

AN OVERVIEW OF THE WORK FOR 2019





THE CONSTITUTIONAL COURT  
OF THE REPUBLIC OF SLOVENIA

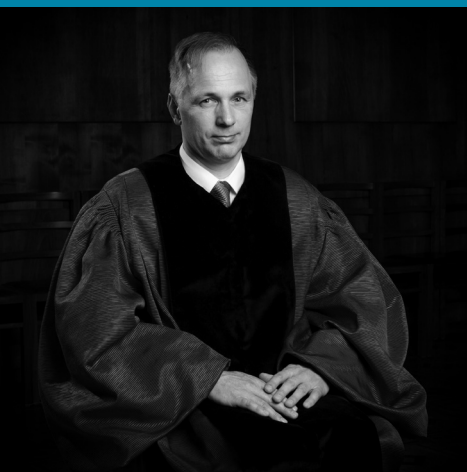
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## Foreword by the President of the Constitutional Court

This annual report sheds light on the functioning of the Constitutional Court from different perspectives, and also offers an opportunity to present a broader view of how the Constitutional Court fulfils its mission, thus lifting the curtain on the workings of the rule of law at the highest court in the country. The decisions of the Constitutional Court namely reflect whether the legislative, executive, and judicial branches respect constitutional values in the exercise of their authoritative powers and, if so, to what extent. In accordance with Article 23 of the Rules of Procedure of the Constitutional Court, the public character of the functioning of the Constitutional Court is ensured in particular through the public presentation of the annual report. Therefore, in this introduction I will attempt to present my view of the bigger picture of the functioning of the Constitutional Court and

draw attention to the challenges we encounter as part of our work. Last year, I completed the first year of my presidency of the Constitutional Court and thus, for me personally, this report also entails a reflection on what has been accomplished and a starting point for addressing future challenges.

Last year, the Constitutional Court was confronted with numerous cases that raised important constitutional legal questions, both in cases concerning a review of the constitutionality of regulations as well as in cases concerning constitutional complaints, and that required the application of the values of constitutional democracy. A comprehensive understanding of the remaining parts of the report, especially those presenting the Court's functioning in terms of numbers, is only possible if we proceed from the substantive part of this report.

The issues that the Constitutional Court encountered required mandatory interpretations of different provisions of the Constitution, including those that guarantee human rights and fundamental freedoms, as well as those regarding, for example, the organisation of the state and the relations between the branches of power. In its decisions the Constitutional Court thus considered the right to a home and the dignity of individuals, freedom of expression and the protection of personal data, the right to social security, the right to a healthy living environment in connection with numerous laws, the rights of migrants, the position of retired persons who wish to remain active in the employment market as entrepreneurs, and the rights of individuals with mental disorders. By means of a temporary suspension it reviewed the subtle balance of the separation of powers between the legislative and judicial branches and between the legislative and executive branches, as well as the system of checks and balances established

between them. It set constitutional limits on the effects of the admission of guilt in criminal proceedings and decided on the freedom of expression and the reputation of a political party, as well as on the admissibility of the use of drones for police purposes and an automatic number plate recognition system. It also engaged in a review of the constitutionality of European arrest warrants issued between Member States of the European Union. As the complexity of the social relations regulated and decided on by the other branches of power is increasing, so too is the range of issues encountered by the Constitutional Court expanding.

In 2019, the Constitutional Court resolved 1,804 cases. However, due to the significant increase in the number of constitutional complaints received, the number of cases resolved did not reach the number of cases received in 2019. Due to the consistently increasing number of new cases, the Constitutional Court has thus not been able to cope with its yearly workload. Based on the continuous monitoring of statistical data and given our improved efficiency, at the beginning of last autumn I still expected that by the end of the year the number of cases resolved would exceed the number of cases received; however, a significantly higher number of cases, particularly constitutional complaints, were lodged in the last quarter.

The heavy workload of the Constitutional Court and the time required to adopt a decision have prompted a number of considerations. At the moment we are working on more than 2,500 cases, with constitutional complaints amounting to more than 80% thereof. Despite ceaseless dedication to the pursuit of efficiency through appropriate internal organisational measures, which could influence the time required to adopt a decision, different questions arise; while the Constitutional Court can resolve some of them by itself, it can only draw attention to others, as it lacks the power to resolve the issues underlying these questions on its own. In any event, it has to be stressed that nine Constitutional Court judges cannot be expected to increase *ad infinitum* the number of cases resolved, as considerable thought has to be dedicated particularly to cases that raise new and precedential constitutional legal questions and which are also significantly entwined with the complexities of the national as well as European legal orders; the search for the right answers, consequently, requires a certain amount of time.

The nature of its decisions and their mandatory effect entail that the Constitutional Court is frequently the subject of public debate, among laypersons as well as among legal professionals and scholars. I cannot but agree with the criticism that proceedings take too long. They do not leave me indifferent, and looking for excuses is the last thing on my mind. I do, however, expect an objective perspective that will take into account the fact that the Constitutional Court, unlike many other constitutional courts, is vested with numerous powers, the broad access to the Constitutional Court, which is accessible by individuals as well as qualified applicants, and the relative lack of qualifying conditions for accessing the Court as compared to other legal systems (i.e. there are no court fees, representation by an attorney is not mandatory, there are no restrictions regarding the length of applications, etc.). The path to the Constitutional Court has also become faster in instances where the Supreme Court does not grant leave to appeal and the Constitutional Court must engage in a judicial dialogue with a court of second or even first instance (e.g. as regards minor offences).

However, it would be wrong to place only constitutional complaints in the foreground, as frequently a great deal of time has to be devoted to cases concerning a review of the constitutionality of a law or of the constitutionality or legality of regulations inferior to laws. These include cases which the Constitutional Court decides on the basis of petitions or requests of privileged applicants or cases where in constitutional complaint proceedings the Constitutional Court

itself comes to doubt the constitutionality of a regulation and initiates a review of its own motion (in accordance with the second paragraph of Article 59 of the CCA). Both concern cases that the Constitutional Court cannot be expected to decide promptly. Namely, in such cases even more time has to be dedicated to consideration of all of the effects and consequences of constitutional interferences at the statutory level, especially in cases that concern complex statutory regulations. When deciding such cases, the Constitutional Court adopts mandatory interpretations of the Constitution, which in constitutional democracies also have to be respected by the legislature. Comparative law shows that several constitutional courts do not adopt more than 60 precedential decisions per year. Such entails approximately five precedential decisions per month. Although the Constitutional Court already surpasses this number, the need for such decisions is even significantly greater. Therefore, a backlog has begun to form. And such has been our reality for years. Last year, the number of unresolved cases increased by 23%, although the level of efficiency remained approximately the same as in 2018.

A look into the history of the functioning of the Constitutional Court shows that this issue has always been addressed by means of internal measures and that the workload exceeded the limits of the capacity of the judges and personnel already a decade ago. As a result, there were attempts to resolve this issue not only through amendments to the Constitutional Court Act (hereinafter referred to as the CCA) in 2007, which limited constitutional complaints in certain fields (e.g. minor offences), but also by means of a more than necessary constitutional amendment in 2009. The latter, however, was unsuccessful. Prior to that the Constitutional Court had already introduced the doctrine of the direct effect of regulations (established in comparable legal systems), which only opens the doors to the Constitutional Court once a constitutional legal dialogue has taken place before the ordinary courts, and the requirement of the substantive exhaustion of constitutional legal questions in all available legal remedy proceedings, as in this regard the role of the Constitutional Court in relation to the judiciary must be distinctly subsidiary. Although the amendment of the Constitutional Court Act in 2007 afforded the Constitutional Court more room to manoeuvre and partly restricted access to the Constitutional Court, the number of new cases has continued to increase every year. Faced with such a reality, we, the Constitutional Court judges, cannot see any other option but to employ additional judicial personnel, i.e. advisors, whom the Constitutional Court nominates from among legal experts. This option immediately meets with not only financial limitations but also the spatial limitations set by “Plečník’s Palace”, the magnificent seat of the Constitutional Court.

Consequently, in recent months, in addition to our regular work, we have been intensely examining the possibility of implementing more far-reaching measures for addressing the backlog. The first two months of 2020 have namely shown that the trend of a significantly increasing workload continues. The 5% increase over the last two months proves that the adoption of additional and even more self-restricting internal measures on its own will probably not bring about the desired effects. For some time there has been a lack of interest in considering evidently unpopular systemic solutions (i.e. limiting the powers of the Constitutional Court, broadening its discretion regarding the acceptance of constitutional complaints for consideration on the merits, reasonable conditions for access to the Court, such as mandatory representation by an attorney, which could also improve the overall quality of applications), and thus the Constitutional Court is forced to seek new internal and external measures. I agree with the opinion of the Constitutional Court judges, who have consistently been drawing attention to this fact. However, this will not be the only appeal that the Constitutional Court is planning to address to the competent authorities in the near future. Experience shows that the Constitutional

Court still has to consider minor offences (in spite of Article 55a of the CCA, which limits its jurisdiction in this regard solely to important constitutional legal questions that exceed the meaning of an individual case) and that as a general rule it is the direct instance of appeal for circuit courts. In these cases we have detected an unacceptable degree of disregard for the standards of a fair trial established by the judgments of the European Court of Human Rights as well as the decisions of the Constitutional Court. Such cases take up the precious time of the Constitutional Court judges and personnel, which could otherwise have been dedicated to the consideration of important precedential issues. The lack of ordinary legal remedies in minor offence cases also entails a failure to harness the full potential of the ordinary courts, which are the first line vested with ensuring the constitutionality of adjudication.

Due to the above, issues concerning the system of judicial protection as a whole need to be considered, not only as a result of the heavy workload of the Constitutional Court, but also for substantive reasons. Does it really correspond to the Constitutional Court's constitutional role if it functions as a "safety net" intended to prevent, in every individual case, a party's easy access to the European Court of Human Rights? The role of the Constitutional Court is to establish standards for adjudication in order to ensure future respect for human rights and fundamental freedoms. I have serious doubts whether a direct path to the Constitutional Court following the judgment of a circuit court is constitutionally appropriate or if, instead, the establishment of different legal remedies in the statutory regulation of minor offences will have to be considered.

The latter further points to the question of whether the subsidiary role of the Constitutional Court is in fact being implemented at a systemic level. I arrive at the same concerns even if I proceed from the fact that so-called judicialisation is in the forefront of the current development of social relations. At courts – not only the Constitutional Court – we are namely confronted with an ever increasing number of cases that are frequently ever more complex, with detailed and complicated rules, as well as with new competences, an increasing number of legal remedies, and more stringent procedural safeguards. People have become ever more aware of their rights, while at the same time they also harbour unrealistic expectations regarding whether they in fact enjoy a certain right. Such is, of course, not a popular topic of conversation and this subject (as well as any person drawing attention thereto) can quickly become a target of criticism. The fact is, however, that all this leads to an increase in arguments. Do a greater number of arguments and a heavier workload for the judiciary also entail a higher level of legal certainty, or does exactly the opposite hold true?

Between a rock and a hard place, the Constitutional Court is thus attempting to find a path between an accelerated pace of decision-making and ensuring that such decision-making nevertheless remains responsible and therefore sufficiently contemplated. It cannot forego its role and efforts to ensure the quality of its decisions, which require sufficient time for consideration, not even at the cost of (excessively) long proceedings in numerous cases, many of which should never have reached the Constitutional Court in the first place.

Prof. Dr Rajko Knez

A handwritten signature in black ink, appearing to read 'Rajko Knez', with a stylized, cursive script.

## 1. Introduction

**O**n 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, most recently in February 2019, and it also brought this to the attention of the wider public by including it in the overviews of its work for 2016 and the following years. 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.

The Constitutional Court reiterates, as it has already done in previous overviews of its work, that 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 recommend 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 ensure the inclusion of the financial plans as proposed by these authorities in the draft budget, 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. Namely, by itself the executive power may not 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

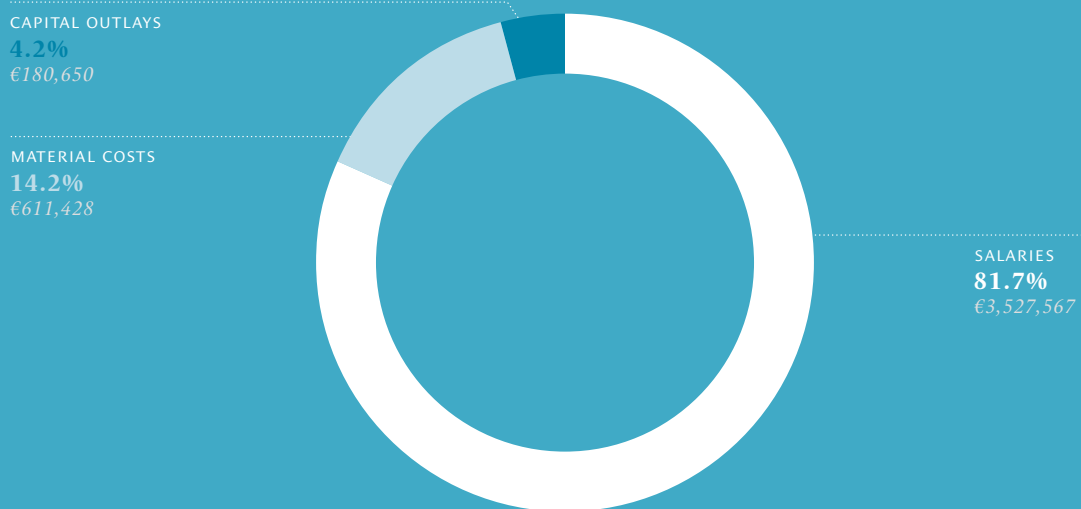
Ministry of Finance carries out inspections ensuring budgetary supervision under this Act and other regulations from the field of public finance have to be amended. Respect for the principle of the separation of powers can only be ensured if supervision of the use of the budgetary funds of the Constitutional 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 by 6.1% and amounted to EUR 4,160,521. In 2019, the budget outturn increased again, by 6.1%, and amounted to EUR 4,319,645, which is 3.9% more than in 2018. Cohesion funds accounted for 1.82% of the budget outturn for 2019. The bulk of the funds was used for salaries, with respect to which it has to be taken into consideration that the increase thereof was the result of changes in the salary system in the public sector. Then followed material costs, which, like salaries, are directly linked to the performance of the competences of the Constitutional Court, and capital outlays. It can be noted that the expenditure of the Constitutional Court in 2019 was 13.5% lower in comparison to 2010, when the budget outturn amounted to EUR 4,993,377, which was the highest amount thus far.

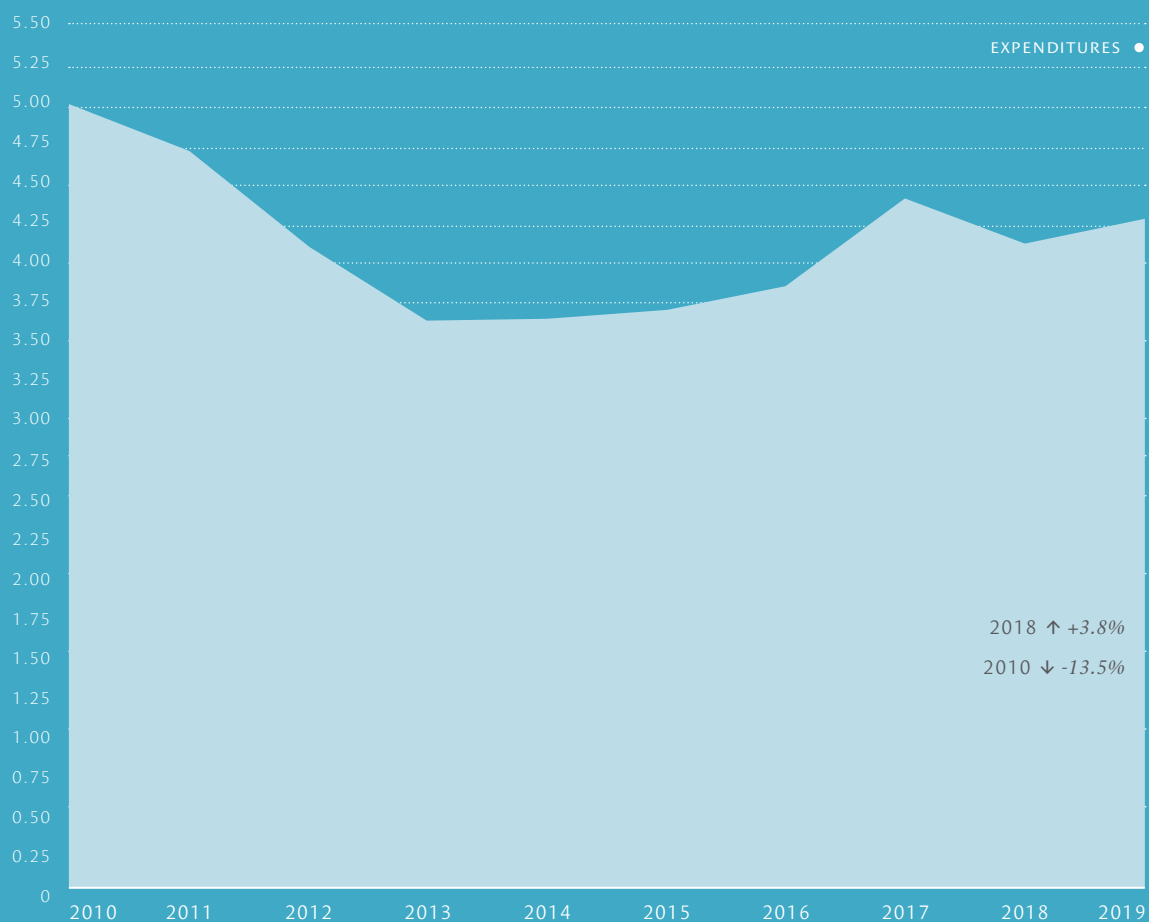
## Distribution of Expenditures in 2019

(see page 119)



## Financial Plan Outturn by Year (in EUR mil.)

(see page 119)



### 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 2019 there remained thirteen unimplemented Constitutional Court decisions, twelve 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 only slightly better than in 2018, as fourteen decisions remained unimplemented as of the end of 2018. While it falls within the competence of the National Assembly as the legislature to remedy unconstitutionality 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 unconstitutionality and illegality 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 eight decisions out of a total of thirteen 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 unconstitutionality established by two Constitutional Court decisions expired and the legislature has not yet responded thereto. 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.

In 2018, the time limit expired for the elimination of the unconstitutionality established by Decision No. U-I-64/14, dated 12 October 2017 (Official Gazette RS, No. 66/17). The Constitutional Court 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.

In 2019, the time limits expired for the elimination of the unconstitutionality established by three decisions of the Constitutional Court. By Decision No. U-I-191/17, dated 25 January 2018 (Official Gazette RS, No. 6/18), the Constitutional Court established that the Referendum and Popular Initiative Act is inconsistent with the Constitution as referendum disputes are not regulated in a clear and precise manner, as well as that two provisions of the Elections and Referendum Campaign Act are inconsistent with the Constitution as they enable the Government to organise and finance a referendum campaign in the same manner as other referendum campaign organisers. By Decision No. Up-769/16, U-I-81/17, dated 12 July 2018 (Official Gazette RS, No. 54/18), the Constitutional Court held that the regulation of the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act, which does not provide a possibility for a debtor to remedy a procedural action that he or she failed to perform in time, and which does not provide the court an adequate basis to invite the debtor to perform the missed procedural action, is inconsistent with the Constitution. 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 established that the statutory regulation of election disputes relating to elections to the National Council is imprecise and incomplete, which prevents or substantially hinders effective exercise of the right to legal remedies determined by Article 25 of the Constitution and exercise of the right to judicial protection determined by the first paragraph of Article 23 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.



## 4. The Composition of the Constitutional Court

**T**he 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  
Prof. Dr Matej Accetto, Vice President  
Dr Dunja Jadek Pensa  
Assist. Prof. Dr Špelca Mežnar  
Marko Šorli  
Acad. Prof. Dr Marijan Pavčnik  
Prof. Dr. Dr. Klemen Jaklič  
Prof. Dr Katja Šugman Stubbs  
Dr Rok Čeferin

THE JUDGE WHO COMPLETED HER TERM OF OFFICE IN 2019

Assist. Prof. Dr Etelka Korpič – Horvat





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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 Luxembourg. 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

27 March 2017

Assumed the office  
of Vice President

28 September 2019



## 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.

15 July 2011



### DR DUNJA JADEK PENZA

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

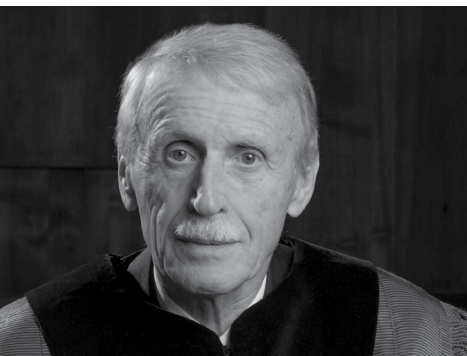
Supreme Court of the Republic of Slovenia, while continuing to work as a district court judge in the commercial department of the District Court in Ljubljana. In 1997, she was appointed higher court judge at the Higher Court in Ljubljana, where she worked in the commercial department. In 2004, she became 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.



#### 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.



## 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.



#### 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 5<sup>th</sup> 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.



## PROF. 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 53<sup>rd</sup> 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.



## PROF. 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), Institut 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.



## DR ROK ČEFERIN

graduated from the Faculty of Law of the University of Ljubljana in 1989. In the same year he started to work as a trainee attorney at the attorney's office of Dr Peter Čeferin in Grosuplje and continued to work there as an attorney after he passed the state legal examination. His father, brother, and he transformed the attorney's office into Law Firm Čeferin & Partners. He was employed at the law firm as an attorney until he commenced duties as judge of the Constitutional Court. In 2012, he obtained a doctorate in law from the Faculty of Law of the University of Ljubljana. Since 2015 he has taught the subject Journalism, Ethics, and Professionalism at the

Faculty of Social Sciences of the University of Ljubljana. In 2018, he became Assistant Professor in the field of journalism studies and Research Fellow at the same faculty. He has participated in several conferences organised by Slovene faculties and different professional associations. After completing his doctoral studies, he participated by delivering a paper or as a lecturer at the Attorney's School (2014) and the Day of Slovene Attorneys (2015). Upon the invitation of Slovene judges, he delivered a lecture at the Judicial School for Civil Law Seminar (2016), while upon the invitation of Slovene prosecutors he delivered a talk at the Slovene State Prosecutors Days (2017). He has participated in seminars organised by the Slovene Academy of Sciences and Arts twice; the first time on the topic of hate speech and freedom of speech (2015), and the second time on the topic of the temporal dimension of the interpretation of laws (2018). In 2018, the President of the Republic of Slovenia invited him to participate in a seminar on hate speech and freedom of speech. He also delivered lectures at the Days of Slovene Lawyers in Portorož, the Days of European Law at the Law Faculty in Ljubljana, and the international conference CEECOM held by the Faculty of Social Sciences in 2017 in Ljubljana. He participated in these seminars and conferences with contributions addressing the protection of human rights, primarily freedom of expression. He is the author of numerous articles published in Slovene and international legal journals (his bibliography includes more than 50 entries in COBISS) and a scientific monograph entitled *Meje svobode tiska v sodni praksi Ustavnega sodišča Republike Slovenije in Evropskega sodišča za človekove pravice* [The Limits of Freedom of the Press in the Jurisprudence of the Constitutional Court of the Republic of Slovenia and the European Court of Human Rights]. Slovene courts have cited the monograph several times as a reference in the reasoning of their judgments. He has been a member of the Board of Editors at the journals *Odvetnik* [Attorney] and *Pravosodni bilten* [Legal Bulletin] and a member of the Attorneys' Academy Council. In 2012, the Bar Association of Slovenia awarded him the title "specialist in civil and media law". In 2018, he co-authored a commentary on the Criminal Code under the auspices of the Faculty of Law of the University of Ljubljana. In 2019, the Minister of Culture appointed him to the expert commission on drafting amendments of the Media Act. He commenced duties as judge of the Constitutional Court on 28 September 2019.

Assumed the  
office of judge

28 September 2010

Held the office  
of Vice President

from 31 October 2016  
until 27 September 2019

Completed her  
term of office

27 September 2019

#### 4.2. The Judge Who Completed Her Term of Office in 2019



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 deagrara 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

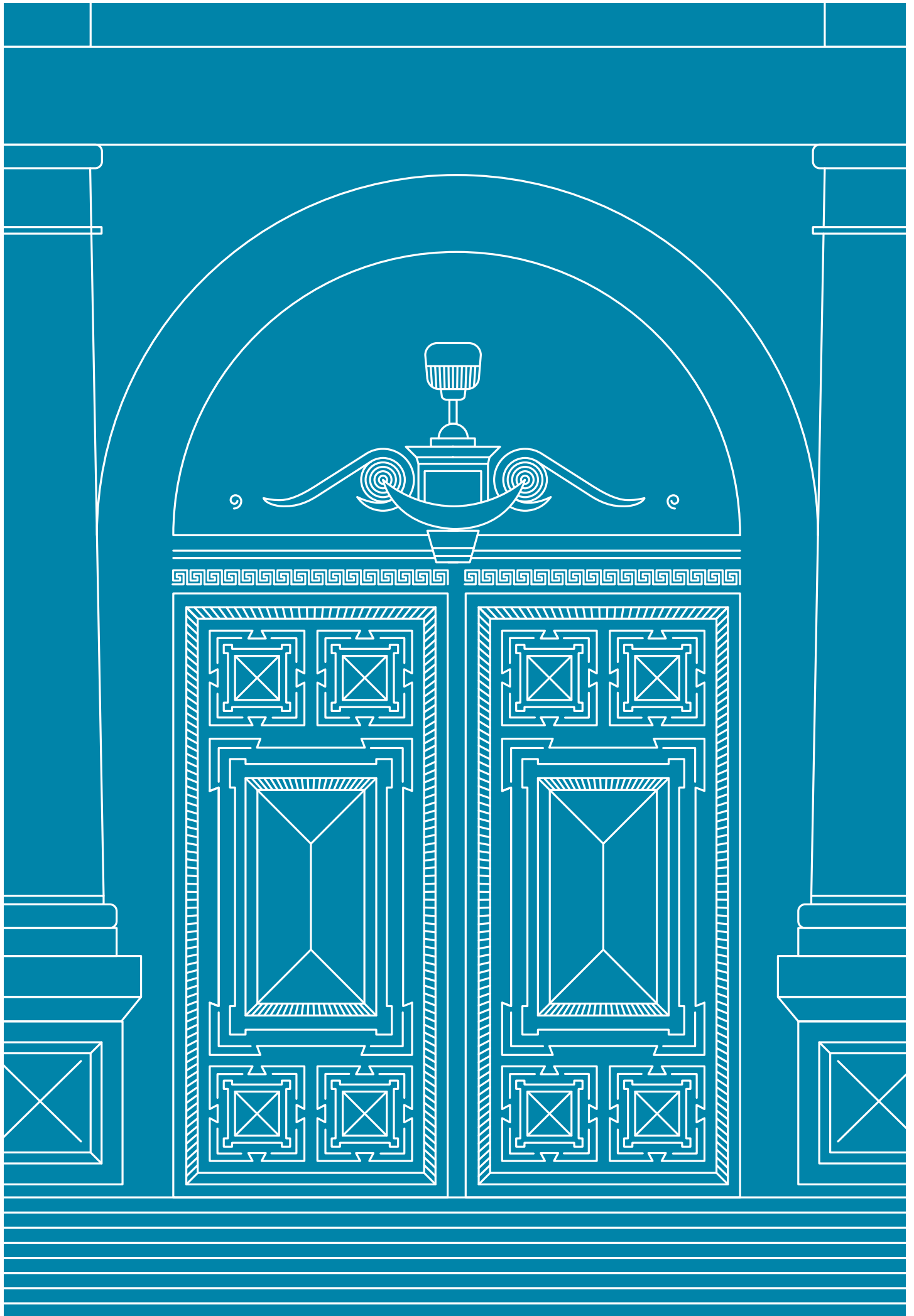
of Audit of the Republic of Slovenia until February 2004. From 1994 until she was elected judge of the Constitutional Court she taught labour law at the Faculty of Law of the University of Maribor. At the same Faculty she was head of the institute for employment relationships and social security and 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 deagrara zacija pomurskega prebivalstva* [Employment and Deagrara zation 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 postopka 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.

#### 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

**I**n 2019, 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. Contempt of Court and Freedom of Expression

By Decision No. Up-455/15, dated 24 January 2019, the Constitutional Court decided on the constitutional complaint of an attorney who acted in criminal proceedings in the capacity of an authorised representative of the injured party acting as a subsidiary prosecutor. In the appeal against the judgement of acquittal of the court of first instance, the complainant wrote, *inter alia*, that “the judge should already have known [...]; things that he should know, he doesn’t know; he was not capable of realising and understanding [something] correctly; he is just absurd in his reasoning, unprofessional and superficial; his statements are a shame to the court” and that “the mentioned judge [...] has such an obvious tendency towards accused individuals who ‘represent something in public life’ as well as to the accused in these concrete proceedings that it makes it distasteful and unhygienic (and not only contrary to the law and the Constitution) for him to judge in the case at issue.” Due to these statements in the appeal, the Higher Court imposed on the complainant a fine of EUR 1,500.00 for contempt of court.

The starting point for the assessment of the Constitutional Court was Article 39 of the Constitution, which guarantees freedom of expression. Freedom of expression, however, protects not only the dissemination of opinions that are received favourably, but also extends to critical and harsh statements. In accordance with the established constitutional case law, the limits to acceptable criticism significantly depend on the social role of the person concerned. While Article 39 of the Constitution does not explicitly determine the reasons that can substantiate the admissibility of an interference with freedom of expression, such reasons are set out in the second paragraph of Article 10 of the ECHR. In view of the fifth paragraph of Article 15 of the Constitution, the mentioned reasons, as well as the case law of the ECtHR, have to be taken into account when assessing the admissibility of an interference with freedom of expression.

In this case, the Constitutional Court assessed three issues: firstly, whether regarding the challenged order the courts balanced the complainant’s freedom of expression under the first paragraph of Article 39 of the Constitution against the public interest in ensuring the reputation of

the judiciary referred to in the second paragraph of Article 10 of the ECHR; secondly, whether thereby the courts took into account the constitutionally significant circumstances and criteria formed in the constitutional case law and in the case law of the ECtHR; and thirdly, whether the courts appropriately assessed the individual criteria and circumstances in view of the significance and objective of the relevant human right and public interest and gave the appropriate weight to the mentioned right and to the public interest.

By the challenged order, the Higher Court punished the complainant on the basis of the first paragraph of Article 78 of the Criminal Procedure Act (the CrPA). It held that the complainant's criticism containing disparaging expressions cannot be tolerated as thereby the complainant allegedly reproached the judge throughout the entire appeal for conducting an intentional and biased trial and allegedly labelled him a biased judge. By reproaching the judge for treating persons who represent something in public life differently, the complainant allegedly asserted that the judge's bias is a personal characteristic that is allegedly completely contrary to what a judge is supposed to represent and also to what is expected of him or her. Such reproaches allegedly entail a negative value judgment that had no basis in the file. The Supreme Court confirmed the positions of the Higher Court and adopted an additional position according to which the principle of proportionality does not apply in the case at issue since insulting communication at court is allegedly not acceptable under any circumstances, no matter which participant it is directed at, and especially when the court itself is at issue. In the assessment of the Supreme Court, an insulting manner of communication cannot be tolerated and neither can it be compared on the basis of the principle of proportionality with any constitutional or procedurally guaranteed right of individual participants in certain judicial proceedings. Therefore, the wording of Article 78 of the CrPA is also allegedly written in such a manner that it obliges the court to punish a person who has committed such contempt.

The Constitutional Court held that the position of the Supreme Court violated the complainant's freedom of expression determined by the first paragraph of Article 39 of the Constitution. It highlighted that courts have to accept critical assessments of their work that are admissible from the point of view of the human right to freedom of expression, whereby such admissibility has to be assessed not only in accordance with Article 78 of the CrPA, but also with the criteria formed by the ECtHR on the basis of Article 10 of the ECHR and by the Constitutional Court on the basis of Article 39 of the Constitution. In the assessment of the Constitutional Court, punishing an attorney in accordance with Article 78 of the CrPA for contempt of court necessarily also presupposes an assessment by a court of the necessity of imposing a fine in a democratic society in order to protect the authority and impartiality of the judiciary. A subjective assessment that the remarks of an attorney are insulting and that he or she could have expressed the allegations in an appeal in a more appropriate manner thus does not suffice to impose a fine; in order to impose a fine it is decisive to assess that in the circumstances of the case punishment is necessary to protect the authority and impartiality of the judiciary. Such assessment thus points to the importance of protecting the authority and impartiality of the judiciary in relation to the importance of protecting the right to freedom of expression of an attorney, and in this respect all circumstances of the case also need to be taken into account. In the case at issue, these were the following: a) the position of the complainant, who defended the interests of her client in the criminal proceedings in her capacity as an attorney, b) the fact that the complainant expressed the criticisms in an appeal, thus in a legal remedy, c) the context in which the criticism was expressed and the form of the expressed criticism, and (č) the severity of the imposed fine and the potential intimidating effect of the imposed fine related thereto.

The Constitutional Court also underlined that despite the text of the first paragraph of Article 78 of the CrPA being written in affirmative terms, such does not entail that a court does not have to take into account Article 10 of the ECHR, Article 39 of the Constitution, and thus also the principle of proportionality. Quite the contrary. Since, in accordance with the established constitutional case law as well as the case law of the ECtHR, freedom of expression also protects expressions that shock, offend, or disturb if their sole intent is not to insult or to shame, such weighing is necessary for a court to decide. As the challenged position of the Supreme Court did not take this into account, it entails a violation of the right to freedom of expression determined by the first paragraph of Article 39 of the Constitution. The Constitutional Court abrogated the order of the Supreme Court and remanded the case thereto for new adjudication.

## 5.2. The Right to Respect for One's Home

By Decision No. Up-619/17, dated 14 February 2019 (Official Gazette RS, No. 17/19), the Constitutional Court decided on the constitutional complaint of a complainant whose lease contract for a non-profit rental apartment was cancelled. In civil proceedings, the court of first instance dismissed the claim of the Municipality of Piran to cancel the complainant's lease contract for a non-profit rental apartment due to the existence of fault grounds, i.e. lengthy rent payment default. The Higher Court, however, upheld the appeal of the municipality and changed the judgement of the first instance court such that it granted the claim for the cancellation of the lease contract and ordered the complainant to vacate the apartment within a period of sixty days from the finality of the judgement.

In the constitutional complaint, the complainant objected to the following key positions of the challenged judgment: (1) the long-term social hardship of the complainant does not substantiate a circumstance that would prevent the cancellation of the lease contract of a tenant in a non-profit apartment in accordance with the first paragraph of Article 104 of the Housing Act; and (2) defaulting on the payment of rent can count as fault grounds for the cancellation of the contract regardless of the fact that the complainant was discharged from these liabilities by a final order issued in personal bankruptcy proceedings already before the completion of the first instance proceedings.

In the case at issue, the Constitutional Court considered the important constitutional question of whether by deciding that the complainant has to move out of the non-profit rental apartment her right to respect for one's home – which is protected within the framework of the right to the inviolability of dwellings determined by the first paragraph of Article 36 of the Constitution and the right to respect for private and family life determined by Article 8 of the ECHR – was possibly interfered with. Neither Article 8 of the ECHR nor the first paragraph of Article 36 of the Constitution ensure individuals the right to be provided a home; however, in certain instances the right to respect for one's home ensures an individual the right to a judicial assessment of the proportionality of the interference before the imminent loss of his or her home. In this respect, the Constitutional Court took into account that in non-profit tenancy relationships also the principle of a social state determined by Article 2 of the Constitution is significantly underlined.

Whether an individual's residence in a specific place already entails his or her home within the meaning of Article 8 of the ECHR depends on the factual circumstances of the concrete case. The right to respect for one's home can be invoked also by a person who is not the owner of an

apartment if he or she can demonstrate the existence of a sufficient and continuous link with a certain space. It is undisputed that the complainant had lived in the non-profit apartment since the conclusion of the lease contract on 27 December 2001, thus for a period of fifteen years at the time of the proceedings before the court of first instance. This apartment therefore undoubtedly represented her home and the decision of the Higher Court ordering the complainant to move out interfered with the complainant's right to respect for one's home. The loss of one's home represents the most extreme interference with the right to respect for one's home.

In contrast to the court of first instance, the Higher Court assessed that by referring only to long-term social hardship the complainant did not prove the existence of particularly exceptional circumstances due to which it would not be possible to cancel the lease contract. It did not, however, thereby assess whether considering all the circumstances of the concrete case the obligation to move out of the apartment represents a proportionate measure. It is precisely long-term social hardship that as a general rule indicates that the tenant of a non-profit apartment is in fact not able to pay the rent (thus that, as a general rule, it was not the case that the tenant did not pay the rent although he or she was able to). The Higher Court should have carefully weighed, by taking into consideration all of circumstances of the case, whether the case at issue indeed concerned a situation in which the complainant did not take her obligation to pay the rent seriously enough despite the received financial assistance or whether perhaps the complainant was in fact not able to pay the rent. It is only following such a careful assessment of the circumstances of the case that the Higher Court should have assessed whether the eviction of the complainant from the non-profit rental apartment represents a proportionate measure required to protect the interests of the Municipality or broader public interests.

The Higher Court failed to take into account the requirements following from the right to respect for one's home guaranteed to the complainant also when assessing the second key position of the first instance court judgement, which by itself sufficed for the dismissal of the claim. It adopted the position that the final discharge of liabilities cannot be taken into account, as the moment in which an action is lodged is decisive for the assessment of whether the conditions for eviction are fulfilled. The Higher Court did not state detailed reasons for this position. In view of the different position in legal theory and case law according to which a court in civil proceedings can take into account the state of the facts existing at the moment of the closure of the main hearing before the court of first instance, the Higher Court should have stated more detailed reasons for its position. Since it did not state detailed reasons why, after the final discharge of past liabilities (which the court of first instance was allowed to take into account in view of generally accepted procedural rules), eviction due to the non-payment of discharged liabilities (under no circumstances can the Municipality any longer claim such liabilities from the complainant) allegedly represents a necessary measure for protecting the interests of the Municipality (in particular taking into consideration the fact that, in accordance with the findings of the court of first instance, the complainant has been regularly fulfilling her new liabilities under the lease contract), it violated the complainant's right to respect for one's home.

Due to the fact that when the Higher Court upheld the claim of the Municipality to evict the complainant from the non-profit rental apartment it did not carry out a particularly careful assessment of the proportionality of the interference with the complainant's right to respect for one's home that took into consideration all of the circumstances of the case at issue, it inadmissibly interfered with her right to respect for one's home determined by the first paragraph of Article 36 of the Constitution. The Constitutional Court thus abrogated the challenged judgment of the Higher Court and remanded the case to that court for new adjudication.

### 5.3. The Impartiality of Judicial Council Members

By Decision No. Up-1094/18, dated 21 February 2019, the Constitutional Court addressed the issue of the impartiality of the members of the Judicial Council when the latter decides on the appointment or promotion of judges. The complainant filed an action against a decision of the Judicial Council by which another person was appointed higher court judge, a position for which the complainant had also applied. The Administrative Court dismissed the action. The Supreme Court dismissed the motion to file an appeal before the Supreme Court. The Administrative Court stated two reasons for dismissing the complainant's allegations as to the impartiality of two members of the Judicial Council, namely 1) that the allegations are merely vague and 2) that the allegations stated in the action are of no relevance since even the potential exclusion of those two members of the Judicial Council would not have led to a different decision; namely, all eleven members of the Judicial Council unanimously selected a different candidate.

The Constitutional Court adopted a position on the issue of the impartiality of bodies that decide on rights, obligations, and legal entitlements and that are not courts already in Decision No. Up-217/15, dated 7 July 2016 (Official Gazette RS, No. 51/16, and OdlUS XXI, 35). It held that the requirement to respect the fundamental procedural guarantee of impartial decision-making is a constituent part of a fair procedure. The requirements of the constitutional procedural guarantee of impartial decision-making follow from the constitutional case law relating to the first paragraph of Article 23 of the Constitution. This constitutional provision refers explicitly only to courts. The mentioned constitutional case law and its premises are, however, taken into account as guidance in ensuring the guarantee of impartial decision-making and thus a fair procedure regarding all procedures in which an individual's rights, obligations, or legal interests are decided on. In cases that do not involve a court, this requirement follows from Article 22 of the Constitution. With regard thereto, the same criteria apply that were taken into account by the Constitutional Court in the existing constitutional case law under the first paragraph of Article 23 of the Constitution.

The Judicial Council is vested with a special role with regard to the formation of judicial power already by the Constitution. The requirement of impartial decision-making by the members of the Judicial Council thus follows from Article 22 of the Constitution, while impartiality is assessed in accordance with the criteria determined by Article 23 of the Constitution. One of the fundamental conditions for ensuring impartial decision-making is the prohibition of a member of the Judicial Council deciding on a matter if circumstances exist that raise doubts as to his or her impartiality or objectivity. From the right to impartial decision-making there also follows the requirement that, when acting in a concrete case, the Judicial Council create and maintain the appearance of impartiality. The impartiality of members of the Judicial Council must be assessed not only on the basis of its effects (e.g. the absence of violations of the procedural rights of one of the parties to a procedure, the influence of (im)partiality on decisions on the merits), but also on the basis of the outward expression thereof, namely according to how participants in a procedure can understand the partiality or impartiality of members of the Judicial Council and how such is understood in the eyes of the public. It does not suffice that in a procedure the Judicial Council acts and decides in an impartial manner; the Judicial Council must also be composed in such a manner that there exist no circumstances that would raise doubt regarding the appearance of impartiality.

By adopting the position that the potential exclusion of two members of the Judicial Council could not have led to a different decision as also all of the remaining nine members of

the Judicial Council unanimously selected a different candidate, the Administrative Court overlooked the essence of the requirement of impartial decision-making. A body deciding on rights, obligations, or legal entitlements must be composed in such a manner that there exist no circumstances that would raise doubt regarding the appearance of the impartiality of the members of the body. The Administrative Court did not take into account that the mere participation of a person regarding whom circumstances that could affect the appearance of the impartiality of an official person were not eliminated entails a violation of the appearance of impartiality. With regard to such, it is irrelevant whether this person performed his or her office impartially or whether the manner in which he or she performed the office affected the outcome of the procedure. As the Administrative Court failed to assess the complainant's allegations in substance, it did not eliminate circumstances that could affect the appearance of impartiality. Thereby it violated the right to impartial decision-making and the right to a fair procedure determined by Article 22 of the Constitution.

#### 5.4. The Right of Aliens to Social Security

By Decision No. Up-672/16, dated 13 March 2019 (Official Gazette RS, No. 32/19), the Constitutional Court decided on the constitutional complaint of a complainant who challenged judgments that assessed that the Pension and Disability Insurance Institute (the PDII) rightfully halted the payment of his disability allowance as the complainant was removed from the register of unemployed persons due to the expiry of the validity of his personal work permit, which is a condition for enjoying this right. The complainant alleged that his personal work permit expired because he no longer fulfilled the condition of having sufficient means for subsistence while residing in the Republic of Slovenia, which is a condition for acquiring or extending a residence permit and consequently for acquiring or extending a personal work permit. He could have fulfilled the mentioned condition had he obtained a disability allowance in time. As, however, the Institute unlawfully deprived him of the possibility to acquire this right, and the courts established this only after lengthy court proceedings, he no longer fulfilled the mentioned condition in the interim, which is also why he could not extend his residence permit and personal work permit. In view of the above, the complainant was of the opinion that he lost his right to a disability allowance due to the actions of the Institute and courts.

Protection of the right to social security determined by the first paragraph of Article 50 of the Constitution is reserved for citizens of the Republic of Slovenia. This, however, does not entail that the Constitution does not guarantee protection of the right to social security to aliens merely because they do not have citizenship of the Republic of Slovenia. Such a narrow interpretation of the provisions of the Constitution could at least in certain circumstances lead to the denial of human dignity, which is the value starting point of human rights and fundamental freedoms. The Constitutional Court has already adopted the position that protection of the right to a pension, which the Constitution explicitly guarantees by the first paragraph of Article 50 as the right to social security, is also guaranteed by the right to private property determined by Article 33 of the Constitution, which also applies to persons who are not citizens of the Republic of Slovenia (see Decision No. Up-770/06, dated 27 May 2009, Official Gazette RS, No. 54/09).

In the case at issue, there was no dispute that the complainant fulfilled the conditions for obtaining the right to a disability allowance. The latter was granted to him by a final decision of the PDII, dated 22 January 2013. The right to a disability allowance entails monetary

compensation arising from compulsory disability insurance, which is intended to guarantee a person with work-related disabilities who is still able to work social security during his or her unemployment. As a general rule, this allowance is paid until the disabled person is again included in the compulsory insurance scheme (e.g. due to re-employment) or until he or she fulfils the conditions for obtaining the right to a pension. Discontinuation of the payment of the allowance interferes with his or her right to social security or with his or her right to private property determined by Article 33 of the Constitution.

The interpretation of the law adopted by the courts – according to which the reasons for which the insured person is no longer registered with the employment service or is no longer listed in the register of unemployed persons, have no relevance to a decision on the discontinuation of the payment of a disability allowance – proceeds from the presumption that it is the insured person who is always responsible for having been removed from the mentioned register. This presumption, however, is false as it does not take into account that also citizens of third countries reside and work lawfully in the Republic of Slovenia and that they are hence included in the compulsory social insurance schemes. For citizens of third countries, special rules relating to residing and work in the territory of the Republic of Slovenia apply. These (can) also affect acquiring and enjoying the rights arising from the social security system. Failure to observe this special regulation can lead to a situation in which an insured person is left without the right to a disability allowance although the person was removed from the register of unemployed person through no fault of his or her own, and possibly even against his or her will. Such does not entail that it is in general inadmissible to discontinue paying a disability allowance to an alien. It does, however, entail that when deciding on the discontinuation of the payment of a disability allowance a disabled person must be able to regulate his or her position (within a reasonable period of time) in a manner that will prevent the discontinuation of the payment of a disability allowance. Obtaining and enjoying the rights arising from compulsory disability insurance cannot be unconditional; it is, however, required that the conditions be reasonable. In this respect, it is also necessary to take into consideration the constitutional requirement according to which the regulation or the interpretation of the mentioned rights must not lead to unjustified different treatment of insured persons who, on the basis of the payment of compulsory insurance contributions, are otherwise in an essentially equal position.

The Constitutional Court held that the position of the courts according to which the reasons that led to the complainant being removed from the register of unemployed persons are not relevant to the discontinuation of the payments of a disability allowance is inconsistent with Article 33 of the Constitution. As the position that the Constitutional Court found to be in violation of the right to private property determined by Article 33 of the Constitution was adopted already by the court of first instance, and the Higher Court and the Supreme Court upheld this position, the Constitutional Court abrogated all of the challenged judgments and remanded the case to the court of first instance for new adjudication.

## 5.5. Finality, Legal Certainty, and the Right to Judicial Protection

By Decision No. Up-95/16, dated 14 March 2019 (Official Gazette RS, No. 26/19), the Constitutional Court decided on the constitutional complaint of a registered pharmacy against a judgment of the Supreme Court that confirmed a judgment of the District Court dismissing a claim of the complainant requesting that it be established that her concession contract for performing a pharmacy practice concluded with the City of Ljubljana is still valid.

Thereby, the Supreme Court confirmed that the City of Ljubljana lawfully cancelled the concession contract of the complainant for performing a pharmacy practice. The complainant reproached the Supreme Court for having violated the human right to judicial protection determined by the first paragraph of Article 23 of the Constitution as it allegedly interfered with a prior final judgment of the Administrative Court that established that the concession had been unlawfully withdrawn.

The Constitutional Court proceeded from the position that the human right to judicial protection ensures a decision on the merits in judicial proceedings regarding rights and obligations, as well as a possibility to effectively invoke a right that was recognised with finality in a dispute. A constituent part of the right to effective judicial protection is thus the requirement that the finality of legal decisions be respected, which also follows from Article 158 of the Constitution. A court may interfere with the final content of granted judicial protection only in proceedings involving an extraordinary legal remedy envisaged by the law. An element of finality is the rule that prohibits re-adjudication on the same matter, as it is only such rule that enables parties to rely on a court decision. The requirement of respect for finality also entails that the parties and courts are bound by the content of a final judicial decision. A right granted by an individual act or an obligation thus imposed may no longer be interfered with, as such would weaken trust in the legal order. Final judicial protection namely brings about in legal relationships legal certainty, which entails the legitimate expectation of the parties that no one will be able to again address issues already resolved with finality, except in proceedings involving extraordinary legal remedies.

In accordance with the content of the principle of finality under Article 158 of the Constitution, the content of the principle of legal certainty, which is one of the principles of a state governed by the rule of law determined by Article 2 of the Constitution, is thus reflected in the human right referred to in the first paragraph of Article 23 of the Constitution. This set of guarantees of the human right to judicial protection goes even further than the mere obligation to be bound by the content of a final judicial decision and than the prohibition of re-adjudication on the same matter. The principle of legal certainty (or of trust in the law) requires that individual decisions that are lawful and adopted without prior reservations and by their nature are not of a transitional nature be stable. The law can assert its function of regulating social life if it is permanent and lasting to the greatest possible extent. Both the law as well as the actions of all state bodies must be foreseeable, as this is required by legal certainty.

The Constitutional Court considered it to be decisive that the judgment of the Administrative Court that annulled as unlawful a decision of the City of Ljubljana withdrawing from the complainant a concession for performing a pharmacy practice was final already before the challenged judgment of the Supreme Court was issued. It established that the courts indeed formally decided on different issues. Both of them, however, each in its own proceedings, addressed the same legal question, i.e. the question of the legal reasons for the termination of the concession for a pharmacy practice. The Supreme Court adopted the position that for the assessment of the legality of the cancellation of a concession contract a legal question first has to be resolved as to the possibility of the grantor of the concession withdrawing the concession for performing a pharmacy practice without fault because there is no longer a concession contract due to the fact that the grantor of the concession cancelled it. It also adopted the position that a concession for performing a pharmacy practice can be terminated also at the discretion of the grantor of the concession. Prior to that, the Administrative Court adopted a different position with regard to the same legal question by a final judgement.

By changing the essential and previously adopted position of the Administrative Court relating to the reasons for the termination of a concession for performing pharmacy activities, the Supreme Court introduced uncertainty into the relation between the complainant and the City of Ljubljana. The complainant's legal certainty and legitimate expectations linked thereto concretised in the final judgment of the Administrative Court were disrupted by the issuance of the challenged judgement. Although the complainant had been issued the final judgment of the Administrative Court, according to which her concession could not be withdrawn against her will if she did not violate the obligations of a concessionaire due to fault, also the challenged judgment of the Supreme Court had an effect on the complainant, which, however, established that the concession contract was no longer valid due to its cancellation "without fault". Thereby the existence of the concession contract, the performance of which is crucial to achieving the purpose of the concession relationship, was undermined; a concessionaire pharmacists whose concession contract is cancelled without him or her being at fault and against his or her will can also for the very same reason lose the concession.

The Supreme Court decided at a time when the judgement of the Administrative Court was already final. This judgement resolved the issue of the lawful reasons for the withdrawal of the concession and is inseparably incorporated into a complete living whole, which (due to the cancellation of the concession contract followed by the withdrawal of the concession by the City of Ljubljana) was subject to a review by two competent courts. Nevertheless, the Supreme Court circumvented it when deciding and thereby again introduced uncertainty into the relationship between the complainant and the City of Ljubljana and disrupted the legal certainty that is guaranteed to parties by an already final judicial decision. Thereby, the Supreme Court violated the complainant's right to judicial protection determined by the first paragraph of Article 23 of the Constitution. The Constitutional Court thus abrogated its judgment and remanded the case for new adjudication.

## 5.6. Enforcement as Part of the Right to Judicial Protection

By Decision No. Up-731/16, Up-742/17, dated 14 March 2019, the Constitutional Court decided on a constitutional complaint of the Bar Association of Slovenia (the BAS), which as the creditor in enforcement proceedings requested the enforcement of monetary claims on the basis of final decisions adopted by its disciplinary committee in two enforcement cases. The first and second instance courts dismissed both requests for enforcement on the basis of the position that the decisions of the disciplinary committee of the BAS do not represent an instrument authorising enforcement that could serve as a basis for judicial enforcement proceedings, namely because such is not explicitly provided by any law or other regulation. In the challenged decisions, the courts interpreted the third paragraph of Article 65 of the Attorneys Act, which provides: "The decisions of the Bar Association's disciplinary bodies shall be enforceable." They adopted the position that disciplinary decisions of the BAS do not represent an instrument authorising enforcement that could serve as a basis for judicial enforcement proceedings under the Claim Enforcement and Security Act. In the constitutional complaint, the complainant alleged that such position is inconsistent with its constitutional right to judicial protection.

The BAS is a legal person of private law in which membership is mandatory for attorneys practicing law in the Republic of Slovenia. One of the important (mandatory and statutorily envisaged) tasks of the BAS is to exercise disciplinary authority over attorneys; an attorney shall namely practice law conscientiously and shall be held responsible for any breach of duty in that regard.

In accordance with the established constitutional case law, the constitutional right to judicial protection determined by the first paragraph of Article 23 of the Constitution also entails the right to request and obtain in enforcement proceedings the compulsory enforcement (implementation) of a judicial decision by which a court decided on a right or obligation in the event that a debtor does not fulfil his or her obligation by him- or herself. As the intent and objective of judicial protection are definitively achieved only by the realisation of a certain right or legal relationship, a party who was recognised a right in a dispute by a final decision must be ensured a possibility and recourse to actually exercise it. Effective enforcement proceedings are an inseparable element of the right to judicial protection.

The complainant alleged that on the basis of Article 23 of the Constitution a court is obliged to enforce a disciplinary decision of a professional organisation of private law by which an attorney was imposed a fine. In the assessment of the Constitutional Court, such conclusion is false. The imposition of a fine namely does not represent the execution of a task that was conferred on the Bar by public authority. In accordance with the established constitutional case law, a decision to impose discipline by means of a fine is not subject to judicial review in an administrative dispute. The constitutional right to effective judicial enforcement proceedings does not extend to the autonomous decisions of a private entity that cannot be reviewed by a court. Therefore, the position of the courts that an enforceable disciplinary decision of the BAS imposing a fine is not an instrument authorising enforcement that could serve as a basis for judicial enforcement proceedings under the Claim Enforcement and Security Act is not inconsistent with the right to judicial protection determined by the first paragraph of Article 23 of the Constitution. The Constitutional Court thus dismissed the constitutional complaint as unfounded.

## 5.7. Nuclear Safety, the Autonomy of Municipalities, and the Right to a Healthy Living Environment

Upon the petition of the Municipality of Dol pri Ljubljani, by Decision No. U-I-22/15, dated 27 March 2019 (Official Gazette RS, No. 32/19), the Constitutional Court reviewed the constitutionality of the Ionising Radiation Protection and Nuclear Safety Act and the constitutionality and legality of the Decree on Areas of Restricted Use due to Nuclear Facilities and on the Conditions for Construction in These Areas. It assessed the challenged regulation from the perspective of the **delimitation of competences between the state and local self-government (the first paragraph of Article 140 of the Constitution), from the perspective of the principle of legality (the second paragraph of Article 120 of the Constitution), and from the perspective of the participation of municipalities in the adoption of the disputed regulation (Articles 9 and 139 of the Constitution). The positions of the Constitutional Court relating to Article 140 of the Constitution are of particular importance.**

The starting point of the review was the fact that, in accordance with the Constitution, the residents of Slovenia are guaranteed the exercise of local self-government, which is realised in municipalities (Articles 9 and 138 of the Constitution). It is guaranteed that residents of municipalities participate in the management of public affairs of a local nature and at the same time they are, as a local community, guaranteed a certain degree of independence from the state. The essence of this independence is demonstrated in the organisational, functional, financial, and territorial autonomy of municipalities in relation to the state. Such autonomy in relation to the state is regulated by the Constitution and laws.

The fundamental purpose of the existence of a municipality is to satisfy the needs and interests of its residents within the framework of its competences. The competences of a municipality comprise local affairs that may be regulated by the municipality autonomously and which affect only its residents (the first paragraph of Article 140 of the Constitution). This definition determines the scope of the original competences assigned to a municipality that are regulated on the constitutional level and are based on the concept of “a local public affair”. It entails the competence to regulate affairs that are local by their nature which the municipality is capable of regulating autonomously, and which only affect the residents of the municipality. The concept of a local public affair thus comprises a set of competences that represent the core of local self-government. This provision of the Constitution thus protects the functional autonomy of a municipality and represents a constitutional bastion preventing inadmissible interferences by the state. This functional autonomy, however, does not entail that a municipality is entirely independent in the exercise of original competences or that any statutory regulation thereof represents an inadmissible interference with its autonomy.

Spatial planning is one of the original competences of municipalities determined in the second paragraph of Article 91 of the Local Self-government Act. A municipality is to a great extent free in making decisions relating to spatial planning, in particular regarding the planning of settlements, the deployment of various activities, and infrastructure planning, while at the same time it is bound by the Constitution and laws. Without spatial management, a municipality cannot implement development, economic, and settlement policies that importantly affect to what extent a municipality is attractive as a residence and for investment. At the same time, the Constitutional Court adopted the position that the autonomy of a municipality in the area of spatial planning is not unlimited. Regarding such, local self-government is limited by the goals and starting points of the broader spatial management, by environmental protection, and by other sectoral interferences with the environment regulated by law.

The fundamental purpose of nuclear and radiation safety measures is not to determine the manner of land use and other admissible spatial interferences. Their purpose is to reduce to the greatest extent the possibility of damage to the health of people and to reduce the possibility of a threat to ensuring a healthy living environment, while at the same time enabling development, production, and the use of radiation sources, as well as the performance of radiation activities. The Act envisages protection measures that regulate the operation and functioning of nuclear facilities and are performed directly therein. The safety of a nuclear facility, however, also depends on exceptional events that may occur in the surroundings of such facility. For this reason, it is imperative that all potential hazards that could affect its safety also be removed from the surroundings of such facility. Likewise, the land use should be such that the least possible number of residents are affected in the event of an accident. Nuclear and radiation safety measures must therefore also extend to the territory situated in the vicinity of the nuclear facility and determine the manner of use of such area. It is only in such manner that comprehensive and adequate nuclear and radiation safety can be guaranteed.

Ensuring the adoption of nuclear and radiation safety measures falls exclusively within the competence of the state. The construction of nuclear facilities and their safe operation and use are intended to meet the needs and interests of all residents of the state. Thus, this competence, by its very nature, cannot pertain to local public affairs as it exceeds the interests of the local community. Due to the intensity of the effect that nuclear energy has on the environment and people, the Constitutional Court classified nuclear safety as an element of the right to a healthy living environment (the first paragraph of Article 72 of the Constitution). It explained

that along with the decision to use nuclear energy, the state must adopt technical, organisational, and other measures that will reduce the risk of an accident to the lowest possible level. The first and second paragraphs of Article 72 of the Constitution thus impose on the state the obligation to ensure a high degree of nuclear safety.

With regard to a limitation of the freedom of spatial planning of a municipality, the Act imposes thereon the obligation to take into consideration the area of limited land use, as well as restrictions on the use of such land due to nuclear and radiation safety measures when drawing up a municipal or detailed municipal spatial plan. At the same time, it requires that the municipality obtain, in view of the planned spatial interferences, guidelines and the opinion of the authority competent for nuclear safety before adopting a decision on drafting and amending a municipal spatial plan. In spatial management, this Article thus obliges the municipality to respect measures concerning nuclear and radiation safety that fall within an area of spatial planning and spatial interferences in its territory.

The autonomy of a municipality in spatial planning and spatial interferences is not absolute or unlimited. It is incorporated into the framework of national spatial planning and state protection of important natural, cultural, and other values in the environment. The right to a healthy living environment (the first paragraph of Article 72 of the Constitution) is one of those values that require the state to adopt adequate nuclear and radiation safety measures. Determining limited land use is (due to ensuring these measures) a spatial interference by the state for reasons of safety that determines the limits of the autonomy of the municipality in the exercise of competences regarding spatial planning and spatial interferences. The Constitutional Court thus dismissed the allegations of the applicant that the legislature interfered with its original competence in an unconstitutional manner. Therefore, the Constitutional Court decided that the challenged statutory regulation is not inconsistent with the first paragraph of Article 140 of the Constitution.

## 5.8. A Pre-emption Right as an Element of a Property Right

By Decision No. Up-1581/18, dated 4 April 2019 (Official Gazette RS, No. 29/19), the Constitutional Court decided on a constitutional complaint against court decisions by which the courts dismissed a request to issue consent to the sale of real property by a debtor in bankruptcy (the seller) and the complainant (the buyer, a pre-emption right holder). In the case at issue, a complex of real property (49 plots) was being sold in bankruptcy proceedings, which also included two real properties regarding which the pre-emption right holder had a legal pre-emption right due to possessing a co-ownership share (0.4% of the entire real property complex). The pre-emption right holder invoked his pre-emption right under the conditions of bankruptcy proceedings in such a manner that by signing the contract he accepted, *mutatis mutandis*, the same conditions as applied to the chosen offeror with regard to the purchase of all of the real property together.

The complainant (the pre-emption right holder) reproached the courts for having inadmissibly interfered with his right to private property under Article 33 of the Constitution by denying his pre-emption right. This right protects a person's freedom in the field of property. By guaranteeing private property, the Constitution not only protects a property right as defined in civil law, but also all legal positions that have a property value for an individual in a similar manner as the property right and which ensure him or her freedom to act in the field of property and thus to freely and responsibly create his or her own destiny.

The pre-emption right of a commonhold unit owner is based on Article 124 of the Law of Property Code. On the basis of the third paragraph of Article 513 of the Obligations Code, the rules on a contractual pre-emption right apply, *mutatis mutandis*, also to a statutory pre-emption right, unless the law stipulates otherwise for an individual case. Under the general rules, a pre-emption right thus entails the obligation of the owner of a thing (the seller) to notify the pre-emption right holder of the intended sale of the thing to a specific person and the conditions of such sale, and to offer the right holder the opportunity to buy the thing under the same conditions. The law regulating bankruptcy determines special cogent rules on invoking a statutory pre-emption right in the event bankruptcy proceedings are initiated against the person liable for pre-emption. In the case of a sale on the basis of a call for offers, it determines that the sales contract with the purchaser is to be concluded under the suspensive condition that the pre-emption right holder will not exercise the pre-emption right, and under a dissolving condition that is realised if the pre-emption right holder exercises the pre-emption right. The official receiver is obliged to provide the pre-emption right holder the wording of the contract with, *mutatis mutandis*, the same content as that of the contract that he or she provided to the chosen offeror and to call on the pre-emption right holder to return to him or her, within fifteen days following receipt, a signed copy of the contract and pay the whole purchase price pursuant to the contract. In the assessment of the Constitutional Court, the mentioned position of a pre-emption right holder arising from a statutory pre-emption right is protected within the framework of the right to private property determined by Article 33 of the Constitution.

In its reasoning, the Higher Court weighed the right of the pre-emption right holder, on one hand, against the right of the chosen offeror to buy the real property at the offered price, on the other. In view of the small surface area of the share of real property in co-ownership regarding which the complainant was able to invoke the pre-emption right, it concluded that the complainant's pre-emption right cannot be extended to the whole complex of real property for sale. Such would namely entail an excessive interference with the right of the chosen offeror to buy the real property at the offered price, in particular since in the case at issue the chosen offeror can no longer raise the price due to the real property being sold in a procedure involving a binding call for offers. The Higher Court thus concluded that the pre-emption right holder does not have priority over the chosen offeror.

At the outset, the Constitutional Court explained that the right to private property determined by Article 33 of the Constitution protects the complainant's position only in the scope of the recognised existence of the statutory pre-emption right, thus only in the scope in which it concerns the complainant's position as a pre-emption right holder relating to the purchase of co-ownership shares of those two real properties regarding which his pre-emption right undisputedly exists on the basis of the law. In the case at issue, however, it had to be taken into account that a complex of forty-nine real properties as a whole was being sold. The joint sale of the whole complex of real property, which also included two real properties (co-ownership shares) over which the pre-emption right holder has a statutory pre-emption right, was thus a consequence of the sales method adopted in the bankruptcy proceedings and not a consequence of a decision of the pre-emption right holder. In the case at issue, the pre-emption right holder could invoke his pre-emption right in proceedings only in such a manner that by signing the contract he accepted, *mutatis mutandis*, the same conditions as applied to the chosen offeror with regard to the purchase of all real property together. In light of the mentioned circumstances, the Constitutional Court thus held that the position of the court according to which a pre-emption right holder does not have priority over the chosen offeror in the purchase of a complex of real property necessarily also entails that the complainant, who

is explicitly granted a pre-emption right regarding specific real property (two co-ownership shares of the debtor in bankruptcy) by law in fact does not have this right. Such a position violates the right to private property determined by Article 33 of the Constitution. Due to the established violation of this human right, the Constitutional Court abrogated the challenged order and remanded the case to the Ljubljana Higher Court for new adjudication.

### 5.9. The Aarhus Convention and Public Participation in Decision-Making in Environmental Matters

By Decision No. U-I-393/18, dated 25 April 2019 (Official Gazette RS, No. 36/19), the Constitutional Court decided on a request of the Municipal Council of the Municipality of Braslovče and of the Municipal Council of the Municipality of Polzela for a review of the constitutionality and legality of the Decree on the National Spatial Plan for the Construction of the National Road from the A1 Šentilj–Koper Motorway Ramp at Šentrupert to the Velenje-South Ramp (hereinafter referred to as: the Decree). It decided that the Decree is not inconsistent with the Constitution. The Constitutional Court rejected the request of the Municipality of Šmartno ob Paki as it did not contain the applicant's signature.

At the outset, the Constitutional Court explained that within its competence to decide on the conformity of regulations with the Constitution and with laws it does not assess the appropriateness of a regulation and it does not decide on technical questions. The Constitutional Court thus did not assess whether the chosen route of the road section is the most appropriate among the suggested ones, nor whether the F2-2 option only represents an optimisation of the F2 option or whether it is an independent route. In the case at issue, the assessment of the Constitutional Court was limited to a review of the constitutionality and legality of the procedure by which the Decree was adopted. The essential allegation of the applicants was that in the process of preparing the Decree, during which legislation in the field of spatial planning was amended several times, the public was not ensured efficient and sufficiently early participation in the procedure. The Constitutional Court held that the Aarhus Convention applies in the circumstances of the case at issue both *rationae materiae* as well as *rationae personae*. On the basis of Article 8 of the Constitution, Article 7 of the Aarhus Convention is binding on the legislature in the adoption of laws; therefore, the participation of the public in spatial planning procedures must be regulated already in sectoral legislation, and regulations and other general acts must be in conformity with the Constitution and laws. As the review of whether efficient public participation was ensured in the procedure for preparing the challenged Decree is a question of the constitutionality and legality of the procedure for preparing the Decree, the Constitutional Court assessed all of the allegations of the applicants in light of the third paragraph of Article 153 of the Constitution.

The Constitutional Court dismissed as unfounded the allegations of the applicants that the Spatial Planning Act (the SPA) did not enable a public debate in the phase wherein variant solutions are still being discussed, which makes it inconsistent with the Aarhus Convention. It also dismissed the allegations relating to a violation of the provisions of the SPA on the public display of an amended national spatial plan draft as in the case at issue this plan had not yet been formulated while the SPA was in force. As the Government demonstrated that the choice of the F2-2 optimised variant solution on section F of the planned express road had already been made at the time when the Siting of Spatial Arrangements of National Importance Act (the SSANIA)

came into force, the Constitutional Court also assessed that the continuation of the procedure in accordance with the fifth paragraph of Article 62 of the SSANIA was lawful. Thereby, it further assessed that the continuation of the procedure in accordance with this provision does not entail that the public was prevented from participating in the selection of variant solutions in the procedure for deciding on the National Spatial Plan (the NSP) since, on the basis of this provision, acquainting the public with the draft plan, the study of variants, and the environmental report in the framework of the mentioned public display, which should last at least 30 days, is envisaged during the next phase of the procedure, and during this time public consultation thereon is also ensured. In the case at issue, the variant study with the suggestion of the most appropriate variant from 2008, which included the optimised F2-2 route (the 2008 Variant Study) was publicly displayed in 2015. During the public display, the public was able to comment on the variant study as well as on the draft plan prepared on its basis and to make proposals. On the basis of the positions taken with regard to the comments and proposals from the 2015 public display, additional possible optimisations of the route were reviewed. Consequently, the draft NSP was amended and in June 2016 an additional public display was carried out, at which the public and local communities again had a possibility to make comments and proposals, and the accepted comments were taken into account in the subsequent procedure for preparing the draft NSP.

The Constitutional Court thus assessed that by the mere fact that the 2008 Variant Study was publicly displayed together with the draft NSP, the public was not deprived of the possibility to effectively participate in the procedure for preparing the NSP. As the Government explained, supplementing certain phases of the procedure or returning to previous phases can occur in the spatial planning procedure. In the assessment of the Constitutional Court, this also applies to the procedure returning to previous phases on the basis of the comments and proposals of the public made in the phase of the public display of the draft NSP in accordance with the provisions of the SSANIA. This is particularly true when the public display of a variant study and of the draft NSP prepared on its basis are combined into one phase. Although the drafter of the NSP is not obliged to take into account the comments of the general public and local communities, the competent participants in the drafting of the plan must take a position on them. In the case at issue, this requirement was complied with. The comments and proposals of the Municipality of Braslovče and of the Municipality of Polzela relating to the 2008 Variant Study were not dismissed without a reasoning since the answers of the drafter of the NSP corresponded to the concretisation of their comments; therefore, the Constitutional Court also dismissed their allegation that their comments were dismissed “*en bloc*”. The mere fact that the municipalities did not succeed with their comments, however, does not substantiate their allegations relating to inefficient public participation in preparing the NSP.

In view of the above, the Constitutional Court held that the procedure for preparing and adopting the Decree was carried out in accordance with the SPA and the SSANIA and that the public was ensured the possibility of effective participation in the procedure. The Decree is thus not inconsistent with the third paragraph of Article 153 of the Constitution.

## 5.10. Enforcement Through the Sale of Real Property and the Right to Respect for One's Home

By Decision No. Up-1298/18, dated 9 May 2019 (Official Gazette RS, No. 38/19), the Constitutional Court decided on a constitutional complaint filed against an order on the sale of

real properties at a public auction. In the constitutional complaint, the complainant asserted that the real property that his family needs for survival is being sold due to his debt, which amounts to approximately EUR 20,000.00.

The Constitutional Court first emphasised that in enforcement proceedings, which are intended to definitively realise the right to judicial protection (the first paragraph of Article 23 of the Constitution), the procedural scales tilt in favour of the creditor. On the other hand, enforcement can interfere with various constitutionally protected positions of a debtor; therefore, protecting the debtor in enforcement proceedings is also a constitutional requirement. Due to the privileged position of the creditor, his or her right to effective judicial protection must give way to the debtor's human rights only if the enforcement entails a disproportionate burden on the debtor and when his or her human rights are essentially affected. Pursuing the objectives of enforcement proceedings must not jeopardise the debtor's right to personal dignity and safety (Article 34 of the Constitution), from which the requirement to ensure the basis for economic and social existence derives.

Similar starting points also follow from the case law of the ECtHR. In the assessment of the ECtHR, the forced sale of a debtor's real property – even if carried out for the purpose of paying a relatively low monetary claim of a creditor – does not necessarily entail a disproportionate interference with the debtor's rights. Regardless of the great importance of the efficiency of enforcement, the forced sale of a debtor's real property intended to pay a creditor's monetary claim can represent a disproportionate interference with the debtor's right to the protection of property under Article 1 of the First Protocol to the ECHR, in particular when the object of the forced sale is his or her apartment: (i) if in the assessment of the ECtHR the forced sale was not necessary since a milder measure was obviously available to pay a creditor's relatively low claim; or, for example because a realistic possibility existed for the debtor to voluntarily pay the remaining relatively low debt (in the concrete case, the costs of the enforcement proceedings), which he or she possibly failed to do precisely due to an omission by the court, which did not calculate the amount of debt already prior to the public auction despite being so requested by the debtor; or (ii) if in the procedure for the forced sale of his or her apartment the debtor was not ensured effective procedural safeguards, whereby one of the important circumstances in such assessment can also be the amount of debt which led to the forced sale. If the object of a forced (court) sale is a debtor's apartment or house, such measure can, in the view of the ECtHR, be unacceptable also from the perspective of the debtor's right to respect for one's home determined by Article 8 of the ECHR. Even if the sale of a debtor's home turns out to be necessary for the payment of a debt (also tax debt) in an individual case, it is important that the mentioned right of the debtor was at least taken into account appropriately in the proceedings. In such a case, the ECtHR reviews in particular whether the debtor was ensured appropriate procedural safeguards in the proceedings.

In light of these guarantees, by adopting an amendment to the Claim Enforcement and Security Act, the legislature has already provided additional protection to the debtor in the event of enforcement through the sale of his or her real property in three ways: (1) by providing the debtor a right to be informed of the possibility to propose enforcement through other methods or through the sale of other real property; (2) by providing additional procedural safeguards that are intended to prevent the sale of the debtor's home to recover a creditor's manifestly disproportionate monetary claim in comparison with the value of the debtor's real property representing his or her home, namely: (a) by granting the debtor an entitlement to submit a proposal that enforcement be carried out through other methods or through the sale

of other real property until the issuance of an order on the sale of his or her home at a public auction, and (b) by obliging the court in charge of the enforcement to allow in such a case, *ex officio*, the sale of other property of the debtor if it can determine on the basis of available or electronically accessible data that it would suffice for the recovery of the creditor's claim; and (3) by providing the possibility of deferring enforcement through the sale of real property that is the debtor's home (also *ex officio*).

On the basis of consulting the challenged order and the enforcement file, the Constitutional Court established the following constitutionally significant facts in the case at issue: (1) that the forced sale of seven real properties of the complainant with a total value of EUR 333,914.00 was ordered, among these also the complainant's home, for the recovery of the claim of the first creditor amounting to approximately EUR 20,000.00 and the claim of the second creditor amounting to EUR 416.50 with interest thereon; (2) that the claims of the creditors are not secured with a contract-based mortgage established on the real property at issue; (3) that the total value of the real property being sold, excluding the complainant's home, amounted to EUR 182,396.00; (4) that after the entry into force of the latest amendment of the Claim Enforcement and Security Act, which extended Article 169 of the Act with new sixth, seventh, and eighth paragraphs, the court in charge of the enforcement did not inform the complainant by a letter (the enforcement orders were namely issued before the amendment of the Act entered in force) of his right to propose enforcement through other methods or other objects until the issuance of an order on the sale of his property at a public auction if the forced sale relates to his home and the claim for recovery is manifestly disproportionate.

The Constitutional Court assessed that in the specific circumstances of the case at issue, which suggest a manifest disproportion between the amount of the claims for recovery and the scope of the real property being sold, including the complainant's home, and due to the fact that the court in charge of the enforcement failed to inform the complainant of his right to object to the sale of his home in such a case until the issuance of an order on the sale thereof at a public auction, the challenged order on the sale of his home at a public auction represents an individual act by which the complainant's rights, obligations, or legal entitlements were decided on. As in the assessment of the Constitutional Court it cannot be excluded in the case at issue that by not being informed by the court in charge of the enforcement of his right to object to the sale of his home until the issuance of an order on the sale of his home at a public auction, the complainant was deprived of the possibility to prevent its forced sale (because the claims would have already been recovered by the sale of other real property), and since the court in charge of the enforcement, despite the mentioned omission, did not by itself *ex officio*, as required by the Act, assess and substantiate the proportionality of the measure of the forced sale of several real properties of the complainant, including his home, from the perspective of the complainant's right to private property (Article 33 of the Constitution) and to respect for one's home (the first paragraph of Article 36 of the Constitution), it thereby violated his right to the equal protection of rights (Article 22 of the Constitution). The Constitutional Court abrogated the challenged order on the sale of his home at a public auction and remanded the case to the Maribor Local Court for new adjudication. It ordered the court to assess, before issuing a new order on such sale, whether there exists a manifest disproportion between the claims being recovered and the value of the real property being sold, including the complainant's home, taking into account thereby also the amount of the lienors' claims, or, in the event it issues an order with the same content, to substantiate why enforcement with no change in scope, thus also encompassing the sale of the complainant's home, is necessary for the payment of the creditors in the enforcement proceedings.

## 5.11. Protection of Personal Data and Freedom of Expression

By Decision No. Up-349/14, dated 16 May 2019 (Official Gazette RS, No. 44/19), the Constitutional Court decided on the constitutional complaint of the complainants (i.e. a journalist, the editor-in-chief of the *Demokracija* weekly newspaper, and the same newspaper as the responsible legal entity), who were found guilty of committing two minor offences under the Personal Data Protection Act (PDPA-1) by the decision of a minor offence authority. The two minor offences were allegedly committed in relation to the unlawful (i.e. without a basis in the law or the personal consent of the individuals concerned) publication of data concerning communication between the journalist and a judge; their email addresses were also published. The complainants filed a request for judicial protection against the minor offence decision, but the Kranj District Court dismissed it by the challenged judgment.

In accordance with the second paragraph of Article 38 of the Constitution, the collecting, processing, designated use, supervision, and protection of the confidentiality of personal data are left for determination by law. In accordance with the first paragraph of Article 8 of the PDPA-1, personal data can also be processed if the law does not envisage such but only if the individual concerned consents thereto. The first paragraph of Article 39 of the Constitution guarantees freedom of expression of thought, freedom of speech and public appearance, freedom of the press, and other forms of public communication and expression. Everyone may freely collect, receive, and disseminate information and opinions. The first paragraph of Article 39 of the Constitution, which also regulates freedom of journalistic expression as a special aspect of this freedom, guarantees not only the rights of individuals (individual journalists), but through the press and other public media outlets also enables exercise of the democratic right of the public to be informed of matters of public concern. In accordance with the established constitutional case law, also legal entities enjoy certain constitutional rights, provided that the specific rights can also refer thereto in view of their content and nature, with regard to which the scope of this protection is adapted to the nature of individual types of legal entities. The Constitutional Court recognises a high level of protection to the freedom of expression of legal entities that work professionally in the field of informing the public, namely due to their key role in a democratic society as regards disseminating information in the public interest. The Constitution recognises legal entities of an expressly commercial nature a lower level of protection of freedom of expression, as such nature is demonstrated, as a general rule, in the form of commercial advertising.

Considering the protection enjoyed by the right to freedom of expression, any restriction of the exercise of this human right must be carefully balanced and convincingly substantiated. The Constitution assigns special importance to the freedom of the press and journalistic reporting. The broad limits of freedom of the press form one of the foundations of a modern democratic society and contribute to establishing and forming a public that is impartially informed. This holds true in particular as regards reporting on topics with respect to which there exists a public interest in the public being informed. The Constitutional Court has already adopted the position that the finding that freedom of expression holds special importance in cases concerning journalistic reporting entails that when balancing interests and benefits in a collision between human rights, freedom of expression must be assigned greater weight and the above-mentioned circumstances must be deemed to significantly tilt the balance in favour of freedom of expression. Therefore, in cases that concern the limitation of freedom of expression regarding journalistic reporting, it must be particularly carefully examined whether there exist constitutionally acceptable reasons for the limitation. In this respect, also the circumstance that the journalistic reporting at issue concerns a topic that is of great importance to the public can be essential.

The first paragraph of Article 38 of the Constitution guarantees protection of personal data as a special aspect of privacy. The purpose of the protection of personal data is to ensure respect for a specific aspect of a person's privacy – i.e. information privacy. By regulating this right independently, the Constitution ascribes to this right a special place and importance within the overall protection of an individual's privacy. In conformity with the established constitutional case law, any collecting and processing of personal data entails an interference with the right to the protection of privacy, i.e. with the right of individuals to keep information regarding themselves private, and to prevent others from accessing such. The fundamental value basis of this right is the realisation that individuals have the right to keep information about themselves to themselves and that they are the ones who are to decide how much information about themselves they want to reveal and to whom. Similarly as the right to freedom of expression, also the right to information privacy is not unlimited; it is not absolute. Therefore, individuals must accept limitations of information privacy, i.e. they must allow interferences therewith that are in the prevailing public interest, provided that the constitutionally determined conditions are fulfilled.

In a collision of two human or constitutional rights, i.e. the right of the complainant who is a journalist and of the other two complainants to freedom of expression as determined by the first paragraph of Article 39 of the Constitution, on the one hand, and the right to the protection of personal data as guaranteed by Article 38 of the Constitution, on the other, the Constitutional Court had to assess whether the adjudicating court carried out a balancing of the rights in collision (i.e. application of the so-called method of practical concordance), and thus by an appropriate constitutional valuation achieved their coexistence, or whether it excluded one of the two rights from its consideration. In such balancing, courts must assess the importance and objective of each right in collision and adopt a position as to what form their coexistence should take in view of the concrete circumstances of the individual case. If the court carried out such balancing, the Constitutional Court must assess whether in doing so it took into consideration the constitutionally decisive circumstances, i.e. the criteria that in this respect are imposed by the Constitution and the ECHR. Both the Constitutional Court and the ECtHR have drawn attention thereto a number of times in their decisions. The Constitutional Court had to assess whether the court at issue based the challenged judgment on positions that are unacceptable from the viewpoint of the protection of the right to freedom of expression as guaranteed by the first paragraph of Article 39 of the Constitution. It had to establish whether in the framework of the assessment by which it substantiated the guilt of the journalist regarding the two minor offences and, as a result, the guilt of the editor-in-chief and the legal entity, it took into consideration and evaluated all constitutionally decisive criteria, i.e. whether it substantiated its decision by relevant and sufficient reasons and appropriately evaluated the important circumstances in view of the importance and objective of the relevant human and constitutional rights, and decided what form their coexistence should take in view of the circumstances of the individual case.

Already in the request for judicial protection, the complainants alleged, *inter alia*: (1) that the case at issue did not concern the processing of personal data under the PDPA-1, as it only concerned the one-time publication of data in the framework of a journalistic article intended to express serious criticism with respect to the publication of judgments in the media before the addressees learned thereof; (2) that the topic was interesting to the public at large, which has the right to know whether there exists a suspicion of abuse of office with the intention to transmit judgments without authorisation; and (3) that in the framework of investigative journalism, and with the intention to objectively report, the weekly newspaper Demokracija would not be able, without evidence, to publish the insinuation that a specific person at the court is

responsible for sending documents to a specific media outlet; the evidence that allegedly justifies objective reporting on the possible origin of the unauthorised leakage of information is allegedly precisely the correspondence between the two email addresses; namely, it is precisely the publication of the electronic communication that allegedly confirms the suspicion that is discussed in the article. Also in the constitutional complaint the complainants alleged that the court failed to carry out balancing, i.e. the test of proportionality, as it allegedly completely overlooked the fact that in the case at issue there existed circumstances that justified an interference with the right to the protection of personal data determined by the first paragraph of Article 38 of the Constitution.

Following a detailed analysis of the case, the Constitutional Court assessed that neither the minor offence authority nor the court in the judicial protection proceedings carried out their assessments by balancing the rights in collision by using the practical concordance method, and thereby they did not take into consideration all the criteria that follow from the case law of the Constitutional Court and the ECtHR. Since the District Court based its entire decision on an assessment that does not take into consideration the constitutional criteria of the protection of the right to freedom of expression, it violated this right of the first complainant, a journalist, as well as that of the other two complainants, as determined by the first paragraph of Article 39 of the Constitution. The Constitutional Court therefore abrogated the challenged judgment and remanded the case to the deciding court for new adjudication.

## 5.12. The Mental Health Act

By Decision No. U-I-477/18, Up-93/18 (dated 23 May 2019, Official Gazette RS, No. 44/19), the Constitutional Court decided on a constitutional complaint against a judicial decision adopted in a non-litigious civil procedure by which a person was committed to a secure ward of a social care institution without his consent. In his constitutional complaint, the committed person alleged, *inter alia*, a violation of the rights determined by Article 19 (the protection of personal liberty) and Article 21 (the protection of human personality and dignity) of the Constitution because he was placed in an institution that was overcrowded. Concurrently with accepting the constitutional complaint for consideration, the Constitutional Court decided to initiate proceedings for a review of the constitutionality of the Mental Health Act.

Within the framework of the review of the constitutionality of the Mental Health Act, the Constitutional Court first had to answer the question of whether the existing statutory regulation of commitment to a secure ward of a social care institution is consistent with the second paragraph of Article 19 of the Constitution, which determines the safeguards under which personal liberty may be limited. In accordance with that provision of the Constitution, no one may be deprived of his or her liberty except in such cases and pursuant to such procedures as are provided by law.

The Constitutional Court stressed that in the event the statutory regulation of a measure that entails an interference with the right to personal liberty of a person due to his or her mental disorder is at issue, it is not sufficient for the legislature to concretise the execution of the measure by merely referring to the protective objective of the measure, as it must also strive, by determining the conditions for the execution of the measure, to attain the therapeutic objective of such measure. The conditions for the execution of the measure must already at the statutory level be determined in such a manner that a factual connection is established between the legal basis, i.e.

the reason for the deprivation of liberty, on the one hand, and the location (i.e. the institution) and the conditions of detention, on the other. The determination of the conditions for the execution of the measure of the deprivation of liberty directed towards attaining both the protective and therapeutic objectives thereof namely ensures that the duration of the measure will be limited to the period strictly necessary for the detained person's health condition to improve to the extent that he or she will be capable of living independently, or to prevent his or her condition from deteriorating. A statutory regulation that does not satisfy the aforementioned requirements as to the precision of the legal basis and the conditions for enforcing the measure of the deprivation of liberty is inconsistent with the second paragraph of Article 19 of the Constitution.

The Constitutional Court then also reviewed the conformity of the statutory regulation from the viewpoint of the first paragraph of Article 19 of the Constitution, which guarantees everyone the right to personal liberty. In doing so, it proceeded from the constitutional requirement that the judicial branch of power is the only branch of power that has the right to order the deprivation of liberty that is longer than only momentary. In conformity with this constitutional requirement, the legislature left to the courts the decision-making in each individual case as to the constitutional admissibility of the commitment of a person to a secure ward of a social care institution without consent, and thereby imposed on the courts the obligation to determine the concrete social care institution that is to execute the ordered measures. However, as the Constitutional Court stressed, the constitutional requirement that the courts must decide on the admissibility of such measure loses its purpose if the law excludes the requirement that the courts must decide on the admissibility of ordering such measure in each individual case, proceeding from the requirements of the principle of proportionality. The reviewed statutory regulation namely enabled courts to merely weigh the necessity of the measure of the deprivation of liberty from the viewpoint of ensuring attainment of that part of the protective objective that is to be attained by excluding the person concerned from the external environment. It, however, excluded the possibility of the courts assessing, prior to determining the concrete institution charged with executing the measure, the appropriateness of that institution from the viewpoint of ensuring security within a secure ward and whether the therapeutic objective will be attained in the phase of execution. A regulation that does not allow for such an assessment by the courts or even prevents it is not, according to the Constitutional Court, an appropriate means to achieve the constitutionally admissible objective or objectives of the measure of the deprivation of liberty and is therefore inconsistent with the right determined by the first paragraph of Article 19 of the Constitution.

Finally, the Constitutional Court also assessed the conformity of the statutory regulation from the viewpoint of the right of detained persons to the protection of personal dignity during the deprivation of their liberty (the first paragraph of Article 21 of the Constitution). It established that the reviewed statutory regulation, which (1) disregards the requirement that the conditions for determining detainment be clear and precise such that they dispel any doubt as to the appropriateness of the institution that is to execute the measure involving the deprivation of liberty, taking into account the constitutional requirements and the requirements of the ECHR regarding the detention of persons with mental disorders, and which (2) in the ordering of such measures by courts excludes the possibility of the courts assessing the appropriateness of the concrete institution in which the measures are to be executed and thus even tolerates that by ordering such measures additional burdens are imposed on the detained person apart from the strictly necessary limitation of his or her personal liberty, despite the obvious shortcomings in the phase of the execution of the measure, is also inconsistent with the right of such persons determined by the first paragraph of Article 21 of the Constitution.

The Constitutional Court also found that the challenged decision of the court to place a person in a specific social care institution, which was based on an unconstitutional statutory regulation, violates the rights of the detained person determined by the first and second paragraphs of Article 19 and of the first paragraph of Article 21 of the Constitution.

### 5.13. Public Hearing in an Electoral Dispute

By Decision No. Up-135/19, U-I-37/19, dated 5 June 2019 (Official Gazette RS, No. 45/19), the Constitutional Court decided on the constitutional complaint of a complainant who challenged a decision of the Administrative Court, which dismissed his appeal against a decision of the City Council of the City of Ljubljana (hereinafter referred to as the City Council), by which the latter dismissed his appeal against an order of the Electoral Commission of the City of Ljubljana. The Administrative Court rebutted all of the allegations of the complainant except partially his allegation concerning the expenditure of budgetary funds for an election campaign. In the framework of this irregularity, which it established in the judgment, the Administrative Court deemed the replies of the Mayor of Ljubljana to three out of five questions that he stated in the October edition of the monthly newsletter Ljubljana, which is financed from budgetary funds, to entail electoral propaganda. However, it assessed that the established irregularity is not such that it could affect the election results if the election results are taken into consideration (the Mayor's list of candidates obtained 23 seats in the City Council, the second best list 10, and the complainant's list none). According to the Administrative Court, in terms of substance the established irregularity was not such as to affect the objective fairness of the electoral procedure or that because of it a reasonable person would have doubts as to the fairness of the election results.

The complainant, both as a voter and as a candidate, claimed in the constitutional complaint that by the challenged judgment the Administrative Court violated a number of constitutional rights, *inter alia* those determined by Articles 22, 23, 24, 25, and 43 of the Constitution. Allegedly, the Administrative Court committed the alleged violations by not holding a main hearing, although in the procedure before the Administrative Court the complainant allegedly requested one and in doing so explained for each proposed witness, and regarding his own testimony, why he proposed the hearing of such witness and what that person would testify. In the complainant's opinion, the established electoral irregularity was important and, contrary to the position of the Administrative Court, significantly affected the results, as the Mayor's list would obtain, in the event it obtained only several votes less, 22 (instead of 23) out of the 45 seats in the City Council and would no longer have a majority in it.

In assessing whether the challenged judgment of the Administrative Court violated the right to a public hearing, the Constitutional Court proceeded from the criteria for assessing the influence of electoral irregularities on the election results, on the basis of which it is apparent which relevant facts must be established in order for the mentioned assessment to be carried out. In assessing the effect of irregularities that entail violations of rules on the financing of an electoral campaign on the election results, one has to proceed from the fact that such are not irregularities that can be expressed numerically. Therefore, both the difference in the number of votes in favour of an individual candidate or a list of candidates and the weight and scope of all established irregularities and their nature and importance for the formation of the free will of voters and for respecting the equality of the candidates in an election must be taken

into consideration. Once the relevant facts are established and all of the above is assessed from the viewpoint of a reasonable voter and reasoned, the effect of such an irregularity on the election results must be assessed.

The Constitutional Court established that the Administrative Court, despite having established that the allegations of the complainant were insufficiently concretised, established by itself the content of the copy of individual pages of the monthly newsletter Ljubljana, which the complainant enclosed with the appeal, and on the basis thereof assessed whether therefrom irregularities follow as to the financing of the electoral campaign of the “List of Candidates of Zoran Janković” in the local elections. Until the Administrative Court established which facts were at issue, it could not carry out a legal assessment thereof; therefore, it is incorrect to conclude that the electoral dispute proceedings only concerned questions of law, which is what the Administrative Court referred to. Since the Administrative Court assessed by itself whether there were irregularities and what kind of irregularities there were, without taking into account the arguments of the complainant, it is impossible to establish in this assessment a clear connection between what the complainant claimed with respect to the Ljubljana newsletter, which was allegedly biased in favour of the Mayor, while other candidates allegedly did not have the possibility to present themselves and their programmes in this newsletter (the equality of the right to vote, which can also affect the formation of the will of the voters), and what the Administrative Court established. Since the representative of the proposer of the list whose terms of office the complainant challenged did not participate in the proceedings, it remained unclear following the decision of the Administrative Court whether some facts were disputable in the proceedings before the Administrative Court and which facts these might be.

The Constitutional Court explained that consideration of allegations concerning unlawful public financing entails one of the questions that are of exceptional importance for the fairness of each electoral procedure, as such may distort the will of the voters and result in an inequality as to the position of candidates in the election; therefore, it is all the more important to allow all parties in an electoral dispute to orally present and contrast their positions as regards the established facts and to adopt a position as to their relevance for consideration of whether they correspond to the statutory definition of inadmissible financing, as well as their influence on the election results. In particular, the nature of electoral disputes requires in these instances that the courts decide once the main hearing is held. A public main hearing cannot be substituted for by the public publication of the operative provisions of a judgment on the notice board of the Administrative Court. Likewise, the principle of the efficiency of proceedings cannot be an independent or predominant reason for refraining to hold a main hearing, which in fact, with the addition of some other circumstances, can be relevant as an additional criterion together with other exceptional circumstances due to which it may be admissible to refrain from holding a main hearing.

The Constitutional Court rejected the constitutional complaint of the Administrative Court in the part that refers to the election of the Mayor of the City of Ljubljana, as it established that the procedural requirements for deciding whether the constitutional complaint was well founded insofar as it refers to the election of the Mayor were not fulfilled. In the part that refers to the election of the members of the City Council, the Constitutional Court abrogated the judgment of the Administrative Court and in this part remanded the case to the Administrative Court for new adjudication, as the Administrative Court violated the complainant’s right determined by Article 22 of the Constitution with its positions by which it substantiated why the electoral dispute was decided on without holding a main hearing.

#### 5.14. The Salary of a Judge upon Re-election to Office

By Decision No. U-I-78/16, Up-384/16, dated 5 June 2019, the Constitutional Court decided on the constitutional complaint of a complainant who challenged decisions of the Supreme Court and Administrative Court, which dismissed her claim regarding her classification into a certain salary grade and the calculation and payment of her salary after she was re-elected to judicial office, namely as a senior judge. The Supreme Court concurred with the decision and reasoning of the Administrative Court, which adopted the position that in view of Article 45 of the Judicial Service Act the classification of the complainant into the starting salary grade is correct, as this is the salary grade into which one is classified when beginning judicial office following election thereto, and it is only through promotion that a judge achieves classification into a higher salary grade.

In her constitutional complaint, the complainant alleged that such an interpretation of Article 45 of the Judicial Service Act is arbitrary and inconsistent with the principle of equality before the law. She alleged that her position is comparable to that of judges who perform judicial office continuously, and not to that of judges who are elected for the first time to judicial office. In the opinion of the complainant, what is at issue is the acquired right to have judicial experience and promotions taken into consideration, which should enjoy statutory and constitutional protection. Together with the constitutional complaint, the complainant also filed a petition for the review of the constitutionality of a law, by which she challenged the first paragraph of Article 44 and Article 45 of the Judicial Service Act, as allegedly they do not regulate, with respect to classification into a salary grade, the position of a judge who is re-elected to judicial office after his or her office was terminated. Consequently, due to the unconstitutional legal gap, they are inconsistent with the second paragraph of Article 14 of the Constitution, as they allegedly enable the unequal treatment of the judges who perform office continuously compared to judges whose judicial office terminated in between periods of holding judicial office.

The Constitutional Court dismissed the petition as unfounded. It adopted the position that judges who are re-elected to judicial office after a certain period of time and those who perform such office continuously are in a different position; therefore, the legislature can treat them differently when classifying them into salary grades. In this respect, the Constitutional Court took into consideration that the continuity of judges is important for an effective and stable judiciary. For judges who perform judicial office continuously, the rules on the incompatibility of judicial office (Article 133 of the Constitution) and the other limitations determined by the Judicial Service Act apply throughout their entire period of service, and judges are continuously obliged to observe the code of judicial ethics, which determines the rules governing the conduct and behaviour of judges not only at work, but also in their private life in order to protect the independence, impartiality, and fairness of judges and the reputation of judicial office. Career judges who perform their work continuously significantly contribute with their work and experience to ensuring an effective and quality judiciary. Judges whose judicial office terminated and who start to perform such office again years (or even decades) later are not bound in the interim by the mentioned obligations and limitations. With respect to the allegation that the challenged regulation interferes with the rights of re-elected judges to have their already gained judicial experience, promotions, and ranks taken into consideration, the Constitutional Court explained that the statutory regulation did not grant the petitioner special rights on the basis of the promotions obtained during her first period holding judicial office, therefore one cannot speak of acquired rights within the meaning of Article 2

of the Constitution. The requirement that the promotions a judge achieved during his or her first period of holding judicial office be taken into consideration when re-elected to judicial office also does not follow from the Constitution.

The Constitutional Court dismissed the constitutional complaint against the challenged judgments. It held that neither the interpretation of Article 45 of the Judicial Service Act nor the reasoning of the courts violate the complainant's right determined by the second paragraph of Article 14 of the Constitution. It also held that the challenged judgments are not arbitrary and that they are appropriately reasoned; therefore, the complainant's right determined by Article 22 of the Constitution was not violated.

## 5.15. The Participation of Employees in the Management of Companies

By Decision No. U-I-55/16, U-I-196/16, dated 13 June 2019 (Official Gazette RS, No. 44/19), upon the petition of the Council of Employees of Nova Ljubljanska Banka, the Constitutional Court decided on the constitutionality of the fourth paragraph of Article 33 of the Banking Act, which excluded the participation of employees in the management of banks by their management bodies (i.e. management and supervisory boards). The challenged fourth paragraph of Article 33 of the Banking Act determined the following: "Banks shall not be subject to the provisions of the Act governing the participation of employees in management concerning employees' representatives in the management and supervisory boards of banks." The applicants alleged that the challenged regulation was inconsistent with the right of employees to participate in the management of companies determined by Article 75 of the Constitution. They also alleged that the regulation was inconsistent with the second paragraph of Article 14 of the Constitution, as the councils of employees and employees in banks are put in an unequal position in comparison with those employed in other companies without reasonable and concrete grounds.

Article 75 of the Constitution ensures employees the right to participate in the management of companies and authorises the legislature to determine by law the manner of exercise of this right and the conditions under which it may be exercised. The Constitutional Court has explained a number of times that the legislature has a wide margin of appreciation when choosing the form of the participation of employees in management. This means that even if the legislature did not envisage the application of certain established forms of participation, such statutory regulation would not be inconsistent with Article 75 of the Constitution merely due to that. This also applies to the case at issue. The challenged provision of the Act excluded the possibility of employees participating in the bodies of banks, but it is not inconsistent with Article 75 of the Constitution merely for that reason. Namely, the Act does not prevent other forms of the participation of employees in management.

However, in instances where there is a narrowing of the scope of the right of employees to participate in management other than envisaged by the regulation that generally applies, the regulation must also be consistent with the principle of equality determined by the second paragraph of Article 14 of the Constitution, which guarantees general equality before the law. If the legislature regulates equal situations in a different manner then there must exist reasonable grounds for such a regulation that are objectively connected to the subject matter. In order to determine which similarities and differences of the relevant situations are essential, one must proceed from the subject of the legal regulation.

The Constitutional Court held that the challenged regulation is inconsistent with the second paragraph of Article 14 of the Constitution, as the legislature failed to substantiate the reasonable grounds for excluding representatives of employees from management bodies in banks that are objectively connected to the subject matter, i.e. the performance of banking activity. Namely, banks are public limited companies, which independently perform – similarly as other companies on the market – a profit-making activity as their sole activity. They carry out business in their own interest and perform their activity to gain profit. In this respect, they are comparable to other companies. It is, however, true that they concurrently implement the general economic, financial, and monetary policy of the state; therefore, they entail an important part of the financial system of the state. In order to ensure the stability of the latter, it is crucial that the operations of banks be efficient, carried out with due diligence, secure, and transparent, which is an objective pursued by the special regulation of some areas of banking, *inter alia*, by rules on the management of banks. However, from neither the legislative file nor the allegations of the National Assembly or the Government does it follow that this objective could in any way be compromised or jeopardised as a result of the participation of representatives of employees in the bodies of banks who otherwise fulfil the conditions for such appointment as determined by the Banking Act. In view of the above, the Constitutional Court established that the fourth paragraph of Article 33 of the Banking Act is inconsistent with the second paragraph of Article 14 of the Constitution and abrogated it.

#### 5.16. The Principle of Legality with Regard to Minor Offences

By Decision No. Up-602/16, dated 20 June 2019, the Constitutional Court decided on the constitutional complaint of a complainant who by a minor offence decision issued by the Health Inspectorate and by a final judgment of the Ljubljana Local Court was found guilty of committing a minor offence under the first paragraph in conjunction with the second paragraph of Article 86 of the Patients' Rights Act because he performed a medical procedure (i.e. a lumbar puncture) on patients who due to mental health issues were unable to make decisions about themselves, without the prior consent of their legal representatives or relatives. In the constitutional complaint, the complainant alleged a violation of the principle of legality determined by Article 28 of the Constitution. Article 86 of the Patients' Rights Act allegedly clearly referred merely to a situation wherein a medical procedure is performed without the consent of a patient who is able to make decisions about him- or herself.

The first paragraph of Article 28 of the Constitution determines that no one may be punished for an act that had not been declared a criminal offence by law or for which a penalty had not been prescribed at the time the act was committed. In the assessment of whether the defendant's conduct corresponds to a state of the facts that forms a constituent element of a criminal offence, courts must not bring into the sphere of punishable conduct anything that the legislature has not clearly and precisely determined already at the general level by determining the constituent elements of a criminal offence. Courts may only use those methods of interpretation that remain within the possible literal meaning. The requirement of the prohibition of statutory and legal analogies (*lex stricta*) is also directly connected with the principle of precision, which clearly delimitates the sphere of punishable conduct from that which is not punishable. For individuals it has to be predictable what consequences their actions can create and they must know where the legislature drew the line of punishability. The first paragraph of Article 28 of the Constitution also applies in the field of minor offence law, with the exception of the requirement that a punishable minor offence shall be determined by law. Such entails that an individual may only be found guilty of committing a minor offence and he or she may

only be imposed a sanction if his or her concretely determined conduct corresponds to a clear and general definition of a minor offence that was in force even before the conduct occurred, and if the assessment regarding such correspondence can be carried out without resorting to interpretations that would widen the literal meaning of the wording of the regulation.

The provision of the law that the complainant was found guilty of violating determined that legal entities providing healthcare services and healthcare professionals shall be punished for the minor offence of performing medical procedures or any other acts during treatment and rehabilitation without the patient's consent. The Constitutional Court established that the right at issue is the right to give consent to the medical care of a patient who is able to make decisions about him- or herself. It is not admissible to perform a medical procedure on or to provide medical care to a patient who is able to make decisions about him- or herself without his or her prior free and conscious consent, save in the instances provided by law. A situation in which due to mental health issues or due to some other cause that affects his or her capacity for judgment a patient is unable to give consent to a medical procedure is specifically regulated in another provision of the law. In the event of such, a medical procedure may only be carried out if the legal representative or the patient's relatives allow it.

The Constitutional Court concurred with the complainant that the minor offence provision on the basis of which he was punished expressly mentions only a patient capable of making decisions about him- or herself. By taking into account the argument *a contrario*, the provision hence does not refer to a patient who is unable to make decisions about him- or herself. Therefore, the local court overstepped the limits of literal interpretation when interpreting the Act, and by applying a statutory analogy, which is not permitted in punitive law, extended the use of a minor offence provision to comparable situations, which, however, are not identical and are not determined to be minor offences in the Act. Since the complainant was found guilty of committing a minor offence despite the fact that his conduct did not match the constituent elements of the minor offence, the challenged judgment violated the principle of legality determined by Article 28 of the Constitution. In view of the nature of the established violation of the human right at issue, the Constitutional Court ordered the discontinuance of the minor offence procedure against the complainant.

In the case at issue, the Constitutional Court primarily determined that from the law it has to be clearly evident which unlawful conduct matches the constituent elements of a minor offence and that courts must not extend this field to other similar cases by means of interpretation. Furthermore, it drew attention to the fact that the third paragraph of Article 51 of the Constitution determines that no one may be compelled to undergo medical treatment except in the cases provided by law. This right is tightly connected to the right to personal dignity (Article 34 of the Constitution) and the right to physical and mental integrity and personality rights (Article 35 of the Constitution). The consent of a patient is a fundamental prerequisite for the admissibility of any medical procedure, and departure therefrom is only possible in exception, and under the conditions and according to a procedure determined by law. This also follows from the Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine, wherein the first paragraph of Article 5 determines that an intervention in the health field may only be carried out after the person concerned has given free and informed consent thereto. In conformity with Article 6 of the mentioned Convention, an intervention may only be carried out on a person who does not have the capacity to consent when such intervention directly benefits him or her, and with the authorisation of his or her representative, or an authority, person, or body provided by law.

## 5.17. The Admission of Guilt in Criminal Procedure

By Decision No. Up-186/15, dated 4 July 2019 (Official Gazette RS, No. 48/19), the Constitutional Court decided on the constitutional complaint of a complainant who challenged a final judgment by which, on the basis of the admission of guilt, he was found guilty of committing the criminal offence of manslaughter while in a state of substantially diminished responsibility on the basis of the first paragraph of Article 115 in conjunction with the third paragraph of Article 29 of the Criminal Code. He was imposed a seven-year prison sentence and the security measure of compulsory psychiatric treatment and placement in the forensic psychiatric ward of the Maribor University Medical Centre.

In his constitutional complaint, the complainant alleged that the regular court did not legally determine the criminal offence correctly. He allegedly admitted how the criminal offence was committed, but he did not concur that the criminal offence determined by Article 115 of the Criminal Code was the correct legal qualification. From all the facts and evidence it was also allegedly clear that what happened was not the criminal offence of manslaughter but the criminal offence of voluntary manslaughter determined by Article 117 of the Criminal Code. All the legal circumstances and consequences of admission should allegedly only count as regards the state of the facts, but not as regards the legal qualification.

The Constitutional Court assessed the allegations of the complainant from the viewpoint of the presumption of innocence. The presumption of innocence is guaranteed by Article 27 of the Constitution, which determines that any person charged with criminal conduct shall be presumed innocent until found guilty by a final judgement. The presumption of innocence prohibits the decision of a court from expressing the position that the accused is guilty without his or her guilt having been proven prior to that and in accordance with the law. The presumption of innocence is also inseparably connected with the right to not incriminate oneself or one's relatives or those close to oneself, or to admit guilt (the fourth indent of Article 29 of the Constitution).

The complainant was found guilty on the basis of admitting guilt at a pre-trial hearing. The institute of a pre-trial hearing was introduced as a new, intermediary, phase after the indictment becomes final and before the main hearing is scheduled, which enables expedited or simplified forms of the criminal procedure and the economical conduct of the main hearing to be carried out. If the accused admits guilt before the court, an expedited procedure is carried out, i.e. the sanction is imposed without the main hearing being carried out. Hence, proceedings against an accused who admits guilt are not carried out in their entirety. However, the law determines that a court may only convict an accused if it is convinced of his or her guilt. This standard of proof applies to every judgment of conviction, i.e. also for a judgment that is issued on the basis of the admission of guilt.

If the accused pleads guilty as charged, the president of the panel assesses: 1. whether the accused understood the nature and consequences of the admission of guilt; 2. whether the admission was made voluntarily; and 3. whether the admission is clear, complete, and supported by the other evidence in the case file. This is not merely formal judicial control of the given admission, but also substantive judicial control. In order to adopt a judgment on the basis of an admission of guilt, it is also necessary for the judge to be convinced that the judgment will reflect the true historical event and that the accused is guilty. Hence, the admission of guilt does not exempt the court from observing the presumption of innocence.

In accordance with the Criminal Code, a perpetrator who takes the life of another human being shall be sentenced to prison for between five and fifteen years, whereas a perpetrator who kills another person through no fault of his or her own under the strong provocation of an assault or serious personal insult from that person shall be sentenced to imprisonment for one to ten years. The condition for an act to qualify as the criminal offence of voluntarily manslaughter is the perpetrator's extreme emotional disturbance or so-called affective state (e.g. rage, fury, fear, shame, sorrow).

The Constitutional Court established that in his legal remedies the complainant did not challenge merely the legal qualification or merely the state of the facts, but claimed that the act that he admitted to does not correspond to the state of the facts as a constituent element of the criminal offence of manslaughter but of the criminal offence of voluntary manslaughter. By claiming that, he essentially alleged that the court of first instance violated its obligation to verify whether the admission was clear, complete, and supported by the other evidence in the case file.

The Constitutional Court stressed that in order to ensure protection of the presumption of innocence enshrined by Article 27 of the Constitution, the assessment of the admission of guilt carried out by the judge adjudicating at the first instance must be conscientious and thorough. In practice, this means that the judge must ascertain the clarity and completeness of the admission by also questioning the accused as to the essential facts and the course of the criminal offence with which he or she is charged. The judge has a duty to ascertain the scope of the admission and the unambiguity of the fact that the admission refers exactly to the criminal offence described in the indictment. This is of particular importance if the accused also adduces circumstances from which the judge could conclude that the criminal offence was carried out differently than the manner described in the indictment or that the accused admits committing a criminal offence other than that described in the indictment. The assessment of the content of the admission must be all the more diligent when the judge – as holds true in the case at issue – has doubts as to the capacity of the accused to assess the circumstances and to control his or her actions. The obligations of the court of first instance to ascertain whether the accused understood the nature and consequences of the admission of guilt, whether the admission was made voluntarily, and also whether the admission is clear, complete, and supported by the other evidence in the case file, are thus of constitutional importance. Since the Higher Court failed to ascertain whether and how the court of first instance assessed the admission of guilt made by the accused in terms of its clarity, completeness, and whether it was supported by the other evidence, and also since the Supreme Court did not remedy this deficiency, the complainant's presumption of innocence determined by Article 27 of the Constitution was violated.

## 5.18. The Use of Drones in the Performance of Police Tasks

By Partial Decision No. U-I-152/17, dated 4 July 2019 (Official Gazette RS, No. 48/19), in proceedings to review constitutionality initiated upon a request of the Ombudsman of Human Rights, the Constitutional Court reviewed the conformity with the Constitution of the third indent of the second paragraph of Article 114a of the Police Tasks and Powers Act, which regulates the legal basis for the use of unmanned aerial vehicles (UAVs, i.e. drones) to collect data in the performance of police tasks. The Ombudsman alleged that the challenged provision is general, and that the use of UAVs allegedly represents the introduction of technology that will enable constant and omnipresent surveillance and which is becoming increasingly sophisticated, advanced, and powerful; as a result, the challenged provision is allegedly not proportionate.

Allegedly, UAVs can be used with respect to any criminal or minor offence dealt with by the Police. The applicant first alleged the inconsistency of the challenged provision with Articles 35 and 38 of the Constitution. Since a violation of the protection of personal data is certainly also one form of violating personal privacy, which the Constitution addresses separately due to the importance and particularities of the right to the protection of personal data, the Constitutional Court reviewed the challenged provision from the viewpoint of Article 38 of the Constitution (the protection of personal data).

By regulating the right to the protection of personal data independently, the Constitution assigns to such protection a special place and importance within the overall protection of personal privacy. It also has a special place on the EU level. Included in Article 8 of the Charter of Fundamental Rights of the European Union, the right to the protection of personal data is placed among the fundamental rights. In conformity with the established constitutional case law, any collecting and processing of personal data entails an interference with the right to the protection of privacy, i.e. with the right of individuals to keep information regarding themselves private, and to prevent others from accessing such. The fundamental value basis of this right is the realisation that individuals have the right to keep information about themselves to themselves and that they are the ones who are to decide how much information about themselves they want to reveal and to whom. However, the right to information privacy is not unlimited; it is not absolute. Therefore, individuals must accept limitations of information privacy, i.e. they must allow interferences therewith that are in the prevailing public interest, provided that the constitutionally determined conditions are fulfilled.

The law must precisely determine which data may be collected and processed, and for what purpose such data may be used; supervision over the collection, processing, and use of personal data must be envisaged, as well as protection of the confidentiality of the collected personal data. The purpose of collecting personal data must be constitutionally admissible. The second paragraph of Article 38 of the Constitution requires the clear, concrete, and precise determination of the (constitutionally admissible) purpose of personal data processing. Only data that are appropriate and absolutely necessary for the implementation of the statutorily defined purpose may be collected. When what is at issue is the processing of personal data for the purposes of police work, the legislature must balance the measure by which it interferes with a sensitive area of the privacy of an individual without his or her consent in an especially meticulous manner.

The challenged statutory provision determined that in order to collect data, police officers may use UAVs to prove criminal and minor offences and to identify the perpetrators thereof when performing police tasks. Following an extensive and detailed interpretation of the challenged statutory provision in conjunction with the other provisions of the Police Tasks and Powers Act, the Criminal Procedure Act, and other laws that regulate police tasks and powers – and by taking into consideration all generally accepted methods of legal interpretation (i.e. literal, teleological, systematic, etc.) – the Constitutional Court held that it is not correct to proceed from the interpretation proposed by the applicant in the case at issue, i.e. that the Police would use new technical means at their own discretion and arbitrarily, thus resulting in constant and omnipresent surveillance. By interpreting all the relevant statutory provisions, the Constitutional Court held (1) that it would be admissible to use UAVs only in order to prove minor and criminal offences and to identify the perpetrators thereof; (2) that it would only be admissible to use them once a criminal or minor offence has already been detected, which excludes their use for preventive or surveillance purposes in the sense of detecting unlawful acts (e.g. road

traffic surveillance); (3) that it would only be admissible to mount on UAVs technical means for taking photographs and recording video (but no other technical means or weapon); (4) that it would only be admissible to use them when a certain law already envisages the use of these technical means, for which it would be admissible to also use them mounted on a UAV; and (5) that the use of UAVs would only be admissible when exercising those police powers where taking photographs and recording video and audio have hitherto been envisaged but by employing a different type of mount, and henceforth also by using UAVs as a mount.

In her request, the Ombudsman for Human Rights provided few reasons as to why the challenged provision is allegedly inconsistent with the protection of personal data (Article 38 of the Constitution). She only referred to an interpretation of the law that according to the analysis of the Constitutional Court did not follow the established methods of interpretation. She based all of her arguments on her interpretation of the challenged provision; on the basis of her interpretation of the law and on the basis of the generalised claim that the technology at issue would enable constant and omnipresent surveillance, which is becoming ever more sophisticated, advanced, and powerful, she further stated that, on the basis of the challenged provision, the use of UAVs without a court order would be possible for any criminal offence that must be prosecuted *ex officio* and for any minor offence. However, the Constitutional Court held that by merely interpreting the Act in a manner that is inconsistent with the established methods of interpretation and by alleging in general that UAVs pose a threat to the protection of privacy, the applicant failed to substantiate the inconsistency of the challenged provision with the protection of personal data determined by the first paragraph of Article 38 of the Constitution. Therefore, the Constitutional Court established that the challenged provision is not inconsistent with the Constitution.

## 5.19. Automatic Recognition of Licence Plates

By Partial Decision No. U-I-152/17, dated 4 July 2019 (Official Gazette RS, No. 46/19), in proceedings to review constitutionality initiated upon a request of the Ombudsman for Human Rights, the Constitutional Court reviewed the conformity with the Constitution of the fourth paragraph of Article 113 of the Police Tasks and Powers Act (and of some other statutory provisions), which introduced new technical means for performing police tasks, namely the optical recognition of licence plates (*ANPR – automatic number plate recognition*). According to the Ombudsman, the mentioned statutory provision was inconsistent with the right to privacy determined by Article 35 of the Constitution and the right to the protection of personal data determined by Article 38 of the Constitution. The challenged measure was allegedly disproportionate, as on the one hand it only pursued the objective of combatting the theft of vehicles, whereas on the other it allowed the mass collection of location data on all road users. The applicant also opined that the subsequent seven-day period of retention of data for the purpose of combatting the theft of motor vehicles was disproportionate. Namely, the reviewed regulation envisaged a further seven-day retention period for all captured data, irrespective of whether these data produce any matches.

The new technical means, i.e. the automatic checking of licence plates, functions in general in such a manner that the optical unit takes a photograph of the licence plate, the software then recognises the licence plate number, and these data are subsequently compared (cross-checked) with other personal data databases. If the data match (i.e. there is a hit), the system notifies the police officer, and on such grounds the police officer may stop the driver and the

vehicle and carry out a more detailed check. From the draft act it followed that the purpose of introducing this technical means was twofold: to ensure road safety and to [facilitate] searches for persons and objects. The measure was designed with the purpose of combatting the most severe violations of road traffic regulations and tracing stolen vehicles and [wanted] persons. The optical recognition of licence plates allegedly entails an effective means for establishing whether the conditions for drivers and vehicles to use roads are fulfilled. According to the opinion of the Government, the use of this technical means only entails an interference with the privacy of those individuals who do not fulfil the conditions for driving or who use vehicles that do not fulfil the conditions for driving, and of individuals who drive stolen vehicles, vehicles with stolen licence plates, or vehicles that authorities are searching for. The optical recognition of licence plates allegedly only entails an enhancement of police powers when carrying out road traffic surveillance. Allegedly, it does not entail a new police power; instead of the hitherto manual checking of data on vehicles and drivers, the measure at issue allegedly enables the automated recognition of licence plates. In addition to [improving] road safety, the measure would allegedly improve the effectiveness of combatting organised crime. Allegedly, due to its geographic location, the Republic of Slovenia is a transit state for organised crime, and the introduction of the optical recognition of licence plates would enable the Police to more easily act proactively.

The Constitutional Court reviewed the measure from the viewpoint of the first paragraph of Article 38 of the Constitution, which guarantees the human right to the protection of personal data. It has stressed a number of times that the constitution-framers thereby specifically protected one aspect of one's privacy, namely information privacy. By regulating this right independently, the Constitution assigns to such a special place and importance within the overall protection of an individual's privacy. The fundamental value basis of this constitutional right is the realisation that individuals have the right to keep information about themselves private and that fundamentally it is they who can decide how much of themselves they will reveal and to whom. A certain degree of concealment from the gaze of others is a necessary prerequisite to the free development of individuals and the intellectual and spiritual potential of individuals. In this sense, the protection of information privacy accelerates the free creation and transfer of thoughts and ideas and strengthens a pluralistic democratic society. However, due to the inclusion of individuals in society, information privacy cannot be unlimited, i.e. absolute. Therefore, individuals must, under the constitutionally determined conditions, allow the collection and processing of personal data.

The second paragraph of Article 38 of the Constitution determines that the collection, processing, and designated use of personal data must be determined by law. Even though this constitutional provision makes a distinction between the terms collection, use, and processing of personal data, the Constitutional Court uses the term processing of personal data as an umbrella term to designate all actions that are carried out in relation to personal data in conformity with the generally accepted terminology. In accordance with the established constitutional case law, any processing of personal data entails an interference with the constitutional right to the protection of personal data determined by Article 38 of the Constitution. The second paragraph of Article 38 of the Constitution determines that the processing of personal data shall be a subject of statutory regulation. An interference with the right to the protection of personal data is admissible if in the law it is, *inter alia*, precisely determined which data may be collected and processed. Only data that are appropriate and absolutely necessary for the implementation of the statutorily defined purpose may be collected. The requirement that the processing of personal data must be subject to statutory regulation does not signify the

mere existence of a statutory provision that enables the processing of personal data in a certain manner; instead, such statutory provision must also be in conformity with those principles of a state governed by the rule of law determined by Article 2 of the Constitution which require that provisions be defined sufficiently clearly and precisely so that they can be implemented in practice, so that they do not allow arbitrary actions by the executive branch of power, and so that they determine with sufficient precision the legal position of the entities to which they refer. In a regulation that refers to the delicate field of information privacy with which the state interferes by collecting personal data, the requirement that provisions be sufficiently clear and precise so as to establish the meaning of the regulation holds special importance.

Personal data are any information regarding a determined or determinable individual; a determinable individual is someone who can be determined either directly or indirectly. The challenged regulation envisaged the processing of personal data, as licence plate data (together with the date, location, and time when the photograph of the licence plate was taken) entail personal data because they refer to information regarding the vehicle of a determined or determinable individual. However, from the challenged provision it did not expressly follow that the collected licence plate data would be automatically compared with other personal data databases, and also not against which personal data databases such comparison would be carried out. In fact, the legislature enabled the Police to automatically record licence plates and, consequently, to retain the data collected in such a manner in a special database for seven days. However, this provision did not in and of itself enable the Police to also carry out the next and key step in the process of personal data processing for the purposes of the envisaged measure, namely to automatically (i.e. in an automated manner) compare all these recorded and stored data with [data from] other personal data databases.

The requirement under the second paragraph of Article 38 of the Constitution that the processing of personal data shall be subject to statutory regulation signifies that there must exist a statutory basis for every single action taken in relation to personal data, which means for every step in the process, including the collection of data, the retention thereof, access thereto, the transfer, analysis, and comparison thereof, and all other steps envisaged by the measure in question. The challenged provision did not fulfil these criteria. The measure of automatic licence plate checking as envisaged by the legislature includes the collection of data and then the comparison of data collected in such a manner with other personal data databases. Each of the two data processing steps entails an independent interference and requires the independent, statutorily structured, regulation of personal data processing. Since the challenged provision failed to determine that the collected licence plate data can be further processed by automated comparison with other personal data databases, the Constitutional Court held that the regulation at issue is for this reason alone inconsistent with the requirement referred to in the second paragraph of Article 38 of the Constitution. The Constitutional Court therefore abrogated it.

## 5.20. European Arrest Warrant

By Decision No. Up-531/19, dated 4 July 2019, the Constitutional Court decided on the constitutional complaint of a Slovene citizen who was found guilty, in Romania, of committing two criminal offences of tax evasion, and was sentenced to a four-year prison sentence. On the basis of a European arrest warrant, Romania asked the Republic of Slovenia to surrender the complainant in order for him to serve the imposed sentence. By an order dated 4 March 2016, which was challenged by the constitutional complaint, the Ljubljana District Court allowed

the surrender, but postponed it until the complainant had served a prison sentence imposed in different criminal proceedings in the Republic of Slovenia. In the order allowing the postponed surrender, the Court stated that the complainant was not present in person at the trial in Romania at which the judgment of conviction was issued, and he was also not invited in person; nevertheless, the condition for his surrender determined by the second paragraph of Article 13 of the Cooperation in Criminal Matters with the Member States of the European Union Act (the CCMMSEUA-1) was fulfilled, as Romania issued appropriate assurances that, following the surrender, the complainant would have the possibility of a retrial. The complainant filed an appeal against this order, which the Ljubljana Higher Court dismissed.

Following the issuance of the challenged order, the complainant attempted to secure a retrial in Romania and filed two applications to the competent Romanian court. The Romanian courts treated the first application as an appeal against the judgment of conviction at the first instance. The appellate court in Timișoara established that the judgment of the Timiș District Court was not served on the complainant, and therefore ordered that the judgment be translated into Slovene and served on him in the penitentiary in the Republic of Slovenia. Concurrently, it invited the complainant to the hearing. The appellate court then carried out the hearing in absentia and dismissed his appeal as unfounded. The Romanian courts treated the second application as a motion for a retrial on the basis of Article 466 of the Romanian Criminal Procedure Code, which regulates the reopening of a criminal procedure in the event of a trial against a person convicted in absentia. The court of first instance dismissed this motion, and the appellate court in Timișoara upheld that decision. From the order of the appellate court it follows, *inter alia*, that the complainant was sent an invitation to appear at court at both the first and second instances, in conformity with the Romanian legislation.

Upon having obtained the decision of the Romanian courts, the complainants filed a request before the Ljubljana District Court for the abrogation or revocation of the challenged final order by which the postponed surrender of the complainant to Romania was granted. He alleged that the surrender was granted due to the assurances of the Romanian authorities that he would be ensured a retrial, but later it became apparent that these assurances were not met. The investigating judge of the Ljubljana District Court treated the complainant's application as an appeal against the challenged final order on surrender and rejected it as inadmissible. The complainant filed an appeal against that decision, which was dismissed by a panel of the Ljubljana District Court.

The complainant filed a constitutional complaint against both final orders, in which he alleged that violations of the rights to a defence, to a fair trial, to a counsel, and to a public trial occurred. He alleged that the surrender was granted due to the assurances of the Romanian authorities that he would be ensured a retrial, but subsequently it became apparent that these assurances no longer exist and in fact had never existed, as his appeal against the judgment of conviction was dismissed in Romania, and also his request for a retrial – due to fact that the trial was carried out in absentia – was dismissed. The complainant opined that the legal basis for the surrender thus ceased to exist.

The Constitutional Court held that the position of both Slovene courts as to the fact that Romania provided appropriate assurances, as determined by the second paragraph of Article 13 of the CCMMSEUA-1 that, after the surrender, the complainant would be ensured a retrial, is manifestly erroneous and entails a violation of the right determined by Article 22 of the Constitution. From neither the European arrest warrant at issue nor from the subsequently

obtained documents is it possible to discern clear and concrete assurances by the Romanian judicial authorities (1) that immediately after the surrender of the complainant the judgment – on which the European arrest warrant ensuring the execution of the sentence is based – would be served on the complainant; (2) that the complainant would be informed of his right to request a retrial, this time while he is present; and (3) that he would be informed of the time limit during which he would be able to request a retrial. According to the Constitutional Court, the mere allegation of the Romanian court that a person who was tried in absentia can, in conformity with the Romanian legislation, require the reopening of criminal proceedings, including the enclosed translation of some provisions of the Romanian Criminal Procedure Code, does not entail the assurances referred to in the second paragraph of Article 13 of the CCMMSEUA-1. The Constitutional Court abrogated the final order allowing the surrender and remanded the case for new adjudication to the Ljubljana District Court.

#### 5.21. Enforcement by the Seizure of One's Home and the Aspect of Human Dignity

By Decision No. U-I-171/16, Up-793/16, dated 11 July 2019 (Official Gazette RS, No. 53/19), the Constitutional Court reviewed, on the basis of a petition (filed together with a constitutional complaint), a part of the second paragraph of Article 71 of the Enforcement and Securing of Claims Act (ESCA), which allows for the postponement of enforcement due to particularly justified reasons upon the debtor's proposal for a maximum of three months and only once. The Constitutional Court limited its assessment of the challenged part of the mentioned provision to reviewing the enforcement by eviction and the seizure of residential real property that is the debtor's home.

The purpose of the postponement of enforcement referred to in the second paragraph of Article 71 of the ESCA is to ensure the protection of the debtor when the execution of approved enforcement by eviction and the seizure of residential real property that is the debtor's home would entail for the debtor, due to particularly justified reasons, an inadmissible hardship that would be inconsistent with the attained values of society and might be contrary to the obligation to observe human dignity and would deny individuals any manner of care. However, the postponement of granting a creditor's claim that follows from a final judicial decision can only be allowed exceptionally. By the second paragraph of Article 71 of the ESCA, the legislature allowed the courts to balance the positions of the creditor and the debtor. It was left to the courts, taking into account all the circumstances of the concrete case, to seek a fair balance between the right of the creditor to judicial protection and the right to physical integrity of the debtor. The assessment of the court regarding the postponement of enforcement was to a significant degree rendered impossible due to statutory regulations, namely: (1) the period for which enforcement can be postponed (a maximum of three months) and (2) postponement is possible only once. In this manner, the law in reality prevented the court from carrying out an assessment by taking into consideration all the circumstances of the case.

The Constitutional Court assessed the challenged part of the provision as if it concerns the formation of the manner of exercise of rights in collision in a judicial procedure. When assessing a statutory regulation that in conformity with the second paragraph of Article 15 of the Constitution only regulates the manner of implementation of human rights, the Constitutional Court is reserved. In this framework, it only assesses whether the challenged regulation is

reasonable. In this respect, the reasonableness of the grounds must be understood as the connection between the regulation and the objective, i.e. as the requirement that there exists an objective connection between the regulation at issue and the subject matter. The Constitutional Court assessed that the challenged part of the provision undermines the realisation of the objective of the postponement of enforcement – i.e. to enable the protection of the debtor's position in those exceptional cases where the invasiveness of eviction and the seizure of real property would be contrary to the attained values of society and the obligation to observe human dignity and would deny individuals any manner of care. Thus, the challenged part of the second paragraph of Article 71 of the ESCA was contrary to the purpose of the postponement of enforcement due to particularly justified reasons. Therefore, the Constitutional Court held that there is no objective connection between the regulation at issue and the subject matter and that, as such, the regulation is not reasonable. It held that in the part in which the second paragraph of Article 71 of the ESCA allows the postponement of enforcement for a maximum of three months and only once, insofar as it refers to enforcement by eviction and the seizure of residential real property that is the debtor's home, that provision is inconsistent with the right to physical integrity determined by Article 35 of the Constitution.

In the constitutional complaint, the orders issued in the enforcement procedure were challenged in the part in which the courts dismissed the motion for the postponement of enforcement for more than three months. Since the two challenged orders were based on the second paragraph of Article 71 of the ESCA, which was partially abrogated by the Constitutional Court, the challenged judicial decisions violated the complainant's right determined by Article 35 of the Constitution.

## 5.22. Aliens Act

By Decision No. U-I-59/17, dated 18 September 2019 (Official Gazette RS, No. 62/19), upon the request of the Ombudsman for Human Rights, the Constitutional Court decided on the constitutionality of the second, third, and fourth sentences of the second paragraph and of the third paragraph of Article 10b of the Aliens Act. The challenged provisions regulated the special legal regime governing the treatment of persons who express an intention to submit an application for international protection during a time of changed circumstances in the field of migration. In the second paragraph of Article 10b of the Aliens Act, the legislature temporarily and in a certain area substituted the general provisions of the International Protection Act, which regulate the handling of international protection applications differently (i.e. normally). The special regime governing the treatment of "motions to submit an application for international protection" in fact entailed that the Police should perform an identification procedure and establish the identity of the alien in conformity with the law that regulates the tasks and powers of the Police, and that, notwithstanding the provisions of the law regulating international protection, the Police would reject such motion as inadmissible and transfer the alien to the relevant neighbouring country if in the neighbouring EU Member State from which the alien entered the state there are no systemic deficiencies related to asylum procedures and reception conditions for applicants that might expose them to the risk of torture or inhuman or degrading treatment.

In order for the special legal regime to enter into force, the National Assembly would first have to establish, by a special decision, that the changed circumstances in the field of migration cause or could cause a situation in which public order and peace or internal security are or

could be jeopardised, such that the functioning of the central institutions of the state and the provision of its vital functions is or could be rendered difficult. The National Assembly should decide on the entry into force of the special legal regime by observing the principle of proportionality. The special legal regime governing the treatment of aliens who express the intention to submit an application for international protection would hence enter into force in special circumstances in the state in the field of migration.

The Constitutional Court assessed the challenged statutory provisions from the viewpoint of their conformity with the principle of non-refoulement (Article 18 of the Constitution). The principle of non-refoulement is an international legal principle that prohibits states from removing, expelling, or extraditing a person to a country in which there exists a serious threat that the person will be subjected to the death penalty, torture, or any other inhuman or degrading treatment or punishment. The principle of non-refoulement ensures individuals the right to enter and to stay in the country where they seek protection and the right to fair and effective proceedings in which the competent authority assesses whether by their removal, expulsion, or extradition this principle could be violated. A state may only exceptionally expel, remove, or extradite an applicant for international protection if it is convinced that the third country is safe (i.e. the safe third country concept). A third country is safe if it provides applicants effective protection against a violation of the non-refoulement principle. An essential requirement when applying the safe third country concept is to ensure an individual procedure in which the individual can rebut the presumption that the third country is safe. In the procedure, the individual may adduce all the circumstances by which he or she can prove that there exists a serious threat that as a result of being extradited to that country he or she would be subjected to inhuman treatment. The same requirements also apply when extraditing individuals to another EU Member State. Due to observance of the non-refoulement principle, the safe third country concept may only be applied if the third country in advance and expressly assures that it will allow entry and access to a fair and effective procedure or if there exists an obligation of the state extraditing the individual that in the event of the denial of entry into a third state it will by itself ensure the individual concerned access to a procedure that is in conformity with the fundamental principles and values required by the non-refoulement principle. On the basis of the challenged provisions of the Aliens Act, an alien who during a time of special circumstances expresses the intention to submit an application for international protection can only rebut the presumption that the neighbouring EU Member State is not safe by adducing the existence of systemic deficiencies in the neighbouring country, health-related circumstances, the existence of family ties with an alien with health issues, or the fact that he or she is an unaccompanied minor. An alien would not be able to adduce other circumstances that could be relevant from the viewpoint of the protection of the non-refoulement principle. Furthermore, the Aliens Act did not regulate the position of an alien who has to leave the Republic of Slovenia on the basis of an enforceable order if the neighbouring EU Member State denies his or her entry.

In its assessment, the Constitutional Court had to take into consideration the circumstances in which the introduction of the special legal regime would be admissible. It held that special circumstances at a time of changed circumstances in the field of migration within the meaning of the second paragraph of Article 10a of the Aliens Act do not entail the existence of a state of emergency referred to in Article 92 of the Constitution. According to the Constitutional Court, the Constitution does not allow for the interpretation that the second paragraph of Article 10a of the Aliens Act regulates circumstances in which the existence of the state would be jeopardised and weighty reasons would be demonstrated that would justify the conclusion

that there exists a real risk that due to changed circumstances in the field of migration the inhabitants of the Republic of Slovenia would be exposed to inhuman treatment (a state of emergency). The circumstances in which the state would no longer be able to effectively ensure public order or internal security as a result of which the existence of the state would be threatened are regulated by Article 92 of the Constitution. The Constitution enables the legislature to declare a state of emergency whenever there exists a great and general danger. In contrast, the legislature defined the circumstances in which the introduction of the special legal regime is admissible with the concepts “threat to public order”, “jeopardised internal security”, “difficulty in the functioning of the central institutions of the state”, and “difficulty ensuring the provision of the vital functions of the state”, which encompass a very broad set of different factual circumstances in society. Thereby, the legislature determined the circumstances in which the introduction of the special legal regime is admissible in a conceptually open manner. Since it follows from the statutory text that the introduction of the special legal regime is admissible already when the functioning of the most important state authorities could be rendered difficult as a result of changed circumstances in the field of migration and even in a situation where negative consequences of changes in the field of migration have not yet even occurred, it was not possible to concur, not even on the statutory level, that Article 10a of the Aliens Act addresses circumstances in which the existence of the state is threatened and the inhabitants of the Republic of Slovenia are exposed to inhuman treatment as a result of the changed circumstances in the field of migration.

Under the Constitution, a limitation of human rights can only be assessed in ordinary circumstances (Article 15 of the Constitution) and during a war and state of emergency (Article 16 of the Constitution). There is no third option (*tertium non datur*). Since the circumstances referred to in the second paragraph of Article 10a of the Aliens Act do not entail a state of emergency in the state, the Constitutional Court was only able to assess the challenged provisions in conformity with the criteria of constitutional case law that apply in ordinary circumstances (i.e. when there is no state of emergency).

The legislature has the duty to regulate the procedure that enables effective exercise of the right determined by Article 18 of the Constitution. The regulation determined by the second and third paragraphs of Article 10b of the Aliens Act did not ensure aliens who, during a time when the special legal regime is in force, submit an application for international protection access to a fair and effective trial in either the neighbouring EU Member State or the Republic of Slovenia. In addition, for aliens who claim that due to their individual circumstances the neighbouring EU Member State is not a safe third country, the challenged two provisions limited the types and number of circumstances by which they could challenge the presumption that the neighbouring EU Member State is safe.

An essential requirement when applying the safe third country concept is namely to ensure an individual procedure in which an individual can rebut the presumption that the third country is safe. From the case law of the ECHR and the CJEU, it follows that also when extradited to a neighbouring EU Member State an individual must have the possibility to adduce in the procedure all the circumstances by which he or she can prove that there exists a serious threat that as a result of being extradited to the EU Member State he or she would be subjected to inhuman treatment. The number and types of such circumstances must be limited in advance. Therefore, the challenged statutory regulation did not enable effective exercise of the right determined by Article 18 of the Constitution and entailed an interference with that right.

On the basis of the challenged constitutional case law, also taking into consideration the case law of the European Court of Human Rights and of the Court of Justice of the European Union in the field of migration, the Constitutional Court proceeded from the fact that the right determined by Article 18 of the Constitution cannot be limited. Interferences with this right are always inadmissible. Consequently, the Constitutional Court abrogated the second, third, and fourth sentences of the second paragraph and the third paragraph of Article 10b of the Aliens Act.

### 5.23. Running a Business as a Sole Trader while Concurrently Enjoying the Right to a Pension

On the basis of a request by the Labour and Social Court in Ljubljana, by Decision No. U-I-303/18, dated 18 September 2019 (Official Gazette RS, No. 59/19), the Constitutional Court reviewed the regulation of the Pension and Disability Insurance Act currently in force that does not enable sole traders to receive their full old-age pension and concurrently carry out business activities. It reviewed the regulation from the perspective of the principle of trust in the law (Article 2 of the Constitution), the principle of equality (the second paragraph of Article 14 of the Constitution), the right to free economic initiative (the first paragraph of Article 74 of the Constitution), and the right to social security (the first paragraph of Article 50 of the Constitution).

The Constitutional Court agreed with the applicant that the challenged regulation entails a deterioration of the position of sole traders when compared to the regulation previously in force. Therefore, the Constitutional Court first reviewed the challenged regulation from the perspective of its consistency with the principle of protection of trust in the law determined by Article 2 of the Constitution. It found that the challenged regulation pursues the objectives of ensuring intergenerational equity, equality, and financial sustainability, which are in the public interest and prevail over the interests of sole traders. In this regard, the Constitutional Court took into account that sole traders were not deprived of their pensions in their entirety and that the three-year transitional period provided sufficient time for their adaptation.

From the perspective of the principle of equality determined by the second paragraph of Article 14 of the Constitution, the Constitutional Court compared the position of sole traders with the positions of (1) farmers, (2) recipients of pensions who receive payments on the basis of civil-law contracts, (3) retired persons who carry out temporary and occasional work on the basis of a special regulation, (4) sole traders who obtained a pension in accordance with the regulation previously in force, (5) recipients of pensions who act as holders of procuratorship for a capital company, i.e. representatives with an extensive, statutorily determined, power of attorney, and also carry out other work in the company, and (6) workers and self-employed persons in the cultural field. With regard to all of these comparisons, the Constitutional Court held that the challenged regulation is not inconsistent with the principle of equality.

The Constitutional Court further reviewed the challenged regulation from the perspective of its consistency with the right to free economic initiative guaranteed by the first paragraph of Article 74 of the Constitution. One of the essential consequences of the challenged regulation for sole traders is namely that they have to terminate their business in its entirety if they wish to receive a full pension.

Article 74 of the Constitution determines the fundamental constitutional definition of the economic system of the state, which is based on free economic initiative, i.e. on free enterprise, with due consideration that free and fair competition is a fundamental principle of the economic order of the state. However, the Constitution also sets limits on free economic initiative. The second sentence of the second paragraph of Article 74 of the Constitution thus determines that commercial activities may not be pursued in a manner contrary to the public interest. The public interest is the explicitly determined constitutional framework within which free economic initiative is guaranteed. The Constitution hence explicitly determines the limits of free economic initiative and vests the legislature with the authority and the duty to formulate, within the scope of regulating free economic initiative, economic policies in different areas of social life that it deems to be the most appropriate for ensuring the general social welfare. In so doing, the legislature enjoys a wide margin of appreciation.

By means of the challenged regulation the legislature determined the conditions for exercising the right to a pension. It thus aimed at achieving the objectives of intergenerational equity, eliminating inequality before the law, and ensuring the financial sustainability of the pension fund. The challenged regulation does not force sole traders into retirement or to terminate their business. The circumstance that a sole trader fulfils the conditions for retirement enables him or her to choose either to keep the status of sole trader and consequently receive a reduced pension or to cease his or her activities and receive a full pension. Retirement upon fulfilment of the conditions is not mandatory. A person who fulfils the conditions for retirement thus merely has the possibility to retire.

However, although the challenged regulation determines the conditions for obtaining the right to a pension and does not have a direct and mandatory effect on the exercise of free economic initiative, it is not neutral with regard to free economic initiative. It has to be presupposed that a regulation that would enable everyone to receive a full pension – including sole traders regardless of whether the pension substitutes for their income or whether their pension and income are cumulated – would create conditions that would encourage sole traders to continue to run their business. A regulation that restricts the reception of a pension to instances where an individual ceases to be a sole trader does not contribute to such. Continuing to run a business after having fulfilled the conditions for retirement thus proves to be less attractive than it could be precisely as in such instances the reception of a full pension is excluded. However, it must be taken into account that the choice which an individual faces with regard to the possible continuation of his or her business after having fulfilled the conditions for obtaining the right to a pension and obtaining the option to retire, as a general rule, also depends on a number of other circumstances in which the individual finds him- or herself and which are of a personal, non-monetary, or monetary nature. The challenged regulation hence entails only one of the reasons for an individual's decision whether to continue a business after having fulfilled the conditions for retirement, and it is by no means the aim of the challenged regulation to influence the individual's choice to give up his or her business. Therefore, the Constitutional Court decided that the indirect actual influence of the challenged regulation on the exercise of the right to free economic initiative does not have the characteristics of an interference with this right. It held that the challenged regulation is not inconsistent with the right determined by the first paragraph of Article 74 of the Constitution.

When conducting the review from the perspective of the right to social security enshrined in Article 50 of the Constitution, the Constitutional Court proceeded from the fact that citizens

have the right to social security, including the right to a pension, under the conditions provided by law. According to established constitutional case law, the core of the right to a pension includes ensuring the income security of insured persons in instances when they are no longer required to work and provide for their income in such manner. A pension is intended to substitute, to a certain (proportional) extent, for the income received during one's active years. The social aspect of the constitutional core of the right to a pension does not guarantee the payment of an old-age pension in instances where the insured person does not cease to work. In addition, the legislature's possibility to temporarily suspend the payment of old-age benefits (which are based on contributions paid) if the beneficiary concurrently engages in certain gainful activities is also determined by the third paragraph of Article 26 of Convention No. 102 of the International Labour Organization concerning minimum social security standards and by the third paragraph of Article 26 of the European Code of Social Security.

It follows from constitutional case law that the essence or the core of the monetary aspect of the right to a pension entails (*inter alia*) the right of an individual to obtain and enjoy, on the basis of contributions paid for pension insurance and subject to the fulfilment of other reasonable conditions (e.g. the pensionable period, age), a pension that guarantees his or her social security. However, when considering the monetary aspect of the right to a pension, it must also be noted that the first paragraph of Article 50 of the Constitution accords the legislature a wide margin of appreciation regarding the choice of measures for regulating the right to a pension. Within this framework, the Constitutional Court may only review whether the challenged condition is reasonable. When what is at issue is the manner of the exercise of a human right, the review of the Constitutional Court is restricted to the question of whether the legislature had reasonable grounds for choosing the measures that define the manner of exercise of the right at issue.

By means of the challenged regulation the legislature aimed to ensure intergenerational equity, as it prevents the additional burdening of insured persons who have not yet fulfilled the retirement conditions and who carry the predominant share of the burden of financing the system of mandatory pension insurance through their contributions. In addition, it was intended to ensure the financial sustainability of the pension system. The state must aim to regulate pension insurance in such a manner so as to render the pension system sustainable on its own. The state's financial capacity to co-finance the pension system also requires that a balance between the competing interests of policies in the social, economic, and fiscal fields is achieved, which inevitably entails that the capacity to additionally finance the pension fund from the state budget has to adapt to this balance and to the existing capacities. The challenged regulation further proceeded from the position that within the system of mandatory pension insurance an insured person is insured for obtaining a pension that will substitute for the loss of income from work. The reduction of the pensions of sole traders who continue to run their business will be substituted for by their expected income from such business. Therefore, they do not have to be ensured a pension in such part. This is also a measure that contributes to the financial sustainability of the pension system. In light of the above, the Constitutional Court held that the challenged regulation is consistent with the right to social security determined by the first paragraph of Article 50 of the Constitution. However, such decision of the Constitutional Court does not entail that the Constitution does not allow for a different regulation that would allow sole traders to run their business and concurrently enjoy the right to a full old-age pension.

#### 5.24. The Right to an Impartial Judge in Instances of a Co-defendant's Admission of Guilt

By Decision No. Up-709/15, Up-710/15, dated 9 October 2019 (Official Gazette RS, No. 69/19), the Constitutional Court decided on the constitutional complaint of a complainant who was found guilty of the criminal offence of accepting a bribe determined by the first paragraph of Article 261 of the Criminal Code. He was sentenced to prison. The complainant's most important allegations were the following: (1) that his right to an impartial trial determined by the first paragraph of Article 23 of the Constitution was violated because the same judge who had previously decided on the guilt of his two co-defendants also decided on his guilt; (2) that his right determined by Article 22 of the Constitution was violated because the court order authorising the acquisition of information concerning a bank transfer did not include a reasoning; (3) that due to the use of traffic data his right to communication privacy determined by Article 37 of the Constitution was violated; and (4) that his right to a defence was violated because the court failed to give him the opportunity to examine a witness for the prosecution. In an extensive decision, the Constitutional Court rejected all of the complainant's allegations and provided reasons for such, and consequently dismissed the constitutional complaint as unfounded.

With regard to the court order by which the investigating judge required the bank to send him information concerning the complainant, namely information regarding a bank transfer – i.e. a cash deposit made by the complainant – the Constitutional Court held that it was sufficiently reasoned. It clearly stated the reasons that were the basis for the court's decision. With regard to the acquisition and use of the traffic data, the Constitutional Court took into account that such measure was ordered due to the existence of the suspicion that a serious criminal offence had been committed, that its duration was limited, that the court substantiated it by providing reasons that were grounded in objective criteria for accessing such data, as at the time when the order was issued the criminal offence was already being monitored through other covert investigative measures, i.e., *inter alia*, by means of the measure of wiretapping and recording communications, which entails the most profound interference with the right to communication privacy. The measure also encompassed stored traffic data for a very brief period preceding the issuance of the court order by which it was ordered. The Constitutional Court assessed that, in the circumstances of the case, neither the storage nor the acquisition of the information contradicted the constitutional requirements that an interference with communication privacy as enshrined in the first paragraph of Article 37 of the Constitution must be proportionate. With regard to the dismissal of the motion to examine witnesses – i.e. the complainant's co-defendants, who had beforehand admitted their guilt – the Constitutional Court held that it did not violate the complainant's right to a defence determined by the second indent of Article 29 of the Constitution. The final judgment namely did not rely exclusively or decisively on the defence of these co-defendants acting as witnesses, nor had the other evidence been assessed from the perspective of their defence.

The Constitutional Court adopted important precedential positions with regard to the right to an impartial court when it previously decided on the criminal liability of an accused person's co-defendants who had admitted their guilt. The challenged first instance judgment was namely adopted by the judge who had previously accepted the admission of guilt of the complainant's co-defendants in disjoined proceedings and thus allegedly had formed a preconceived opinion on the adjudicated subject matter. The review proceeded from the first paragraph of

Article 23 of the Constitution, according to which everyone has the right to have any decision regarding his or her rights, duties, and any charges brought against him or her made without undue delay by an independent, impartial court constituted by law. In accordance with the established constitutional case law, impartiality entails that the person adjudicating on a matter does not have a vested interest in the outcome of the proceedings and is open to the evidence proposed and the motions of the parties. In order to be able to decide in an impartial manner, a judge must thus not form a preconceived opinion on the adjudicated subject matter, and the decision of the court must be adopted on the basis of facts and reasons presented by the parties in the course of judicial proceedings.

The impartiality of a judge is ensured when from the standpoint of a reasonable person there exist no circumstances relating to the judge that would raise justified doubt as to his or her 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 individual cases courts have to create and maintain the appearance of impartiality (i.e. the objective aspect of impartiality). The impartiality of judges as the bearers of judicial power at individual courts must thus also be assessed according to its outward expression, i.e. how the (im)partiality of judges is understood by the parties to proceedings and how such can be understood in the eyes of the public. It therefore does not suffice that in proceedings the court acts and decides in an impartial manner; the court must also be composed in such a manner that there exist no circumstances that would raise doubt regarding the appearance of the impartiality of the judges. In addition to ensuring the observance of procedural safeguards, from the perspective of ensuring the objective aspect of the court's impartiality it is also important to eliminate circumstances that from the standpoint of a reasonable person would raise justified doubt as to the judge's impartiality. In connection therewith, the confidence that the decisions of the courts must inspire in the public in a democratic society is especially accentuated.

On the basis of these criteria, already by Decision No. Up-57/14, dated 26 January 2017, the Constitutional Court established a violation of the right to an impartial trial determined by the first paragraph of Article 23 of the Constitution because the court's assessment in the judgment that had been issued against the complainant's co-defendants in joined criminal proceedings contained an assessment of the complainant's actions, on which the court decided by a subsequent judgment issued against the complainant in disjoined proceedings. As in that case the same judge who had already decided on the guilt of the complainant's co-defendants also decided on the complainant's guilt and the judgment against the co-defendants included positions that prejudged the assessment of the complainant's guilt in his subsequent trial, the appearance of the court's impartiality in the subsequent disjoined criminal proceedings was impaired to such an extent that one could no longer speak of an impartial trial.

The institution of the exclusion of a judge is one of the most important procedural statutory institutions in criminal proceedings for ensuring the right to an impartial trial. In the Criminal Procedure Act, the grounds for exclusion according to which a judge must not adjudicate in a case if he or she has issued an order rejecting the defendant's admission of guilt or rejecting an agreement containing a guilty plea are included among the mandatory grounds for exclusion (*iudex inhabilis*), which entail the irrefutable legal presumption (*presumptio iuris et de iure*) that they affect a judge's impartiality and prevent the judge from adjudicating a case. Instances where a judge accepts a defendant's admission of guilt and subsequently adjudicates in the trial against his or her co-defendants are not expressly regulated by the Act. The Act does, however, also regulate the grounds for exclusion due to bias (*iudex suspectus*), according

to which a judge must not perform his or her function as judge if there exist circumstances that raise doubt regarding the judge's impartiality. As the Constitutional Court held already in Decision No. Up-57/14, a judge must recuse him- or herself if he or she believes that his or her role in a trial against a defendant's co-defendants entails grounds for exclusion due to bias in accordance with the established constitutional case law and the case law of the ECtHR.

In the case at issue, at the 19<sup>th</sup> hearing of the trial, the complainant's co-defendants admitted the commission of the criminal offences of accepting a bribe, and the judge hence decided to disjoin the criminal proceedings against them and decide them separately. Following the pronouncement of the judgment against his co-defendants, the judge only conducted three further hearings in the criminal proceedings against the complainant. In the disjoined criminal proceedings against the co-defendants the same judge adjudicated as in the criminal proceedings that continued against the complainant following the disjoining.

As the judgment in the disjoined proceedings was issued on the basis of an admission of guilt, the court did not establish the facts of the case, nor did it assess all of the evidence at a public, oral, and direct main hearing. In the judgment against the co-defendants, the District Court limited itself solely to the finding that they admitted their guilt before the judge, who accepted their admissions. Consequently, the judgment contains no reasoned positions that also include an assessment of the concrete acts of the complainant, which the court decided by the subsequent judgment issued against him. The judgment against the co-defendants from the disjoined criminal proceedings did, however, contain operative provisions including a description of the legally relevant facts of the concrete case, a citation of the criminal offences at issue, the determination of the criminal sanction, and the decision.

The adoption of a judgment on the basis of an admission of guilt nevertheless requires the court's conviction that the judgment truthfully reflects the relevant past event and that the defendants are guilty. The court namely still adopts the judgment on the basis of facts that it accepts as such or that are deemed to be such due to the admission of guilt. In the disjoined proceedings, the court therefore had to adopt a decision on the merits concerning the guilt of the co-defendants even though they had admitted their guilt. The description of the legally relevant facts of the concrete case with regard to the criminal offence in the operative provisions of the judgment against the co-defendants included the statement that the co-defendants were involved in bribing the complainant. In connection with the individual acts of commission, the court also noted the role the complainant played in their commission and the fact that the complainant's co-defendants claimed the money in his name; the judgment also mentions that part of the money that the injured party gave to the co-defendants was handed to the complainant.

The criminal offences referred to in the judgment against the complainant's co-defendants cited the same past events as the past events contained in the description of the legally relevant facts of the case referred to in the challenged judgment against the complainant. The complainant and his co-defendants were each convicted of a continued offence of accepting a bribe. His co-defendants were convicted of acting as agents in connection with the acceptance of a bribe, and the complainant was subsequently convicted of accepting a bribe. Therefore, when establishing the statutory elements of the offence of acting as an agent in connection with the acceptance of a bribe, given the definition of such criminal offence, in the judgment against the complainant's co-defendants the court had to establish the existence of a bribe (but it did not have to substantiate such, as the case concerned a judgment on the basis of an

admission of guilt). The acts of the complainant (who demanded or accepted a bribe) and his co-defendants (who acted as agents in connection with the bribe) concern acts arising from the same past event and they in fact entail the incrimination of different forms of participation in the same criminal offence. However, the judgment on the basis of the admission of guilt only referred to the co-defendants who admitted their guilt.

The Constitutional Court considered the time when the complainant's co-defendants admitted the criminal offence to also be important for the case at issue. The epistemological value of an admission of guilt can namely depend on the time when it is given. The later in the process of taking evidence such an admission is given, the lower is, as a general rule, its weight in the judge's cognitive process. The complainant's co-defendants admitted their guilt at the 19<sup>th</sup> hearing of the trial. The judge only conducted three further hearings in the criminal proceedings against the complainant and no new evidence was presented therein. The complainant only began to present his defence after his co-defendants had admitted the alleged criminal offence at the 19<sup>th</sup> hearing of the trial. The complainant had exercised his right to remain silent throughout the proceedings up to that point and had not actively defended himself. At a hearing intended for the pronouncement of the judgment, one week after the pronouncement of the judgment against his co-defendants, the judge pronounced a judgment of conviction against the complainant. As a result, it could be concluded that by the time the complainant's co-defendants decided to admit the alleged criminal offence the process of taking evidence had already entered its final stage and was nearly completed. The weight of their admission in the judge's cognitive process was thus accordingly lower in this stage of the criminal proceedings than it would have been if the admission had occurred already in the initial or an earlier stage, e.g. the pre-trial hearing. Therefore, it cannot be concluded that the judge who adopted the judgment against the complainant after having accepted the admission of guilt of his co-defendants in the disjoined proceedings had (solely) on the basis of his co-defendants' admission formed a preconceived opinion regarding the adjudicated subject matter. It does not follow from the judgment against the complainant that the court referred to the judgment that had been issued against his co-defendants on the basis of their admission of guilt in connection with their role and acts. The court provided a reasoning of its assessment of the evidence without referring to the admission of the co-defendants. Although the judgment that was based on the co-defendants' admission of guilt was adopted on the basis of the judge being convinced of their guilt and it also mentions the role of the complainant, it does not contain any position of the court regarding the complainant's guilt, nor did the court refer to the admission of guilt of the complainant's co-defendants in the challenged judgment. The Constitutional Court therefore held that the court's handling of the criminal proceedings did not create the appearance that the president of the panel had formed a preconceived opinion on the adjudicated subject matter. The complainant's right to an impartial trial determined by the first paragraph of Article 23 of the Constitution was thus not violated.

## 5.25. Mandatory Slovene Music Quotas

Upon a request of the National Council and petitions of listeners of private radio stations, a music editor at a private radio station, a private radio station, and a partner in a private radio station, by Decision No. U-I-26/17, U-I-87/16, U-I-105/16, dated 24 October 2019 (Official Gazette RS, No. 67/19), the Constitutional Court decided on the constitutionality of the provisions of the Media Act that determined the mandatory shares of Slovene music on the playlists of radio stations. In light of the petitioners' allegations, the Constitutional Court deemed that

they in fact challenged the statutory provisions insofar as they apply to private radio stations. The challenged statutory provisions determined that at least 20% of all the music played daily during any radio or television programme had to be Slovene music, i.e. music produced by Slovene artists and performers. This quota had to be ensured during the broadcast period between midnight and 6 a.m., the broadcast period between 6 a.m. and 6 p.m., and the broadcast period between 6 p.m. and midnight. At least 70% of this quota had to consist of music that is performed exclusively or to a predominant extent in the Slovene language, with the exception of radio or television programmes that predominantly broadcast instrumental music. At least one quarter of the Slovene music quota had to consist of Slovene music first broadcast no more than two years ago, i.e. new music.

In light of the allegations of the applicant and the petitioners, the Constitutional Court reviewed the regulation from the perspective of the principle of the clarity and substantive precision of regulations as one of the principles of a state governed by the rule of law (Article 2 of the Constitution). The applicant and the petitioners highlighted alleged ambiguities, inconsistencies, and internal contradictions as to the following terms: (a) “Slovene music”, (b) “music produced by Slovene artists or performers”, and (c) “music performed exclusively or to a predominant extent in the Slovene language”. They further drew attention to the fact that the challenged provisions were practically impossible to apply. If laws are unclear, there exists a possibility of different application of the laws and of arbitrary conduct by state authorities or other bodies vested with public authority that decide on the rights of individuals. A regulation is unconstitutionally unclear if its content cannot be construed through established methods of interpretation, and not simply because it does not answer all questions that may arise in the course of its application in practice. A law thus fulfils the requirements of clarity and substantive precision if on its basis the conduct of authorities entrusted with its implementation (or with supervising how it is applied by its addressees) can be predicted with sufficient precision. Such ensures that the addressees of legal rules are not exposed to a level of unpredictability and uncertainty as regards the legal consequences of their actions or the omission thereof that is constitutionally untenable and unacceptable. If, even after having applied all relevant methods of interpretation, the application of a statutory provision would prove practically impossible (meaning that its addressees could not comply with it, not even hypothetically speaking), such provision can be reproached for being unconstitutionally unclear and substantively imprecise.

The Constitutional Court first considered the terms “Slovene music”, “music of Slovene origin”, and “music produced by Slovene artists or performers”. The Constitutional Court deemed that it is evident that in order to be classified as a “Slovene” piece of music it is decisive that such piece of music is the product of Slovene artists or performers. However, what does “Slovene” mean? In general linguistic use, the word “Slovene” designates a member of the Slovene nation. In the opinion of the Constitutional Court, however, the criterion of nationality cannot serve as an argument in support of the clarity and substantive precision of the law, as such a criterion would namely be unconstitutional. A system of mandatory Slovene music quotas based exclusively on ethnic affiliation would require (a) the mass collection of data on the national affiliation of a high number of artists, frequently on the basis of unreliable conclusions drawn from personal names or other (unclear) circumstances, and, following the acquisition of such, (b) the classification of musical works for the purpose of including them in the mandatory quota according to the artists’ nationality, which would indirectly affect artists’ freedom of artistic expression (Article 59 of the Constitution) as well as their exercise of economic initiative (the first paragraph of Article 74 of the Constitution). Furthermore, such a system would be unacceptable from the perspective of the prohibition of discrimination (the first paragraph

of Article 14 of the Constitution). The law could also be interpreted in the sense that “Slovene” artists and performers are natural persons who are substantively rooted in the Slovene material and spiritual environment or who can demonstrate a certain (relatively) permanent and strong connection with the Slovene cultural space. However, this method evidently was not chosen in administrative practice, and the statutory text does not provide points of reference to make reliable conclusions to this end.

The Constitutional Court then considered the question of how the term “music performed exclusively or to a predominant extent in the Slovene language” should be interpreted. Private radio stations namely had to fill 70% of the prescribed mandatory quota (i.e. a total of 14% of all the music they played) with music performed (at least) to a predominant extent in the Slovene language. This obligation did not apply to private radio stations that predominantly broadcast instrumental music. The Constitutional Court held that it is not clear how the statutory term radio programmes (of private radio stations) “*that predominantly broadcast instrumental music*” should be interpreted. It is thus not clear how the circle of entities to whom the exemption from broadcasting music in the Slovene language applies should be determined. The text of the law namely does not provide a sufficient basis for choosing between two equally likely interpretations. As regards the term “music performed exclusively or to a predominant extent in the Slovene language”, the Constitutional Court held that it can be interpreted. The purpose of the statutory regulation is to ensure that the predominant part of the lyrics of a musical work is in the Slovene language, with two potential criteria, i.e. (a) the ratio between the number of words or phrases in Slovene and the number of words or phrases in another language, or (b) the time during which lyrics are recited or sung in Slovene compared to the entire length of the piece.

The Constitutional Court established that linguistic interpretation does not enable the meaning of the challenged provisions to be construed in their entirety. Furthermore, the meaning cannot be established by other potentially available methods of interpretation of legal rules, such as historical or teleological interpretation. The legislative materials did not address the considered open issues, and the ambiguities could further not be remedied in light of the purpose of the law (i.e. the preservation of Slovene national and cultural identity, the protection and promotion of Slovene music, and the protection of the Slovene language). Therefore, the Constitutional Court abrogated the challenged provisions of the Media Act insofar as they applied to private radio stations.

## 5.26. International Protection and the State’s Duty to Cooperate

By Decision No. Up-229/17, U-I-37/17, dated 21 November 2019, the Constitutional Court decided on the constitutional complaint of an applicant for international protection whose application for international protection in the Republic of Slovenia had been dismissed. The decision thereon of the administrative authority had first been confirmed by the Administrative Court and subsequently also by the Supreme Court. The decisions of both courts were based on the position that the complainant failed to seek protection from the alleged persecution before the competent authorities in his country of origin, and therefore he could not successfully invoke international protection, which he could only avail himself of if the state authorities of his country of origin were not able to ensure his adequate protection. It was namely established that the complainant did not report six out of the alleged total of seven acts of violence (including rape) to the police, even though the police had accepted his report

in connection with a social media post for consideration. In accordance with the findings of the Supreme Court, the complainant neither claimed nor demonstrated, for example, that, in his country of origin, the judicial system for the detection, prosecution, and punishment of criminal offences does not function or that access to such protection is not ensured and that the practical or legal basis for the functioning of the protective institutions and bodies is not provided. With the exception of a social media post, he did not report any of the alleged acts. The one report that he filed was accepted by the police.

The Constitutional Court found that the reasoning of the Supreme Court does not raise any constitutional concerns. If in his or her application for international protection an applicant relies on the inability of his or her country of origin to protect him or her from persecution, it is undoubtedly the applicant's duty to prove the claims that could substantiate the alleged inability of the state of origin to provide protection. An applicant must in particular prove that he or she had turned to the prosecuting authorities of his or her state of origin, but they did not want to protect him or her or were unable to do so. An official report on such acts is not merely a formality that an applicant has to fulfil before he or she can lodge an application for international protection in another country. By reporting an incident, the applicant namely enables the authorities of the country that is deciding on his or her application for international protection to verify whether the competent authorities of the applicant's country of origin had in fact taken it into consideration. Only following such does the state's so-called duty to cooperate enshrined in the first paragraph of Article 4 of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 arise. In accordance with this provision of the Directive, in spite of the applicant's duty to submit all the evidence needed to substantiate his or her application, it is the duty of the Member State to assess the relevant elements of the application in cooperation with the applicant. This requirement in fact entails that if, for whatever reason, the evidence submitted by the applicant for international protection is not complete, up to date, or relevant, the Member State must actively cooperate with the applicant at that stage of the proceedings in order to ensure that all evidence substantiating the application is obtained.

Therefore, the duty to report incidents to the competent authorities of the country of origin does not entail an unreasonable requirement that an applicant has to fulfil before he or she can apply for international protection in another country. As the complainant failed to substantiate the alleged violations of human rights and fundamental freedoms, the Constitutional Court dismissed the constitutional complaint.

## 5.27. Freedom of Expression and the Reputation of a Political Party

By Decision No. Up-366/16, dated 5 December 2019 (Official Gazette RS, No. 3/20), the Constitutional Court decided on the constitutional complaint of DELO newspaper against the Supreme Court judgment by which it was ordered to pay monetary compensation in the amount of EUR 10,000 for damaging the reputation and good name of the plaintiff – i.e. a political party. The plaintiff (Slovenska demokratska stranka [the Slovene Democratic Party] – SDS) demanded (by means of a lawsuit) that the complainant publicly apologise for having published an article entitled “The money from Patria did not end up with Janez Janša, but with his SDS party”, published in the daily newspaper Delo on 23 November 2009. The court of first instance granted the plaintiff's claim for damages, and the Higher Court and the Supreme Court confirmed this decision. The complainant criticised the Supreme Court for not

sufficiently taking into account, when weighing the rights in conflict, the circumstance that the plaintiff is a political party, or the fact that the complainant's journalist prepared the article in good faith, and therefore it allegedly violated the complainant's right determined by the first paragraph of Article 39 of the Constitution. In the complainant's opinion, a journalist is not required to verify the veracity of official information if he or she prepares information in good faith and cannot be held liable even if such information later proves to be false.

The first paragraph of Article 39 of the Constitution guarantees freedom of expression of thought, freedom of speech and public appearance, of the press and other forms of public communication and expression. Everyone may freely collect, receive, and disseminate information and opinions. Freedom of expression is furthermore a direct manifestation of an individual's personality in society and a fundamental constitutive element of a free democratic society. 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. It often collides 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.

By Decision No. Up-530/14, dated 2 March 2017 (Official Gazette RS, No. 17/17, and OdlUS XXII, 18), the Constitutional Court already held that, by its very nature, a legal entity, such as a political party, does not enjoy the right to personal dignity and consequently also not the constitutional right to the protection of (subjective, intrinsic) honour – i.e. to the protection of its perception or awareness of its intrinsic worth. Political parties do, however, enjoy the right to the protection of their reputation that follows from Article 35 of the Constitution. Unless they are protected from false (unsubstantiated) statements or statements made in bad faith that inadmissibly dismantle their reputation in public, their activities could be significantly impaired. As a structure intended for the attainment and exercise of power, a political party must be subjected to constant critical scrutiny by the democratic public, and therefore a public character and the requirement of transparency are already integrated into its very essence. When weighing constitutional values, especially in a conflict with freedom of expression, the weight of the reputation of a political party is thus appropriately small. It also follows from the ECtHR case law that the limits of acceptable criticism are broader with regard to politicians and political parties than with regard to private individuals.

In the case at issue, the Constitutional Court had to examine the acceptability of the position of the Supreme Court that the freedom of journalistic expression cannot protect knowingly false statements of facts which interfere with the reputation of a person, even if what is damaged is the reputation of a political party and the limits of freedom of expression in debates on the potential corruption of political parties are broad. The article at issue was published in the context of a corruption affair that was unfolding in public at the relevant time. There is therefore no doubt that the case concerned reporting on an issue that is important for a debate in the public interest. The Supreme Court classified the notes at issue as statements of facts regarding which journalists are required to prove that they are true or at least that they relied on them in good faith, i.e. that they had a legitimate basis to believe that what they wrote was true.

It is in principle true that a journalist is not required to verify the veracity of official information and that he or she cannot be held liable even if such information later proves to be false. However, such is only the case if the journalist is acting in good faith. The finding that a journalist knowingly wrote and published false or fabricated information that is seriously harmful

to the plaintiff's reputation logically excludes that the journalist acted in good faith. The duty of journalists to cite the sources they rely on in a credible manner in no way encroaches on journalistic freedom of expression. The duty of a journalist who disseminates facts by referring to a source to properly cite comments made by the source does not entail a burden that would in any way impede the journalist's freedom of expression.

Whereas the media and journalists undoubtedly play a key and irreplaceable role in informing the public of issues that are in the public interest, such is closely intertwined with their duty and responsibility to act in good faith when providing the public authentic and verified information and facts. In such manner, the interest of the public to be informed of issues that are important for a debate in the public interest is namely realised. Journalistic freedom entails the freedom to responsibly search for the truth.

The Constitutional Court concluded that in a collision between freedom of expression and the right to the protection of one's reputation, the conduct of the complainant's journalist, which the courts assessed as being seriously harmful to the plaintiff's reputation, cannot be granted constitutional protection, regardless of the importance of the issue for debate in the public interest and the invoked role of journalists in informing the public of such issues. It must namely be noted that the special protection afforded to journalists by the first paragraph of Article 39 of the Constitution and the first paragraph of Article 10 of the ECHR is subject to the condition that they act in good faith and with the intention of ensuring precise and reliable information in accordance with the principles of responsible journalism. In such an instance, the limitation of freedom of expression in order to protect the reputation of another proves to be necessary in a democratic society.

In the assessment of the Constitutional Court, although the awarded damages in the amount of EUR 10,000 imposed as a sanction for violating the right to one's reputation restrain the exercise of the right to freedom of expression, such did not have a punitive character. The Supreme Court stated relevant and sufficient reasons to substantiate that in the circumstances of the case at issue it was necessary in a democratic society and proportional to the aim pursued – i.e. to protect a person's reputation against the newspaper publication of a journalist's knowingly false statements of facts that were seriously harmful to the person's reputation. In light of the above, the Constitutional Court dismissed the constitutional complaint.

## 5.27. Fair Proceedings Concerning Legal Incapacitation

By Decision No. Up-1178/18, dated 12 December 2019, the Constitutional Court decided on a constitutional complaint lodged against a final court order by which the complainant was partially deprived of his legal capacity due to querulous paranoia, namely as regards his participation in judicial proceedings and administrative procedures before judicial authorities of the Republic of Slovenia (i.e. including all courts, state prosecutors' offices, and state attorneys' offices). In the constitutional complaint, the complainant claimed that a number of procedural safeguards were violated in the non-litigious proceedings concerning his partial incapacitation. He namely claimed that: (1) he was not appropriately represented in the proceedings; (2) the court failed to consider his remarks concerning the written expert opinion of the Commission for Expert Opinions of the Faculty of Medicine of the University of Ljubljana and did not enable him to directly examine the court-appointed experts; and (3) that by disregarding his procedural actions, the court did not treat him as a participant in the proceedings but as an object thereof.

All of the outlined claims are important from the perspective of the right to the equal protection of rights determined by Article 22 of the Constitution. This human right namely guarantees parties to judicial proceedings, *inter alia*, the right to be heard with regard to all procedural materials in the case file that could affect the decision of the court (i.e. the right to adversarial proceedings); in connection therewith, it requires that parties be ensured reasonable possibilities to present their positions, including evidence, before the court, subject to conditions that do not place one party in a substantively less favourable position in comparison to the opposing party (i.e. the right of parties to judicial proceedings to equality of arms). The Constitutional Court has already adopted the position that the requirements of adversarial proceedings and of equality of arms must be respected in all judicial proceedings, including non-litigious proceedings for the (involuntary) detention of persons with mental disorders in a psychiatric hospital and in procedures for the admission of such persons to a secure ward of a social care facility. In the assessment of the Constitutional Court, from the perspective of persons with mental disorders who may also suffer from difficulties in connection with the exercise of their (free) will, only proceedings that enable their utmost comprehensive and complete participation in the proceedings and thus also the same degree of exercise of their human rights and fundamental freedoms can be considered fair. The same requirements also apply to the Constitutional Court's review of non-litigious legal incapacitation proceedings.

In its Decision, the Constitutional Court stressed that persons against whom legal incapacitation proceedings have been initiated, even if there exists a strong indication that they are suffering from a serious mental disorder, must be ensured the fundamental procedural safeguards determined by Article 22 of the Constitution, namely at least those that constitute the very essence of the right to a fair trial. These undoubtedly include the possibility of the affected persons to effectively participate in the legal incapacitation proceedings. In practice, such will only be guaranteed if the state ensures them the right to an independent representative who will act in their interest. Precisely this procedural safeguard was violated in the complainant's case because at the last hearing, which was decisive for the decision in the case (the hearing was namely scheduled after the court received the written expert opinion that was the basis for its decision), the court did not follow the request of the complainant's guardian *ad litem* (i.e. a social work centre) to delay deciding in the case until a new attorney for the complainant had been appointed in a procedure for granting free legal aid. In the opinion of the Constitutional Court, the court should have delayed its decision-making in the case at issue, as the guardian *ad litem* alerted the court to the fact that the complainant had ceased to cooperate with it and in light of the fact that the guardian *ad litem* remained passive as regards protection of the complainant's rights (i.e. it neither commented on the expert opinion nor requested an oral examination of the court-appointed experts, although the expert opinion was decisive to the decision in the case). The court further violated the complainant's right to effectively participate in the proceedings as, in spite of the mentioned circumstances of the case, it did not allow the complainant to be represented by a representative of his own choosing at the last hearing and failed to provide constitutionally acceptable reasons for such. The Constitutional Court established a violation of the right to the equal protection of rights determined by Article 22 of the Constitution also due to the fact that the courts failed to consider the complainant's concrete remarks concerning the expert opinion or his request to orally examine the court-appointed experts, although such entailed the decisive piece of evidence in the case.

The Constitutional Court further established a violation of the right to the inviolability of an individual's mental integrity determined by Article 35 of the Constitution. In the assessment of the Constitutional Court, every instance of legal incapacitation, even if only partial, entails

a severe interference with this human right. Therefore, it must be reserved only for exceptional cases, and any judicial decision regarding such must be based on reliable and convincing evidence. In the assessment of the Constitutional Court, without having verified the positions in the written expert opinion by means of an oral examination of the court-appointed experts, the court could not duly consider the existence of the conditions for the complainant's partial incapacitation, especially since the court-appointed experts prepared the opinion without having personally examined the complainant. Consequently, the Constitutional Court abrogated the challenged judgments and remanded the case for new adjudication.

## **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 27 September 2019, the term of office of Dr Etelka Korpič-Horvat as judge and Vice President of the Constitutional Court expired. On 28 September 2019, Dr Rok Čeferin replaced her, as he began his term of office as Constitutional Court judge.

On 28 September 2019, Dr Matej Accetto assumed the office of Vice President of the Constitutional Court.

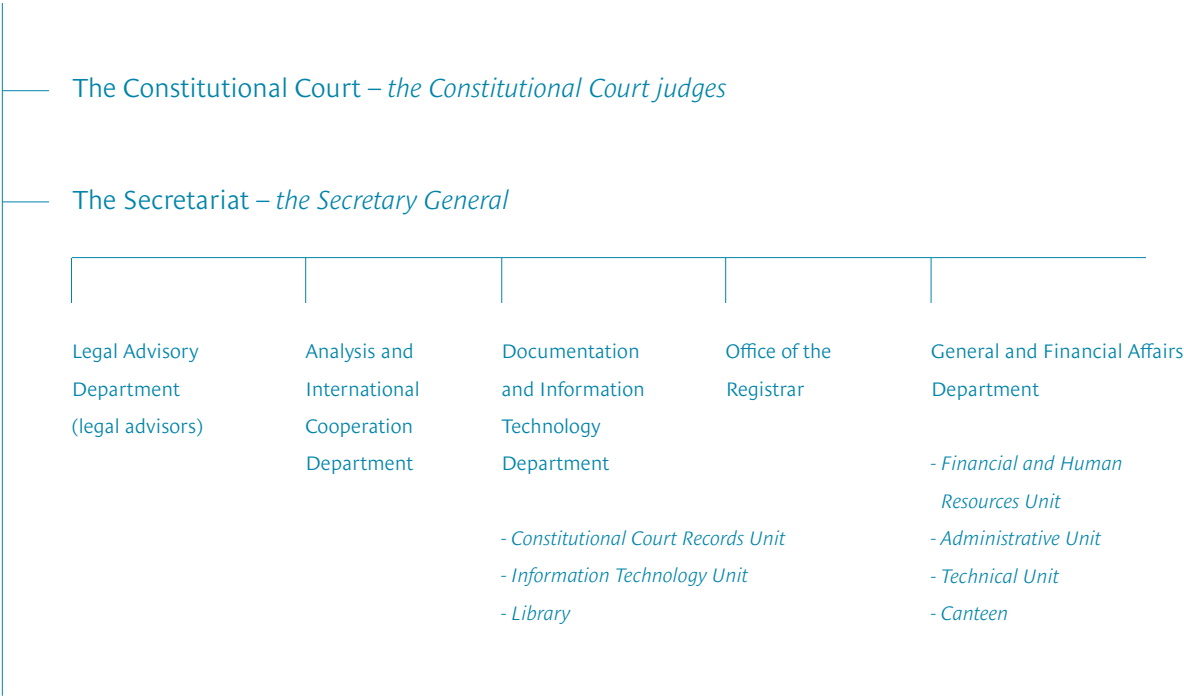
### **6.2. The Secretariat**

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 Assistants to the Secretary General 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 2019, in addition to nine Constitutional Court judges and the Secretary General, 76 judicial personnel were employed at the Constitutional Court, 74 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, 35 were advisors in the Legal Advisory Department of the Constitutional Court, and four were advisors in the Analysis and International Cooperation Department. In 2019, the Constitutional Court employed one new advisor and an Assistant Secretary General due to resignations.

### 6.3. The Internal Organisation of the Constitutional Court



## 6.4. Judicial Personnel

### Deputy Secretary General and Assistants to the Secretary General:

Mag. Tjaša Šorli, <i>Deputy Secretary General</i>
Dr Jadranka Sovdat, <i>Assistant Secretary General</i>
Nataša Stele, <i>Assistant Secretary General</i>
Suzana Stres, <i>Assistant Secretary General</i>
Mag. Zana Krušič - Matè, <i>Assistant Secretary General for Judicial Administration</i>

### Department heads:

Ivan Biščak, <i>Director of the General and Financial Affairs Department</i>
Nataša Lebar, <i>Head of the Office of the Registrar</i>
Mag. Miloš Torbič Grlj, <i>Head of the Documentation and Information Technology Department</i>

### Advisors:

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

## 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 2019 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.

The President of the Constitutional Court attended a solemn session of the European Court of Human Rights in Strasbourg at the end of January and a ceremony commemorating 30 years of the Court of Justice of the European Union in Luxembourg in September. In September, the President of the Constitutional Court also attended a conference of representatives of the highest courts of the Member States of the Council of Europe, held in Paris, France.

In 2019, the Constitutional Court accepted invitations to numerous international conferences, at the majority of which Constitutional Court judges gave presentations. In February, a judge of the Constitutional Court attended the *International Legal Informatics Symposium*, held in Salzburg, Austria. In March, representatives of the Constitutional Court participated in a seminar entitled *FRICoRE* in Trenta, Italy, in the international conference *The Constitutional EU-dentity* in Budapest, Hungary, and in a conference commemorating 10 years of the Charter of Fundamental Rights of the European Union, which was held in Oxford, the United Kingdom. In April, a judge of the Constitutional Court participated in a conference held at the Boston College School of Law, USA. In June, a judge of the Constitutional Court attended a conference entitled *High Level Policy Dialogue on the Rule of Law in the European Union*, which was held in Florence, Italy, and in July the 29<sup>th</sup> World Congress of the International Association for the Philosophy of Law and Social Philosophy in Lucerne, Switzerland. In September, a judge of the Constitutional Court attended a conference of the Central and Eastern European Network of Jurisprudence, held in Bratislava, Slovakia. In October, the President of the Constitutional Court attended a regional conference on the topic *Freedom of Religion in Constitutional Court Practice*, which was held in Teslic, Bosnia and Hercegovina. In November, Constitutional Court judges participated in the conference *Judges in Utopia* in Amsterdam, the Netherlands, in a conference of high-level representatives commemorating

10 years of the Charter of the Fundamental Rights of the EU, held in Brussels, and in a conference marking the completion of the project *E-learning National Active Charter Training*, which was also held in Brussels, Belgium.

Furthermore, in 2019 the Constitutional Court engaged in active bilateral cooperation with other constitutional courts. The Constitutional Court hosted two official visits from foreign constitutional courts. In May, a delegation from the Constitutional Court of Lithuania paid an official visit to the Constitutional Court, thereby renewing their successful bilateral contacts established some years ago. At the latest meeting, the judges were acquainted with the organisation and functioning of both courts and with the most important constitutional law cases. They devoted special attention to the tests applied in reviews of constitutionality and to the influence of the case law of the European Court of Human Rights and the Court of Justice of the European Union. In June, the Constitutional Court hosted its Croatian colleagues in the frame of the traditional working meeting of the judges of both courts. On this occasion, the main topics of discussion were the recent important decisions of both courts and the mechanisms for controlling the caseload.

In 2019, the Constitutional Court also completed a bilateral visit abroad. Namely, at the end of September, a delegation of the Constitutional Court, led by the President, visited the Constitutional Court of Lithuania in Vilnius. The main topics of discussion were constitutional standards for elections and referendums in the framework of the most recent decisions of both constitutional courts and the challenges judges are faced with when deciding on constitutional complaints.

In 2019, the Constitutional Court also hosted a working visit from Dr Marko Bošnjak, judge of the European Court of Human Rights, and from Dr Marko Ilešič, judge of the Court of Justice of the European Union. At a working meeting in March, the Constitutional Court judges and Dr Bošnjak discussed novelties in the case law of both courts and exchanged experiences in the field of constitutional review. At a working meeting in October, Dr Bosnjak and Dr Ilešič shared with the Constitutional Court judges their experiences in the field of human rights protection and EU law, respectively.

The Constitutional Court also devotes a great deal of attention to encouraging the training of its employees. As an integral component of the European environment, the Constitutional Court requires further staff training in order to provide high-quality assistance to the Constitutional Court judges in the performance of their office. In this framework, of note is a study visit to Vienna, Austria, during which legal advisors from the Constitutional Court visited the European Union Agency for Fundamental Rights, as well as the United Nations Office. At the EU Agency for Fundamental Rights they held talks with advisors from various units of the Agency and learned more about its work and activities in the field of monitoring the application and expansion of knowledge regarding the Charter of the Fundamental Rights of the EU. During the visit to the United Nations Office, the Constitutional Court advisors devoted special attention to the functioning of UNCITRAL and learned more about arbitration rules and the legal framework for the functioning of this body. In addition to several regular and customary educational courses in Slovenia (judicial training courses, etc.), last year advisors from the Constitutional Court also attended several legal courses abroad, *inter alia*, a seminar on business secrets for judges and prosecutors (Alicante, Spain) and a study meeting on legal terminology attended by translation groups and advisors from various European institutions (Luxembourg). A representative of the Constitutional Court

attended the 18<sup>th</sup> meeting of the Joint Council on Constitutional Justice at the Venice Commission (Rome, Italy), the forum of the Superior Courts Network at the European Court of Human Rights (Strasbourg, France) and a meeting in the framework of the Judicial Network of the EU at the Court of Justice of the European Union (Luxembourg). The Head of the Documentation and Information Technology Department attended a *Microsoft Ignite* technical training course (Amsterdam, the Netherlands) and a conference in the field of the computerisation of the courts (New Orleans, USA).

## 8. The Constitutional Court in Numbers

The statistical data must be interpreted in the light of the fact that, in 2019, as well as already 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 (the 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 2019 the number of such cases (hereinafter referred to as AREECtHRJ cases) amounted to 622 (i.e. 311 petitions for a review of constitutionality and 311 constitutional complaints), which is almost one third of all cases received (28%).

Whereas in the annual report for 2018 some comparisons and numbers were presented that took into consideration AREECtHRJ cases, all numbers and comparisons in the annual report for 2019 are presented without AREECtHRJ cases, except where explicitly indicated. In 2019, 311 such cases were received (compared to 312 in 2018) and 291 were resolved (compared to 253 in 2018). Although these cases are practically the same in terms of content, the judges as well as the different services of the Constitutional Court nevertheless have to invest a relatively significant amount of work in them.

### 8.1. Cases Received

In 2019, the trend of an increasing number of cases received continued, as the Constitutional Court received even a few cases more than in 2018. Hence, in the last couple of years, the curve of cases received has been 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) their number was decreasing. In 2019, the Constitutional Court received 1,599 cases, which is 4.6% more than in 2018, when it received 1,533 cases.

The increase in the total number of cases received was a consequence of receiving a higher number of constitutional complaints (the Up register), while the number of applications for the review of the constitutionality or legality of regulations (the U-I register) decreased. In 2019, the Constitutional Court received 165 requests and petitions for a review of the constitutionality or legality of regulations, which represents a 20% decrease compared to 2018, when it received 207. The Constitutional Court received 1,429 constitutional complaints, which represents an 8.6% increase compared to 2018, when it received 1,316 constitutional complaints.

As regards applications for a review of constitutionality and legality of regulations, the Constitutional Court has recorded a downward trend of the number of these cases at least since 2012, the only exception being 2018. In 2019 the number of these cases decreased by 20%. However, as regards these cases it also has to be underlined that the number of petitions that require a review on the merits is increasing, and the number of requests for a review of constitutionality, which in accordance with the Constitution and law can be filed by privileged applicants, remained the same as in 2018 (i.e. 29). Among privileged applicants, relatively significant activity by regular courts was observed. Although the Constitutional Court cannot precisely predict the trend regarding the number of constitutional complaints, there are no circumstances that would indicate deviations from the workload in previous years. On the other hand, due to the increased efficiency of the Supreme Court following the wider incorporation of the institution of granted leave to appeal to the Supreme Court – which entails that the Supreme Court may select which cases it will review on the merits – into procedural acts, the number of new cases can even be expected to increase. 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 relationship between the Supreme Court and the Constitutional Court is systemically and constitutionally appropriate. 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 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 2019, there was as usual a strong preponderance of constitutional complaints, which represented 89.4% of all cases received. In some instances, constitutional complaints were filed together with petitions for the review of the constitutionality or legality of a regulation on which judicial decisions are based; in 2019, there were 122 such cases. These are so-called joined cases, on which the Constitutional Court decides by a single decision.

In 2019, the number of constitutional complaints received by the individual panels of the Constitutional Court differed to some extent. The Civil Law Panel received the highest number of cases, i.e. in 2019 it received 657 cases, which is a 6.8% increase compared to the previous year. The number of constitutional complaints received by the Administrative Law Panel decreased by 10%; however, this panel also received 311 AREECtHRJ cases, which entails additional work for the advisors and judges as well as the other court personnel. The number of constitutional complaints received by the Criminal Law Panel increased significantly, i.e. by 40.2%. In absolute numbers, the Civil Law Panel received the highest number of cases in 2019 (657 cases), which amounts to almost half (46%) of all constitutional complaints received. Although the Administrative Law Panel received the lowest number of constitutional complaints (378) in absolute numbers, it must be taken into account that it also received 311 AREECtHRJ cases.

With regard to their content, the majority of the constitutional complaints received in 2019 originated in disputes connected to civil law litigation (25.8%). The number of disputes connected to civil law litigation also increased when compared to 2018. They are followed by

constitutional complaints from the field of minor offences; compared to 2018 the number of such increased by 110% and they accounted for 15.5% of all constitutional complaints received in 2019. Next in line were criminal cases with a 12% share, labour disputes (7.5%), other administrative disputes (6.4%), commercial disputes (6.2%), execution proceedings (5.9%), social disputes (4.3%), and disputes connected to taxes (4.1%).

As regards proceedings for a review of the constitutionality or legality of regulations (U-I cases), the number of cases received in 2019 was significantly lower than in 2018. The decrease amounted to 20%. Of the 165 cases received, 29 (17.6%) 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 14 requests for a review of the constitutionality of laws, which amounts to approximately half (48.3%) of all requests filed. In addition, groups of deputies of the National Assembly filed six requests, the National Council and the Judicial Council two requests each, and the Human Rights Ombudsman, the Government, local communities, and trade unions one request each.

Of the 165 petitions for a review of constitutionality or legality, in 122 cases (74% 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 regulations do not have a direct effect. In such instances, all judicial remedies must first be exhausted in proceedings before the competent courts, and only then can the constitutionality or legality of the regulation on which the individual act is based be challenged, together with a constitutional complaint against the individual act.

As regards the type of regulations challenged, it can be concluded that, as usual, also in 2019 most often laws were challenged, as applicants challenged laws in 118 instances; laws are followed by regulations of local communities (24 municipal regulations were challenged) and by acts of the Government and the Ministries (15 executive regulations). In particular as regards laws, but also decrees, it must be taken into consideration that numerous regulations were challenged multiple times. With regard to laws, it can be seen that provisions of the AREECtHRJ were, for example, challenged 311 times (these cases are not considered in the statistical data). Of the remaining laws, the provisions of the following laws were challenged most frequently: the Criminal Procedure Act (13 times), the Pension and Disability Insurance Act (10 times), the Civil Procedure Act (8 times), the Local Elections Act (7 times), the Tax Procedure Act (6 times), etc.

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 2019, the Constitutional Court resolved a few cases less than in 2018 (1,143 cases compared to 1,173 cases, i.e. a 2.6% decrease). However, the Constitutional Court should not 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 envisaged already by the unsuccessful constitutional amendments would be very much needed. This report is therefore only one in a line of calls for appropriate normative (statutory or even constitutional) amendments that the Constitutional Court has addressed to the ordinary and the constitutional legislator.

The distribution of cases resolved was similar to the distribution of cases received. In 2019, the Constitutional Court resolved 129 cases relating to the constitutionality and legality of regulations (U-I cases), amounting to an 11.3% share of all cases resolved. In comparison to 2018, when it resolved 152 petitions and requests for a review of the constitutionality of regulations, this represents a 15.1% decrease if AREECtHRJ cases are not taken into account. In 2019, as has been the case every year thus far, constitutional complaints represented the majority of cases resolved. The Constitutional Court resolved 1,008 such cases, amounting to an 88.2% share of all cases resolved (excluding AREECtHRJ cases). Such a number of resolved constitutional complaints represents a 0.3% decrease in comparison to 2018, when the Constitutional Court resolved 1,011 constitutional complaints.

With regard to the individual panels of the Constitutional Court, in 2019 the highest number of constitutional complaints was resolved by the Civil Law Panel, i.e. 448; the Administrative Law Panel resolved 295 constitutional complaints, and the Criminal Law Panel 265. Compared to the previous year, in 2019 the number of constitutional complaints resolved by the Civil Law Panel decreased by 12.8% and those resolved by the Administrative law Panel by 5.8%, while the number of cases resolved by the Criminal Law Panel increased considerably, namely by 44%.

In addition to proceedings for a review of the constitutionality or legality of regulations and constitutional complaints, the Constitutional Court also resolved five jurisdictional disputes (P cases) and one appeal concerning the confirmation of the election of deputies or members of the National Council (Mp cases) in 2019.

In terms of content, the greatest number of constitutional complaints resolved referred to civil law litigation (23.3%), followed by criminal cases (16.8%), administrative disputes (9.4%), enforcement proceedings (7.8%), disputes concerning taxes (5.7%), labour disputes (4.9%), social disputes (4.4%), and commercial disputes (4.1%).

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 1,143 cases resolved (excluding AREECtHRJ cases) in 2019, the Constitutional Court adopted a decision in 83 proceedings (7.3% of cases resolved, excluding AREECtHRJ cases), while the others were resolved by an order. If substantive decisions according to the individual registers are considered, it can be observed that in 129 proceedings for a review of the constitutionality or legality of regulations (U-I cases), the Constitutional Court adopted 24 decisions (18.6%), and in constitutional complaint proceedings it resolved 55 out of 1,008 cases by a decision (5.5% excluding AREECtHRJ cases). Statistically speaking, in 2019 the Constitutional Court adopted fewer decisions in proceedings for a review of the constitutionality or legality of regulations than in the previous year (24 compared to 28), while in constitutional complaint proceedings it adopted more decisions than in 2018 (55 compared to 32), of which 13 were adopted by the panels. The total number of decisions – the Constitutional Court also adopted four decisions regarding jurisdictional disputes (P cases) – was also higher than in 2018 (83 compared to 66). It is characteristic of the decisions of the Constitutional Court adopted in 2019 that they dealt with a high number of new and diverse

constitutional questions; these decisions, therefore, have an important precedential effect. The most important of these decisions are briefly presented in the present report. Constitutional Court judges submitted 58 separate opinions, of which 32 were dissenting, 24 concurring, one partially concurring and partially dissenting, and one partially dissenting.

In 2019, the success rate of complainants, petitioners, and applicants, taken as a whole, was, statistically speaking, higher than in 2018. This is due to the higher success rate in constitutional complaint cases, and the success rate in cases for the review of the constitutionality or legality of regulations was also slightly higher. Of the 129 resolved petitions and requests for a review of the constitutionality or legality of regulations, in 15 cases the Constitutional Court established that the law was unconstitutional (11.6% of all U-I cases), of which it abrogated the relevant statutory provisions in nine cases (delaying the effects of its decision in one case), whereas in six cases it adopted a declaratory decision; in four of these declaratory decisions it imposed on the legislature a time limit by which it must remedy the established unconstitutionality. With regard to the challenged regulations inferior to laws, the Constitutional Court abrogated one regulation. The combined success rate in U-I cases was thus 11.6%. In comparison, the success rate amounted to 12.4% in 2018. The success rate of constitutional complaints was higher than in the previous year. The Constitutional Court granted 44 (i.e. 4.4% excluding AREECtHRJ cases) of all constitutional complaints resolved in 2019 (1,008 excluding AREECtHRJ cases), and dismissed by a decision 12 constitutional complaints as unfounded. One case was partially granted and partially dismissed. In comparison, the success rate amounted to 2.5% in 2018. The success rate with regard to constitutional complaints (and other applications) must, of course, always be interpreted carefully, as the numbers do not reflect the true importance of these cases. These cases refer to matters that provide answers to important constitutional questions; therefore their significance for the development of (constitutional) law far exceeds their statistically expressed quantity.

With regard to successful constitutional complaints, it can be concluded that the Constitutional Court most often (28 times) established a violation of Article 22 of the Constitution, which guarantees different aspects of fair proceedings. 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 substantiated judicial decision. The number of cases in connection with the second and third paragraphs of Article 29 of the Constitution and Article 33 of the Constitution also stand out; the Constitutional Court namely established that each was violated three times.

The average period of time it took to resolve a case in 2019 was approximately the same as or slightly longer than in 2018. On average, the Constitutional Court resolved a case in 428 days (as compared to 418 days in the previous year). In contrast to the previous annual report, this annual report presents the duration of proceedings without taking into account AREECtHRJ cases. The average duration of proceedings for a review of the constitutionality or legality of regulations was 498 days, which is considerably longer than the previous two years. Constitutional complaints were resolved by the Constitutional Court on average in 420 days, which is approximately the same as in 2018 (411 days). When interpreting these data, one needs to be careful, as in fact average data 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 a significant burden on Constitutional Court judges and advisors, individual cases can take up to a few years to be resolved. The average duration of resolving

cases must be distinguished from the time limit in which the Constitutional Court ensures the reasonable promptness of decision-making. By the nature of the matter, the time limit for ensuring the right to a trial within a reasonable time must be adapted to more complex cases. At the Constitutional Court, this time limit 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 2019, the Constitutional Court had a total of 2,408 unresolved cases remaining, of which four were from 2015, 70 from 2016, 382 from 2017, and 813 from 2018. The remaining unresolved cases (1,139) were received in 2019. Among the unresolved cases, 631 cases were priority cases and 74 cases were absolute priority cases. Such designation is assigned particularly to cases that also the regular courts must consider expeditiously, in light of their nature. Priority cases also include requests by courts for a review of the constitutionality of laws and other cases that the Constitutional Court deems need to be considered expeditiously due to their importance to society. Among the constitutional complaints that remained unresolved as of the end of the year, in five 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, the suspension of the implementation of the challenged regulation was ordered in six cases.

In 2019 the number of unresolved cases once again increased significantly compared to the previous year. At the end of 2017 the Constitutional Court had 1,609 unresolved cases, at the end of 2018 the number of unresolved cases amounted to 1,952 (2,084 if AREECtHRJ cases are taken into account), and at the end of 2019 this number increased to 2,408 cases (2,568 with AREECtHRJ cases). This entails that in 2019 the number of unresolved cases increased by almost a quarter (23.4%).

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 2019 it must especially be stressed that the increased number of unresolved cases was mainly the result of the increase in the number of cases received, in particular constitutional complaints. Understandably, the information regarding the unresolved cases and the backlog of cases does not explain the complexity of the cases considered by the Constitutional Court and the burden they entail. The data regarding the unresolved cases also does not entail that the Constitutional Court has not yet considered these cases at all; it has considered a significant number of unresolved cases, but did not adopt a final 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 etc.), it must be underlined that both the judges of the Constitutional Court and the advisory personnel are significantly burdened. At the same time, 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. From the perspective of the long-term capacity of the Constitutional Court to effectively and promptly ensure its precedential role in the protection of fundamental human rights, certain normative (statutory or even constitutional) amendments will have to be adopted or the Constitutional Court will have to recruit additional personnel, especially advisory personnel, which, of course, would also require its financial (budgetary) reinforcement.

## 9. Summary of Statistical Data for 2019

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

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

The Constitutional Court examines constitutional complaints in the following panels:

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

<b>Note</b>	<b>AREECtHRJ Cases</b>	hereinafter refers 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 Judgment of the European Court of Human Rights in <i>Ališić and others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and "the former Yugoslav Republic of Macedonia"</i> , 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.
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In the annual report for 2018 some comparisons and numbers included AREECtHRJ cases, whereas in the present annual report, except where explicitly indicated, AREECtHRJ cases are excluded. In 2019, 311 such cases were received (312 in 2018) and 291 such cases were resolved (253 in 2018).

Table 1 Summary Data on All Cases in 2019

REGISTER	CASES PENDING AS OF 31 DECEMBER 2018*	CASES RECEIVED IN 2019	CASES RESOLVED IN 2019	CASES PENDING AS OF 31 DECEMBER 2019
Up	1710	1740	1299	2151
U-I	360*	476	420	416
P	2	4	5	1
U-II				
R-I		72	79	
Rm				
Mp		1	1	
Ps				
Op				
<b>Total</b>	<b>2072</b>	<b>2293</b>	<b>1804</b>	<b>2568</b>

\* Due to subsequent erroneous entries, the number of cases pending as of 31 December 2018 does not completely match the data provided in last year's overview.

Table 1a Summary Data on All Cases in 2019 Excluding AREECtHRJ Cases (311 Received and 289 Resolved Up and U-I Cases) and Excluding R-I Cases

REGISTER	CASES PENDING AS OF 31 DECEMBER 2018*	CASES RECEIVED IN 2019	CASES RESOLVED IN 2019	CASES PENDING AS OF 31 DECEMBER 2019
Up	1650	1429	1008	2071
U-I	300	165	129	336
P	2	4	5	1
U-II	0	0	0	0
Rm	0	0	0	0
Mp	0	1	1	0
Ps	0	0	0	0
Op	0	0	0	0
<b>Total</b>	<b>1952</b>	<b>1599</b>	<b>1143</b>	<b>2408</b>

\* Due to subsequent erroneous entries, the number of cases pending as of 31 December 2018 does not completely match the data provided in last year's overview.

Table 2 Summary Data regarding R-I Cases in 2019

REGISTER	RECEIVED IN 2019	RESOLVED IN 2019
R-I	72	79

Table 3 Summary Data regarding Up Cases according to Panel in 2019

PANEL	CASES PENDING AS OF 31 DECEMBER 2018*	CASES RECEIVED IN 2019	CASES RESOLVED IN 2019	CASES PENDING AS OF 31 DECEMBER 2019
Civil Law	601	657	448	810
Administrative Law	581	689	586	684
Criminal Law	528	394	265	657
<b>Total</b>	<b>1710</b>	<b>1740</b>	<b>1299</b>	<b>2151</b>

\* The number of cases pending as of 31 December 2018 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 2019 (Excluding AREECtHRJ Cases)

PANEL	CASES PENDING AS OF 31 DECEMBER 2018*	CASES RECEIVED IN 2019	CASES RESOLVED IN 2019	CASES PENDING AS OF 31 DECEMBER 2019
Civil Law	601	657	448	810
Administrative Law	521	378	295	604
Criminal Law	528	394	265	657
<b>Total</b>	<b>1652</b>	<b>1429</b>	<b>1008</b>	<b>2071</b>

\* The number of cases pending as of 31 December 2018 does not completely match the data provided in 2018 (the net difference is one case).

Table 4 Pending Cases by Year Received as of 31 December 2019 (Including AREECtHRJ Cases)

YEAR	2015	2016	2017	2018	2019	TOTAL
U-I	2	28	65	115	206	416
Up	2	42	317	698	1092	2151
P	0	0	0	0	1	1
<b>Total</b>	<b>4</b>	<b>70</b>	<b>382</b>	<b>813</b>	<b>1299</b>	<b>2568</b>

## 9.1. Cases Received

Figure 1 Distribution of Cases Received in 2019

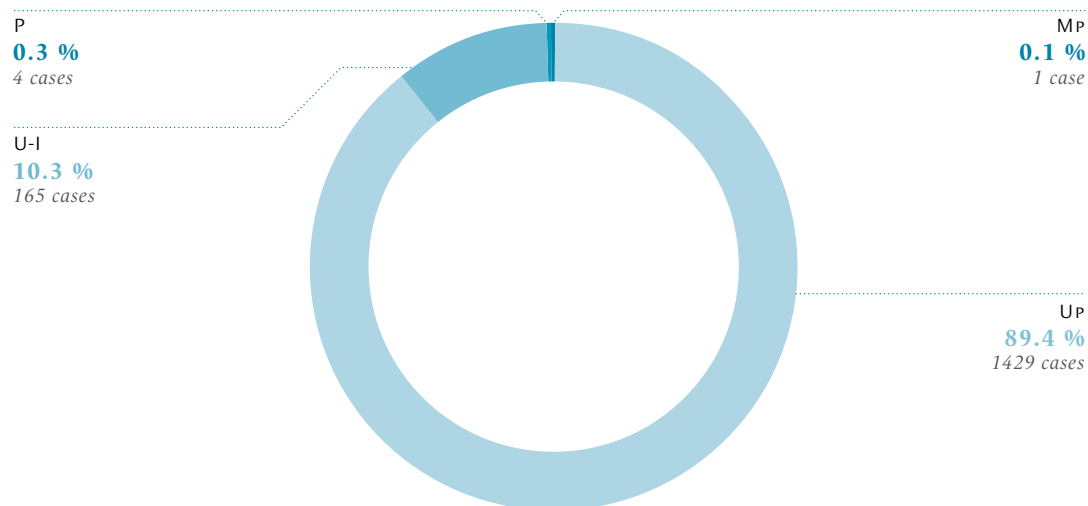


Table 5 Cases Received according to Type and Year

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	207	1316	5			5		1533
<b>2019</b>	<b>165</b>	<b>1429</b>	<b>4</b>			<b>1</b>		<b>1599</b>
<b>2019/2018</b>	<b>↓ -20.3%</b>	<b>↑ 8.6%</b>	<b>↓ -20.0%</b>			<b>↓ -80.0%</b>		<b>↑ +4.6%</b>

\* Excluding AREECtHRJ Cases

Figure 2 Total Number of Cases Received by Year (Excluding AREECtHRJ and R-I Cases)

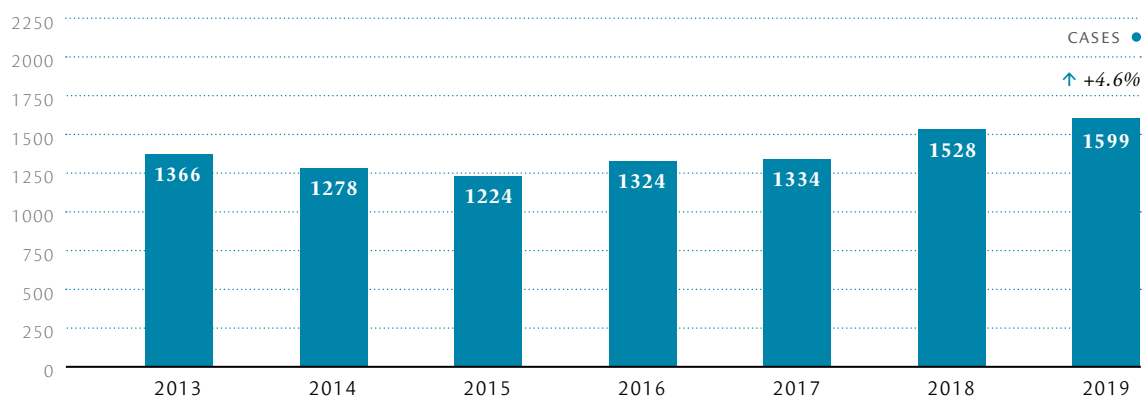


Figure 3 U-I Cases Received by Year (Excluding AREECtHRJ Cases)

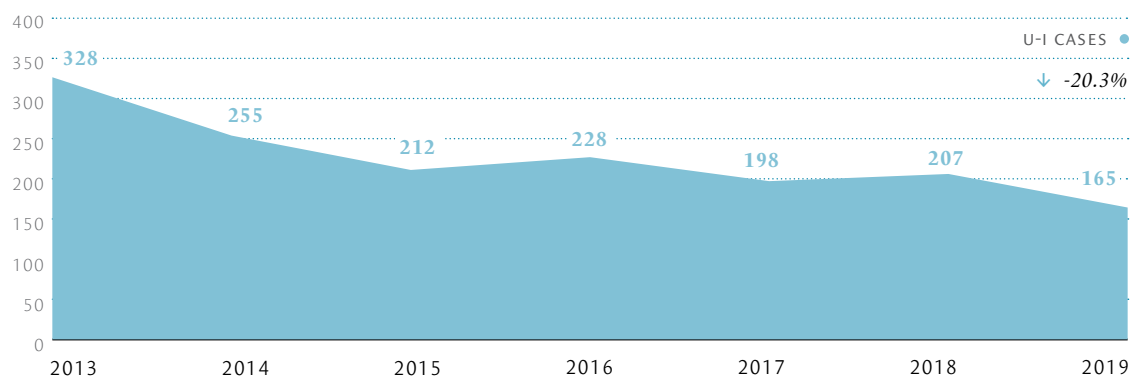


Table 6 Number of Requests for a Review according to Applicant

APPLICANTS REQUESTING A REVIEW	NUMBER OF REQUESTS FILED
Skupina poslank in poslancev Državnega zbora (Deputy Groups of the National Assembly of the Republic of Slovenia)	6
Okrajno sodišče v Mariboru (Local Court in Maribor)	3
Upravno sodišče Republike Slovenije (Administrative Court of the Republic of Slovenia)	4
Vrhovno sodišče Republike Slovenije (Supreme Court of the Republic of Slovenia)	4
Državni svet Republike Slovenije (National Council of the Republic of Slovenia)	2
Sodni svet Republike Slovenije (Judicial Council of the Republic of Slovenia)	2
Informacijski pooblaščenec (Information Commissioner)	1
Občina Starše - Občinski svet (Starše Municipality – Municipal Council)	1
Okrajno sodišče v Ljubljani (Local Court in Ljubljana)	1
Okrožno sodišče v Mariboru (District Court in Maribor)	1
Samostojni sindikat delavcev kontrole letenja Republike Slovenije (Independent Trade Union of Air Traffic Control Workers of the Republic of Slovenia)	1
Varuh človekovih pravic (Human Rights Ombudsman)	1
Višje delovno in socialno sodišče (Higher Labour and Social Court)	1
Vlada Republike Slovenije (Government of the Republic of Slovenia)	1
<b>Total</b>	<b>29</b>

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
<b>2019</b>	<b>118</b>	<b>10</b>	<b>5</b>	<b>24</b>	<b>5</b>

Table 8 Acts Challenged Multiple Times in the Cases Received in 2019

ACTS CHALLENGED MULTIPLE TIMES IN THE CASES RECEIVED IN 2019	NUMBER OF CASES
Act Regulating the Enforcement of the European Court of Human Rights Judgment in Case No. 60642/08 (the AREECTHRJ)	311
Criminal Procedure Act	13
Pension and Disability Insurance Act	10
Civil Procedure Act	8
Local Elections Act	7
Tax Procedure Act	6
Attorneys Act	5
Personal Income Tax Act	4
Health Care Services Act	4
Criminal Code	4
Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act	3
Claim Enforcement and Security Act	3
Public Procurement Act	3
Real Estate Agencies Act	3
Non-litigious Civil Procedure Act	3
...	

Table 9 Number of Cases Received according to Panel and Year

YEAR	CIVIL LAW	ADMINISTRATIVE LAW	CRIMINAL LAW	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	420	281	1316
<b>2019</b>	<b>657</b>	<b>378</b>	<b>394</b>	<b>1429</b>
<b>2019/2018</b>	<b>6.8%</b>	<b>-10.0%</b>	<b>40.2%</b>	<b>8.6%</b>

Figure 4 Number of Up Cases Received by Year

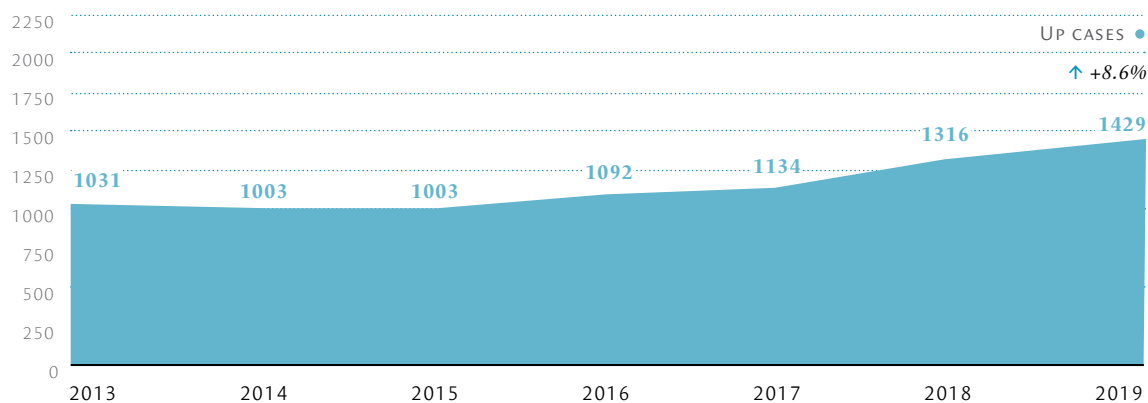


Figure 5

Distribution of Legal Acts Challenged in 2019 (U-I Cases Received)

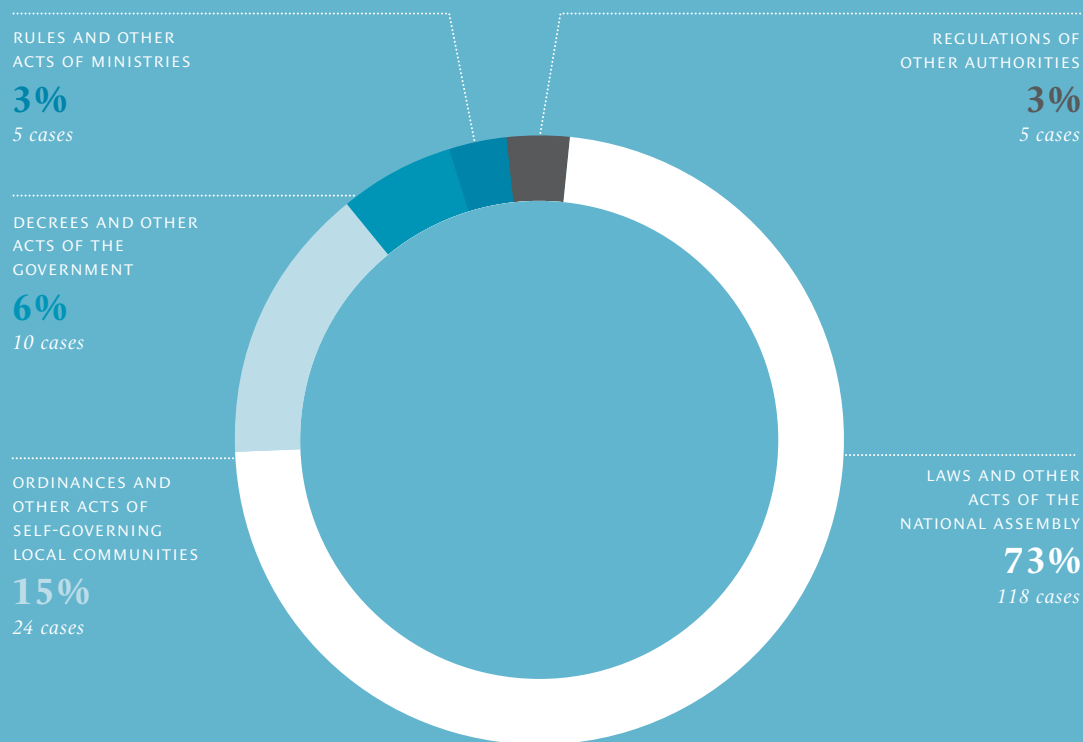


Figure 6

Number of Up Cases Received according to Panel

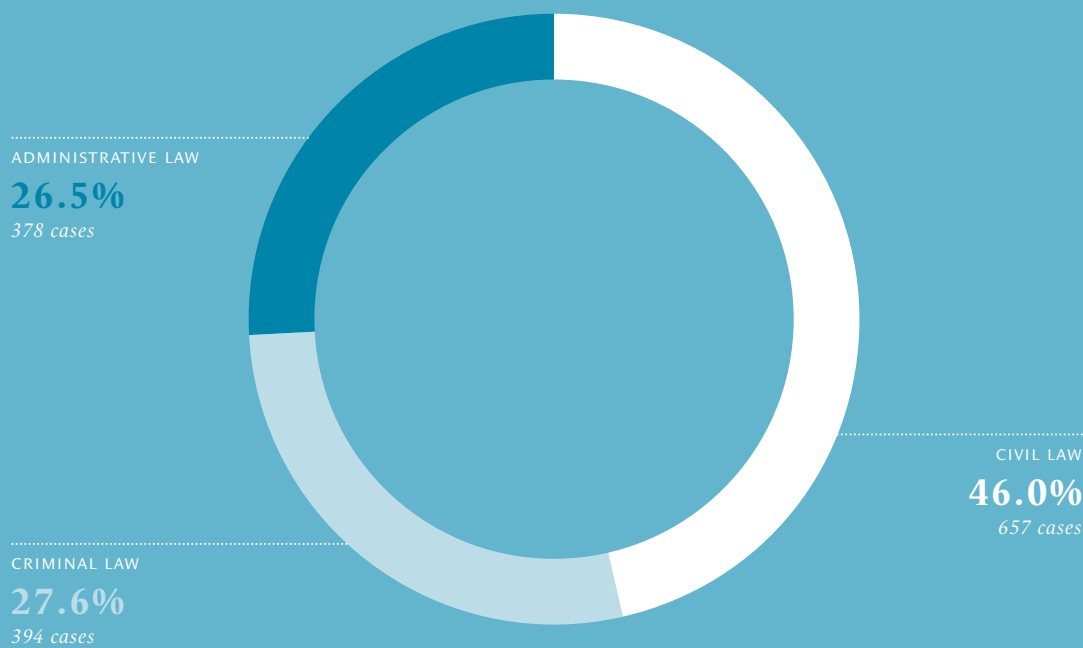


Table 10 Up Cases Received according to Type of Dispute

TYPE OF DISPUTE (UP CASES)	RECEIVED IN 2019	PERCENTAGE IN 2019	RECEIVED IN 2018	CHANGE 2019/2018
Civil Law Litigation	369	25.8%	344	7.3% ↑
Minor Offences	221	15.5%	105	110.5% ↑
Criminal Cases	171	12.0%	174	-1.7% ↓
Labour Law Disputes	107	7.5%	134	-20.1% ↓
Other Administrative Disputes	92	6.4%	102	-9.8% ↓
Commercial Law Disputes	88	6.2%	73	20.5% ↑
Enforcement Proceedings	85	5.9%	79	7.6% ↑
Social Law Disputes	61	4.3%	64	-4.7% ↓
Taxes	59	4.1%	49	20.4% ↑
Non-litigious Civil Law Proceedings	45	3.1%	47	-4.3% ↓
Insolvency Proceedings	29	2.0%	43	-32.6% ↓
Proceedings related to the Land Register	16	1.1%	9	77.8% ↑
Denationalisation	15	1.0%	11	36.4% ↑
Election	14	1.0%	33	-57.6% ↓
Succession Proceedings	14	1.0%	13	7.7% ↑
Other	13	0.9%	4	225.0% ↑
Matters concerning Spatial Planning	11	0.8%	14	-21.4% ↓
No Dispute	10	0.7%	6	66.7% ↑
Civil Status of Persons	9	0.6%	7	28.6% ↑
Registration in the Companies Register	0	0.0%	5	-100.0% ↓
<b>Total</b>	<b>1429</b>	<b>100.0%</b>	<b>1316</b>	<b>8.6% ↑</b>

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

INITIATOR OF THE JURISDICTIONAL DISPUTE	NUMBER OF CASES
Medobčinski inšpektorat Kranj (Kranj Intermunicipal Inspectorate)	1
Ministrstvo za delo, družino, socialne zadeve in enake možnosti (Ministry of Labour, Family, Social Affairs, and Equal Opportunities)	1
Okrajno sodišče v Celju, Oddelek za prekrške (Local Court in Celje, Minor Offences Department)	1
Specializirana enota za nadzor prometa (Specialised Unit for Traffic Control)	1
<b>Total</b>	<b>4</b>

## Cases Resolved

Figure 7

Distribution of Cases Resolved in 2019

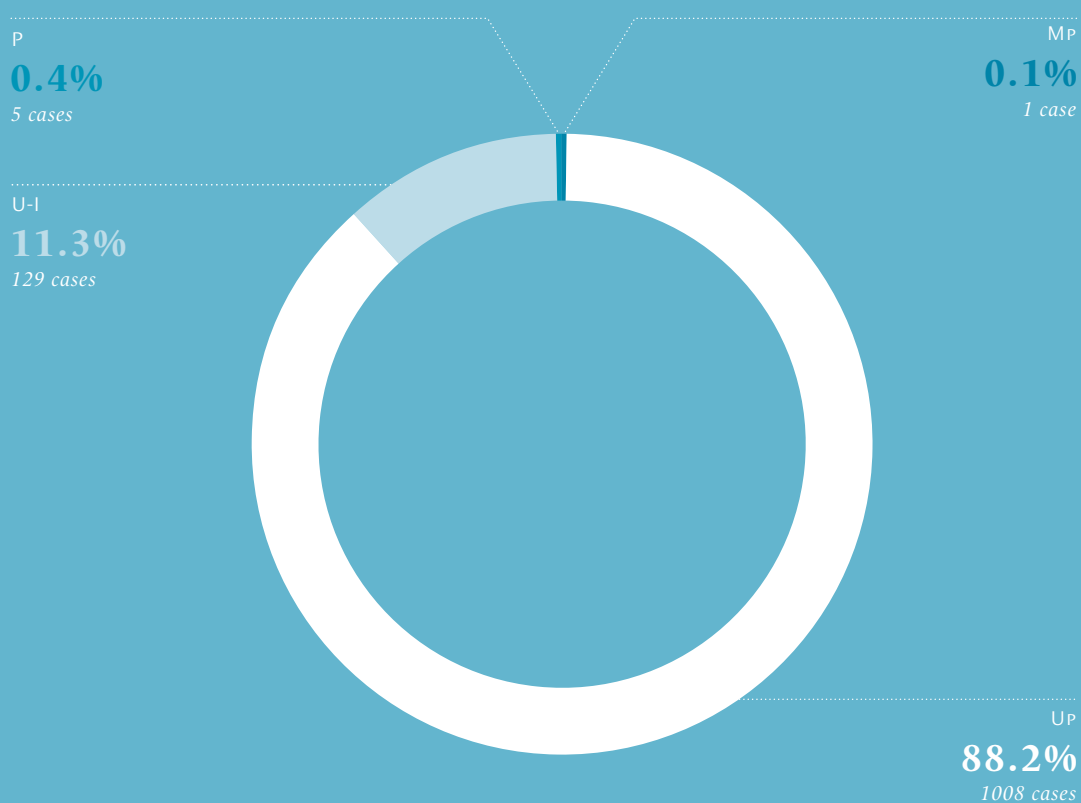


Table 12 Number of Cases Resolved according to Type of Case and Year Resolved

LETO	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	152	1011	5	/	/	/	5	1173
<b>2019</b>	<b>129</b>	<b>1008</b>	<b>5</b>	<b>/</b>	<b>/</b>	<b>/</b>	<b>1</b>	<b>1143</b>
<b>2019/2018</b>	<b>-15.1%</b>	<b>-0.3%</b>	<b>0.0%</b>	<b>/</b>	<b>/</b>	<b>/</b>	<b>-80.0%</b>	<b>-2.6%</b>

Figure 8 Number of Cases Resolved by Year Resolved

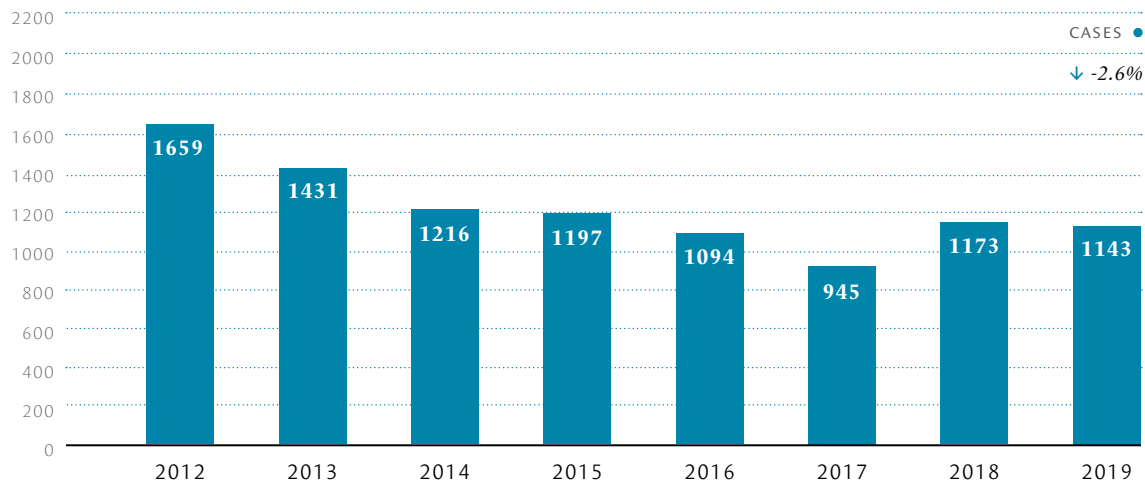


Figure 9 Number of U-I Cases Resolved by Year Resolved

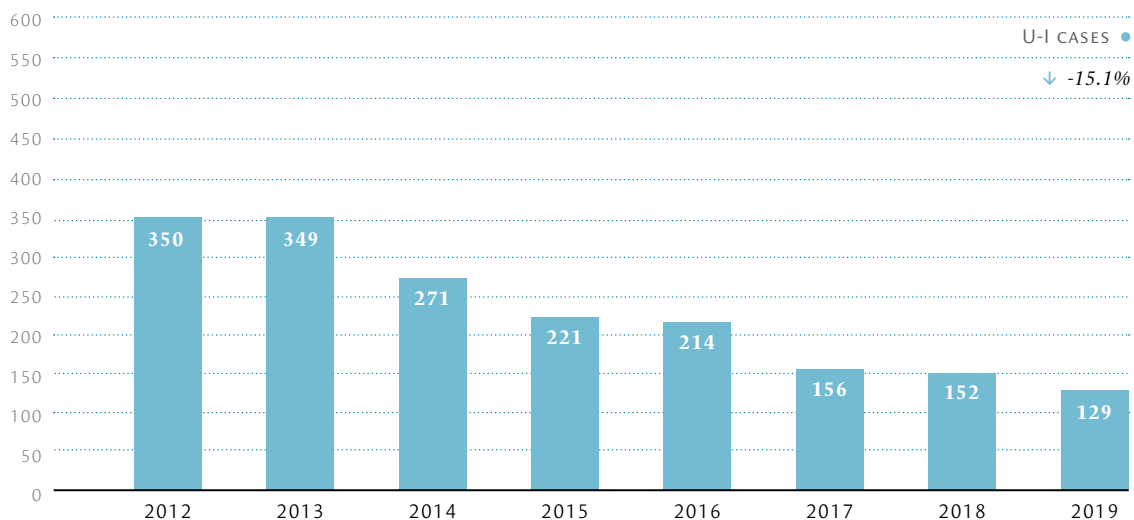


Figure 10

Number of Cases Resolved according to Type of Case and Year Resolved

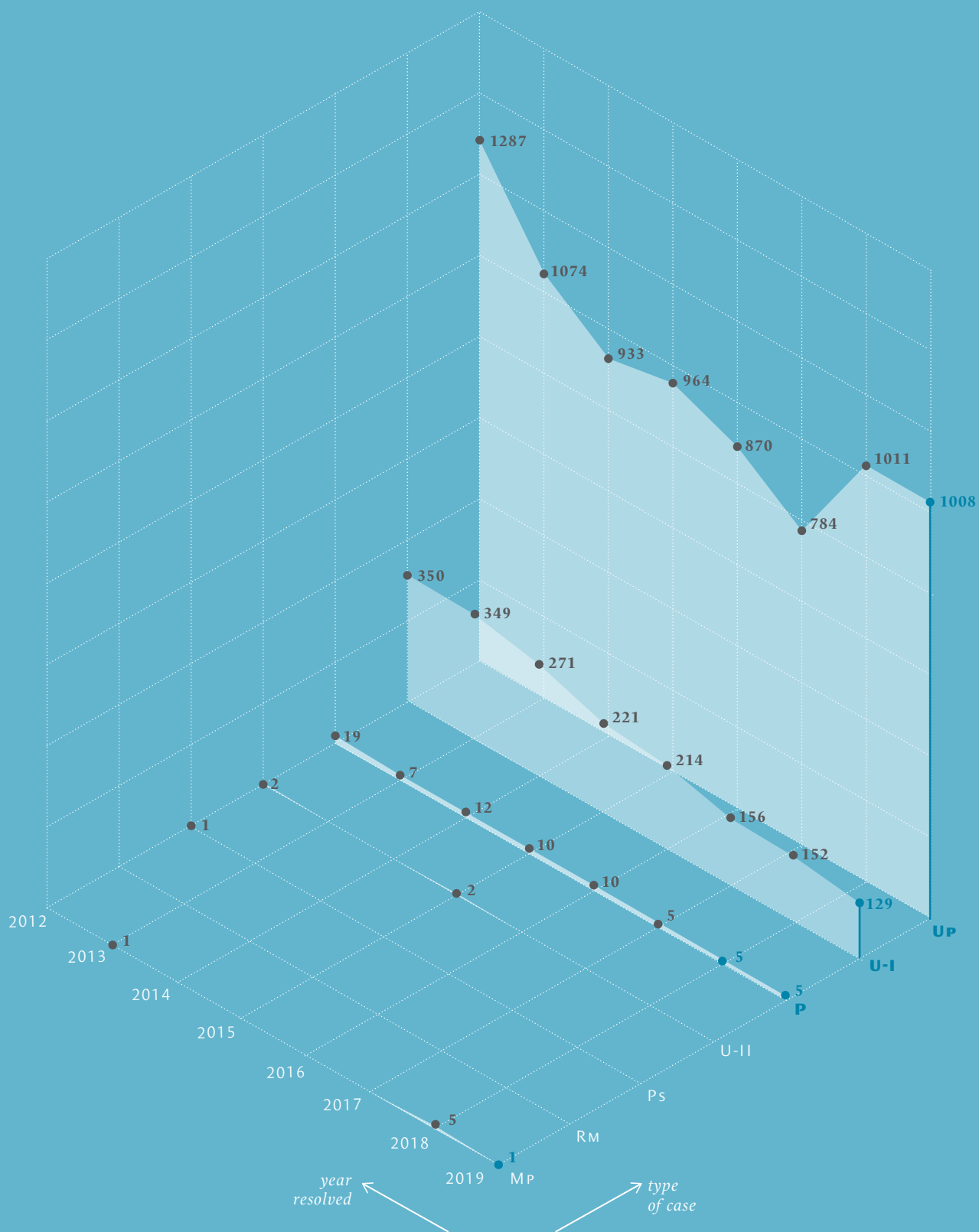


Table 13 Number of U-I Cases Resolved on the Merits by Year

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	152	28	18.4%
<b>2019</b>	<b>129</b>	<b>24</b>	<b>18.6%</b>

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

TYPE OF RESOLUTION	2019 REQUESTS	2019 PETITIONS /SUA SPONTE	2019 TOTAL	2018	2017	2016	2015	2014	2013
Abrogation of statutory provisions	4	5	9	7	6	5	9	11	6
Inconsistency with the Constitution – statutory provisions	2	0	2	3	2	5	5	4	3
Inconsistency with the Constitution and determination of a deadline – statutory provisions	2	2	4	4	3	9	2	5	5
Not inconsistent with the Constitution – statutory provisions	5	2	7	9	7	14	10	0	15
Inconsistency, abrogation, or annulment of the provisions of regulations	0	1	1	3	2	8	5	7	12
Not inconsistent with the Constitution or the law – provisions of regulations	1	0	1	1	0	1	0	2	1
Dismissed	0	30	30	19	39	41	37	38	61
Rejected	10	71	81	105	111	132	154	156	238
Proceedings were stayed	0	3	3	11	10	8	8	31	22

Figure 11 Number of Up Cases Resolved by Year

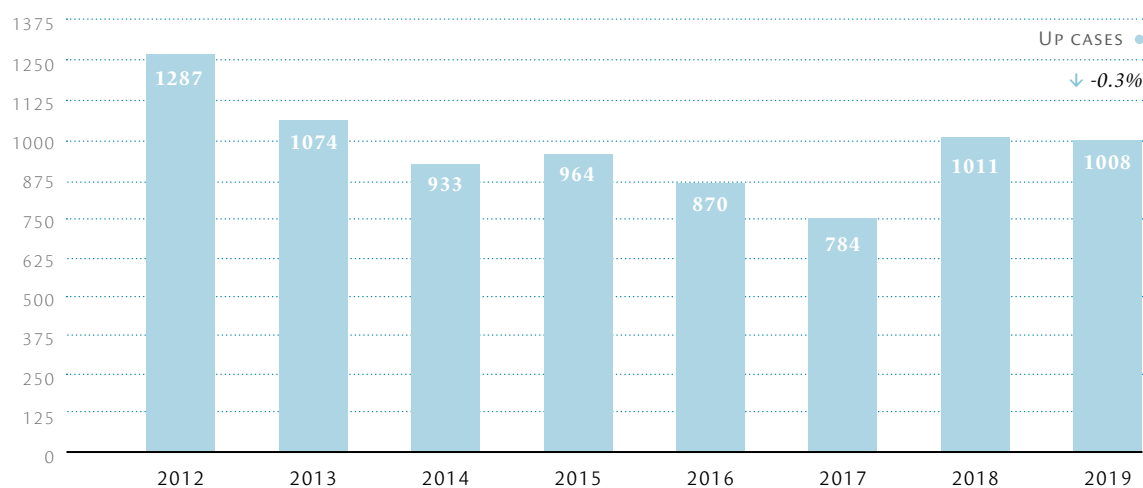


Table 15 Number of Up Cases Resolved according to Panel and Year

YEAR	CIVIL LAW	ADMINISTRATIVE LAW	CRIMINAL LAW	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	313	184	1011
<b>2019</b>	<b>448</b>	<b>295</b>	<b>265</b>	<b>1008</b>
<b>2019/2018</b>	<b>-12.8%</b>	<b>-5.8%</b>	<b>44.0%</b>	<b>-0.3%</b>

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

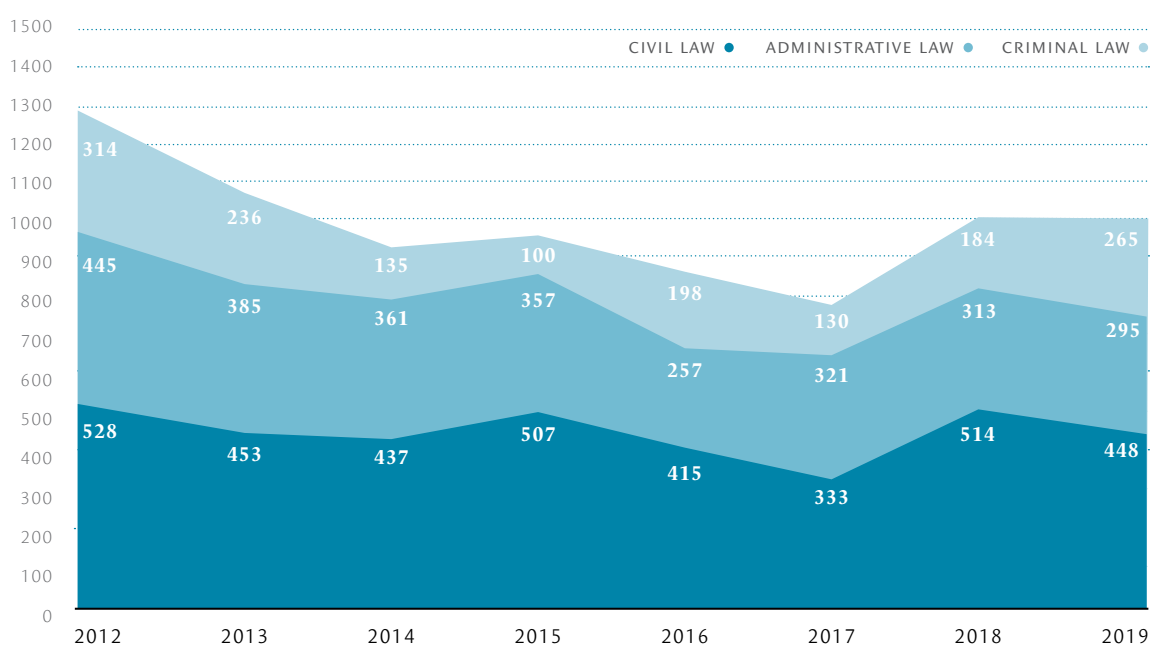


Table 16 Number of Up Cases Resolved according to Type of Dispute

TYPE OF DISPUTE	2019	PERCENTAGE	2018	2019/2018
Civil Law Litigation	235	23.3%	275	-14.5 % ↓
Criminal Cases	169	16.8%	158	7.0 % ↑
Other Administrative Disputes	95	9.4%	66	43.9 % ↑
Minor Offences	95	9.4%	27	251.9 % ↑
Enforcement Proceedings	79	7.8%	80	-1.3 % ↓
Taxes	57	5.7%	42	35.7 % ↑
Labour Law Disputes	49	4.9%	78	-37.2 % ↓

Social Law Disputes	44	4.4%	21	109.5% ↑
Commercial Law Disputes	41	4.1%	69	-40.6% ↓
Non-litigious Civil Law Proceedings	40	4.0%	38	5.3% ↑
Insolvency Proceedings	37	3.7%	61	-39.3% ↓
Succession Proceedings	13	1.3%	14	-7.1% ↓
Proceedings related to the Land Register	13	1.3%	8	62.5% ↑
Election	12	1.2%	33	-63.6% ↓
Other	11	1.1%	2	450.0% ↑
No Dispute	7	0.7%	5	40.0% ↑
Civil Status of Persons	6	0.6%	9	-33.3% ↓
Matters concerning Spatial Planning	3	0.3%	9	-66.7% ↓
Denationalisation	1	0.1%	14	-92.9% ↓
Registration in the Companies Register	1	0.1%	2	-50.0% ↓
<b>Total</b>	<b>1008</b>	<b>100.0%</b>	<b>1011</b>	<b>-0.3% ↓</b>

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 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	1011	32	3.2%	25	2.5%
<b>2019</b>	<b>1008</b>	<b>55</b>	<b>5.5%</b>	<b>44</b>	<b>4.4%</b>

Figure 13 Type of Decision in Up Cases Accepted for Consideration by Year Resolved  
(one case was partially granted and partially dismissed)

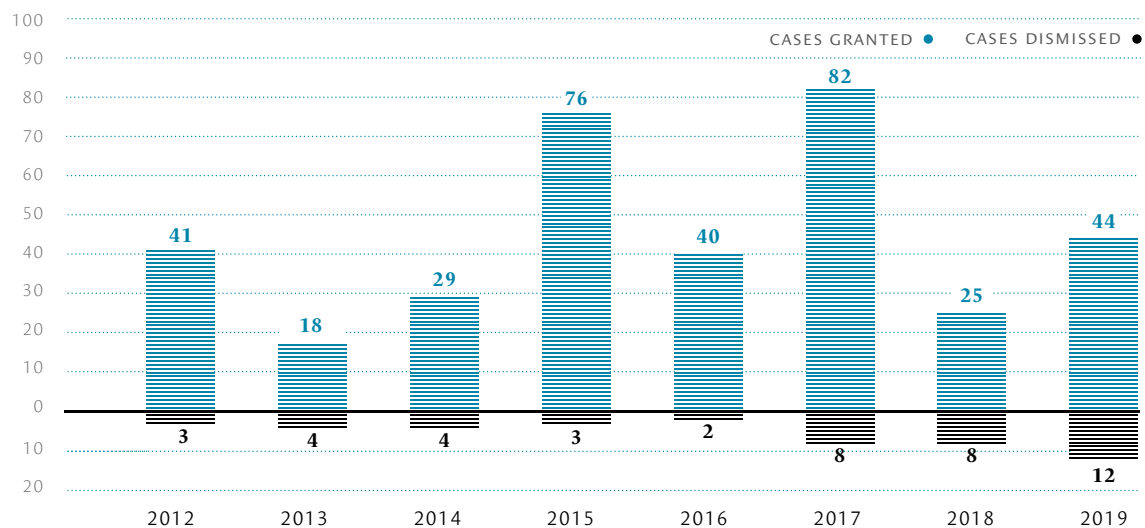


Table 18 Certain Other Types of Resolutions in Up Cases

LETO	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	387
<b>2019</b>	<b>537</b>	<b>427</b>

\* Excluding AREECtHRJ Cases

Table 19 Number of P Cases Resolved on the Merits

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%
<b>2019</b>	<b>5</b>	<b>4</b>	<b>80.0%</b>

Table 20 Average Number of Days Needed to Resolve a Case according to Register

REGISTER	AVERAGE DURATION IN DAYS
U-I	498
Up	420
P	190
Mp	113
<b>Total</b>	<b>428</b>

Table 21 Average Number of Days Needed to Resolve Up Cases according to Panel (Excluding AREECtHRJ and R-I Cases)

PANEL	2019	2018	CHANGE 2019/2018
Civil Law	309	353	-12.5% ↓
Administrative Law	461	396	16.4% ↑
Criminal Law	563	599	-6.0% ↓
<b>Total</b>	<b>420</b>	<b>411</b>	<b>2.2% ↑</b>

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

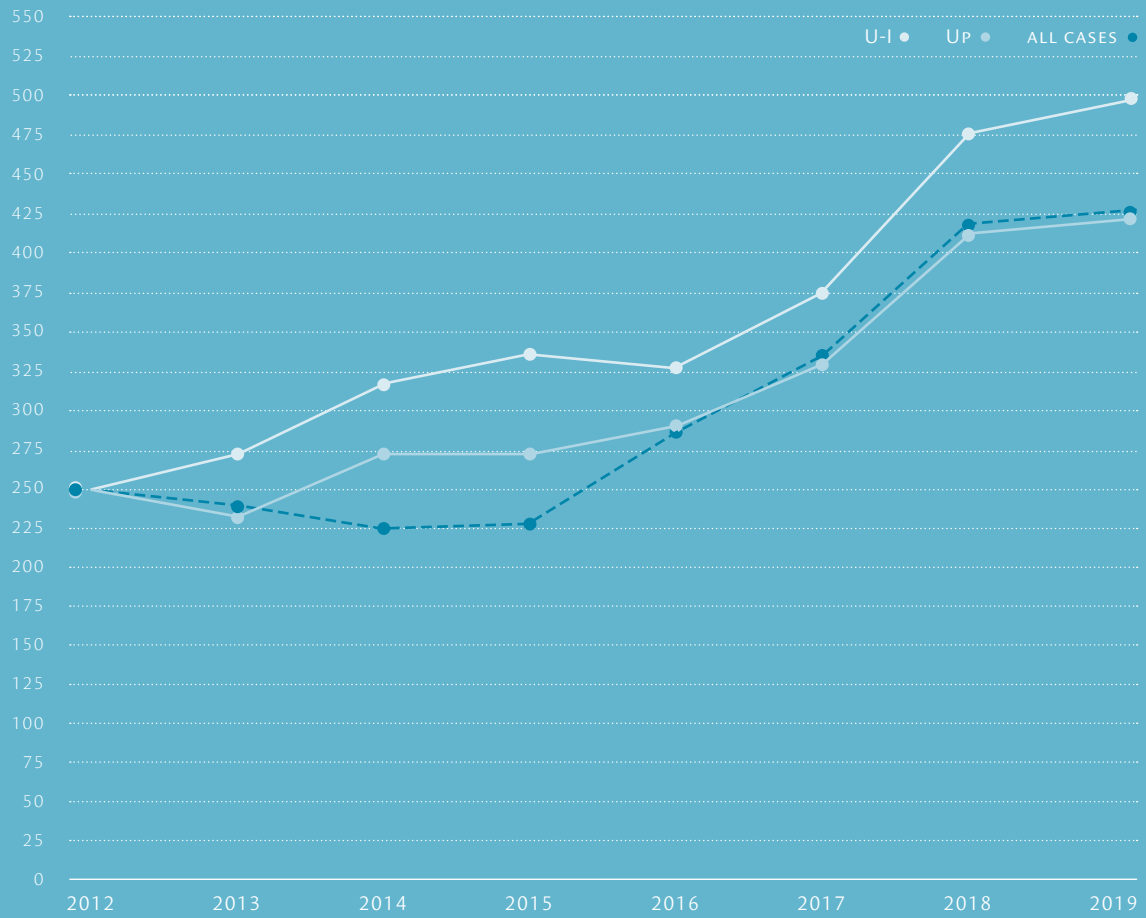
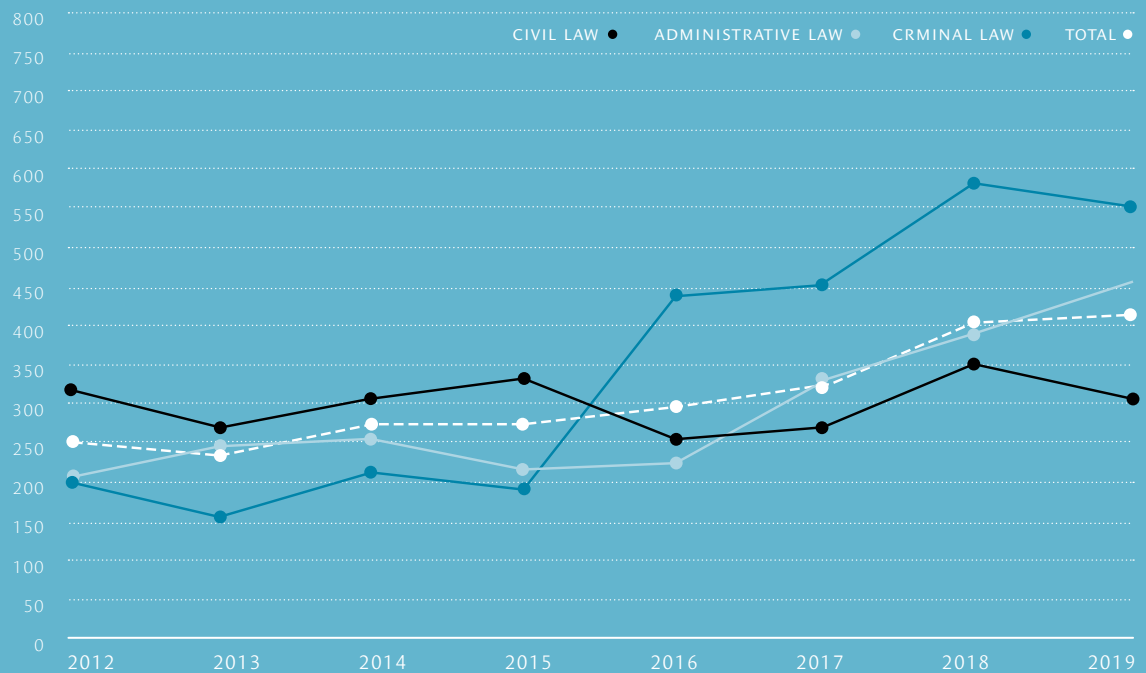


Figure 14 a Average Number of Days Needed to Resolve Up Cases according to Panel



### 9.3. Unresolved Cases

Table 22 Unresolved Cases by Year Received as of 31 December 2019

YEAR	2015	2016	2017	2018	2019	TOTAL
U-I	2	28	65	115	206	416
Up	2	42	317	698	1092	2151
P					1	1
<b>Total</b>	<b>4</b>	<b>70</b>	<b>382</b>	<b>813</b>	<b>1299</b>	<b>2568</b>

Figure 15 Number of Cases Pending at Year End (Including AREECtHRJ Cases)

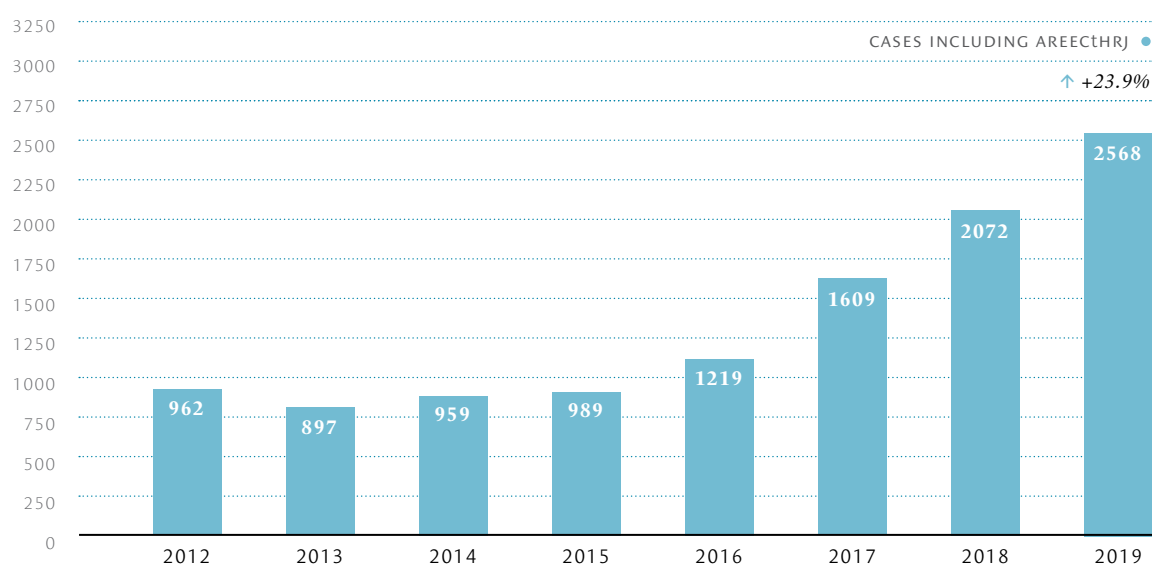
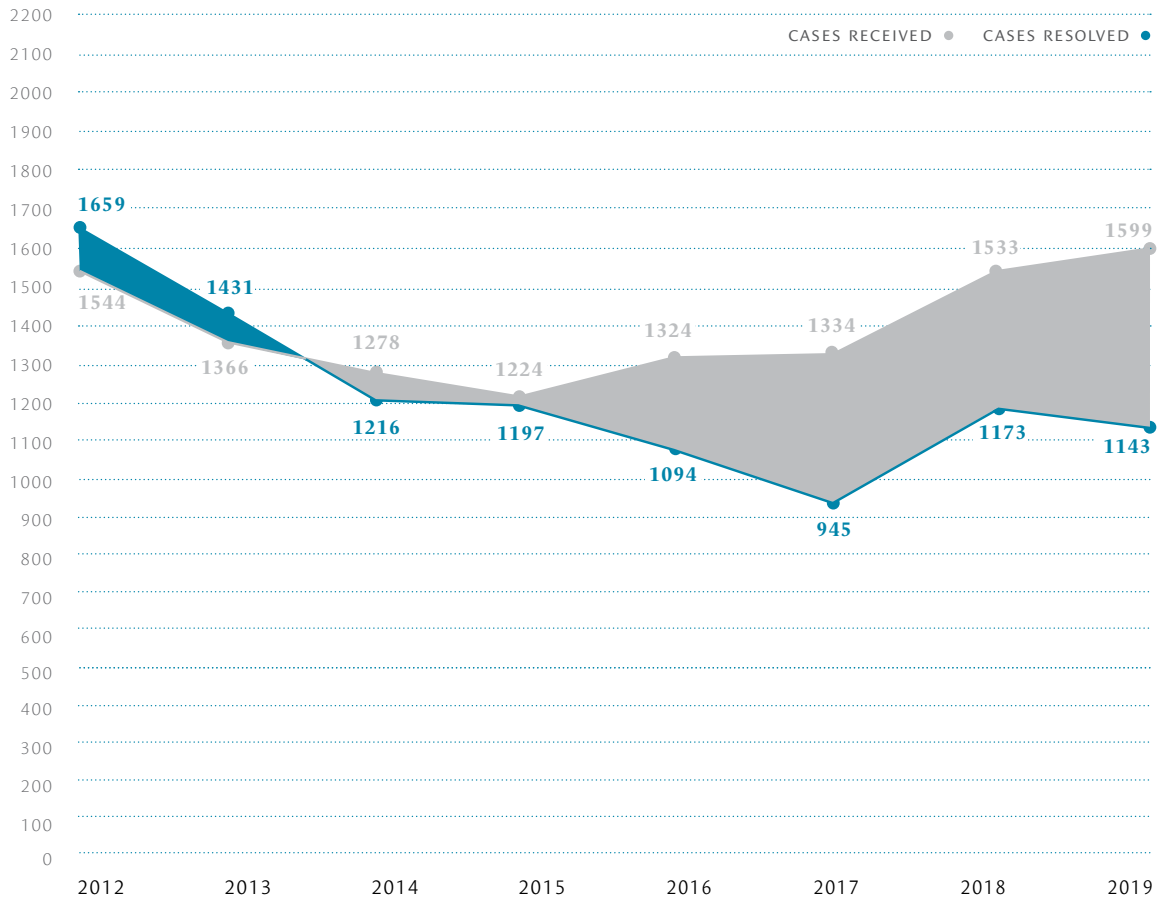


Table 23 Priority Cases Pending as of 31 December 2019

REGISTER	ABSOLUTE PRIORITY CASES	PRIORITY CASES	TOTAL
Up	105	381	486
U-I	59	42	101
P		2	2
<b>Total</b>	<b>164</b>	<b>425</b>	<b>580</b>

Figure 16 Cases Received and Resolved



#### 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% ↓
<b>2019</b>	<b>3,527,567</b>	<b>611,428</b>	<b>180,650</b>	<b>4,319,645</b>	<b>3.82% ↑</b>

\* 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 2019.

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

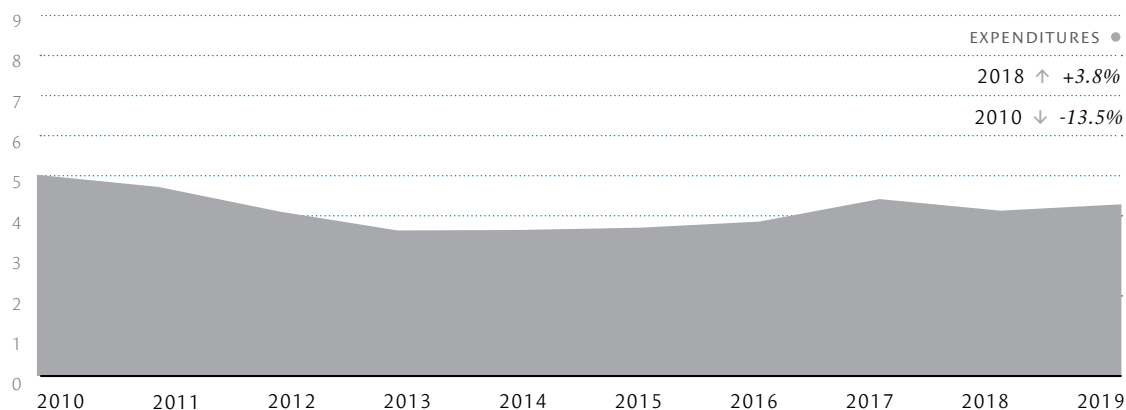


Figure 18 Distribution of Expenditures in 2019

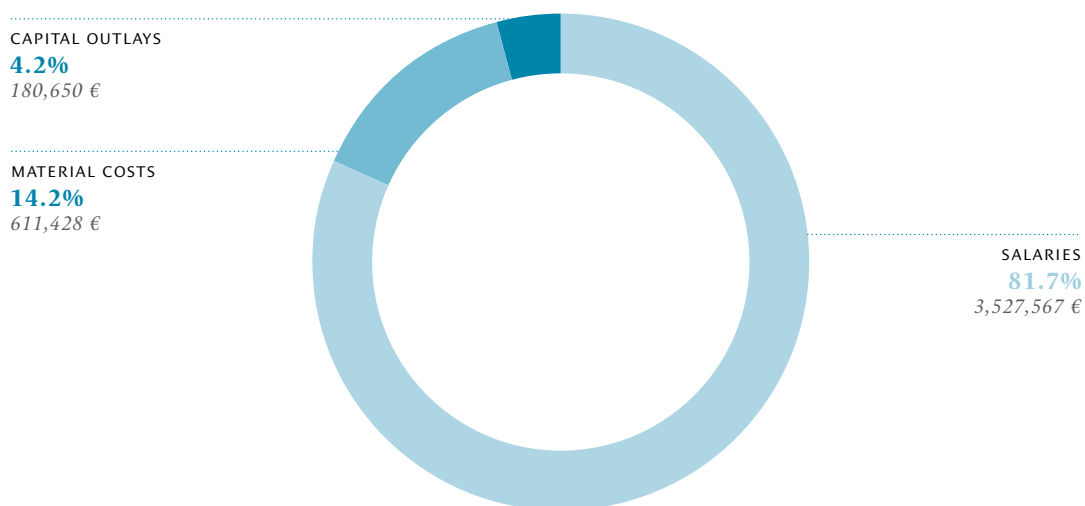
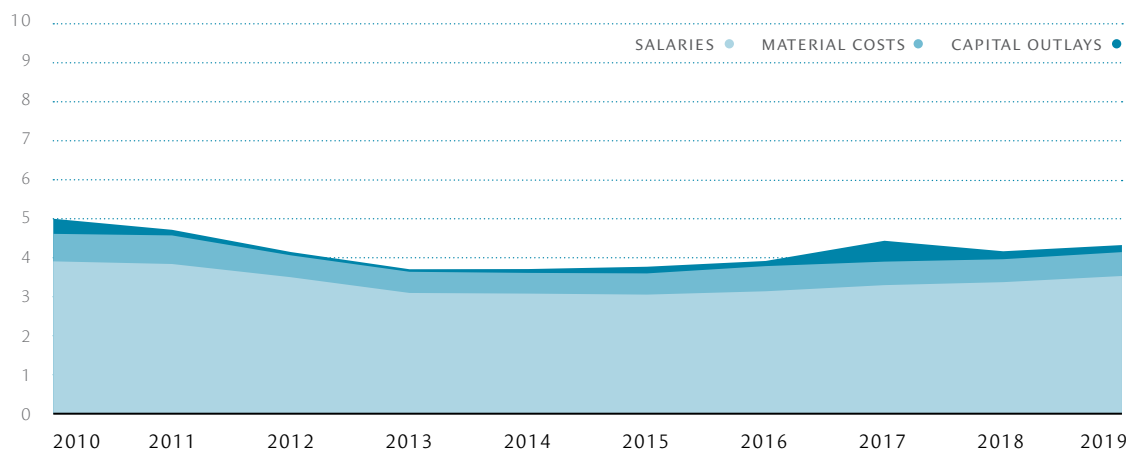


Figure 19 Distribution of Expenditures by Year (in mio. EUR)





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