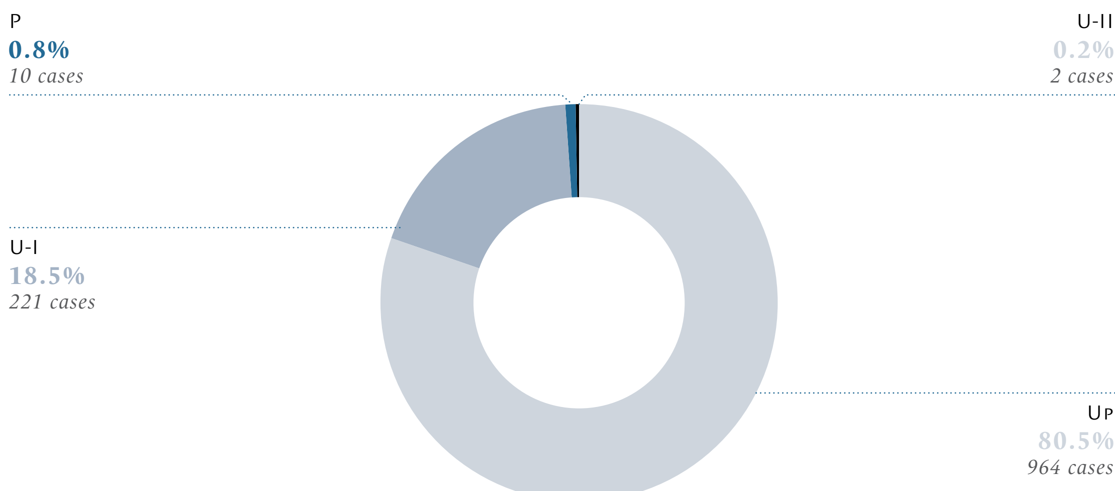


Figure **10** Distribution of Cases Resolved according to Type of Case and Year Resolved (including R-I Cases)

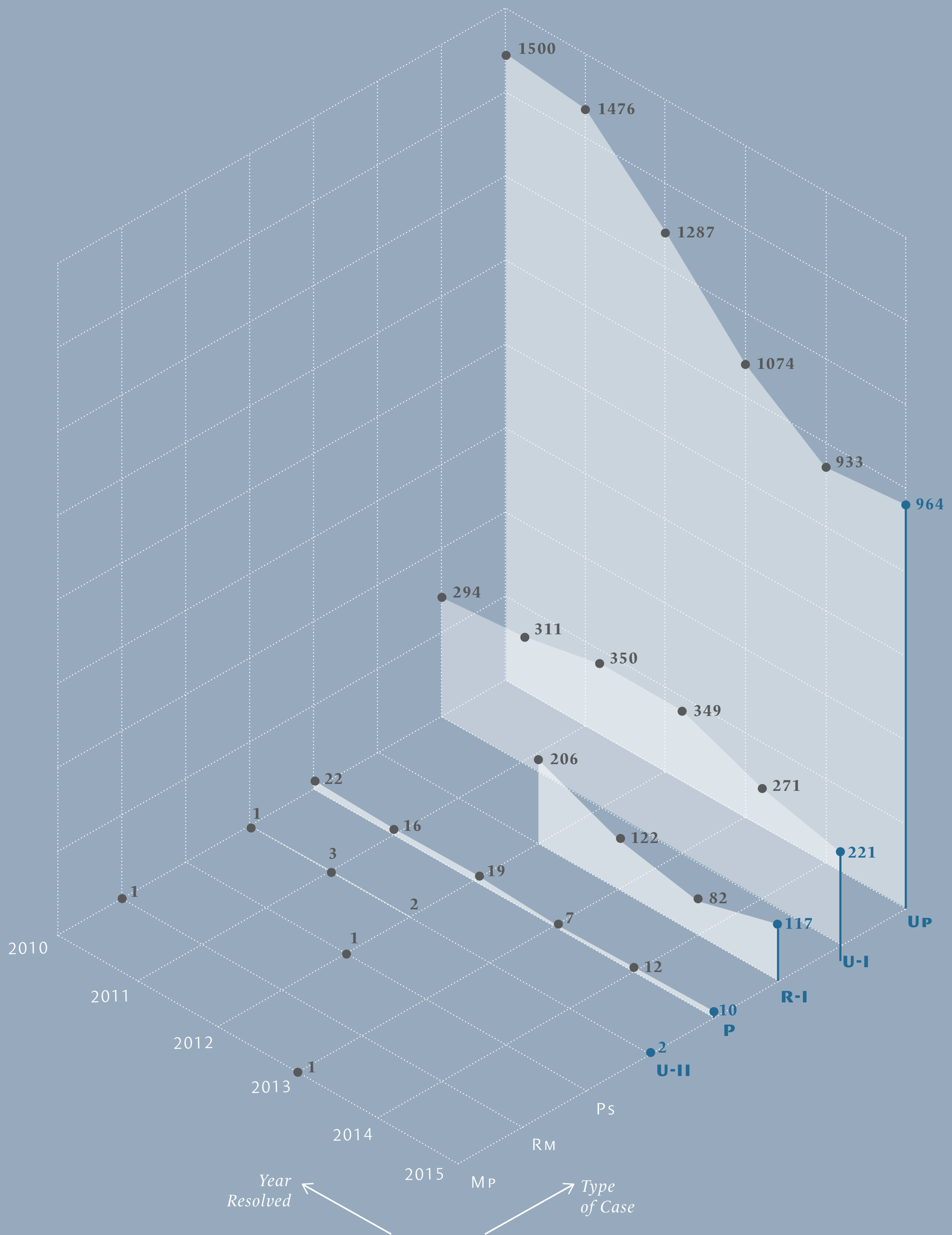


Table **12** Number of U-I Cases Resolved according to Type of Resolution and Year

TYPE OF RESOLUTION	2015 REQUESTS	2015 PETITIONS / *SUA SPONTE*	2015	2014	2013	2012	2011	2010
Abrogation of statutory provisions	5	4	9	11	6	6	8	8
Inconsistency with the Constitution – statutory provisions	2	3	5	4	3	2	3	4
Inconsistency with the Constitution and determination of a deadline – statutory provisions	1	1	2	5	5	1	8	7
Not inconsistent with the Constitution – statutory provisions	6	4	10	0	15	9	19	15
Inconsistency, abrogation, or annulment of provisions of regulations	2	3	5	7	12	22	30	6
Not inconsistent with the Constitution or the law – provisions of regulations	0	0	0	2	1	2	7	1
Dismissed	0	37	37	38	61	39	50	26
Rejected	29	125	154	156	238	187	205	185
Proceedings were stayed	3	5	8	31	22	82	9	4

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

YEAR	CIVIL	ADMINISTRATIVE	CRIMINAL	TOTAL
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
2015	507	357	100	964
2015/2014	**↑ 16.0%**	**↓ -1.1%**	**↓ -25.9%**	**↑ 3.3%**

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

	CIVIL	ADMINISTRATIVE	CRIMINAL	TOTAL
All R-I Cases	138	106	121	365
R-I Cases Resolved in the R-I Register (by the presumption that they had not been lodged)	33	38	46	117
Up Cases Resolved	507	357	100	964
Up and R-I Cases Resolved	**540**	**395**	**146**	**1081**
Up and R-I Cases Resolved in 2014	**471**	**402**	**182**	**1055**
Compared to 2014	**↑ 14.6%**	**↓ -1.7%**	**↓ -19.8%**	**↑ 2.5%**

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

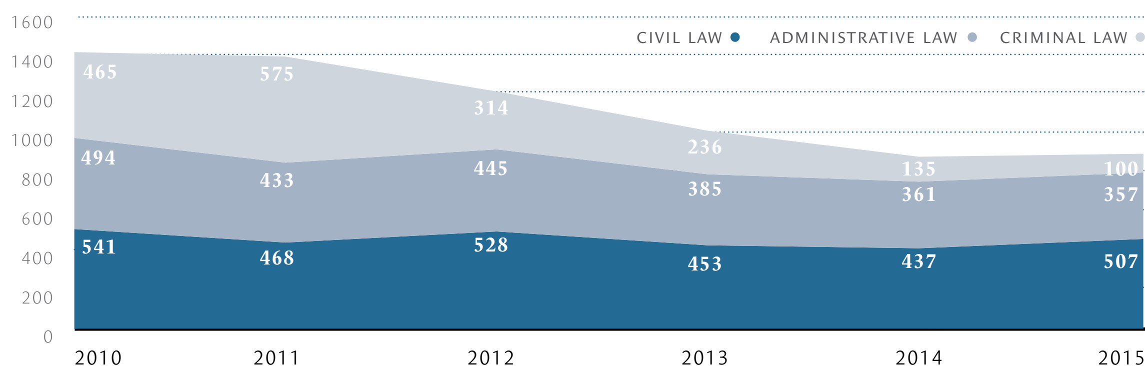


Table **15** Number of Up Cases Resolved according to Type of Dispute

TYPE OF DISPUTE	2015	PERCENTAGE IN 2015	2014	CHANGE 2015/2014
Civil Law Litigation	277	28.7%	241	14.9% ↑
Other Administrative Disputes	116	12.0%	87	33.3% ↑
Social Law Disputes	81	8.4%	40	102.5% ↑
Criminal Cases	74	7.7%	100	-26.0% ↓
Labour Law Disputes	71	7.4%	119	-40.3% ↓
Commercial law Disputes	71	7.4%	33	115.2% ↑
Execution of Obligations	59	6.1%	73	-19.2% ↓
Taxes	36	3.7%	51	-29.4% ↓
Non-litigious Civil Law Proceedings	33	3.4%	26	26.9% ↑
Proceedings related to the Land Register	26	2.7%	27	-3.7% ↓
Insolvency Proceedings	25	2.6%	24	4.2% ↑
Minor Offences	25	2.6%	34	-26.5% ↓
Civil Status of Persons	16	1.7%	14	14.3% ↑
Denationalisation	12	1.2%	8	50.0% ↑
Matters concerning Spatial Planning	11	1.1%	32	-65.6% ↓
Succession Proceedings	10	1.0%	3	233.3% ↑
No Dispute	9	0.9%	4	125.0% ↑
Other	8	0.8%	12	-33.3% ↓
Registration in the Companies Register	4	0.4%	1	300.0% ↑
Elections	0	0.0%	4	-100.0% ↓
Total	**964**	**100.0%**	**933**	**3.3%** ↑

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 %
2015	**964**	**81**	**76**	**7,9 %**

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%		
2015	**221**	**33**	**14.9%**	**964**	**81**	**8.4%**	**10**	**8**	**80.0%**	2	

Table **18** Certain Types of Resolutions

	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
2015	**153**	**37**	**1**	**633**	**334**	**9**

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

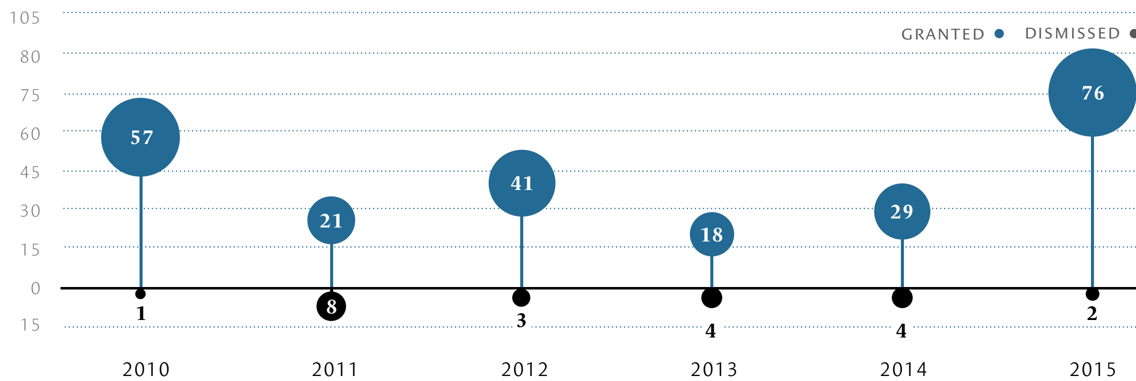


Table **19** Average Duration in Days of Cases Resolved in 2015 according to Type of Case

REGISTER	AVERAGE DURATION IN DAYS
U-I	336
Up	272
P	268
U-II	99
R-I	48
Total	**228**
Total excluding R-I cases	**283**

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

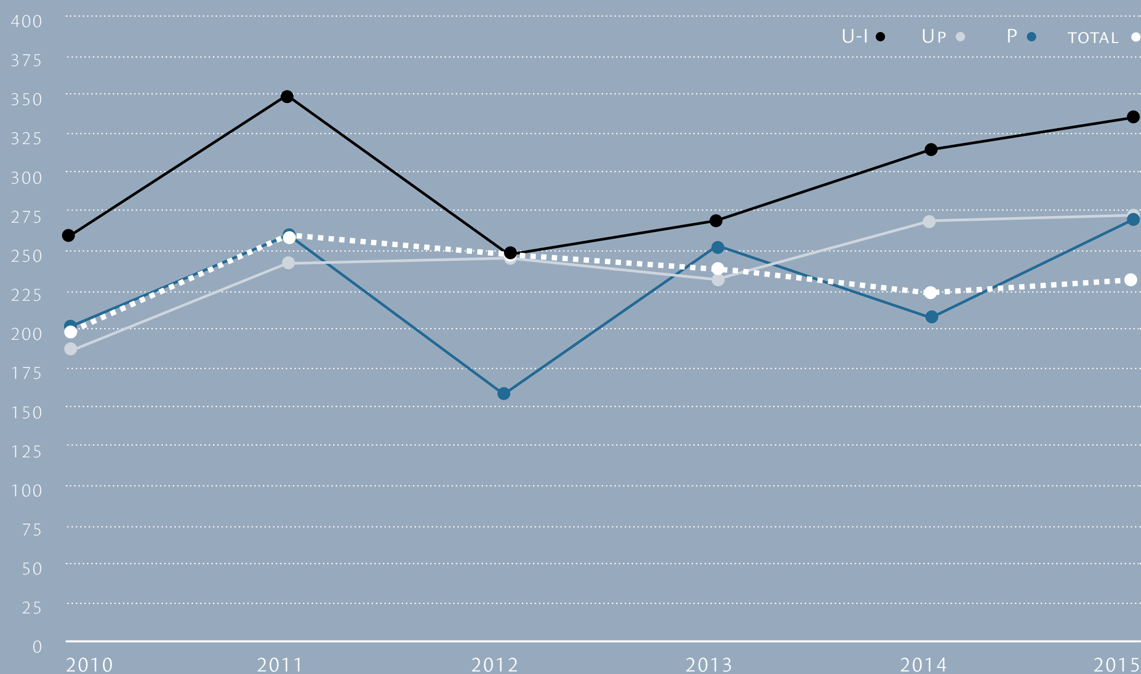


Figure **14** Average Duration in Days of Up Cases Resolved according to Year (excluding R-I Cases)

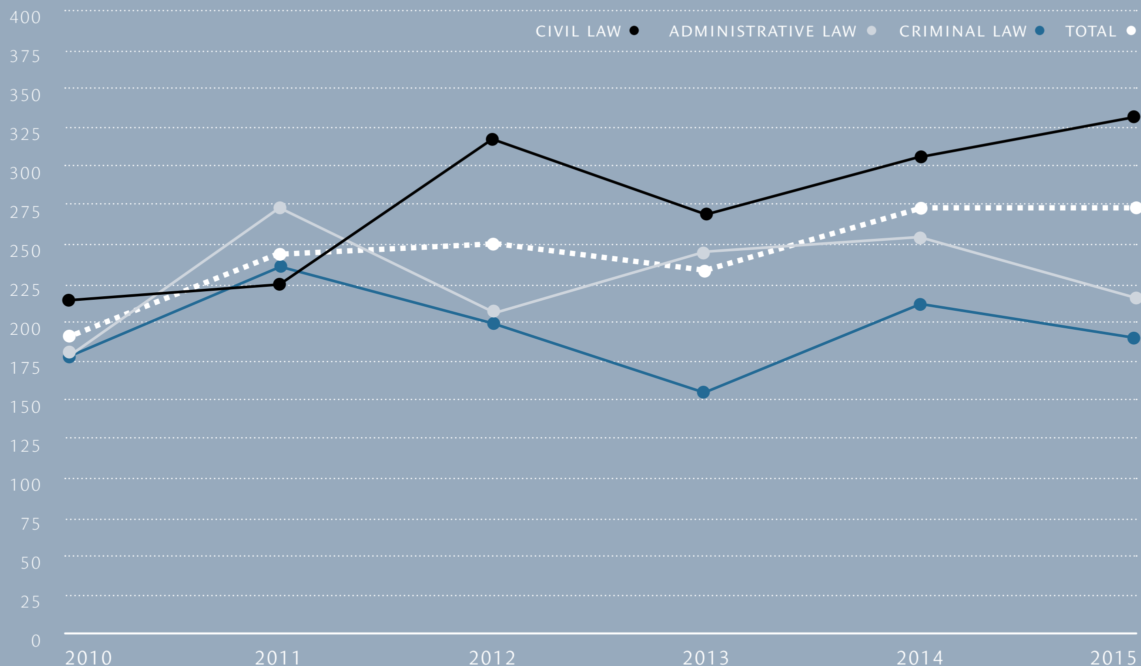


Table **20** Average Duration in Days of Up Cases Resolved according to Panel

PANEL	2015	2014	CHANGE 2015 / 2014
Civil Law	331	304	8.8% ↑
Administrative Law	213	252	-15.4% ↓
Criminal Law	188	209	-10.0% ↓
Total	**272**	**270**	**↑ 0.9%**

2. 4. Unresolved Cases

Table **21** Unresolved Cases according to Year Received as of 31 December 2015

YEAR	2013	2014	2015	TOTAL
U-I	14	58	133	205
P		5	6	11
Up	8	176	589	773
Total	**22**	**239**	**728**	**989**
+ R-I			52	52
Total including R-I cases	**22**	**239**	**780**	**1041**

Table **22** Temporary Suspensions of Regulations and Individual Acts as of 31 December 2015

REGISTER	TEMPORARY SUSPENSIONS
U-I	1
Up	8
Total	**9**

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

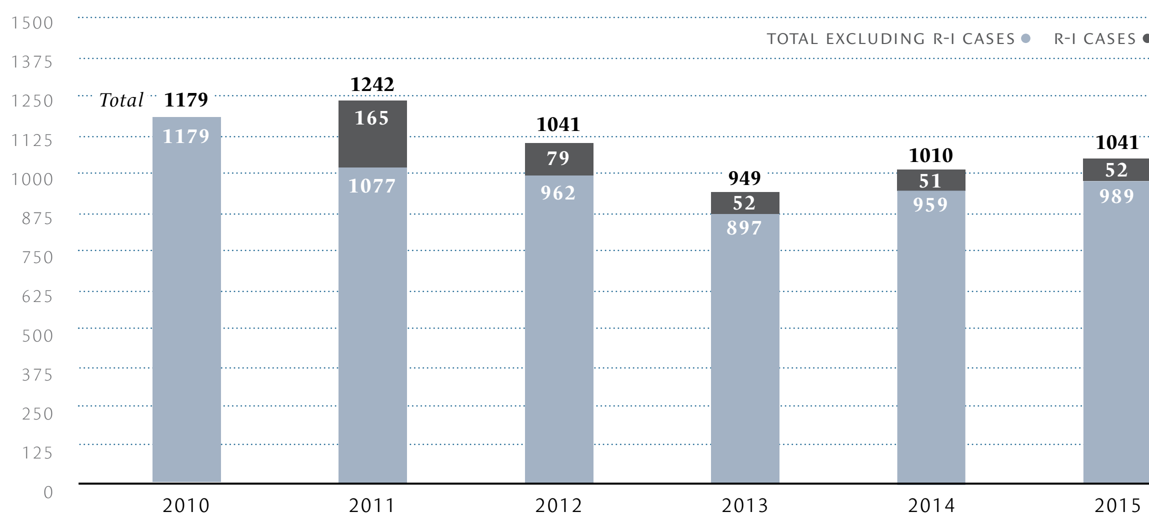


Figure **16** Cases Received and Cases Resolved (excluding R-I Cases)

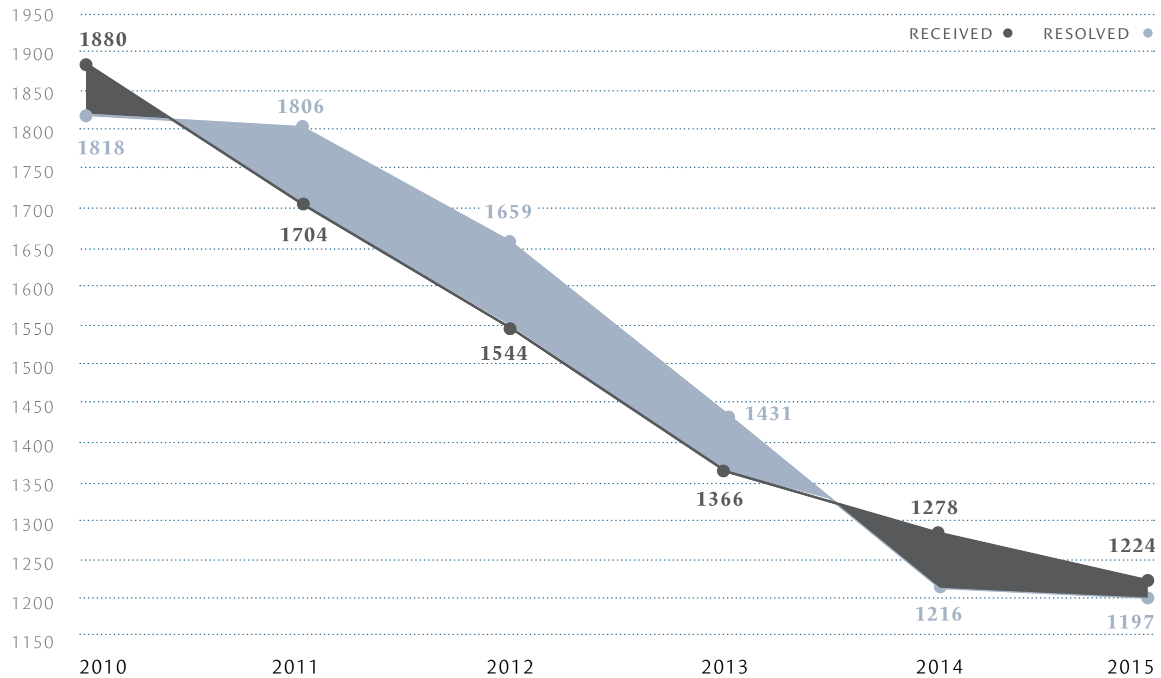


Table **23** Priority Cases Pending as of 31 December 2015

REGISTER	ABSOLUTE PRIORITY CASES	PRIORITY CASES	TOTAL
Up	18	265	283
U-I	39	32	71
P	0	11	11
R-I	1	9	10
Total	**58**	**317**	**375**

2.5. Realisation of the Financial Plan

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

***** In previous annual reports, the data on the expenditure of public resources only referred to resources from the state budget. The data presented below, however, also include the Constitutional Court's own resources, and therefore the data relating to expenditure according to year are slightly different than in the reports on the work of the Constitutional Court in previous years.

YEAR	SALARIES	MATERIAL COSTS	CAPITAL OUTLAYS	TOTAL	CHANGE FROM PREVIOUS YEAR
2010	3,902,162	704,651	386,564	4,993,377	7.2% ↑
2011	3,834,448	732,103	143,878	4,710,429	-5.7% ↓
2012	3,496,436	560,184	84,726	4,141,346	-12.1% ↓
2013	3,092,739	542,058	65,171	3,699,968	-10.7% ↓
2014	3,076,438	530,171	98,230	3,704,839	0.1% ↑
2015	**3,050,664**	**542,833**	**171,010**	**3,764,507**	**1.6%** ↑

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

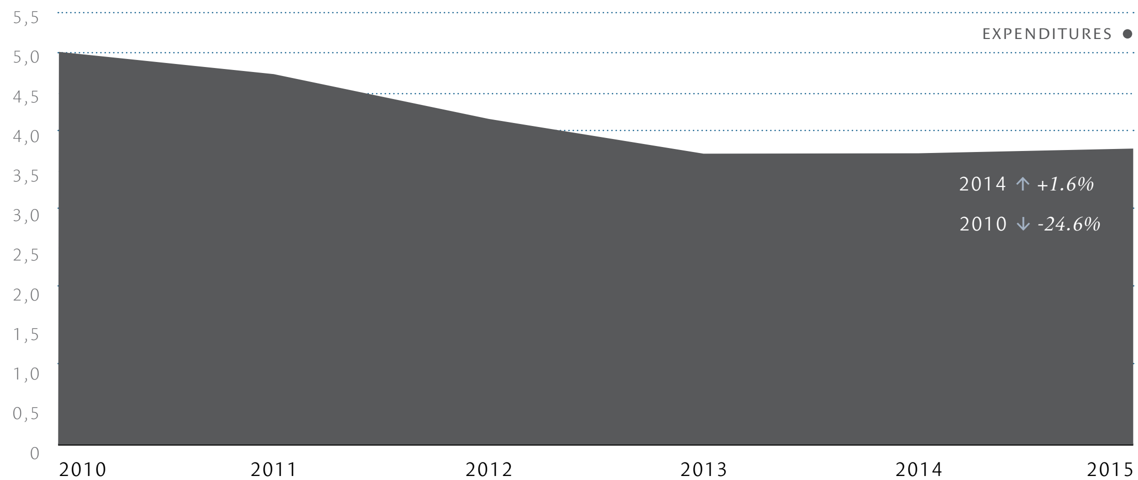


Figure **18** Distribution of Expenditures in 2015

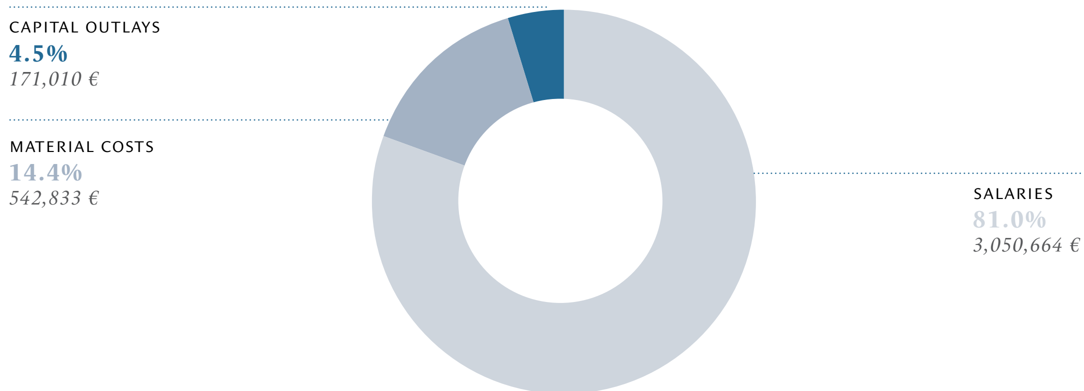
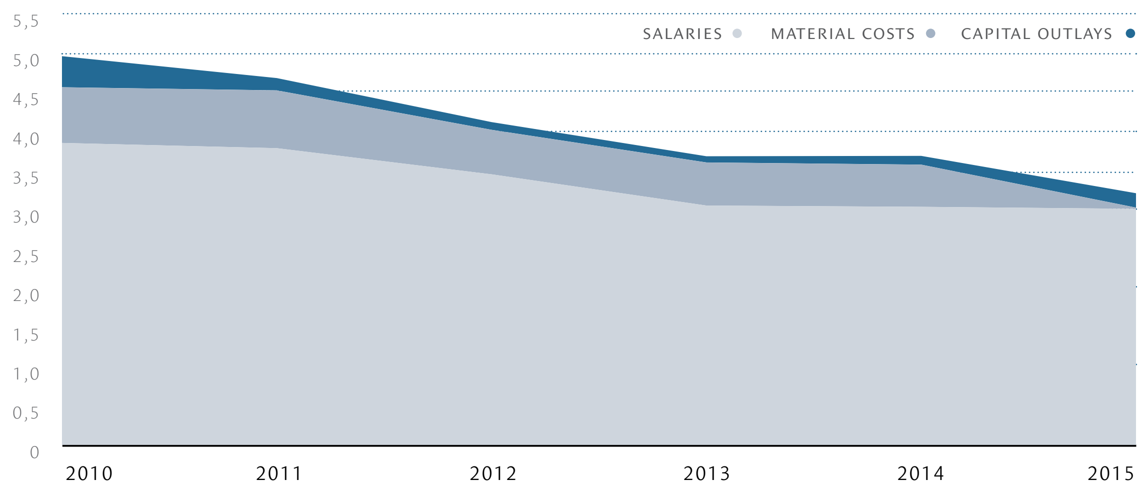


Figure **19** Distribution of Expenditures by Year (in EUR mil.)



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 mete out, and we will not find justice, if there is no justice inside of us.

Leonid Pitamic

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