The Constitutional Court of the Republic of Slovenia

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An Overview of the Work for 2016

Foreword by the President of the Constitutional Court

In a report published once a year, the Constitutional Court of the Republic of Slovenia provides concise insight into its work. I use the term concise, as in fact the Constitutional Court provides insight into its work with every decision it publishes. Through the decisions adopted within the framework of its jurisdiction, the Court fulfils the role of guardian of the Constitution in relation to the legislative and executive branches of power, in relation to the judiciary, with the Supreme Court of the Republic of Slovenia as its highest authority, as well as in relation to all holders of public authority and local government authorities in the state. When carrying out their competences and thus their duties, all of them are bound directly by the Constitution and they must act in accordance with such. In a state governed by the rule of law, they cannot reject this duty by objecting that they do not have to concern themselves with constitutionality, as in any event the Constitutional Court will have the final say as to whether their conduct was constitutional or not. It is they who are primarily bound by the Constitution, and the Constitution only established the Constitutional Court as the guardian who shall have the final authoritative say on the interpretation of the Constitution. The annual report of the Constitutional Court is therefore not only an illustration of its work, but it also delivers, albeit with a certain delay, equally important messages regarding whether and to what extent the Constitution, the fundamental legal and political act governing our peaceful co-existence, has been observed in the work of other authorities.

The year 2016 was marked by a large number of decisions adopted on the merits, i.e. the most significant decisions, in which the Constitutional Court, when reviewing the constitutionality of challenged acts, interprets the Constitution and the international instruments that our state has undertaken to respect. Some of these decisions have been selected due to their precedential character and their social importance in the view of the Constitutional Court and are presented herein in more detail. Observance of Constitutional Court decisions namely presupposes that one is acquainted with their content. In the hunt for fast news the media all too often devote too little attention to the content of Constitutional Court decisions and thus ignore the fact that knowledge of the content of the adopted decisions is of utmost importance. It ensures the predictability of the work of the authorities of the state and local government with regard to constitutional law and therefore provides an area of individual freedom wherein individuals can enjoy their freedom precisely due to the fact that they can rely on the law. As the provisions of the Constitution are the most important common denominator of the law, the manner in which they have been interpreted by the Constitutional Court is essential.

As in all previous years, the report specifically draws attention to Constitutional Court decisions establishing the unconstitutionality of laws that require that the legislature respond within a time limit determined by the Constitutional Court. It has almost become a rule that the legislature responds to such with a delay, and some decisions remain unimplemented even after an unacceptable amount of time. As the Constitutional Court has regularly stressed, such conduct entails a violation of the principles of a state governed by the rule of law and the principles of the separation of powers. In a state governed by the rule of law, Constitutional Court decisions are observed; in a state with a constitutional order that upholds the principle of the separation of powers, each branch of power must perform its constitutional duties in a responsible manner. It is the legislature's duty to respond to declaratory Constitutional Court decisions, and in connection therewith, no less importance can be attributed to the duty of the Government, whom the Constitution authorises to propose laws, to ensure the timely introduction of draft laws in order to remedy established unconstitutionalities.

In 2016, once again an increase in the number of new cases was recorded, although it has been clear for some time that the Constitutional Court cannot cope with its extensive workload, whereby the capacity of the Court would be similarly impaired whether it received 200 cases more or 200 cases less. Above all, the Court cannot ensure that all cases are decided in a reasonably short time. The constitutional amendments regarding the competences and work of the Constitutional Court that were prepared several years ago but which did not gain sufficient political support are at least as necessary today as they were then. In fact, they are even more necessary today, as the Constitutional Court receives ever fewer cases that are relatively easy to resolve by means of the appropriate organisation of its work, and significantly more cases whose resolution requires in-depth constitutional law analysis by the Constitutional Court judges. The appropriate consideration of such cases naturally requires a certain amount of time, which, due to the great number of pending cases, is always in short supply. The fact that the Constitutional Court judges are constantly overburdened, as are the advisors assisting the judges with their excellent work, certainly does not contribute to effective and high-quality constitutional adjudication.

The data regarding the established unconstitutionalities of regulations and the granted constitutional complaints with regard to cases decided by the Constitutional Court in 2016 show no special characteristics. Taking into account the total share of constitutional complaints granted, it has to be noted that violations of human rights were only established in a very small number of the cases resolved. In this regard, it should be highlighted that the regular judiciary is sometimes the subject of unjustified criticism. This is even truer when the criticism comes from politicians. Politicians themselves occasionally significantly contribute to the

established violations. In certain instances, whose number is not insignificant, violations of human rights in judicial proceedings can be attributed to the legislature, as already the applicable law itself was unconstitutional. Such was the case in all instances where the Constitutional Court first established the unconstitutionality of a law, and subsequently also a violation of a human right by a judicial decision; cases of this type were also decided last year. In this regard, it is a welcome fact that requests for a review of the constitutionality of laws are ever more frequently being lodged by courts. They evidently act in such manner so as to avoid human rights violations in judicial proceedings. Building on these findings, one cannot agree with the generalised claim that courts do not observe the Constitution and the human rights and fundamental freedoms it guarantees when adjudicating. This only happens in isolated cases. These are precisely the cases in which the legal order provides a special legal remedy before the Constitutional Court in order to eliminate violations. Although the Constitutional Court does not constitute a part of the regular judiciary, constitutional law integrates both into a single legal system determined by the Constitution in order to ensure respect for human rights and fundamental freedoms in judicial proceedings. The existence of legal remedies intended to eliminate violations of the Constitution in judicial proceedings lies at the very essence of the functioning of the state administration, also as regards the decision-making of the Constitutional Court on constitutional complaints.

The year 2016 witnessed the beginning of personnel changes among the judges of the Constitutional Court. For the most part of last year, i.e. up until he concluded his term of office at the end of October, Mag. Miroslav Mozetič was the president of the Constitutional Court. He deserves our sincere gratitude for his work as a Constitutional Court judge as well as during his terms as vice-president and president of the Constitutional Court. We are equally grateful to Mag. Marta Klampfer for her work as a Constitutional Court judge; she also concluded her term of office in 2016. We expect even further changes in the first half of this year. Every change of a Constitutional Court judge temporarily slows down the work of the Constitutional Court. This time will be no different. However, there will be an opportunity to remark further on this in a year's time when we once again review the work accomplished.

Dr Jadranka Sovdat

1. Introduction

On 25 June 1991, the Republic of Slovenia became a sovereign and independent state. The new and democratic Constitution, adopted on 23 December 1991, provided the legal basis for state power by means of the highest legal act of the state. The Constitution placed individuals and their dignity in the foreground by its extensive catalogue of human rights and fundamental freedoms. The Constitution, however, is more than merely a collection of articles; its content is, to a large extent, the result of the work of the Constitutional Court. The decisions of the Constitutional Court breathe substance and meaning into the Constitution, thus making it a living instrument and an effective legal act that can directly influence people's lives and well-being. The extensive case law of the Constitutional Court extends to all legal fields and touches upon various dimensions of individual existence as well as of society as a whole. Its influence on the personal, family, economic, cultural, religious, and political life of our society has been of extreme importance.

The Constitution and the Constitutional Court Act are the basis for the functioning of the Constitutional Court. The Constitutional Court adopts its Rules of Procedure in order to independently regulate its organisation and work, as well as to determine in more detail the rules governing the procedure before the Constitutional Court.

The Constitutional Court exercises extensive jurisdiction intended to ensure effective protection of constitutionality and legality, as well as to prevent violations of human rights and fundamental freedoms. The majority of the powers of the Constitutional Court are determined by the Constitution, which, however, also permits additional powers to be determined by law. In terms of their significance and share of the workload, the most important powers of the Constitutional Court are the review of the constitutionality and legality of regulations and the power to decide on constitutional complaints regarding violations of human rights and fundamental freedoms. A constitutional complaint may be lodged to claim a violation of rights and freedoms determined by the Constitution as well as those recognised by the applicable treaties ratified by the Republic of Slovenia.

When exercising its powers, the Constitutional Court decides by orders and decisions. From a substantive perspective, decisions on the merits, by which the Constitutional Court adopts precedential standpoints regarding the standards of protection of constitutional values, especially human rights and fundamental freedoms, are of particular importance for the development of (constitutional) law. In proceedings for a review of the constitutionality or legality of regulations, the Constitutional Court rejects a request or petition by an order, unless all procedural requirements are fulfilled. Furthermore, it can dismiss a petition by an order if it is manifestly unfounded or if it cannot be expected that it will result in the resolution of an

important legal question. The Constitutional Court decides cases on the merits (i.e. it decides on constitutionality and legality) by a decision. The situation is similar as regards constitutional complaints. If the procedural requirements are not fulfilled, the Constitutional Court rejects the constitutional complaint by an order. If they are fulfilled, it accepts the constitutional complaint for consideration if it concerns a violation of human rights or fundamental freedoms that has had serious consequences for the complainant, or if the constitutional complaint concerns an important constitutional question that exceeds the importance of the concrete case. Following consideration on the merits, by a decision the Constitutional Court dismisses as unfounded a constitutional complaint or it grants the complaint and (as a general rule) annuls or abrogates the challenged act and remands the case for new adjudication.

Other competences of the Constitutional Court include deciding on the constitutionality of treaties prior to their ratification, on disputes regarding the admissibility of a legislative referendum, on jurisdictional disputes, on the impeachment of the President of the Republic, the President of the Government, and individual ministers, on the unconstitutionality of the acts and activities of political parties, on disputes on the confirmation of the election of deputies of the National Assembly and other similar disputes, and on the constitutionality of the dissolution of a municipal council or the dismissal of a mayor.

The Constitutional Court adopts its decisions at sessions that are closed to the public. Before a decision is adopted, the cases are deliberated, as a general rule, in closed sessions; in some cases, however, in exception a public hearing is held. The Constitutional Court ensures that the public is informed of its work in particular by publishing its decisions and orders in official publications, on its website, and in the Collected Decisions and Orders of the Constitutional Court, which is periodically published in book form. In cases that are of more interest to the public, the Constitutional Court issues a special press release in order to present its decision.

The President of the Constitutional Court ensures that the work of the Constitutional Court is public also through the public presentation of the annual report on the work of the Court (the second paragraph of Article 23 of the Rules of Procedure of the Constitutional Court).

2. The Position of the Constitutional Court

In relation to other state authorities, the Constitutional Court is an autonomous and independent state authority. With regard to the principle of the separation of powers (the second sentence of the second paragraph of Article 3 of the Constitution) and the jurisdiction of the Constitutional Court (Article 160 of the Constitution), the Constitutional Court Act defines the Constitutional Court as the highest body of the judicial power for the protection of constitutionality, legality, and human rights and fundamental freedoms. Such position of the Constitutional Court is necessary due to its role as a guardian of the constitutional order and enables the independent and impartial decision-making of the Constitutional Court in protecting constitutionality and the human rights of individuals and legal persons in relation to any authority. It stems from the principle that the Constitutional Court is an autonomous and independent state authority, *inter alia*, that the Constitutional Court determines its internal organisation and mode of operation by its own acts (i.e. the Rules of Procedure of the Constitutional Court), and that it determines in more detail the procedural rules determined by the Constitutional Court Act. The competence of the Constitutional Court to independently decide on the appointment of its advisors and the employment of other staff is crucial for ensuring its independent and impartial work. The budgetary autonomy and independence of the Constitutional Court are also important.

In the Slovene legal order, which is founded on the principle of the separation of powers, it is paramount for the position of the Constitutional Court that its decisions are binding and final; no appeal or other legal remedy is allowed against its decisions. This binding nature entails that Constitutional Court decisions have to be observed and implemented in an appropriate manner.

As the Constitutional Court has stressed in a number of its decisions, the equality of all three branches of power follows from the principle of the separation of powers. Such entails that all three branches of power, and especially the highest authorities within each of the branches of power, must be awarded some autonomy in regulating their internal matters in relation to the other two branches of power.

Article 8 of the Constitutional Court Act, which in principle regulates the organisation and mode of work of the Constitutional Court, also determines the autonomy of the Constitutional Court in the budgetary field. The first paragraph of Article 8 provides that the funds for the work of the Constitutional Court are determined by the National Assembly upon the proposal of the Constitutional Court, and the second paragraph provides that the Constitutional Court shall decide on the use of these funds. The funds for the work of the Constitutional Court thus constitute a part of the budget of the Republic of Slovenia, however, according to the

Constitutional Court Act, the Court is autonomous as regards the preparation of its financial plan to be included in the draft budget of the state as well as in the use of the funds approved by the National Assembly. The provision of the third paragraph of Article 8 of the Constitutional Court Act explicitly states that supervision of the use of the funds shall be performed (only) by the Court of Audit. Even if such were not explicitly determined by the Constitutional Court Act, it would follow directly from the Constitution, as these premises are a reflection of the fundamental principle of the separation of powers and the relations between the central bearers of state power are constitutionally defined.

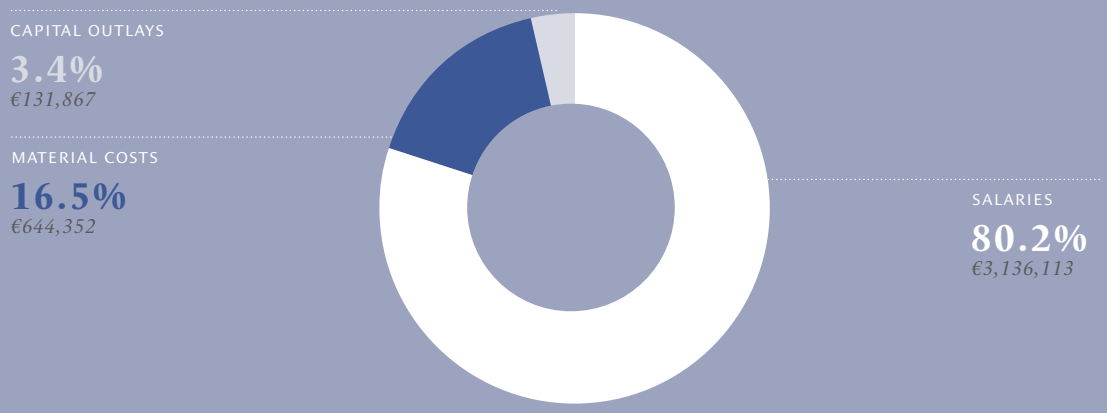
Every year, during the budgetary negotiations with the ministry responsible for public finance, the Constitutional Court repeatedly draws attention to the fact that the autonomy and independence of the Constitutional Court that derive from the Constitution and the Constitutional Court Act are not appropriately implemented by the Act governing public finance. What is particularly disputable is the statutory regulation of instances when the Government cannot reach a consensus with direct budget users that are not administrative authorities or organisations of the state, thus also not with the Constitutional Court. In such instances, the Government namely includes its own financial plan in the draft budget of the state, whereas the financial plan proposed by the Constitutional Court is only included in the explanatory notes accompanying the draft budget. Although the final decision is left to the National Assembly, it is evidently primarily a decision on the Government's proposal. Given the specific constitutional position of the Constitutional Court, exactly the opposite approach would be consistent with the Constitution. The Public Finance Act should determine that in instances when the Government cannot reach a consensus with the Constitutional Court regarding the Court's proposed financial plan, the financial plan as proposed by the Constitutional Court shall be included in the draft budget and the plan proposed by the Government shall be included in the explanatory notes accompanying the budget.

From the perspective of the budgetary autonomy of the Constitutional Court, the regulation that, subject to certain conditions, requires the Court to obtain prior approval from the ministry responsible for public finance before concluding contracts or incurring financial obligations, even if it is acting within the framework of the adopted budget, is also unacceptable. This regulation is unconstitutional as it can significantly interfere with the exercise of the powers of the Constitutional Court. Enforcement measures that interfere with the budgetary appropriations adopted by the National Assembly should not apply to the Constitutional Court as they interfere with its independence and impede its work.

As in previous years, also in 2016 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 slightly, more precisely by 1.6%, and amounted to EUR 3,764,507. In 2016, the realised budget again increased slightly and amounted to EUR 3,912,332, i.e. 3.9% more than in 2015. Cohesion funds comprised 0.57% thereof. It is evident that the expenditure of the Constitutional Court in 2016 was 21.6% lower in comparison to 2010, when the realised budget amounted to EUR 4,993,377.

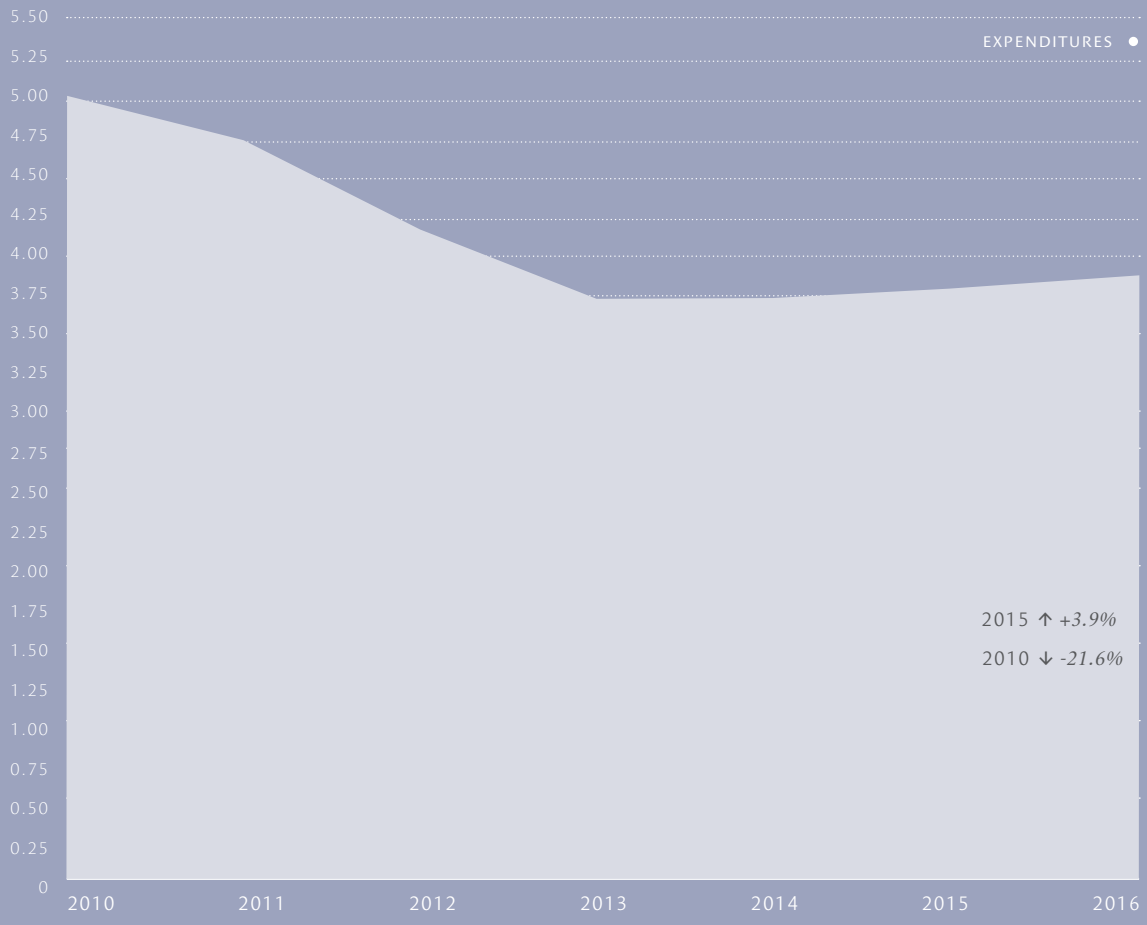
Distribution of Expenditures in 2016

(see page 101)



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

(see page 101)



3. Respect for the Decisions of the Constitutional Court

The issue of respect for Constitutional Court decisions arises in particular with regard to so-called declaratory decisions that do not abrogate a law or other regulation, but merely establish its unconstitutionality or illegality. 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 sentence of 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 within the specified time limit. In a number of its decisions, the Constitutional Court has stressed that the failure of a competent issuing authority to respond to a Constitutional Court decision within the specified time limit entails a serious violation of the principles of a state governed by the rule of law and the principle of the separation of powers.

At the end of 2016 there remained ten unimplemented Constitutional Court decisions, nine of which refer to statutory provisions and one to a regulation of a local community. While it falls within the competence of the National Assembly as the legislature to remedy unconstitutionalities in laws, the duty of the Government, as the constitutionally appointed proposer of draft laws, to prepare draft laws promptly and submit them for the legislative procedure must be stressed as well. It falls within the competence of municipal authorities to remedy the unconstitutionalities and illegalities in local regulations.

The oldest unimplemented decision dates from 1998 (Decision No. U-I-301/98, dated 17 September 1998, Official Gazette RS, No. 67/98). This decision established the unconstitutionality of certain provisions of the Establishment of Municipalities and Municipal Boundaries Act defining the territory of the Urban Municipality of Koper. Furthermore, 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 municipalities have remedied the established illegality of their charters, the Municipality of Grosuplje has not responded to the decision of the Constitutional Court by

amending its municipal charter. In this regard, it must be added that the state already ensured the constitutionality and legality of the composition of municipal councils through the enactment of the Act Amending the Local Self-Government Act (Official Gazette RS, No. 70/09). In accordance with the seventh paragraph of Article 39 of the Local Self-Government Act, the election of a representative of the Roma community is carried out by the State Electoral Commission if a municipality fails to implement the right of the Roma community to a representative in the municipal council.

The time limit for remedying the unconstitutionality established by Decision No. U-I-50/11, dated 23 June 2011 (Official Gazette RS, No. 55/11), expired already in 2012, and the legislature has not yet responded thereto. By that decision 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 are 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.

In 2016, the time limits for remedying the unconstitutionalities established by three Constitutional Court decisions expired and the legislature has not yet responded appropriately thereto. By Decision No. U-I-269/12, dated 4 December 2014 (Official Gazette RS, No. 2/15), the Constitutional Court found that the regulation of the financing of private primary schools determined by the Organisation and Financing of Education Act is inconsistent with the second paragraph of Article 57 of the Constitution, which ensures pupils the right to attend compulsory state-approved primary education programmes free of charge in public and private schools. By Decision No. U-I-156/11, Up-861/11, dated 10 April 2014 (Official Gazette RS, No. 35/14) the Constitutional Court established the unconstitutionality of the National Assembly Elections Act as it does not regulate the access of persons with disabilities to polling stations, but leaves such entirely to the decisions of electoral authorities. As a result, the challenged regulation is contrary to the right of persons with disabilities to non-discriminatory treatment (indirect discrimination) in relation to the right to vote (the first paragraph of Article 14 in conjunction with the second paragraph of Article 43 of the Constitution). By Decision No. U-I-227/14, Up-790/14, dated 4 June 2015 (Official Gazette RS, No. 42/15), the Constitutional Court established the unconstitutionality of the Deputies Act as it did not ensure effective judicial protection against a decision on the termination of office of a deputy.

In four decisions out of a total of ten decisions to which the legislature has not yet responded, although the time limit determined for remedying the established unconstitutionality or illegality has expired, the Constitutional Court determined the manner of implementation of the decision on the basis of the second paragraph of Article 40 of the Constitutional Court Act. In doing so, the Court ensured effective provisional protection of the human rights of individuals in concrete proceedings. However, the determination of the manner of implementing a decision does not relieve the legislature of its duty to respond by adopting a law, as it does not entail that the legislature's competence and duty to adopt an appropriate statutory regulation have not ceased.

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 provision of 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 members 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 specifically regulate the handling of classified information and thus the Classified Information Act also applies in judicial proceedings in accordance with the Civil Procedure Act even though it is not adapted to the nature of such proceedings.

There remain two further decisions to which the legislature has responded only partially. Decision No. U-I-7/07, Up-1054/07, dated 7 June 2007 (Official Gazette RS, No. 54/07), 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. Decision No. U-I-214/09, Up-2988/08, dated 8 July 2010 (Official Gazette RS, No. 62/10), remains unimplemented insofar as it concerns the established unconstitutionality of the Social Security Contributions Act as regards contributions for unemployment insurance.

4. The Composition of the Constitutional Court

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

4.1. The Judges of the Constitutional Court

Assist. Prof. Dr Jadranka Sovdat, President
Assist. Prof. Dr Etelka Korpič – Horvat, Vice President
Dr Mitja Deisinger
Jasna Pogačar
Jan Zobec
Prof. Dr Ernest Petrič
Dr Dunja Jadek Pensa
Assist. Prof. Dr Špelca Mežnar
Marko Šorli

Judges who completed their term of office in 2016:
Mag. Miroslav Mozetič
Mag. Marta Klampfer

Assumed the office of judge

19 December 2009

Held the office of Vice President

from 11 November 2013
until 30 October 2016

Assumed the office of President

31 October 2016

Assist. Prof. Dr Jadranka Sovdat, President,

graduated from the Faculty of Law of the University of Ljubljana in 1982. In 1983 she passed the public administration examination, and the following year the state legal examination. After graduation, she began working at the Ministry of Justice. At the Ministry of Justice she carried out expert work in the field of the system of justice, and after 1990 she was involved primarily in the drafting of legislation in this field. She is *inter alia* the co-author of legislation and legislative materials in the field of attorneyship, the organisation of the courts and judicial service, the state prosecution, and judicial review of administrative acts that were drafted in the first years after the implementation of the new constitutional order. During her final year at the Ministry she was head of the Justice Division, the work of which included both the drafting of legislation as well as tasks related to the financing and administration of the system of justice. In 1994 she was appointed legal advisor to the Constitutional Court, and later she also assumed the office of Deputy Secretary General of the Constitutional Court. In 1999, she was appointed Secretary General of the Constitutional Court and held this office until her election as judge of the Constitutional Court. Following the defence of her master's thesis, entitled "Judicial Protection of the Right to Vote in State Elections", she completed the postgraduate study of constitutional law at the Faculty of Law of the University of Ljubljana and obtained the Master of Legal Sciences degree. At the same university, she was also awarded the academic title of Doctor of Legal Sciences after defending her doctor's thesis, entitled "Electoral Disputes". She has delivered papers on constitutional law at national and international legal conferences. In 1993 she spent short study periods at the *Conseil d'État* of the Republic of France focusing on judicial review of administrative acts and in 1998 at the *Conseil constitutionnel* of the Republic of France studying electoral disputes. She has published scientific monographs and numerous articles on constitutional law and is the co-author of the Commentary on the Constitution of the Republic of Slovenia (2002) and its supplements (2011). She is Assistant Professor at the Faculty of law of the University of Ljubljana. As an external staff member, she lectures on constitutional procedural law and on parliamentary and electoral law. She commenced duties as judge of the Constitutional Court on 19 December 2009. She was Vice President of the Constitutional Court from 11 November 2013 until 30 October 2016. She assumed the office of President of the Constitutional Court on 31 October 2016.

Assumed the
office of judge

28 September 2010

Assumed the office
of Vice President

31 October 2016

Assist. Prof. Dr Etelka Korpič – Horvat, Vice President,

graduated from the Faculty of Law of the University of Ljubljana, where she also completed a Master's Degree and, in 1991, successfully defended her doctoral dissertation regarding the impact of home-country and international employment on deagrarization in the Pomurje Region, which was also published. She began her career as an intern, and subsequently a manager, at ABC Pomurka. She also passed the state legal examination. She was employed as Director of the Murska Sobota subsidiary of the Public Audit Service for eight years and subsequently worked for nine years as a member and Deputy President of the Court of Audit of the Republic of Slovenia until February 2004. From 1994 until she was elected judge of the Constitutional Court she taught labour law at the Faculty of Law of the University of Maribor. At the same Faculty she was head of the institute for employment relationships and social security and lead lecturer for the subjects Budget Law and State Revision as well as Individual Labour Law as part of the Master's Degree programmes in tax law and labour law, respectively. She has held several important positions: she was president of a panel of the Court of Associated Labour in Murska Sobota for two terms; for one term of office she was a deputy in the Chamber of Municipalities of the Assembly of the Republic of Slovenia; for over 20 years she was president of a panel of the Court of Honour of the Slovene Chamber of Commerce and Industry; she was a member of the Judicial Council; president of the Commission for the Interpretation of the Collective Agreement for the Public Sector; president of the Commission for the Interpretation of the Collective Agreement for the Wood Industry in the Republic of Slovenia; president of the Programme Committee of the Dr Vanek Šiftar Scientific Foundation; and president of the Žitek Agri-Tourism Cooperative in Čepinci. She is a member of the state legal examination commission and a member of the Pomurje Union of Academic Sciences. Her bibliography includes approximately 240 publications, mainly in labour law, budget law, and the field of state audit. The most important among them include the following: Zaposlovanje in deagrarizacija pomurskega prebivalstva [Employment and Deagrarization of the Residents of Pomurje], 1992; Zakon o računskem sodišču s komentarjem [The Court of Audit Act with Commentary], 1997; Zakon o delovnih razmerjih s komentarjem [The Employment Relationships Act with Commentary], 2008, co-author; Proračunsko pravo [Budget Law], 2007, co-author; Individualno delovno pravo [Individual Labour Law], 2004; Autonomnost postupka nadzora računskog suda Republike Slovenije [The Autonomy of the Supervisory Procedure of the Court of Audit of the Republic of Slovenia], 1996; and Termination of Employment Contract at the Initiative of the Employer in the Republic of Slovenia, Internationales und vergleichendes Arbeits- und Sozialrecht, 2008. She has participated in numerous national and international legal conferences and meetings. She commenced duties as judge of the Constitutional Court on 28 September 2010 and assumed the office of Vice President of the Constitutional Court on 31 October 2016.

Assumed the
office of judge

27 March 2008

Dr Mitja Deisinger

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

Assumed the
office of judge

27 March 2008

Jasna Pogačar

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

Assumed the
office of judge

27 March 2008

Jan Zobec

graduated from the Faculty of Law of the University of Ljubljana in 1978. Thereafter he was employed as an intern at the District Court in Ljubljana. After he passed the state legal examination in 1981, he was elected judge of the Basic Court in Koper, and in 1985 judge of the Higher Court in Koper. Starting in the beginning of 1992 he was judge at the Higher Court in Ljubljana, where he was appointed senior higher court judge by the Judicial Council's decision of 13 April 1995. In May 2003 he became a judge of the Supreme Court of the Republic of Slovenia. For all twenty-six years of his hitherto judicial career he worked in litigation and civil law departments, while as a Supreme Court judge he occasionally also participated in sessions of the commercial law panel. As an expert in civil law, he participated in drafting the first amendment to the Civil Procedure Act in 2002, and was the president of the working group that drafted the Act on the Amendment to the Civil Procedure Act. In 2006 he led the expert group working on the Institution of Appellate Hearings project. He has taken part in various Slovene as well as foreign professional meetings and seminars, and lectured to judges of the civil and commercial law departments of the higher courts on the topic of amendments to the civil procedure and reform of the appellate procedure. As a lecturer he has often participated in judicial school seminars for civil and commercial law departments. He has been a member of the state legal examination commission in civil law since 2003. His bibliography includes 31 publications, mainly in the field of civil (procedural) law, including, *inter alia*, as co-author, Pravdni postopek (1. in 2. knjiga komentarja Zakona o pravdnem postopku) [The Civil Procedure - volumes 1 and 2 of a commentary on the Civil Procedure Act]. He commenced duties as a judge of the Constitutional Court on 27 March 2008.

Assumed the office of judge

25 April 2008

Held the office of President

from 11 November 2010
until 10 November 2013

Prof. Dr Ernest Petrič

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

Assumed the
office of judge

15 July 2011

Dr Dunja Jadek Pensa

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

Assumed the
office of judge

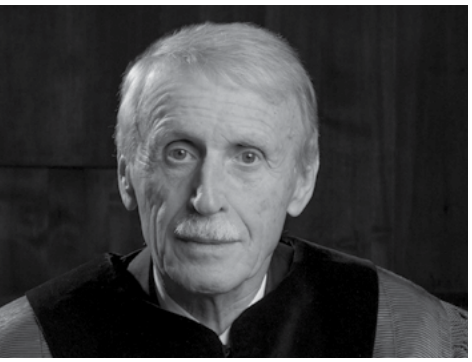
31 October 2016

Assist. Prof. Dr Špelca Mežnar

graduated from the Faculty of Law of the University of Ljubljana in 1999. In 2000, she completed postgraduate specialist studies in European Communities law, and, in 2002, she obtained a Masters Degree in civil and commercial law. She passed the bar exam in 2003, and following the successful defence of her doctoral thesis entitled "Copyright in the Conflict Rules of Private International Law", which she completed under the mentorship of Assist. Prof. Dr Miha Trampuž, she obtained a doctorate in law in 2004. In the following year, she received the "Young Lawyer of the Year" award from the Association of Lawyers of Slovenia for her thesis. Between 1999 and 2008, she worked at the Faculty of Law of the University of Ljubljana as a young researcher, and subsequently as a teaching assistant and assistant professor lecturing on private international law, commercial law, intellectual property law, and law of obligations. She regularly attended courses abroad, for which she also received grants: in 2001, in the USA (Franklin Pierce Law Center: copyright law) and the Netherlands (The Netherlands School of Human Rights and Katholieke Universiteit Leuven: human rights); in 2002, in Finland (Åbo Akademi, Turku: international law) and the Netherlands (Hague Academy of International Law: private international law); and in 2003, in Germany (Deutsche Institution für Schiedsgerichtsbarkeit – DIS, Cologne: international commercial arbitration) and the Netherlands (University of Columbia and Universiteit van Amsterdam: US law). In 2006, as a Marie Curie Scholarship student she participated in the project "Unfair Suretyship and European Contract Law" (Bremen, Germany). In the years 2012–2015, she led a group of researchers from Slovenia, Croatia, and Serbia in the FP7 project "Tenancy Law and Housing Policy in Multi-Level Europe". She is the author of several expert legal studies (Analysis of the Key Decisions of Slovene Courts concerning the Enforcement of Intellectual Property Rights, Pilot Field Study on the Functioning of the National Judicial Systems for the Application of Competition Law Rules, Study on Conveyancing Services Regulations in Europe). Starting in 2007, she first worked for the Čeferin law firm (commercial law department), and then in 2015 for the Vrtačnik law firm. She specialises in the fields of contract, tort, and copyright law as well as the law of consumer protection and public procurement. She is an arbitrator at the Slovene Chamber of Commerce and Industry. As a teacher and researcher at institutions of higher education, she has been working at the International School for Social and Business Studies in Celje since 2008. She is the author of numerous articles (her bibliography comprises over 100 entries in COBISS) and a regular lecturer at workshops for judges, attorneys, and other legal professionals. She commenced duties as judge of the Constitutional Court on 31 October 2016.

Assumed the
office of judge

20 November 2016



Marko Šorli

graduated from the Faculty of Law of the University of Ljubljana. Following a period as judge at Kranj Municipal Court from 1977 to 1981, he was judge at Ljubljana Higher Court until 1996, when he was appointed Supreme Court judge. Since 1999, he was in charge of the Department for International Judicial Cooperation of the same court and in 2000 he was appointed head of the Criminal Law Department and Vice President of the Supreme Court (a position he held until 2010). He is a member of the state legal examination commission for criminal law. In 1994, he was appointed to the Judicial Council and for the last two thirds of his term of office first held the position of Vice President and then President of the Council. In addition to his work on criminal law, throughout his entire judicial career he has actively participated in solving issues regarding the organisation and democratisation of the judiciary. He has presented papers at various conferences, seminars, and discussions in Slovenia and abroad. In 1997, at an international conference of representatives of Judicial Councils held in Poland he presented a contribution with the title "The Role of the Judicial Council in ensuring the independence of the Judiciary." At the fifth meeting of the Presidents of European Supreme Courts, under the theme "The Supreme Court: publicity, visibility and transparency" organised by the Council of Europe in Ljubljana in 1999, he presented the keynote speech entitled "Publicity of the activities of the Supreme Court." In 2002, he became a member of the European Commission for the Efficiency of Justice – CEPEJ. His written work includes more than 40 articles in professional publications and reviews and he is also a co-author of the Komentar Ustave Republike Slovenije [Commentary on the Constitution of the Republic of Slovenia], Fakulteta za državne in evropske študije.

Assumed the office of judge	Held the office of Vice President	Held the office of President	Completed his term of office
31 October 2007	*from* 11 January 2010 *until* 10 November 2013	*from* 11 November 2013 *until* 30 October 2016	30 October 2016

4. 2. Judges Who Completed Their Term of Office in 2016

Mag. Miroslav Mozetič

graduated from the Faculty of Law of the University of Ljubljana in 1976. Prior to that he had worked in the private sector, and in 1979 he passed the state legal examination. While working in the private sector he dealt with various legal fields, in particular with company law, labour law, and, mainly towards the end of this period, with foreign trade and the representation of companies before courts. At that time he continued his education by studying international and comparative commercial law at the Faculty of Law of the University of Zagreb. He also worked as a lawyer for one year. With short interruptions in 1990 and 1992 while performing the office of secretary of the Assembly of the City of Ljubljana and the office of director of its legal department, he continued to work in the private sector until 1992, when he was elected deputy of the first sitting of the National Assembly. During that term of office he was also Vice President of the National Assembly and actively participated in the drafting of its Rules of Procedure and the act which regulated the institute of parliamentary inquiry. In 1996 he was re-elected deputy of the National Assembly. During his second term of office he was a member of the delegation to the Parliamentary Assembly of the Council of Europe, where he was predominantly engaged in the work of the Legal Issues and Human Rights Committee. In 1999 he was awarded a Master's Degree in Constitutional Law by the Faculty of Law of the University of Ljubljana. In February 2000 he was employed by the Constitutional Court as a senior advisor, and was appointed Deputy Secretary General of the Constitutional Court in 2001. In mid 2005 he was appointed director general of the Directorate for Legislation of the Ministry of Justice, and at the beginning of 2006 head of the Legislative and Legal Service of the National Assembly. He is also currently deputy president of the state legal examination commission. His master's thesis, entitled "Parlamentarna preiskava v pravnem redu Republike Slovenije" [Parliamentary Inquiry in the Legal System of the Republic of Slovenia], was published as a book (Uradni list Republike Slovenije, 2000). He is one of the authors of the Commentary on the Constitution of the Republic of Slovenia. He commenced duties as judge of the Constitutional Court on 31 October 2007. He was Vice President of the Constitutional Court from 11 January 2010 until 10 November 2013, and President of the Constitutional Court from 11 November 2013 until 30 October 2016.

Assumed the
office of judge

20 November 2007

Completed her
term of office

19 November 2016

Mag. Marta Klampfer

graduated from the Faculty of Law of the University of Ljubljana in 1976, and passed the state legal examination in 1979. Subsequently she was employed as a legal advisor at the Court of Associated Labour of the Republic of Slovenia. In 1991 she was elected judge of the same court. Following the transformation of the courts of associated labour into labour and social courts, she was elected higher court judge with life tenure, and in 1997 she became head of the Labour Disputes Department. Subsequently she was appointed senior higher court judge. By a decision of the Ministry of Justice, she was appointed examiner for labour law for the state legal examinations, and in 1994 she was appointed to the position of research associate at the Institute of Labour at the Faculty of Law of the University of Ljubljana. She has been president of the Labour Law and Social Security Association of the Faculty of Law of the University of Ljubljana for two terms. In 2001 she was appointed Vice President of the Higher Labour and Social Court, and on 6 May 2004 the Minister of Justice appointed her President of the Higher Labour and Social Court for a six-year term, a position she held until she was elected judge of the Constitutional Court. She was a judge of the Constitutional Court from 20 November 2007 until 19 October 2016.

4. 3. The Secretary General of the Constitutional Court

Dr Sebastian Nerad

graduated from the Faculty of Law of the University of Ljubljana in 2000. For a short period after graduation he worked as a judicial intern at the Higher Court in Ljubljana. After becoming a Lecturer at the Faculty of Law in Ljubljana at the end of 2000, he concluded his internship at the Higher Court as an unpaid intern. He passed the state legal examination in 2004. From December 2000 until July 2008 he was a lecturer at the Department of Constitutional Law of the Faculty of Law in Ljubljana. During this period his primary field of research was constitutional courts. In 2003, he was awarded a Master's Degree in Law by the Faculty of Law on the basis of his thesis entitled "Pravne posledice in narava odločb Ustavnega sodišča v postopku ustavnosodne presoje predpisov" [Legal Consequences and the Nature of Constitutional Court Decisions in the Procedure for the Constitutional Review of Regulations]. He was also awarded a Doctorate in Law by this Faculty in 2006, following the completion of his doctoral thesis entitled "Interpretativne odločbe Ustavnega sodišča" [Interpretative Decisions of the Constitutional Court]. In 2007, he worked for six months as a lawyer-linguist at the European Parliament in Brussels. In August 2008, he was employed as an advisor to the Constitutional Court of the Republic of Slovenia. In this position he mainly worked in the areas of state and administrative law. In 2011, he went on a one-month study visit to the European Court of Human Rights in Strasbourg. He has published several articles on constitutional law, particularly on the functioning of the Constitutional Court. He is also the co-author of two monographs (Ustavno pravo Evropske unije [Constitutional Law of the European Union], 2007; Zakonodajni referendum: pravna ureditev in praksa v Sloveniji [The Legislative Referendum: Regulation and Practice in Slovenia], 2011), and co-author of Komentar Ustave Republike Slovenije [The Commentary on the Constitution of the Republic of Slovenia], 2011. He has been a member of the Constitutional Law Association of Slovenia since 2001. He occasionally participates in lectures on constitutional procedural law at the Faculty of Law of the University of Ljubljana. He was appointed Secretary General of the Constitutional Court on 3 October 2012.

5. Important Decisions

In 2016, the Constitutional Court adopted a number of important decisions. Only the decisions that have a constitutional precedential value because they significantly contribute to an understanding of the Constitution are presented below. The decisions are arranged in chronological order according to the date of their adoption. The full texts are also available on the website of the Constitutional Court.

5. 1. Searches of Attorneys' Offices

In Decision No. U-I-115/14, Up-218/14, dated 21 January 2016 (Official Gazette RS, No. 8/16), upon a petition submitted by the Bar Association of Slovenia, the Constitutional Court reviewed the constitutionality of the Criminal Procedure Act and the Attorneys Act. The petitioner's main allegation was that the Acts do not regulate searches of attorneys' offices, apartments, and personal vehicles in a manner that ensures respect for their right to privacy and the confidentiality of the relationship between attorneys and their clients.

In this case, the Constitutional Court for the first time defined the content of the privacy of attorneys (Article 35, the first paragraph of Article 36, and the first paragraph of Article 37 of the Constitution). When practising their profession attorneys provide legal assistance to their clients, *inter alia*, by representing them in judicial proceedings. Attorneys play an essential part in the exercise of the right to judicial protection, the right to a legal remedy, and in implementing the safeguards of a fair trial. Attorneys are even more indispensable in criminal proceedings, in which the defence attorney plays a crucial part in the exercise of the right to a defence and the implementation of other safeguards guaranteed to defendants by the Constitution. Attorneys may only play their part effectively if clients entrust them with their personal data and numerous other items of information, including, *inter alia*, intimate information regarding their privacy. Attorneys must protect such data and information as a professional secret. The duty to protect confidentiality is thus the foundation of the confidential attorney-client relationship, which entails an intertwinement of all aspects of privacy, ranging from general to spatial, communication, and information privacy. However, an attorney can only be obliged to protect this confidential relationship if he or she is concurrently able to protect his or her right to privacy in the professional field from unjustified interferences by the state. The privacy of attorneys is thus a collection of entitlements that are protected on the basis of Article 35, the first paragraph of Article 36, and the first paragraph of Article 37 of the Constitution. The special protection of the privacy of attorneys is necessary because it is a reflection of the privacy of their clients. It is thus not intended to privilege attorneys, but to protect and safeguard their clients.

The privacy of attorneys is not protected only in attorneys' offices as the spatial aspect of privacy protects attorneys on all premises where they carry out their work (e.g. an apartment, car, holiday home). What is protected are namely not the premises as such, but privacy on such premises. Communication privacy entails the protection of an individual's interest in controlling the remote transmission of a message and preventing the state or third parties from gaining knowledge of the content thereof. In addition, direct communication between an attorney and a client, notes regarding such, and all drafts of documents held by the attorney are protected by the general right to privacy. However, the privacy of attorneys is not absolute. Limitations are admissible subject to the general constitutional requirements that apply to interferences with human rights (i.e. the interference must pursue a constitutionally admissible aim and be proportionate) and the special safeguards that the Constitution determines for all interferences with spatial and communication privacy (i.e. a prior court order, the presence of the proprietor, the presence of witnesses).

Ensuring the effective prevention, discovery, and prosecution of criminal offences, and the institution or course of criminal proceedings are constitutionally admissible aims for interferences with the privacy of attorneys. However, such does not apply to attorneys acting as defence attorneys in criminal proceedings. In order to protect defendants' right to a defence and the privilege against self-incrimination, investigative measures against an attorney representing a defendant in a pre-trial investigation or in criminal proceedings are not admissible. Such only applies with regard to information concerning the confidential relationship between the attorney acting as a defence attorney and the defendant. However, even the protection of this confidential relationship is not absolute. A defence attorney who is suspected of or charged with participation in the criminal offence under investigation may not rely on the privacy of attorneys. It would namely be inadmissible if criminal offences were committed under the guise of protecting the privacy of attorneys.

When an interference with the privacy of attorneys is justified in the interest of prosecuting a criminal offence, the interference will only be admissible if it is necessary. With regard to necessity, two aspects in particular have to be considered. An interference with the privacy of attorneys is necessary if the information or data that are directly connected to specific criminal proceedings can be obtained only through a search of the attorney's office, and not by means of other investigative measures. Such must already follow from the court order, as without a court order the interference is not even admissible. The second aspect of necessity refers to the execution of the investigative measure. While the challenged statutory regulation regulated certain questions regarding the execution of searches of premises and seizures of objects, it did not regulate such in a manner that prevented inadmissible interferences. The legislation namely enabled that the execution of investigative measures, which investigative judges as a general rule delegate to the police, also encompassed data that may not be accessed because such is inadmissible due to the lack of a constitutionally admissible aim (as regards defence attorneys in criminal proceedings) or data that are not necessary for the specific criminal proceedings. In addition, the presence of the attorney whose premises or electronic devices are being searched and the presence of a representative of the Bar Association during the execution of certain investigative measures was not envisaged at all. Even when they were able to be present, they could only express their objection to the search or seizure of documents or devices, but they could not prevent the interferences. Furthermore, they were not able to ensure that the decision on whether their objection was substantiated would be transferred to an independent body that would decide on it in an impartial manner – i.e. a judge.

The Constitutional Court emphasised that the presence of a representative of the Bar Association serves for the protection of the human rights of the affected attorney's clients. The representative can only fulfil such role if he or she plays an active role during the search, which is not envisaged by the statutory regulation. Only if the representative of the Bar Association is able to effectively object to individual interferences with the privacy of attorneys could he or she effectively fulfil the role of guardian of the rights of the affected attorney's clients. If a judge had the final say on whether an interference with the privacy of attorneys was justified, such would still entail an interference with the right to privacy, however, it would be a less invasive interference than the interferences that occurred on the basis of the challenged regulation. In such manner, reviews of data and seizures that are inadmissible already with regard to their aim or which are not necessary for the criminal proceedings could be prevented. In light of the above, the Constitutional Court held that the challenged statutory regulation of searches of attorneys' premises and seizures of objects disproportionately interferes with the privacy of attorneys as it does not regulate any less invasive measure that could still achieve the aim of ensuring the effective prosecution of criminal offences (Article 35, the first paragraph of Article 36, and the first paragraph of Article 37 of the Constitution).

The Constitutional Court also reviewed the challenged regulation from the perspective of the right to judicial protection (the first paragraph of Article 23 of the Constitution) and the right to a legal remedy (Article 25 of the Constitution). It found that there existed no constitutionally admissible aim for the statutory regulation that does not ensure the affected attorney and a representative of the Bar Association the right to appeal a court order authorising an investigative measure. Consequently, it is inconsistent with the right to a legal remedy. In instances where the investigating judge delegates the execution of an investigative measure to the police, the fact that the statutory regulation does not determine judicial control of their decisions constitutes an interference with the right to judicial protection. With regard to both instances, the Constitutional Court established a so-called unconstitutional legal gap in the laws regulating investigative measures against attorneys. The Constitutional Court required the legislature to remedy the unconstitutionality within one year following the publication of its Decision in the Official Gazette of the Republic of Slovenia.

In order to prevent further violations of human rights in instances where the effective prosecution of criminal offences requires the authorisation of investigative measures against attorneys, the Constitutional Court determined the manner of implementation of its Decision (the second paragraph of Article 40 of the Constitutional Court Act). It thereby determined a transitional regulation of the manner of authorising and executing investigative measures in accordance with the constitutional safeguards as outlined in the Decision. The manner of implementation of the Decision essentially entails that the Constitutional Court regulated the procedure for the execution of searches and seizures in a manner that enables the affected attorney and the representative of the Bar Association to effectively object to the review of documents and electronic devices by the investigating judge or the police in order to protect the privacy of attorneys. Following his or her objection, the relevant document or electronic device (or a copy thereof) is immediately sealed and brought before a District Court judge (who is not the investigating judge in charge of the criminal investigation) for a decision on whether the seizure is justified. If the judge decides that the relevant data are to be seized despite the objections, such decision may be appealed in an appropriately short period of time and the appeal hinders the execution of the judge's decision.

In addition to the review of the constitutionality of the Criminal Procedure Act and the Attorneys Act, the Constitutional Court also decided on the constitutional complaints filed by the Bar

Association of Slovenia and the law firms and attorneys whose offices, apartments, and personal vehicles were searched on the basis of orders issued by the Ljubljana District Court due to the probability that objects and evidence of criminal offences important for criminal proceedings would be found. The searches were carried out by the police, who also seized documents and electronic devices containing data that were allegedly connected to the purpose of the criminal investigation.

With regard to its decision in the procedure to review the constitutionality of the challenged laws, the Constitutional Court found that the investigative measures against the complainants (attorneys and law firms) who were not suspected of criminal offences were executed on the basis of an unconstitutional statutory regulation. Consequently, the affected attorney and a representative of the Bar Association could not even be present during the execution of all of the investigative measures. Even when they were present, their objections were merely recorded in the minutes, and the police decided on the seizure of documents and electronic devices. Therefore, the Constitutional Court held that the court orders and their execution resulted in violations of the privacy of attorneys, the right to judicial protection, and the right to a legal remedy. The Constitutional Court also determined the manner of the implementation of its Decision regarding the constitutional complaints. It prohibited all further interferences with the privacy of attorneys without due respect for the safeguards that the Constitutional Court developed in its Decision. As the effective prosecution of criminal offences also requires investigative measures against attorneys, such investigative measures are not inadmissible and can thus continue; however, they have to be authorised and executed in such a manner so as to prevent further human rights violations.

5. 2. Tax Enforcement through Garnishment of a Tax Debtor's Monetary Claim against a Third Party

In Decision No. U-I-6/13, Up-24/13, dated 11 February 2016 (Official Gazette RS, No. 18/16), the Constitutional Court decided the constitutional complaint on the merits, but rejected the petition to review the constitutionality of the Enforcement and Securing of Claims Act. The complainant opposed the position of the Supreme Court that in tax enforcement proceedings a tax authority may establish, as a preliminary issue, that a disputed monetary claim of the tax debtor against a debtor (i.e. a third party) in fact exists and also order the enforcement of the tax debtor's claim against the third party.

The Constitutional Court emphasised that tax enforcement proceedings may not aim to affect the payment of a monetary claim of the state – i.e. the creditor – from the property of a third party without providing the third party with an opportunity to exercise his or her right to judicial protection determined by the first paragraph of Article 23 of the Constitution and thus prevent an interference with his or her property. Although a tax debtor's property also encompasses his or her monetary claims and the garnishment of such claims can constitute a means of tax enforcement, such does not entail that in tax enforcement proceedings the state may enforce the garnished monetary claim against the property of a third party (who allegedly is the tax debtor's debtor), unless a court has decided on the existence of the monetary claim that is disputed by the third party. The interpretation according to which the decision of a tax authority adopted as a decision on a preliminary issue that the disputed claim exists justifies an interference with the property of a third party entails that an interference with the property of a third party may occur without prior judicial proceedings and without the existence of an instrument authorising such enforcement.

In order to affect the payment of his or her monetary claim originating from a civil law relationship from a third party, the tax debtor first has to obtain a judgment on the basis of which a court then allows the enforcement against his or her debtor. In the event of a dispute, the court adopts such judgment in adversarial judicial proceedings. In proceedings before a civil court the third party – i.e. the tax debtor's alleged debtor – acting as the respondent, can defend him- or herself and prove that the lawsuit is unsubstantiated. In judicial proceedings the statements of both parties are then considered, and only the final constitutive judgment constitutes an instrument authorising enforcement. As a result of the finding of a tax authority adopted as a decision on a preliminary issue that a monetary claim that has been disputed by the third party who is the tax debtor's alleged debtor exists and the interpretation that such a decision authorises the enforcement of a tax debt from said third party, the third party becomes a debtor without an instrument authorising enforcement establishing such with finality and without the possibility to present his or her objections against the alleged claim in court. As a decision on a preliminary issue cannot produce the same effect as an instrument authorising enforcement, it cannot entail a basis for imposing an obligation on a third party to pay another's tax debt unless the third party agrees to participate in the tax enforcement proceedings as the tax debtor's debtor. The position of the Supreme Court that a monetary claim may be enforced through garnishment on the basis of a decision that the disputed monetary claim exists, adopted in tax enforcement proceedings as a decision on a preliminary issue, thus nullifies the right of the third party to judicial protection determined by the first paragraph of Article 23 of the Constitution, as it prevents said third party from being able to protect him- or herself against an interference with his or her property as a respondent in adversarial civil proceedings. The Constitutional Court therefore abrogated the challenged judgment and remanded the case to the Supreme Court for new adjudication.

5. 3. The Use of Third Party Real Property for the Construction of Energy Infrastructure

By Decision No. U-I-133/13, U-I-134/13, dated 11 February 2016 (Official Gazette RS, No. 18/16), upon two requests of the Administrative Court, the Constitutional Court reviewed the constitutionality of the eighth indent of the first paragraph of Article 59a of the Energy Act, which regulated some specificities regarding obtaining a building permit for the construction of energy infrastructure (electricity lines and gas transmission networks) in comparison to the general regulation in the Construction Act. A building permit is a decision by which the competent administrative authority authorises a construction and determines the concrete conditions that have to be observed during construction. A building permit that has become final at least as regards the administrative procedure grants the investor the right to build a construction subject to the conditions determined by the building permit. Such right naturally also contains the right of possession and use of the real property to the extent required for the construction. According to the general Construction Act, an established right to build is a condition for issuing a building permit. The existence of the right to build can be demonstrated by proving the existence of ownership or some other property right or any other right granting the investor the right to carry out construction work on the plot of land or building in question. The establishment of the right to build ensures that the relationship between the owner and the investor (provided they are not one and the same person) is legally regulated.

In addition to proof of the right to build as determined by the Construction Act, the challenged provision of the Energy Act defined other options for investors to establish their right to build. Investors were also able to establish their right to build by means of documentation that did not prove that they had already acquired ownership or some other property right or any other right granting them the right to carry out construction work on the plot of land or building in question, but which established the existence of other facts. Investors could prove their right to build by means of documentation proving that they had (just) presented the owner an offer to conclude a contract (regarding the acquisition of ownership, a building right, or an easement) and that expropriation proceedings or proceedings for obtaining an easement had (just) been initiated.

As in accordance with the challenged provision an investor could begin building energy infrastructure regardless of the course of the expropriation proceedings that constitute independent administrative proceedings, the Constitutional Court had to review the constitutionality of the use of third party real property for the construction of energy infrastructure on the basis of a building permit during the time period from the moment the actual use of the real property for the construction had begun until a decision in expropriation proceedings was issued. The Constitutional Court assessed the case from the perspective of Article 33 of the Constitution, which protects the freedom of individuals in the field of property.

The Constitutional Court firstly established that the right of an owner to dispose of his or her real property is significantly limited already by the issuance of an order by an administrative authority on the institution of expropriation proceedings. Until the expropriation proceedings have been concluded with finality, the real property may not be transferred or significantly altered unless it is sold to the expropriation beneficiary or a third party subject to the consent of the expropriation beneficiary. In addition, in accordance with the challenged regulation, the owner had to allow the use of his or her real property for the purpose of building energy infrastructure and its operation. He or she had to allow any work that was necessary for building, restructuring, operating, monitoring, maintaining, and reconstructing energy infrastructure, and provide unhindered access to the plot of land at any time. Considering the scope and restrictions on the use of the real property, the Constitutional Court deemed that the duties of and restrictions on the owners of real property entail an interference with the right to private property determined by Article 33 of the Constitution.

The Constitutional Court further had to decide whether the interference with the right to property was constitutionally admissible. If the legislature pursues a constitutionally admissible aim and if the limitation is consistent with the principle of proportionality, which prohibits excessive state interferences, the limitation of the human right is admissible according to the established constitutional case law.

The construction of energy infrastructure is certainly in the public interest. Its function is to fulfil the needs of the general public, as it ensures the provision of electricity, natural gas, and heat. Consequently, ensuring fast and efficient construction of energy infrastructure is a constitutionally admissible aim for an interference with the right to private property. The challenged statutory provision enabled significant acceleration of the construction of energy infrastructure and constituted an appropriate measure for ensuring the speed and efficiency of the construction of such infrastructure. Energy infrastructure spans a large number of plots of land, which requires that ownership of such land or an easement serving the public interest has to be acquired. A regulation according to which an investor could obtain a building

permit only after all processes for the acquisition of ownership or an easement serving the public interest were concluded would prevent the quick construction of energy infrastructure. As the effective functioning of energy infrastructure can only be ensured if its construction is continuous, i.e. from the initial to the final point, the acquisition of the right to build must depend on the activities of the investor and the competent state authority, and not on the conduct of every individual owner. There is no other means to attain the aim pursued. Therefore, the challenged regulation is also necessary in order to attain a constitutionally admissible aim.

When assessing proportionality in the narrower sense, the Constitutional Court weighed the need for fast and efficient construction of energy infrastructure for the purpose of ensuring the needs of the population and the economy against the severity of the interference with the right to private property. As the challenged provision imposed on the owners of plots of land on which energy infrastructure was to be built an additional burden when compared to owners whose land only became subject to such a restriction on the basis of a decision on expropriation or the establishment of an easement, the Constitutional Court held that, in accordance with the principle of proportionality, the first group of owners should be ensured special monetary compensation for the use of their land for the time period from the actual start of the construction of the energy infrastructure until the issuance of a decision on expropriation or the establishment of an easement serving the public interest or until the investor acquires the right to possess the land in the framework of expropriation proceedings. As the legislature did not determine that the authorities could consider this "special burden" imposed on the owners of real property when determining the compensation to be awarded in expropriation proceedings, the eighth indent of the first paragraph of Article 59a of the Energy Act was inconsistent with Article 33 of the Constitution.

5. 4. Registration of Same-Sex Partnerships

By Decision No. U-I-255/13, dated 18 February 2016 (Official Gazette RS, No. 18/16), upon the request of the Administrative Court, the Constitutional Court decided that the Civil Partnership Registration Act was unconstitutional, as it did not enable same-sex couples to request the registration of their partnership outside the premises designated for such by the administrative unit, although the Marriage and Family Relations Act grants such an option to future marital partners when they enter into marriage. The Constitutional Court reviewed the alleged inequality of same-sex couples in comparison with marital partners as regards the possibility to register a civil partnership or enter into marriage outside the designated premises from the perspective of the general principle of equality before the law determined by the second paragraph of Article 14 of the Constitution. The general principle of equality requires the legislature to regulate positions that are essentially the same in the same manner, and different positions accordingly differently, unless the different treatment of positions that are essentially the same is justified by reasonable and objective grounds that follow from the nature of the matter.

When comparing the statutory regulations, the Constitutional Court found that in the Slovene legal system the possibility to enter into marriage and to register a same-sex partnership outside the designated premises are not regulated in the same manner for same-sex couples and different-sex couples. As regards marital partners (i.e. married different-sex couples) the Marriage and Family Relations Act determines that marriage may also be entered into outside the designated premises if the future marital partners request such and state significant reasons

for such. Administrative authorities decide on their request at their discretion. In contrast to the regulation with regard to marital partners, the Civil Partnership Registration Act contains no provisions on the implementation of the procedure for registration outside the designated premises. While it thus does not prohibit such registration, the Constitutional Court stressed that an administrative authority may only adopt a decision at its discretion if a law authorises it do so. However, the Civil Partnership Registration Act contained no authorisation for administrative discretion regarding a request for the registration of a civil partnership outside the designated premises.

The Constitutional Court concluded that the Civil Partnership Registration Act is inconsistent with the principle of equality determined by the second paragraph of Article 14 of the Constitution, as it does not grant administrative authorities the authorisation to carry out discretionary decision-making such as administrative authorities are granted when deciding on whether a marriage may be entered into outside the designated premises. It required the National Assembly to remedy the established unconstitutionality within a period of six months. It further determined the manner of the implementation of the Decision, whereby it established that, until an appropriate statutory regulation is adopted, the procedure for registering a civil partnership shall be carried out on the premises designated for such by an administrative unit, but it may also be carried out on other premises if the future partners request such and state significant reasons for such.

5. 5. Recognition of a Foreign Judgment

In Decision No. Up-645/13, dated 3 March 2016 (Official Gazette RS, No. 24/16), the Constitutional Court decided on a constitutional complaint against judgments recognising the legal validity of two final judgments of an Israeli court. The Constitutional Court considered two positions adopted by the regular courts, namely: (1) that the jurisdiction of the foreign court was not based exclusively on the serving of the lawsuit on the complainant in person and therefore it does not entail an instance of exorbitant jurisdiction, and (2) that the case at issue is an exceptional case, as there is no certified court interpreter for the Hebrew language in the Republic of Slovenia, and therefore an uncertified translation of the foreign judgment by a professionally trained translator suffices. It found that by these positions the courts breached the constitutional procedural safeguards stemming from Article 22 of the Constitution.

The first paragraph of Article 98 of the Private International Law and Procedure Act requires a Slovene court to reject the recognition of a foreign judgment if the jurisdiction of the foreign court was based exclusively on one of the exhaustively listed connecting factors that the Act deems to be exorbitant (the so-called negative list principle) and an objection regarding such has been raised. An instance of such exorbitant jurisdiction is jurisdiction based exclusively on the fact that a lawsuit was served on the respondent in person.

In the regular proceedings (i.e. when deciding on the request for recognition of the foreign judgment and on the objection or appeal against the decision on the recognition of the foreign judgment) the courts adopted the position that in the case at issue the jurisdiction of the foreign court was not based exclusively on the fact that the lawsuit was served on the complainant in person, as when assessing whether they had jurisdiction the Israeli courts also considered other connecting factors, i.e. connecting factors supporting the jurisdiction of an Israeli court as well as connecting factors supporting the jurisdiction of a Slovene court. In its

order dismissing the request for the protection of legality, the Supreme Court also adopted the position that the case at issue is not an instance of exorbitant jurisdiction. The Supreme Court substantiated such position by stating that the first paragraph of Article 98 of the Private International Law and Procedure Act prohibits the recognition of a foreign judgment only if, when determining its jurisdiction, the foreign court accepts as sufficient a connecting factor that the mentioned provision defines as inappropriate, while it does not consider other circumstances that can entail independent connecting factors for determining jurisdiction under international law. The Supreme Court emphasised that although the jurisdiction of the Israeli court was established by means of the serving of the lawsuit on the complainant, when deciding on the complainant's objection of *forum non conveniens*, that court also considered other circumstances that can entail individual connecting factors for determining jurisdiction under international law and which are not exorbitant according to Slovene domestic law. It was thus decisive that in the framework of the proceedings regarding the objection of *forum non conveniens* the Israeli courts established the existence of circumstances that may in substance entail individual connecting factors for determining jurisdiction. In the opinion of the Supreme Court, already the fact that upon filing the lawsuit the plaintiff was a permanent resident of Israel can constitute such an independent connecting factor.

With regard to the position of the lower courts that in connection with the objection of *forum non conveniens* the Israeli courts also considered other connecting factors for determining jurisdiction, the Constitutional Court held that the position that interprets the provision of point 3 of the first paragraph of Article 98 of the Private International Law and Procedure Act only through the arguments considered by the foreign court is fundamentally deficient. Such position disregards that the case at issue concerns the interpretation of domestic law according to which a national court shall decide on the recognition of a foreign judgment. Therefore, the national court may not disregard that it has to assess the jurisdiction of the foreign court that was rooted in foreign law from the perspective of domestic law. Unless the court interprets a domestic norm in an independent and autonomous manner, it ignores the principle of a sovereign state as regards the definition of the rules on recognition. The Constitutional Court decided that the arguments stated by the courts in the regular proceedings regarding the interpretation of the relevant domestic law are unreasonable and therefore in violation of Article 22 of the Constitution.

As regards the position of the Supreme Court – i.e. that the additional connecting factors established by the Israeli courts may entail independent connecting factors for determining jurisdiction under international law and that the fact that the plaintiff is a permanent resident of Israel entails such a connecting factor for determining jurisdiction – the Constitutional Court held that such also does not satisfy the requirements stemming from Article 22 of the Constitution. The Supreme Court namely did not clarify which "international law" it was referring to, especially as (outside the framework of the European Union) an international regulation of jurisdiction does not yet exist. It is further not evident why and under which law the connecting factor of the plaintiff's permanent residence may constitute an independent connecting factor for the jurisdiction of the Israeli court. The Supreme Court had the duty to provide a thorough, clear, and structured statement of reasons for the challenged legal position. However, the Supreme Court only substantiated its position with generalised arguments that do not explain to the parties to proceedings which law (i.e. domestic or foreign or even international law) is relevant for a decision on the case. As the Supreme Court failed to consider such requirements when deciding on the request for the protection of legality, it breached the requirement that judicial decisions must contain a statement of reasons stemming from Article 22 of the Constitution.

Furthermore, the Constitutional Court reviewed the position of the courts that an uncertified translation of the foreign judgment by a professionally trained translator suffices, as there is no certified court interpreter for the Hebrew language in the Republic of Slovenia, from the perspective of Article 22 of the Constitution. The complainant believed that he was deprived of the right to obtain a certified translation and therefore of the possibility to acquaint himself with the content of the foreign judgment. He alleged that the courts departed in an arbitrary manner from the formal evidentiary rule determined by the second paragraph of Article 95 of the Private International Law and Procedure Act, which unequivocally requires that a party requesting the recognition of a foreign judgment must also provide a certified Slovene translation of the judgment.

The Constitutional Court emphasised that the clear and unequivocal text of a statutory provision may be exceeded but only if the judge, who is bound by laws (Article 125 of the Constitution), substantiates such with compelling legal reasons. It found that the courts did not clarify which method of interpretation established in legal science allegedly substantiated a departure from the requirement that the formal conditions for the recognition of a foreign judgment have to be fulfilled. They merely referred to the *mutatis mutandis* application of (some of) the provisions of the Civil Procedure Act. The Constitutional Court thus held that the position of the courts regarding an interpretation exceeding the meaning of the text of a statutory provision was not supported by sufficient reasons and therefore the complainant's right to a reasoned judicial decision stemming from Article 22 of the Constitution was violated. Due to the established violations, the Court abrogated the challenged judgments and remanded the case for new adjudication.

5. 6. Protection of the Personal Data of Tax Defaulters

By Decision No. U-I-122/13, dated 10 March 2016 (Official Gazette RS, No. 25/16), upon the request of the Information Commissioner, the Constitutional Court assessed the constitutionality of the first, seventh, and eighth paragraphs of Article 20 of the Tax Procedure Act. The applicant alleged that these provisions were inconsistent with Article 38 of the Constitution insofar as they refer to the publication of information regarding individual tax defaulters who are natural persons and do not carry out an economic activity. In addition to publishing the defaulter's name, date of birth, and in some instances his or her address, the publication of the amount of the owed tax was envisaged.

The first paragraph of Article 38 of the Constitution guarantees the protection of personal data as a special facet of privacy that is intended to ensure respect for a specific aspect of a person's privacy – i.e. information privacy. In conformity with the established constitutional case law, any collecting and processing of personal data entails an interference with the right to the protection of privacy, i.e. with the right of individuals to keep information regarding themselves private, and to prevent others from accessing such. The fundamental value basis of this right is the realisation that individuals have the right to keep information about themselves to themselves and that they are the ones who are to decide how much information about themselves they want to reveal and to whom. However, the right to information privacy is not unlimited; it is not absolute. Individuals must accept limitations of information privacy, i.e. they must allow interferences therewith that are in the prevailing public interest and provided the constitutionally determined conditions are fulfilled. Interferences are admissible if they satisfy the conditions determined by the third paragraph of Article 15 and Article 2 of

the Constitution. Within this framework, the Constitutional Court must review whether the legislature pursued a constitutionally admissible aim; if such is the case, it must further review if the limitation is consistent with the principles of a state governed by the rule of law, i.e. with those principles that prohibit excessive measures of the state (the general principle of proportionality). The Constitutional Court performs an assessment of whether an interference is excessive on the basis of the so-called strict test of proportionality, encompassing a review of three aspects: a test of appropriateness, a test of necessity, and a test of proportionality in the narrow sense of the word.

With regard to the existence of a constitutionally admissible aim, the Constitutional Court found that through the publication of a list of tax defaulters the legislature pursued aims at several levels, i.e. the aim of raising the tax culture, improving payment discipline, and encouraging voluntary, orderly, and timely payment of taxes. In addition, the National Assembly stated that the publication of a list of tax defaulters also serves to reveal the total tax debt and thus enables the general public to gain insight into the (un)successful work of the competent state authorities in collecting this debt. The Constitutional Court clarified that taxes are not only an instrument for collecting funds to cover the functioning of the state apparatus, but particularly also an instrument of the economic and social policy of the state. Taxes are a means for ensuring funds for financing goods that cannot be ensured under market conditions (e.g. the safety of the state and its population, the system of justice), providing access to certain goods to all citizens regardless their material situation (education), and the supply of goods at not-for-profit prices (rail and road transport). The state can only exercise its duties determined by Article 146 of the Constitution if the tax system is effective, which by the nature of the matter also includes the effective collection of taxes. An effective tax system undoubtedly serves the public interest. In addition, the National Assembly stated that the publication was also intended to provide the general public with insight into the state of the tax defaulters' debt. Such concerns the interest of all citizens in knowing who owes the community a sufficiently large debt, thus justifying greater public scrutiny as such in turn necessarily has an effect on their situation. As the tax defaulters did not pay their taxes, everyone's tax burden may become greater or the services provided to them by the state may be limited. In light of the above, the legislature had constitutionally admissible aims for an interference with the right to information privacy determined by the first paragraph of Article 38 of the Constitution.

With regard to the appropriateness and necessity of the challenged measure, the Constitutional Court held that the publication of the personal data of tax defaulters is an appropriate and necessary measure for attaining the mentioned aims. The possibility to publish personal data in connection with due but unpaid taxes is certainly a measure that can encourage taxpayers to pay their taxes, and it can contribute to raising the tax culture as well as to the final aim of building an effective tax system. When verifying the necessity of an interference, the Constitutional Court reviews if the interference is at all necessary (i.e. required) in the sense that the aim cannot be attained without the interference or that it cannot be equally effectively attained by other means that would be less invasive. The Constitutional Court held that it is not clear how the aims pursued could be attained in another (i.e. less invasive) manner than through the publication of a generally and publicly accessible list of tax defaulters.

Proportionality in the narrow sense concerns a review of whether the weight of the consequences of the reviewed interference for the affected human right is proportionate to the value of the aim pursued or to the benefits that will arise due to the interference. The Constitutional Court held that the aim of building an effective tax system and the interest of the

general public in being able to verify in a simple manner who has not contributed his or her share to the common purse outweigh the weight of the interference with the right to the protection of personal data. The information that an individual is a tax defaulter cannot enjoy strong protection with regard to information privacy. It namely does not reveal any details from an individual's private life regarding which the individual could reasonably expect that they will remain hidden from the eyes of the public. With regard to such, the Constitutional Court emphasised that the publication of personal data on the internet does not entail a loss of information privacy in the sense that the internet does not recognise a right to be forgotten. In the internet era, it is important that an individual can achieve that the provider of an internet search engine deletes a hyperlink to a website containing incorrect personal data, or personal data that are out-dated or no longer relevant in accordance with and subject to the conditions determined by the Court of Justice of the European Union in its *Google Spain* Judgment (C-131/12). An individual's option to have such a link deleted significantly decreases the invasiveness of the interference due to the publication of personal data on the internet.

As the challenged regulation thus did not interfere disproportionately with the right to the protection of personal data of natural persons who do not carry out an economic activity, the Constitutional Court decided that the challenged provisions of the Tax Procedure Act are not inconsistent with Article 38 of the Constitution.

5. 7. The Right to Strike during Military Service

By Decision No. U-I-289/13, dated 10 March 2016 (Official Gazette RS, No. 21/16), the Constitutional Court decided on a request of the Trade Union of Slovene Soldiers to review the constitutionality of the first paragraph of Article 99 of the Defence Act, which determines that military personnel do not have a right to strike during their military service. The applicant's main allegation was that the challenged regulation interferes in an inadmissible manner with the right to strike determined by Article 77 of the Constitution, as it in fact denies such right to military personnel during their military service, while the Constitution only allows for its limitation. The first paragraph of Article 77 of the Constitution determines that workers have the right to strike. In accordance with the second paragraph of Article 77 of the Constitution, this right may be restricted by law where required by the public interest and with due consideration of the type and nature of activity involved.

The first paragraph of Article 99 of the Defence Act prohibits strikes by military personnel during military their service. The regulation of military service is based on Article 123 of the Constitution, which regulates the duty to participate in the national defence, and on Article 124 of the Constitution, which authorises the National Assembly to regulate by a law the form, extent, and organisation of the defence of the inviolability and integrity of the national territory. Participation in the national defence is compulsory for citizens within the limits and in the manner provided by law. The constitutional duty to participate in the defence of the state also applies to conscientious objectors, but they are not required to bear arms. Citizens thus bear the positive duty to actively defend the state. This duty determined by the Constitution necessarily influences the rights – including the human rights – of every citizen. The duty to participate in the national defence may be a source of limitations of the human rights of individuals. In certain instances, this constitutionally determined duty may even lead to the exclusion of a specific group of individuals from the enjoyment of a human right.

On the basis of the first paragraph of Article 123 of the Constitution, the Defence Act determines the manner and extent of the exercise of the duty of national defence, and thereby also the duties and rights of citizens with regard to national defence. Article 6 of the Act determines that with regard to national defence citizens have the following duties: military duty, work duty, and material duty. Military duty is implemented by means of military service performed by military personnel. Such concerns specific types of tasks for ensuring the defensive capability of the state, the inviolability and integrity of the national territory, protection and rescue in the event of natural and other disasters, and the fulfilment of international commitments undertaken by means of treaties in the field of defence. The special nature of these types of tasks is indicated by strict and precise rules on performing military service.

Military service, which is performed exclusively by military personnel, thus entails the performance of specific types of tasks that are of crucial importance for ensuring the readiness to fulfil the statutory tasks of the military in times of peace and war and constitutes a manner of implementing the duty of national defence determined by the first paragraph of Article 123 of the Constitution. The national defence is primarily intended to ensure the inviolability and integrity of the national territory. The defence of the inviolability and integrity of the national territory as well as international obligations in the field of defence can (only) be ensured through continuous and unhindered performance of the tasks of military service. In the assessment of the Constitutional Court, such already conceptually excludes interruptions in the performance of military service that depend on free will and entail suspension of the performance of the military duty of persons who as soldiers are the first to be called upon to perform such. As military service comprises specific types of tasks that have to be performed without interruption in order to ensure the constitutionally determined defence duty enshrined in the first paragraph of Article 123 of the Constitution (in conjunction with Article 124 of the Constitution), the Constitutional Court held that such constitutional duty excludes the right to strike determined by Article 77 of the Constitution with regard to military personnel during their military service. Military personnel are thus outside the scope of this human right, and therefore neither the first nor the second paragraph of Article 77 of the Constitution apply to them.

The Constitutional Court further reviewed the applicant's allegation that due to the prohibition on striking military personnel performing their military service are placed in an unequal position in comparison with other civil servants (in the field of defence) and in comparison with persons employed by the police, who are subject to a restriction of the right to strike by means of an enumeration of the tasks that have to be carried out during a strike for public interest purposes. The principle of equality before the law (the second paragraph of Article 14 of the Constitution) requires the legislature to regulate essentially equal positions equally, and different positions accordingly differently. If the legislature regulates essentially equal positions differently or essentially different positions equally, it must demonstrate a sound reason that follows from the nature of the matter for such. The Constitutional Court held that, with regard to the right to strike, military personnel who perform military service are not in a comparable situation with regard to other civil servants in the field of defence or members of the police, as these entail different positions from the perspective of constitutional law. Therefore, the legislature may regulate them differently and such is not inconsistent with the second paragraph of Article 14 of the Constitution. With regard to the comparison with the police, the Constitutional Court added that the statutory restrictions of the right of members of the police to strike are determined in such way that also during a strike members of the police have to carry out those tasks that are intended for the protection of the lives and personal safety of persons and property.

5. 8. Excessive Duration of Detention

In Decision No. Up-45/16, dated 17 March 2016 (Official Gazette RS, No. 25/16), the Constitutional Court decided on the constitutional complaint of a complainant against whom criminal proceedings for the criminal offence of abuse of position or trust in the performance of an economic activity had been initiated. The complainant's defence attorney filed a motion for his release from detention due to its excessive duration and new circumstances that allegedly entailed that the grounds for detention, i.e. the risk of absconding, no longer existed. She requested that the detention be replaced by house arrest. The Maribor District Court dismissed the defence attorney's motion as unsubstantiated.

According to established constitutional case law, from Article 22 of the Constitution there follows the obligation that a court hear the statements of the parties, consider such, and take a position regarding their essential statements in the reasoning of its decision. A reasoned judicial decision namely entails an essential part of a fair trial. The requirement of a reasoned judicial decision is even more accentuated in instances concerning decisions on interferences with the right to personal liberty determined by the first paragraph of Article 19 of the Constitution. If the detained person states that he or she has been detained for an unreasonably long period of time, the court must respond to such statements and decide not only on whether the grounds for and the absolute necessity of the interference with personal liberty still exist, but also whether the duration of detention is still reasonable. Already in Decision No. Up-155/95, dated 5 December 1996, the Constitutional Court held that the criteria for determining whether a judgment has been issued in a reasonable period of time cannot be the same in instances when a defendant is in detention or when he or she is free during the trial. The criteria for what is reasonable must be stricter when the defendant is in detention.

In the case at issue, the court only responded to the allegation that the duration of the detention was excessive by stating that the case was extremely complex and its consideration required a longer time than the average criminal case, and that, according to the law, detention after indictment may last up to two years. The statutory maximum length of detention (i.e. 2 years) cannot constitute the grounds by which a court could substantiate the potentially excessive duration of detention in a concrete case. Detention may namely be ordered only for the shortest necessary time and, at any stage of the proceedings, the detained person has to be released as soon as the grounds on which the detention has been ordered cease to exist. As the court failed to review the duration of detention from such perspective and thus failed to take a position on all of the complainant's allegations, but only referred to the extreme complexity of the case at issue, it violated the complainant's right to a reasoned judicial decision determined by Article 22 of the Constitution.

The complainant further alleged that his right determined by Article 22 of the Constitution was violated as in the challenged order the court failed to take a position regarding the new, changed circumstances that allegedly entailed that the grounds for detention, i.e. the risk of absconding, no longer existed and therefore the complainant suggested that his detention be replaced by less invasive measures. It follows from the challenged order that in the motion for his release the complainant emphasised the following circumstances that allegedly affected the grounds for detention, i.e. the risk of absconding, namely that his wife owns a company that would employ him after his release from detention, that he is a permanent resident of Pesnica pri Mariboru, and that he had renounced his Bosnian citizenship. The Constitutional Court emphasised that the court should have responded to the circumstances that had changed since the last decision on

detention and which the complainant asserted in the motion for his release. In the case at issue, such is of particular importance as in the motion for his release the complainant alleged precisely that he submitted the motion due to changed circumstances. As the court not only failed to take a position regarding such, but even deemed that the complainant alleged no change in circumstances, it violated the complainant's right to a reasoned judicial decision determined by Article 22 of the Constitution. The Constitutional Court abrogated the challenged order of the Maribor District Court and remanded the case to that court for new adjudication.

5. 9. The Right to an Old-Age Pension

In Decision No. U-I-246/13, dated 21 April 2016 (Official Gazette RS, No. 35/16), upon the request of certain trade unions and petitions submitted by individuals, the Constitutional Court decided on the constitutionality of the fourth and fifth paragraphs of Article 27 of the Pension and Disability Insurance Act that was adopted in 2012 but which entered into force on 1 January 2013 (hereinafter referred to as the PDIA-2). The PDIA-2 defined the concepts and conditions for obtaining the right to an old-age pension differently than the Pension and Disability Insurance Act previously in force (hereinafter referred to as the PDIA-1). It also introduced a new right, i.e. the right to an early old-age pension. The PDIA-2 determines the conditions for obtaining an old-age pension in Article 27. According to the first paragraph thereof, insured persons (men and women) obtain the right to an old-age pension when they reach the age of 65 years, provided they have completed at least 15 years of the insurance period. Regardless of the first paragraph, according to the fourth paragraph of this Article, insured persons (men and women) obtain the right to an old-age pension if they have reached the age of 60 years and have completed 40 years of the pension qualifying period, excluding purchased periods. The PDIA-2 also introduced a new right, i.e. the right to early retirement. According to the first paragraph of Article 29, insured persons obtain the right to an early old-age pension when they reach the age of 60 years, provided they have completed at least 40 years of the pension qualifying period. The conditions for obtaining an old-age pension determined by the PDIA-2 are stricter than the conditions determined by the PDIA-1. An essential amendment is the amended condition for obtaining the right to an old-age pension in accordance with the fourth paragraph of Article 27 of the PDIA-2 that requires the fulfilment of the condition regarding the pension qualifying period, excluding purchased periods. Such entails a new concept and a condition that the PDIA-1 did not envisage, as the condition for obtaining an old-age pension was the employment period, which included a broad spectrum of insurance periods, including, *inter alia*, periods completed by voluntary inclusion in the compulsory insurance scheme.

The Constitutional Court thus reviewed the regulation under which the right to an old-age pension is subject to fulfilment of the condition regarding the pension qualifying period, excluding purchased periods. The concept of the pension qualifying period, excluding purchased periods, is a new concept in the regulation of the compulsory pension insurance scheme and only in part replaces the concept of the employment period introduced by the PDIA-1 previously in force. In contrast to the employment period, the pension qualifying period, excluding purchased periods, does not include periods completed by voluntary inclusion in the compulsory insurance scheme. Such periods are included in the insurance period and the pension qualifying period, and therefore insured persons who voluntary joined the compulsory insurance scheme may retire, but at an older age, and they may retire early, but with a lower pension (reductions).

As the pension qualifying period, excluding purchased periods, only includes compulsory inclusions in the compulsory pension and disability insurance scheme and periods of pursuing agricultural activity, while voluntary inclusion in the compulsory insurance scheme is not included, the Constitutional Court first reviewed whether the challenged regulation is consistent with the principle of equality determined by the second paragraph of Article 14 of the Constitution.

In accordance with the PDIA-2, the right to obtain an old-age pension at a lower age (i.e. 60 years) and without reductions in the amount of the pension is only attainable by insured persons who were included in the compulsory insurance scheme as employed persons, self-employed persons, farmers, or persons insured on some other basis connected to the performance of work, while insured persons who voluntarily joined the compulsory insurance scheme cannot (or can no longer) enjoy this right. The Constitutional Court held that the adoption of such a regulation was not inconsistent with the principle of equality. When defining the concept of the pension qualifying period, excluding purchased periods, the legislature namely proceeded from the criteria of employment and the amount of the contribution to the compulsory pension insurance scheme that are built into the very essence of the system of compulsory pension insurance. The legislature only envisaged the possibility of early retirement, subject to the condition of the pension qualifying period, excluding purchased periods, for individuals with long periods of employment, i.e. those who began to work at an early age and who in fact remained active throughout their entire insurance period. By introducing the concept of the pension qualifying period, excluding purchased periods, it concurrently remedied the inequality between insured persons that resulted from the concept of the employment period as introduced by the PDIA-1. Insured persons who voluntarily joined the compulsory pension insurance scheme paid significantly lower contributions than other insured persons. With regard to the amount of contributions paid, they were in a significantly better position than other insured persons who paid (significantly) higher contributions and concurrently thus had to demonstrate solidarity with the former (in order to ensure the funding of their rights). The introduction of the pension qualifying period, excluding purchased periods, thus also satisfied a fundamental principle of compulsory insurance, i.e. the principle that rights must depend on the contributions paid.

The Constitutional Court also reviewed the consistency of the challenged regulation with the principle of protection of trust in the law determined by Article 2 of the Constitution. Although it found that by determining the pension qualifying period, excluding purchased periods, as a condition for obtaining the right to an old-age pension, the legislature interfered with the legitimate expectations of insured persons who voluntarily joined the compulsory insurance scheme as unemployed persons or persons employed on a part-time basis in accordance with the PDIA-1, it nevertheless held that the interference was not inadmissible.

One of the objectives of the pension reform was to achieve a sustainable pension system. Sustainability can only be achieved through later retirement. The introduction of the concept of the pension qualifying period, excluding purchased periods, was intended to achieve such. In order to be consistent with the principle of the protection of trust in the law, amendments to the regulation of retirement have to be introduced gradually, which the legislature ensured by means of a transitional regulation. It has to be taken into account that the affected insured persons could have anticipated the amendments and that their social security is still guaranteed. They can obtain an old-age pension, albeit at an older age, and the periods of their voluntary inclusion in the insurance scheme are fully considered. On the other hand, they can also choose

to retire early and receive a lower pension. The periods of their voluntary inclusion in the insurance scheme are only disregarded as to the conditions that enable retirement at a younger age only for those insured persons who were active throughout their entire insurance period.

5. 10. Policing Powers of the Slovene Armed Forces

In Decision No. U-I-28/16, dated 12 May 2016 (Official Gazette RS, No. 42/16), in proceedings initiated upon the request of the Ombudsman for Human Rights, the Constitutional Court reviewed the constitutionality of the first, second, and third paragraphs of Article 37a of the Defence Act, which granted members of the Slovene Armed Forces special (policing) powers in critical security situations, particularly for managing the migrant and refugee crisis. In the request the applicant explicitly emphasised that it does not oppose the (greater) engagement of the Slovene Armed Forces, and an increase in their operative capabilities and efficiency, particularly if the migrant and refugee crisis issue were to deteriorate. The applicant thus does not believe that the granting of special powers to soldiers is constitutionally disputable as such. The challenged provisions are allegedly constitutionally disputable because they are so general and loose that they violate the principle of the clarity and precision of regulations as one of the principles of a state governed by the rule of law (Article 2 of the Constitution). This principle requires that interferences with human rights be regulated in a precise and unequivocal manner. Already in Decision No. U-I-25/95, dated 27 November 1997, the Constitutional Court highlighted that the more important the subject of its protection is, the more accentuated the requirement that a law be precise becomes. As the powers of repressive authorities may entail a significant interference with individuals' human rights, they must be based on a particularly precise regulation, consisting of clear and detailed rules. The statutory regulation must be such so as to exclude the possibility of arbitrary state action. In addition to being predictable, the statutory regulation must especially also ensure effective legal supervision and appropriate and effective measures for preventing abuses. The requirement of the clarity and precision of regulations does not entail that rules should be such that they require no interpretation. The application of regulations namely always entails the interpretation thereof. As is true of all regulations, laws also require interpretation. A statutory norm fulfils the requirement of the clarity and precision of regulations if its content may be construed through established methods of interpretation and thus the conduct of the authorities who have to implement it is determinable and predictable.

The challenged first, second, and third paragraphs of Article 37a of the Defence Act determined that, if such is required by the security situation and upon a proposal of the Government, the National Assembly may decide by a two-thirds majority vote of the deputies present that members of the Slovene Armed Forces may together with the police, and in accordance with the plans and prior approval of the Government as determined by the fourth paragraph of the preceding Article, exceptionally also exercise the following powers: 1. to issue warnings; 2. to direct persons; 3. to temporarily restrict the freedom of movement of persons; and 4. to participate in managing groups and crowds. These powers are exercised subject to the conditions determined for members of the police, and soldiers must immediately inform the police of any such exercise of power.

The Constitutional Court began the review by establishing the meaning of the words "to direct". Considering its meaning construed on the basis of grammatical and teleological interpretation, the content of the power to direct must be understood as meaning that, subject to the

conditions and in accordance with the manner determined by the Police Tasks and Powers Act, members of the Slovene Armed Forces may indicate to persons the mandatory way or direction that they must move and to this end they may give them instructions and require certain actions or omissions by such persons in order to fulfil their task of assisting the police in the protection of the state border in the broader sense.

The Constitutional Court proceeded with a review of the content of the power "to temporarily restrict the freedom of movement of persons." Such is a general police power determined by the Police Tasks and Powers Act which is clear, as the purpose of the power (i.e. the exercise of another police power or other official act) and its duration (i.e. the restriction may only last for the time that is absolutely necessary and the restriction of a person's movement who is being processed by the police or in police custody may not exceed 6 hours) are determined. Members of the Armed Forces exercise the power to temporarily restrict the freedom of movement of persons subject to the conditions determined for the police. However, teleological interpretation must be applied when interpreting this power, as it was granted to members of the Armed Forces only for the purpose of assisting the police in the protection of the state border in the broader sense. Therefore, also the content of this power has to be interpreted as meaning that soldiers may only exercise those tasks that pursue the purpose (objective) of the protection of the state border in the broader sense and that entail assisting the police regarding that task. In light of such, the Constitutional Court held that also the content of the power to temporarily restrict the freedom of movement of persons is not inconsistent with the principle of clarity and precision determined by Article 2 of the Constitution.

Furthermore, the Constitutional Court established the content of the power "to participate in managing groups and crowds". Such entails a power related to police powers involving the use of force to restore public order in instances of serious and massive violations of such and that can be applied against both individuals and a crowd (i.e. use of handcuffs, ties, physical force, tear gas, police batons, service dogs, mounted police, water jets, special vehicles, and other statutorily determined means). The cooperation of the Armed Forces and the police in the protection of the state border in the broader sense is not an "original" task that derives from the defence function, but entails the exercise of powers for ensuring internal state security that primarily fall within the competence of the police. Consequently, the powers of the Slovene Armed Forces are exercised subject to the conditions determined for members of the police by the Police Tasks and Powers Act. Soldiers may not exercise these powers independently, but only together with the police, and they have to immediately inform the police of the powers exercised. In addition, the members of the Armed Forces only exercise these powers in exceptional circumstances, i.e. if required by the security situation and subject to a decision of the National Assembly upon a proposal of the Government by a two-thirds majority vote of the deputies present. The exercise of these powers is further limited, as it may only last for the period of time that is absolutely necessary and may not exceed three months; this period can be prolonged subject to the same conditions. The Constitutional Court held that also the content of the power "to participate in managing groups and crowds" can be construed on the basis of grammatical and teleological interpretation and therefore there exists no inconsistency with the principle of clarity and precision determined by Article 2 of the Constitution.

The Constitutional Court also held that the open-textured terms "persons, groups, crowds", "security situation", and "the protection of the state border in the broader sense" are not inconsistent with the principle of the clarity and precision of regulations. As regards the persons against whom the powers determined by the first paragraph of Article 37a of the Defence Act may be exercised,

the Constitutional Court found that, although the current migrant and refugee crisis was the reason underlying the challenged regulation, the powers do not refer only to refuges and migrants, but individual policing powers may be exercised against all persons. As regards the term "security situation", the Court held that it concerns a technical question that depends on the specific circumstances and their assessment in concrete cases lies in the competence of the Government and the National Assembly. As regards the term "the protection of the state border in the broader sense", the Constitutional Court held that its content can be construed through interpretation, although the term is not explicitly defined by any regulation. In accordance with the State Border Control Act, the protection of the state border that is carried out by the police is exercised directly at the border as well as more broadly, i.e. throughout the state territory. It has to be borne in mind that, when participating in the protection of the state border in the broader sense, members of the Armed Forces do not have the power to perform border controls and exercise other police powers, but only the powers determined by the first paragraph of Article 37a of the Defence Act.

The protection of the state border in the broader sense is an open-textured term and its content has to be determined with regard to every individual activation of the first paragraph of Article 37a of the Defence Act. The content of the task of the protection of the state border in the broader sense and the territory upon which it is exercised thus predominantly depend on the specific security situation that requires the assistance of the Slovene Armed Forces in the protection of the state border. Such entails that the specific security situation determines the range of powers of the Armed Forces as well as the territory on which they operate. With regard to the activation of the Slovene Armed Forces due to the refugee and migrant crisis, the above entails that the members of the Armed Forces may exercise powers at and near the border where persons suspected of having illegally crossed the state border are caught, and within the state territory where activities in relation to illegal border crossings by refugees and migrants are carried out (reception and accommodation centres, centres for foreigners, migration routes, and the transportation of refugees and migrants).

5. 11. The Principle of Equality and Rent Supplements

In Decision No. U-I-109/15, dated 19 May 2016 (Official Gazette RS, No. 38/16), in proceedings initiated upon the request of the Ombudsman for Human Rights, the Constitutional Court reviewed the constitutionality of Article 28 of the Exercise of Rights from Public Funds Act. With regard to tenants who satisfy the criteria for renting a non-profit apartment but who live in apartments let out at market rates and in caretakers' apartments and receive a rent supplement corresponding to the difference between the non-profit rent and the market rent, the challenged provision eliminated their right to an additional rent supplement that effectively lowers their non-profit rent. It clearly followed from the statutory regulation that the legislature regulated the determination of the amount of the subsidy for tenants of non-profit apartments differently than for tenants of apartments let out at market rates and of caretakers' apartments who fulfilled the criteria regarding income and other criteria for obtaining a non-profit apartment. The statutory regulation namely did not enable tenants in apartments let out at market rates and in caretakers' apartments who receive a rent supplement corresponding to the difference between the non-profit rent and the market rent, to also obtain an additional rent supplement that effectively lowers their non-profit rent.

The Constitutional Court reviewed the challenged regulation from the perspective of the general principle of equality (the second paragraph of Article 14 of the Constitution). In accordance

with established constitutional case law, the general principle of equality requires that essentially equal states of the facts must be treated equally. If such situations are treated differently, their differentiation must be substantiated by sound reasons that follow from the nature of the matter. The principle of equality before the law does not entail that the law may not regulate the positions of legal subjects differently, but that such different treatment may not be arbitrary and without sound and objective reasons. In order to determine which similarities and differences of the relevant situations are essential, one must proceed from the subject matter of the legal regulation. Article 78 of the Constitution imposes an obligation upon the state and guides it in its activities in the field of housing policy. By that provision, the Constitution explicitly emphasises one of the social aspects deriving from the principle of a social state (Article 2 of the Constitution). According to Article 78 of the Constitution, the state shall adopt appropriate measures to create opportunities for citizens to obtain adequate housing. Thus, from the mentioned provision there follows the obligation to create an active housing policy. The state may choose different measures to fulfil its obligation, and such measures may interfere with different areas of legal regulation. The choice of the type of measures falls within the legislature's broad margin of appreciation. However, when choosing the measures, the legislature is bound by the principle of equality and the prohibition of discrimination (Article 14 of the Constitution).

The purpose of rent supplements is to ensure socially disadvantaged classes of the population access to adequate housing. The provision of non-profit housing is an active housing policy measure by which the state creates the opportunities to obtain adequate housing. It is intended to ensure the social security of those individuals (the first paragraph of Article 50 of the Constitution) who have difficulty securing adequate housing due to their precarious material situation. The number of available non-profit apartments is smaller than the number of individuals who fulfil the criteria regarding income and other criteria for obtaining a non-profit apartment. The reason that individuals cannot exercise the right to a non-profit apartment even though they have fulfilled the criteria regarding income and other criteria thus does not lie in any difference as to their social, or particularly their financial, position, but in the fact that the state and municipalities do not provide a sufficient number of non-profit apartments. The income ceiling for rent supplement is determined similarly for tenants of non-profit apartments and for tenants of apartments let out at market rates and of caretakers' apartments. Therefore, tenants of apartments let out at market rates and of caretakers' apartments who have satisfied the criteria regarding income and other criteria for obtaining a non-profit apartment but could not obtain a non-profit apartment due to the insufficient number of such apartments are in essentially the same position as tenants of non-profit apartments from the perspective of the right to an additional rent supplement.

As tenants of apartments let out at market rates and of caretakers' apartments who fulfil the criteria regarding income and other criteria for obtaining a non-profit apartment are not entitled to a rent supplement that effectively lowers their non-profit rent, while such is provided to tenants of non-profit apartments, the Constitutional Court had to review whether such differentiation was substantiated by sound reasons deriving from the nature of the matter.

The Government cited the reason of ensuring sustainable public finances, which may constitute a sound reason for eliminating social security rights or reducing their scope. The scope of social security rights depends on the financial capacity of the state to pay such benefits. If the state lacks sufficient financial capacity to ensure certain social security rights, the legislature must (in accordance with the principle that the law must adapt to social conditions) amend the statutory regulation so as to ensure that the burden of the necessary reduction is

proportionately distributed among the beneficiaries. In doing so, it must respect the principle of trust in the law (Article 2 of the Constitution) and the principle of equality (the second paragraph of Article 14 of the Constitution). The requirement of ensuring respect for the principle of equality and equal treatment is one of the fundamental requirements that the legislature must take into account when regulating rights that entail the exercise of the right to social security. Therefore, the sustainability of public finances cannot by itself constitute a sound reason for a reduction in the scope of a right of only a specific group of beneficiaries.

The National Assembly and the Government failed to explain the reasons underlying the different treatment of tenants of apartments let out at market rates and of caretakers' apartments who have satisfied the criteria regarding income and other criteria for obtaining a non-profit apartment in comparison with tenants of non-profit apartments. As the legislature failed to demonstrate a sound reason deriving from the nature of the matter to substantiate the different positions of tenants of non-profit apartments in comparison with tenants of apartments let out at market rates and of caretakers' apartments who have satisfied the criteria regarding income and other criteria for obtaining a non-profit apartment, the Constitutional Court established that Article 28 of the Exercise of Rights from Public Funds Act is inconsistent with the general principle of equality determined by the second paragraph of Article 14 of the Constitution. It required the National Assembly to remedy the established inconsistency within a period of one year from the publication of the Decision in the Official Gazette of the Republic of Slovenia.

5. 12. The Limitation Period for a Claim for Compensation against the State

In Decision No. Up-450/15, dated 2 June 2016 (Official Gazette RS, No. 43/16), the Constitutional Court decided on the constitutional complaint of a complainant whose claim for compensation against the state was dismissed by the courts due to the claim becoming time barred. In criminal proceedings the complainant was acquitted of the charge that he had committed the criminal offence of the unauthorised manufacture and sale of illicit drugs. He filed a lawsuit against the state, as on 28 July 1995, during pre-trial criminal proceedings, the police unjustly and illegally destroyed his hemp crop and he thus incurred damage as he could not sell the destroyed hemp or convert it into essential oil. In the constitutional complaint he opposed the positions of the courts that by 7 January 2011, when he filed the lawsuit, the subjective as well as the objective limitation period for claiming compensation had long since expired, as the police had seized and destroyed the hemp already on 28 July 1995. That was allegedly the date when the limitation period began to run in accordance with the Obligations Act, as at that moment the complainant learned of the damage and of the responsible party.

It is established Constitutional Court case law that the classic rules of vicarious civil liability for damages do not suffice for an assessment of the liability of the state for damages; when assessing individual prerequisites as regards the responsibility of the state, the specificities that originate in the authoritative nature of the functioning of its authorities must be taken into consideration. The Constitutional Court has held on a number of occasions that such instances entail a form of liability for damages under public law that requires an adapted application of the criteria for a review of the liability of the state for damages. In the case at issue, the Constitutional Court held that the conduct of the courts was erroneous, as in the assessment of the course of the limitation period they failed to consider the fact that during the time when, in their assessment, he should have invoked his rights by means of a civil lawsuit, the complainant was the defendant in criminal proceedings on the basis of the charge

that he committed the continued criminal offence of unauthorised manufacture and sale of illicit drugs. They furthermore disregarded the fact that in these proceedings the complainant was twice convicted at the first instance, and he was acquitted only after the abrogation of these two judgments of conviction.

The Constitutional Court emphasised that in instances where an individual sues the state for damages that were allegedly incurred due to an illegal police measure carried out during criminal proceedings, before such proceedings, or in connection therewith, it is contrary to Article 26 of the Constitution to require this individual to file such lawsuit within the limitation period running from the day the relevant police measure was carried out. Forcing a defendant to initiate a civil lawsuit during ongoing criminal proceedings in which, *inter alia*, the illegality of the police measures that constitute the basis of the prosecutor's conclusions regarding the criminal offence will be considered is constitutionally disputable for a number of reasons. Primarily, it appears extremely harsh with regard to the defendant. During criminal proceedings, a person who is threatened by criminal sanctions must be given the opportunity to fully concentrate on his or her defence, and must not be required to waste energy, time, and money also on other proceedings, such as a lawsuit for damages. In addition, the expectation that a defendant in criminal proceedings will at the same time file a lawsuit for damages against the state is not realistic. A defendant, *inter alia*, enjoys the so-called privilege against self-incrimination (the fourth indent of Article 29 of the Constitution), and thus the courts should not have required a complainant who was defending himself against criminal charges to concurrently file a lawsuit against the state for damages connected to the criminal proceedings. Until such criminal proceedings have been concluded with finality, it is not even clear if a person whose property has been seized is entitled to have it returned or to compensation for the damage resulting from the seizure. Due to such reasons, in the complainant's case the general rules on statutes of limitation have to be interpreted as entailing that the limitation period did not begin to run until the judgment of the complainant's acquittal became final. The courts did not apply this interpretation, although the option of suspending the course of the limitation period due to insurmountable obstacles provided them with sufficient room for interpretation.

The Constitutional Court deemed that with the adopted interpretation of the rules on the statute of limitations the courts rendered it excessively difficult for the complainant to effectively exercise the human right to compensation for damage from the state (Article 26 of the Constitution) or even prevented him from exercising it. The Constitutional Court therefore abrogated the challenged judgments and remanded the case to the District Court for new adjudication.

5. 13. The Reasoning of a Court Order Authorising a Search of Premises

In Decision No. Up-1006/13, dated 9 June 2016 (Official Gazette RS, No. 51/16), the Constitutional Court decided on the constitutional complaint of a complainant who had been convicted in criminal proceedings for the criminal offences of robbery and unauthorised manufacture and sale of illicit drugs. The complainant alleged that the evidence regarding the latter criminal offence was obtained in a search of premises that was carried out on the basis of a court order that did not contain a reasoning and was therefore illegal and unconstitutional. The Constitutional Court reviewed the criminal case file and found that the investigating judge issued two orders authorising searches of premises against the complainant, both concerning the criminal offence of robbery. The police officers did not find any objects connected

with the criminal offence of robbery during the search of the premises; they did, however, find 82.88 g of cannabis. Consequently, criminal proceedings for the criminal offence of the unauthorised manufacture and sale of illicit drugs were instituted against the complainant as well. Throughout the criminal proceedings the complainant claimed that the order authorising the search of the premises did not contain a sufficient reasoning, and therefore the evidence obtained during the search had to be excluded from the case file as inadmissible. In reply to the complainant's allegations that the order authorising the search of the premises did not contain a reasoning, the Supreme Court replied that not every irregularity in the execution of an investigative measure necessarily results in the inadmissibility of the evidence obtained thereby. According to the position of the Supreme Court, one of the purposes of the reasoning of a court order authorising an investigative measure is to ensure the possibility of a subsequent review of the legality of the investigative measure. The mere fact that an order authorising a search of premises contains a rather weak reasoning thus does not entail such a violation that one could claim that the search of the premises was carried out without a written court order. Although the concrete circumstances were not clarified in detail in the court order authorising the search of the premises, the Supreme Court was of the opinion that it sufficed that these circumstances were listed in the request of the police that the investigating judge referred to in the order.

Article 35 of the Constitution guarantees the inviolability of a person's physical and mental integrity, and the inviolability of his or her privacy and personality rights. In addition to this general provision regarding the protection of privacy, the first paragraph of Article 36 of the Constitution contains a special provision that specifically protects the inviolability of dwellings or the so-called spatial aspect of privacy. A search of premises entails an interference with the inviolability of the dwelling of the affected individual. The following paragraphs of Article 36 of the Constitution determine special conditions for interferences with this right: no one may, without a court order, enter the dwelling or other premises of another person, nor may they search such, against the will of the resident (the second paragraph); any person whose dwelling or other premises are searched has the right to be present or to have a representative present (the third paragraph); a search of premises may only be conducted in the presence of two witnesses (the fourth paragraph); while the fifth paragraph of Article 36 determines the conditions, subject to statutory regulation, under which an official may enter the dwelling or other premises of another person without a court order, and may in exceptional circumstances conduct a search in the absence of witnesses.

In accordance with the provisions of the Criminal Procedure Act, a search of a dwelling or other premises of a defendant or of other persons may only be conducted if there exist reasonable grounds for the suspicion that a person committed a criminal offence and if it is likely that during the search the suspect will be apprehended or evidence of the criminal offence or objects that are important for the criminal proceedings will be found. A search of premises may be conducted without the consent of the person whose dwelling or premises are to be searched if such is ordered by a court by means of a written order containing a reasoning. If during a search of premises objects are found that are not connected to the criminal offence regarding which the search has been ordered, but they indicate that another criminal offence that is prosecuted *ex officio* has been committed, they shall be seized as well. However, a court decision may not be based on evidence found during a search of premises if such was conducted without a written court order, or without the presence of the persons who have to be present at a search, or if the search was conducted contrary to the provisions of the Criminal Procedure Act.

The Criminal Procedure Act does not explicitly determine the content of the reasoning of an order authorising a search of premises. It is, however, clear that it must provide reasons substantiating the reasonable grounds for the suspicion that a person committed a criminal offence as well as the likelihood that during the search the suspect will be apprehended or evidence of the criminal offence or objects that are important for the criminal proceedings will be found. In accordance with the case law, an order authorising a search of premises must further contain information on the person against whom the search is to be conducted, and as well identify the defendant and the premises on which the search is to be conducted. The essence of prior judicial control lies in the fact that a judge deciding on the request to issue an order verifies, as a representative of the judicial branch of power, whether the constitutional and statutory conditions for the search of premises exist. In doing so, the judge assumes the role of a guarantor, i.e. a guardian of defendants' rights and a supervisor of the work of the prosecution and the police. Such entails that he or she must first review in a critical, independent, and impartial manner whether the conditions for a search of the premises are fulfilled, and subsequently also provide an appropriate reasoning of such decision. The statutory requirement that the court order contain a reasoning is not an end in itself, but is intended to prevent the arbitrary conduct of prosecuting authorities and possible abuses, as well as to ensure subsequent judicial control. The individual against whom a search of premises is to be conducted namely does not have the possibility to participate in the decision-making on the request for ordering a search of premises and to use effective legal remedies at that point, as with regard to the execution of a search of premises it is essential that its execution be unexpected. Therefore, it is even more important that the reasoning of an order authorising a search of premises ensure the possibility of subsequent verification of whether the statutorily determined conditions for ordering a search of premises were fulfilled and whether the search was constitutionally admissible.

In accordance with established constitutional case law, the requirement that judicial decisions must contain a reasoning entails a special aspect of the right determined by Article 22 of the Constitution. In a judicial decision the court must provide the reasons on which it based its decision in a concrete manner and with sufficient clarity. The requirement that judicial decisions must contain a reasoning is also an essential part of fair proceedings, which are guaranteed by Article 22, the first paragraph of Article 23, and, as regards criminal proceedings, Article 29 of the Constitution. The duty of courts to state the reasons for their decisions also derives from Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which has also been highlighted by certain judgments of the European Court of Human Rights (e.g. the Judgment in *Dragojević v. Croatia*, dated 15 January 2015).

In the case at issue, in the reasoning of the order authorising the search of premises the investigating judge wrote that from the request there followed the reasonable suspicion that the complainant committed the criminal offence of robbery and that he deemed it to be likely that certain objects would be found. While the order for the search of premises was thus authorised with regard to the criminal offence of robbery, during the search police officers found objects that indicated the commission of another criminal offence, namely the criminal offence of the unauthorised manufacture and sale of illicit drugs. With regard to the regulation under the Criminal Procedure Act, the order authorising the search should thus have also contained a statement of the reasons on the basis of which the investigating judge deemed that there exist reasonable grounds for the suspicion that the criminal offence of robbery had been committed.

The Constitutional Court stressed that before issuing an order authorising a search of premises, the court must assess whether the constitutional and statutory conditions for a search of premises are fulfilled. The judge's assessment is reflected in the reasoning of an order authorising a search of premises. The fact that the request of the police or the prosecution for the ordering of a search of premises contains a statement of reasons does not relieve the investigating judge of the duty to review the fulfilment of the conditions for a search of premises him- or herself and to provide a careful statement of reasons for his or her decision. In doing so, the judge may refer to the documents submitted by the police or the prosecution, as these documents are usually the only source of information for the investigating judge, however, such reference cannot replace the judge's own assessment of whether the conditions for a search of the premises are in fact fulfilled. Therefore, the judge must critically and thoroughly assess whether the submitted data justify an interference with a human right, and the reasons underlying this decision have to be evident from the reasoning of the court order. The statutory and constitutional requirements that have to be fulfilled before a search of premises may be carried out namely do not protect individuals who engage in criminal activity, but all persons with regard to whom there do not exist sufficient grounds to justify an interference with their privacy.

Therefore, the order authorising the search of premises should have contained a concrete statement of the reasons on the basis of which the investigating judge deemed that there exist reasonable grounds for the suspicion that the criminal offence of robbery had been committed. As the 82.88 g of cannabis, indicating the commission of another criminal offence, were only found during the search of the premises, it is logical that the reasoning of the order did not contain reasonable grounds for suspicion regarding the criminal offence of the unauthorised manufacture and sale of illicit drugs. However, a reasoning of the existence of reasonable grounds for the suspicion that the criminal offence of robbery had been committed cannot be found in the reasoning of the order authorising the search of the premises. With regard to such, the investigating judge namely only referred to the request for ordering the search of the premises submitted by the police without himself listing the reasons that convinced him that all the conditions for ordering a search of the premises were fulfilled. Only an interference with the complainant's right to spatial privacy that was based on a prior court order elaborating the reasonable grounds for the suspicion that the criminal offence of robbery had been committed could have been a basis for instituting proceedings regarding a new criminal offence due to the discovered drugs. The deficient reasoning of an order authorising a search of premises cannot be remedied by means of subsequent control by a (higher instance) court carried out after the search of the premises has already been executed. The essence of subsequent control is namely not in providing a review by the Supreme Court (and previously by a Higher and a District Court) to substitute for the lack of a review by the investigating judge, but in verifying whether the review performed by the investigating judge before the search of the premises was in accordance with the Constitution and the law.

By ordering a search of premises against the complainant by means of a court order that did not contain the reasons underlying the assessment of whether the conditions for an interference with spatial privacy were fulfilled, the investigating judge thus violated the complainant's right to a court order containing a reasoning determined by Article 22 of the Constitution. Such could also have resulted in an inadmissible violation of the complainant's right to the inviolability of his dwelling determined by the first paragraph of Article 36 of the Constitution. Therefore, the Constitutional Court abrogated the challenged judgments of the Supreme Court, the Higher Court, and the District Court, and remanded the case to the court of first instance for new adjudication.

5. 14. Discrimination of Same-Sex Partners with regard to International Protection

By Decision No. U-I-68/16, Up-213/15, dated 16 June 2016 (Official Gazette RS, No. 49/16), the Constitutional Court decided on a constitutional complaint against a decision by which the Supreme Court held that the complainant and his partner cannot be deemed to be marital partners or common law different-sex partners and that they cannot constitute a family in accordance with the first paragraph of Article 16b of the International Protection Act. In 2013, when the administrative authority adopted its decision, the Act namely did not explicitly state that two persons of the same sex living in a *de facto* relationship could be deemed to constitute family members. The first paragraph of Article 16b of the International Protection Act was no longer in force at the time of the proceedings before the Constitutional Court. In accordance with the first paragraph of Article 47 of the Constitutional Court Act, the Constitutional Court has the power to review a law that is no longer in force only if the consequences of its unconstitutionality have not been remedied.

The Constitutional Court reviewed the challenged statutory provision with regard to its consistency with the prohibition of discrimination determined by the first paragraph of Article 14 of the Constitution, which determines that in Slovenia everyone is guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other conviction, material standing, birth, education, social status, disability, or any other personal circumstance. Although sexual orientation is not explicitly mentioned in the first paragraph of Article 14 of the Constitution, according to the established case law of the Constitutional Court, sexual orientation is one of the personal circumstances encompassed by the first paragraph of Article 14 of the Constitution.

The case at issue concerned the question of discriminatory treatment in the statutory regulation of the position of the family members of applicants for international protection. The first paragraph of Article 16b of the International Protection Act determined the circle of persons who can be deemed to be the family members of an applicant for international protection. The third paragraph of Article 53 of the Constitution provides, *inter alia*, that the state shall protect the family and create the necessary conditions for such protection, without determining in further detail the content and scope of the right to respect for one's family life. A number of international instruments, which determine in further detail the content and scope of this right, have to be taken into account when interpreting such.

The challenged provision of the International Protection Act did not enable that also persons who live with an applicant for international protection in a union that, due to its specific characteristics, is essentially similar to a nuclear family or that performs the same function as a nuclear family could be deemed to be family members in connection with an application for international protection. Same-sex partners (either a registered same-sex partner or a same-sex partner who lives in a long-term union with the applicant) were thus not included in the list of persons who can be deemed to be family members. Already in Decision No. U-I-212/10, dated 14 march 2013, the Constitutional Court adopted the position that in today's society, there remains no disagreement regarding the fact that loving and lasting relationships are established by same-sex and different-sex couples alike. It stated that same-sex partnerships concern the same substantial factual situation in which two persons are connected as a couple, whereby their relationship is decisively defined by their emotional, moral, spiritual, and sexual

attachment on their shared life path. Therefore, a union that is essentially similar to a nuclear family or that performs the same function as a nuclear family, which primarily entails the existence of genuine family ties between the family members, physical care, protection, emotional support, and economic dependence, can also exist between two persons of the same sex living together in a relationship. It follows from the above that, as regards protection of the right to family life, in procedures for granting international protection same-sex partnerships are in a comparable situation to partnerships between persons of different sexes (i.e. marital partners and common law different-sex partners living in long-term relationships).

As the first paragraph of Article 16b of the International Protection Act did not enable that same-sex partners could be included in the circle of persons who can be deemed to be the family members of an applicant for international protection, the Constitutional Court thus established an inconsistency with the right to non-discriminatory treatment in the exercise of the right to family life determined by the first paragraph of Article 14 in conjunction with the third paragraph of Article 53 of the Constitution. As it established the unconstitutionality of the statutory provisions, it also abrogated the challenged Supreme Court decision and remanded the case for new adjudication.

5. 15. A Child's Right to Family Life

In Decision No. Up-868/14, dated 16 June 2016 (Official Gazette RS, No. 49/16), the Constitutional Court decided on a constitutional complaint against two judicial decisions dismissing the enforcement of a court settlement by which two parents agreed on an arrangement for contact with their child, including the provision that the non-resident parent is required to observe the arrangement for contact as agreed upon in the court settlement.

The right of parents to contact with their children is a legal expression of parenthood that, in accordance with the first paragraph of Article 54 of the Constitution, has the character of a human right. In accordance with this constitutional provision, parents have the right and duty to maintain, educate, and raise their children. If a family union falls apart, it is only through regular contact that the non-resident parent can exercise parental care and the child can receive such care. Therefore, the right to contact is also or even predominantly a right of the child. It is the legal expression of a child's right to receive parental care. The Marriage and Family Relations Act also does not define the right to contact only as a right of the non-resident parent, but primarily as a right of the child. Parents enjoy this right primarily in order to protect the child's interests. The child is the main subject of the right to contact. The actual benefit for the child is the decisive criterion for all decisions regarding contact. The purpose of contact is namely not only to enable the non-resident parent to fulfil his or her emotional needs, but primarily to maintain the child's sense of emotional attachment and the relationship with the parent, and a feeling of mutual belonging.

The question of the existence of a parent's duty to have contact with his or her child and the question of whether such a duty may be enforced have to be considered separately. When a parent does not wish to have contact with his or her child, it is questionable if he or she should be forced to fulfil this duty, as it is questionable whether such enforced contact would benefit the child. The question at issue is thus not the admissibility of the enforcement of the contact, but the question of whether enforced contact benefits the child. Although, as a general rule, contact that has to be enforced does not benefit the child, it is not excluded that in individual

specific instances even enforced contact may benefit a child. The reply to this question depends on the circumstances of the concrete case. There was no indication in the case files that the courts considered the question of whether in the case at issue the enforcement of contact would in fact not benefit the child. In the assessment of the Constitutional Court, the automatic conclusion that the enforcement of a court settlement regarding arrangements for personal contact would not benefit the child was already prevented by the fact that in the court settlement the non-resident parent voluntarily agreed to the scope and manner of implementation of such contact. By doing so, the non-resident parent assumed certain obligations in relation to the child to whose benefit the court settlement had been concluded. On the other hand, contrary to the complainant's opinion, the mere fact that the manner of implementation of the contact was determined in the court settlement also does not suffice for the automatic conclusion that enforced contact would benefit the child.

The Constitutional Court held that, in light of all of the circumstances of the case at issue, the court in charge of the enforcement failed to assess whether the enforcement of contact could have benefitted the child. Only such an assessment would have enabled the court in charge of the enforcement to decide, with due consideration of the best interests of the child, which of the conflicting rights are to be given precedence – the right of the child to contact with his father (the first paragraph of Article 54 in conjunction with the first paragraph of Article 56 of the Constitution) or the father's right to freely decide what type of relationship he wants to have with his child (Article 35 of the Constitution). As the court in charge of execution dismissed the request for enforcement prematurely, it violated the child's right to respect for one's family life determined by the first paragraph of Article 54 in conjunction with the first paragraph of Article 56 of the Constitution.

5. 16. Obtaining Rights Financed from Public Funds

In Decision No. U-I-73/15, dated 7 July 2016 (Official Gazette RS, No. 51/16), upon the request of the Human Rights Ombudsman, the Constitutional Court decided on the constitutionality of several provisions of the Exercise of Rights from Public Funds Act and on the constitutionality of the second paragraph of Article 7 of the Rules regulating the manner of determining property and its value for the purpose of granting rights financed from public funds.

By adopting the Social Assistance Benefits Act and the Exercise of Rights from Public Funds Act the legislature thoroughly revised the social welfare system. By the first it regulated the right to financial social assistance and the right to a social security allowance, and by the second the types of financial assistance (i.e. rights financed from public funds), the maximum income levels for obtaining rights financed from public funds that depend on a person's overall material position, a single method for determining such material position, the scope of rights financed from public funds, and the procedure for obtaining such rights. The regulation maintained the principle that a right financed from public funds is granted when a person's income that is relevant for determining their material position does not exceed the maximum income determined with regard to the individual right financed from public funds. A right financed from public funds is thus a right that depends on a person's material position, and it is decided on by a centre for social work and paid from the state or local budget. A fundamental characteristic of rights from the welfare system (as well as the social assistance system) is their subsidiarity. Therefore, individuals and families must exhaust all possibilities to ensure their sustenance by their own efforts. Before they become eligible for social assistance, they have

to exhaust all rights from the system of social insurance, recover debts (e.g. maintenance), accept any (paid) work, and reduce their available assets. As a result, it is regularly emphasised that the social assistance system is the last safety net of the broader system of social security intended to ensure a life worthy of human dignity. An additional aim of social assistance is to enable persons to live independently again.

The first paragraph of Article 50 of the Constitution ensures everyone the right to social security subject to the conditions provided by law. Although Article 50 of the Constitution does not explicitly refer to rights from the system of social protection, such rights also fall within the framework of the right to social security determined by the first paragraph of this Article. According to constitutional case law, this right requires a social state (Article 2 of the Constitution) to provide adequate assistance to individuals at risk. Such includes the provision of a so-called existential minimum for to ensure the survival of an individual who is in social or financial hardship and needs help.

The Constitutional Court found that the statutory presumption determined by the fifth paragraph of Article 10 of the Exercise of Rights from Public Funds Act, i.e. that there exists a common law marriage between two persons who are not married regardless of the duration of their union if they have a child together or if they have adopted a child together and there exists no single-parent family (and there are no reasons that would render a marriage invalid), is not inconsistent with the principle of equality determined by the second paragraph of Article 14 of the Constitution. It held that other persons (i.e. relatives, persons married to another person, and persons with severe mental disorders or persons deprived of legal capacity), who can live together in (*de facto*) unions, including shared households, are not in the same position as persons who live in a common law marriage with regard to the obligation of maintenance in relation to their partner or their children. With regard to such persons, there namely exist reasons that prevent a valid marriage and consequently also the legal recognition of a common law marriage. The legislature thus proceeded from the obligation of maintenance when determining the circle of persons who are taken into account with regard to obtaining rights financed from public funds. The obligation of maintenance exists between spouses, between common law spouses, and between parents and children. The second paragraph of Article 14 of the Constitution does not require the legislature to treat other (e.g. *de facto*, cohabitation) unions in the same manner as a common law marriage (and assign the same consequences thereto), even if children can be born in such unions. As they entail essentially different positions, the Constitution did not prevent the legislature from regulating them differently.

The Constitutional Court further established that the regulation according to which the part of child maintenance up to the amount of the minimum income (point 4 of the first paragraph of Article 12 of the Exercise of Rights from Public Funds Act) is included in the family income for the purpose of determining its material position does not interfere with the child's right to maintenance. It namely concerns the part of maintenance intended to cover the costs and needs of a family that can only be established for the family as a whole (i.e. the costs for housing, heating, food). Child maintenance is primarily an obligation of the parents, and the obligation of the state to assist parents from public funds only arises when parents, despite having done everything in their power, cannot fulfil their obligation in this regard. In order to ensure equal treatment with regard to the provision of assistance from public funds regardless of whether the parents fulfil their obligation in shared or separate households, the state determined that also the part of child maintenance intended to cover those needs of the family that can only be established for the family as a whole shall be taken into account in determining

the material position of the family. The Constitutional Court held that the challenged regulation is also not inconsistent with the special protection of children determined by the third paragraph of Article 53 and by Article 56 of the Constitution.

The Constitutional Court reviewed the first paragraph of Article 14 of the Exercise of Rights from Public Funds Act from the perspective of the second paragraph of Article 14 of the Constitution (the principle of equality before the law), which requires that essentially equal factual situations must be treated equally. If such situations are treated differently, their differentiation must be based on reasonable grounds that follow from the nature of the matter. The challenged regulation determined that in instances when a person has only just begun to carry out a gainful activity or if their monthly income from a gainful activity is below the amount of the gross minimum income, a fictional income in the amount of 75% of the gross minimum income was to be taken into account instead of their actual monthly income. The Human Rights Ombudsman deemed that – regarding persons who earn income from carrying out a gainful activity – there existed no reasons preventing the establishment of their actual income at the moment they applied for a right financed from public funds. It stressed that due to this presumption, which was formulated in a manner that prevents its rebuttal, these persons have no possibility of obtaining rights financed from public funds (regardless of the scope of their gainful activity and their actual income). The Constitutional Court held that there exist no grounds deriving from the nature of the matter that would substantiate a regulation that determines that a certain fictional income be taken into account only as regards persons who obtain income from carrying out a gainful activity, instead of their actual monthly income, when determining their income relevant for establishing their material position; consequently, the regulation is inconsistent with the principle of equality determined by the second paragraph of Article 14 of the Constitution. The Constitutional Court required the legislature to remedy the unconstitutionality within one year following the publication of its Decision in the Official Gazette of the Republic of Slovenia.

In addition, the Constitutional Court established that Article 7 of the Rules that regulated the manner of determining property and its value for the purpose of granting rights financed from public funds narrowed the content of the third paragraph of Article 17 of the Exercise of Rights from Public Funds Act in an inadmissible manner. It therefore held that in this regard the Rules were inconsistent with the principle of legality determined by the second paragraph of Article 120 of the Constitution.

5. 17. Substantiation of the Risk of Recidivism

In Decision No. Up-495/16, Up-540/16, dated 18 July 2016 (Official Gazette RS, No. 51/16), the Constitutional Court decided on two constitutional complaints of a complainant against whom criminal proceedings were pending before the court of first instance for the criminal offence of murder. The complainant challenged final orders by which the courts established that there still existed a risk of recidivism as grounds for detention in accordance with point 3 of the first paragraph of Article 201 of the Criminal Procedure Act. During the entire procedure for issuing the challenged orders the complainant claimed that the substantiation of the existence of the risk of recidivism as grounds for detention is generalised and without concrete substance. Such statements of the complainant entailed the allegation of a violation of the right determined by Article 22 of the Constitution. A reasoned judicial decision forms a significant part of judicial proceedings. By such a decision, courts must concretely and with

sufficient clarity state the reasons on the basis of which they have adopted their decision. The reasoning of a judicial decision is an independent and autonomous element of the right to fair trial, which is ensured – within the framework of the right to the equal protection of rights – by Article 22 of the Constitution.

In accordance with the second paragraph of Article 19 of the Constitution, no one may be deprived of his or her liberty except in such cases and pursuant to such procedures as are provided by law. In accordance with the first paragraph of Article 20 of the Constitution, a person reasonably suspected of having committed a criminal offence may be detained only on the basis of a court order when this is absolutely necessary for the course of criminal proceedings or for reasons of public safety. Hence, the mentioned provision of the Constitution requires three conditions under which detention may be imposed: (1) reasonable suspicion, (2) a court order, and (3) that such is absolutely necessary for the course of criminal proceedings or for reasons of public safety. From the established constitutional case law it follows that both when ordering detention and each time they decide on the prolongation of detention, courts must assess whether the constitutional conditions for an interference with the right to personal liberty are fulfilled. In accordance with the position of the Constitutional Court, every time a court decides on detention due to risk of recidivism, it must (1) establish and state those concrete circumstances on the basis of which it is possible to make a substantiated conclusion based on its experience that there exists a real threat that the defendant will repeat a specific criminal offence, (2) establish and substantiate that there exists a threat of the repetition of such an offence that poses a threat to the security of people, and (3) balance, by applying the principle of proportionality, whether in the concrete case, due to the threat of a certain criminal offence being repeated, the security of persons is threatened to such an extent that it outbalances the interference with the defendant's right to personal liberty. As regards the assessment of the existence of the threat of a criminal offence being repeated, the Constitutional Court adopted the position that the circumstances in which the criminal offence was carried out and the weight of the criminal offence at issue do not in themselves justify the conclusion that there existed a risk of recidivism. Detention due to the risk of recidivism may only be ordered once also the personality of the defendant, the environment, and the circumstances in which he or she lives, as well as his or her hitherto life, enable a reliable concretised conclusion to be made as to the existence of a real threat of a specific criminal offence being repeated.

With due consideration of the mentioned starting points, the Constitutional Court established that the reasoning of the courts that referred to the existence of the risk of recidivism was essentially superficial and thus did not meet the criteria determined by Article 22 of the Constitution. The courts firstly substantiated the threat of the repetition of the criminal offence by the opinion of an expert in clinical psychology, with regard to which the assessment remained on a merely general level and was limited to excerpts of the expert opinion of the clinical psychologist. In his allegations, the complainant underlined the clear criticism of this partiality and the court's assessment being based on merely certain segments of the expert opinion, and clearly demanded that the courts assess the expert opinion as a whole. Only on the basis of a holistic assessment would it be possible to carry out a concrete assessment of whether there existed appropriate subjective circumstances as regards the complainant that indicated the risk of recidivism.

The courts substantiated the threat that they concluded existed due to the existence of the subjective circumstances due to which the risk of recidivism arguably existed by, *inter alia*, assessing the testimonies of witnesses. They allegedly described the complainant as a

confrontational person who allegedly, *inter alia*, also threatened other employees at his previous workplace. Such assessment is allegedly consistent with the expert opinion of the clinical psychologist. Also as regards this reasoning, the Constitutional Court assessed that it does not correspond to the requirements of Article 22 of the Constitution. The courts were satisfied with the general substantiation that the risk of recidivism follows from the testimonies of the witnesses heard. As with any other type of evidence in criminal proceedings, it also holds true for the testimony of each witness that the court can freely decide how it will assess such evidence, as well as the degree to which it will take such evidence into consideration. The courts should have assessed each individual testimony of the witnesses heard in such framework. When substantiating the threat that the criminal offence at issue might be repeated, the courts should have concretely stated what exactly a certain witness testified and why they deem, on the basis of the witness's testimony, that such testimony substantiates the existence of subjective circumstances that are relevant for the assessment of the existence of grounds for detention. The courts of first instance and the appellate courts failed to do so. This means that the reasoning of the challenged order was superficial also in this part and did not attain the level required by Article 22 of the Constitution.

5. 18. The Right to an Impartial Court in Relation to the Imposition of a Punishment for Insulting the Court

In Decision No. Up-185/14, U-I-51/16, dated 28 September 2016 (Official Gazette RS, No. 65/16), the Constitutional Court decided on a constitutional complaint against an order by which the complainant as a counsel in criminal proceedings was punished by a fine, on the basis of Article 78 of the Criminal Procedure Act, because he insulted the judge deciding in the case. The complainant alleged a violation of his right to an impartial trial determined by the first paragraph of Article 23 of the Constitution because the challenged order was issued by the judge deciding in the case against whom the presumed insult was directed. The Constitutional Court could not reply to the complainant's allegations without also reviewing the constitutionality of the statutory provision on which the challenged individual act is based. The Constitutional Court therefore initiated proceedings to review its constitutionality. First, it assessed whether the statutory regulation in accordance with which it is always the judge or the panel before which the presumably insulting statement was given – or the court that is competent to decide on an application that contains such a statement – who decides on the punishment due to insulting the court is consistent with the right to an impartial trial as determined by the first paragraph of Article 23 of the Constitution.

The Constitutional Court has already adopted a position on a similar question in Decision No. U-I-145/03, dated 23 June 2005, when it assessed Article 109 of the Civil Procedure Act, which regulated punishment in civil proceedings for having insulted the court. At that time, it explained that the protected value in such punishment is not the honour and reputation of a concrete judge, but trust in the law and the authority of the judicial branch of power, therefore the judge in this procedure does not decide in the case in which he or she him- or herself was the injured party. Therefore, it decided that the regulation, in accordance with which it is the judge to whom the insult refers who decides on the punishment due to insulting the court during civil proceedings, is not inconsistent with the right to an impartial trial as determined by the first paragraph of Article 23 of the Constitution, as the judge does not decide in his or her own case in this procedure. In *Pečnik v. Slovenia*, dated 27 September

2012, the European Court of Human Rights adopted a different position. It decided that there exists a violation of the right to an impartial court within the meaning of the first paragraph of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as it was the judge who was the subject of the presumably insulting criticism who decided on the insulting statement. As the European Court of Human Rights explained, Article 6 of the Convention was applicable due to the fact that it was possible to convert the issued fine into a prison sentence.

In the case at issue, an identical question was raised in criminal proceedings with regard to which the statutory regulation envisaged that the fine due to insulting the court could be converted into a prison sentence. The Constitutional Court therefore decided to reassess the position adopted in Decision No. U-I-145/03. Hence, the first question for the Constitutional Court was whether the circumstance that it is the judge to whom the insulting statement refers who decides in the punishment procedure due to insulting the court can raise objectively justified doubt in a reasonable person that the judge will not decide impartially.

The first paragraph of Article 23 of the Constitution, *inter alia*, determines that everyone has the right to have any decision regarding his rights, duties, and any charges brought against him made by an impartial court. The Constitutional Court has stressed a number of times that from the right to an impartial trial it follows that the judge is not connected to the party or the disputed subject in such manner that, in a dispute, he or she would not be able to decide objectively, impartially, and by exclusively taking legal criteria into consideration. In the assessment of whether in proceedings an individual was ensured the right to an impartial court, the position was established in the constitutional case law that the impartiality of a court must be assessed not only on the basis of the effects of its impartiality, but also on the basis of the outward expression thereof, namely according to how parties to proceedings can understand partiality and impartiality. In order for justified doubt regarding a judge's impartiality to be raised in a reasonable person the mere appearance of partiality suffices.

Considering these starting points, the Constitutional Court changed its position from Decision No. U-I-145/03. In a situation where a judge decides on the punishment of a party or other participant in proceedings due to an insult that is addressed to this judge in person, the appearance of impartiality is compromised to such a degree that it is no longer possible to speak of an impartial trial within the meaning of the first paragraph of Article 23 of the Constitution. In such procedure, the judge does not decide on his or her own defamation, but on whether the reputation of the judicial branch of power has been damaged. However, the fact that the supposedly insulting statement refers directly to the judge who is to decide thereon can raise serious doubt in the eyes of a reasonable person as regards the existence of an impartial trial. It is not necessary to establish whether the judge in fact felt insulted, how he or she responded to the insult, or how he or she reasoned the punishment order. The fact that a judge gives value judgments and sanctions statements that refer to him or her personally raises in itself an objectively substantiated doubt regarding the impartiality of the trial. The appearance of impartiality is additionally compromised due to the fact that the judge issues the punishment order *ex officio*, which means that not only is he or she the judge in the case, but also the prosecutor. Therefore, the Constitutional Court decided that Article 78 of the Criminal Procedure Act is inconsistent with the Constitution insofar as it also refers to instances where the insult is directed towards either a judge or the members of a panel personally. The right to an impartial trial determined by the first paragraph of Article 23 of the Constitution requires that in such cases another judge decide on the punishment.

As it reviewed the constitutionality of the first paragraph of Article 78 of the Criminal Procedure Act, the Constitutional Court *ex officio* (Article 30 of the Constitutional Court Act) extended the review to also include Article 130, which enabled the fine issued due to insulting the court to be converted into a prison sentence. The Constitutional Court established that deciding on the punishment due to insulting the court is not a criminal institute. The violation is not a criminal offence by its nature, and the prescribed sanction is not a criminal sanction either. Such punishment entails a measure concerning the procedural conduct of proceedings that is intended to ensure that criminal proceedings are carried out in an organised manner, as well as that a respectful attitude towards the court is maintained. However, the possibility that the imposed fine is automatically replaced (if it cannot be enforced) with a prison sentence entails such a severe interference by the state with the rights of individuals that the act and the sanction should be defined in accordance with the guarantees determined by Article 28 of the Constitution, while deciding on the imposition of the sanction should be carried out in a separate procedure in which all constitutional procedural guarantees under criminal procedure determined by Articles 27 and 29 of the Constitution are guaranteed. The regulation of this punishment is thus inconsistent with the Constitution, not because any punishment due to defaming a court would be inadmissible within the framework of criminal proceedings, but because it is inadmissible to impose such severe sanctions as envisaged by the regulation at issue in summary proceedings and without the appropriate constitutional guarantees determined by Articles 27, 28, and 29 of the Constitution.

Since the Constitutional Court abrogated the statutory basis for the issuance of such punishment orders, it consequently also granted the constitutional complaint. It abrogated the challenged orders and remanded the case to the court of first instance for new adjudication. It also decided that, in the new proceedings, another judge would have to decide on the punishment.

5. 19. The Banking Act

By Decision No. U-I-295/13, dated 19 October 2016 (Official Gazette RS, No. 71/16), in proceedings to review constitutionality initiated upon the requests of the National Council, the Human Rights Ombudsman, and the Ljubljana District Court, and upon petitions submitted by a number of petitioners, the Constitutional Court, *inter alia*, decided that Article 350a of the Banking Act was inconsistent with the Constitution and that Article 265 of the Resolution and Compulsory Dissolution of Banks Act is inconsistent with the Constitution. It imposed on the legislature the obligation to remedy the established unconstitutionality within six months of the publication of the Decision in the Official Gazette of the Republic of Slovenia.

The proceedings to review the constitutionality of the Banking Act were initiated on the basis of twenty-three petitions and requests for the review of constitutionality, which the Constitutional Court joined for joint consideration and decision-making. During the proceedings before the Constitutional Court, the Banking Act ceased to be in force; nevertheless, the Constitutional Court decided on its constitutionality because the consequences of the alleged unconstitutionality have not been remedied. Since Article 265 of the Resolution and Compulsory Dissolution of Banks Act referred to the Banking Act, the Constitutional Court also initiated, *ex officio,* proceedings to review its constitutionality.

The Constitutional Court stayed the proceedings for the review of constitutionality and submitted to the Court of Justice of the European Union a number of preliminary questions relating to the validity and interpretation of the Communication from the Commission on

the application, from 1 August 2013, of state aid rules to support measures in favour of banks in the context of the financial crisis (hereinafter referred to as the Banking Communication), as well as a question relating to the interpretation of the Directive on the reorganisation and winding up of credit institutions. The Constitutional Court had to proceed in such manner because concerns regarding the interpretation and validity of the Banking Communication were raised during its decision-making, as well as concerns regarding the interpretation of the mentioned Directive, all of which could only be clarified by the Court of Justice of the European Union, which is the only authority competent to interpret EU law and to assess the validity of secondary EU law. On the basis of the third paragraph of Article 3a of the Constitution, the Constitutional Court had to observe the Judgment of the Court of Justice of the European Union in case No. C526/14 when interpreting the challenged statutory provisions and the provisions of the Constitution. The Constitutional Court proceeded without delay as soon as it received from the Court of Justice of the European Union, on 19 July 2016, its answers to the submitted questions.

In review proceedings, the Constitutional Court established that, substantively, a number of arguments of the petitioners and applicants did not refer to the constitutionality of the provisions of the Banking Act, which introduced the statutory basis for the extraordinary measure of the write-off or conversion of the eligible liabilities of banks, but to the alleged unlawfulness or unconstitutionality of the concrete decisions of the Bank of Slovenia adopted in December 2013 and December 2014 by which the eligible liabilities of some Slovene banks were written off. In light of its competences, the Constitutional Court did not address such allegations, nor did it address similar allegations regarding the inappropriateness of the statutory regulation. It only decided on the constitutionality of the Act, which in itself tells nothing about whether the concrete decisions of the Bank of Slovenia violated the human rights of the holders of the eligible liabilities of banks. Such question can only be addressed in concrete proceedings and cannot be a subject of the review of the constitutionality of the Act.

As the starting point for the review of constitutionality, the Constitutional Court took into account the fact that eligible liabilities were not legally equivalent to a bank's senior debt, as they predominantly formed the capital of the bank, which served to cover any losses of the bank and to protect other creditors, i.e. depositors, in particular. The focal point of the assessment of the Constitutional Court was an assessment of the consistency of the challenged provisions of the Banking Act with the prohibition of retroactivity determined by Article 155 of the Constitution, the principle of trust in the law determined by Article 2 of the Constitution, the right to private property determined by Articles 33 and 67 of the Constitution, and the right to judicial protection determined by the first paragraph of Article 23 of the Constitution.

The Banking Act allowed the Bank of Slovenia to compulsorily write off or convert (into shares) eligible liabilities that had already existed before its entry into force. However, the challenged regulation did not have a retroactive effect and hence it did not interfere with Article 155 of the Constitution. Namely, it was not possible for there to arise on the basis thereof an obligation of the holders of eligible liabilities to reimburse sums that they had already received. Consequently, there was no inconsistency with Article 155 of the Constitution.

Similarly, the Banking Act was not inconsistent with the principle of trust in the law, which is one of the principles of a state governed by the rule of law determined by Article 2 of the Constitution. The extraordinary measure of the write-off or conversion of a bank's eligible liabilities was only admissible where it was possible, by means of state aid, to prevent the bankruptcy

of the bank and the financial system as a whole from being threatened. By its economic logic, it entailed the decision that a certain category of the bank's creditors would not benefit from resolution with public funds. Of decisive importance for the assessment of the Constitutional Court was the fact that the challenged regulation contained the "no creditor worse off" principle, which means that individual creditors must not sustain a greater loss than they would have sustained had there been no write-off or conversion.

The Constitutional Court established that the Banking Act also did not interfere with the right to private property as determined by Article 33 in conjunction with Article 67 of the Constitution. The extraordinary measure of the write-off or conversion of a bank's eligible liabilities was intended to prevent the initiation of a bankruptcy procedure against the bank and had to be carried out in a manner such that the holders of eligible liabilities received, despite the extraordinary measure, at least an amount equal to the amount they would have received in a bankruptcy procedure. There is no duty of the state stemming from the Constitution to reimburse creditors, by means of state aid, the money they privately invested where the investment transpired to be economically unsuccessful.

Within the framework of the assessment from the viewpoint of the right to judicial protection, as determined by the first paragraph of Article 23 of the Constitution, it has to be underlined that the Banking Act did not allow the holders of written-off or converted eligible liabilities to challenge before a court, on their own behalf, the final decision of the Bank of Slovenia on the write-off or conversion. It did, however, provide them with different judicial protection in the form of an action for damages against the Bank of Slovenia. The mere fact that the affected persons only had an action for damages at their disposal, but not a possibility that would allow for the abrogation of the decisions of the Bank of Slovenia, was not inconsistent with their right to judicial protection, as the Constitution does not require precisely determined judicial proceedings to be available. The compensatory protection entailed the manner of exercise of the right to judicial protection within the meaning of the second paragraph of Article 15 of the Constitution. The Constitutional Court assessed that in this part the challenged regulation was reasonable and thus consistent with the Constitution. However, the Constitutional Court stressed that in order for compensatory protection to be consistent with the Constitution it must be effective. It established that the judicial protection provided by the Banking Act was not effective, as the legislature failed to take into account the significantly weaker position of the holders of eligible liabilities or to strike a fair balance between their position and that of the Bank of Slovenia. This caused the legislature to regulate their judicial protection in a manner that inadmissibly (i.e. lacking an admissible objective) interfered with their right determined by the first paragraph of Article 23 of the Constitution. The following characteristics of the challenged regulation were instrumental in such decision of the Constitutional Court: (1) the inaccessibility of the data relating to the assessment of the value of the capital of banks and of other data relevant to the dispute that would actually allow the plaintiffs to draft an action and to engage in a dispute; (2) the absence of any particular or adapted procedural rules that would compensate for the imbalance that existed in terms of the expertise and availability of information between an average holder of eligible liabilities and the Bank of Slovenia; (3) the lack of any specific expedited, economical proceedings for collective judicial protection that would ensure quality and uniform decision-making in disputes between the holders of eligible liabilities and the Bank of Slovenia.

With regard to the fact that the Banking Act did not provide for effective judicial protection of the holders of written-off or converted liabilities in banks (an unconstitutional legal gap), the

Constitutional Court established that Article 350a of the Banking Act was inconsistent with the Constitution. Also Article 265 of the Resolution and Compulsory Dissolution of Banks Act is inconsistent with the right to judicial protection, as it prescribes that the unconstitutional Banking Act be applied further. The Constitutional Court imposed on the National Assembly the obligation to remedy the established unconstitutionality within six months by adopting a statutory regulation that will enable constitutionally consistent exercise of the right to judicial protection as regards all actions for damages that have possibly already been filed or are yet to be filed concerning the write-off of eligible liabilities on the basis of the Banking Act. In order to protect the right to judicial protection until the established unconstitutionality is remedied, the Constitutional Court determined the manner of implementation of its Decision. It ordered that the statute of limitations regarding claims for damages be suspended until six months after the established unconstitutionality is remedied and decided that all actions for damages be suspended until the established unconstitutionality is remedied.

5. 20. The Right to Participate in Minor Offence Proceedings

In Decision No. Up-497/14, dated 24 November 2016, (Official Gazette RS, No. 79/16), the Constitutional Court decided on the constitutional complaint of a complainant who was punished by a citation issued by a police station for having committed a number of traffic offences. The complainant filed a request for judicial protection against the citation, but the local court dismissed it. The complainant challenged the judgment issued in the minor offence case by a constitutional complaint. He alleged that in the procedure he did not have the right to be heard, which constitutes a violation of Article 22 of the Constitution.

On the basis of the Constitutional Court Act, constitutional complaints are not, as a general rule, admissible in minor offence cases. The Constitutional Court decides only exceptionally on such constitutional complaints, namely in particularly substantiated cases that concern an important constitutional question that exceeds the importance of the concrete case. As a general rule, this condition is not fulfilled if there already exists a position of the Constitutional Court on the constitutionally important question raised by the constitutional complaint. Namely, when exceptionally deciding in minor offence cases, the Constitutional Court does not carry out standard supervision over respect for human rights but forms precedential standards for the protection of human rights with a view to developing and directing case law. In the case at issue, such a position could lead to the conclusion that the constitutional complaint at issue is not admissible, as it raised questions on which the Constitutional Court had already adopted a position. However, the Constitutional Court stated that in the event of repeated violations the question at issue is no longer merely one of the violation of a particular human right but the further question of whether in such decision-making of minor offence courts the position is expressed that human rights need not be respected at all in minor offence cases. Therefore, the Constitutional Court decided to accept the constitutional complaint for consideration and to substantively decide thereon.

Article 22 of the Constitution guarantees everyone the equal protection of rights in any proceedings before a court and before other state authorities. The key substance of this right is that it gives an individual the possibility to participate in proceedings in which his or her rights are decided on and the possibility to make a statement on the facts and circumstances that are important for deciding on his or her rights. From this constitutional guarantee there follows, *inter alia,* the right to an adversarial procedure, i.e. the right to be heard, on the basis

of which all parties must be guaranteed the right to participate in judicial proceedings and the possibility to conduct a defence regarding all procedural actions that could influence their rights or legal position. The right to be heard, which is based on respect for human personality and dignity (Article 34 of the Constitution) guarantees parties that the court will treat them as active participants in the proceedings and enable them an effective defence of their rights and an active influence on the decision in a case that interferes with their rights and interests.

By a citation, the complainant was found responsible for having committed three traffic offences. In the request for judicial protection he claimed that he had not committed the alleged minor offences. He also drew attention to the fact that the alleged minor offences were not presented to him at the place where they were allegedly committed and that also from the citation that was served on him it does not follow whether the minor offences due to driving an uninsured and unregistered vehicle refer to the tractor or to the trailer. The complainant proposed to the court that he be heard, that enquiries be made at the administrative unit as to the registration of the tractor and the trailer, that enquiries be made at the insurance company as to the insurance of the tractor and the trailer, that the vehicle registration certificate be checked, that the photographs of the tractor with the trailer taken by the minor offence authority be acquired, and that a road traffic expert be appointed. He also proposed that the court summon the minor offence authority in order for it to state facts and evidence, and then enable the complainant to adopt a position thereon.

Prior to adopting the decision, the court carried out enquiries at the administrative unit regarding the registration of the trailer and at the insurance company regarding the insurance of this vehicle and acquired data on the internet regarding the mass and other characteristics of the type of trailer that the complainant was driving. From the challenged judgment it was evident that the court based its assessment regarding the existence of decisive evidence on the findings of the police officers, on the photographs of the vehicle that were taken and presented to the court by the minor offence authority, and on the evidence that the court obtained by itself. However, the court failed to inform the complainant of the mentioned evidence and also did not enable him to make a statement thereon. The court also did not serve on the complainant the description of the state of the facts (despite the fact that the complainant expressly alleged in the request for judicial protection that he did not understand the state of the facts of the minor offence) or the evidence that the court had obtained by itself. The court also failed to hear the complainant prior to adopting the decision. Since the court failed to do all of the above, it deprived the complainant of the possibility to participate in the procedure for taking evidence, whereby it violated his right to be heard determined by Article 22 of the Constitution.

5. 21. The Limits to the Freedom of Expression

By Decision No. Up-407/14, dated 14 December 2016 (Official Gazette RS, No. 2/17), the Constitutional Court decided on two constitutional complaints that the complainant, the company MLADINA, filed against two judgments of the Higher Court and the Supreme Court that were issued in a lawsuit in which the plaintiff Branko Grims alleged an interference with his personality rights. In 2011, in Issue No. 9 of the weekly Mladina, in the satirical section Mladinamit, the complainant namely published an article with the title, in Slovene, "Not Every Dr G. is Dr Goebbels." In the article, a photograph of the family of the plaintiff was published, and beside it a photograph of the German Nazi politician and Minister of Propaganda Joseph Goebbels with his family. In an editorial of the same issue and in three articles in the next issue

of the magazine, the complainant compared the methods of political propaganda of the two politicians and explained in more detail the reasons for publishing the disputed photographs. The plaintiff demanded, by an action, that an apology and the judgment be published in the weekly Mladina, as well as compensation for non-material damage. The court of first instance dismissed both the plaintiff's claim for the payment of compensation as well as the demand that the defendant, i.e. the complainant before the Constitutional Court, publish the judgment in the weekly Mladina and apologise to the plaintiff and his three children. The Higher Court granted the plaintiff's appeal and partly modified the judgment of the first instance, namely, it required the complainant to publish, within fifteen days, the judgment in the weekly Mladina and, concurrently when the judgment is published, to apologise to the plaintiff in the same issue of the weekly. The complainant submitted a motion to file an appeal before the Supreme Court against the judgment of the second instance, which the Supreme Court partially granted, but it subsequently dismissed the appeal.

In the case at issue, the publication of the text articles in the weekly Mladina was not disputable (i.e. neither the editorial that was published in the same issue as the disputed comparison of the photographs nor the three text articles published in the following issue of the weekly Mladina). There was also no dispute between the complainant and the plaintiff regarding whether the publication of the photograph of the plaintiff's family in the weekly Mladina is in itself admissible. For the plaintiff, the matter of dispute was merely the simultaneous publication of the photograph of his family and the photograph of the family of Joseph Goebbels, and the consequent visual comparison of the two families in the complainant's satirical section Mladinamit. The Higher Court and the Supreme Court assessed the issue of the admissibility of the published comparison of the photographs of the plaintiff's family and of the Goebbels family differently than the court of first instance. Therefore, the assessment of the Constitutional Court was focused on the decisions of the Higher Court and the Supreme Court on the inadmissibility of the publication of the disputed comparison of the photographs, with regard to which the court imposed a civil sanction on the complainant, namely the duty to publish the judgment and an apology to the plaintiff in the weekly Mladina. The Constitutional Court assessed the admissibility of the positions on which the challenged judgments of the Higher Court and the Supreme Court were based from the viewpoint of the complainant's freedom of expression, which is protected by the first paragraph of Article 39 of the Constitution. In its assessment, it took into consideration both the criteria adopted in its hitherto constitutional case law and the criteria that the European Court of Human Rights applies in cases of such kind.

The Constitutional Court underlined the starting point of its assessment, namely that the publication of a photograph can entail a much more severe interference with the personality rights of the affected person than a text article. Therefore, the position of the courts that the balancing of the conflicting rights relating to the published photographs must be carried out separately is not disputable from either the constitutional or Convention-based perspective of the protection of freedom of expression. The requirement to carry out a separate balancing of conflicting rights with regard to the publication of the photographs does not entail that the court, when separately assessing the admissibility of the publication of the text article and of the publication of the photograph, does so with no regard for the context in which each of them was published. In the assessment of the Constitutional Court, the position of the courts in accordance with which photographs have a much greater documentary and communication power is not constitutionally disputable; this position entails that precisely due to the open nature of the content of communication by a non-textual means of communication journalists must act in a particularly sensitive and responsible manner when publishing such material.

Among the important constitutional circumstances considered by the Constitutional Court that affected the balancing in the case at issue was the fact that in the photograph the plaintiff is also (even primarily) in the role of the father of a family. Also the plaintiff as a politician must be recognised and enabled judicial protection against inadmissible interferences with his honour and reputation, in particular when he is protecting the reputation of his family as a family member. Despite the fact that the plaintiff has to be willing to be subject to very harsh and provocative criticisms of himself as a politician, he must be recognised legal protection from unjustified interferences that extend to family members. Such a situation also exists in the case at issue, where the criticism, i.e. the publication of a satirical article, also extended to his family members. Despite the starting point that a satirical style of expressing opinions and criticisms enjoys broader protection, the Constitutional Court assessed, by taking all the circumstances at issue into consideration, that the fact that the disputed comparison of photographs was positioned in a satirical section of the publication does not entail a factor that would tip the scales in favour of the complainant's freedom of expression.

The Constitutional Court established that the Higher Court and Supreme Court took into account both of the human rights in collision, that they did not disregard either of them in their assessments, that they carried out the balancing between the human rights in collision by taking into account the criteria adopted in the constitutional case law and the case law of the European Court of Human Rights, and that they also took into consideration all the constitutionally relevant circumstances. Furthermore, in the assessment of the Constitutional Court, they attributed each of the two rights in collision appropriate weight when assessing the mentioned criteria. The balancing by the courts led to the result that due to the publication of the family photographs – unlike the text articles, whose publication was never disputed – there was an inadmissible interference with the plaintiff's right to the protection of one's honour and reputation. The courts also appropriately and sufficiently reasoned such result. Considering all of the above, the Constitutional Court had no grounds to interfere with the challenged judgments of the Higher Court and Supreme Court. Therefore, it dismissed both constitutional complaints.

6. The Personnel of the Constitutional Court

6. 1. The Judges of the Constitutional Court

The Constitutional Court is composed of nine judges elected on the proposal of the President of the Republic by secret ballot and by a majority of votes by the National Assembly. Any citizen of the Republic of Slovenia who is a legal expert and has reached at least 40 years of age may be elected a Constitutional Court judge. Constitutional Court judges are elected for a term of nine years and may not be re-elected. Judges of the Constitutional Court enjoy the same immunity as deputies of the National Assembly. The incompatibility of their office with other offices and with the performance of other work, with the exception of teaching at a university, is one important element of their independence.

The President of the Constitutional Court is elected by the judges from among their own number for a term of three years. Also the Vice President of the Constitutional Court, who substitutes for the President when he or she is absent from office, is elected in the same manner. The President represents the Constitutional Court, manages relations with other state authorities and cooperation with foreign constitutional courts and international organisations, coordinates the work of the Constitutional Court, calls and presides over its sessions, signs decisions and orders of the Constitutional Court, and performs other tasks in accordance with the law and the Rules of Procedure of the Constitutional Court.

In 2016, two judges of the Constitutional Court were replaced. On 31 October, Constitutional Court Judge Dr Špelca Mežnar assumed office and replaced Constitutional Court Judge Mag. Miroslav Mozetič. On 20 November, Marko Šorli assumed the office of Constitutional Court Judge and replaced Constitutional Court Judge Mag. Marta Klampfer.

As the term of office of the previous President of the Constitutional Court Mag. Miroslav Mozetič expired in 2016, also the leadership of the Constitutional Court changed. Following her election, Constitutional Court Judge Dr Jadranka Sovdat assumed the office of President of the Constitutional Court on 31 October 2016. On the same day, Constitutional Court Judge Dr Etelka Korpič – Horvat assumed the office of Vice-president of the Constitutional Court.

6. 2. The Secretariat of the Constitutional Court

The legal advisory work for Constitutional Court judges and judicial administration tasks are carried out by the Secretariat, which is composed of five organisational units: the Legal Adviso-

ry Department, the Analysis and International Cooperation Department, the Documentation and Information Technology Department, the Office of the Registrar, and the General and Financial Affairs Department. The Secretary General, who is appointed by the Constitutional Court, directs the functioning of all services of the Secretariat. The Deputy Secretary General and Assistant Secretary Generals assist him or her in the performance of management and organisational tasks. The work of the advisors in the Legal Advisory Department is of particular importance in exercising the competences of the Constitutional Court, as is the work of the advisors in the Analysis and International Cooperation Department. Advisors are appointed by the Constitutional Court from among legal and other experts.

As of the end of 2016, 79 judicial personnel were employed at the Constitutional Court, 77 of whom were employed for an indefinite period of time, one judicial officer was employed for a defined period of time, and one employee performed supplementary work in a one-fifth full-time equivalent position. Among those employed for an indefinite period of time, 29 were advisors of the Constitutional Court, one of whom was employed in a one-fifth full-time equivalent position, and six were advisors in the Analysis and International Cooperation Department.

6. 3. The Internal Organisation of the Constitutional Court

6.4. Advisors and Department Heads

Mag. Tjaša Šorli, *Deputy Secretary General*
Nataša Stele, *Assistant Secretary General*
Suzana Stres, *Assistant Secretary General*
Mag. Zana Krušič - Matè, *Assistant Secretary General for Judicial Administration*

ADVISORS
Tina Bitenc Pengov
Mag. Uroš Bogša
Vesna Božič Štajnpihler
Diana Bukovinski
Mag. Tadeja Cerar
Mag. Polona Farmany
Dr Aleš Galič
Mag. Nada Gatej Tonkli
Mag. Marjetka Hren, LL.M.
Andreja Kelvišar
Andreja Krabonja
Jernej Lavrenčič
Simon Leohar
Marcela Lukman Hvastija
Mag. Maja Matičič Marinšek
Mag. Karin Merc
Katja Mramor
Liljana Munh
Constanza Pirnat Kavčič
Andreja Plazl
Ana Marija Polutnik
Maja Pušnik
Mag. Vesna Ravnik Koprivec
Mag. Heidi Starman Kališ
Mag. Jerica Trefalt
Dr Katja Triller Vrtovec, LL.M.
Dr Katarina Vatovec, LL.M.
Igor Vuksanović
Dr Renata Zagradišnik, spec., LL.M.
Dr Sabina Zgaga
Mag. Lea Zore

DEPARTMENT HEADS
Ivan Biščak, *Director of the General and Financial Affairs Department*
Nataša Lebar, *Head of the Office of the Registrar*
Tina Prešeren, *Head of the Analysis and International Cooperation Department*
Mag. Miloš Torbič Grlj, *Head of the Documentation and Information Technology Department*

7. International Activities of the Constitutional Court

In the sphere of international cooperation, the year 2016 was predominantly marked by the celebration of the 25th anniversary of the functioning of the Constitutional Court in the independent and democratic state. On that occasion the Constitutional Court published a special collection of the most important decisions adopted in the 25 years of the its functioning. The collection was published in Slovene and English. The Constitutional Court celebrated its silver jubilee with a solemn ceremony and an international conference dedicated to the role and position of constitutional courts. The solemn ceremony, held on 22 June 2016 at Brdo Castle, was attended by the highest representatives of the Slovene state, guests from the Court of Justice of the European Union and a number of foreign constitutional courts and supreme courts exercising constitutional jurisdiction. The ceremony audience was addressed by Mag. Miroslav Mozetič, President of the Constitutional Court of the Republic of Slovenia, Prof. Koen Lenaerts, President of the Court of Justice of the European Union, George Papuashvili, President of the Constitutional Court of Georgia and Chair of the Conference of European Constitutional Courts, and Borut Pahor, President of the Republic of Slovenia. The international conference, which was held on 23 June 2016 in Bled, was very productive; in addition to numerous national participants, the Constitutional Court hosted 50 representatives from 27 foreign constitutional courts and other highest courts exercising constitutional jurisdiction. At the conference, national and foreign experts, members of international and constitutional courts, presented their standpoints on the significance of constitutional courts for the development of the rule of law and their views on the contemporary challenges faced by constitutional courts. The Constitutional Court published special Conference Proceedings in English concerning the solemn ceremony and the international conference.

In February 2016, the President and Vice President of the Constitutional Court participated in the international conference on constitutional protection of the right to vote held by the Constitutional Court of Montenegro in Podgorica. They also participated in the conference marking the 25th anniversary of the functioning of the Constitutional Court of Latvia, held in May in Riga. Judge Zobec shared his knowledge and experiences with the participants of the seminar on the transformation of civil justice in Croatia and the region, which was held in April in Pazin. In the same month, the President of the Constitutional Court attended the international symposium marking the 54th anniversary of the Constitutional Court of Turkey in Ankara. In the first half of September, a delegation of the Constitutional Court travelled to Batumi to attend the international conference marking the 20th anniversary of the Constitutional Court of Georgia. In the second half of September, representatives of the Court attended the 25th anniversary of the Constitutional Court of Bulgaria in Sofia. In 2016, the annual working meeting of the judges of the Constitutional Courts of Croatia and Slovenia was hosted by the Constitutional Court of Croatia. The main topic of discussions was the relationship

between the constitutional court as the negative legislator and the parliament as the positive legislator. In October, a delegation of the Constitutional Court led by the Court's President paid a three-day official visit to the Constitutional Court of the Kingdom of Belgium. The judges discussed in particular the challenges both constitutional courts face when deciding cases related to asylum procedures, migrations, and security issues. In the end of October, Judge Zobec attended the annual Erevan International Conference organised by the Constitutional Court of Armenia, and in November, he participated in the International Conference of the Justices of the World, held in Lucknow, India.

The Head of the Analysis and International Cooperation Department participated in the 15th meeting of the Joint Council on Constitutional Justice of the Venice Commission, which took place in June in Venice, and attended the 8th Congress of the ACCPUF – the Association of Constitutional Courts Using the French Language –, held in September in Chisinau, Moldavia. The participants of the Congress discussed various aspects of adversarial proceedings before constitutional courts. In October, a delegation of the Constitutional Court led by the Court's Secretary General travelled on a three-day study visit to the Constitutional Court of Albania in Tirana. In 2016, the Court's legal advisors attended several legal courses abroad. These included a seminar on criminal law (Strasbourg, France), the international conference on the role of assistant magistrates in the jurisdiction of constitutional courts (Bucharest, Romania), the annual conference of the European Society of International Law – ESIL (Riga, Latvia), a summer course on European Data Protection Law (Trier, Germany), a seminar on the life cycle of electronic evidence (Barcelona, Spain), and a seminar on European Union law (Brussels, Belgium).

8. The Constitutional Court in Numbers

8. 1. Cases Received

In 2016, the trend of a decreasing number of cases received, which had started in 2009, reversed, as the Constitutional Court received more cases than in 2015. In 2016, it received 1,324 cases, which is 8.2% more than in 2015, when it received 1,224 cases. The increase in the total number of cases received was a consequence of receiving a higher number of constitutional complaints (the Up register), and a higher number of applications for the review of the constitutionality or legality of regulations (the U-I register). In 2016, the Constitutional Court received 228 requests and petitions for a review of constitutionality and legality – which represents a 7.5% increase compared to 2015, when it received 212 requests and petitions – and 1,092 constitutional complaints, which represents an 8.7% increase compared to 2015, when it received 1,003 constitutional complaints. Within the distribution of all cases received, there was still a strong preponderance of constitutional complaints, which represented 82.5% of all cases received. In some instances, constitutional complaints are filed together with petitions for the review of the constitutionality or legality of a regulation on which judicial decisions are based; in 2016, there were 79 such cases. These are so-called joined cases, on which the Constitutional Court decides by a single decision.

In 2016, 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 again increased significantly, while the number of constitutional complaints received by the Civil Law Panel again decreased marginally compared to the previous year. The increase with regard to the Criminal Law Panel reached 22%, and 17.8% with regard to the Administrative Law Panel. On the other hand, the Civil Law Panel received 3% fewer constitutional complaints than in 2015. In absolute figures, the Civil Law Panel still had the highest number of cases received (458 cases), which accounted for almost half (41.9%) of all constitutional complaints received. This was followed by the Administrative Law Panel, with 384 cases received (35.2%) and the Criminal Law Panel, with 250 cases received (22.9%). Constitutional complaints in the civil law field have always represented the greatest share. The relatively lower number of constitutional complaints received by the Criminal Law Panel compared to the beginning of this decade can, on the one hand, be attributed to the decrease in recent years in minor offence cases received. On the other hand, the number of complex criminal cases considered by the Criminal Law Panel has increased significantly in recent years.

With regard to the content of the constitutional complaints received, once again in 2016 the most frequent disputes were those linked to civil law litigation. In comparison to 2015, the number thereof increased by 5.5%, whereas the share of such in all constitutional complaints

amounted to 24.5%. This was followed, in second place, by constitutional complaints in the field of criminal law, with regard to which an increase was noted for the fourth year in a row. In comparison to 2015, the number of such increased by 23.3% and accounted for 18.4% of all constitutional complaints. In terms of content, criminal cases were followed by administrative disputes (10.5%), labour disputes (9.7%), commercial disputes (6.9%), execution proceedings (5.5%), and minor offences (4.3%). If these shares are compared, for example, with 2011, it can be noted that in the last five years the trend as to the number of criminal cases received compared to minor offence cases received completely reversed. In 2011, minor offences represented a 23.3% share of all constitutional complaints received, and by 2016 this share had progressively decreased to 4.3%. On the other hand, the share of complex criminal cases has virtually doubled – from 9.3% in 2011 to 18.4% in 2016.

With regard to proceedings for a review of the constitutionality or legality of regulations (U-I cases), concerning which the number of cases received in 2016 was somewhat higher than in 2015 (an increase of 7.5%), it should be underlined that of the 228 cases received, 42 (18.4%) 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 (186 petitions). In this context, the activity of the regular courts must be highlighted, as they filed 21 requests for a review of the constitutionality of laws, which amounts to 50% of all requests filed. In addition to the Ombudsman for Human Rights, which filed one request, local communities or their associations filed five requests; the National Council and trade unions each filed four requests; the Government filed three requests; and the Court of Audit and deputy groups of the National Assembly each filed two requests. Of the 186 petitions for a review of constitutionality or legality, in 79 cases (42.5% 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 when the regulations do not have a direct effect. In such instances, all judicial remedies must first be exhausted in proceedings before the competent courts, 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.

As regards the type of regulations challenged, it can be concluded that in 2016 most often laws and other acts adopted by the National Assembly were challenged; namely, as many as 91 different laws adopted by the National Assembly were challenged. Such laws were followed by regulations of local communities (36 different municipal regulations were challenged) and by acts of the Government and governmental ministries (24 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 17 times, the provisions of the Civil Procedure Act nine times, the provisions of the Criminal Procedure Act seven times, and the provisions of the Tax Procedure Act six times. The Pension and Disability Insurance Act, which was challenged most often in 2015, ranked only fifth in 2016 – it was challenged four times.

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 adopted positions 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 their application has no chance of success. If the applicant remedies the established deficiencies or requests that the Constitutional Court nevertheless decide upon the application, the application is transferred to the Up register (constitutional complaints) or the U-I register (petitions for a review of the constitutionality or legality of regulations). 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").

However, these cases do not represent a significant burden in comparison to the overall workload of the Constitutional Court, therefore they are statistically shown only within the framework of the general R-I register.

In view of the statistical data, it should be underlined that the burden on the Constitutional Court cannot be measured by quantitative data, as the true burden always depends on the nature of the individual cases, on their difficulty, and on the importance and complexity of the constitutional questions that they raise.

8. 2. Cases Resolved

With regard to cases resolved, it must be noted that in 2016 the Constitutional Court resolved slightly fewer cases than in 2015 (1,094 cases compared to 1,197 cases, an 8.6% decrease). The lower number of cases resolved can to a great extent be attributed to the fact that in 2016 the Constitutional Court was faced with issues with its personnel in the Legal Advisory Department (longer leaves of absence and resignations), which affected the dynamics of the work of the court. The distribution of cases resolved was similar to the distribution of cases received. In 2016, the Constitutional Court resolved 214 cases regarding the constitutionality and legality of regulations (U-I cases), amounting to a 19.6% share of all cases resolved. In comparison to 2015, when it resolved 221 petitions and requests for a review of the constitutionality of regulations, this represents a 3.2% decrease. In 2016, as has been the case every year thus far, constitutional complaints represented the majority of cases resolved. The Constitutional Court resolved 870 such cases, amounting to a 79.5% share of cases resolved and representing a 9.8% decrease in comparison to 2015, when it resolved 964 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 (415), followed by the Administrative Law Panel (257) and the Criminal Law Panel (198). The number of cases resolved by the Administrative Law Panel decreased by 28%; the number of cases resolved by the Civil Law Panel decreased by 18.1%, while the number of cases resolved by the Criminal Law Panel increased significantly, namely by 98%. In addition to proceedings for the review of the constitutionality and legality of regulations and constitutional complaints, the Constitutional Court also resolved 10 jurisdictional disputes (P cases) in 2016.

In terms of content, the greatest number of constitutional complaints resolved referred to civil law litigation (27.6%), followed by criminal cases (17.1%, which is a twofold increase compared to the previous year), administrative disputes (9.1%), enforcement (7.6%), labour disputes (6.9%), minor offences (5.5%), and commercial disputes (5.3%). Similarly as regards the number of cases received, also as to the number of cases resolved a completely opposite trend in criminal cases compared to minor offence cases can particularly be noted. The share of complex criminal cases among cases resolved has been consistently increasing, whereas the share of minor offence cases has been diminishing.

In addition to the data regarding the total number of cases resolved, also the information regarding how many cases the Constitutional Court resolved substantively, i.e. by a decision, is important. Out of a total of 1,094 cases resolved in 2016, the Constitutional Court adopted a substantive decision in 86 proceedings (7.9% of all cases resolved), while the others were resolved by an order. If substantive decisions according to the individual registers are considered, it can be observed that in 214 proceedings for a review of the constitutionality or legality of regulations (U-I cases), the Constitutional Court adopted 38 decisions (17.8%), and in constitutional complaint proceedings it resolved 42 out of 873 cases by a decision (4.8%). Statistically speaking, the Constitutional Court indeed adopted fewer decisions in 2016 in constitutional complaint proceedings than in 2015 (42 compared to 81); however, it has to be underlined that, in 2015, out of 81 decisions, 33 were of the same type and were adopted by a Constitutional Court panel (i.e. a panel decision on the basis of the third paragraph of Article 59 of the Constitutional Court). This in fact means that the number of decisions in constitutional complaint cases was more or less the same also in 2016. It is characteristic of the decisions of the Constitutional Court adopted in 2016 that they dealt with a high number of new and diverse constitutional questions; therefore these decisions have an important precedential effect. Constitutional Court judges submitted 16 separate opinions, of which 12 were dissenting and 4 concurring opinions.

In 2016, the success rate of complainants, petitioners, and applicants, taken as a whole, was in fact lower than in 2015. This is above all due to the lower success rate in constitutional complaint cases, whereas the success rate in cases for the review of the constitutionality or legality of regulations was higher. Of the 214 resolved petitions and requests for a review of the constitutionality or legality of regulations, in 19 cases the Constitutional Court established that the law was unconstitutional (8.9% of all U-I cases), of which it abrogated the relevant statutory provisions in five cases, whereas in 14 cases it adopted a declaratory decision; in nine of these declaratory decisions it imposed on the legislature a time limit by which it must remedy the established unconstitutionality. Applicants were also more successful at challenging implementing regulations, as the Constitutional Court established the unconstitutionality or illegality of an implementing regulation in eight cases (3.7% of all U-I cases). The combined success rate in U-I cases was thus 12.6% (while in 2015 it was 8.1%). The success rate of constitutional complaints was lower than in previous years. The Constitutional Court granted 40 (i.e. 4.6%) of all the constitutional complaints resolved in 2016 (870), and dismissed by a decision two constitutional complaints as unfounded. In comparison, in 2015, the success rate of constitutional complaints was as high as 7.9%; however, a factor that influenced this higher success rate was the already-mentioned fact that the Constitutional Court issued 33 so-called panel decisions in cases of the same type. The success rate with regard to constitutional complaints (and other applications) must, of course, always be interpreted carefully, as the numbers do not reflect the true importance of these cases. These cases refer to matters that provide answers to important constitutional questions; therefore their significance for the development of (constitutional) law far exceeds their statistically expressed quantity.

With regard to successful constitutional complaints, it can be concluded that the Constitutional Court most often (27 times) dealt with 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. To some degree, violations of the right to judicial protection determined by the first paragraph of Article 23 of the Constitution also stand out; the Constitutional Court established such a violation 8 times. Among other violations of human rights, which were more or less evenly distributed, also violations of the following rights can be mentioned: the right to privacy and personality rights (Article 35 of the Constitution), the inviolability of dwellings (the first paragraph of Article 36 of the Constitution), and the right to the privacy of correspondence and other means of communication (the first paragraph of Article 37 of the Constitution).

The average period of time it took to resolve a case in 2016 was approximately the same or a little longer compared to 2015. On average, the Constitutional Court resolved a case in 299 days (as compared to 283 days in the previous year). In 2016, the relatively long average time needed to resolve jurisdictional disputes (P cases) in particular influenced the overall average time needed to resolve cases. The average duration of proceedings for a review of the constitutionality or legality of regulations (U-I cases) was 326 days, whereas constitutional complaints were resolved by the Constitutional Court on average in 289 days. When interpreting these data, one needs to consider other factors, otherwise they can be misleading. Simpler cases are, as a general rule, resolved faster by the Constitutional Court, whereas the resolution of more complex cases often takes much more time than the average amount of time it takes to resolve a case.

8. 3. Unresolved Cases

At the end of 2016, the Constitutional Court had a total of 1,219 unresolved cases remaining, of which one was from 2013, 47 from 2014, and 276 from 2015. All of the remaining unresolved cases (895) were received in 2016. Among the unresolved cases, 286 cases were priority cases and 101 cases were absolute priority cases. Such designation is assigned to particular cases that also the regular courts must consider expeditiously, in light of their nature. Priority cases include requests by courts for a review of the constitutionality of laws and other cases that the Constitutional Court deems need to be considered expeditiously due to their importance to society. Among the unresolved cases, in eight constitutional complaints the Constitutional Court decided to suspend the implementation of the challenged individual acts. The suspension of the implementation of the regulation at issue has not been ordered in any unresolved cases involving a review of the constitutionality or legality of regulations.

In comparison with 2015, the number of unresolved cases increased in 2016. At the end of 2015, the Constitutional Court had 989 unresolved cases, whereas at the end of 2016 this number was 1,219. This entails that in 2016 the backlog of cases increased by 23.2%. Such an increase in the number of unresolved cases can be explained by the lower number of resolved cases, on the one hand, and by the significantly higher number of cases received, on the other. Considering the fact that in 2016 the Constitutional Court adopted an approximately equal number of decisions on the merits as in previous years, the lower number of cases resolved must be attributed to the lower number of decisions adopted by an order (rejections, dismissals, inadmissibility decisions). In general, it can be established that, in recent years, the number of rejections in particular has been decreasing, namely as regards both petitions and requests for a review of constitutionality as well as constitutional complaints. To illustrate, in 2011 the

Constitutional Court rejected 828 constitutional complaints and 205 petitions and requests, whereas in 2016 it rejected 334 constitutional complaints and 132 petitions and requests. On the one hand, this may entail that the increase in the backlog of cases is not a result of reduced substantive decision-making by the Constitutional Court, but a result of reduced decision-making in simple cases that do not have special significance for the development of law, in particular for respect for human rights and fundamental freedoms. On the other hand, it is evident that the number of applications that need to be rejected is diminishing, while the number of quality applications that raise weighty constitutional issues and require in-depth substantive consideration by the Constitutional Court is increasing. However, personnel-related reasons may have also affected the extent of the backlog. In 2016, the Constitutional Court was faced with longer leaves from work and the resignation of certain advisors, and did not manage to entirely compensate for this shortfall. Nevertheless, it must be taken into consideration that such raw data on the backlog of cases fails to reveal anything about the complexity of these cases or about the consequent burden on the Constitutional Court. Considering the number of cases received, among which the number of constitutionally complex cases is increasing, and considering the usual fluctuations (retirements, resignations) in the personnel structure, it must be underlined that both the judges of the Constitutional Court and the advisory personnel are overburdened.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9. Summary of Statistical Data for 2016

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

Key	REGISTER
U-I register	cases involving a review of the constitutionality and legality of regulations and general acts issued for the exercise of public authority
Up register	cases involving constitutional complaints
P register	cases involving jurisdictional disputes
U-II register	applications for the review of the constitutionality of referendum questions
Rm register	opinions on the conformity of treaties with the Constitution in the process of ratifying a treaty
Mp register	appeals in procedures for confirming the election of deputies of the National Assembly and the election of members of the National Council
Op register	cases involving the impeachment of the President of the Republic, the President of the Government, or ministers
Ps register	cases involving the review of the constitutionality of the acts and activities of political parties
R-I register	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 2016

REGISTER	CASES PENDING AS OF 31 DECEMBER 2015	CASES RECEIVED IN 2016	CASES RESOLVED IN 2016	CASES PENDING AS OF 31 DECEMBER 2016
Up	773	1092	870	995
U-I	205	228	214*	219
P	11	4	10	5
U-II				
Rm				
Mp				
Ps				
Op				
Total	**989**	**1324**	**1094**	**1219**

* The 214 U-I cases resolved include 7 joined applications.

Table **2** Summary Data regarding R-I Cases in 2016

REGISTER	CASES PENDING AS OF 31 DECEMBER 2015*	CASES RECEIVED IN 2016	CASES RESOLVED IN 2016	CASES PENDING AS OF 31 DECEMBER 2016
All R-I	54	290	301	43
R-I** (cases that remained in the R-I register)	54	75	71	43
Total (all registers and R-I cases)	**1043**	**1399**	**1165**	**1262**

* The number of cases pending as of 31 December 2015 does not match the data provided in last year's overview, as a few R-I cases were reopened and closed in 2016.
** 290 R-I cases were received, 215 of which were transferred to another register (Up or U-I) in 2016, while 75 remained in the R-I register. The total number amounted to 301 R-I cases resolved, 230 of which were resolved by transfer to other registers, while 71 cases remained in the R-I register.

Table **3** Summary Data regarding Up Cases by Panel in 2016

PANEL	CASES PENDING AS OF 31 DECEMBER 2015*	CASES RECEIVED IN 2016	CASES RESOLVED IN 2016	CASES PENDING AS OF 31 DECEMBER 2016
Civil	336	458	415	379
Administrative	181	384	257	308
Criminal	256	250	198	308
Total	**773**	**1092**	**870**	**995**

* The number of cases pending according to panel as of 31 December 2015 does not match the data provided in last year's overview, as the manner of the distribution of cases between the panels changed during the year. The total number of cases differs by one, as one Up case was reopened and closed in 2016.

Table **4** Pending Cases according to Year Received as of 31 December 2016

YEAR	2013	2014	2015	2016	TOTAL
U-I		12	51	156	219
P			2	3	5
Up	1	35	223	736	995
Total	**1**	**47**	**276**	**893**	**1219**

9. 1. Cases Received

Figure **1** Distribution of Cases Received in 2016

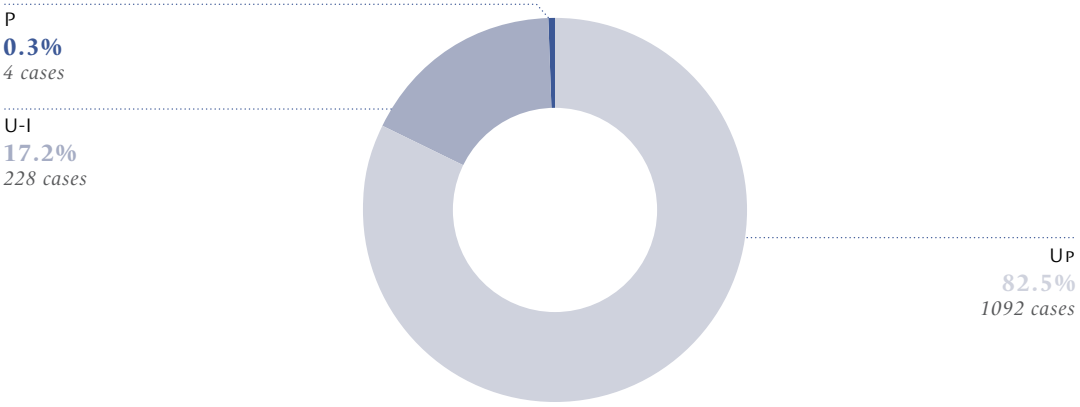


Table **5** Cases Received according to Type and Year

YEAR	U-I	Up	P	U-II	Ps	Mp	Rm	TOTAL
2010	287	1582	10	1				1880
2011	323	1358	20	3				1704
2012	324	1203	13	2	1	1		1544
2013	328	1031	7					1366
2014	255	1003	20					1278
2015	212	1003	7	2				1224
2016	**228**	**1092**	**4**					**1324**
2016/2015	**↑ 7.5%**	**↑ 8.7%**	**↓ -42.9%**					**↑ 8.2%**

Figure **2** Total Number of Cases Received by Year

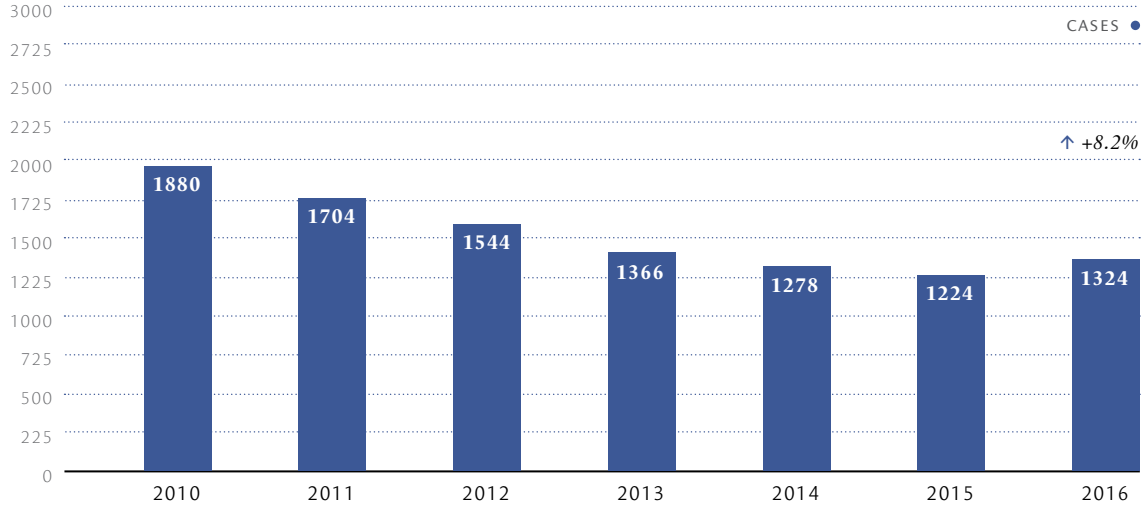


Figure **3** Number of U-I Cases Received by Year

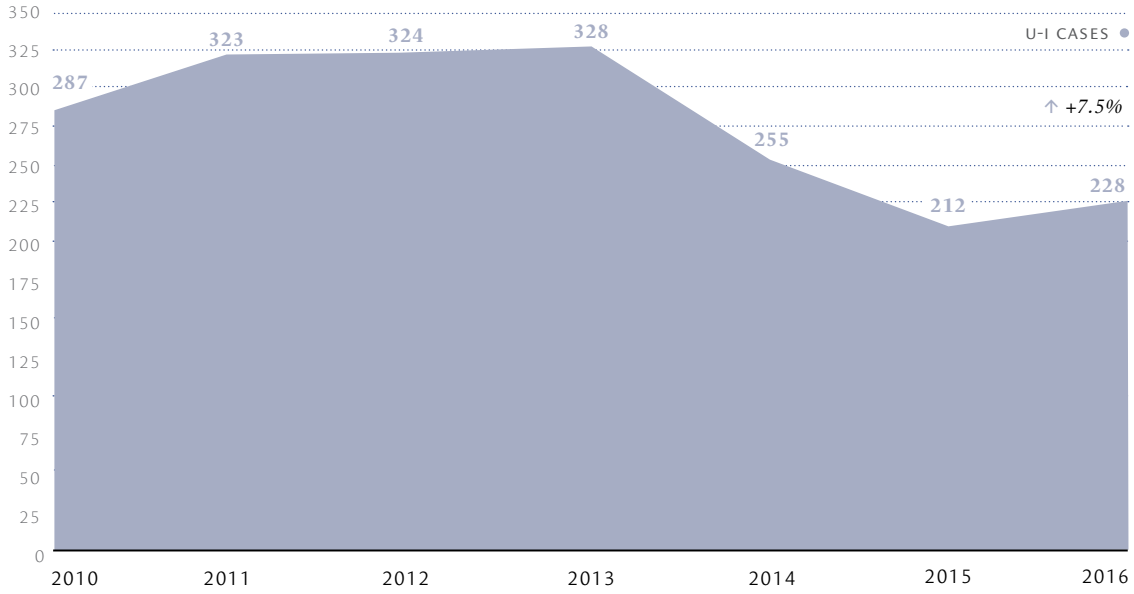


Table **6** Number of Requests for a Review Received in 2016 according to Applicant

APPLICANTS REQUESTING A REVIEW	NUMBER OF REQUESTS FILED
Državni svet Republike Slovenije (National Council of the Republic of Slovenia)	4
Upravno sodišče Republike Slovenije (Administrative Court of the Republic of Slovenia)	4
Vrhovno sodišče Republike Slovenije (Supreme Court of the Republic of Slovenia)	4
Okrajno sodišče v Ljubljani (Local Court in Ljubljana)	3
Višje sodišče v Ljubljani (Higher Court in Ljubljana)	3
Vlada Republike Slovenije (Government of the Republic of Slovenia)	3
Računsko sodišče Republike Slovenije (Court of Audit of the Republic of Slovenia)	2
Skupina poslank in poslancev Državnega zbora (Deputy Groups of the National Assembly of the Republic of Slovenia)	2
Višje sodišče v Mariboru (Higher Court in Maribor)	2
Združenje občin Slovenije (The Association of Municipalities of Slovenia)	2
Delovno in socialno sodišče v Ljubljani (Labour and Social Court in Ljubljana)	1
Konfederacija sindikatov Slovenije Pergam (Pergam Confederation of Trade Unions of Slovenia)	1
Občina Dobrepolje (Dobrepolje Municipality)	1
Občina Solčava (Solčava Municipality)	1
Občina Zagorje ob Savi (Zagorje ob Savi Municipality)	1
Okrožno sodišče v Kopru (District Court in Koper)	1
Okrožno sodišče v Ljubljani (District Court in Ljubljana)	1
Okrožno sodišče v Novem mestu (District Court in Novo Mesto)	1
Okrožno sodišče v Slovenj Gradcu (District Court in Slovenj Gradec)	1
Sindikat finančnih organizacij Slovenije, Republiški odbor (Trade Union of Financial Organisations of Slovenia, Republican Committee)	1
Sindikat Nove ljubljanske banke (Trade Union of Nova ljubljanska banka)	1
Sindikat zavarovalnih zastopnikov Slovenije (Trade Union of Insurance Agents of Slovenia)	1
Varuh človekovih pravic (Ombudsman of the Republic of Slovenia)	1
Total	**42**

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
2016	**91**	**17**	**7**	**36**	**5**

Table **8** Acts Challenged Multiple Times in the Cases Received in 2016

ACTS CHALLENGED MULTIPLE TIMES IN 2016	NUMBER OF CASES
Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act	17
Civil Procedure Act	9
Criminal Procedure Act	7
Tax Procedure Act	6
Pension and Disability Insurance Act	4
Banking Act	4
Confiscation of Proceeds of Crime Act	4
Criminal Code	4
Referendum and Popular Initiative Act	4
Claim Enforcement and Security Act	3
National Assembly Elections Act	3
Book Entry Securities Act	3
Civil Union Act	3

Table **9** Number of Cases Received according to Panel and Year

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
2016	458	384	250	1092
2016/2015	**↓ -3.0%**	**↑ 17.8%**	**↑ 22.0%**	**↑ 8.9%**

Figure **4**

Distribution of Legal Acts Challenged (U-I Cases)

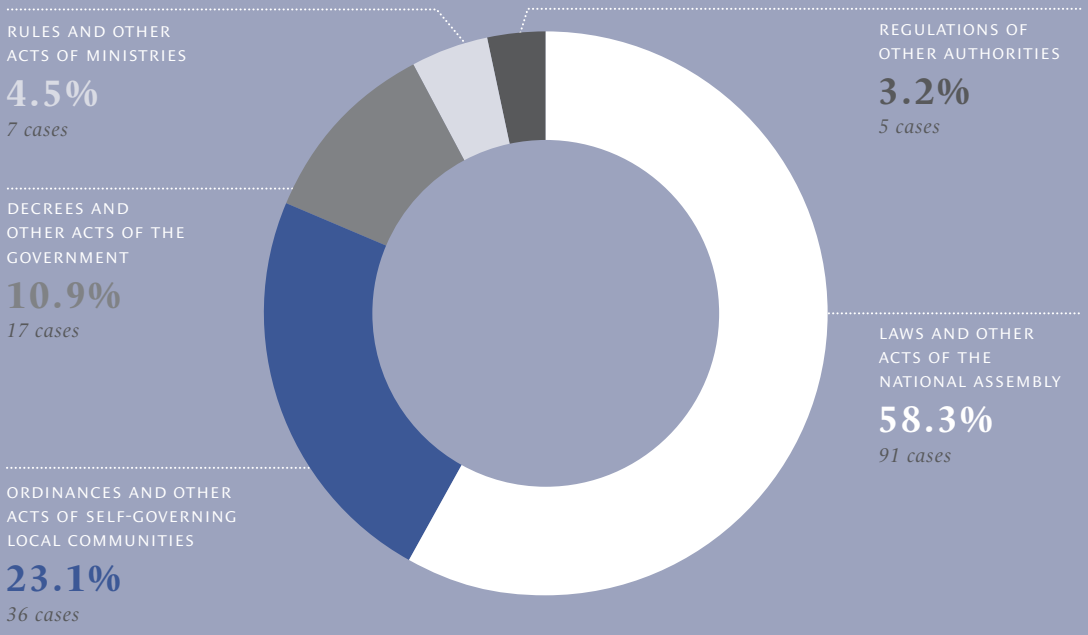


Figure **5**

Number of Cases Received according to Panel in 2016

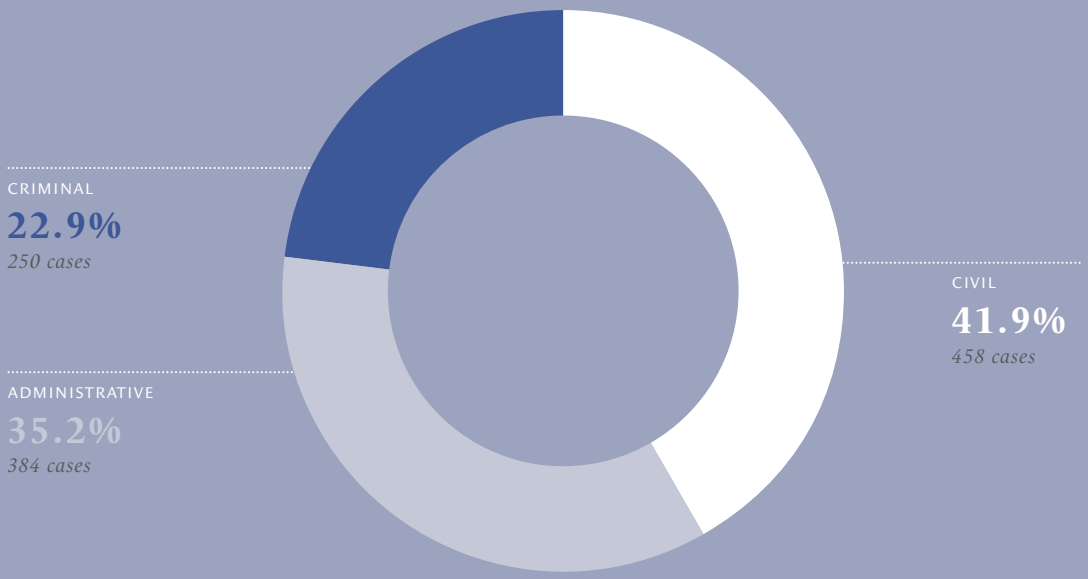


Figure **6** Number of Up Cases Received by Year

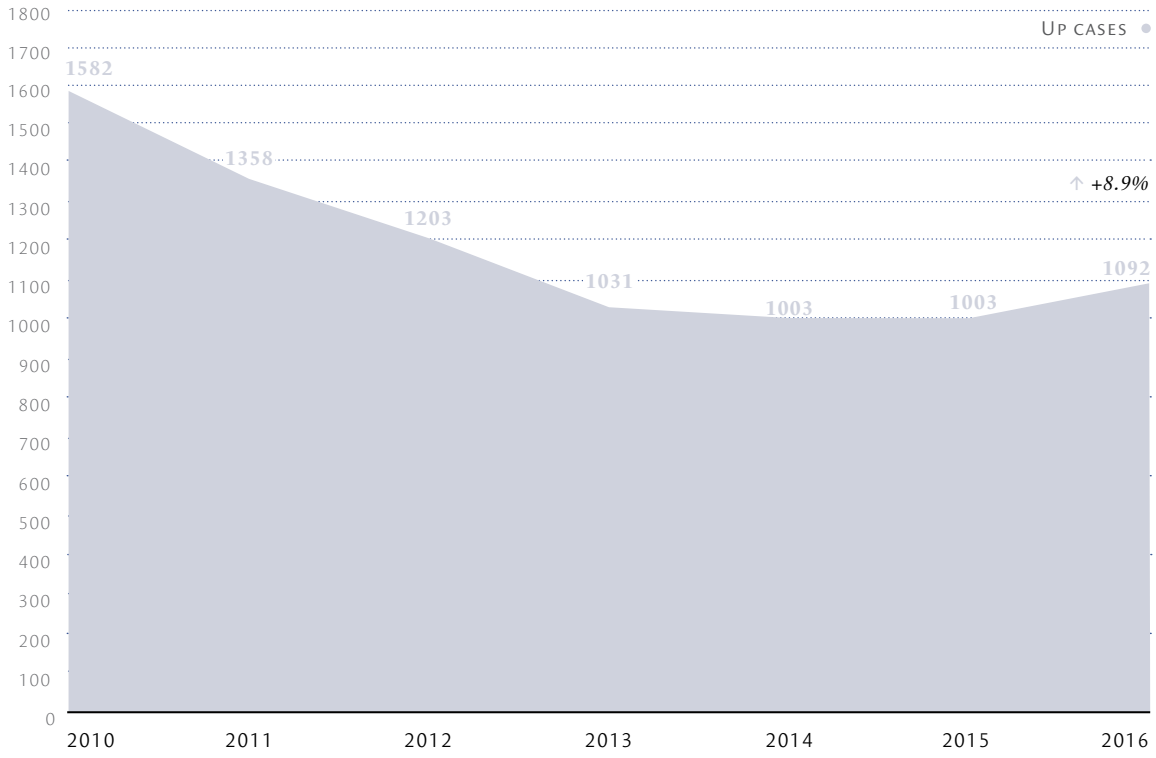


Table **10** Up Cases Received according to Type of Dispute

Type of Dispute (Up cases)	Received in 2016	Percentage in 2016	Received in 2015	Change 2016/2015
Civil Law Litigation	267	24.5%	253	5.5% ↑
Criminal Cases	201	18.4%	163	23.3% ↑
Other Administrative Disputes	115	10.5%	109	5.5% ↑
Labour Law Disputes	106	9.7%	71	49.3% ↑
Commercial Law Disputes	75	6.9%	61	23.0% ↑
Execution of Obligations	60	5.5%	61	-1.6% ↓
Minor Offences	47	4.3%	41	14.6% ↑
Taxes	45	4.1%	37	21.6% ↑
Insolvency Proceedings	44	4.0%	35	25.7% ↑
Social Law Disputes	30	2.7%	40	-25.0% ↓
Non-litigious Civil Law Proceedings	28	2.6%	45	-37.8% ↓
Civil Status of Persons	18	1.6%	11	63.6% ↑
Matters concerning Spatial Planning	16	1.5%	13	23.1% ↑
Denationalisation	15	1.4%	36	-58.3% ↓
Succession Proceedings	9	0.8%	3	200.0% ↑
Proceedings related to the Land Register	7	0.6%	8	-12.5% ↓
Other	6	0.5%	7	-14.3% ↓
No Dispute	3	0.3%	4	-25.0% ↓
Registration in the Companies Register	0	0.0%	5	-100.0% ↓
Total	**1092**	**100.0%**	**1003**	**↑ 8.9%**

Table **11** Jurisdictional Disputes – P Cases Received according to Initiator of the Dispute

INITIATOR OF THE DISPUTE (P)	NUMBER OF CASES
Policijska uprava Kranj (Kranj Police Directorate)	1
Okrožno državno tožilstvo v Kranju (Kranj District State Prosecutor's Office)	1
Občina Dol pri Ljubljani (Dol pri Ljubljani Municipality)	1
Natural person	1
Total	**4**

9. 2. Cases Resolved

Figure **7** Distribution of Cases Resolved in 2016

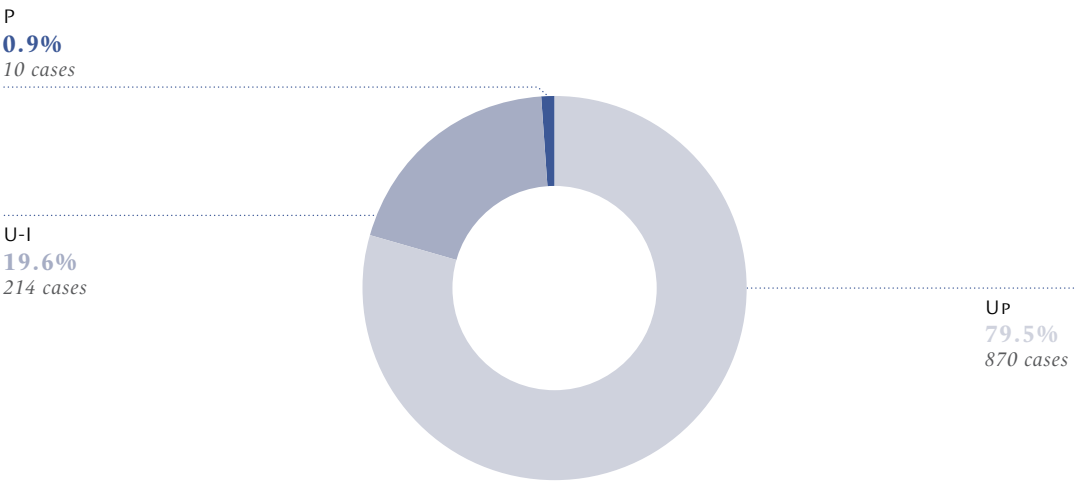


Table **12** Number of Cases Resolved according to Type of Case and Year Resolved

YEAR	U-I	Up	P	U-II	Ps	Rm	Mp	TOTAL
2010	294	1500	22	1	/	1	/	1818
2011	311	1476	16	3	/	/	/	1806
2012	350	1287	19	2	1	/	/	1659
2013	349	1074	7	/	/	/	1	1431
2014	271	933	12	/	/	/	/	1216
2015	221	964	10	2	/	/	/	1197
2016	214	870	10	/	/	/	/	1094
2016/2015	**↓ -3.2%**	**↓ -9.8%**	**0.0%**	**/**	**/**	**/**	**/**	**↓ -8.6%**

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

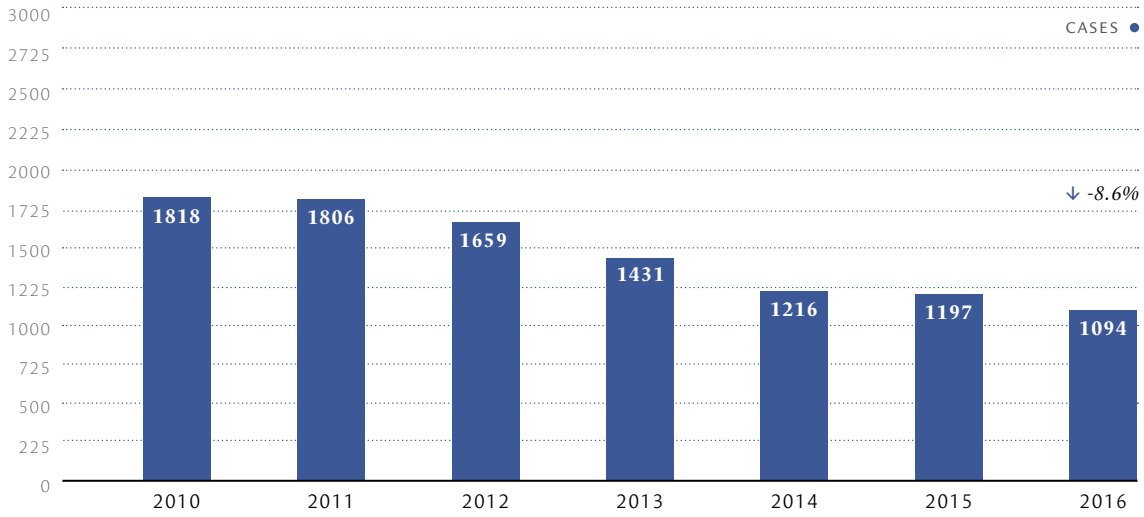


Figure **9** Number of U-I Cases Resolved according to Year

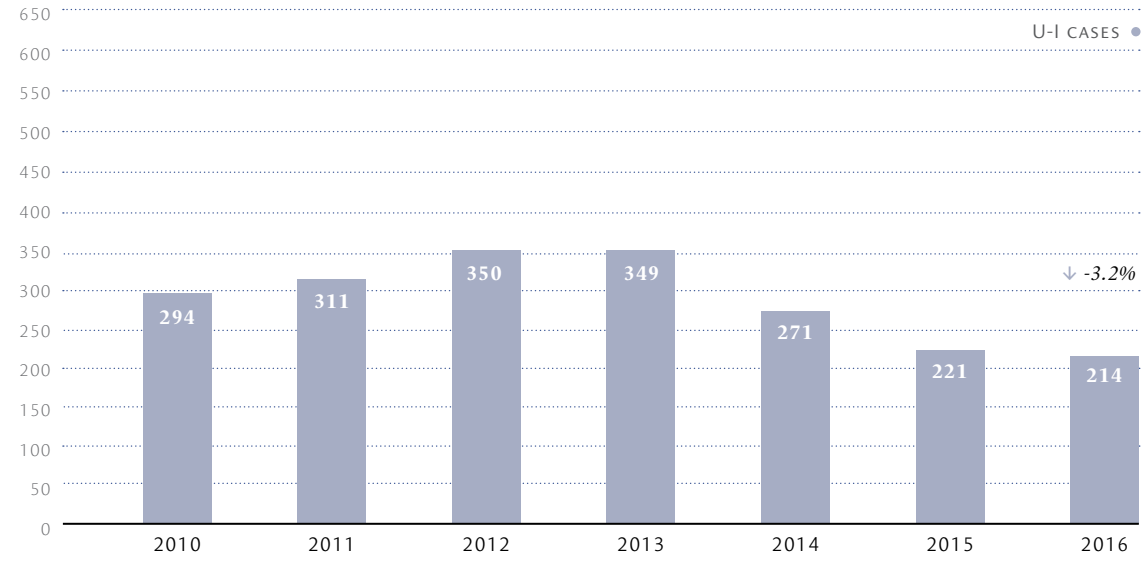


Table **13** U-I Cases Resolved by a Decision according to Year

YEAR	RESOLVED	RESOLVED ON THE MERITS	PERCENTAGE
2011	311	62	19.9%
2012	350	45	12.9%
2013	349	36	10.3%
2014	271	29	10.7%
2015	221	33	14.9%
2016	**214**	**38**	**17.8%**

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

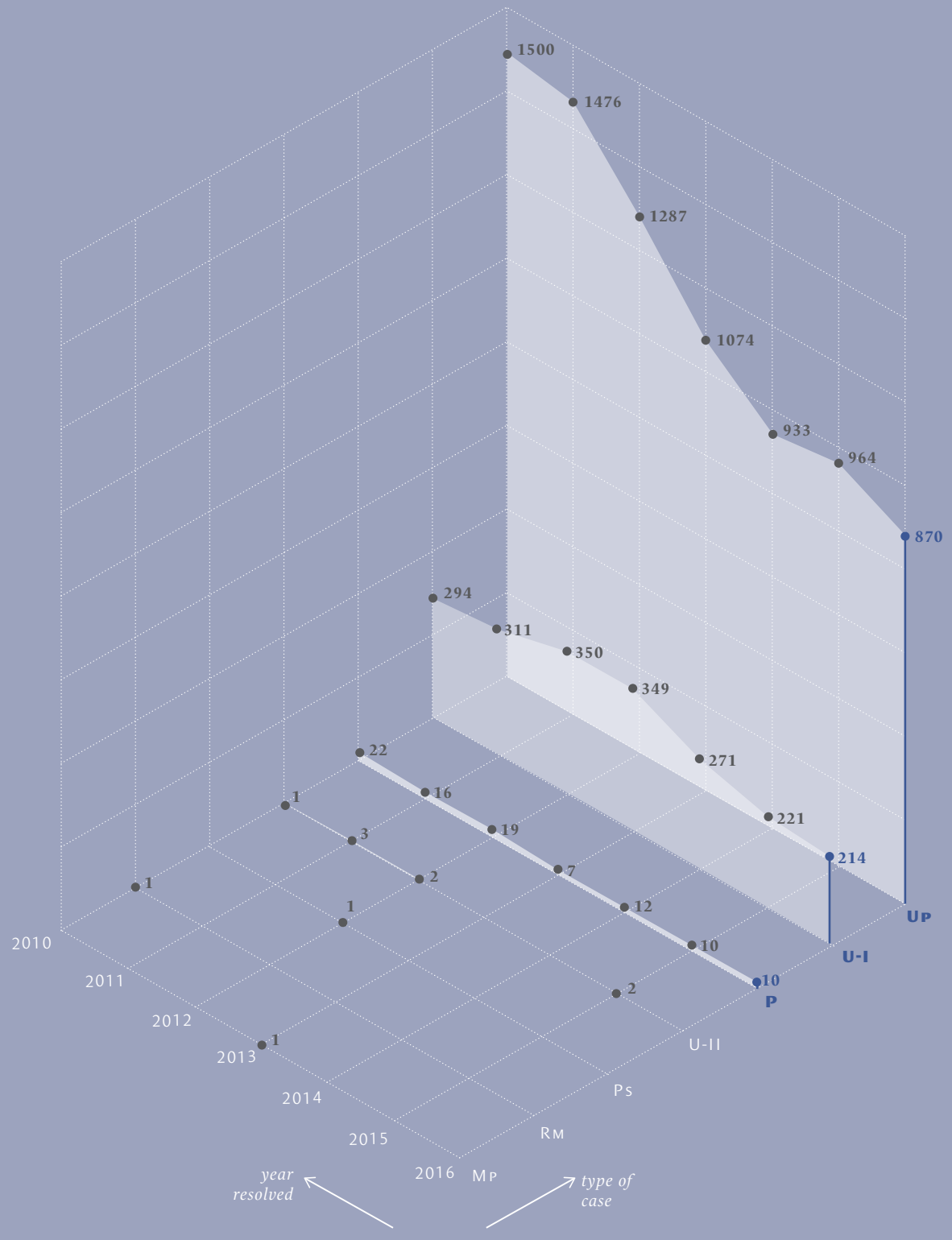


Table **14** Number of U-I Cases Resolved according to Type of Resolution and Year

TYPE OF RESOLUTION	2016 REQUESTS	2016 PETITIONS / *SUA SPONTE*	2016 TOTAL	2015	2014	2013	2012	2011	2010
Abrogation of statutory provisions	4	1	5	9	11	6	6	8	8
Inconsistency with the Constitution – statutory provisions	4	1	5	5	4	3	2	3	4
Inconsistency with the Constitution and determination of a deadline – statutory provisions	6	3	9	2	5	5	1	8	7
Not inconsistent with the Constitution – statutory provisions	13	1	14	10	0	15	9	19	15
Inconsistency, abrogation, or annulment of provisions of regulations	3	5	8	5	7	12	22	30	6
Not inconsistent with the Constitution or the law – provisions of regulations	1	0	1	0	2	1	2	7	1
Dismissed	0	41	41	37	38	61	39	50	26
Rejected	28	104	132	154	156	238	187	205	185
Proceedings were stayed	2	6	8	8	31	22	82	9	4

Figure **11** Number of Up Cases Resolved according to Year

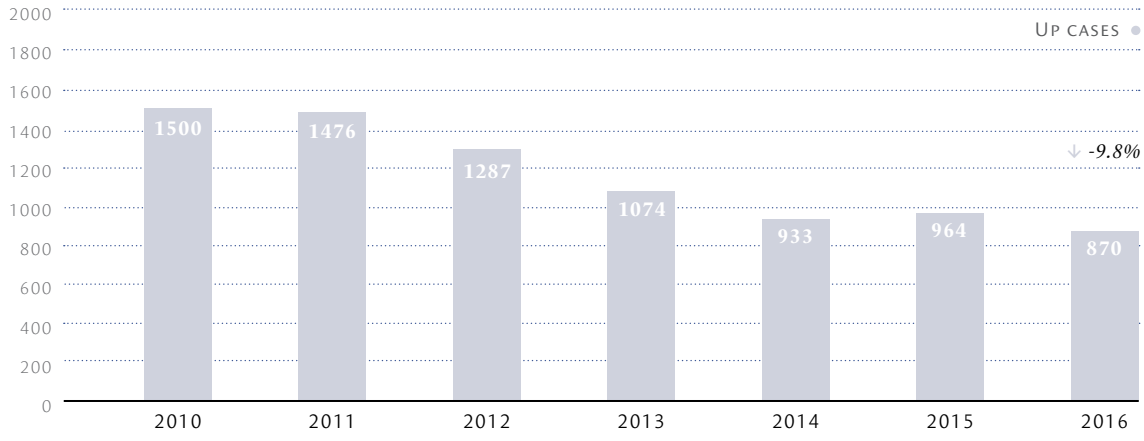


Table **15** Number of Up Cases Resolved according to Panel and Year

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
2016	415	257	198	870
2016/2015	**↓ -18.1%**	**↓ -28.0%**	**↑ 98.0%**	**↓ -9.8%**

Figure **12** Distribution of Up Cases Resolved according to Panel and Year

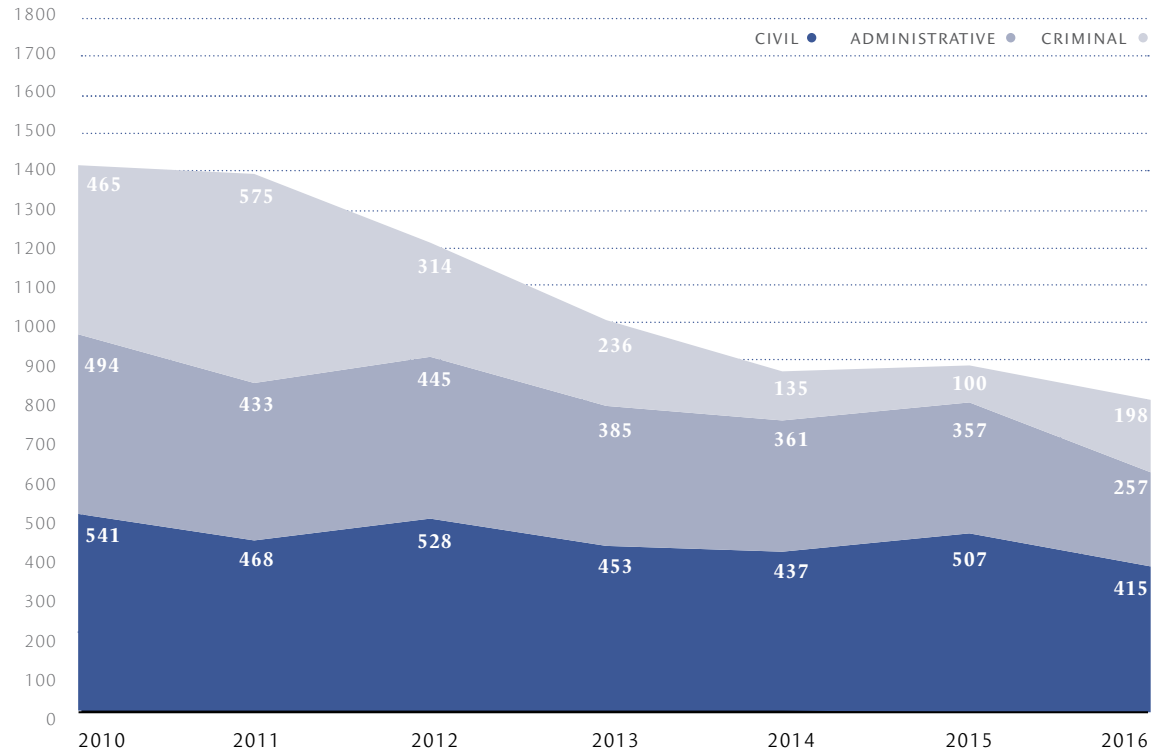


Table **16** Number of Up Cases Resolved according to Type of Dispute

TYPE OF DISPUTE	2016	PERCENTAGE IN 2016	2015	CHANGE 2016/2015
Civil Law Litigation	240	27.6%	277	-13.4% ↓
Criminal Cases	149	17.1%	74	101.4% ↑
Other Administrative Disputes	79	9.1%	116	-31.9% ↓
Execution of Obligations	66	7.6%	59	11.9% ↑
Labour Law Disputes	60	6.9%	71	-15.5% ↓
Minor Offences	48	5.5%	25	92.0% ↑
Commercial Law Disputes	46	5.3%	71	-35.2% ↓
Insolvency Proceedings	39	4.5%	25	56.0% ↑
Non-litigious Civil Law Proceedings	38	4.4%	33	15.2% ↑
Taxes	26	3.0%	36	-27.8% ↓
Social Law Disputes	23	2.6%	81	-71.6% ↓
Matters concerning Spatial Planning	16	1.8%	11	45.5% ↑
Civil Status of Persons	12	1.4%	16	-25.0% ↓
Proceedings related to the Land Register	9	1.0%	26	-65.4% ↓
Denationalisation	5	0.6%	12	-58.3% ↓
Succession Proceedings	5	0.6%	10	-50.0% ↓
Other	4	0.5%	8	-50.0% ↓
Registration in the Companies Register	3	0.3%	4	-25.0% ↓
No Dispute	2	0.2%	9	-77.8% ↓
Total	**870**	**100.0%**	**964**	**↓ -9.8%**

Table **17** Decisions on the Merits in Up Cases

YEAR	ALL UP CASES RESOLVED	UP CASES RESOLVED ON THE MERITS	SHARE OF UP CASES RESOLVED	UP CASES GRANTED	SHARE OF UP CASES RESOLVED
2011	1476	27	1.8%	21	1.4%
2012	1287	43	3.3%	41	3.2%
2013	1074	19	1.8%	18	1.7%
2014	933	33	3.5%	29	3.1%
2015	964	81	8.4%	76	7.9%
2016	**870**	**42**	**4.8%**	**40**	**4.6%**

Figure **13** Decisions on the Merits in Up Cases according to Year

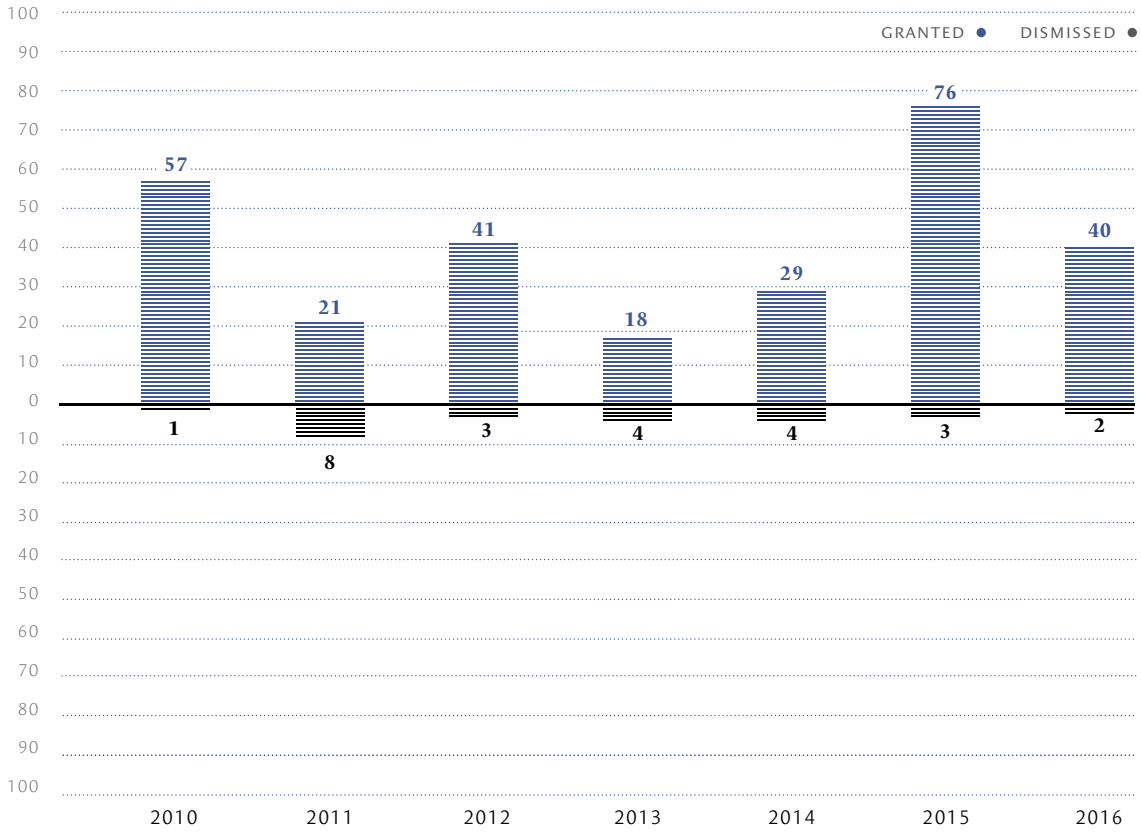


Table **18** Certain Other Types of Resolutions in Up Cases

YEAR	NOT ACCEPTED FOR CONSIDERATION	REJECTED
2011	699	828
2012	798	537
2013	644	496
2014	605	340
2015	633	334
2016	**539**	**334**

Table **19** Number of Decisions in Resolved P Cases

YEAR	RESOLVED	RESOLVED ON THE MERITS	PERCENTAGE
2011	16	9	56.3%
2012	19	8	42.1%
2013	7	5	71.4%
2014	12	8	66.7%
2015	10	8	80.0%
2016	**10**	**6**	**60.0%**

Table **20** Average Number of Days Required to Resolve a Case in 2016 according to Type of Case

REGISTER	AVERAGE DURATION IN DAYS
U-I	326
Up	289
P	574
R-I	47
Total	**244**
Total excluding R-I cases	**299**

Figure **14** Average Number of Days Required to Resolve U-I and Up Cases according to Year

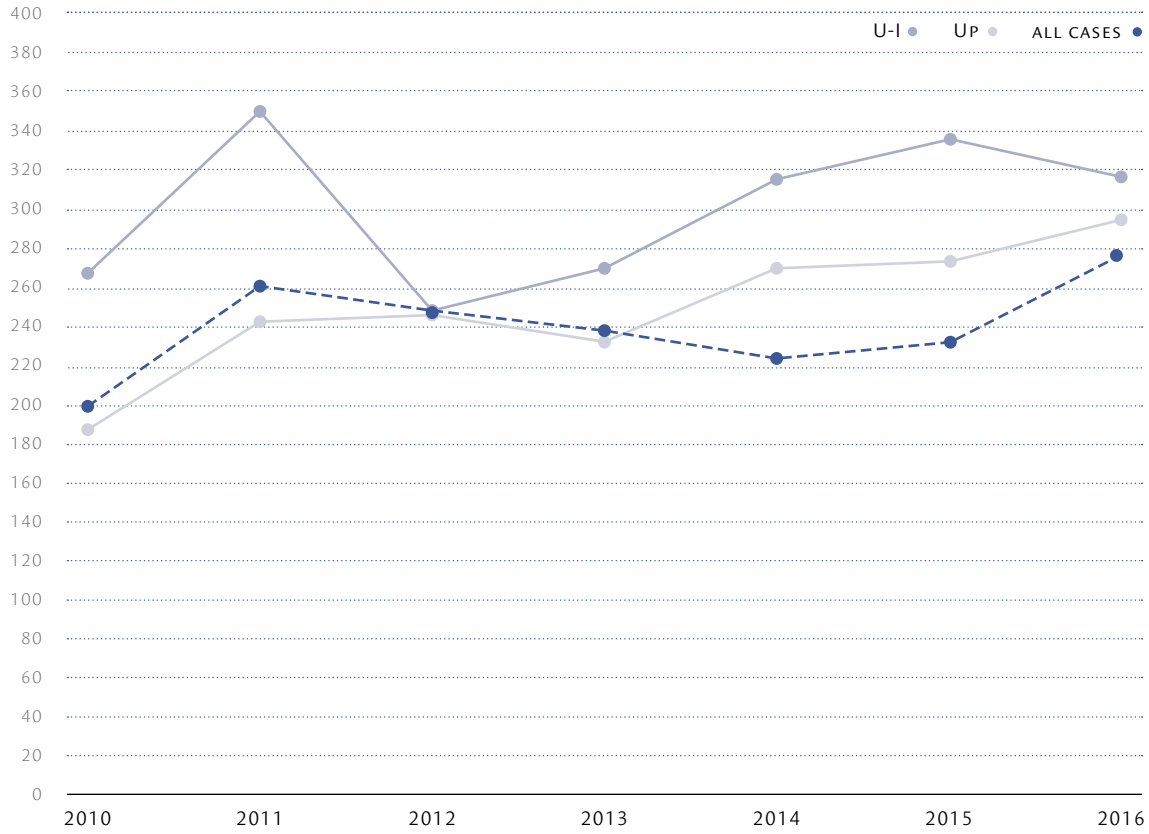


Table **21** Average Number of Days Required to Resolve Up Cases according to Panel

PANEL	2016	2015	CHANGE 2016/2015
Civil	257	331	-22.3% ↓
Administrative	223	213	4.6% ↑
Criminal	440	188	133.9% ↑
Total	**289**	**272**	**↑ 6.1%**

9. 3. Unresolved Cases

Table **22** Unresolved Cases according to Year Received as of 31 December 2016

YEAR	2013	2014	2015	2016	TOTAL
U-I		12	51	156	219
P			2	3	5
Up	1	35	223	736	995
Total	**1**	**47**	**276**	**895**	**1219**

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

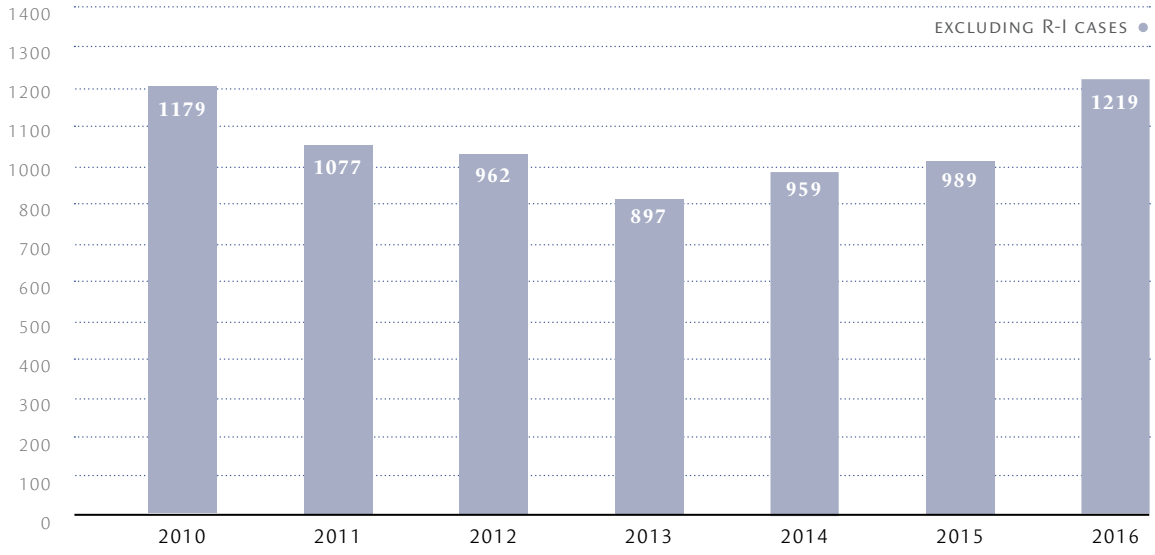
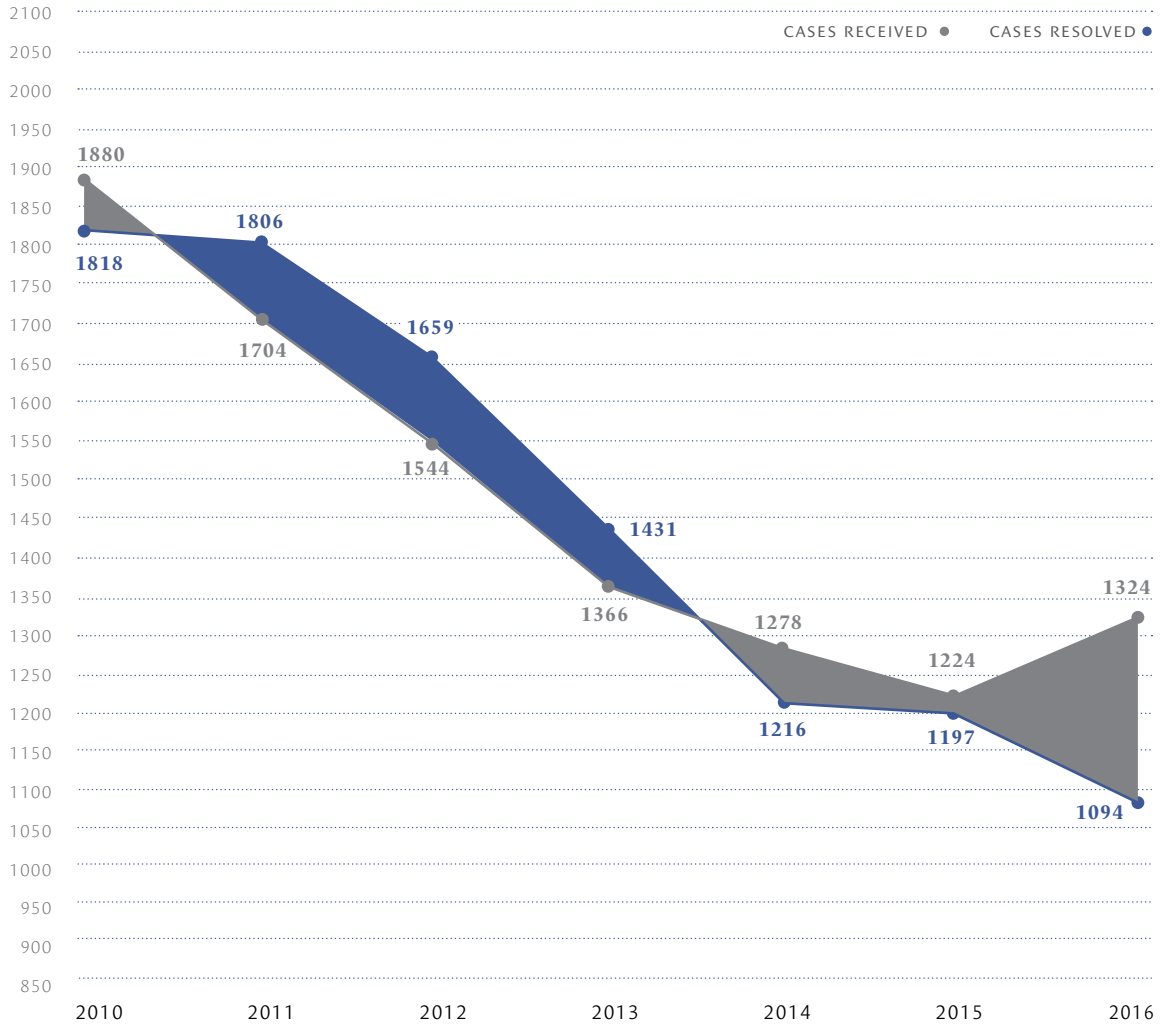


Table **23** Priority Cases Pending as of 31 December 2016

REGISTER	ABSOLUTE PRIORITY CASES	PRIORITY CASES	TOTAL
Up	60	250	310
U-I	41	31	72
P		5	5
Total excluding R-I cases	**101**	**286**	**387**

Figure **16** Priority Cases Pending as of 31 December 2016



9. 4. Realisation of the Financial Plan*

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

***** The data on the expenditure of public resources refer to resources from the state budget, earmarked funds, and cohesion funding, which amount to 0.47% of all realised funds in 2016.

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% ↑
2016	**3,136,113**	**644,352**	**131,867**	**3,912,332**	**3.9%** ↑

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

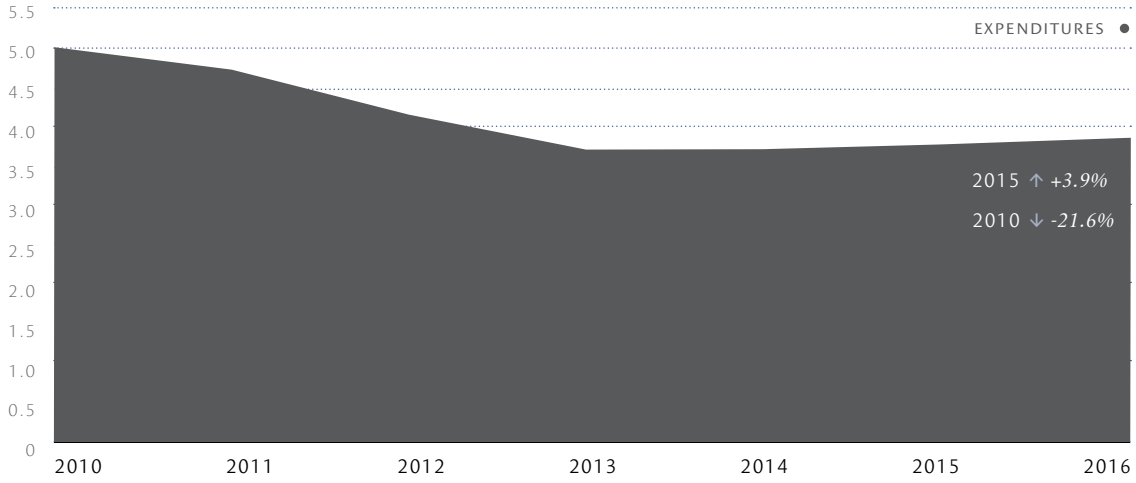


Figure **18** Distribution of Expenditures in 2016

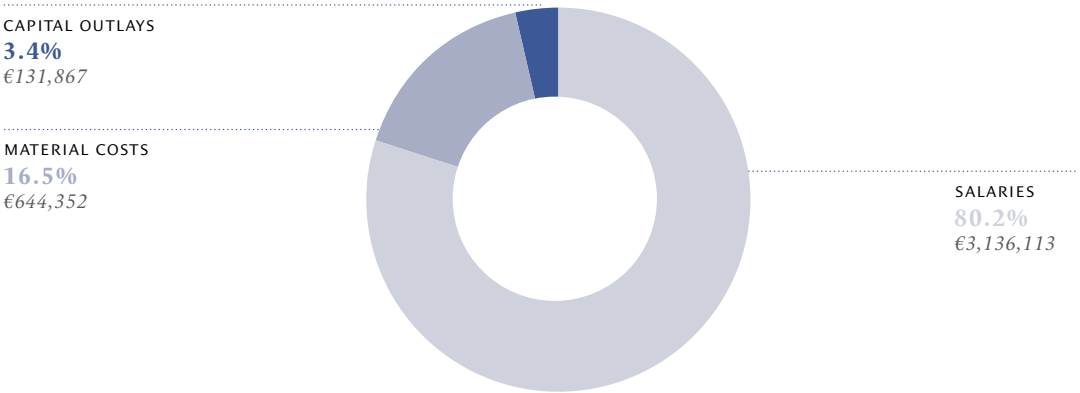
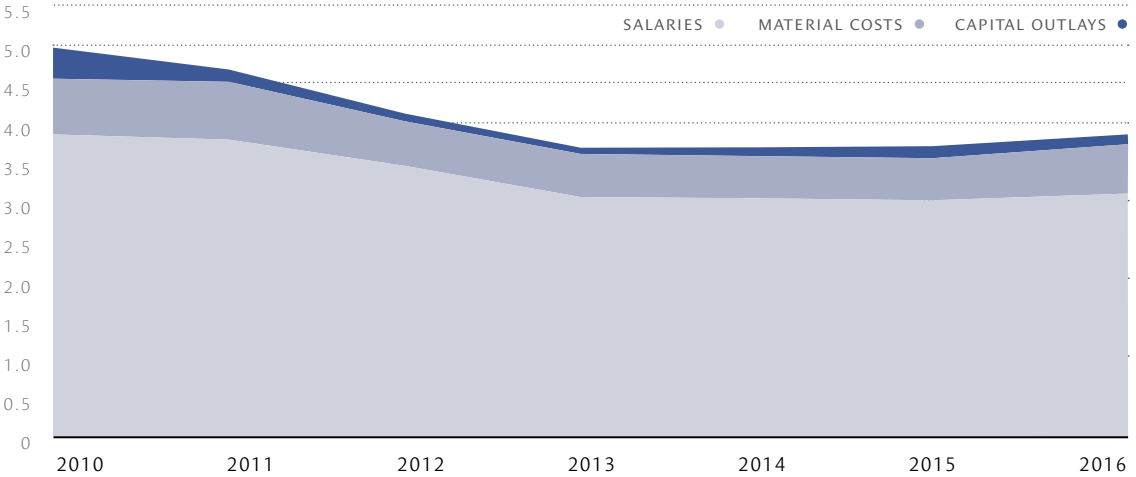


Figure **19** Distribution of Expenditures by Year (in EUR mil.)



Advisors of the Constitutional Court participating in the international conference commemorating the 25th anniversary of the Constitutional Court in Bled, Slovenia.

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