AN OVERVIEW OF THE WORK FOR 2018

The Constitutional Court of the Republic of Slovenia

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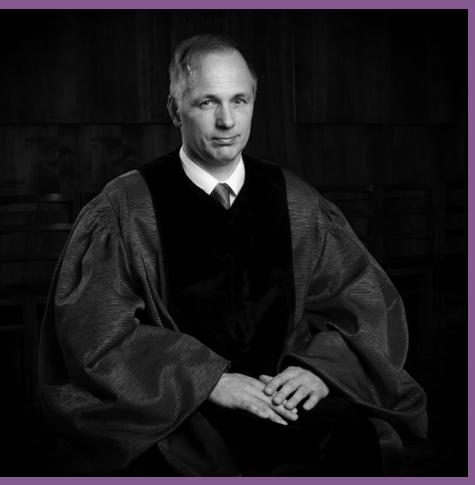
An Overview of the Work for 2018



Foreword by the President of the Constitutional Court

Esteemed Readers,

In 2018, the work of the Constitutional Court was marked by a number of circumstances that we would like to emphasise in this overview. Furthermore, we do not wish to avoid highlighting again certain warnings already mentioned in previous years, warnings that relate to issues that the Constitutional Court is striving to resolve. But let us first review the year 2018.

The current composition of the Constitutional Court changed just prior to the end of the year, when the term of office of Dr Jadranka Sovdat, President and judge, expired, and when Dr Katja Šugman Stubbs assumed the office of Constitutional Court judge. In other words, following the replacement of six judges in 2016 and 2017, the Constitutional Court found stable ground in 2018. Similar holds true for the advisory department, as a number of Constitutional Court advisors were also replaced in recent years. That means that the functioning of the Court was better optimised in 2018, which is also reflected in the statistical data. The latter will be addressed in short below.

As regards decision-making, it should perhaps be mentioned that the entire year was marked by elections, namely the elections to the National Assembly, the National Council, and municipalities, while a number of referendum disputes presented a prelude thereto. Disputes relating to the referendum on the so-called "second track of the Divača–Koper railway line" and electoral disputes demonstrated anew that in these fields judicial protection is not satisfactory and that the legislation that was hastily adopted during the period when the Republic of Slovenia declared independence and during the transition to a democratic system has remained deficient. Appropriate judicial protection mechanisms entail an important part of the regulation of elections and referendums; therefore, in these cases the Constitutional Court drew the attention of the legislature to the fact that it must undertake comprehensive regulation of judicial protection in these fields without delay.

The Constitutional Court also decided on a series of other constitutionally important issues, e.g. on the principle of the equality of religious communities, procedural guarantees and the principle of legality in criminal procedure, compensation for persons erased from the register of permanent residents, freedom of religion, the ritual slaughter of animals, limits to the freedom of expression, the right to ensure respect for a deceased person and for their personality

rights, the retroactivity of the law regulating the confiscation of illicitly acquired property, the privacy of a deputy of the National Assembly suspected of having committed a criminal offence, the right to private property as regards infrastructure developments, freedom of expression when criticising courts, and free economic initiative in the provision of public health care services. The most important decisions are presented in concise form in this overview.

It should be noted that in 2018 the Constitutional Court resolved 24.1% more cases than in 2017. The pace of judicial decision-making is relentless, and I fear that we will not be capable of maintaining it year after year. Actually, in comparison with 2017, the average time of decision-making has lengthened by one month (while the number of cases resolved increased by a quarter), however the Constitutional Court did not give in to time pressure, considering that the number of cases received increased by almost 15% compared to 2017. Namely, the decision-making of the Constitutional Court does not consist of "raising hands" when voting, but entails reasoned decision-making embedded within the systemic frameworks of the international, European, and national legal orders, where cases with a consequent high level of complexity are dealt with for as long as necessary for the issues in dispute to be convincingly resolved. However, the Constitutional Court was certainly not conceived as a court that would address more than a thousand cases per year (under the pressure of an even higher number of cases waiting to be decided on) and at the same time play a precedential role. I believe no court performing a precedential role, such as the Constitutional Court of the Republic of Slovenia is tasked with, can cope with such a burden. Currently, as many as 588 cases are classified as priority cases, which highlights even more starkly the element of the time necessary to decide a case. I wish to underline that the Constitutional Court strives to resolve cases as quickly as time permits, without in any way compromising its thorough substantive approach.

Similarly as in the past years, the factual and legal complexity of cases that require distinctly deep study is increasing. This is not only a characteristic of abstract reviews, i.e. reviews of the constitutionality of (especially) laws, which are initiated not only by applicants filing requests (i.e. courts, the Government, the Ombudsman, and municipalities), but also by individuals as petitioners. Constitutional complaints that even interfere with the systemic foundations of the legal order are frequent as well.

The Constitutional Court has also noted a certain problematic issue when deciding on minor offences, namely in those cases that, although the alleged violation is manifest, cannot be deemed to raise an important legal question because they concern a matter that the Constitutional Court already decided on. In the field of minor offences, the precedential role of the Constitutional Court, as also envisaged in the Constitutional Court Act, cannot entail

repetitive decision-making on legal issues of the same kind to which the Constitutional Court has already provided clear answers. The insufficient observance of precedential decisions thus increases the risk of violations, the supervision of which should no longer fall among the regular tasks of the Constitutional Court, but regarding which it nevertheless remains admissible to also initiate a procedure before the European Court of Human Rights.

As mentioned above, some warnings from past years should be highlighted once again. Among others, these warnings concern the issue of the financial independence of the Constitutional Court. The point of dispute is that the executive branch of power exerts significant influence on the financial position of the Constitutional Court (this is further elaborated in the chapter on the position of the Constitutional Court).

Finally, the Constitutional Court's stated position regarding the failure to observe some of its decisions requiring legislative action should be repeated. In 2018, the number of such decisions increased by one. However, I believe that we need not waste words explaining this matter at length. Numerous decisions of the Constitutional Court are namely already in the process of implementation through legislative changes, so it can be expected that they will be implemented eventually. Hence, the Government and the National Assembly are active, and our decisions are not being ignored completely. This is a positive sign. It shows that the Constitutional Court has been heard. By saying so, I do not mean to diminish the importance of this matter and the consequences of the failure to observe constitutional decisions, but due to the mentioned circumstances I choose to view the issue from a slightly more positive perspective.

Prof. Dr Rajko Knez

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 as well as the human rights of individuals and the constitutional rights of legal entities 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 are 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 granted autonomy in regulating their internal matters in relation to the other two branches of power. In this regard, the Court of Audit and the Ombudsperson for Human Rights, to whom the Constitution also guarantees a special position, are similar to the Constitutional Court. These three constitutional authorities, however, are not entirely comparable to other independent state authorities that are established on the basis of different laws.

The Constitutional Court Act, which in principle regulates the organisation and functioning of the Constitutional Court, in Article 8 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. They are thus not determined on the basis of a proposal of the Government, as applies to other direct budget users. The second paragraph of the same Article further provides that the Constitutional Court shall decide on the use of these funds. Although the funds for the work of the Constitutional Court constitute a part of the budget of the Republic of Slovenia, according to the Constitutional Court Act, the Court is autonomous as regards the preparation of its financial plan, which is 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 such funds shall (only) be performed by the Court of Audit, and not also by the Ministry of Finance, as the Public Finance Act determines for other direct budget users. This would follow directly from the Constitution even if it were not explicitly determined by the Constitutional Court Act 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. Consequently, the use of the funds of the Constitutional Court may only be supervised by an authority that is essentially as independent from other state authorities as the Constitutional Court itself. Only in such a manner can the Constitutional Court's financial independence from the executive branch of power be ensured. Financial independence, however, is a necessary prerequisite to the exercise of the powers of the Constitutional Court.

Every year during the budgetary negotiations with the Ministry of Finance the Constitutional Court repeatedly draws attention to the fact that the autonomy and independence of the Constitutional Court deriving from the Constitution and the Constitutional Court Act are not appropriately implemented by the regulations governing public finance. On a number of occasions it has brought this fact directly to the attention of the Government, and it also brought this to the attention of the wider public by including it in the overview of its work for 2016. From the perspective of the Constitutional Court, the relevant regulations are inconsistent with the principle of the separation of powers, and this is even accentuated as their interpretation in practice entails a derogation from the fundamental specific provisions of the Constitutional Court Act regarding the financial independence of the Constitutional Court.

It is particularly objectionable that the Public Finance Act determines that the Ministry of Finance shall review the financial plans proposed by direct budget users and suggest the necessary adjustments with regard to the instructions for the preparation of the draft state budget. 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, it 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, this approach is constitutionally disputable. The law should take into account the special constitutional position of the constitutional authorities that are independent of the Government and include in the draft budget the financial plans proposed by these authorities, while the Government should have the possibility to draw the attention of the National Assembly to potential significant deviations from the envisaged scope of the budget. Such a solution – which with regard to the Constitutional Court explicitly follows from Article 8 of the Constitutional Court Act, a provision that is included among the fundamental provisions of the Act and entails the implementation of fundamental constitutional principles – would take into consideration the fact that from a constitutional perspective the Constitutional Court is on a par with the Government and its independence must to a certain

degree also extend to the budgetary field. In order to ensure observance of the common budgetary objectives that are defined in accordance with the fiscal rule, the Government and the Constitutional Court must cooperate in the preparation of the budget as equal partners, as otherwise, from a constitutional perspective, we would be faced with a situation wherein the executive power exerts inadmissible pressure on an independent authority. Naturally, the same would have to apply to instances of a potential rebalancing of the state budget.

With regard to the budgetary independence of the Constitutional Court, the statutory regulation of measures for balancing the state budget also has to be amended. The Public Finance Act enables the Government to suspend the implementation of specific types of expenditure for up to 45 days per budget year. Within the framework of this authorisation, the Government may (1) halt the conclusion of new commitments, (2) propose that contractual payment terms be extended, or (3) discontinue the re-allocation of budget appropriations required to enter into new commitments. The Government may even decide that a direct budget user must obtain the authorisation of the Ministry of Finance before concluding a contract. This regulation is constitutionally problematic as it can significantly interfere with the financial autonomy of the Constitutional Court and consequently curtail the exercise of its constitutional powers. In such a manner, the constitutionally envisaged independent position of the Constitutional Court is impaired. The law should proceed from the autonomy and independence of the Constitutional Court and in this sense determine that measures involving the temporary suspension of expenditure, including the requirement to obtain prior authorisation from the Ministry of Finance, do not apply to constitutional authorities; the latter may, however, adopt the same measures following a reasoned proposal submitted by the Government.

Furthermore, also the law governing the implementation of the budget of the Republic of Slovenia is constitutionally disputable as it determines the measure of proportionately reducing appropriations, with regard to which the percentage of such reduction in appropriations is the same for all direct budget users, while the Government decides which appropriations are to be subject to this measure. Such measures that interfere with budgetary appropriations that were approved by the National Assembly should not apply to the Constitutional Court as they interfere with its independence and impede its regular work.

The same reasons also call into question the provision of the Public Finance Act according to which every year the Minister of Finance adopts rules on the closing of the state and municipal budgets. These rules generally also include a provision requiring direct budget users to obtain prior authorisation from the Ministry of Finance for every new commitment made after a specific day in October even if they are acting in accordance with the adopted budget. Such a provision is constitutionally questionable as it interferes with the autonomous and independent position of the Constitutional Court, results in continuous uncertainty regarding its functioning, and impedes its normal work as envisaged in advance in accordance with the adopted budget. The executive power may namely not by itself limit the use of the funds that the National Assembly allocated to the Constitutional Court in the budget or in an act rebalancing the budget. The legislature should adopt a systemic regulation to prevent such interferences with the implementation of an adopted budget during the budget year.

Moreover, proceeding from the constitutional position of the Constitutional Court, the constitutionally problematic provisions of the Public Finance Act in accordance with which the Ministry of Finance carries out inspections ensuring budgetary supervision under this Act and other regulations from the field of public finance have to be amended. Respect for the

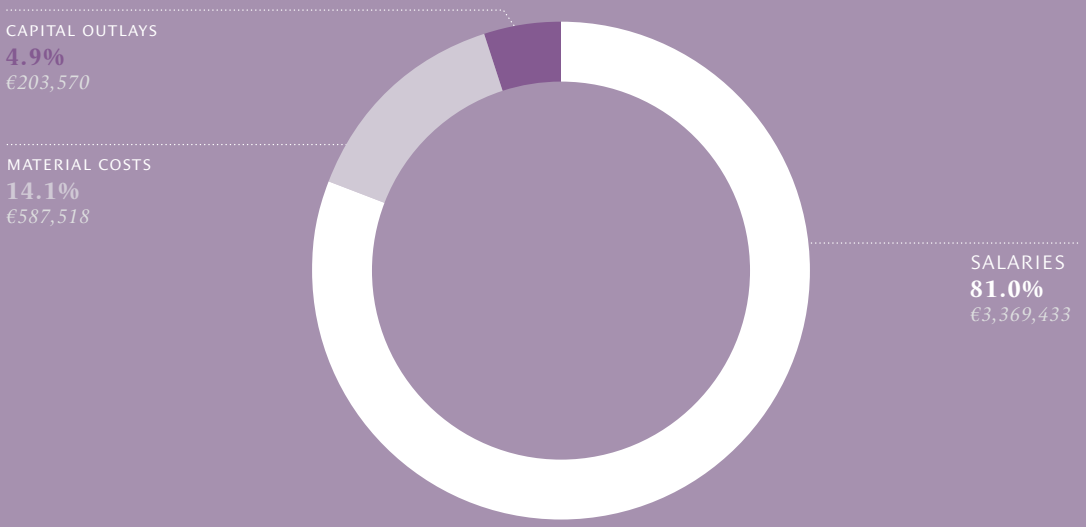
principle of the separation of powers can only be ensured if supervision of the use of the budgetary funds of the Constitutional Court is performed by an autonomous and independent authority, such as the Court of Audit. The Government should not have any supervisory competences or authorisations with regard to the Constitutional Court, as such entails the dismantling of the constitutionally determined relationship between these two authorities. It namely follows from the constitutional principle of the separation of powers and from the constitutionally determined independence of the Constitutional Court that the Constitutional Court does not answer to the Government concerning its work, which includes the financial aspect of its functioning. As the highest authority of the executive branch of power, the Government may not supervise the use of the budgetary funds of the Constitutional Court, as due to the principle of the separation of powers such would entail an inadmissible interference with the constitutionally guaranteed autonomy and independence of the Constitutional Court.

In light of the above, it is clear that in the preparation of amendments to the acts regulating public finance the following three issues in particular have to be considered: (1) the constitutional position of autonomous and independent constitutional authorities, such as the Constitutional Court, in the preparation of the budget or the rebalancing thereof, (2) the prohibition of any limitation – during the budget year – of the handling of resources approved by a decision of the National Assembly, and (3) the admissibility of supervision of the financial operations of these constitutional authorities only by authorities that are themselves constitutionally defined as independent and autonomous state authorities.

The budget outturn 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. The budget outturn increased slightly in 2015, i.e. by 1.6%, in 2016 it increased by 3.9%, when it amounted to EUR 3,912,332, and in 2017 by 13.2%, amounting to EUR 4,429,551. In 2018, the budget outturn decreased again, by 6.1%, and amounted to EUR 4,160,521. Cohesion funds accounted for 2% of the budget outturn for 2018. A reduction in capital outlays and material costs was among the reasons for reduced expenditure in 2018. The bulk of the funds was used for salaries, followed by material costs, which, like salaries, are directly linked to the exercise of the competences of the Constitutional Court, and capital outlays. It can be noted that the expenditure of the Constitutional Court in 2018 was 16.7% lower in comparison to 2010, when the budget outturn amounted to EUR 4,993,377.

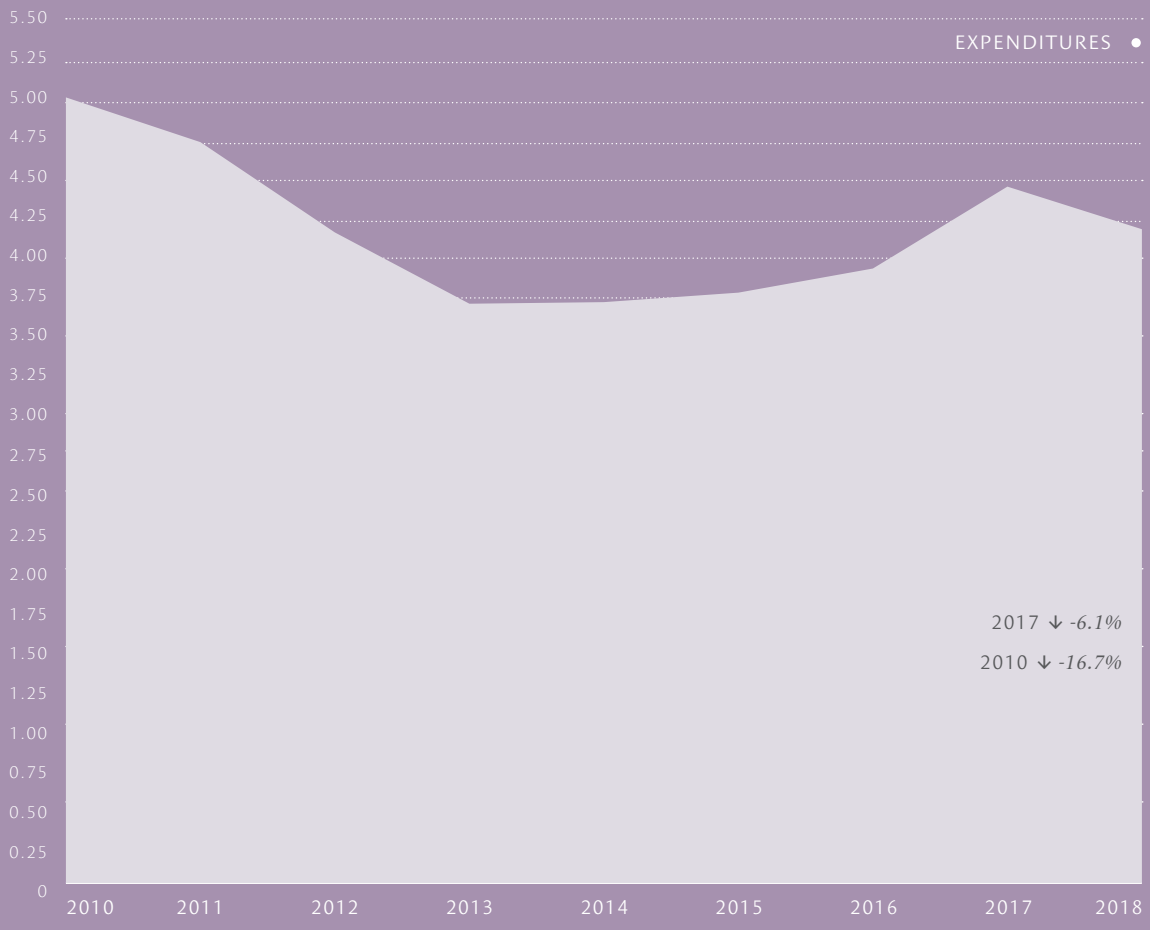
Distribution of Expenditures in 2018

(see page 107)



Financial Plan Outturn by Year (in EUR mil.)

(see page 107)



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 2018 there remained fourteen unimplemented Constitutional Court decisions, thirteen of which refer to statutory provisions and one to a regulation of a local community. The situation regarding respect for the decisions of the Constitutional Court is slightly worse than in 2017, as thirteen decisions remained unimplemented as of the end of that year. 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 unconstitutionalities and illegalities in local regulations.

The oldest unimplemented decision remains a decision from 1998 (Decision No. U-I-301/98, dated 17 September 1998, Official Gazette RS, No. 67/98) that declared 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 adoption of the Act Amending the Local Self-Government Act (Official Gazette RS, No. 79/09). 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 National Electoral Commission if a municipality fails to ensure 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 appropriately 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 expired for the elimination of the unconstitutionality of two decisions of the Constitutional Court to which the legislature has not yet responded. 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-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 the office of a deputy of the National Assembly.

In 2017, the time limit expired for the elimination of the unconstitutionality established by Decision No. U-I-246/14, dated 24 March 2017 (Official Gazette of the Republic of Slovenia No. 16/17). The Constitutional Court established that a provision of the Criminal Procedure Act is inconsistent with the Constitution as the purpose for which the results of undercover investigative measures were stored for the same period as the relevant criminal file was not determined in the law. It is namely the task of the legislature to determine in the law the purpose(s) of the storage of the results of undercover investigative measures by courts clearly and in concrete terms.

In eight decisions out of a total of fourteen 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 its decision on the basis of the second paragraph of Article 40 of the Constitutional Court Act. In doing so, the Court ensured effective temporary protection of the human rights of individuals in concrete proceedings. However, determination of the manner of implementing a decision does not relieve the legislature of its duty to respond by adopting a law, as in adopting such a temporary solution the Constitutional Court only regulates those

issues regarding which such regulation is indispensable due to the subject matter of the case at issue. Nevertheless, it is the legislature that is obliged to respond to a decision of the Constitutional Court in a comprehensive manner and insofar as necessary. Determination of the manner of implementation therefore does not entail that the legislature's competence and duty to adopt an appropriate statutory regulation have ceased. A short presentation of these decisions follows below.

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. Remedying such an unconstitutionality should be even more urgent as the Constitutional Court determined in the manner of implementing the Decision that, due to the complexity of the subject matter, the unconstitutional statutory regulation shall continue to apply until the established inconsistency is remedied.

In 2016, the time limits for remedying the unconstitutionalities established by four Constitutional Court decisions expired and the legislature has not yet responded thereto. By Decision No. U-I-115/14, Up-218/14, dated 21 January 2016 (Official Gazette RS, No. 8/16), the Constitutional Court established that the Criminal Procedure Act and the Attorneys Act are inconsistent with Article 35, the first paragraph of Article 36, and the first paragraph of Article 37 of the Constitution as they do not regulate the special characteristics of investigative measures against attorneys in a manner that would prevent inadmissible interferences with the privacy of attorneys. The Constitutional Court also reviewed the challenged regulation from the perspective of the right to judicial protection and the right to a legal remedy, and established that such regulation is inconsistent with the first paragraph of Article 23 and Article 25 of the Constitution. By Decisions No. U-I-57/15, U-I-2/16, dated 14 April 2016 (Official Gazette RS, No. 31/16), and No. Up-386/15, U-I-179/15, dated 12 May 2016 (Official Gazette RS, No. 38/16), the Constitutional Court decided that the Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act is (1) inconsistent with the second paragraph of Article 14 of the Constitution since creditors who wish to prevent a legal entity from being struck off the court register without winding up, on the grounds that the legal person does not exercise any activities at the address entered in the court register, must either prove that the legal entity is carrying out activities at that address or that it is carrying out its activities at another address at which it is allowed to carry out its activities either as the owner of the property or because it has the authorisation of the property owner to do so, and (2) is inconsistent with Article 22 of the Constitution as it does not determine that a decision to initiate bankruptcy proceedings on the proposal of the creditor shall be served on the shareholders of the bankruptcy debtor if that company is a limited liability company. By Decision No. U-I-295/13, dated 19 October 2016 (Official Gazette RS, No. 71/16), the Constitutional Court established that Article 265 of the Resolution and Compulsory Dissolution of Banks Act is unconstitutional as it prescribed that the unconstitutional Banking Act, which did not determine effective judicial protection of the holders of written-off or converted liabilities in banks, would continue to apply.

In 2018, the time limits expired for the elimination of the unconstitutionality established by two decisions of the Constitutional Court. By Decision No. Up-320/14, U-I-5/17, dated 14 September 2017 (Official Gazette RS, No. 59/17), the Constitutional Court established that the

provision of the Criminal Procedure Act regulating the right to an appeal is inconsistent with the injured party's right to a legal remedy stemming from Article 25 of the Constitution as it did not ensure the injured party the right to appeal a judgment of the first instance criminal court, i.e. to appeal a decision regarding his or her procedural rights and, within this scope, regarding his or her legal interests in criminal proceedings. By Decision No. U-I-64/14, dated 12 October 2017 (Official Gazette RS, No. 66/17), it held that the Construction Act is unconstitutional as it does not ensure prior judicial review of the proportionality of interferences with the right to respect for one's home, which is protected within the framework of the first paragraph of Article 36 of the Constitution.

There remains another decision to which the legislature has responded only partially. 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 unemployment insurance contributions.


BRATA NE SESTRE
ČLENA OD MIRU
DOLG UŽITEK

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

Prof. Dr Rajko Knez, President
Assist. Prof. Dr Etelka Korpič – Horvat, Vice President
Dr Dunja Jadek Pensa
Assist. Prof. Dr Špelca Mežnar
Marko Šorli
Acad. Prof. Dr Marijan Pavčnik
Prof. Dr Matej Accetto
Dr.Dr. Klemen Jaklič
Prof. Dr Katja Šugman Stubbs

The judge who completed her term of office in 2018
Assist. Prof. Dr Jadranka Sovdat

Assumed the office of judge

25 April 2017

Assumed the office of President

19 December 2018

Prof. Dr Rajko Knez, President

graduated from the Faculty of Law of the University of Maribor in the field of civil law. He obtained a master's degree in the field of commercial law in 1996. Two years later, he passed the state legal examination. In 2000 he obtained a doctorate (following preparatory work on his doctoral thesis in the USA). He has been professor of European Union law at the University of Maribor since 2011. Since 1993 he has primarily worked at the Faculty of Law of the University of Maribor. In addition to European Union law, his research has focused on civil law and environmental law. He was also employed as a senior judicial advisor at the Supreme Court. This has enabled him to combine theory and practice and to integrate case law, judicial decision-making skills, and the procedures, organisation, and functioning of the courts into the teaching process. As a visiting lecturer, he has lectured at the Faculties of Law of the Universities of Vienna (Juridicum), Graz, and Zagreb. He has delivered individual guest lectures in Italy, Germany, Slovakia, Russia, Ukraine, etc. He was in charge of a number of EU projects, namely Free Movement of Services and Workers (2003), EU Law in the Light of the Horizontal Direct Effect of Directives (2005), European Legal Studies – Jean Monnet Chair (2007), Balancing between Fundamental Rights and Internal Market Freedoms (2008), and most recently the Jean Monnet Centre of Excellence (2013–2017). He also holds the title of Jean Monnet Professor for lectures and research on EU law. He completed two internships at the Court of Justice of the EU. He enhanced his expertise through study visits to Karl-Franzens-Universität, Graz, Institut für das Recht der Wasser; Bonn, European University Institute, Florence, Faculteit der Rechtsgeleerdheid, Universiteit van Amsterdam, Law offices Moore & Bruce, Washington DC, and Mezzullo & McCandlish, Richmond, and an internship at the Law Library of Congress, Washington DC, and Training of Trainers on EU Waste Law in Luxemburg. He is the author of numerous scientific and scholarly articles, monographs, and commentaries on law. He is also the founder and conceptual leader of the *Amicus Curiae* project, which, at the time, entailed a new form of practical co-operation of students in open judicial proceedings under the mentorship of faculty staff. The project is a synergy of providing assistance to courts, acquainting students with the work of the courts, and engaging them in practical work and the application of law, with feedback for professors who thus gain concrete insight into case law. The idea was well received by some courts. After ten years, it outgrew the framework of the Faculty of Law of the University of Maribor and has since been implemented at other faculties and institutionalised. He was a member of the Permanent Court of Arbitration in The Hague until 2017. He was a member of the Presidency of the Permanent Court of Arbitration at the Chamber of Commerce of Slovenia. Between 2007 and 2011, he served as the Dean of the Faculty of Law of the University of Maribor. He commenced duties as judge of the Constitutional Court on 25 April 2017. He assumed the office of President of the Constitutional Court on 19 December 2018.

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 deagrariza tion 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

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

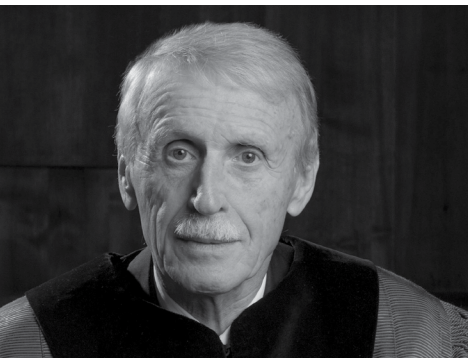
31 October 2016

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. He commenced duties as judge of the Constitutional Court on 20 November 2016.

Assumed the
office of judge

27 March 2017

Acad. Prof. Dr Marijan Pavčnik

was born in 1946 in Ljubljana. In 1969 he graduated from the Faculty of Law of the University of Ljubljana. In 1971 he passed the state legal examination, in 1978 he obtained a master's degree from the Faculty of Law in Belgrade, and in 1982 a doctorate from the Faculty of Law in Ljubljana. From 1970 until 1971 he was an intern at the Ljubljana District Court, and subsequently an advisor and judge at the Municipal Court I in Ljubljana. Since May 1973 he has worked at the Faculty of Law of the University of Ljubljana, first as a teaching assistant, starting in 1982 as an assistant professor, and in 1987 as an associate professor. Since 1993 he has been a professor of Philosophy and Theory of Law and State. He retired on 31 December 2016. In 1997 he wrote Teorija prava [Theory of Law], the first comprehensive work in the field of theory of law in the Slovene language. In 2015 the 5th revised and supplemented edition of this book was issued. He is particularly interested in the interpretation of the law and the arguments underlying legal decision-making. He addresses these issues in Argumentacija v pravu [Argumentation in Law] (1991; third edition: 2013). In the eyes of critics, this monograph represents "a new way of thinking and writing in Slovene legal theory" (V. Simič). In a slightly modified form, the monograph was also published by Springer Publishing (Juristisches Verstehen und Entscheiden, 1993). In 2011 Steiner Verlag (Stuttgart) published his book Auf dem Weg zum Maß des Rechts [On the Way to a Measure of the Law]. The book consists of a selection of 14 scientific articles (in German and English) from the period 1997–2010. In 2015 GV Založba published his bilingual monograph Čista teorija prava kot izziv / Reine Rechtslehre als Anregung [Pure Theory of Law as a Challenge], and in 2017 the work Iskanje opornih mest [In Search of Points of Reference]. He is also the co-author and (co-)editor of numerous books. He is the co-author and editor of the lexicon Pravo [Law] (1987; second edition: 2003). He also published the bilingual selection of Leonid Pitamic's treatises Na robovih čiste teorije prava / An den Grenzen der Reinen Rechtslehre [At the Limits of the Pure Theory of Law] (together with an introductory study; 2005, reprint: 2009). He was a fellow of the Alexander von Humboldt Foundation for twenty three months; he spent most of this time at the Institute of Philosophy of Law and Legal Informatics at the University of Munich and the Institute for Interdisciplinary Research at the University of Bielefeld. In 2001, he received the Zois Award for outstanding achievements in legal sciences. In 2003, he was elected an associate member of the Slovenian Academy of Sciences and Arts, and a full member in 2009. He has been a member of the European Academy (Academia Europaea) since 2010, a member of the Executive Committee of the International Association for the Philosophy of Law and Social Philosophy since 2011, and an international correspondent member of the Hans Kelsen Institute in Vienna since 2012. A more detailed biography, including a bibliography, is accessible on the website of the Slovenian Academy of Sciences and Arts. He commenced duties as judge of the Constitutional Court on 27 March 2017.

Assumed the
office of judge

27 March 2017

Prof. Dr Matej Accetto

graduated from the Faculty of Law of the University of Ljubljana in 2000 and obtained a doctorate in law from the same Faculty in 2006. He further obtained an LL.M. from Harvard Law School in 2001. After obtaining his doctorate in law, in 2006 he received a Monica Partridge Visiting Fellowship and spent the Easter term at Fitzwilliam College of the University of Cambridge as a visiting lecturer. In 2011 he completed a longer research visit at Waseda University in Tokyo, and in 2012 he was a visiting scholar at the Faculty of Law of the University of Cambridge. From 2008 he worked at the University of Ljubljana, first as an assistant professor of EU law, and from 2013 as an associate professor of EU law. From September 2013 until August 2016 he lectured at the international graduate law school Católica Global School of Law / UCP in Lisbon as a professor with an additional research grant from the Gulbenkian Foundation, and since the beginning of the 2016/17 academic year he has been lecturing at the Faculty of Law of the University of Ljubljana. In addition to his regular lectures in Slovenia and Portugal, he taught entire courses or held a series of lectures as a guest lecturer at the Graduate School of the Chinese Academy of Social Sciences in Beijing (China), Irkutsk State University (Russia), and the ISES Foundation in Kőszeg (Hungary), and at the Católica University in Lisbon (Portugal) also before 2013. He has delivered occasional guest lectures at numerous other universities around the world. As a Constitutional Court Judge, he continues to cooperate with the Faculty of Law of the University of Ljubljana and the Católica University in Lisbon. While concentrating mainly on his research and pedagogical work, he has also cooperated with the judiciary and jurisprudence in various ways. In 2003 he spent five months at the Court of the European Union as a trainee, and in the period 2003/04, as a Fellow of the British Lord Slynn Foundation for European Law, he spent a year working with distinguished British judges (the House of Lords (which at that time still functioned as the court of last resort), the Commercial Court, the Central Criminal Court), attorneys (the Brick Court Chambers, Blackstone Chambers, Doughty Street Chambers), and law firms (Clifford Chance, Ashurst). Between 2007 and 2011 he was, *inter alia*, a member of the National Commission for the Legal Revision of the Historic Case Law of the European Court of Justice, and between 2009 and 2013 he was president of an examination board for the examination of court interpreter candidates as well as a lecturer at events organised by the Slovene Judicial Training Centre. He has participated in numerous national and international research projects that focused on different issues of fundamental rights, (constitutional) adjudication, and citizenship. He is the author of several books and numerous scientific legal papers (in Slovene, English, and Portuguese) as well as numerous editorials and columns in legal newspapers and on websites. He commenced duties as judge of the Constitutional Court on 27 March 2017.

Assumed the
office of judge

27 March 2017

Dr.Dr. Klemen Jaklič

graduated from the Faculty of Law in Ljubljana (LL.B.) and then completed his LL.M. and S.J.D. at Harvard Law School on a Fullbright Fellowship, as well as a D.Phil. at Oxford University (all in the field of constitutional law and theory). Such parallel research on both continents, and under the supervision of the world's leading authorities in this field, provided him with authentic insight into the comparative dimensions of European and US constitutional law. After completing the D.Phil. at Oxford, he began teaching at Harvard. During the subsequent ten years he taught over twenty courses from his field across five different departments at Harvard University, and received teaching excellence awards from each of them. For his research he was awarded Harvard's Mancini Prize ("best work in European law and European legal thought"). His bibliography consists of over two hundred contributions in the field of constitutional law. These include leading commentaries on the Slovene Constitution and the first Slovene translation of, and commentary on, the US Constitution. In 2014 he published his acclaimed *Constitutional Pluralism in the EU*, the first and only monograph by a Slovene legal scholar ever published by Oxford University Press. The international legal community has described it as an "important and tremendously useful" contribution that represents the first "coherent defense of the entire 'movement' [of constitutional pluralism]" (J. H. H. Weiler, EJIL), as a "contribution of great merit" by which Jaklič "lays the foundation to nothing less than a new way of understanding law" (E. Dubout, Revue française de droit constitutionnel), etc. He is a regular speaker at leading international academic fora. At the 53rd Annual Conference of Societas Ethica, the European Society for Research in Ethics, he delivered the keynote lecture on "The Morality of the EU Constitution". At the Center for European Studies, Harvard University, he delivered a talk on "The Democratic Core of the European Constitution", while at a Harvard Law School faculty workshop he was invited to speak on "Liberal Legitimacy and the Question of Respect". At Harvard College, Harvard Hall Auditorium, he delivered an invited lecture entitled "The Case For and Against Open Borders", while in 2012/13 he held a series of lectures at the Faculty of Law of the University of Ljubljana as a visiting lecturer from abroad, etc. He has been a member of numerous scholarly associations and a peer reviewer for leading international publishers and law journals, such as Hart Publishing (Oxford), Journal of International Constitutional Law (ICON), Ratio Juris, and the Harvard International Law Journal, of which he was also co-editor. He was appointed a full member of the European Commission for Democracy Through Law (the Venice Commission) for the 2008–12 term. Every year since 2013 he has been included among the top ten most influential members of the Slovene legal profession (IUS INFO), while for the last three years he has been selected the most acclaimed member of the Slovene legal profession (Tax-Fin-Lex). He commenced duties as judge of the Constitutional Court on 27 March 2017.

Assumed the
office of judge

19 December 2018

Prof. Dr Katja Šugman Stubbs

Dr Katja Šugman Stubbs graduated in 1989 from the Faculty of Law, Ljubljana, where she also completed her doctorate in 2000. In 2001, she graduated in Psychology and subsequently trained as a psychotherapist (Transactional Analysis). Since 1992 she has been employed at the Faculty of Law, Ljubljana (full Professor of Criminal Law (2011) and Associate Professor of Criminology (2015)). She is a Senior Research Fellow at the Faculty's Institute of Criminology. Dr Šugman Stubbs' bibliography includes more than 200 items published mostly in Slovenian and English-language contexts. She has predominantly focused on topics in the fields of criminal procedure and criminology. She has participated in 17 national and international research projects and served as project leader in the initiatives which produced The New Model of Criminal Procedure in Slovenia and The European Arrest Warrant. She is a member of the editorial boards of and a reviewer for numerous Slovene and foreign journals (e.g. the New Journal of European Criminal Law). Dr Šugman Stubbs was visiting lecturer and researcher at the University of Cambridge (UK) (2003, 2004–2005), Institute de sciences criminelles, Université de Poitiers (France) (2009, 2012), and, as a Fulbright Scholar, at Berkeley University (USA) (2017). In 2008 she was elected Professeur Associé at the University of Luxembourg's Faculty of Law, Economics and Finance, and she has lectured and conducted research at numerous other foreign universities (e.g. The Free University of Amsterdam, Université libre de Bruxelles, The University of Malta). Dr Šugman Stubbs has been actively involved in the field of human rights protection. She was the Slovene representative on the Council of Europe's Committee for the Prevention of Torture (2015–2016), and acted as senior researcher on human rights issues for the EU Agency for Fundamental Rights (FRA) (2014–2018). She is the Slovene contact person of the European Criminal Law Academic Network (ECLAN), within the framework of which she has prepared a number of research reports for the European Commission. Together with her colleague Dr Katja Filipčič, she co-authored the Second Report of the Republic of Slovenia on the International Covenant on Civil and Political Rights (UN). She has acted as advisor to a number of ministers in the field of human rights and EU criminal law. Dr Šugman Stubbs is regularly invited to teach at training programmes for judges, prosecutors, and advocates, and was a trainer for the European Judicial Training Network (EJTN). Furthermore, she has held a number of administrative offices at the University of Ljubljana at both faculty and university level (e. g. President of the Law Faculty Steering Committee; member of the Habilitation (academic rank-assessment) Commission). She was also a member of the Ethics Commission of the Slovene Psychologists' Association and an EU research programme evaluator (Seventh Framework Programme, Horizon 2000, etc.). She commenced duties as judge of the Constitutional Court on 19 December 2018.

Assumed the office of judge	Held the office of Vice President	Held the office of President	Completed her term of office
19 December 2009	from 11 November 2013 until 30 October 2016	from 31 October 2016 until 18 December 2018	18 December 2018

4. 2. The Judge Who Completed Her Term of Office in 2018

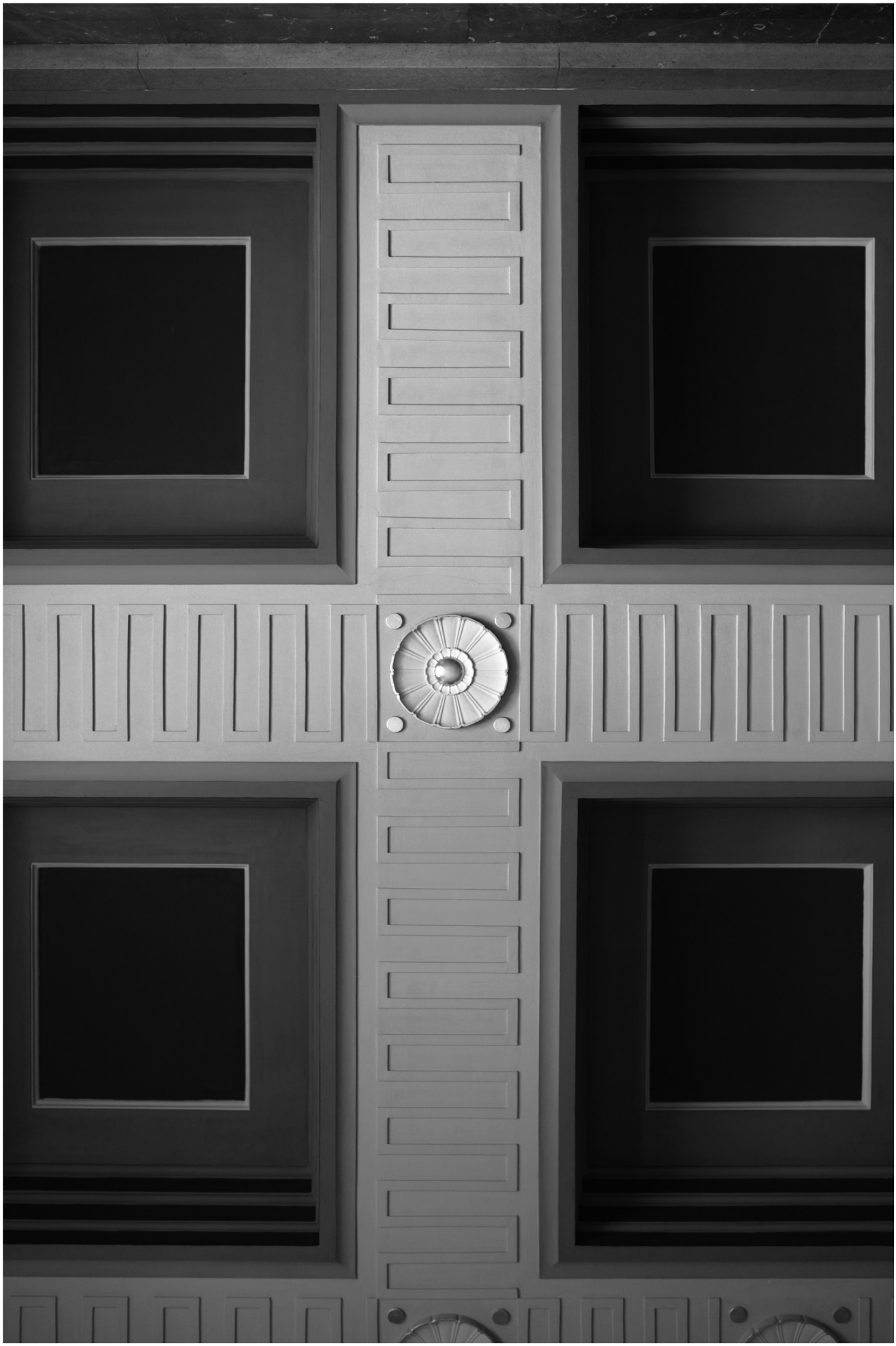
Assist. Prof. Dr Jadranka Sovdat

graduated from the Faculty of Law of the University of Ljubljana in 1982. In 1983 she passed the public administration examination, and the following year the state legal examination. 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 and held the office of President of the Constitutional Court from 31 October 2016 until 18 December 2018.

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 2018, the Constitutional Court adopted a number of important decisions and orders. Only the decisions and orders that have a constitutional precedential value because they significantly contribute to an understanding of the Constitution are presented below. The decisions and orders 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. A Referendum Campaign of the Government and Judicial Protection in a Referendum Dispute

By Decision No. **U-I-191/17**, dated 25 January 2018 (Official Gazette RS, No. 6/18), in proceedings to review constitutionality initiated upon the request of the Supreme Court, the Constitutional Court decided on the conformity of the Referendum and Popular Initiative Act and the Elections and Referendum Campaign Act with the Constitution. In conformity with Article 156 of the Constitution, the Supreme Court stayed the referendum dispute regarding protection of the right to vote in a referendum on the Act Regulating the Construction, Operation, and Management of the Second Track of the Divača–Koper Railway Line and challenged, by a request, the Referendum and Popular Initiative Act because it failed to regulate in a constitutionally consistent manner proceedings for judicial protection of the right to vote in a referendum. As to the sixth paragraph of Article 4 of the Elections and Referendum Campaign Act, the Supreme Court challenged it because it allowed the Government to use budgetary funds in an unconstitutional manner during the referendum campaign, namely as a campaign organiser. Due to the interconnectedness of the statutory provisions, the Constitutional Court also initiated, on its own motion, proceedings to review the constitutionality of the first paragraph of Article 3 of the Elections and Referendum Campaign Act, which enabled the Government or a service thereof to be the organiser of a referendum campaign.

The Constitutional Court established that the Referendum and Popular Initiative Act is inconsistent with the Constitution, as referendum disputes before the Supreme Court are not regulated in a clear and precise manner. The Supreme Court must have, *inter alia*, express authorisation to annul a referendum if there were irregularities in the procedure that could have affected the results of the referendum. The Constitutional Court also established that the first paragraph of Article 3 and the sixth paragraph of Article 4 of the Elections and Referendum Campaign Act are inconsistent with the Constitution as well, as they enable the Government to organise and finance a referendum campaign in the same manner as other organisers. Such a statutory regulation excessively interferes with the right to vote in a referendum. Namely, the Government

cannot be equal to other campaign organisers, as its constitutional position requires it to objectively, comprehensively, and transparently inform voters of the subject of referendums. In a referendum procedure, the Government can publicly adopt a "*pro*" or "*contra*" position regarding the law in question, but the information it provides must present both the reasons in favour of and against the law. Only by proceeding in such a manner can it use budgetary funds.

When reviewing the constitutionality of the regulation of judicial protection of the right to vote in a referendum, the Constitutional Court proceeded from the position that such judicial protection is primarily intended to protect not the subjective legal position of individual voters, but the public interest and constitutional values. These values include a fair referendum procedure (i.e. the observance of referendum rules), the correctness of referendum results, and the trust of citizens that the referendum has been carried out fairly. The objective character of judicial protection of the right to vote in a referendum is ensured by taking into account only established irregularities in the referendum procedure that affected or could have affected the referendum results, but not established irregularities that did not or could not have affected such results. Affecting the referendum results means that an irregularity is of such nature that it could have led to different (i.e. opposite) final results of the voting. The only possible exception could be irregularities whose quality (not quantity) would fundamentally compromise the fairness of the referendum procedure.

The special character of the right to vote in a referendum and the requirement that referendum disputes be resolved as quickly as possible require special, expeditious, and effective judicial protection in such a dispute. To this end, the legislature must adopt a regulation that fulfils the fundamental requirements of such judicial proceedings. The legislature must determine by law the legal remedy, the entitled applicants who may file such, the phase of the referendum procedure in which a legal remedy may be filed and the time limit for such, the grounds on which a legal remedy may be filed (i.e. the substance of objections), the competent court, the rules of judicial proceedings, and the powers of the court when deciding on such cases.

Due to the special nature of judicial protection of the right to vote in a referendum, only referendum results as such can be challenged in a referendum dispute, and all the alleged irregularities can be claimed therein, including irregularities from the referendum campaign that affected or could have affected the fairness of the procedure as a whole. Only irregularities that affected or could have affected the referendum results due to their quantity or quality can lead to the annulling of the vote or to the repetition thereof. If the [competent] court establishes such irregularities in the procedure, it must have the power to annul in full or in part the voting and to order new voting in full or in part. In the event the consequences of an established irregularity that affected or could have affected referendum results can be eliminated merely by establishing different referendum results, the [competent] court must have the power to do so. Provided that, on the basis of the established facts, the [competent] court establishes that no irregularities have occurred that affected or could have affected the referendum results, it must have the power to dismiss the legal remedy. Which established irregularities in the referendum procedure are such that affected or could have affected referendum results is a matter of assessment of the competent court in each individual referendum dispute.

The Constitutional Court established that proceedings for the judicial review of administrative acts as regulated by the Act on the Judicial Review of Administrative Acts, which was also, *mutatis mutandis*, applicable in proceedings for judicial protection of the right to vote in a referendum before the Supreme Court (i.e. a referendum dispute), do not contain all the elements

that should have been prescribed in order to ensure effective exercise of the right to judicial protection of the right to vote in a referendum. It held that such indeterminacy and deficiency (a legal gap) of the statutory regulation significantly restrict the exercise of judicial protection of the right to vote in a referendum. However, the challenged regulation is unconstitutional already due to the fact that it does not fulfil the requirement of the clarity and precision of regulations as regards their content stemming from Article 2 of the Constitution. In order for the Supreme Court to be able to decide in the specific judicial proceedings it stayed, the Constitutional Court, on the basis of the second paragraph of Article 40 of the Constitutional Court Act, drew attention to the legal effects of its declaratory decision and determined the authorisations of the Supreme Court for decision-making on the matter at issue.

With regard to the participation of the Government in a referendum campaign, the Constitutional Court held that, considering the constitutional position of the Government, the mere possibility of it participating in a referendum procedure is not constitutionally disputable. In a public debate, the Government is authorised to advocate a law adopted by the National Assembly and to present its position thereon, and it may also present the consequences of the law not entering into force that it deems negative. However, in proceeding in such a manner, it must not hinder or restrict the freedom to form a position in the referendum procedure. The Government must convey information in a fair and reserved manner, namely information both in favour of and opposing the law at issue. Nevertheless, the Government may express its position thereon. Thus, such provision of information must be objective, comprehensive, and transparent. In these efforts, the Government must act diligently and must not distort or conceal the information it possesses.

In a referendum campaign as defined by the Act, the organisers thereof were able to act in a biased manner and affect, by means of propaganda, the decision-making of voters as to voting pro or contra in the referendum. However, referendum propaganda is incompatible with the position of the Government in the system of state power. It is constitutionally inadmissible for the Government to organise such a referendum campaign. Since the challenged statutory regulation enabled the Government to organise a referendum campaign, the Government's action entailed an excessive interference with the right to participate in the management of public affairs determined by Article 44 of the Constitution, which protects the right to vote in a legislative referendum determined by the third paragraph of Article 90 of the Constitution. Given that the Government may not be the organiser of a referendum campaign, it must not allocate to itself budgetary funds for its participation as the organiser of a referendum campaign.

In the case at issue, the Constitutional Court neither examined nor decided whether in the concrete referendum procedure regarding the so-called Act on the Second Track of the Railway Line the Government acted in conformity with the described requirements. That matter was later decided on by the Supreme Court in a procedure against the final results of the referendum. In its Decision, the Constitutional Court drew attention to the fact that the Supreme Court would have to decide in conformity with the constitutional starting points stated in the Decision of the Constitutional Court; hence, in the referendum dispute that it stayed, the Supreme Court would have to adjudicate whether the concrete activities that the Government carried out in the referendum procedure (i.e. also during the referendum campaign) were in conformity with the reasons stated in the Decision of the Constitutional Court. The Supreme Court thus had to assess whether the Government, as the organiser of a referendum campaign, objectively, comprehensively, and transparently informed voters. Had it established irregularities, it would also have had to decide whether these irregularities affected or could have affected the results of the voting in the referendum.

5. 2. Free Economic Initiative in the Field of Securities

By Decision No. **U-I-192/16**, dated 7 February 2018 (Official Gazette RS, No. 15/18), the Constitutional Court, upon the petition of several companies that manage accounts holding book-entry securities, reviewed the fourth paragraph of Article 48 of the Book-Entry Securities Act, which determined the upper limit of the costs of (i.e. the price for) account management that those companies can charge natural persons. The annual cost of having an account and the fee for managing an account held by a natural person could not exceed 0.5% of the average value of the book-entry securities in that account.

The Constitutional Court reviewed the statutory regulation from the viewpoint of the first paragraph of Article 74 of the Constitution, which guarantees the right to free economic initiative. That constitutional right also guarantees the freedom to manage an economic entity in conformity with economic principles. On the basis of the first sentence of the second paragraph of Article 74 of the Constitution, the legislature is authorised to regulate the manner of exercise of the right determined by the first paragraph of Article 74 of the Constitution as regards exercising economic activities. In doing so, it enjoys a wide margin of discretion. Not only can the legislature prescribe the manner of exercise of the right to free economic initiative in accordance with the second paragraph of Article 15 of the Constitution, but it can also limit certain forms of free enterprise in accordance with the third paragraph of Article 15 of the Constitution. The basis for such is the second sentence of the second paragraph of Article 74 of the Constitution, which prohibits the pursuit of commercial activities in a manner contrary to the public interest. As the Constitutional Court has stressed a number of times, the border between the determination of the manner of exercise of free economic initiative and its limitation, i.e. an interference with this human right, is movable and difficult to determine. In accordance with the established case law, when a regulation particularly intensively narrows the field of economic freedom, then this entails a limitation of the right to free economic initiative. When determining the conditions for performing an economic activity, the manner of exercise of the right can only then be at issue when the condition has a true substantive connection to the concretely regulated economic activity. Such is the case in particular when the legislature averts a threat or mitigates the risks that follow from a certain concrete activity (e.g. in the field of safety at work or the protection of a healthy living environment). However, if the legislature limits the freedom to act enjoyed by economic entities in order to achieve general public objectives or objectives in a certain separate field of social life, then this entails an interference with the right to free economic initiative determined by the first paragraph of Article 74 of the Constitution or a limitation thereof.

The challenged regulation limited the costs (i.e. the price) for managing book-entry security accounts that the petitioners were able to charge natural persons. Hence, on the basis of the challenged regulation, the legislature limited the price that the petitioners are entitled to charge for a certain set of services, whereby it directly interfered (the effects even extended to existing relations) with the essential element of contractual relations between the petitioners and the holders of book-entry securities. According to the National Assembly, the challenged regulation entailed a manner of exercise of the right to free economic initiative, as it pursued the objective of protecting consumers from disproportionate costs in view of the value of book-entry securities. In contrast, the Constitutional Court opined that the protection of consumers entails a general objective, with regard to which in the legislative file or the reply of the National Assembly there was no evidence of a particularly tight connection between the mentioned general objective and the regulated activity of the petitioners. Similarly, from the

mentioned files no risks specific to the activity of the petitioners were evident that the challenged regulation would mitigate. Since the limitation of the costs entailed a legislative limitation of contractual freedom as regards an essential component part of a contractual relation, namely the price that the petitioners are entitled to charge, the Constitutional Court opined that the challenged regulation entailed an interference with the right to free economic initiative, which is determined by the first paragraph of Article 74 of the Constitution.

Subsequently, the Constitutional Court had to assess whether there existed a public interest in such an interference with free economic initiative as determined by the first paragraph of Article 74 of the Constitution. It established that the possession of securities does not concern any particularly sensitive interests of consumers that could justify the need for special protection in the sense of a public interest. If the price for managing book-entry security accounts is too high considering their value, that can entail a reason for the holder of securities to consider that holding securities is no longer (economically) sensible, given the costs for managing an account. The Constitutional Court held that the public interest in limiting the costs for managing trading accounts was not demonstrated. Therefore, the challenged regulation was inconsistent with the right determined by the first paragraph of Article 74 of the Constitution.

5. 3. Caritas Slovenia and the Principle of Equality

By Decision No. **Up-217/14**, dated 7 February 2018, the Constitutional Court decided on the constitutional complaint of Caritas Slovenia filed against the judgments by which the Administrative and Supreme Courts dismissed the action that the complainant filed against a decision of the Communication Office of the Government by which its application to the Call for Tenders for the Co-financing of Information and Communication Education Activities of Non-governmental Organisations on European Matters in 2011 was rejected.

The Communication Office rejected the complainant's application because it did not fulfil a condition determined in the call for tenders, namely it was not a non-governmental organisation founded on the basis of the Societies Act, Foundations Act, or Institutes Act. In judicial proceedings, both courts held that this condition was not determined contrary to Article 13 of the Agreement between the Republic of Slovenia and the Holy See on Legal Issues (hereinafter referred to as the Agreement). According to the courts, the Agreement ensures charity and social ecclesiastical foundations and organisations parity with other similar charity organisations in the state only insofar as they fulfil equal criteria in every concrete case, with regard to which their position must not be worse only because these foundations and organisations are ecclesiastical.

In the constitutional complaint, the complainant alleged that, contrary to Article 13 of the Agreement, such a position prevents it from being treated equally in comparison with other non-governmental organisations when accessing public funds, and no grounds follow from the call for tenders that in view of the purpose of this call for tenders substantiate differentiation based on the disputed criterion between non-governmental organisations established on the basis of the mentioned laws, on the one hand, and the legal form of the complainant, on the other.

The Constitutional Court reviewed the challenged judicial decisions from the viewpoint of the right to equality before the law determined by the second paragraph of Article 14 of the Constitution, from which, *inter alia*, there follows the requirement that administrative authorities and courts treat essentially equal situations equally when deciding in concrete procedures. If

they treat them differently, reasonable grounds objectively connected to the subject of legal regulation must exist for such. In the Decision, the Constitutional Court drew attention to the fact that in the assessment of which details and differences in the positions are essential, it must also be taken into consideration whether perhaps essentially different positions of legal entities are deemed to be equivalent by some rule established by ratified treaties.

In the assessment, the Constitutional Court took into account the second paragraph of the Agreement, which in the Republic of Slovenia ensures registered legal entities of canon law – from the viewpoint of their legal status – a position equivalent to that of legal entities founded on the basis of Slovene legislation, and Article 13 of the Agreement, which – as regards [tax] relief, aid, and other stimulus measures – deems charity and social ecclesiastical foundations and organisations whose field of activity is charity and social solidarity and that are organised in conformity with Slovene legislation to be equal to other similar charity organisations in the state. It held that from the legal status viewpoint, the mentioned provisions ensure the complainant, which is a registered ecclesiastical charity institution, a position equal to that of legal entities established under Slovene law. Therefore, mere legal status cannot entail reasonable grounds objectively connected to the subject of regulation that in respect of access to public funds for co-financing charity activities would allow for different treatment of the complainant in comparison with legal entities established under the law of the Republic of Slovenia.

The courts based the challenged judicial decisions on an interpretation that makes a distinction between the position of the complainant, a registered ecclesiastical charity institution, whose field of activity is charity work, and the position of other similar charity organisations in the state merely on the basis of its legal status. Thereby, they denied the complainant an equal position when invoking the right to obtain public funds for co-financing a charity activity – namely in comparison with other similar (non-governmental) charity organisations established on the basis of the regulations in force in the Republic of Slovenia governing legal status – merely on the basis of a circumstance that in view of Article 13 in conjunction with the second paragraph of the Agreement cannot entail a criterion for the different treatment of the complainant. Therefore, the Constitutional Court held that the challenged judicial decisions violated the complainant's right to equality before the law determined by the second paragraph of Article 14 of the Constitution. The Constitutional Court annulled the challenged judgments and remanded the case to the Administrative Court for new adjudication.

5. 4. Legal Guarantees in Criminal Proceedings

By Decision No. **Up-381/14**, dated 15 February 2018, the Constitutional Court decided on the constitutional complaint of a complainant who was convicted of the criminal offence of insulting someone determined by the first and second paragraphs of Article 169 of the Criminal Code. Although the Constitutional Court established that all the allegations made by the complainant were unfounded, it nevertheless adopted in the decision several important constitutional positions that refer to procedural guarantees in criminal proceedings.

As regards the allegation regarding the right to an impartial trial as determined by the first paragraph of Article 23 of the Constitution, the Constitutional Court stressed that impartiality entails that the person adjudicating on a matter is disinterested as regards the outcome of the proceedings and is open to the evidence proposed and the motions made by the parties. In

the assessment of whether in proceedings an individual was ensured the right to an impartial court, the position already established in the constitutional case law is that the impartiality of a court must be assessed according to its effects. The impartiality of a judge is ensured where there are no circumstances relating to him or her that in a reasonable person would raise a justified doubt as to the judge's capacity to decide impartially on the request at issue (i.e. the subjective aspect of impartiality). Furthermore, from the right to an impartial trial there also follows the requirement that, when acting in concrete cases, courts create or maintain the appearance of impartiality (i.e. the objective aspect of impartiality). The impartiality of judges as the bearers of the judicial function in individual courts must thus also be assessed according to its outward expression, i.e. how the partiality or impartiality of judges is understood by the parties to proceedings and by the public. As regards the alleged violation of the right to an impartial court, the complainant only referred to certain conclusions of the courts regarding evidence with which he did not concur; therefore, the Constitutional Court decided that the constitutional complaint is manifestly unfounded in that part.

The Constitutional Court assessed the alleged violation of the right to present evidence to the benefit of the defendant from the viewpoint of the third indent of Article 29 of the Constitution, namely on account of the fact that the court at issue dismissed his motion to hear six witnesses. In accordance with this provision, anyone charged with a criminal offence has, in addition to absolute equality, the right to present all evidence to his or her benefit. The Constitutional Court stressed that, in accordance with the established constitutional case law, it follows from the third indent of Article 29 of the Constitution that courts, considering the principle of the free assessment of evidence, shall independently decide which evidence they will allow the presentation of and how they will assess the credibility thereof. Courts are not obliged to allow every piece of evidence proposed by the defence; a proposed piece of evidence must be substantively relevant and the defence must substantiate the existence and legal relevance of the proposed evidence with the necessary degree of probability. In doing so, courts must take into account that, when in doubt, every motion of the defence to present evidence benefits the defendant and courts must allow it, unless it is manifest that the evidence cannot be successful. According to the Constitutional Court, the wording of the Constitution that "anyone charged with a criminal offence must be guaranteed the right to present all evidence to his [or her] benefit" should not be interpreted in such a manner that courts should allow every motion to present evidence made by the defence that could merely substantively benefit the defendant. The phrasing implies the following criteria as to the substantive relevance of evidence: a piece of evidence that is not substantively relevant is irrelevant and hence cannot "benefit the defendant". Furthermore, courts do not have to allow the presentation of evidence proposed by the defendant indefinitely; they only have the duty to allow such evidence if the defence carries out its burden of proof and substantiates with the necessary degree of probability the legal relevance of the proposed evidence. This is also a question that constitutionally depends on whether the evidence benefits the defendant. Namely, motions to present evidence that merely delay the proceedings cannot substantively benefit the defence. The wording of the Constitution is not focused on the benefit that the defence could derive from obstructing the criminal proceedings by delaying them. The position of the Constitutional Court is that the third indent of Article 29 of the Constitution includes the presumption that, when in doubt, every motion to present evidence benefits the defendant. Courts must allow such motions, unless it is manifest that the evidence cannot be successful. Courts may reject the presentation of a piece of evidence if further presentation of evidence to clarify the matter would be redundant, if the fact that the proposed piece of evidence would prove is already proven or irrelevant for the case, or if the means of evidence is inappropriate or unreachable.

The courts at issue dismissed the complainant's motions to hear witnesses, arguing that they are irrelevant, as the incriminated statement did not refer to concrete historical events or the conduct of the private prosecutor (i.e. the facts), but instead entailed a value judgment of the defendant regarding the private prosecutor, the credibility of which, however, cannot be proven. When assessing the violation determined by the third indent of Article 29 of the Constitution, the Constitutional Court took into account that the complainant was convicted due to the criminal offence of insulting someone and alleged that he submitted the motions for evidence with the purpose of proving the credibility of his statement and that he had reasonable grounds to believe in its credibility, and thus exonerated himself from criminal liability for making the incriminated statement. Therefore, the Constitutional Court assessed the alleged violation within the context of the freedom of expression determined by the first paragraph of Article 39 of the Constitution and Article 10 of the ECHR, as the criminal offence of insulting someone entails a collision between the right to the protection of one's honour and good reputation, on the one hand, and the right to freedom of expression, on the other.

When assessing the collision between the right to the protection of one's honour and good reputation, on the one hand, and the right to freedom of expression, on the other, the differentiation between facts and value judgments must be taken into consideration. Namely, the existence of facts can be proven, whereas the veracity of value judgments cannot be proven. Nevertheless, a negative value judgment that harms one's honour and good reputation must be based on facts in order to be admissible. The person making the statement is exonerated and his or her liability for such statement is excluded if there exists a sufficient basis in the facts for the value judgment in question. In accordance with the established constitutional case law and the case law of the ECtHR, a negative value judgment is inadmissible when it does not have a sufficient basis in the facts. In conformity therewith, the defendant can also be exonerated from (criminal) liability for a negative value judgment if he or she demonstrates that he or she had a sufficient basis in the facts therefor. In view of the above, the position of the courts that the proposed evidence (i.e. the hearing of six witnesses) is not relevant because the prohibited statement does not refer to concrete historical events is in itself incompatible with the right to present evidence to the benefit of the defendant determined by the third indent of Article 29 of the Constitution. In the case at issue, the actual basis for negative value judgments (insults) allegedly followed from hearsay originating from third persons whose examination the complainant proposed. According to the Constitutional Court, hearsay can entail a sufficient factual basis for a negative value judgment if the holder of the value judgment believes in the veracity of the bases therefor. Therefore, the evidence by which defendants wish to prove facts relating to hearsay can be substantively relevant. However, in such case, the allegation that in the circumstances of the case at issue the proposed evidence was not allowed did not give rise to the conclusion that there was a violation of the right to present evidence to the benefit of the defendant as determined by the third indent of Article 29 of the Constitution. Consequently, the Constitutional Court dismissed the constitutional complaint.

5. 5. Limitation of Compensation for Persons Removed from the Register of Permanent Residents

By Decision No. **U-I-80/16, U-I-166/16, U-I-173/16**, dated 15 March 2018 (Official Gazette RS, No. 24/18), the Constitutional Court decided, upon the request of multiple courts – i.e. the Slovenj Gradec District Court, the Ljubljana District Court, and the Ljubljana Local Court – on the constitutionality of the statutory regulation in accordance with which the total amount of

compensation that a court can decide on in judicial proceedings for damage caused by the removal of persons from the register of permanent residents was limited. The courts claimed that the regulation inadmissibly retroactively interferes with the acquired rights of applicants who due to the challenged statutory regulation were deprived of the right to obtain compensation in full, due to which this regulation is allegedly inconsistent with Article 155 of the Constitution.

The Constitutional Court held that the challenged regulation does not retroactively interfere with the acquired rights of the persons removed from the register of permanent residents. Therefore, it is not inconsistent with the prohibition of retroactivity (the second paragraph of Article 155 of the Constitution).

When an unconstitutional retroactive validity of a law is claimed that actually does not exist, the Constitutional Court always also assesses whether the law is in conformity with the principle of trust in the law (Article 2 of the Constitution). Such ensures the individual that the state will not arbitrarily worsen his or her legal position, i.e. without a reason based on a prevailing public interest. Hence, it is significant whether the legal position of the persons removed from the register of permanent residents has worsened as regards invoking claims for compensation in judicial proceedings against the state for damage caused by the removal of these persons from the register of permanent residents when the challenged Act entered into force.

From the viewpoint of this assessment, it was essential in which position these persons were at the time when the Act entered into force and when it became applicable. Therefore, two groups of injured parties must be distinguished, namely (1) those who filed actions for compensation against the state even prior to the Act entering into application, and whose claims had not become time-barred by then (the first group of injured parties), and (2) those who prior to the Act entering into application did not have judicial proceedings pending against the state or they initiated such proceedings by then but their claims for compensation would have been time-barred under the regulation previously in force (the second group of injured parties). The positions of the mentioned two groups were different when the Act entered into application.

When the challenged statutory regulation became applicable, the injured parties from the first group had the right to expect compensation for damage incurred due to removal from the register, namely on the basis of Article 26 of the Constitution. Therefore, they could justifiably expect that the amount of monetary compensation would depend exclusively on the amount of damage and that that amount would not be limited by law. The adoption of the challenged Act interfered with this right of theirs. Thereby, their position when invoking claims for compensation against the state deteriorated. It is essential for this group that while judicial proceedings were pending, the legislature changed the conditions for invoking claims for compensation, namely in proceedings in which actions were filed against the state due to the unlawful conduct of its authorities. It thereby ensured a more favourable position of the state as the defendant, and the possible amount due from the state in these proceedings was already determined. The legislature did not state reasons in the public interest that in view of these obligations of the state could justify the interference of the legislature with the pending judicial proceedings. Therefore, it acted contrary to Article 2 of the Constitution.

As regards the second group of injured parties, the Constitutional Court established that their position is different because it is not possible to presume for them in general that they had the right to expect compensation for damage on the basis of Article 26 of the Constitution. Their position was thus only determined by the pilot judgment of the ECtHR in *Kurić and others v.*

Slovenia, which imposed on the Republic of Slovenia the obligation to specifically regulate compensatory protection in order to mitigate the consequences of removal from the register of permanent residents. In doing so, the Constitutional Court took into account two aspects of the ECtHR's position in particular: 1) individual assessment of how much each individual complainant was materially deprived of, and 2) a separate assessment of claims regarding material and non-material damage, with the awarding of compensation for both types of damage. In this respect, the law treats the second group of injured parties less favourably. From the viewpoint of the mentioned judgment of the ECtHR, the limitation of the amount of monetary compensation determined by Article 12 of the Act entails a deterioration of the position of those injured parties that in individual judicial proceedings attempt to prove the concrete scope of the sustained damage and demand appropriate monetary compensation that exceeds the statutorily determined highest lump sum of monetary compensation.

The Constitutional Court assessed that a serious crisis as regards public finances can entail a constitutionally admissible objective for adopting a law that limits the total amount of monetary compensation. However, the regulation was unconstitutional, as not even in individual cases in which a disproportionate discrepancy would be established between the demonstrated scope of damage and the statutorily limited lump sum of monetary compensation did the Act enable individual assessment of the positions of individual injured parties. Therefore, the challenged regulation was also unconstitutional in the part in which it refers to the second group of injured parties.

5. 6. Referendum Campaign and the Day of Voting

By Order No. **U-I-263/18, Up-540/18**, dated 9 April 2018 (Official Gazette RS, No. 27/18), the Constitutional Court decided on the petition of a petitioner who challenged Article 33 of the Referendum and Popular Initiative Act (the RPIA), which determines that no less than thirty days and no more than one year may pass between the day when a referendum is called and the day of voting. Articles 30 and 31 of the RPIA determine that the act calling a referendum must contain the date of calling the referendum and that the time limits for the performance of tasks necessary to carry out the referendum begin to run as of that date. The time limits for carrying out a referendum are determined by Article 33 of the RPIA and are connected to the date when the referendum is called. The Constitutional Court established that the purpose of these time limits is to ensure an appropriate period of time for technical preparations (composing the electoral roll, appointing electoral authorities) and for the voters to learn of the subject to be decided on in the referendum. All these activities, which are called referendum activities, must be carried out within certain time limits, which must be determined clearly, so that there is no doubt how the addressees must act. This is important in order for the referendum procedure to be carried out fast and to ensure that individual phases or activities follow one another continuously. The same as for an election, also with regard to a referendum, after a certain period of time provided for referendum activities, voting must follow, wherein voters decide on the subject of the referendum. The Constitutional Court decided that the allegation of the petitioner that Article 33 of the RPIA is unconstitutional is manifestly unfounded, due to which it dismissed the petition to initiate proceedings to review constitutionality.

In the constitutional complaint, the petitioner also challenged the Order of the National Electoral Commission (the NEC) determining the date of repeated voting in the legislative referendum on the Act Regulating the Construction, Operation, and Management of the Second

Track of the Divača–Koper Railway Line. He opined that this order, which determines the day of voting in a referendum such that one week of the referendum campaign takes place during the May Day holidays and school holidays (i.e. from 27 April to 2 May) – and this would be the second week of the referendum campaign, entails an interference with the right to vote in a referendum, as the amount of information provided to voters and their knowledge of the content of the law and of the arguments for and against the law would be limited. The petitioner also alleged that in order to ensure effective exercise of the right to vote in a referendum as a positive right, the NEC should select, from among the multiple possible dates, the one that will probably have the highest participation.

As the starting point of its assessment, the Constitutional Court stressed that campaigning is important in order to effectively exercise the right to vote in a referendum (Article 44 of the Constitution). The first paragraph of Article 2, in conjunction with the fourth paragraph of Article 1 of the Elections and Referendum Campaign Act, determines that a referendum campaign may not begin sooner than 30 days prior to the day of voting and must, at the latest, end twenty-four hours prior to the day of the voting. Hence, it clearly follows from the Act that the period of a referendum campaign can last 29 calendar days at most, while on the last day prior to the day of voting a "campaign silence" applies. In the challenged Order, the NEC determined that repeated voting in the referendum would be carried out on Sunday, 13 May 2018. In view of the described statutory regulation, the referendum campaign started on 13 April 2018 and lasted until 11 May 2018, i.e. also during school and May Day holidays (from 27 April to 2 May 2018).

The petitioner argued that for this reason the possibility of an effective referendum campaign and, consequently, effective exercise of the right to vote in a referendum would be affected. However, according to the Constitutional Court, the performance of a campaign during shorter holidays does not in itself entail that the campaign is in its entirety rendered impossible, ineffective, or substantially difficult. Six days of the campaign would fall on school holidays, while only three days would be state holidays. But it is also not possible to state in a generalised manner that school or state holidays necessarily affect the effectiveness of a campaign. As regards voters who during holidays have more time to become informed, it is not unreasonable to expect that, in view of the accessibility of electronic media and social networks, they would obtain information relating to the campaign. In view of these circumstances, the possibility of an effective referendum campaign and, consequently, the possibility of effective exercise of the right to vote in a referendum is not affected. Therefore, the Constitutional Court decided that the challenged Order does not interfere with the right to vote in a referendum. Also the petitioner's reference to Decision of the Constitutional Court No. U-I-76/14 was unfounded. Namely, the circumstances of the case at issue are significantly different from the circumstances that entailed the basis for that decision, as in that instance it was the voting and not the campaign that fell in the holiday period.

As regards the petitioner's allegation that the challenged Order interferes with the right to vote in a referendum also due to the fact that it does not determine the date of the repeated voting in the referendum on the same date when elections to the National Assembly would be carried out, the Constitutional Court repeated its position that from the fourth paragraph of Article 90 of the Constitution it does not follow that, in order to ensure the highest possible participation in the referendum, the National Assembly must determine the day of voting in a referendum to be the same date as the date of such elections. This requirement also does not follow from the right to vote in a referendum (Article 44 of the Constitution). The determination of the day of voting in itself entails the manner of exercise of that human right. The legislature (and also the NEC

in the case at issue) must act within the framework of the statutory possibilities as it determines the day of voting by an implementing regulation (i.e. a decree or an order). In doing so, it must ensure effective exercise of the right to vote in a referendum as a positive right, the nature of the right to vote in a referendum itself coupled with the simultaneous constitutional requirement of a quorum for rejecting a law in a referendum, and the requirement of fair implementation of the referendum procedure in each individual legislative referendum, all of which are constitutional starting points. As long as the National Assembly proceeds within these constitutional limits, it has a wide margin of appreciation in scheduling the day of voting in a referendum. The same applies, *mutatis mutandis*, to the NEC when scheduling the date of repeated voting. The Constitutional Court therefore decided that the argument of the petitioner that in order to ensure the highest possible participation in the referendum the NEC should have determined the day of voting on the referendum on the same date as the date of the elections is unfounded.

5. 7. Active Standing of the Bank of Slovenia and the European Central Bank to File a Constitutional Complaint

By Order No. **U-I-157/16, Up-729/16, Up-55/17**, dated 19 April 2018 (Official Gazette RS, No. 35/18), the Constitutional Court decided on the constitutional complaint of the European Central Bank (the ECB) against the order by which a District Court dismissed its request, based on the first paragraph of Article 221 of the Criminal Procedure Act (the CrPA), to exclude from an investigation and to hand back to the ECB certain documents that prosecuting authorities seized when carrying out investigative actions at the Bank of Slovenia (the BS). Furthermore, the Constitutional Court decided on the constitutional complaint of the Bank of Slovenia against the orders issued in the police procedure concerning the search of premises, the seizure of objects and documents, the seizure, safeguarding, and search of electronic data, and the search of multiple computers and electronic data carriers.

In conformity with the provisions of the Constitutional Court Act, a person entitled to file a constitutional complaint is someone who claims that one of his or her human rights or fundamental freedoms has been violated by the challenged act (by which his or her rights, obligations, or legal entitlements were decided on). Only a subject who can actually have the human rights or fundamental freedoms that he or she alleges were violated can be a person entitled to file a constitutional complaint. Hence, if a constitutional complaint is filed by an entity that already due to its nature or status (i.e. circumstances related to the legal personality thereof) cannot have the allegedly violated human rights or fundamental freedoms, the Constitutional Court rejects the constitutional complaint.

The legal-ethical foundation of modern states based on the concept of constitutional democracy is respect for human dignity. Human dignity and a person's freedom lie at the core of the constitutional order of the Republic of Slovenia and form the foundation of the value system enshrined in the Constitution. The constitutional order is thus built on values that fundamentally belong to the individual – free human beings. Since also legal entities may play an important role in the exercise of the (human) rights of individuals, appropriate (constitutional) protection of legal entities is also necessary, namely in some (not necessarily all) areas where natural persons otherwise enjoy legal (constitutional) protection. Therefore, some rights guaranteed by the Constitution to natural persons as human rights are also recognised by the Constitutional Court to legal entities as constitutionally protected rights (i.e. the constitutional rights of legal entities).

However, the question of the scope and ambit of the constitutional rights of legal entities cannot be resolved in the same manner for all legal entities. As regards legal entities of public law, the reasons for broadening the scope of constitutional rights are significantly weaker than as regards legal entities of private law. Historically, the concept of human rights has developed into a bastion offering protection from the arbitrary exercise of state power. The state – as a legal entity of public law *par excellence* – is from this perspective seen as a threat to human (constitutional) rights and as the power that has to ensure respect for such, but not also as an entity protected by the mentioned rights. The same applies to all other public law entities. Public law entities cannot be seen as a means for the free development of the concrete individuals who stand behind them. This realisation is clearly reflected in the constitutional case law, which demonstrates a more restrictive approach in broadening the sphere of constitutional rights and protection to include public law entities.

There is an established position in the case law of the Constitutional Court that legal entities of public law are not holders of constitutional rights in instances when they operate as authorities in power (*ex iure imperii*), i.e. as entities that within the framework of their authoritative tasks act as public authorities, operate in the public interest, and pursue public goals. Operating *ex iure imperii*, however, does not merely entail decision-making on the rights and obligations of individuals. Also any other functioning of a public law entity within the framework of a public law relation (either between the authorities in power and an individual or between different structures of the authorities in power) entails acting from a position of power that is incompatible with the recognition of constitutional rights. In accordance with the case law of the Constitutional Court, legal entities of public law can only exceptionally have constitutional rights, namely when they function *ex iure gestionis* (i.e. in equal rank relations of a civil law nature), with regard to which the Constitutional Court has thus far recognised legal entities of public law in such relations only the fundamental constitutional procedural guarantees determined by Articles 22, 23, and 25 of the Constitution. The *ratio* of recognising legal entities of public law constitutional rights in such cases was to ensure the fundamental procedural balance between two procedurally equal parties and to prevent the distorted functioning of the mechanism of judicial procedures due to protection of the principles of a state governed by the rule of law.

As regards the constitutional complaint of the BS, the Constitutional Court held that the establishment and functioning of the BS are not derived from the human right to establish legal entities in order for natural persons to exercise their interests, but are a consequence of the requirements of the Constitution and of the Treaty on the Functioning of the European Union that there exist an institution to carry out the monetary function of the state that is protected from political meddling. The BS also lacks a personal substratum in the sense of a group of persons who freely associate and function due to personal interests; one part of its personnel structure consists of office holders and employees who are in charge of carrying out official tasks. Hence, the BS cannot be deemed to entail a means to ensure the free development of individuals (i.e. natural persons). On the contrary, the BS is the means for exercising state power, which the right to privacy is primarily supposed to offer protection from. For such reasons, the Constitutional Court adopted the position that the BS does not have the rights determined by Article 35, the first paragraph of Article 36, and the first paragraph of Article 37, which protect privacy.

The Constitutional Court also adopted the position that neither the BS nor the ECB can enjoy the constitutional procedural guarantees determined by Articles 22, 23, and 25 of the Constitution, which ensure a fair procedure, as in the circumstances of the case at issue they did not function *ex iure gestionis.* They namely referred to these constitutional procedural guarantees in

the procedures in which they protected the exercise of their authoritative functioning (*ex iure imperii)* – i.e. in a dispute in which one state authority structure alleges that another state authority structure inadmissibly interfered with the sphere of its authoritative functioning. Furthermore, the Constitutional Court adopted the position that the ECB also cannot enjoy the right to a fair trial enshrined in Article 6 of the ECHR. From the established interpretation of Article 34 of the ECHR, which consists of decisions of the ECtHR, it namely follows that public law entities do not enjoy the right determined by Article 6 of the ECHR. The ECtHR considers legal entities that participate in the exercise of state power or that provide public services under the supervision of the state to be "a government" or "governmental organisations" that do not enjoy protection under the Convention. Consequently, also the ECB – as a part of the supranational authority of the EU that performs functions that are distinctly public – cannot enjoy the rights enshrined in the ECHR. In the case at issue, the Constitutional Court did not need to adopt a position as to whether in the field of the implementation of EU law the ECB can enjoy the rights determined by Article 47 of the Charter. In view of the above, the Constitutional Court rejected the constitutional complaints, as they were filed by entities that are not entitled to file such.

Understandably, the decision of the Constitutional Court does not entail that in court proceedings that they are parties to the complainants do not have the procedural rights that procedural laws confer on parties to proceedings. The above-stated also does not entail that regular courts do not have to take into consideration primary and secondary EU law, or that in instances when a question of the interpretation of EU law is raised in a dispute they do not have the obligation to submit a question for a preliminary ruling to the Court of Justice of the European Union. It only entails that neither of the two complainants, given that they do not have the constitutional rights determined by Articles 22, 23, and 25 of the Constitution, nor the ECB itself, given that it does not have the right enshrined in Article 6 of the ECHR, have active standing to file a constitutional complaint.

5. 8. The Position of Children in International Protection Procedures

By Decision No. **Up-748/16**, dated 25 April 2018 (Official Gazette RS, No. 39/18), the Constitutional Court decided on the constitutional complaint of an applicant for international protection against a judgment of the Supreme Court. The Supreme Court upheld the appeal of the Ministry of Internal Affairs (the MIA) and dismissed the applicant's action against an administrative decision by which in the procedure for granting international protection the complainant was granted subsidiary protection, but not the status of a refugee.

In the procedure for granting international protection, the complainant, who was an unaccompanied minor, was able to personally file an application for international protection. However, prior to adopting a decision, the administrative authority did not ensure that the complainant underwent an additional personal interview, which is required by Article 45 of the International Protection Act. The complainant was opposed to the position of the Supreme Court that failure to carry out an additional personal interview on the basis of Article 45 of the International Protection Act only entails an infringement of procedural requirements that vitiated the procedure but did not affect the lawfulness or correctness of the decision of the MIA.

In its assessment, the Constitutional Court took into consideration that the principle of a child's best interests requires that in a procedure for granting international protection, unaccompanied minors must be ensured special procedural guarantees. In a procedure for granting international protection, a personal interview is necessary in order to fully and

correctly establish the state of the facts. Furthermore, the establishment of the state of the facts is based on the allegations of the applicant for international protection, hence the decision of the competent authority depends above all on how convincing, credible, and consistent the allegations made by the applicant to his or her benefit are. The principle of a child's best interests requires that in a procedure for granting international protection applicants for international protection that are unaccompanied minors must be ensured all procedural guarantees in order to present the elements that are necessary to substantiate the application as comprehensively as possible. Since in the procedure for granting international protection at issue a personal interview was necessary in order to correctly and fully establish the state of the facts, and since the applicant was a minor, the Constitutional Court assessed that the position of the Supreme Court that failure to carry out a personal interview merely entails an infringement of the procedural requirements that vitiated the procedure resulted in a violation of the principle of a child's best interests determined by the first paragraph of Article 56 of the Constitution. It annulled the judgment of the Supreme Court and remanded the case thereto for new adjudication.

5. 9. Freedom of Religion and the Ritual Slaughter of Animals

By Decision No. **U-I-140/14**, dated 25 April 2018 (Official Gazette RS, No. 35/18), upon a petition of the Slovene Muslim Community and a natural person, the Constitutional Court decided on the constitutionality of the second paragraph of Article 25 of the Animal Protection Act (the APA), which determines that animals must be stunned also during ritual slaughter. The central question in the case at issue was whether the challenged statutory provision is inconsistent with the freedom of religion determined by the first paragraph of Article 41 of the Constitution. The petitioners (a religious community whose objective is to preserve Islamic values and a natural person who is a Muslim) alleged that it is unconstitutional that the second paragraph of Article 25 of the APA determines the obligatory prior stunning of all animals for slaughter, without providing an exception for Islamic ritual slaughter. Allegedly, the challenged provision prevents Muslims from enjoying a supply and consumption of *halal* meat on a daily basis, and in particular on the occasion of Kurban Bayram, which is an Islamic religious holiday.

The Constitutional Court accepted the petitioners' reasoning that regular consumption of the meat of animals slaughtered in conformity with Islamic rules and the consumption and donation of the meat of animals slaughtered in such manner during Kurban Bayram entails fulfilment of important religious duties that are reasonably connected with the essence of the religious belief at issue. Therefore, both are protected by the right to freedom of religion determined by the first paragraph of Article 41 of the Constitution. Since the challenged provision renders access to the meat of ritually slaughtered animals difficult, and thus also the daily consumption thereof and full and unhindered celebration of Kurban Bayram, it hinders the performance of key religious duties. Therefore, according to the Constitutional Court, it interferes with the freedom of religion of the members of Islamic faith.

However, the Constitutional Court stressed that when assessing the admissibility of limitations of the right to freedom of religion determined by the first paragraph of Article 41 of the Constitution it is necessary to take into consideration, in view of the fifth paragraph of Article 15 of the Constitution, the objectives determined by the second paragraph of Article 9 of the

ECHR, due to which interference with freedom of religion may be admissible. The objective of the second paragraph of Article 25 of the APA is to ensure the well-being of animals. Within the context of the case at issue, this means the protection of animals from torture, which is expressly required by the fourth paragraph of Article 72 of the Constitution. The definition of the constitutionally required "protection of animals from torture" also requires that the legislature strive to prevent, ease, or alleviate unpleasant feelings of pain, stress, and fear that people cause animals. The objective of the requirement that animals be stunned prior to slaughtering, i.e. to ensure the well-being of animals, is a part of morals, as an ensemble of rules that characterise and direct the conduct of people based on conceptions of good and bad. In view of the second paragraph of Article 9 of the ECHR, morals are an admissible reason for interfering with freedom of religion.

When assessing the proportionality of this measure, the Constitutional Court established that the measure is appropriate and necessary, i.e. that the prior stunning of animals can effectively ease the pain and fear of animals, and that no milder means of achieving that objective exist that would interfere with freedom of religion to a lesser extent. The legislature has also already carried out such an assessment. Since the legislature based that assessment, which concerns a complex scientific field, on scientific bases and did not exceed the furthermost limits of its discretion, the Constitutional Court accepted it. Within the framework of assessing proportionality in the narrower sense, the Constitutional Court decided that the constitutional weight of the benefits gained from the second paragraph of Article 25 of the APA is significant. The absence of the rule in question in the second paragraph of Article 25 of the APA would signify that unstunned animals can be slaughtered, which would expose animals that are to be slaughtered to additional pain, stress, and suffering from the moment their neck is cut to the moment they lose consciousness. On the other tip of the scale, however, access to *halal* meat is rendered more difficult, which has additional weight in conjunction with the importance of the donation and consumption of such meat during the celebration of Kurban Bayram in conformity with religious obligations. The consequences of the challenged provision for freedom of religion are limited already due to its religious neutrality; furthermore, access to *halal* meat is merely rendered more difficult for Muslims and it is not rendered impossible, as – according to one petitioner – the ritual slaughter of animals during Kurban Bayram can be ordered abroad. Hence, the fact that the prohibition of the ritual slaughtering of unstunned animals entails a prohibition on inflicting pain that can be avoided was of decisive importance in the process of balancing the benefits of the challenged limitation and the weight of the challenged limitation. Thereby, an important moral obligation in the Slovenian cultural environment is protected. Consequently, the state is permitted to prohibit conduct that is incompatible with the fundamental rules and moral framework of the society, provided that concurrently it does not excessively interfere with the right to freedom of religion. The Constitutional Court thus decided that the challenged regulation is not unconstitutional as it does not excessively interfere with the right to freedom of religion determined by the first paragraph of Article 41 of the Constitution.

5. 10. Gender Quotas with regard to Lists of Candidates in Elections to the National Assembly

By Order No. **Up-716/18, Up-745/18**, dated 17 May 2018 (Official Gazette RS, No. 35/18), the Constitutional Court decided on a constitutional complaint against a decision of the Supreme Court which by the challenged judgments upheld the decisions of two electoral commissions

that in the election procedure dismissed the lists of candidates "Kangler & Primc Združena desnica – Glas za otroke in družine" and "Nova ljudska stranka Slovenije". In constituencies 1 and 6, the lists of candidates were determined contrary to the sixth paragraph of Article 43 of the National Assembly Elections Act (the NAEA), which requires a certain percentage of candidates of each gender on a list of candidates (so-called gender quotas).

The sixth paragraph of Article 43 of the NAEA determines that on a list of candidates each gender must not comprise less than 35 percent of the total actual number of female and male candidates on the list. In accordance with the fourth paragraph of Article 43 of the Constitution, a law shall provide measures for encouraging the equal opportunity of men and women in standing for election to state bodies and local community bodies. The legislature thus adopted the sixth paragraph of Article 43 of the NAEA on a constitutional basis. The provision is clear and comprehensible to anyone. As the legislature did not determine a specific sanction for not observing this rule, it is deemed that a list of candidates that does not observe it has not been determined in accordance with the law. An electoral commission must reject such a list on the basis of the first paragraph of Article 56 of the NAEA. In the Republic of Slovenia, such a statutory regulation has been in force since the year 2006, and the Supreme Court provided a clear interpretation thereof in a 2011 judgment. All political parties thus had prior knowledge of the sanction for disregarding the rule in question.

The Constitutional Court already clarified in Decision No. Up-304/98, dated 19 November 1998, that elections entail a process that has to take place and be completed within an uninterrupted period of time, and therefore all tasks that have to be performed as part of this process are restricted by statutorily precisely determined time limits that are very short. It stressed that all bodies authorised to decide in this process have to take into account the particular nature of the right to vote, which must also be considered by all participants in the process. Therefore, a political party that wants to participate in an election must align its organisation and functioning with these requirements and ensure that all relevant statutory conditions are fulfilled upon the submission of a list of candidates. The electoral commission is tasked with rejecting lists of candidates that are not determined in accordance with the statutorily determined rules.

As the Constitutional Court has repeatedly stressed, including in the cited decision, the right to vote has a particular nature, as it is a personal right, but all holders of this right can only exercise it concurrently in an organised procedure and within a precisely determined time frame. This restricted time frame and the ensuing extremely short time limits for carrying out individual acts are a consequence of the principle of periodic elections, which the Code of Good Practice in Electoral Matters determines as one of the fundamental principles of the European electoral heritage. In the Republic of Slovenia, the time limits determined by the Constitution are particularly short and thus the restricted time frame for carrying out elections is especially accentuated. Such substantiates the statutory determination of short time limits and the requirement that political parties that want to participate in the electoral process have to carry out all electoral tasks in accordance with the rules and within the time limits determined by law. These rules must apply to all political parties that are competing for power in an election, as only in such manner can the principle of equal suffrage enshrined in the first paragraph of Article 43 of the Constitution be observed.

In accordance with the above, the competent electoral commission has the express statutory authorisation to only require the remedying of formal deficiencies. The Constitutional Court

clarified already in Decision No. Up-304/98 that the term "formal deficiency" is an open-textured legal term and its precise content is subject to interpretation by the competent body. By Decision No. Up-2385/08, dated 9 September 2008 (Official Gazette RS, No. 88/08), the Constitutional Court adopted the position that a formal deficiency is a deficiency that can be remedied without the need to carry out any new electoral tasks in the nomination procedure. In light of the above, the distinction between formal and substantive deficiencies is precisely and substantively defined, and at least since 2008 it has also been expressly and unequivocally defined by the Constitutional Court.

The Constitutional Court concurred with the position of the Supreme Court that in order to remedy a deficiency as regards the gender quota, the entire nomination procedure would have to be repeated. Therefore, a change in the candidates on a list after the expiry of the time limit for submitting the list cannot constitute the remedying of a formal deficiency, but entails the remedying of a substantive deficiency of such list. Formal deficiencies are those that can be remedied without having to carry out any electoral tasks anew (i.e. determining the candidates on a list).

The time limits for submitting lists of candidates were the same for all political parties. In accordance with the principle of equal suffrage (the first paragraph of Article 43 of the Constitution), the same rules applied to all. As was evident from the large number of confirmed lists of candidates for the upcoming election, the great majority of the proposers had no difficulty fulfilling their statutory obligations. Enabling a substantive deficiency of a list of candidates to be remedied after the expiry of the time limit for submitting lists of candidates would entail that the procedure for determining lists of candidates would be conducted anew. In order to observe the principle of equality, such would have to be applied to all proposers of lists and would result in a significant prolongation of procedures and require that the date of the vote be postponed, which would not only entail disregard for the third paragraph of Article 81 of the Constitution, but also an inadmissible interference with the principle of periodic elections.

The Constitutional Court stressed that it is not inconsistent with the Constitution for political parties to be required to act diligently when exercising the right to vote. If they fail to act diligently, the rejection of a list of candidates entails an interference with the right to vote, not due to the conduct of state authorities, but due to a lack of diligence on the part of the proposer of the list. Therefore, an electoral commission cannot be held liable for such. The reason underlying the illegality of the list of candidates at issue was a lack of diligence on the part of the proposer of the list and not the conduct of a state authority.

The Constitutional Court decided that failure to fulfil the condition determined by the sixth paragraph of Article 43 of the NAEA is thus not a formal deficiency of a list that would compel the electoral commission to require that it be remedied. Furthermore, electoral commissions may not by themselves, without an express statutory basis, interfere with lists of candidates; therefore, it was not possible to concur with the complainants' allegation that the electoral commissions could themselves have chosen individual candidates and struck them off the list of candidates. However, the requirement determined by the sixth paragraph of Article 43 of the NAEA is a requirement that applies to a list of candidates in its entirety. Therefore, the fact that a proposer disregards such cannot be attributed to anything other than the proposer's insufficient diligence.

5. 11. The Limits to the Freedom of Expression

In case No. **Up-614/15** (Decision dated 21 May 2018, Official Gazette RS, No. 44/18), the Constitutional Court decided on the constitutional complaint of a complainant who was sentenced to pay damages to the plaintiff due to defamatory statements he made in interviews with different media sources. The courts in the civil procedure based their decision on the position that the complainant could have expressed criticism regarding the plaintiff's prior conduct (i.e. censoring a satirical TV broadcast on national television) in a different, non-defamatory, manner. In the assessment of the Constitutional Court, the interference of the courts with the complainant's right to freedom of expression was excessive, as it was not substantiated with relevant and sufficient reasons.

In the general starting points of the constitutional assessment, the Constitutional Court stressed that the first paragraph of Article 39 of the Constitution guarantees the right to the freedom of expression of opinions. Everyone may freely collect, receive, and disseminate information and opinions. An indispensable component of a free democratic society is public and open discussion of matters of general interest. Freedom of expression protects not only the spreading of opinions that are received favourably, but also extends to critical and harsh statements. In order to ensure that discussion is really free, the right of individuals to express their opinions must, as a general rule, be protected irrespective of whether the statements made are harsh or neutral, rational or emotionally charged, gentle or aggressive, beneficial or detrimental, or right or wrong. In accordance with the established constitutional case law, the limits to acceptable criticism significantly depend on the social role of the person concerned. A person who decides to hold public office or to appear in public raises more public interest. For this reason, he or she has to take this into account and also be prepared for possibly critical and unpleasant statements, in particular as regards commentary on matters related to the performance of his or her office. In accordance with the third paragraph of Article 15 of the Constitution, the right to freedom of expression (Article 39 of the Constitution) is limited by the rights and freedoms of others. This often comes into conflict with the right to the protection of personal dignity (Article 34 of the Constitution) and the protection of personality rights (Article 35 of the Constitution), which also include the right to the protection of one's honour and reputation. The right to personal dignity guarantees individuals recognition of their value as persons, from which follows one's capacity to decide independently. The guarantee of personality rights also stems from this human trait. In the event of a conflict between the right to the protection of one's honour and reputation, on the one hand, and the right to freedom of expression, on the other, even very harsh, crude, and ruthless statements that the reader or listener still understands as criticism of conduct or a standpoint, and not as an attack on his or her personality or an effort to shame, humiliate, show contempt for, or ridicule him or her, may be outside of the scope of illegality. Due to respect for the core of the rights determined by Articles 34 and 35 of the Constitution, a limit must also be drawn as regards expressions of harsh value judgments. Where the intent of the speaker is no longer to influence the debate on matters of public concern, but only to insult someone, illegality is not excluded.

In applying this general position to the case at issue, the decisive element for the assessment of the Constitutional Court was the fact that the complainant's disputed allegations were elicited by the previous conduct of the plaintiff (i.e. the censoring of satire on national television). Therefore, the context in which they were said was decisive in assessing their admissibility. The Constitutional Court stressed that censorship at the national radio and television is certainly

a topic that is important for a discussion in the public interest. However, it is not admissible to limit the right to the freedom of expression merely because the complainant could have responded to the conduct of the plaintiff in a different, non-defamatory, manner. According to the Constitutional Court, taking into account the meaning of the expressions used (and not only their literal meaning) and the context in which they were used, there is no basis to conclude that the subject of discussion was not at the forefront and that the purpose of the statements was to discredit or shame the plaintiff. In consequence thereof, the Constitutional Court held that the complainant's right to freedom of expression (the first paragraph of Article 39 of the Constitution) must be given priority over the plaintiff's right to the protection of his honour and reputation (Article 35 of the Constitution). Due to the established violation of the complainant's right determined by the first paragraph of Article 39 of the Constitution, the Constitutional Court abrogated the challenged two judgments. In order to ensure the right to a trial within a reasonable time and because it decided on the matter already for the second time, the Constitutional Court itself decided on the disputed right such that it rejected the plaintiff's claim for the payment of damages due to the defamation of his honour and reputation.

5. 12. The Right to Ensure Respect for a Deceased Person and for the Personality Rights thereof

By Decision No. **Up-1005/15**, dated 31 May 2018 (Official Gazette RS, No. 48/18), the Constitutional Court decided on a constitutional complaint against Judgments of the Supreme and Higher Courts by which the request of the son of Dr Janez Drnovšek, former President of the Republic of Slovenia, that the municipality of Zagorje ob Savi remove a statue of Dr Janez Drnovšek and abrogate the decision to name the town's central park after him, was dismissed. The central question in the constitutional complaint was whether the position of the courts that erecting a statue of Dr Drnovšek and naming a park after him, despite the fact that this was carried out without the consent of the complainant, entailed an admissible interference with the complainant's right that respect for a deceased person be ensured as determined by Article 35 of the Constitution, was in conformity with the Constitution.

The Constitutional Court held that the courts appropriately assessed the interference with the complainant's human right at issue. It considered the position of the Higher Court, i.e. that the right of a relative that respect for a deceased person be ensured and that the personality rights of the deceased are tightly intertwined and substantively connected, to be in conformity with the Constitution. Relatives cannot succeed with a request that a statue be removed that is based on their own right that respect for the deceased person at issue be ensured if not even the deceased person – were he or she still alive – would be able to succeed with such a request based on the person's personality rights to his or her own image and name.

The rights to one's image and name are personality rights protected by Article 35 of the Constitution. In its assessment, the Constitutional Court confirmed the constitutionality of the position of the courts that where the use of the name and image of the most exposed public persons is at issue, in particular of those who played an important role in the formation of the state and thus had a profound impact on society, such persons only exceptionally enjoy protection as regards independent decision-making concerning the use of their name and image. The use of one's name and image for neutral, non-commercial purposes (such as naming parts of cities, erecting a statue, naming a school, etc.) does not fall within that protected scope. By

erecting statues and constructing other memorials, the residents of local communities, who exercise power through elected representatives in municipal authorities, also ensure the symbolic expression of certain positions, ideas, and values that are important for these communities. Erecting a statue and naming a public place serve to remind the populace of a person who at a certain time and place played an important role in the identity of the community. If such conduct does not violate fundamental constitutional values such as respect for one's dignity, it is always in the public interest. Therefore, the Constitutional Court dismissed the petition.

5. 13. The Privacy of a Deputy of the National Assembly

By Decision No. **Up-979/15**, dated 21 June 2018 (Official Gazette RS, No. 54/18), the Constitutional Court decided on a constitutional complaint against an order by which – in a police procedure due to a continuing criminal offence of abuse of position or trust in a business activity involving multiple suspects, including the complainant, who is a deputy of the National Assembly and allegedly an accomplice in the criminal offence – a court ordered a search of business premises and additional areas at the address of the National Assembly that the complainant uses, as well as the seizure, safeguarding, inspection, and search of electronic data of the National Assembly that refer to the complainant or to which he had access.

As a starting point, the Constitutional Court drew attention to the fact that the complainant filed the constitutional complaint together with twenty other deputies of the National Assembly and that in the phase of the examination of the constitutional complaint only his constitutional complaint was accepted for consideration, while the constitutional complaint of all other complainants was rejected due to a lack of legal interest. For this reason, in the procedure for considering and deciding on the constitutional complaint the Constitutional Court had to limit its assessment to only those allegations that refer to violations of the complainant's human rights, and therefore did not assess the allegations that refer to violations of the human rights of the other complainants. The Constitutional Court explained that it was also unable to substantively assess the allegations by which the complainant substantiated that there was an interference with the work of deputies and their autonomy, which is allegedly determined by Article 82 of the Constitution, and with parliamentary democracy and the principle of the separation of powers. It held that these institutes do not fall within the field of human rights and fundamental freedoms but within the field of the regulation of the state, and a constitutional complaint may only be filed in the event of violations of human rights and fundamental freedoms. Hence, the Constitutional Court was only able to assess the allegation of the complainant that his right to a reasoned judicial decision was violated, as the challenged order allegedly did not indicate concrete circumstances from which it would follow that in the search of the National Assembly evidence of the criminal offence or objects necessary for the criminal procedure would be found (the appropriateness of the measure) and because the court allegedly did not substantiate the proportionality between the interference with privacy and the objectives of the ordered search (proportionality in the narrower sense).

Within the framework of this assessment, the Constitutional Court first had to answer the question of whether the challenged order actually interferes with the complainant's right to privacy. It held that the order allows for an interference with the complainant's right to communication privacy determined by the first paragraph of Article 37 of the Constitution, which not only applies to authorisation to seize means of communication that might be found in the complainant's deputy office, but also to the seizure of evidence of communication that took place

via the communication channels of the National Assembly. Namely, considering the concrete circumstances of the case, employees or holders of public office can justifiably expect, even when using means of communication at work, that their employer, the organisation at issue, or persons who are not addressees of such communication will not learn of the content thereof.

The Constitutional Court later explained that when deciding on interferences with privacy courts must assess whether all the constitutional and statutory conditions allowing an interference with privacy are fulfilled, and justify such decision. If it is not evident from the judicial decision that the court carried out an assessment of whether the constitutional and statutory conditions for the interference with privacy are satisfied, such entails a violation of the right to a reasoned judicial decision that follows from Article 22 of the Constitution. If a court carries out such assessment and justifies it, but the reasons stated by the court are not in conformity with the constitutional conditions for an interference with privacy, this entails a violation of Article 35, the first paragraph of Article 36, or the first paragraph of Article 37 of the Constitution.

According to the Constitutional Court, in the case at issue the court sufficiently and reasonably justified in the order why there was a probability that in the investigation evidence of a criminal offence or objects necessary for the criminal procedure would be discovered, and that an investigation is an appropriate measure for achieving the pursued objective. In view of the fact that in the reasoning of the order the court explained the existence of reasonable grounds for suspicion that a serious criminal offence against the economy had been committed, according to the Constitutional Court it cannot be alleged that from the reasoning of the order there does not follow a reasonable proportionality between the interference with the complainant's right to privacy, which he as a deputy enjoys in his work environment, and the interests of the criminal procedure. The Constitutional Court held that the challenged order violated neither the complainant's right to a reasoned judicial decision nor his right to privacy, and thus dismissed the constitutional complaint.

5. 14. Prohibition of Retroactivity in the Confiscation of Illicitly Acquired Property

By Decision No. **U-I-6/15, Up-33/15, Up-1003/15**, dated 5 July 2018 (Official Gazette RS, No. 53/18), the Constitutional Court decided on the constitutionality of the first paragraph of Article 57 of the Confiscation of Illicitly Acquired Property Act (the CIAPA), in accordance with which this Act also applied retroactively, namely in cases in which a police or criminal procedure was initiated prior to its entry into force and after 1 January 1990. The Constitutional Court abrogated the challenged provision with immediate effect. It decided that the first paragraph of Article 57 of the CIAPA is inconsistent with the principle of the prohibition of the retroactive validity of regulations (Article 155 of the Constitution) because it enables inadmissible retroactive application of a law as regards a period prior to its entry into force, i.e. prior to 29 November 2011.

The main allegation in the petition for the review of constitutionality was that the first paragraph of Article 57 of the CIAPA is inconsistent with the prohibition of retroactivity determined by Article 155 of the Constitution, as on its basis the whole Act would allegedly be used for the confiscation, i.e. securing, of property acquired prior to the CIAPA entering into force.

Under the CIAPA it was deemed that property was illicitly acquired if it was not proven that it was acquired from lawful income or in a lawful manner. The Act determined a rebuttable presumption that property has been illicitly acquired if there is a manifest disproportionality between the scope of such property and the income (reduced by taxes and contributions) that the person against which the procedure is pending spent in the period in which the property was acquired. If the individual concerned does not rebut the presumption, the [competent] court grants the claim of the Specialised State Prosecutor's Office and concludes that the origin of a certain property is illicit. The property is confiscated and, once the judgment is final, becomes the property of the Republic of Slovenia. During the proceedings it is possible to temporarily secure the property in order to confiscate it.

While the CIAPA applied *ex nunc*, i.e. after 29 November 2011, it nevertheless, in accordance with the first paragraph of Article 57 thereof, also applied in cases in which a police or criminal procedure was initiated prior to its entry into force and after 1 January 1990. In defining property of illicit origin, the law applied on the basis of the first paragraph of Article 57 did not determine anew only the retroactively relevant facts that already at the time of their occurrence would have undermined the validity of acquiring the property such that already at that time the acquirer thereof would not have been able to trust that he or she would be able to peacefully enjoy such property. It was necessary to take into account the fact that in defining property of illicit origin, the CIAPA defined anew the violation and connected thereto new legal consequences in the form of the confiscation of property or securing it in order for it to be subsequently confiscated. In this respect, the Act did not determine that the illicit origin of property must be proven in judicial proceedings, but [instead] enacted a rebuttable presumption that property is of illicit origin if there is a manifest disproportionality between its scope and the income (reduced by taxes and contributions) that the person against which the procedure is pending spent in the period in which the property was acquired. Prior to the entry into force of the CIAPA, no regulation enacted such a presumption. Therefore, the existence of property defined in such a manner was not recognised as a violation that in itself would trigger the duty to challenge the presumption and to impose a sanction if the presumption is not rebutted in judicial proceedings. Since in the described manner the CIAPA interfered with the rights to the free disposition and peaceful enjoyment of property, it applied in the period prior to its entry into force, on the basis of the challenged first paragraph of Article 57 thereof. A law that in such a manner prescribes the application of the measure of the confiscation of property or securing it in order for it to be confiscated entails the retroactive application of such law. Namely, individuals were unable to know that on the basis of past presumed facts violations would be established anew and legally binding consequences would arise if they failed to rebut the presumed facts.

Although the CIAPA as a whole applies *ex nunc*, in view of the above, the first paragraph of Article 57 caused some of its provisions to also apply retroactively. The first paragraph of Article 155 of the Constitution prohibits such retroactive effects. In accordance with the second paragraph of that Article, it is only exceptionally admissible that a law establish that certain of its provisions have retroactive effect, if such is required in the public interest and provided that no acquired rights are infringed thereby. In accordance with the established case law, in order for the retroactive application of a law [to be admissible], a special public interest that justifies the retroactive application of statutory provisions must exist. The legislature failed to demonstrate such public interest. In the legislative procedure it did not respond to the warnings of the Legislative and Legal Service of the National Assembly and of the National Council, which drew attention to the fact that the measure is constitutionally disputable from the viewpoint

of the constitutional prohibition of the retroactive application of laws, and the legislature also did not state its position in the constitutional review proceedings. Consequently, one of the cumulatively determined conditions listed in the second paragraph of Article 155 of the Constitution was not fulfilled. Hence, the challenged provision was inconsistent with the second paragraph of Article 155 of the Constitution, and thus also with the prohibition of the retroactive application of laws determined by the first paragraph of Article 155 of the Constitution.

The Constitutional Court also granted the two constitutional complaints. It found that the challenged judicial decisions, which were based on the abrogated statutory provision and referred to the temporary securing of property by confiscation (the complainant was prohibited thereby from alienating her real property or encumbering her ownership right) violated the rights determined by the second paragraph of Article 14 of the Constitution (the general principle of equality) if the criminal offences were carried out or if the property was acquired prior to the entry into force of the CIAPA, and Article 22 of the Constitution (the equal protection of rights).

5. 15. The Principle of Legality in Criminal Law

By Decision No. **Up-616/15**, dated 20 September 2018 (Official Gazette RS, No. 67/18), the Constitutional Court decided on a constitutional complaint by which the complainant challenged the final judgment by which she was found guilty of committing the criminal offence of the abduction of a minor, as she maliciously prevented the implementation of an enforceable judgement regarding contact between her daughter, who was a minor, and her daughter's father. She claimed that she did not maliciously prevent the contact but was instead promoting the welfare of her daughter, who allegedly refused to have contact with her father. She *inter alia* claimed that the courts interpreted malice as a constituent element of the criminal offence inconsistently with the principle of legality determined by the first paragraph of Article 28 of the Constitution.

The Constitutional Court decided that the court of first instance, in a manner consistent with the Constitution, concretised malice as a constituent element of the criminal offence at issue, which in the absence of a confession or possible explicit statements of the perpetrator can otherwise only be established and proven by connecting certain actions with the circumstances in a concrete case, and appropriately substantiated which concrete action of the complainant indicated that she acted maliciously. The Constitutional Court warned that the position of the appellate court would be constitutionally disputable from the viewpoint of the first paragraph of Article 28 of the Constitution if it was understood such that the mere prevention of contact would suffice to conclude that the perpetrator's conduct was malicious, without any malevolent or unfair intent on his or her part. Namely, such an understanding of the position of the appellate court would eliminate the meaning of "malice" as a constituent element of the criminal offence and erroneously render it redundant. Considering the statutory description of the criminal offence, which includes the word "maliciously", it is namely clear that in accordance with the first paragraph of Article 190 of the Criminal Code only intentionally preventing the implementation of an enforceable judgement concerning a minor is punishable, provided that the perpetrator acts with an unfair and despicable intention, i.e. maliciously. According to the Constitutional Court, the challenged position of the appellate court cannot be understood in the described manner. On the contrary, the challenged position, together with the position of the court of first instance, which the appellate court upheld, entailed that the appellate court considered conduct whose objective is to prevent the implementation of an

enforceable judgement concerning contact, while there are no justifiable reasons for contact to be prevented, to entail malicious prevention of contact. Such an interpretation of "malice" as a constituent element of the criminal offence is in conformity with the principle of legality; therefore, there is no violation of the first paragraph of Article 28 of the Constitution. The Constitutional Court reached an equivalent conclusion, *mutatis mutandis*, also as regards the position of the Supreme Court, which fully upheld the positions of the appellate court and the court of first instance.

5. 16. The Right to Private Property

By Decision No. **Up-849/14**, dated 27 September 2018 (Official Gazette RS, No. 68/18), the Constitutional Court decided in a dispute between the complainants, who are co-owners of plots of land, and the opposing party, who is the legal successor of Združeno podjetje za distribucijo električne energije Slovenije [Eng.: United Company for the Distribution of Electric Energy of Slovenia], which on the plots owned by the complainants or their legal predecessors in the 1970s constructed a transmission line and two medium-voltage cable routes. In the first lawsuit, the complainants claimed from the opposing party the payment of damages due to unlawful conduct, as the opposing party allegedly did not carry out an expropriation procedure or a procedure for restricting the right to private property, nor did it pay appropriate compensation. The claim made by the complainants was dismissed with finality on the basis of the assessment that the claim for damages had become time-barred. In the second lawsuit between the same parties, the subsidiary claim of the opposing party was granted, namely that, on the basis of the law of property rules regarding acquisition by prescription, it be established that on the real estate owned by the complainants the opposing party has an easement to construct, supervise, manage, maintain, repair, and reconstruct electricity transmission structures, i.e. electric cable routes, for which the complainants claimed damages in the first lawsuit.

The Constitutional Court assessed the challenged judgments in particular from the viewpoint of a violation of the right to private property as determined by Article 33 in conjunction with Article 69 of the Constitution. Namely, the main allegation of the complainants was that regarding neither of the lawsuits did the courts attribute appropriate constitutional weight to the circumstances that in the case at issue the expropriation indeed occurred and was unlawful. The Constitutional Court stressed that expropriation as determined by Article 69 of the Constitution entails mandatory expropriation or restriction of the ownership right to a real property in the manner and under the procedure prescribed by law. It underlined that due to the severity of an interference with the ownership right to a real property the Constitution determines substantive and formal conditions (*inter alia* the payment of compensation) under which such an interference is admissible. In the assessment of the Constitutional Court, the compensation referred to in Article 69 of the Constitution entails monetary compensation in exchange for expropriation or the restriction of the right to property that is in the public interest, which must be distinguished from the term damages as determined by the general provisions of the law of damages.

According to the Constitutional Court, the decision of the courts that protected the position of the opposing party as the expropriation beneficiary such that it established the existence of an easement in the public interest in accordance with the rules of the law of property merely on the basis of the fact that the opposing party had been exercising such easement in an undisputed manner for over twenty years is not acceptable from the viewpoint of the right determined

by Article 33 in conjunction with Article 69 of the Constitution. The Constitutional Court reproached the two [regular] courts for not taking into account the fact that the position of the complainants is constitutionally protected not only within the framework of Article 33 of the Constitution but, in view of the circumstances of the case at issue, also within the framework of Article 69 of the Constitution. According to the Constitutional Court, the two courts only assessed the passivity of the legal predecessors and complainants and did not compare this fact to the passivity of the opposing party, who was an expropriation beneficiary and on whom the legal order clearly and unambiguously imposed obligations in relation to the persons subject to expropriation. Due to the established violation of the right to private property, the Constitutional Court abrogated the challenged judgments and remanded the case to the court of first instance for new adjudication.

The Constitutional Court then also assessed the decision of the courts as regards the rejection of the complainants' claim for damages. This decision was based on the position that the legal predecessors of the complainants had a possibility to file a claim for damages under the general provisions of the law of damages against the legal predecessor of the opposing party, but they did not file such within the statutorily prescribed limitation periods. The Constitutional Court assessed whether the interpretation of the rules on the statute of limitations is perhaps excessively limiting from the viewpoint of the rights to private property and to access to a court (the first paragraph of Article 23 of the Constitution). In view of the fact that, according to the findings of the courts, the legal predecessors of the complainants agreed to the construction, and the fact that a transmission line is an object that one cannot fail to notice, the Constitutional Court deemed the conclusion of the [regular] courts that the legal predecessors of the complainants had directly learned of the occurrence of damage and the perpetrator when the damage occurred, i.e. at the latest in 1975 when the transmission line was built, to be reasonable. In the assessment of the Constitutional Court, in the circumstances of the case at issue, the fact that the unlawful state persists does not in and of itself substantiate the position that the fact that the claim for damages of the complainants is statute-barred constitutes a violation of their right to private property. What is important is that the position that the claim for damages of the complainants is statute-barred does not mean that the complainants lost the possibility to invoke the right to compensation, which is guaranteed by Article 69 of the Constitution, even before they had the possibility to invoke it. The decision to dismiss the claim for damages is also not disputable from the viewpoint of the right to access to a court. Since the Constitutional Court also did not establish that any other constitutional procedural guarantees that the complainants enjoy had been violated in the procedure, it dismissed the constitutional complaint in this part.

5. 17. Freedom of Expression When Criticising a Court

By Decision No. **Up-793/15**, dated 10 October 2018 (Official Gazette RS, No. 71/18), the Constitutional Court decided on a constitutional complaint against decisions of the Higher and Supreme Courts finding that the complainant must pay a fine in the amount of EUR 500 because he sent an e-mail to the court in which, according to the courts, he insulted the adjudicating judge and thus undermined the reputation and authority of the judiciary. The case at issue concerned the question of whether by imposing a fine in the concrete case the courts correctly assessed the limits of the freedom of expression of a participant in judicial proceedings as determined by the Constitution. The key allegation of the complainant in the constitutional complaint was that the letter due to which he was fined was not insulting. It allegedly

entailed professional criticism by which the complainant allegedly intended to draw the attention of the judge to the incorrect and unprofessional performance of her tasks – criticism that transpired to be necessary. The Constitutional Court had to assess whether the Higher and Supreme Courts carried out a balancing between the colliding right and public interest (i.e. between the complainant's freedom of expression determined by the first paragraph of Article 39 of the Constitution and the need to protect the authority and reputation of the judiciary referred to in the second paragraph of Article 10 of the ECHR), whether in doing so they took into account all the appropriate assessment criteria, and whether in assessing individual criteria or circumstances they attributed appropriate weight to the mentioned right and to the public interest.

The Constitutional Court followed the established case law of the ECtHR, in accordance with which an alleged violation of the right to freedom of expression is always assessed in light of the case as a whole, taking into consideration both the content and the context of the disputed statements. The pure semantic meaning of words and phrases that are expressed should not be attributed excessive importance. It is necessary to distinguish between statements of fact and value judgments; the requirement to prove the veracity of a value judgment is fundamentally inconsistent with the freedom of expression. In the event of a value judgment, the proportionality of an interference by the state depends on whether there exists a sufficient factual basis for the statement in question. A certain degree of hostility in one's expression or the use of acerbic language in commentaries that concern a judge is not in itself inconsistent with Article 10 of the ECHR. Judges, when operating within the limits of their profession, must, being part of [the judiciary as] a fundamental institution of the state, tolerate criticism to a greater degree than ordinary citizens. However, such does not authorise anyone to attack them in a destructive and fundamentally unjustified manner.

In the case at issue, the following circumstances were important: whether it is possible to understand the complainant's message as an attempt to defend his jeopardised right to participate in the civil proceedings, whether the message maintained a connection with the conduct of the judge in conducting the proceedings at hand, and whether the complainant's harsh negative judgments and burdensome allegations have a sufficient factual basis – all of the above, naturally, in the overall context of the case at issue. In order to clarify the further (and decisive) question of whether the complainant's allegations truly entail an unlawful personal attack, a deprecating statement, and an insult against the deliberating judge, and thus an instance of destructive undermining of the reputation and authority of the judiciary, as the courts adjudged, or whether they must be understood as merely entailing permitted harsh criticism of the performance of the judge's profession that has some basis in the facts or circumstances of the case, an integrated assessment of the mentioned circumstances is necessary.

The Constitutional Court also drew attention to the fact that the courts should not overlook that criticism of a judge or a public prosecutor expressed in a courtroom enjoys a higher degree of protection than criticism expressed elsewhere (e.g. in the media). The same holds true as regards criticism in written form: critical remarks that are submitted in a legal remedy and which essentially entail internal communication between a lawyer and the appellate court, which does not transpire before the general public, are more acceptable. Hence, also the forum where the disputed remarks were made and the circle of people that witnessed these remarks entail important elements that must be taken into account when balancing the right to the freedom of expression and protection of the reputation of and trust in the judiciary. Therefore, it was not irrelevant that the complainant sent the e-mail to the Office of the President of the

Ljubljana District Court and copies to the President of that Court and the President of the Supreme Court. The circle of people who saw the e-mail is therefore relatively limited. Furthermore, the purpose of punishing someone for making insulting submissions is to quickly and effectively ensure an appropriate level of communication in judicial proceedings. An excessive time lag between the disputed statement and the punishment can no longer serve the purpose of a disciplinary sanction. Therefore, it was also not irrelevant that between the e-mail dated 2 October 2014 and the issuance of the Higher Court order imposing a fine (dated 1 April 2015), almost six months had passed. Where the time lag is so long, punishment can be seen as disputable from the viewpoint of the assessment of the necessity of the imposed limitation of freedom of expression in a democratic society.

The form of the message, the limitation of its reach, and the time lag between the act and the imposition of the punishment are thus the constitutionally relevant elements that can tip the scales in favour of the complainant's freedom of expression, despite recognition of the appropriate weight of the public interest in protecting trust in the judiciary and the reputation and authority of the judiciary as the forum for resolving disputes in a democratic society. The two courts only focused on the selected parts of the complainant's message, while they completely overlooked the other factors that were constitutionally decisive for the outcome of the balancing. Therefore, they did not sufficiently justify the necessity of the interference with the right determined by the first paragraph of Article 39 of the Constitution in a democratic society.

5. 18. Elections to the National Assembly

By Decision No. **U-I-32/15**, dated 8 November 2018 (Official Gazette RS, No. 82/18), upon a request of the National Council, the Constitutional Court reviewed the conformity of the National Assembly Elections Act (the NAEA) and the Act Establishing Constituencies for the Election of Deputies to the National Assembly (the AECEDNA) with the Constitution.

When assessing whether the electoral system guarantees voters decisive influence on the allocation of seats to candidates, the Constitutional Court proceeded from the fifth paragraph of Article 80 of the Constitution, which determines three fundamental elements of the electoral system: deputies (except for the deputies of the national communities) are elected (1) according to the principle of proportional representation (2) with a four-percent threshold [per list of candidates] required for election to the National Assembly, (3) with due consideration that voters have a decisive influence on the allocation of seats to the candidates. The constitutional requirement that the voters have a decisive influence on the allocation of seats means that it is the voters who "cause" the allocation of seats to individual candidates on different lists of candidates. Therefore, voters must be enabled to vote for individual candidates. However, the constitutional requirement that voters have a decisive influence is not an element of the right to vote as a human right (Article 43 of the Constitution), but an objective and collective element of the electoral system. Therefore, in the relation between the principle of proportionality and the decisive influence of voters there is not an opposition (a conflict), which occurs when two human rights of equal rank clash, where in accordance with the principle of proportionality the highest possible degree of the realisation of both is required (i.e. a so-called practical concordance). Since the Constitution does not determine the type of voting for candidates (e.g. preferential voting, panachage, ranking within a system involving a single transferable vote), the choice thereof is a matter of statutory regulation, which, however, has to be appropriate. Hence, it falls within the legislature's discretion.

The Constitutional Court held that the challenged rule in accordance with which deputies' seats are allocated within a list of candidates having the same name to individual persons according to their relative success in an electoral district compared to the candidates of a list of candidates having the same name in other electoral districts excludes the possibility that seats are allocated according to the order as determined by the proposer of the list at the level of the constituency. Thereby, the decisive influence of voters on the allocation of seats is ensured. Therefore, the second paragraph of Article 91 of the NAEA is not inconsistent with the fifth paragraph of Article 80 of the Constitution.

The Constitutional Court also established that 26 years after the adoption of the electoral legislation the areas of the electoral districts no longer correspond to the criteria for the formation thereof determined by Article 20 of the NAEA (i.e. an equal number of inhabitants, geographical completeness, and the highest possible integrity of municipalities). Namely, the difference in the size of the biggest electoral district to the smallest electoral district has a ratio of 1:3.73. Furthermore, the territories of the electoral districts are not harmonised with the borders of the new municipalities and no longer fulfil the requirement of geographical completeness. Therefore, the Constitutional Court held that Article 4 of the AECEDNA, which determines the territories of electoral districts, is inconsistent with all of the criteria determined by Article 20 of the NAEA. The inconsistency of the laws is such that the principles of a state governed by the rule of law determined by Article 2 of the Constitution are violated.

The Constitutional Court adopted a declaratory decision. The abrogation of Article 4 of the AECEDNA would namely entail that the territories of the electoral districts are not determined. Such would render the holding of elections impossible. The abrogation of the regulation on electoral districts could thus result in the emergence of an unconstitutional legal gap from the viewpoint of the fundamental constitutional principles of democracy determined by Article 1 of the Constitution and of the principle that citizens exercise power through elections, as stipulated by the second sentence of the second paragraph of Article 3 of the Constitution. The Constitutional Court imposed on the legislature a two-year time limit to eliminate the established unconstitutionality, taking into consideration that modification of the fundamental elements of the electoral system as a general rule entails the complex and internally intertwined regulation of individual issues for the enactment of which the legislature must have at its disposal an adequately greater amount of time than the Constitutional Court usually grants thereto in order to respond to an established unconstitutionality.

5. 19. Free Economic Initiative in the Performance of a Public Health Care Service

By Decision No. **U-I-194/17**, dated 15 November 2018 (Official Gazette RS, No. 1/19), the Constitutional Court decided on the constitutionality of multiple provisions of the Health Care Services Act (the HCSA) insofar as they concerned individuals who had a concession to perform a public health care service.

Firstly, the Constitutional Court considered the allegations regarding the inconsistency of the second paragraph of Article 3 of the HCSA with the principle of the clarity and substantive precision of regulations determined by Article 2 of the Constitution. The challenged statutory provision determined that the providers of public health care services perform such services

on a non-profit basis, namely such that they must spend any surplus of revenue over expenditure on the performance and development of health care services. The law qualified those services as non-commercial services of general interest. The Constitutional Court established that the introduction of the term non-commercial services of general interest (which is an EU term) in the national legislation does not entail that from the viewpoint of national law public health care service is no longer a non-commercial public service. According to Slovene law, the term non-commercial public service is broader than the term non-commercial service of general interest under EU law. In EU law, the doctrine regarding non-commercial services of general interest sets the criteria for assessing to what degree certain activities regulated by national laws are excluded from the field of application of EU law. In view of the established criteria, it is the Court of Justice of the EU that has competence to answer the question of whether a certain activity is a non-commercial activity of general interest. The Constitutional Court thus established that it can interpret the second sentence of the second paragraph of Article 3 of the HCSA; hence, it is not inconsistent with the principle of the clarity and substantive precision of regulations determined by Article 2 of the Constitution.

The Constitutional Court also reviewed the second sentence of the second paragraph of Article 3 of the HCSA from the viewpoint of the right to free economic initiative determined by Article 74 of the Constitution. Namely, that provision imposes on private providers the obligation to perform a public commercial service on a non-profit basis; hence they must keep the surplus from the public service in the public service. By prohibiting private providers from paying out the surplus from the activity or from using it for personal needs, the legislature *de facto* changed private providers into a non-profit legal form. The Constitutional Court adopted the position that the performance of a public health care service as a non-commercial public service must be deemed to be protected, from the viewpoint of private providers – concessionaires, by Article 74 of the Constitution. Concessionaires who perform a public service in the field of health care gain the protection of the guarantees determined by this constitutional provision.

The Constitutional Court opined that this limitation of the freedom to decide how to allocate the surplus of revenue over expenditure very significantly narrows the scope of the entrepreneurial freedom of private providers and interferes with their economic initiative. There certainly exists a public interest in providing durable, high-quality, and universal access to public health care services. However, such an intense limitation of the freedom to allocate the surplus of revenue over expenditure undermines one of the key motives for performing a concessionary activity, the quality of which can be ensured by adopting appropriate professional standards. Since the balance of the assessed interference with the human right to free economic initiative exceeds the weight of the public interest, the Constitutional Court abrogated the challenged regulation in that part.

5. 20. An Electoral Dispute in the Elections to the National Council

By Decision No. **U-I-349/18, Mp-1/18, Mp-2/18**, dated 29 November 2018 (Official Gazette RS, No. 81/18), the Constitutional Court decided on an electoral dispute in which the appellants – a candidate for election to the National Council who was not elected and the nominator of his candidacy – substantively challenged the confirmation of the office of an elected member of the National Council, namely that of the representative for the field of education and training. The appellants filed their appeals on the basis of the third paragraph of Article 50 of the National Council Act (the NCA), which, however, does not allow all candidates who participated in the election the right to an appeal but only those candidates who were elected but

whose office the National Council did not confirm. The appellant as a candidate for election to the National Council who was not elected and his nominator, i.e. a professional organisation, were, in view of the third paragraph of Article 50 of the NCA, not entitled to file an appeal. In order for the Constitutional Court to be able to decide on the appeals, it *ex officio* initiated proceedings for a review of the constitutionality of Article 50 of the NCA. Namely, the question of the constitutionality of the statutory regulation of the procedure for the National Council to decide on the appeal (Article 25 of the Constitution) and the procedure for exercising judicial protection of the right to vote before the Constitutional Court (the first paragraph of Article 23 of the Constitution) was raised. In its Decision the Constitutional Court established that the statutory regulation is inconsistent with the Constitution and determined the manner of execution of its Decision such that it declared that all candidates and their nominators are entitled to file an appeal with the Constitutional Court. Hence, it did not reject the appeals due to lack of active standing but considered them substantively.

In the reasoning, the Constitutional Court stressed that the right to vote in elections to the National Council (like the right to vote in elections to the National Assembly) has a special legal nature as, despite being a personal right, it can only be exercised in a collective manner, i.e. together with other voters in a manner organised in advance and according to a procedure determined in advance. The principles of the equal and general right to vote (the first paragraph of Article 43 of the Constitution) also apply thereto, which due to the definition of the National Council as the representative body for individual social interests (Article 96 of the Constitution) are only established within individual interest groups. Furthermore, the principles of free voting and voting by secret ballot also apply thereto.

The Constitution does not include provisions on judicial protection of the right to vote in elections to the National Council. In light of the absence of express constitutional provisions, it falls within the discretion of the legislature to determine which court is competent for ensuring judicial protection. The legislature regulated the procedure for ensuring judicial protection of the right to vote in elections to the National Council together with confirmation of the office of the members of the National Council. Judicial protection of the right to vote in elections to the National Council is not primarily intended to protect the subjective legal position of individual voters or candidates, but the public interest and constitutional values. These values are the same as those in elections to the National Assembly, namely a fair electoral procedure in which electoral rules are respected, the credibility of the election result, and the trust of citizens in the fair conduct of the election. The objective character of judicial protection of the right to vote in elections to the National Council is ensured in the same manner as in elections to the National Assembly so that only such established irregularities in the election are taken into account that affected or could have affected the election result. In order to ensure objective protection of the right to vote, not only candidates who were elected and whose office the National Council did not confirm have the right to initiate a dispute, but also all other candidates who stood in the elections but were not elected, as well as their nominators.

A statutory regulation that grants the right to initiate an electoral dispute only to elected candidates whose term of office the National Council did not confirm, but not also to all the other candidates and nominators who have filed an appeal with the National Council and alleged voting irregularities, entails for the latter group a hollowing out of the right to judicial protection determined by the first paragraph of Article 23 of the Constitution. Whenever the assessed regulation entails an interference with a human right so significant that it is considered a denial (or a hollowing out) of the human right in question, a review of the

admissibility of the interference does not require weighing the proportionality between the interference with the human right, on the one hand, and the possible constitutionally admissible objective, on the other. Namely, no admissible objective can justify denial of the right to judicial protection. The Constitutional Court therefore decided that the first sentence of the third paragraph of Article 50 of the NCA is inconsistent with the first paragraph of Article 23 of the Constitution.

Also as regards the appeal procedure before the National Council, the Constitutional Court held that it does not include the essential elements that should be determined in order to effectively exercise the right to a legal remedy determined by Article 25 of the Constitution. The imprecision and deficiency of the statutory regulation of the appeal procedure before the National Council render it impossible or significantly difficult to exercise the right to a legal remedy and, consequently, the right to judicial protection before the Constitutional Court. Therefore, such a regulation entails an interference with the right to a legal remedy. It is obvious that there is no constitutionally admissible reason for such a deficient and imprecise regulation of the procedure before the National Council. Therefore, the regulation is inconsistent with the right to a legal remedy determined by Article 25 of the Constitution.

The special character of the right to vote and the requirement that electoral disputes be resolved as quickly as possible require special, expeditious, and effective judicial protection. To this end, the legislature must determine, in addition to the persons entitled to initiate an electoral dispute, the type of the legal remedy (e.g. an appeal, action, or request), the time limit for filing a legal remedy, the reasons due to which such may be filed, the rules on the burden of allegation and the burden of proof, the assessment criteria, the competent court, and the authorisations of courts during the decision-making process. The imprecision and deficiency of the statutory regulation of the electoral procedure as regards the election of the members of the National Council render it impossible or significantly difficult to exercise the right to judicial protection. Therefore, such a regulation entails an interference with this human right. It is obvious that there is no constitutionally admissible reason for such a deficient and imprecise regulation. Therefore, the regulation of the procedure for judicial protection of the right to vote is inconsistent with the right to judicial protection determined by the first paragraph of Article 23 of the Constitution.

Once the Constitutional Court decided on the constitutionality of the statutory regulation, it proceeded to decide on the appeals filed against the election results. It held that in the National Council the irregularities in the process of deciding on the appeals did not affect the election results and that the election of the elected candidate was lawful, as the alleged irregularities concerning his candidacy did not occur and because the one established inconsistency concerning the candidacy of another candidate who, like the appellant, was not elected, could not have affected the election result. Therefore, the appeals were unfounded and the Constitutional Court dismissed them.

5. 21. Statutory Maintenance in Enforcement or Bankruptcy Procedures

By Decision No. **U-I-21/16**, dated 5 December 2018 (Official Gazette RS, No. 82/18), the Constitutional Court, upon the request of the Koper District Court, decided on the constitutionality of Articles 371 and 390 of the Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act (the FOIPCDA), which refer to the order of repayments from the common

and special distribution estates in the personal bankruptcy procedure of a maintenance debtor. In the request the court claimed that the challenged regulation is unconstitutional, as the FOIPCDA, in contrast to the Claim Enforcement and Security Act (the CESA), in the event of a mortgage (or a right granting separate satisfaction in bankruptcy proceedings) does not grant a maintenance creditor who is a child priority in repayment from a special distribution estate, whereas in the event of the attachment of mortgaged real property the CESA gives priority to a child as regards statutory maintenance due one year prior to the adoption of the order to deliver the real property to the buyer.

The Constitutional Court reviewed the challenged regulation from the viewpoint of the second paragraph of Article 14 (the principle of equality), the first paragraph of Article 54 (the rights and duties of parents), and the first paragraph of Article 56 (the rights of children) of the Constitution. It again stressed that both the claim based on statutory maintenance and the claim protected by the right granting separate satisfaction are private law situations that are protected within the framework of the right to private property (Article 33 of the Constitution). However, the proposer did not allege that the challenged regulation concerns a violation of the mentioned right of this child, who is a maintenance creditor. Hence, the Constitutional Court had to assess whether the legislature sufficiently took into consideration the special protection of and care for children, which are guaranteed by the Constitution, when determining the order of repayment in personal bankruptcy procedures. It held that by granting the status of a priority claim to a claim based on statutory maintenance in the process of repayment from the common distribution estate and due to the fact that the final obligation discharge did not apply to that claim in the personal bankruptcy procedure, the legislature sufficiently took into consideration the special protection of and care for children.

When reviewing the conformity of the challenged regulation with the second paragraph of Article 14 of the Constitution, the Constitutional Court stressed that the objectives of an enforcement procedure are different than the objectives of a personal bankruptcy procedure, which is also reflected in the differences in the regulation of the repayment of claims on the basis of statutory maintenance and in the different positions of the creditor and the debtor in these procedures. The regulation of priority repayment on the basis of statutory maintenance in an enforcement procedure and the regulation thereof in personal bankruptcy procedure can differ, as these two legal situations differ in their essential characteristics, i.e. as regards the scope of the property to which the priority repayment extends and as regards the institute of obligation discharge, which is only possible in a personal bankruptcy procedure.

5.22. Prohibition of Torture

By Decision No. **Up-1472/18**, dated 13 December 2018 (Official Gazette RS, No. 2/19), the Constitutional Court decided on the constitutional complaint of a Montenegrin citizen who challenged the order of an investigating judge of the Ljubljana District Court on the approval of his extradition to Montenegro and the order of the panel of that court on the dismissal of the appeal against the order of the investigating judge. The complainant alleged a violation of the rights determined by Articles 18 and 22 of the Constitution. Allegedly, the court did not adopt a position as to the evidence and the claim that in the event of extradition the complainant would be subjected to torture or inhuman or degrading treatment. Allegedly, he demonstrated by two judgments of the competent court of the requesting state that in the requesting state he is under threat of torture, disablement, and death.

The Constitutional Court proceeded from the fact that, in accordance with valid international law, states have the right to control the entry of foreign nationals, permits for their stay, as well as expulsions and extraditions. However, the sovereignty of the state is limited by the prohibition of removing, expelling, or extraditing a national to a state in which there exists a serious danger that he or she will be subjected to inhuman treatment (the *non-refoulement* principle). In the event of removal, expulsion, or extradition, protection is guaranteed by Article 18 of the Constitution, which determines that no one may be subjected to torture, inhuman, or degrading punishment or treatment. It follows from the established constitutional case law that that Article prohibits a person regarding whom there exists a real threat that in the event he or she returns to the state from which he or she came he or she will be exposed to inhuman treatment from being extradited or expelled to that state.

The procedure for deciding on the extradition of the complainant to the requesting state was carried out in accordance with the provisions of the Criminal Procedure Act (the CrPA). Two procedures are regulated by this Act: the regular procedure and the expedited procedure. In a regular procedure, the assessment of the conditions for extradition is divided into two phases. First, once the opinion of the investigating judge is obtained, the non-trial panel ascertains whether the statutory conditions for extradition are fulfilled. If the conditions for extradition are fulfilled, the case is sent to the Minister of Justice, who then decides on the extradition. In the second phase of the procedure the Minister of Justice issues a decision by which he or she approves or rejects the extradition. The Minister does not approve the extradition of the foreign national if the latter enjoys the right to asylum, if a political or military criminal offence is concerned, or if it is probable that the person whose extradition is requested would be tortured or treated or punished in an inhuman or degrading manner in the requesting state (the third paragraph of Article 530 of the CrPA). Judicial protection before the Administrative Court is ensured against the decision of the Minister.

In the case at issue, once the complainant was given the legal instructions by the investigating judge, he stated that he concurs with the extradition. In such an event, the court decides on the extradition in an expedited procedure. In an expedited procedure, once the investigating judge verifies whether the statutory conditions are fulfilled, he or she decides on the extradition. There is no second phase, i.e. decision-making by the Minister of Justice; instead, once the order is final, the investigating judge communicates the decision to the Minister of Justice, who immediately thereafter notifies the requesting state of the decision of the court. In an expedited procedure the law does not specifically impose on the investigating judge the obligation to assess whether there exists a probability that the requested person would be subjected to torture in the requesting state. However, it would be contrary to the right determined by Article 18 of the Constitution if the person whose extradition is requested could not allege a violation of the prohibition of torture merely because he or she has already given consent to be extradited, as consent to torture cannot have legal effects. Article 18 of the Constitution imposes on courts the duty to enable also in such an event substantive consideration of the allegations of the requested person regarding the existence of the danger of torture in the requesting state.

The Constitutional Court opined that the constitutionally consistent interpretation of these statutory provisions is that the court would deem that by making such allegations concerning torture the complainant implicitly revoked his consent to extradition. In such an event, decision-making would continue in accordance with the rules that apply to the regular extradition

procedure, which means that the danger of torture, taking into account the allegations made by the complainant and the evidence he produced, would be assessed by the competent ministry. Since the court did not deem the complainant's allegations regarding the danger of torture to entail a revocation of his consent to extradition and did not proceed with its decision-making in conformity with the rules of the regular extradition procedure, it did not enable the complainant a substantive assessment of those allegations. Thereby, it violated his right to the prohibition of torture determined by Article 18 of the Constitution.

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.

On 18 December 2018, the term of office of Jadranka Sovdat as judge and President of the Constitutional Court expired. On 19 December 2018, Katja Šugman Stubbs replaced her, as she began her term of office as Constitutional Court judge.

On 19 December 2018, Dr Rajko Knez assumed the office of President of the Constitutional Court.

6. 2. The Secretariat

The Secretariat of the Constitutional Court performs legal advisory work and provides administrative and technical assistance to Constitutional Court judges. It is composed of five organisational units: the Legal Advisory Department, the Analysis and International Cooperation Department, the Documentation and Information Technology Department, the Office of the Registrar, and the General and Financial Affairs Department. The Secretary General, 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.

As of the end of 2018, in addition to nine Constitutional Court judges and the Secretary General, 72 judicial personnel were employed at the Constitutional Court, 70 of whom were employed for an indefinite period of time and two for a fixed term. Among those employed for an indefinite period of time, 33 were advisors in the Legal Advisory Department of the Constitutional Court, and four were advisors in the Analysis and International Cooperation Department. In 2018, the Constitutional Court employed two new advisors due to resignations.

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
Mag. Uroš Bogša
Vesna Božič Štajnpihler
Diana Bukovinski
Mag. Tadeja Cerar
Dr Eneja Drobež
Dr Polona Farmany
Dr Aleš Galič
Luka Grasselli
Mag. Marjetka Hren, LL.M.
Jasna Hudej
Nika Hudej
Gregor Janžek
Andreja Kelvišar
Luka Kovač
Andreja Krabonja
Jernej Lavrenčič
Simon Leohar
Marcela Lukman Hvastija
Mag. Maja Matičič Marinšek
Mag. Karin Merc
Mag. Tina Mežnar
Liljana Munh
Špela Ocepek
Constanza Pirnat Kavčič
Andreja Plazl
Maja Pušnik
Mag. Vesna Ravnik Koprivec
Mag. Žiga Razdrih
Leon Recek
Mag. Heidi Starman Kališ
Mag. Jerica Trefalt Kepic
Dr Katarina Vatovec, LL.M.
Igor Vuksanović
Dr Renata Zagradišnik, spec., LL.M.
Dr Sabina Zgaga Markelj
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

The Constitutional Court of the Republic of Slovenia devotes special attention to international cooperation, particularly to the exchange of experiences with other international institutions competent to protect human rights and fundamental freedoms. An important aspect of the Court's international activities is cooperation with foreign constitutional courts and other highest national courts with constitutional jurisdiction. In the framework of its efforts to strengthen international cooperation, in 2018 the Constitutional Court deepened its existing relationships with other constitutional courts, international courts, the Council of Europe, and other institutions ensuring the protection of human rights and fundamental freedoms. The Constitutional Court is also a member of a number of major European and global associations of constitutional courts, in the framework of which representatives of the Constitutional Court attend regular meetings and exchange knowledge and experiences with other institutions of equivalent jurisdiction.

In June, the President of the Constitutional Court and the Secretary General attended a preparatory meeting of the Circle of Presidents of the Conference of European Constitutional Courts (CECC) in Prague, the Czech Republic. The meeting participants negotiated the plans for the XVIII CECC Congress, which is to be hosted in 2020 by the Constitutional Court of the Czech Republic. The meeting concluded with a conference entitled *Our First Steps: The Heirs of Hans Kelsen*, at which the President presented a paper entitled *Kelsen's Legacy in Slovenia*.

In 2018, the Constitutional Court received invitations to numerous international conferences, solemn meetings, seminars, and symposiums. Due to their work commitments, the Constitutional Court judges only participated in some of the more important events, at the majority of which they gave presentations. The following in particular should be mentioned: an international conference commemorating 25 years of the Constitutional Court of the Russian Federation, which was held in Saint Petersburg, Russian Federation; a regional conference entitled *The Role of Constitutional Courts and Regular Courts in the Protection of Human Rights and Fundamental Freedoms – Joint Responsibility*, which was held in Budva, Montenegro; the international conference *The Role of Constitutional Courts in the Globalised World of the 21st Century*, which was held on the occasion of the 100th anniversary of Latvia, in Riga, Latvia; an ICON-S conference entitled *Identity, Security, Democracy: Challenges for Public Law*, which was held in Hong Kong, China; an international conference upon the 25th anniversary of the Constitutional Court of Andorra; a conference organised by the International Association for the Philosophy of Law and Social Philosophy held in Baltimore, U.S.A.; an international conference marking the 30th anniversary of the Constitutional Court of Korea in Seoul, Korea; a conference entitled *Jurisprudence in Central and Eastern Europe: Work in Progress 2018*, which was held in Zagreb, Croatia; and a conference entitled *Pure Theory of Law: Conceptions and Misconceptions,* which

was held in Freiburg, Germany. A judge of the Constitutional Court also attended the solemn opening of the judicial year of the European Court of Human Rights in Strasbourg, France. In December, the President and Vice President of the Constitutional Court attended the solemn presentation of a *liber amicorum* collection of legal research papers to Dr Jean Spreutels, President of the Constitutional Court of Belgium, commemorating his departure from the Court (Brussels, Belgium).

Furthermore, in 2018 the Constitutional Court engaged in active bilateral cooperation with other constitutional courts. The Constitutional Court hosted three official visits from foreign constitutional courts. In May, a delegation from the Constitutional Court of Belgium, led by Presidents Dr Jean Spreutels and Baron Dr André Alen, paid an official visit to the Constitutional Court of the Republic of Slovenia. The judges discussed the more important recent decisions of the two courts, the right to social security, and personal dignity. In June, a delegation from the Federal Constitutional Court of Germany, led by Dr Andreas Voßkuhle, President of the Court, also made an official visit to the Slovene Constitutional Court. The judges exchanged their experiences regarding the case law of their respective constitutional courts, devoting special attention to the question of delimiting between the concepts of interfering with human rights by law and the manner of regulating human rights by law, as well as the right to personal identity, in particular in conjunction with establishing paternity and one's sexual identity. In November, a delegation of the Constitutional Court of the Republic of Austria led by Dr Brigitte Bierlein, President of the Court, paid an official visit to the Slovene Constitutional Court. The judges exchanged positions and experiences regarding important questions in the field of constitutional judiciary. These official visits continue and strengthen the excellent cooperation between the mentioned constitutional courts.

In 2018, the Constitutional Court also went on two bilateral visits abroad. In June, a delegation of the Constitutional Court led by the President attended the annual working meeting with their Croatian colleagues, which took place on the Brijuni Islands in Croatia. On this occasion, the main topic of discussion was the question of the relationship between constitutional courts and the Court of Justice of the European Union, with an emphasis on the mechanism determined by Article 267 of the Treaty on the Functioning of the European Union as a manner of judicial dialogue. In October, a delegation of the Constitutional Court, led by the President, paid an official visit to the Constitutional Court of the Republic of Latvia. During the discussions the judges exchanged their experiences regarding the constitutional case law of the respective constitutional courts and addressed the role of constitutional courts in a globalised world.

In 2018, the Constitutional Court also hosted working visits from Dr Marko Bošnjak, judge of the European Court of Human Rights, and from Dr Verica Trstenjak, former judge of the General Court of the Court of Justice of the European Union and Advocate General at the Court of Justice, who shared their experiences with the judges of the Constitutional Court. In February, the Constitutional Court hosted a delegation of the Congress of Local and Regional Authorities of the Council of Europe, in April the United Nations Special Rapporteur on minority issues, and in May experts from the Office for Democratic Institutions and Human Rights.

The integration of the Constitutional Court into the European environment and the need for further training of the staff of the Constitutional Court in order to provide high-quality assistance to the Constitutional Court judges in the performance of their office require not only international cooperation between the judges of constitutional courts but also the cooperation of high-level state officials of constitutional courts and especially their legal advisors. The

following events from 2018 also deserve mention: a study visit to Luxembourg, during which a group of advisors of the Constitutional Court viewed the Court of Justice of the European Union, met with Dr Marko Ilešič and Dr Miro Prek, judges at the Court of Justice and General Court, respectively, attended a main hearing at the Court of Justice, and discussed with the mentioned two judges and their advisors the work and recent case law of the Court of Justice of the European Union and the dialogue between Member State courts and the Court of Justice.

In addition to several regular and customary educational courses in Slovenia (judicial training courses, etc.), the advisors of the Constitutional Court also attended several legal courses abroad last year. *Inter alia*, their participation in the following events should be mentioned: a seminar held by the EU Intellectual Property Office entitled *Exceptions and Limitations in Copyright Law* (Alicante, Spain), a seminar on data protection in the judiciary (Vienna, Austria), a forum of courts within the framework of the Superior Courts Network of the European Court of Human Rights (Strasbourg, France), a seminar on protection of the environment and human rights (Strasbourg, France), a workshop on the constitutional case law of Central and Eastern European EU Member States (Budapest, Hungary), a seminar on the case law of the European Court of Human Rights as regards detention in the period 2017–2018 (Strasbourg, France), the 17th meeting of the Joint Council on Constitutional Justice (Lausanne, Switzerland), and the 13th Congress on Criminal Law (Munich, Germany).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8. The Constitutional Court in Numbers

8. 1. Cases Received

In 2018, the trend of an increasing number of cases received continued, as the Constitutional Court received considerably more cases than in 2017. In the last couple of years, the curve marking cases received again turned upwards, as the number of new cases per year has been increasing since 2016, while for several consecutive years prior to that (i.e. from 2009 to 2015) this number had been decreasing. In 2018, the Constitutional Court received 2,157 cases, which is 61.7% more than in 2017, when it received 1,334 cases.

The statistical data must be interpreted in light of the fact that in 2018 the Constitutional Court received a large number of cases of the same type that refer to the Act Regulating the Enforcement of the European Court of Human Rights Judgment in Case No. 60642/08 (AREECtHRJ). This Act determined the manner of implementation of the ECtHR Judgment in *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and "the former Yugoslav Republic of Macedonia"*, No. 60642/08, dated 16. July 2014, in the part obligating the Republic of Slovenia to make all necessary arrangements in order to allow the recovery of "old" foreign currency savings. In 2018 the number of such cases (hereinafter referred to as AREECtHRJ cases) amounted to 624 (i.e. 312 petitions for a review of constitutionality and 312 constitutional complaints), which is almost one third of all cases received (28.9%). Even if these cases are not taken into account, in 2018 the Constitutional Court nevertheless received considerably more cases than in 2017 (1,533 or 14.9% more).

The increase in the total number of cases received was a consequence of receiving a higher number of constitutional complaints (the Up register), and the number of applications for a review of the constitutionality or legality of regulations (the U-I register) also increased. In 2018, the Constitutional Court received 519 requests and petitions for a review of the constitutionality or legality of regulations, which represents a 162.1% increase compared to 2017, when it received only 198. Even if the AREECtHRJ cases (312 petitions) are not taken into account, a 4.5% increase in the number of applications for a review of the constitutionality and legality of regulations may be observed compared to 2017 (207 compared to 198). The Constitutional Court received 1,628 constitutional complaints, which represents a 43.6% increase compared to 2017, when it received 1,134 constitutional complaints. Leaving the AREECtHRJ cases (312 constitutional complaints) aside, the Constitutional Court received 1,316 constitutional complaints, which still amounts to a 16% increase compared to 2017.

While the Constitutional Court had recorded a downward trend since 2012 in the number of cases stemming from applications for a review of the constitutionality or legality of regulations,

an increase was observed in 2018. However, as regards such cases, it also has to be underlined that the number of petitions that require a review on the merits, and in particular the number of requests for a review of constitutionality, which in accordance with the Constitution and law can only be filed by privileged applicants, is increasing. In this regard, the ever-greater activity of the regular courts is particularly notable. Although the Constitutional Court cannot precisely predict future trends regarding the number of constitutional complaints, there are no circumstances that would indicate that there will be any deviation from the workload of previous years. On the other hand, although the Constitutional Court cannot yet support a prediction with statistical data, the fact that the institution of leave to appeal to the Supreme Court – which entails that the Supreme Court may select which cases it will review on the merits – has been more widely incorporated into procedural acts is expected to result in an increase in the number of new cases. In addition, certain legal fields are excluded from judicial review by the Supreme Court (e.g. insolvency and bankruptcy proceedings) and a constitutional complaint may be lodged directly against a higher court decision. However, it is questionable whether such different positions of the Supreme Court and the Constitutional Court are consistent with our constitutional legal system. In accordance with the Constitution (the first paragraph of Article 127 of the Constitution), the Supreme Court is the highest court in the state and must, *inter alia*, ensure the uniformity of case law. The Constitution envisaged the constitutional complaint as a subsidiary legal remedy (the third paragraph of Article 160 of the Constitution), which, as a general rule, may only be filed once all other legal remedies have been exhausted, i.e. when all of the regular courts, including the Supreme Court, have adopted a position regarding the relevant legal (constitutional) issues. In light of its role within the system of state power, the Constitutional Court cannot resolve thousands of disputes, but can only focus on a limited number of cases that substantively raise the most important constitutional issues.

Within the distribution of all cases received in 2018 there was, as usual, a strong preponderance of constitutional complaints, which accounted for 75.5% of all cases received (or even 85.8% if the AREECtHRJ cases are excluded). In some instances, a constitutional complaint was filed together with a petition for a review of the constitutionality or legality of the regulation on which the judicial decision at issue was based; in 2018 there were 390 such cases (or 78 excluding the AREECtHRJ cases). These are so-called joined cases, on which the Constitutional Court decides by a single decision.

In 2018, the number of constitutional complaints received by the individual panels of the Constitutional Court differed significantly. The number of constitutional complaints received by the Administrative Law Panel increased significantly, namely by 73%; however, the increase was due to the AREECtHRJ cases, as without these cases the number decreased slightly – i.e. by 0.7%. The number of constitutional complaints received by the Criminal Law Panel increased by 11.1%, while the number of cases received by the Civil Law Panel increased by 34.3%. Due to the AREECtHRJ cases, in absolute figures, the Administrative Law Panel received the highest number of cases in 2018 (732 cases), which amounts to 45% of all constitutional complaints received. If we disregard the AREECtHRJ cases, the Civil Law Panel received the highest number of constitutional complaints (615), continuing the trend from recent years. With regard to the Civil Law Panel, the great increase in the number of cases received compared to 2017 is particularly worrisome (an increase of 34.3%), which entails that the Civil Law Panel received almost half (46.7%) of all constitutional complaints, excluding the AREECtHRJ cases. There was also a significant increase in the number of constitutional complaints received by the Criminal Law Panel, which recorded an 11.1% increase compared to 2017. Although the Criminal Law Panel received the lowest number of constitutional

complaints in terms of absolute numbers (281), the number of complex criminal cases considered by the Criminal Law Panel has increased significantly in recent years, therefore the statistically lower number of cases received does not in any way signify a decrease in the workload on the Constitutional Court judges.

With regard to their content, the majority of the constitutional complaints received in 2018 originated in administrative disputes (25.4%), which is mainly due to the AREECtHRJ cases. If these cases are not taken into account, disputes connected with civil law litigation were the most numerous (which were otherwise in second place, representing a 21.1% share). In comparison with 2017, the number of disputes connected with civil law litigation increased. They are followed by constitutional complaints from the field of criminal law; although the number of such decreased by 11.2% in comparison to 2017, they still accounted for 10.7% of all constitutional complaints. In terms of content, criminal cases were followed by labour disputes (8.2%), minor offences (6.4%), enforcement proceedings (4.9%), commercial disputes (4.5%), social disputes (3.9%), and tax disputes (3%).

As regards proceedings for a review of the constitutionality or legality of regulations (U-I cases), the number of cases received in 2018 was significantly higher than in 2017. The increase amounted to 162.1%, or 4.5% excluding the AREECtHRJ cases. Of the 519 cases received (207 excluding the AREECtHRJ cases), 29 (5.6%, or 14% excluding the AREECtHRJ cases) 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. In this context, the activity of the regular courts must be highlighted, as they filed 19 requests for a review of the constitutionality of laws, which amounts to 65.5% of all requests filed. In addition, the Government filed three requests, local communities filed four requests, and the National Council, the Union of Doctors Specialising in Family Medicine, and the State Prosecutor General filed one request each. It is worth noting that the Human Rights Ombudsman did not file any requests in 2018. Of the 519 petitions for a review of the constitutionality or legality of regulations, in 390 cases (75.1% of all petitions) the petitioners concurrently filed a constitutional complaint. Petitioners thus 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 challenged regulation does not have direct effect. In such instances, all judicial remedies must first be exhausted in proceedings before the competent courts, and only then can a petition for a review of the constitutionality or legality of the act on which the individual act is based be filed together with a constitutional complaint against the individual act.

As regards the type of regulations challenged, it can be concluded that, as usual, also in 2018 most often laws were challenged; namely, as many as 107 different laws were challenged. Laws were followed by local community regulations (23 different municipal regulations were challenged) and by acts of the Government and governmental ministries (18 implementing regulations were challenged). In particular as regards laws, but also decrees, it must be taken into consideration that numerous regulations were challenged multiple times. If we limit the discussion to laws, it is evident that, for instance, the provisions of the AREECtHRJ were challenged 312 times (these are the cases referred to herein as the AREECtHRJ cases), the provisions of the Civil Procedure Act 19 times, the provisions of the Criminal Procedure Act nine times, the provisions of the Pension and Disability Insurance Act nine times, the provisions of the Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act eight times, and the provisions of the National Assembly Elections Act eight times as well.

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

In 2018, the Constitutional Court resolved considerably more cases than in 2017 (1,679 cases compared to 945 cases, a 77.7% increase). If we exclude the AREECtHRJ cases (506 cases: 253 petitions and 253 constitutional complaints) and thus create a more realistic statistical comparison, in 2018 the Constitutional Court resolved one quarter (24.1%) more cases than the year before (1,173 compared to 945). The larger number of resolved cases is certainly also a consequence of significant changes in the personnel of the Legal Advisory Department of the Constitutional Court, as eight advisors of the Constitutional Court were replaced in 2017 due to retirements and resignations. The Constitutional Court succeeded in mitigating the negative effects of these changes in 2018, as procedures for new appointments had already been initiated in 2017. As holds true for new Constitutional Court judges, also new advisors need a certain period of time to become familiar with their work. The larger number of resolved cases must thus also be attributed to this fact.

However, this does not entail that the Constitutional Court could be expected to increase the number of cases resolved year after year, and even less so while the share of complex cases is increasing. The reforms embodied in the thus far unsuccessful constitutional amendments are still very much needed. This report is therefore only one in a line of calls for appropriate normative amendments that the Constitutional Court has addressed to the legislature and constitution framer.

The distribution of cases resolved was similar to the distribution of cases received. In 2018, the Constitutional Court resolved 405 cases relating to the constitutionality or legality of regulations (U-I cases), amounting to a 24.1% share of all cases resolved (or 152 cases, excluding the AREECtHRJ cases, thus amounting to a 13% share of all cases). In comparison to 2017, when it resolved 156 petitions and requests for a review of the constitutionality of regulations, this represents a 159.6% increase, or a 2.6% decrease if the AREECtHRJ cases are not taken into account. In 2018, as has been the case every year thus far, constitutional complaints represented the majority of cases resolved. The Constitutional Court resolved 1,264 such cases, amounting to a 75.3% share of all cases resolved. Excluding the AREECtHRJ cases, 1,011 constitutional complaints were resolved, amounting to an 86.2% share. Such a number of resolved constitutional complaints represents a 61.2% increase – or a 29% increase if the AREECtHRJ cases are excluded – in comparison with 2017, when the Constitutional Court resolved 784 constitutional complaints.

With regard to the individual panels of the Constitutional Court, in 2018 the highest number of constitutional complaints were resolved by the Administrative Law Panel (566, or 313 excluding the AREECtHRJ cases). If the AREECtHRJ cases are excluded, the highest number of cases was resolved by the Civil Law Panel (514). The Criminal Law Panel resolved 184 constitutional complaints. The number of constitutional complaints resolved by the Administrative Law Panel increased by 76.3% compared to 2017, or decreased by 2.5% if the AREECtHRJ cases are not taken into account. Compared to the previous year, in 2018 the number of

constitutional complaints resolved by the Civil Law Panel increased by 54.4%; the number of cases resolved by the Criminal Law Panel also increased, namely by 41.5%.

In addition to proceedings for a review of the constitutionality or legality of regulations and constitutional complaints, in 2018 the Constitutional Court also resolved five jurisdictional disputes (P cases) and five appeals concerning confirmation of the election of deputies or members of the National Council (Mp cases).

In terms of content, due to the AREECtHRJ cases, as was observed with regard to the number of cases received, the greatest number of resolved constitutional complaints also concerned administrative disputes (25.2%). If the AREECtHRJ cases are left aside, the greatest number of constitutional complaints resolved referred, as has been usual in recent years, to civil law litigation (21.8%), followed by criminal cases (12.5%), enforcement proceedings (6.3%), labour disputes (6.2%), and commercial disputes (5.5%).

In addition to the data regarding the total number of cases resolved, also the information regarding how many cases the Constitutional Court resolved by a decision on the merits is important. Out of a total of 1,679 cases resolved in 2018 (1,173 excluding the AREECtHRJ cases), the Constitutional Court adopted a decision in 66 proceedings (3.9% of all cases resolved, or 5.6% of cases resolved excluding the AREECtHRJ cases), while the others were resolved by an order. If decisions on the merits according to the individual registers are considered, it can be noted that in 405 (152 excluding the AREECtHRJ cases) proceedings for a review of the constitutionality or legality of regulations (U-I cases) the Constitutional Court adopted 28 decisions (6.9%, or 18.4% excluding the AREECtHRJ cases), and in constitutional complaint proceedings it resolved 32 out of 1,264 cases by a decision (2.5%, or 1,011 cases and 3.2% excluding the AREECtHRJ cases). Statistically speaking, in 2018 the Constitutional Court adopted more decisions in proceedings for a review of the constitutionality or legality of regulations than in the previous year (28 compared to 19), while in constitutional complaint proceedings it adopted fewer decisions than in 2017 (32 compared to 88). However, it has to be underlined that in 2017, out of 88 decisions, 33 were of the same type, therefore 32 of them – after the Constitutional Court adopted a precedential decision on the first such case by a plenary decision – were adopted by a Constitutional Court panel (i.e. by a panel decision on the basis of the third paragraph of Article 59 of the Constitutional Court Act, whereby a panel can grant a constitutional complaint if the Constitutional Court has already decided in an analogous case). Even if we count these cases of the same type from 2017 as a single decision, it can be noted that in 2018 the Constitutional Court adopted fewer decisions in constitutional complaint proceedings than the previous year (32 compared to 56). The total number of decisions – the Constitutional Court adopted four decisions regarding jurisdictional disputes (P cases) and two decisions in electoral disputes (Mp cases) – was also somewhat lower than in 2017 (66 compared to 79). It is characteristic of the decisions of the Constitutional Court adopted in 2018 that they dealt with a high number of new and diverse constitutional questions; these decisions, therefore, have an important precedential effect. Only the most important of these decisions are briefly presented in the present report. Constitutional Court judges submitted 70 separate opinions, of which 29 were dissenting, 37 were concurring, and four were partially concurring and partially dissenting.

In 2018, the success rate of complainants, petitioners, and applicants, taken as a whole, was, statistically speaking, lower than in 2017. This is due to the lower success rate in constitutional complaint cases, whereas the success rate in cases for a review of the constitutionality

or legality of regulations was somewhat higher, if the AREECtHRJ cases are not considered. Of the 405 resolved petitions and requests for a review of the constitutionality and legality of regulations (152 excluding the AREECtHRJ cases), in 14 cases the Constitutional Court established that the law was unconstitutional (3.5% of all U-I cases, or 9.2% excluding the AREECtHRJ cases), of which it abrogated the relevant statutory provisions in seven cases; it adopted a declaratory decision in seven cases as well, and in four of these declaratory decisions it imposed on the legislature a time limit by which it must remedy the established unconstitutionalities. With regard to challenged implementing regulations, the Constitutional Court established the unconstitutionality or illegality of an implementing regulation in three cases. The combined success rate in U-I cases was thus 11.2% (excluding the AREECtHRJ cases). In comparison, the success rate amounted to 8.3% in 2017. The success rate of constitutional complaints was lower than in previous years. The Constitutional Court granted 25 (i.e. 2.0%, or 2.5% excluding the AREECtHRJ cases) of all constitutional complaints resolved in 2018 (1,264, or 1,011 excluding the AREECtHRJ cases), and dismissed by a decision eight constitutional complaints as unfounded. One case was partially granted and partially dismissed. In comparison, the success rate with regard to constitutional complaints was 4.6% in 2016, and even reached 10.5% in 2017, which was influenced by the fact that the Constitutional Court adopted 32 panel decisions in cases of the same type in 2017; however, the success rate in 2017 was 7.1% even without these 33 cases. 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 observed that the Constitutional Court most often (13 times) established 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, most often, the right to be heard and the right to a reasoned judicial decision. To some degree, violations of the right to equality before the law (the second paragraph of Article 14 of the Constitution) also stand out; the Constitutional Court established such a violation seven times.

The average period of time it took to resolve a case in 2018 was approximately the same as in 2017. On average, the Constitutional Court resolved a case in 337 days (as compared to 336 days in the previous year). The average duration of proceedings for a review of the constitutionality or legality of regulations was 271 days, which is considerably shorter than the previous year. Constitutional complaints were resolved by the Constitutional Court on average in 359 days, which is longer than in 2017 (328 days). When interpreting these data, care must be taken, as data on averages do not reflect the entire picture and 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. Due to the significant burden on Constitutional Court judges and advisors, individual cases can take up to a few years to resolve. The average duration of resolved cases should not be confused with the time period in which the Constitutional Court is obliged to ensure the right to a decision within a reasonable time. Naturally, the time period for ensuring this must be adapted to the complexity of the proceedings. At the Constitutional Court, the time period needed to resolve more complex cases is on average at least two years. Consequently, only cases older than two years can be classified as backlog cases.

8. 3. Unresolved Cases

At the end of 2018, the Constitutional Court had a total of 2,084 unresolved cases remaining, of which two cases were from 2014, 21 from 2015, 234 from 2016, and 635 from 2017. The remaining unresolved cases (1,192) were received in 2018. Among the unresolved cases, 511 cases were priority cases and 77 cases were absolute priority cases. Such designation is primarily assigned to cases that, in light of their nature, also the regular courts must consider expeditiously. Priority cases include requests by courts for a review of the constitutionality of laws and other cases that the Constitutional Court has assessed should be considered expeditiously due to their importance to society. Among the constitutional complaints that remained unresolved as of the end of the year, in 12 cases the Constitutional Court suspended the implementation of the challenged individual acts until the adoption of its final decision. Among the cases involving a review of the constitutionality or legality of regulations that remained unresolved as of the end of the year, suspension of the implementation of the challenged regulation was ordered in one case.

The number of unresolved cases increased significantly in 2018 compared to 2017. At the end of 2017 the Constitutional Court had 1,609 unresolved cases, whereas at the end of 2018 the number was 2,084. This entails that in 2018 the number of unresolved cases increased by almost a third (29.5%). However, as the number of resolved cases increased significantly in 2018 (by almost a quarter compared to the previous year), the increase in the backlog of cases can only be explained by the considerable increase in the number of new cases. In comparison with 2017, in 2018 the number of cases older than two years – which can be classified as the backlog of the Constitutional Court – more than doubled once again (from 112 to 257). Considering the fact that the number of decisions adopted in 2018 did not significantly differ from previous years, the higher total number of cases resolved must be attributed to the higher number of decisions adopted by orders (rejections, dismissals, inadmissibility decisions). In contrast to what the Constitutional Court reported in 2017, 2018 was characterised by an increase in the number of orders, namely to the level of 2015. However, the Constitutional Court still assesses that the number of extremely complex cases, which take the Constitutional Court longer to resolve, is increasing.

In addition to the changes in the structure of cases that in the long term and objectively affect the (statistical) efficiency of the work of the Constitutional Court, for 2018 it must especially be stressed that the increased number of unresolved cases was mainly a result of the increase in the number of cases received, in particular constitutional complaints. It should also be noted that the data regarding the unresolved cases and the backlog of cases do not take into account the complexity of the cases considered by the Constitutional Court or the burden placed thereon as a consequence. The data regarding the unresolved cases also do not entail that the Constitutional Court has not yet considered these cases at all; it has considered a significant number of unresolved cases, but had not adopted a decision thereon by the end of the year.

In view of the number of cases received, among which the number of constitutionally complex cases is increasing, and considering the usual fluctuations in the personnel structure (retirements, resignations), it must be underlined that both the judges of the Constitutional Court and the advisory personnel are significantly burdened. In light of the fact that at the end of 2018 a new Constitutional Court judge began her term of office and that in the next two years a further two Constitutional Court judges whose terms of office will be coming to an end will be replaced by new Constitutional Court judges – which we expect will again affect the

efficiency of the work of the Constitutional Court – it is difficult to expect that the trend as to an increasing number of unresolved cases will reverse significantly. In addition, the Constitutional Court may not avail itself of a mechanism that would allow it to select only those cases that are of precedential constitutional importance. The judges and advisors have been working at the limit of their capacities and cannot be required to resolve more and more cases every year. In light of the increasing number of cases received, the Constitutional Court can, therefore, not be expected to decide cases in a shorter period of time, especially if such were to the detriment of the quality of its decisions.

9. Summary of Statistical Data for 2018

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

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

The Constitutional Court examines constitutional complaints in the following panels:

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

Note		
	AREECtHRJ cases	hereinafter refer to cases that concern the Act Regulating the Enforcement of the European Court of Human Rights Judgment in Case No. 60642/08 (the AREECtHRJ). This Act regulates the enforcement of the Judgement of the European Court of Human Rights in *Ališić and others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and "the former Yugoslav Republic of Macedonia"*, No. 60642/08, dated 16 July 2014, in the part obligating the Republic of Slovenia to make all necessary arrangements in order to allow the recovery of "old" foreign currency savings.

Table **1** Summary Data on All Cases in 2018

REGISTER	CASES PENDING AS OF 31 DECEMBER 2017*	CASES RECEIVED IN 2018	CASES RESOLVED IN 2018	CASES PENDING AS OF 31 DECEMBER 2018
Up	1346	1628	1264**	1710
U-I	258	519	405**	372
P	2	5	5	2
U-II				
Rm				
Mp		5	5	
Ps				
Op				
Total	**1606**	**2157**	**1679**	**2084**

***** Due to subsequent erroneous entries and reopened cases, the number of cases pending as of 31 December 2017 does not completely match the data provided in last year's overview (the net difference is three).
****** One U-I case was resolved by being joined to another case, as was one Up case (a total of two cases).

Table **1a** Summary Data on All Cases in 2018 Excluding AREECtHRJ Cases (312 Received and 253 Resolved Up and U-I Cases)

REGISTER	CASES PENDING AS OF 31 DECEMBER 2017*	CASES RECEIVED IN 2018	CASES RESOLVED IN 2018	CASES PENDING AS OF 31 DECEMBER 2018
Up	1346	1316	1011**	1651
U-I	258	207	152**	313
P	2	5	5	2
U-II				
Rm				
Mp		5	5	
Ps				
Op				
Total	**1606**	**1533**	**1173**	**1966**

***** Due to subsequent erroneous entries and reopened cases, the number of cases pending as of 31 December 2017 does not completely match the data provided in last year's overview (the net difference is three).
****** One U-I case was resolved by being joined to another case, as was one Up case (a total of two cases).

Table **2** Summary Data regarding R-I Cases in 2018

PANEL	RECEIVED IN 2018	RESOLVED IN 2018
Zadeve R-I	100	134*

***** 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.

Table **3** Summary Data regarding Up Cases according to Panel in 2018

PANEL	CASES PENDING AS OF 31 DECEMBER 2017*	CASES RECEIVED IN 2018	CASES RESOLVED IN 2018	CASES PENDING AS OF 31 DECEMBER 2018
Civil Law	500	615	514	601
Administrative Law	415	732	566	581
Criminal Law	431	281	184	528
Total	**1346**	**1628**	**1264**	**1710**

* The number of cases pending as of 31 December 2017 does not completely match the data provided in last year's overview (the net difference is one case).

Table **3a** Summary Data regarding Up Cases according to Panel in 2018 (excluding AREECtHRJ Cases)

PANEL	CASES PENDING AS OF 31 DECEMBER 2017*	CASES RECEIVED IN 2018	CASES RESOLVED IN 2018	CASES PENDING AS OF 31 DECEMBER 2018
Civil Law	500	615	514	601
Administrative Law	415	420	313	522
Criminal Law	431	281	184	528
Total	**1346**	**1316**	**1011**	**1651**

* The number of cases pending as of 31 December 2017 does not completely match the data provided in 2017 (the net difference is one case).

Table **4** Pending Cases by Year Received as of 31 December 2018

YEAR	2014	2015	2016	2017	2018	TOTAL
U-I		4	48	110	210	372
Up	2	17	186	525	980	1710
P					2	2
Total	**2**	**21**	**234**	**635**	**1192**	**2084**

9.1. Cases Received

Figure **1** Distribution of Cases Received in 2018

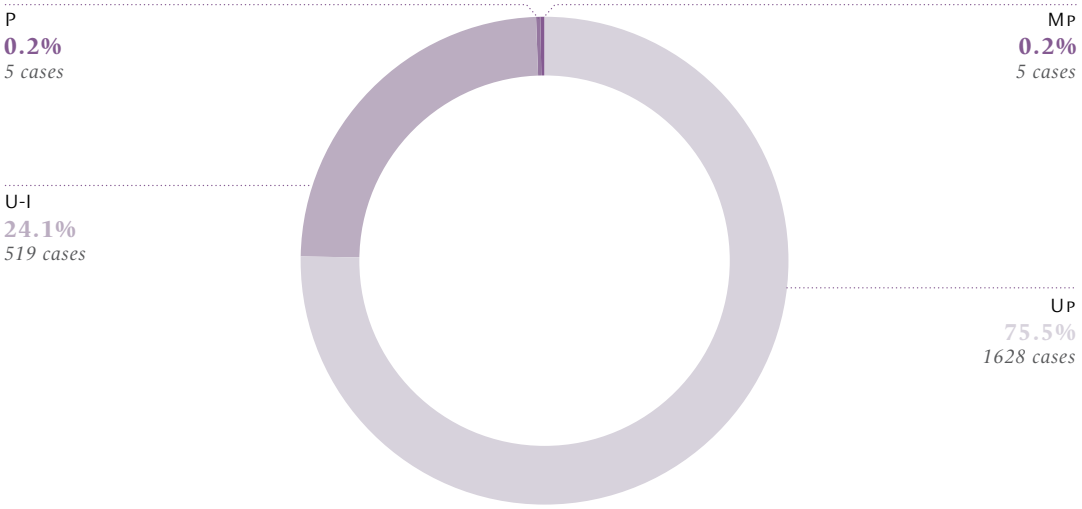


Table **5** Cases Received according to Type and Year

YEAR	U-I	UP	P	U-II	PS	MP	RM	TOTAL
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
2017	198	1134	2					1334
2018	**519**	**1628**	**5**			**5**		**2157**
2018/2017	**↑ 162.1%**	**↑ 43.6%**	**↑ 150.0%**					**↑ 61.7%**
2018*	**207**	**1316**	**5**	**2**				**1533**
2018/2017	**↑ 4.5%**	**↑ 16.0%**	**↑ 150.0%**					**↑ 14.9%**

***** Excluding AREECtHRJ Cases

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

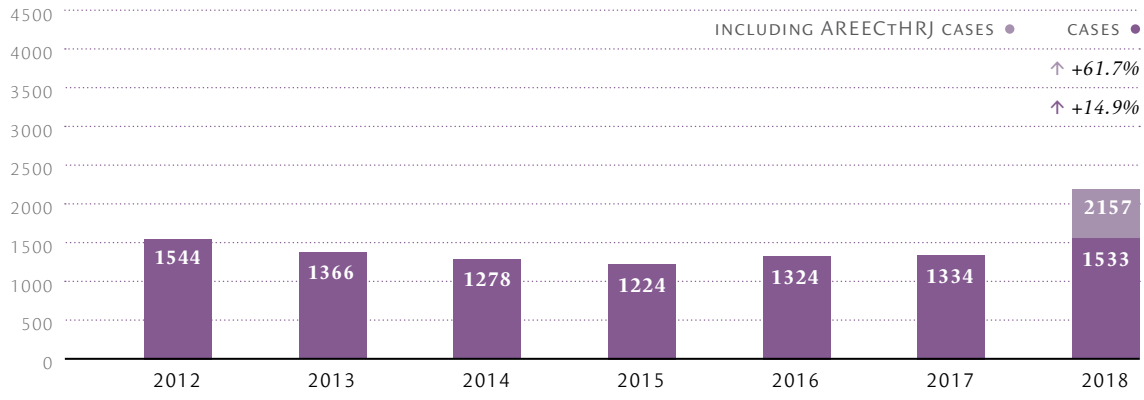


Figure **3** Number of U-I Cases Received by Year

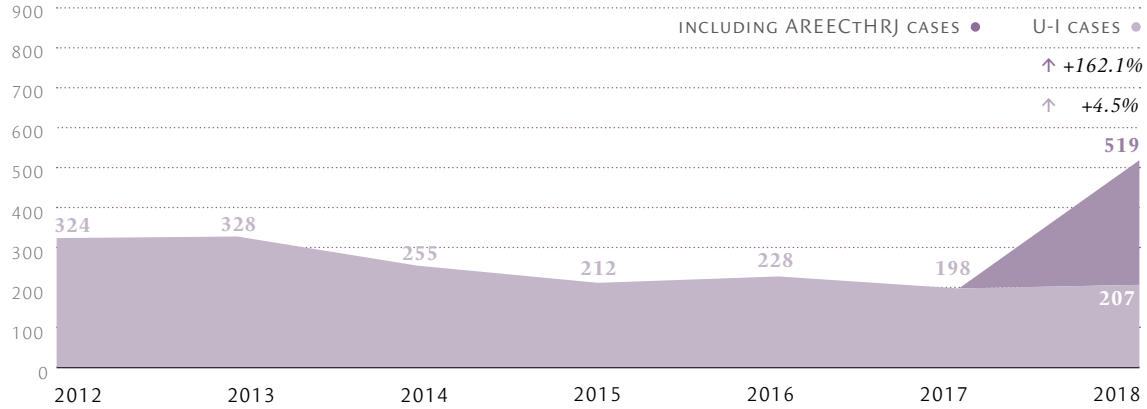


Table **6** Number of Requests for a Review Received in 2018 according to Applicant

APPLICANTS REQUESTING A REVIEW	NUMBER OF REQUESTS FILED
Vrhovno sodišče Republike Slovenije (Supreme Court of the Republic of Slovenia)	7
Upravno sodišče Republike Slovenije (Administrative Court of the Republic of Slovenia)	3
Vlada Republike Slovenije (Government of the Republic of Slovenia)	3
Okrajno sodišče v Mariboru (Maribor Local Court)	2
Okrožno sodišče v Ljubljani (Ljubljana District Court)	2
Delovno in socialno sodišče v Ljubljani (Ljubljana Labour and Social Court)	1
Državni svet Republike Slovenije (National Council of the Republic of Slovenia)	1
Dušan Krštinc, Mayor	1
Generalni državni tožilec (General State Prosecutor)	1
Mestna občina Ljubljana (City of Ljubljana)	1
Občina Braslovče in drugi (Braslovče Municipality and Others)	1
Občina Cerklje na Gorenjskem (Cerklje na Gorenjskem Municipality)	1
Okrožno sodišče v Celju (Celje District Court)	1
Sindikat zdravnikov družinske medicine Slovenije Praktikum (Trade Union of Family Medicine Physicians of Slovenia Praktikum)	1
Higher Labour and Social Court	1
Ljubljana Higher Court	1
Maribor Higher Court	1
Total	**29**

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
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
2017	86	8	8	26	5
2018	**107**	**8**	**10**	**23**	**16**

Figure **4** Distribution of Legal Acts Challenged in 2018 (U-I Cases Received)

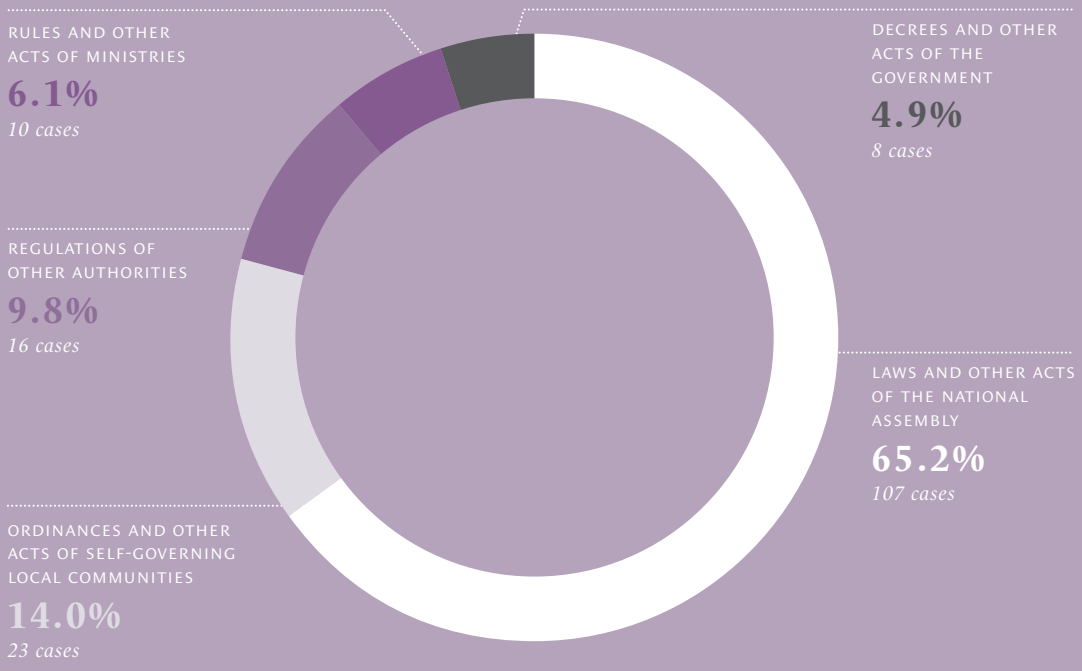


Figure **5** Number of Up Cases Received according to Panel in 2018

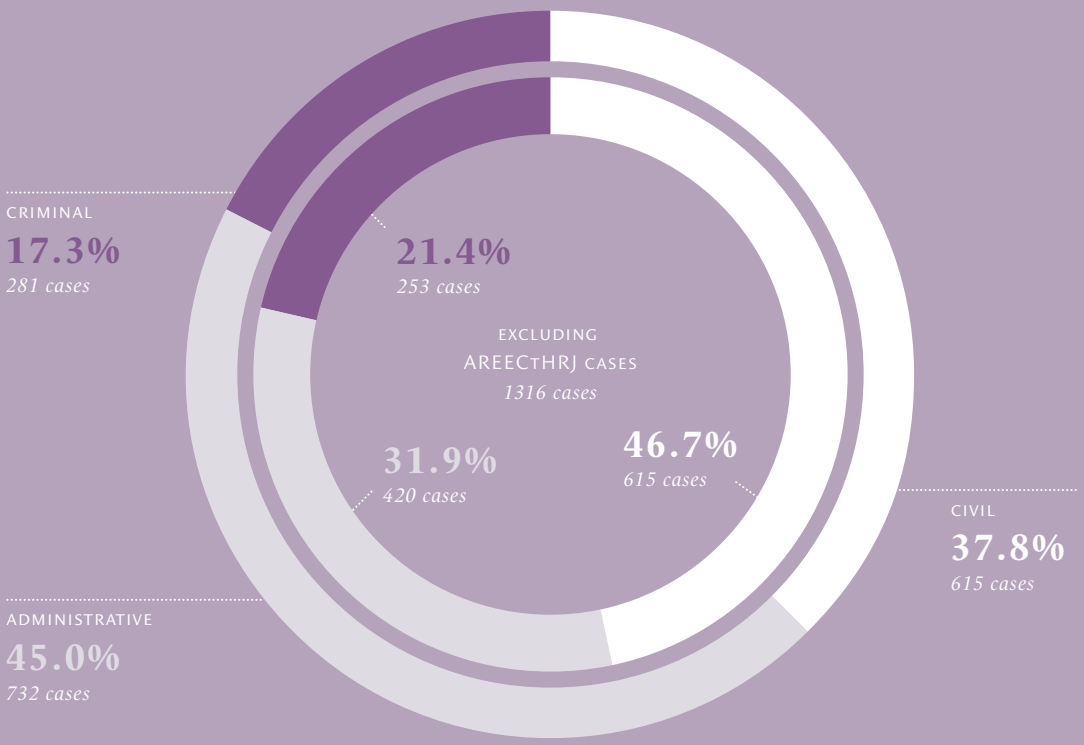


Table **8** Acts Challenged Multiple Times in the Cases Received in 2018

ACTS CHALLENGED MULTIPLE TIMES IN THE CASES RECEIVED IN 2018	NUMBER OF CASES
Act Regulating the Enforcement of the European Court of Human Rights Judgment in Case No. 60642/08	312
Civil Procedure Act	19
Criminal Procedure Act	9
Pension and Disability Insurance Act	9
Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act	8
National Assembly Elections Act	8
Claim Enforcement and Security Act	6
Attorneys Act	5
Minor Offences Act	5
Personal Income Tax Act	4
Health Care Services Act	4
Tax Procedure Act	4
Confiscation of Illicitly Acquired Property Act	4
Local Elections Act	4
Architecture and Civil Engineering Act	4
Enforcement of Criminal Sanctions Act	3
Act on the Judicial Review of Administrative Acts	3
International Protection Act	3
Game and Hunting Act	3
…	2

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

YEAR	CIVIL	ADMINISTRATIVE	CRIMINAL	TOTAL
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
2017	458	423	253	1134
2018	**615**	**732**	**281**	**1628**
2018/2017	**34.3%**	**73.0%**	**11.1%**	**43.6%**
2018*	**615**	**420**	**281**	**1316**
2018/2017	**34.3%**	**-0.7%**	**11.1%**	**16.0%**

***** Excluding AREECtHRJ Cases

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

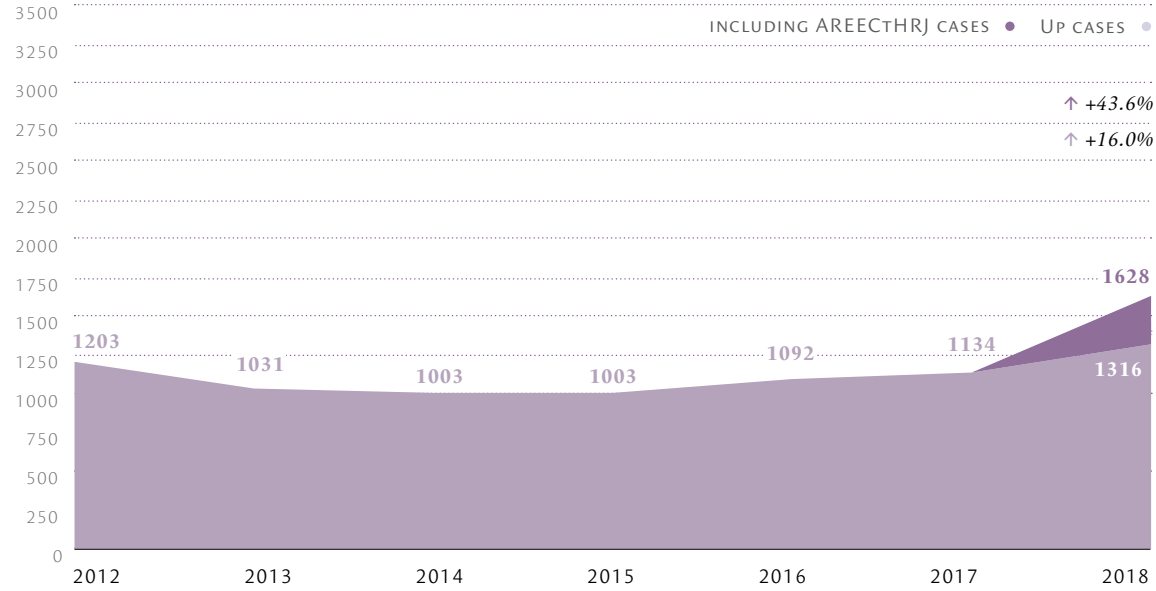


Table **10** Up Cases Received according to Type of Dispute

Type of Dispute (Up Cases)	Received in 2018	Percentage in 2018	Received in 2017	Change 2018/2017
Other Administrative Disputes	414	25.4%	146	183.6% ↑
Civil Law Litigation	344	21.1%	267	28.8% ↑
Criminal Cases	174	10.7%	196	-11.2% ↓
Labour Law Disputes	134	8.2%	66	103.0% ↑
Minor Offences	105	6.4%	56	87.5% ↑
Enforcement Proceedings	79	4.9%	69	14.5% ↑
Commercial Law Disputes	73	4.5%	63	15.9% ↑
Social Law Disputes	64	3.9%	39	64.1% ↑
Taxes	49	3.0%	63	-22.2% ↓
Non-litigous Civil Law Proceedings	47	2.9%	37	27.0% ↑
Insolvency Proceedings	43	2.6%	52	-17.3% ↓
Election	33	2.0%	1	3200.0% ↑
Matters concerning Spatial Planning	14	0.9%	19	-26.3% ↓
Succession Proceedings	13	0.8%	11	18.2% ↑
Denationalisation	11	0.7%	9	22.2% ↑
Proceedings related to the Land Register	9	0.6%	11	-18.2% ↓
Civil Status of Persons	7	0.4%	19	-63.2% ↓
No Dispute	6	0.4%	6	0.0%
Registration in the Companies Register	5	0.3%	0	↑
Other	4	0.2%	4	0.0%
Total	**1628**	**100.0%**	**1134**	**↑ 43.6%**

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

INITIATOR OF THE JURISDICTIONAL DISPUTE (P CASES)	NUMBER OF CASES
Medobčinski inšpektorat in redarstvo Maribor (Maribor Intermunicipal Inspectorate and Traffic Wardens Department)	1
Mestna občina Nova Gorica (City of Nova Gorica)	1
Ministrstvo za finance (Ministry of Finance)	1
Okrajno sodišče v Mariboru (Maribor Local Court)	1
Postaja prometne policije Ljubljana (Ljubljana Traffic Police Station)	1
Total	**5**

9. 2. Cases Resolved

Figure **7** Distribution of Cases Resolved in 2018

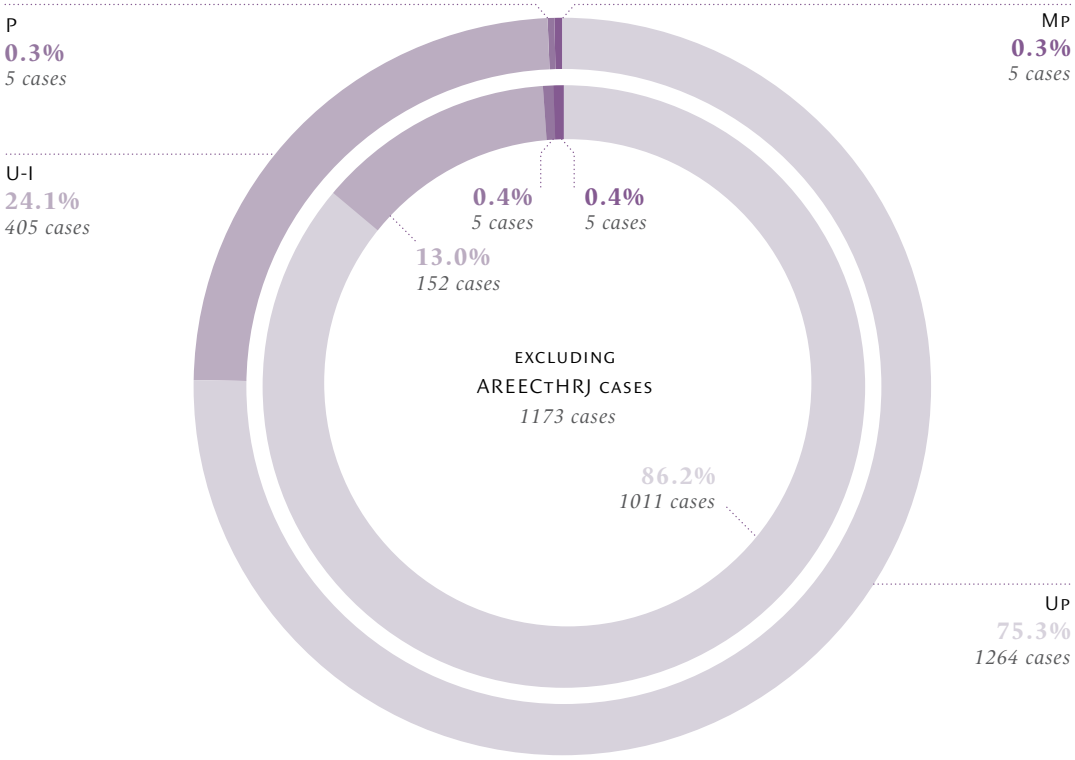


Table **12** Number of Cases Resolved according to Type of Case and Year Resolved

YEAR	U-I	UP	P	U-II	PS	RM	MP	TOTAL
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
2017	156	784	5	/	/	/	/	945
2018	**405**	**1264**	**5**	/	/	/	**5**	**1679**
2018/2017	**159.6%**	**61.2%**	**0.0%**	/	/	/	/	**77.7%**
2018*	**152**	**1011**	**5**	/	/	/	**5**	**1173**
2018/2017	**-2.6%**	**29.0%**	**0.0%**	/	/	/	/	**24.1%**

* Excluding AREECtHRJ Cases

Figure **8** Number of Cases Resolved by Year Resolved

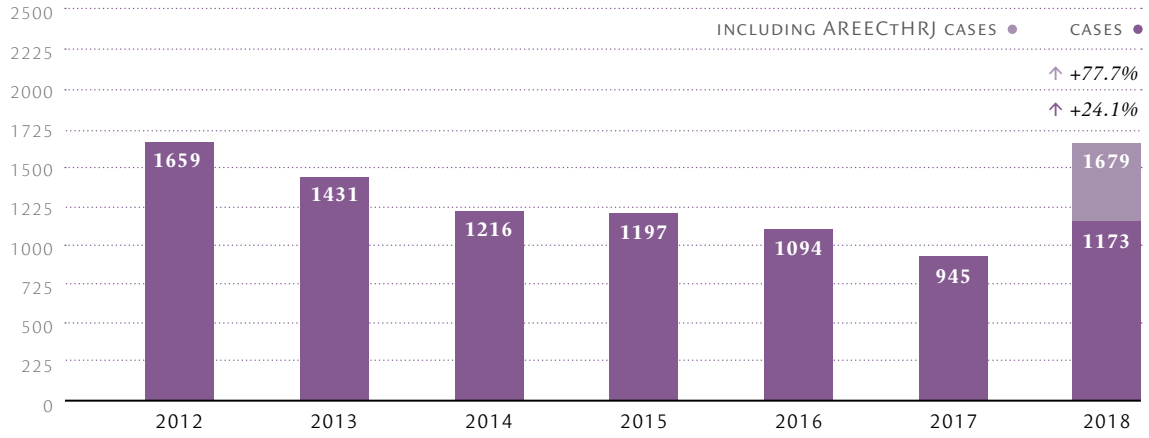


Figure **9** Number of U-I Cases Resolved by Year Resolved

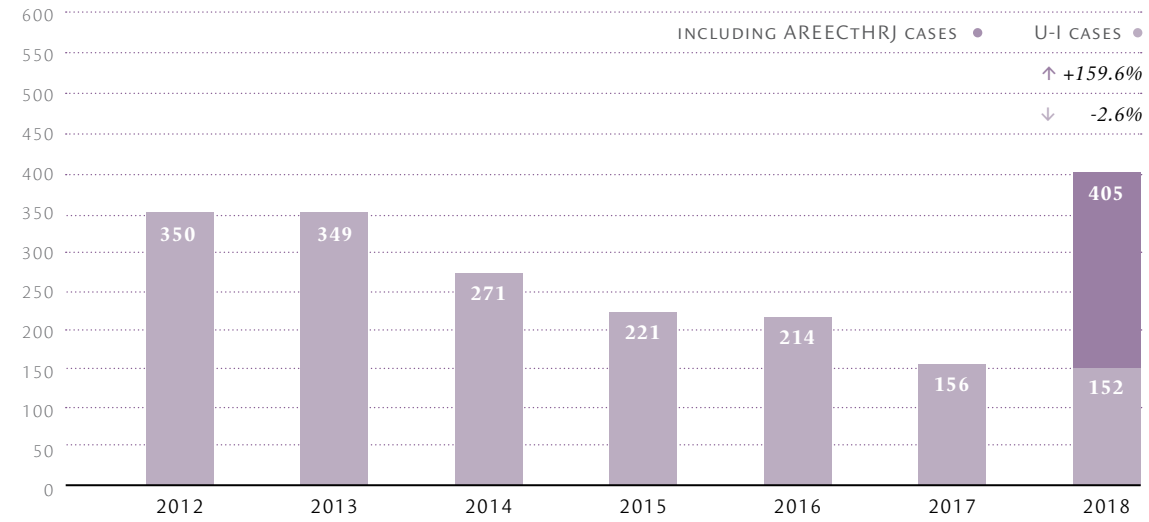


Figure **10** Number of Cases Resolved according to Type of Case and Year Resolved

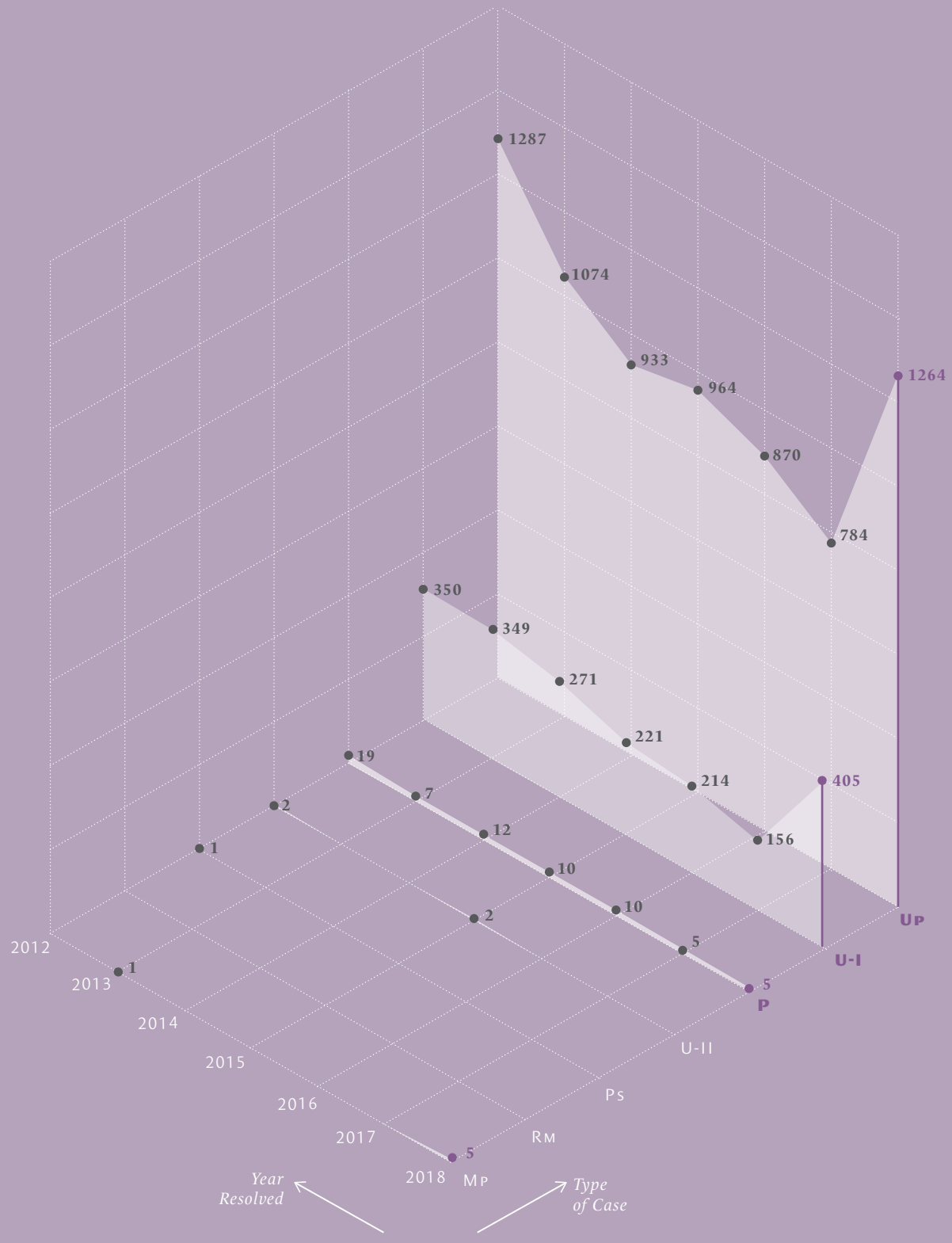


Table **13** Number of U-I Cases Resolved on the Merits by Year

YEAR	RESOLVED	RESOLVED ON THE MERITS	PERCENTAGE
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%
2017	156	19	12.2%
2018	**405**	**28**	**6.9%**
2018*	**152**	**28**	**18.4%**

***** Excluding AREECtHRJ Cases

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

TYPE OF RESOLUTION	2018 REQUESTS	2018 PETITIONS / *SUA SPONTE*	2018 TOTAL	2017	2016	2015	2014	2013	2012
Abrogation of statutory provisions	4	3	7	6	5	9	11	6	6
Inconsistency with the Constitution – statutory provisions	2	1	3	2	5	5	4	3	2
Inconsistency with the Constitution and determination of a deadline – statutory provisions	2	2	4	3	9	2	5	5	1
Not inconsistent with the Constitution – statutory provisions	6	3	9	7	14	10	0	15	9
Inconsistency, abrogation, or annulment of the provisions of regulations	2	1	3	2	8	5	7	12	22
Not inconsistent with the Constitution or the law – provisions of regulations	1	0	1	0	1	0	2	1	2
Dismissed	0	19	19	39	41	37	38	61	39
Rejected	10	348	358	111	132	154	156	238	187
Proceedings were stayed	3	8	11	10	8	8	31	22	82

Figure **11** Number of Up Cases Resolved by Year

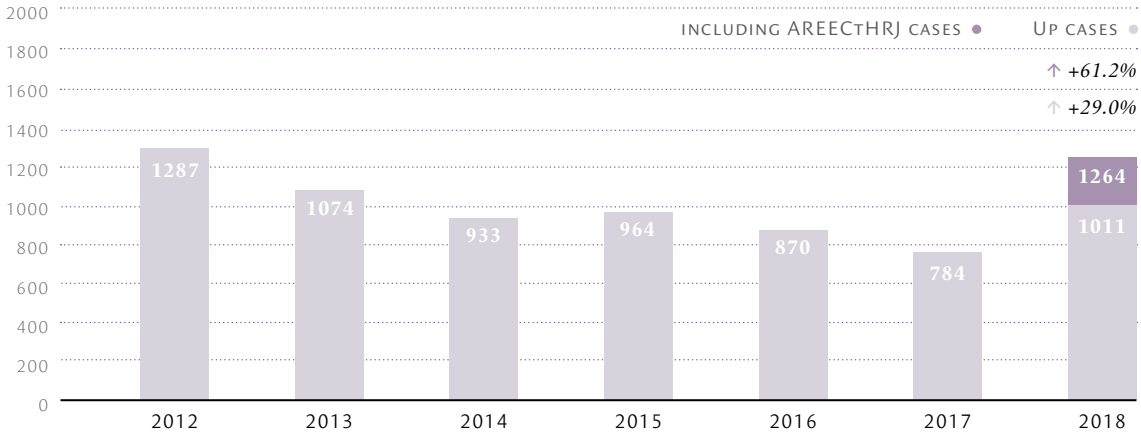


Table **15** Number of Up Cases Resolved according to Panel and Year

YEAR	CIVIL	ADMINISTRATIVE	CRIMINAL	TOTAL
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
2017	333	321	130	784
2018	**514**	**566**	**184**	**1264**
2018/2017	**54.4%**	**76.3%**	**41.5%**	**61.2%**
2018*	**514**	**313**	**184**	**1011**
2018/2017	**54.4%**	**-2.5%**	**41.5%**	**29.0%**

* Excluding AREECtHRJ Cases

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

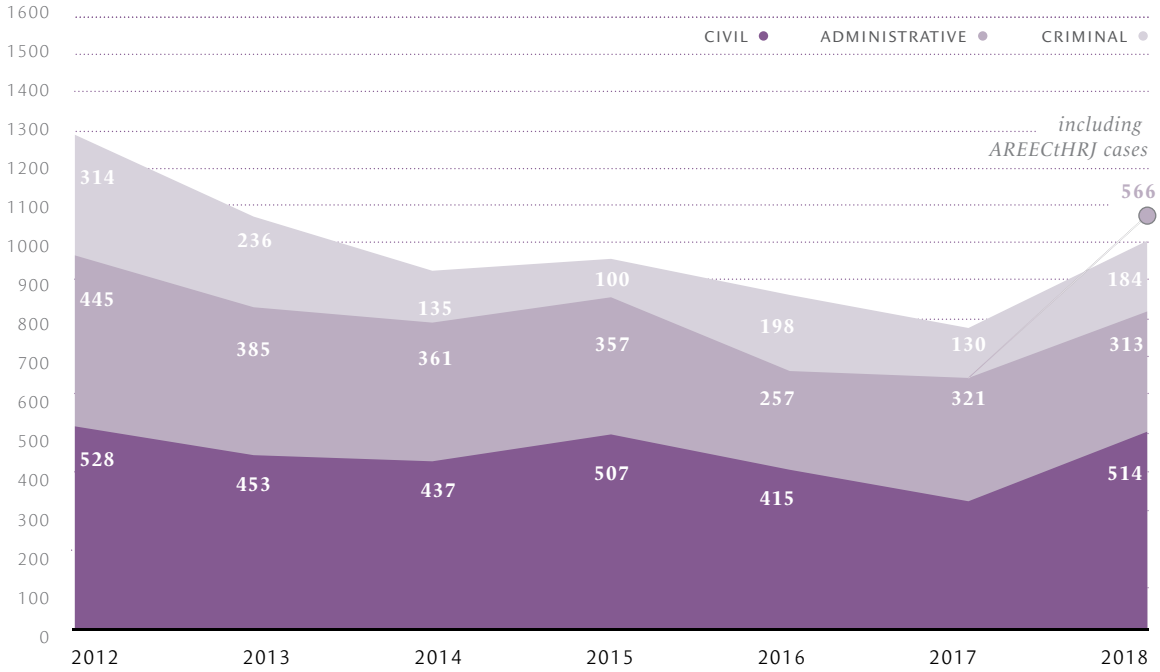


Table **16** Number of Up Cases Resolved according to Type of Dispute

TYPE OF DISPUTE	2018	PERCENTAGE IN 2018	2017	CHANGE 2018/2017
Other Administrative Disputes	319	25.2%	114	179.8% ↑
Civil Law Litigation	275	21.8%	205	34.1% ↑
Criminal Cases	158	12.5%	92	71.7% ↑
Enforcement Proceedings	80	6.3%	42	90.5% ↑
Labour Law Disputes	78	6.2%	44	77.3% ↑
Commercial Law Disputes	69	5.5%	48	43.8% ↑

Insolvency Proceedings	61	4.8%	33	84.8% ↑
Taxes	42	3.3%	28	50.0% ↑
Non-litigious Civil Law Proceedings	38	3.0%	25	52.0% ↑
Election	33	2.6%	1	3200.0% ↑
Minor Offences	27	2.1%	37	-27.0% ↓
Social Law Disputes	21	1.7%	30	-30.0% ↓
Denationalisation	14	1.1%	36	-61.1% ↓
Succession Proceedings	14	1.1%	3	366.7% ↑
Civil Status of Persons	9	0.7%	18	-50.0% ↓
Matters concerning Spatial Planning	9	0.7%	13	-30.8% ↓
Proceedings related to the Land Register	8	0.6%	5	60.0% ↑
No Dispute	5	0.4%	6	-16.7% ↓
Other	2	0.2%	4	-50.0% ↓
Registration in the Companies Register	2	0.2%	0	
Total	**1264**	**100.0%**	**784**	**61.2% ↑**

Table **17** Up Cases Granted

YEAR	ALL UP CASES RESOLVED	CASES RESOLVED ON THE MERITS	PERCENTAGE OF UP DECISIONS/ UP CASES RESOLVED	CASES GRANTED	PERCENTAGE OF UP CASES GRANTED/ UP CASES RESOLVED
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%
2017	784	88	11.22%	82	10.5%
2018	**1264**	**32**	**2.5%**	**25**	**2.0%**
2018*	**1011**	**32**	**3.2%**	**25**	**2.5%**

***** Excluding AREECtHRJ Cases

Figure **13** Type of Decision in Up Cases Accepted for Consideration

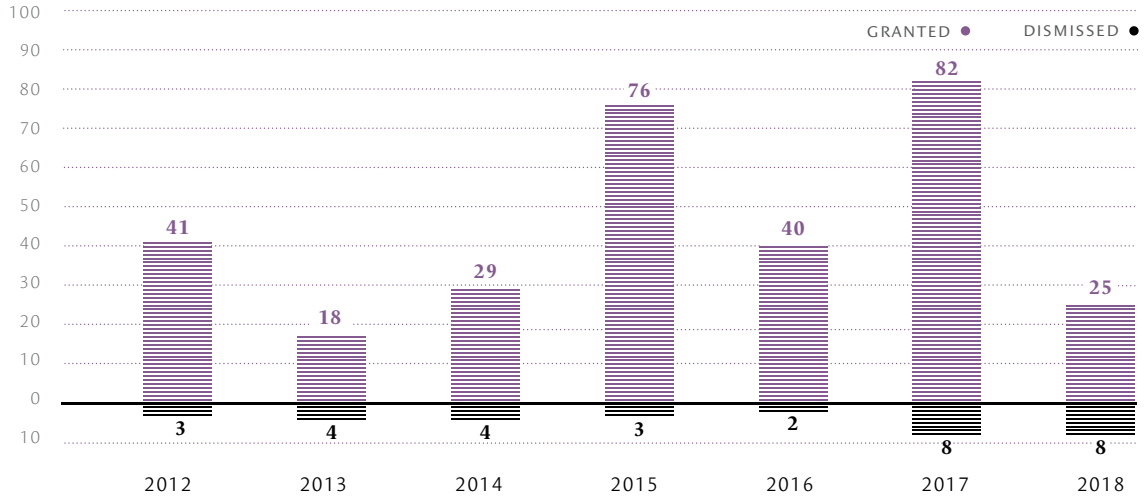


Table **18** Certain Other Types of Resolutions in Up Cases

YEAR	NOT ACCEPTED FOR CONSIDERATION	REJECTED
2012	798	537
2013	644	496
2014	605	340
2015	633	334
2016	539	334
2017	424	338
2018	**614**	**640**
2018*	**614**	**387**

***** Excluding AREECtHRJ Cases

Table **19** Number of P Cases Resolved on the Merits

	P		
YEAR	RESOLVED	RESOLVED ON THE MERITS	PERCENTAGE
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%
2017	5	4	80.0%
2018	**5**	**4**	**80.0%**

Table **20** Average Number of Days Needed to Resolve a Case in 2018 according to Type of Case

REGISTER	AVERAGE DURATION IN DAYS
U-I	271
Up	359
P	207
Mp	147
R-I	61
Total	**316**
Total excluding R-I Cases	**337**

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

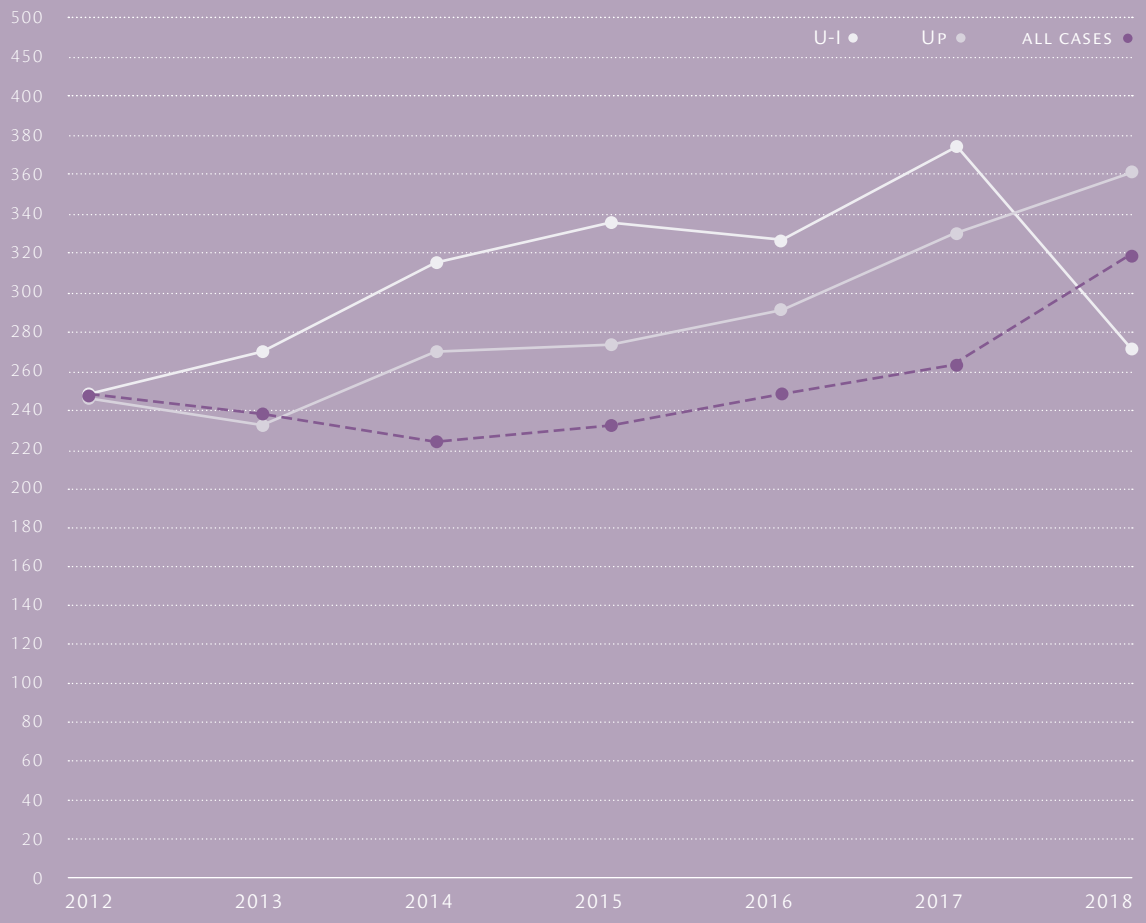


Figure **14 a** Average Number of Days Needed to Resolve Up Cases according to Panel

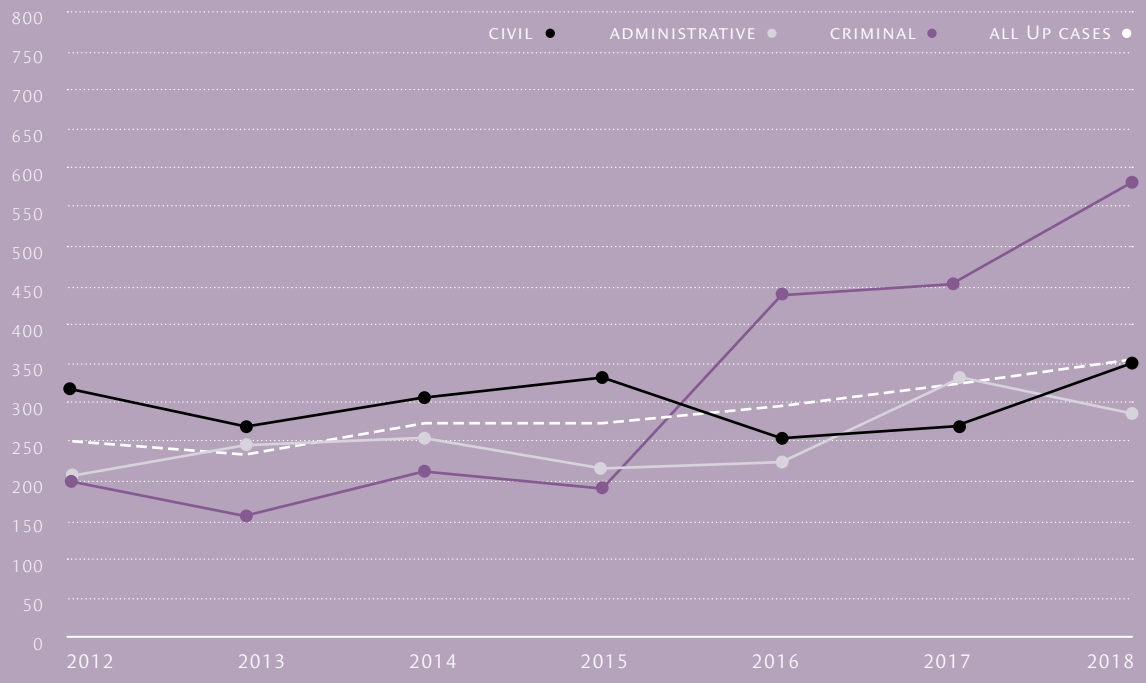


Table **21** Average Number of Days Needed to Resolve Up Cases according to Panel

PANEL	2018	2017	CHANGE 2018/2017
Civil Law	353	274	28.8% ↑
Administrative Law	286	332	-13.9% ↓
Criminal Law	599	463	29.4% ↑
Total	**359**	**328**	**9.5% ↑**

9. 3. Unresolved Cases

Table **22** Unresolved Cases by Year Received as of 31 December 2018

YEAR	2014	2015	2016	2017	2018	TOTAL
U-I		4	48	110	210	372
Up	2	17	186	525	980	1710
P					2	2
Total	**2**	**21**	**234**	**635**	**1192**	**2084**

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

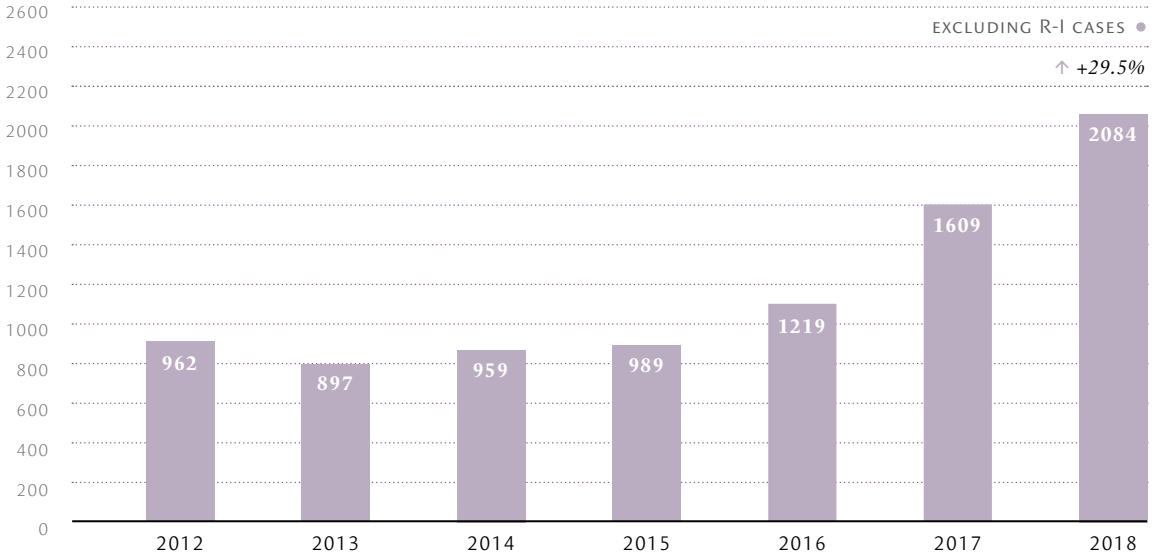
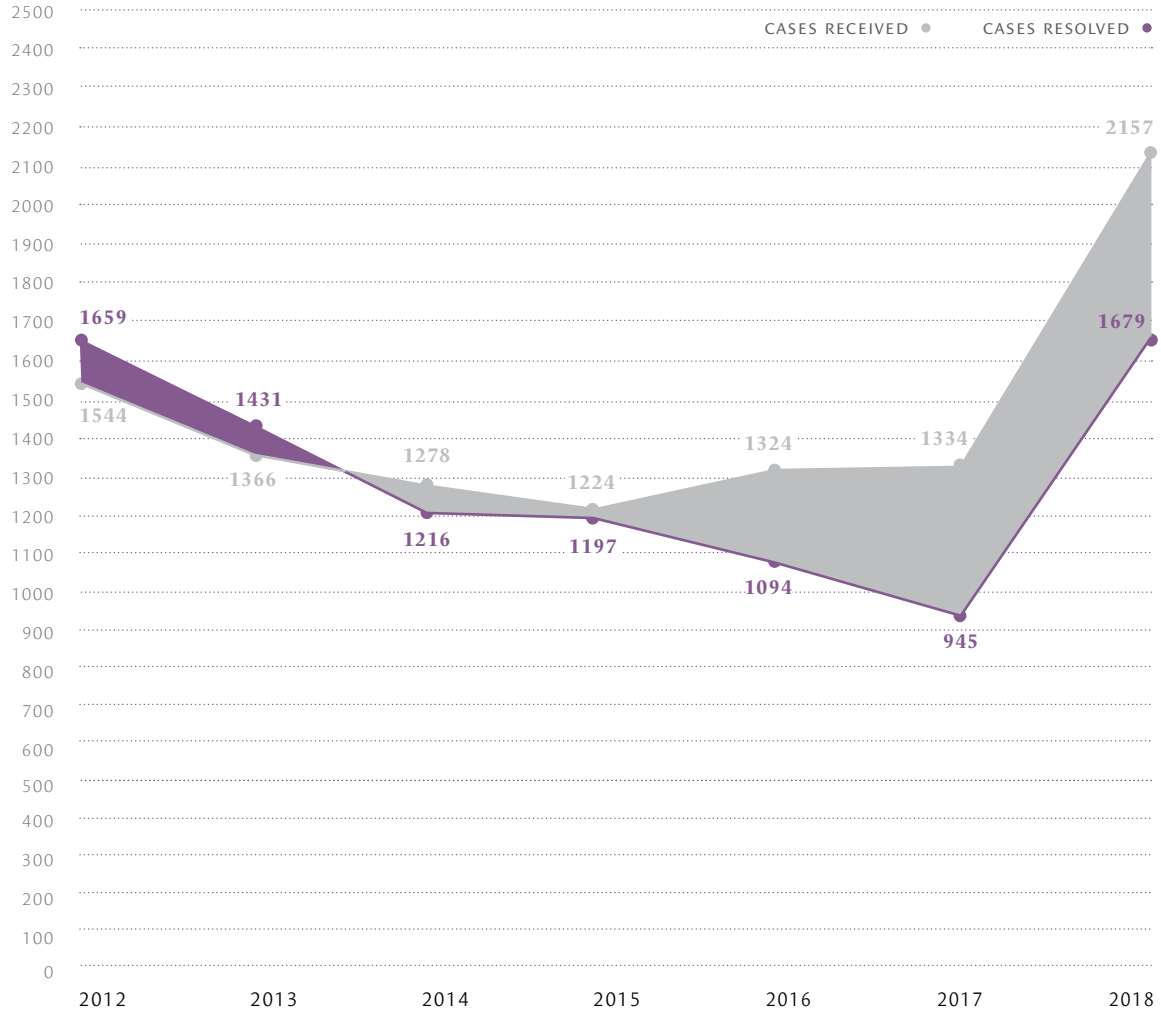


Table **23** Priority Cases Pending as of 31 December 2018

REGISTER	ABSOLUTE PRIORITY CASES	PRIORITY CASES	TOTAL
Up	40	462	502
U-I	37	47	84
P	/	2	2
Total without R-I	**77**	**511**	**588**

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



9. 4. Financial Plan Outturn

Table **24** Financial Plan Outturn by Year (in EUR)*

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% ↑
2017	3,293,454	601,661	534,436	4,429,551	13.2% ↑
2018	**3,369,433**	**587,518**	**203,570**	**4,160,521**	**- 6.1%** ↓

***** The data on the expenditure of public resources refer to resources from the state budget, earmarked funds, and cohesion funds, with the latter amounting to 2% of the outturn in 2018.

Figure **17** Financial Plan Outturn by Year (in EUR mil.)

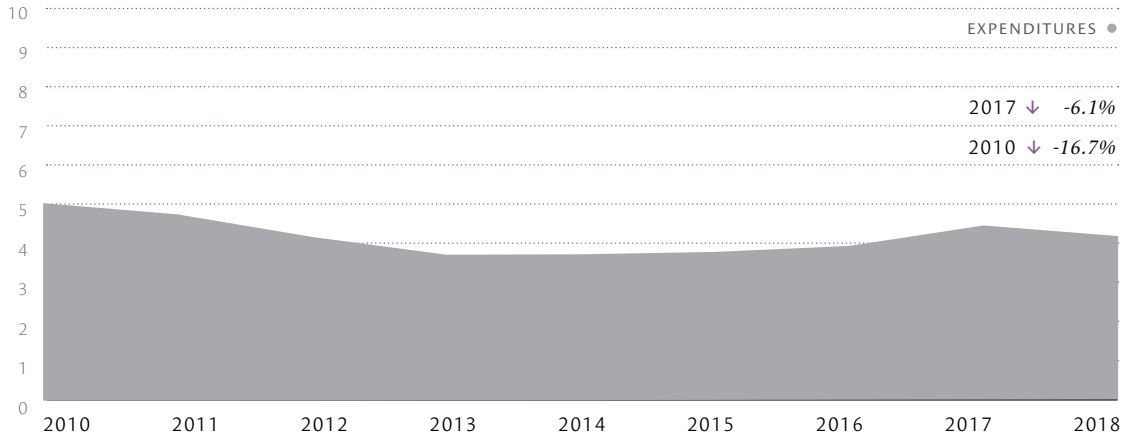


Figure **18** Distribution of Expenditures in 2018

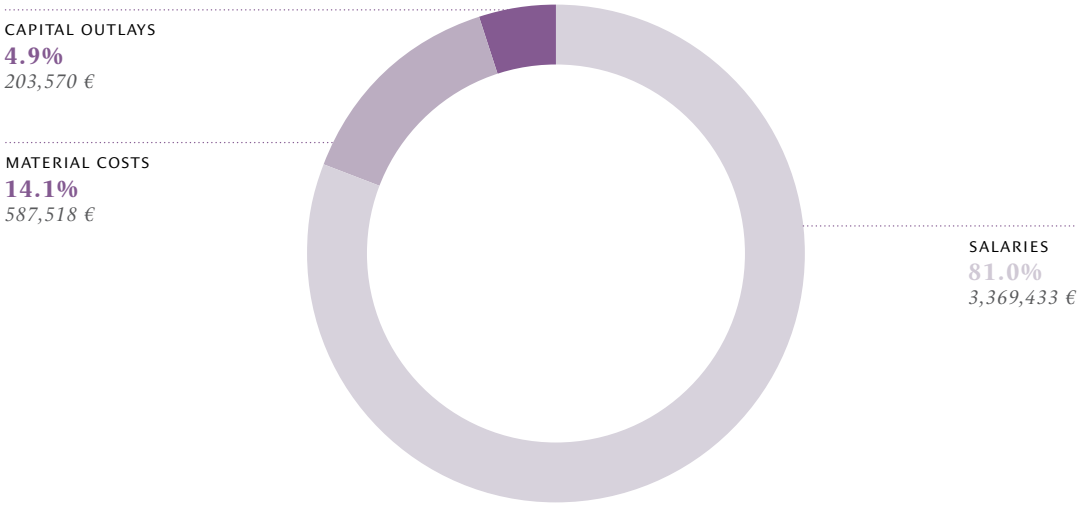
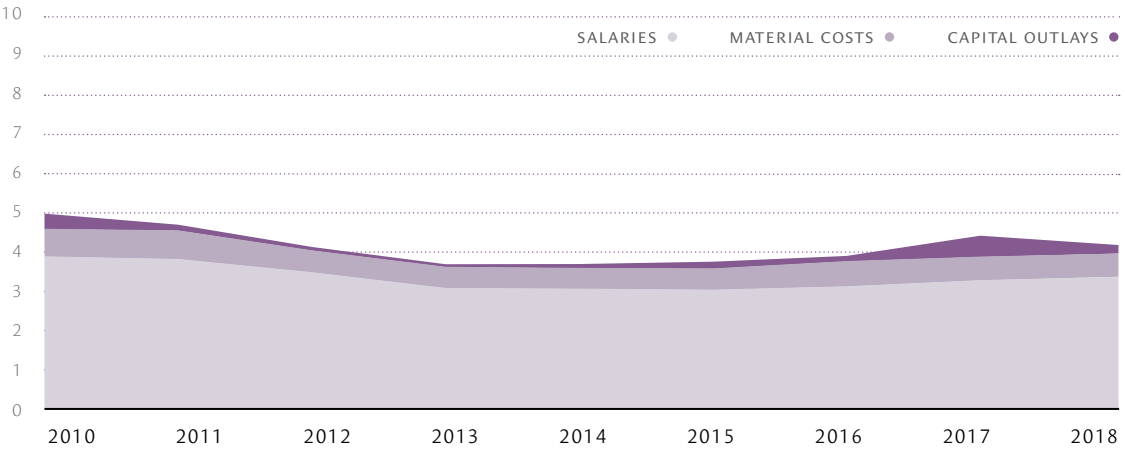


Figure **19** Distribution of Expenditures by Year (in EUR mil.)



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

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

Leonid Pitamic

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