AN OVERVIEW OF THE WORK FOR 2020

The Constitutional Court of the Republic of Slovenia

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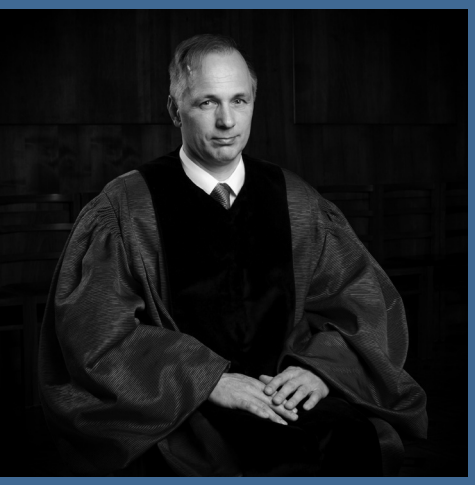

Foreword by the President of the Constitutional Court

Usually, it is already during the year that I begin to consider how the work of the Constitutional Court will be reflected in the annual report and what the complete picture as to how the Constitutional Court fulfilled its mission of protecting constitutional values will look like. The year 2020 was no different in this respect; however, it is impossible not to mention the now more or less constantly present circumstances – the COVID-19 epidemic. Although I would prefer to avoid emphasising the existence of the pandemic, I unfortunately cannot do so. The changed circumstances required us to quickly adapt our working routine as we strove to ensure to the greatest extent possible the smooth operation and full effectiveness of the exercise of the powers of the Constitutional Court. Concurrently, it was precisely due to the COVID-19 epidemic that last year the Constitutional Court faced a significant number of lodged requests and petitions by which epidemiological measures were challenged, as well as the legislation regulating infectious diseases and the measures for tackling them.

The Constitutional Court swiftly and effectively resolved the internal aspect of the organisation of its operations. As early as in late March, soon after the epidemic began, an amendment to the Rules of Procedure of the Constitutional Court was adopted, which was necessary in order to enable the plenary sessions and the sessions of the panels to be carried out at a distance in both the spring and autumn waves of infection. The drafting of documents remained efficient throughout the year. The advisors and other judicial personnel worked mostly from home by communicating at a distance and by making other necessary adaptations allowing them to carry out all the necessary tasks before and after the sessions (i.e. all tasks from when a new case is received to when it is resolved). Since the judicial personnel demonstrated a high level of engagement and supported each other, the operations of the Constitutional Court did not cease even for a moment. In this respect I wish to express my gratitude to the employees – and it is also appropriate to do so already in the foreword – for their commitment and responsible attitude towards their work, and for their awareness of the importance of the effective exercise of the role of the Constitutional Court, which also during an epidemic must operate optimally and appropriately perform the role with which it is entrusted by the constitutional order.

Also the outward aspect of the increased number of cases connected with the epidemic that the Constitutional Court received in the past year requires an explanation. Due to the urgency of these completely new cases, the Constitutional Court considered a number of them

concurrently with other cases which were received in recent years, both those that had the status of priority cases or even absolute priority cases and others which already at the beginning of the pandemic had been pending for too long. This means that the increased number of petitions and requests that referred to so-called anti-Covid measures, i.e. measures adopted due to the epidemiological situation, including in instances that in ordinary circumstances would not be constitutionally disputable (e.g. carrying out referendums during an epidemic), did not stop the decision-making in all the other cases. The cases relating to anti-Covid measures have absolute priority, therefore the consideration of these cases is not without an effect on the pace at which other cases are resolved simultaneously. Nevertheless, in 2020, by working intensively, the Constitutional Court considered and decided on more cases than in previous years, and also reduced the backlog.

The number of petitions directed against measures relating to the epidemic that were filed before the Constitutional Court is comparable to the number before other constitutional courts (the German Federal Constitutional Court, for instance, received approximately 800 cases relating to anti-Covid measures). During the epidemic, I often spoke with the presidents of the constitutional courts of other states, and we exchanged experiences concerning the manner in which constitutional courts are operating under the new circumstances, information concerning the cases they receive, as well as the constitutional questions raised in connection therewith. I noted a number of details. The common thread was the question of how far interpretations of constitutional rules and principles can go when exceptional circumstances have not yet been declared, i.e. circumstances that allow (even) more invasive measures with human rights and fundamental freedoms. Attention should also be drawn to a very important fact, which is often overlooked also by the professional public, namely that the legal bases for the measures in the fight against the epidemic differ from state to state on both the constitutional and statutory levels, and that therefore simplified comparisons of decisions that are based merely on the final result are not necessarily correct. It is precisely this difference between the states that requires diligence when making comparative law assessments. Hitherto, no case law on this issue has been adopted by the European Court of Human Rights, which will, as usual, be formed with a time lag.

When assessing the epidemiological measures, a new dimension to a question that the Constitutional Court has often answered in the past became apparent. This question concerns the existence of the need for legal protection by requesting a review of regulations that at the time of the decision-making of the Constitutional Court are not or are no longer in force if the applicant cannot demonstrate that he or she suffered consequences due to the unconstitutional regulation or that such have not been remedied. The governmental anti-Covid measures (adopted by ordinances) often remained in force for a shorter period of time; even if the Constitutional Court had acted very quickly, it would not have been able to decide on the constitutionality thereof (merely ensuring that the proceedings are adversarial takes some time). The narrow interpretation of the need for legal protection would therefore every time prevent access to the Constitutional Court, although these ordinances contain rules that can enter into force over and over again, and a decision as to their constitutionality would provide an answer to an important constitutional question and would exceed the importance of the decision in an individual case. Therefore, the Constitutional Court already in Decision U-I-129/19, which concerned the budget (see paragraph 43 of the Decision, dated 1 July 2020, which is also presented in more detail in the present annual report among the important decisions), formed a rule that it then also applied when reviewing the constitutionality of anti-Covid measures enacted by ordinances of the Government (see paragraph 27 of Decision No. U-I-83/20, dated

27 August 2020, which is also presented in more detail in the present annual report among the important decisions). Hence, when a decision of the Constitutional Court would entail a precedential response to a particularly important constitutional question of a systemic nature on which the Constitutional Court had not yet had the opportunity to take a position and which could also arise in connection with possible future acts of the same nature and with comparable subject matter, the Constitutional Court carries out a review of the constitutionality of the regulation at issue despite the fact that the latter ceased to be in force and the applicant is unable to demonstrate that the consequences of its unconstitutionality have not been remedied.

The Constitutional Court also decided on a number of other cases related to the epidemic; however, it has not yet adopted a decision on several anti-Covid measures of the legislature and the executive branch of power. In this respect, we are in a similar position compared to the constitutional courts of other states. Some measures ceased or will cease to be in force during the proceedings and we will decide on their constitutionality ex post if the presented conditions as to the existence of the need for legal protection are fulfilled.

The time needed by the Constitutional Court to decide on an individual case is closely connected to the number of cases received. The warnings of the Constitutional Court and its presidents regarding the imbalance between the capabilities of the Constitutional Court (in terms of personnel and available space) and the necessary work that should be done in order to adequately manage the number of cases received and to reduce the backlog of cases have already become a constant. Ever since the unsuccessful attempt in 2011 to reform the constitutional regulation of the powers of the Constitutional Court and of the scope and manner in which the Constitutional Court can be accessed, additional internal solutions that could mitigate this significant imbalance have been sought. The support of the majority of the judges in the spring of 2020 for the decision to accordingly increase the number of advisors could enable the continuation of the trend from the past year, i.e. faster decision-making and, thereby, a reduction in the backlog.[1] In this effort we are limited by the available space on the premises; therefore, we have already addressed applications to the competent institutions requesting that this difficulty be appropriately resolved. Concurrently, we are aware that an increase in the number of advisors must have a limit if we are to ensure that the judges of the Constitutional Court will still be able to decide expeditiously and prudently. We only have nine Constitutional Court judges, and they are the ones who have to adopt a decision in each and every case received, either jointly in a plenary session or in individual panels when deciding on whether to accept a constitutional complaint for consideration. In any event, my view is that the path taken in 2020 was correct. The numbers confirm this; however, in the same breath I must add that the work of the Constitutional Court should not be measured in numbers, but above all according to the content of its decisions. The data on the cases resolved allow us to conclude that we are heading towards our goal of ensuring expeditious decision-making and reducing the number of pending cases, but such data do not reflect the complete picture.[2]

1 As regards the average time needed to decide on a case, which in the past year indeed increased, it is important to understand that only cases resolved are included in the statistical calculation. This means that the statistical result is "worse" when the Constitutional Court resolves old cases. In this respect, see the explanation in Chapter 7, entitled "The Constitutional Court in Numbers". The 2020 Rule of Law Report of the European Commission states, on page 15 with respect to the Slovene Constitutional Court, that the increase in the number of incoming cases (in particular constitutional complaints) and the consequently lengthier proceedings pose a threat to its effective functioning. Therefore, I draw attention in particular to the interpretation of the statistical data, which without such explanation can be misleading. As regards the issue of constitutional complaints, see also R. Knez, Sodstvo in Ustavno sodišče [The Judiciary and the Constitutional Court], in: PiD, No. 7/2020, Chapter 3, pp. 1100 et seq.

2 See also the explanation in Chapter 7, "The Constitutional Court in Numbers".

By stating this, I do not depart from a warning that has been repeated a number of times, namely that the Constitutional Court has (too) numerous constitutionally determined powers and that it was given additional powers by legislation. The Constitutional Court Act itself determines numerous applicants who enjoy privileged access to the Constitutional Court, but other laws incessantly add new ones, without a thorough consideration of where that might lead. Without taking a position as to the constitutionality of such regulation, it is from the mentioned viewpoint that I draw attention to the regulation by which the legislature enabled every voter to file a request (not a petition!) (the fifth paragraph of Article 25 of the Referendum and Popular Initiative Act). In contrast to petitions, requests cannot be dismissed as manifestly unfounded even if their content is such; they must always be decided on by a decision.[3] It is precisely in this context that also the most recent proposal that the Constitutional Court Act be amended can be classified, the purpose of which is to effect that the existence of legal interest for a review of a regulation would only be ascertained when a petition is filed, and no longer during the decision-making. The approaches and consideration of the legislature should in fact be oriented in the opposite direction – i.e. towards unburdening the Constitutional Court, so that it would have more – crucially important – time to decide on important constitutional issues, which always require strategic and prudent consideration.

Actually, deciding on constitutional issues is not the same as applying a law – a certain specific rule – to a specific case, but consists in interpreting and applying abstract constitutional rules, which require clarified terms at the doctrinal level and, as a general rule, demanding value-based decision-making. Every Constitutional Court decision is, to a certain extent, an upgrading of the meaning of the Constitution. The constitutional space, shaped by the Constitutional Court through its interpretation of the Constitution, must be cautiously developed and the values embedded therein must be delicately balanced. Therefore, it is necessary to anticipate in due time where a certain position could lead to, what additional questions it might raise, and what it could mean for the balance between constitutional rules and human rights, i.e. for the Constitution and the legal order as a whole. The Constitutional Court must always stand with one leg in the past, whence a regulation (or a judicial decision) on whose constitutionality it is deciding originates, and with the other leg in the future, which its binding interpretation of the Constitution will co-shape. Constitutional decision-making must therefore also anticipate the legal effect of decisions in society and their positioning in time and space. The view of the Constitutional Court must thus be broad and well-balanced from all the mentioned aspects.

These considerations show that constitutional decision-making is particular and complex to such an extent that the success of the Constitutional Court cannot be assessed only according to the criterion of the number of cases resolved. Such also entails that Constitutional Court judges need time for "strategic" contemplation, as I call it. The less time there is, the more difficult it is for the Constitutional Court to operate; therefore, the increasing powers and the increasingly open access to the Constitutional Court make it substantively weaker. I cannot avoid stating that today one of the characteristics of the work of a Constitutional Court judge is that, burdened with an extremely high number of cases, he or she is constantly losing the battle against time. This is certainly an aspect that is not seen from outside the walls of the

3 Unlike a petition, a request for a review of the constitutionality of a regulation has an effect so as to *eo ipso* initiate a constitutional dispute. Legal interest is not required for filing a request, therefore they should be reserved only for qualified applicants, and not available to voters, i.e. any individual (as an *actio popularis*). Such would entail that, potentially, the Constitutional Court could receive up to a million and a half requests in a mere 15 days, and it would neither be allowed to ascertain the existence of a legal interest nor whether such requests are perhaps manifestly unfounded. One can imagine that this would overwhelm the Constitutional Court already as regards the procedural and formal elements of decision-making.

Constitutional Court, and it especially cannot be seen by those not familiar with the proceedings and nature of the decision-making of the Constitutional Court; however, the legislature should be aware of it. It is namely a systemic issue. Or, in other words: The Constitutional Court can carry out its part of the task, and by means of its internal organisation and diligence it can also attempt to resolve the backlog that over the years has snowballed, but it will not be able to do so if the constantly repeated warnings are not even listened to or if, with a view to boosting political appeal, actions in the exact opposite direction are taken.

In Chapter 4 of the present report, the summaries of the most important decisions adopted in the past year are assembled; I hope that this will be most telling for the public. The decisions of every constitutional court must also proceed from the trust of society in that court as an independent guardian of a state governed by the rule of law. Some decisions, also the most far-reaching ones, which can be classified as precedential decisions, were adopted by the majority outvoting the minority. Separate opinions additionally explain the positions of individual judges or unveil entirely different viewpoints and arguments therefor. In such manner, the Constitutional Court operates transparently and presents to the public the decision-making process, in which opinions also clash, which is legitimate. In such context, we, the judges, are obliged to keep our deliberations secret, in order to be free in our discussions.

I conclude this foreword to the annual report with a warning that is also a constant, namely with the fact that there exist numerous unimplemented Constitutional Court decisions (18 as of the end of 2020),[4] to which the norm-giver, in particular the legislature and the Government as the constitutionally determined proposers of laws, should have responded within the time limits that the Constitutional Court determined in its decisions. If I may connect this question with the above-described difficulties posed by the influx of new cases and the burden on the Constitutional Court, I see a problem on both sides – the continual lack of political will to observe the Constitution, and also the principles of the rule of law and the separation of powers, which require a response to Constitutional Court decisions, on the one hand, and concurrently, the equally constant lack of political will to appropriately change the powers of the Constitutional Court and the conditions for accepting constitutional complaints for consideration in order to enable the Court to operate efficiently, on the other. I am aware that the year 2020, when the Government and the legislature found themselves in the unenviable position of having to fight the epidemic (as did governments and legislatures elsewhere in the world) and had to predominantly deal with anti-Covid measures and measures for mitigating the consequences of the epidemic, is not the best year for expressing harsh assessments. However, this situation wherein the Constitution has not been observed shows no sign of abating; therefore, at least an appeal to both of them is necessary yet again.

Prof. Dr Rajko Knez
President of the Constitutional Court

4 As of this moment, when writing this foreword, the number of unimplemented decisions has increased to 19.

1. Introduction

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

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

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

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

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

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

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

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

2. The Position of the Constitutional Court

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

In recent years, the Constitutional Court has repeatedly drawn 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. It has brought this fact directly to the attention of the Government on a number of occasions, most recently in February 2019, and also to the attention of the wider public by including it in the overviews of its work for 2016 and the following years.

In 2020, the Constitutional Court adopted a decision by which it resolved this situation in proceedings for a review of the constitutionality of the Public Finance Act. By Decision No. U-I-474/18 (dated 10 December 2020, Official Gazette RS, No. 195/20), upon the request of the National Council, the Constitutional Court reviewed the provisions of the Public Finance Act that regulate (1) the inclusion of the proposed financial plans of direct budget users in the draft of the state budget; (2) measures to balance the budget during a fiscal year; (3) the inspection supervision carried out by the Ministry of Finance over the implementation of the Public Finance Act and other public finance regulations by non-governmental users; and (4) the competence of the Minister of Finance to issue detailed instructions regarding the end of the fiscal year for the central and local government budgets no later than by 30 September of the current year. It reviewed the challenged provisions insofar as they refer to the National Council, the Constitutional Court, the Court of Audit, and the Human Rights Ombudsman.

It established that these are constitutionally determined authorities that are ensured by the Constitution an autonomous and independent position, an element of which is financial (i.e. budgetary) independence. This independence is (*inter alia*) ensured by these authorities proposing to the National Assembly by themselves the determination of an appropriate amount of funds in the state budget for their effective and undisturbed operation, such that they independently decide on the expenditure of the allocated funds, and such that the expenditure of these funds is supervised by another – equally autonomous and independent – authority such as the Court of Audit, which is independent of state power. According to the Constitutional Court, it does not follow from the Constitution that influence by the executive power on the financial independence of autonomous and independent constitutional authorities is admissible, which

entails that the amount of funds for the operation of these authorities must not depend on the Government but only on the National Assembly, which is the general representative body. In order for these independent constitutional authorities to be able to exercise their constitutional role, in the procedure for drafting the state budget adopted by the National Assembly they must have a position that is constitutionally equivalent to that of the Government.

The Constitutional Court concluded that Article 20 of the Public Finance Act, which enables the Government to request that necessary alignments of proposed financial plans submitted by independent constitutional authorities be carried out and requires these authorities to align their proposals with those of the Government, causes them to yield to the will of the line ministry, which is part of the executive power. Since this Article interferes with the right of independent constitutional authorities to formulate a proposal regarding the funds necessary for their operation independently of the Government, it establishes their financial dependence on the executive power. In the assessment of the Constitutional Court, this finding cannot be changed by the fact that while the Government, by itself, formally proposes a different financial plan for independent constitutional authorities, it includes the proposal submitted by these constitutional authorities in the reasoning of its own draft state budget. In this respect, the Constitutional Court stressed that the financial independence of autonomous and independent constitutional authorities does not entail that in the procedure for including proposed financial plans in the draft state budget the Government or the competent ministry thereof should not be allowed to warn the independent constitutional authorities of possible departures from the fundamental economic starting points for drafting a budget in their financial plans. Namely, in order for the state power as a whole to be able to operate, it is necessary for the authorities in different branches of power to cooperate, just as it is also necessary for the Government and the other independent constitutional authorities to cooperate. However, the Government must not require independent constitutional authorities to submit to its policies and interests when drafting the budget. Therefore, the Constitutional Court decided that Article 20 of the Public Finance Act, insofar as it refers to the National Council and the Constitutional Court, is inconsistent with the second sentence of the second paragraph of Article 3 of the Constitution, that insofar as it refers to the Human Rights Ombudsman, it is inconsistent with the first sentence of Article 159 of the Constitution, and that insofar as it refers to the Court of Audit, it is inconsistent with the third paragraph of Article 150 of the Constitution.

As regards the measures to balance the budget during a budget year (Article 40 of the Public Finance Act), the Constitutional Court established that the provisions intended for the adoption of urgent temporary measures by the executive power in the event of significant imbalances in the budget caused by unforeseen events merely provide for temporary measures with a strictly determined time of validity that apply equally to all direct budget users, with regard to which the measures are to be determined in cooperation therewith, i.e. also in cooperation with the constitutional authorities that are independent of the Government. Therefore, such regulation does not reduce the financial independence of the autonomous and independent constitutional authorities, which are also independent of the Government. Conversely, the provision that allows the Government to also determine that under conditions involving the temporary suspension of individual expenditures direct budget users must obtain the prior consent of the Ministry of Finance to enter into any contract – i.e. independent constitutional authorities as well – prevents the National Council, the Constitutional Court, the Human Rights Ombudsman, and the Court of Audit from determining by themselves the use of funds for their operations provided from the state budget. This authorisation allows the executive power to intensively and inadmissibly interfere with the work of the autonomous and independent

constitutional authorities; therefore, insofar as the authorisation refers thereto, it is inconsistent with the constitutionally guaranteed financial independence of these authorities.

In the assessment of the Constitutional Court, observance of the financial independence of the National Council, the Constitutional Court, the Human Rights Ombudsman, and the Court of Audit can only be ensured by a regulation determining supervision over the expenditure of budgetary funds that is performed by an autonomous and independent state authority, or, insofar as the Court of Audit is concerned, by an institution independent of state power. The statutory regulation that authorises public officials of the Ministry of Finance to carry out that task does not meet that requirement and is thus unconstitutional.

The Constitutional Court also established that neither the statutory provision that authorises the Minister of Finance to adopt rules annually regarding the end of the implementation of the state and local government budgets for an individual fiscal year, nor any other provision of the Public Finance Act includes any framework or guideline for the issuance of more detailed implementing regulations by the Minister of Finance. Therefore, the Constitutional Court decided that the first paragraph of Article 95 of the Public Finance Act, to the extent to which it was subject to constitutional review, is inconsistent with the second paragraph of Article 120 of the Constitution.

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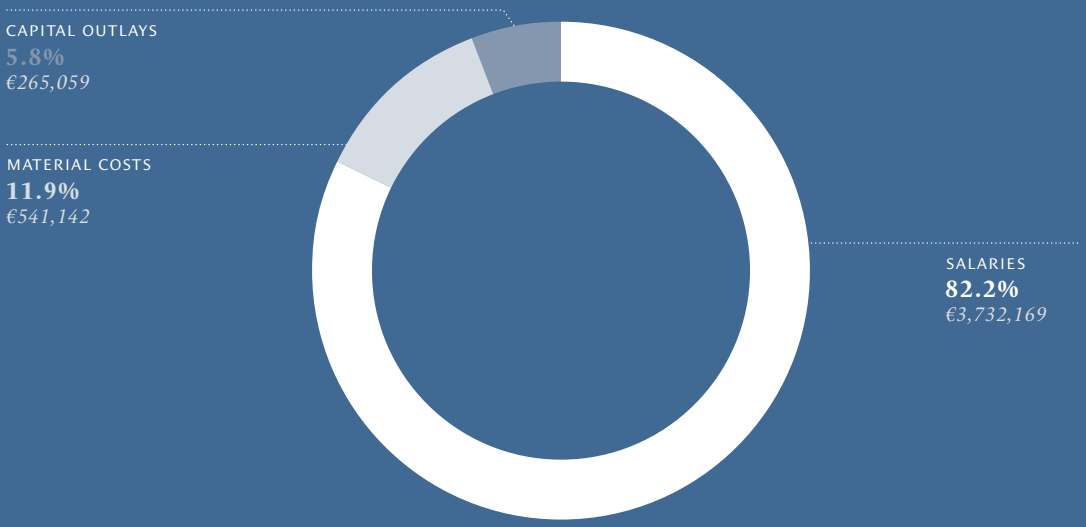
The budget outturn of the Constitutional Court in 2012 amounted to EUR 4,141,346, but only EUR 3,699,968 in 2013. In 2014, it remained at approximately the same level as in 2013, i.e. EUR 3,704,839. The budget outturn increased slightly in 2015, i.e. by 1.6%, in 2016 it increased by 3.9%, when it amounted 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 and amounted to EUR 4,319,645. In 2020, the budget outturn increased once again, by 5.1%, and amounted to EUR 4,538,370. Cohesion funds accounted for 2.64% of the budget outturn for 2020. 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 2020 was still 9.1% lower in comparison to 2010, when the budget outturn amounted to EUR 4,993,377, which was the highest amount thus far.

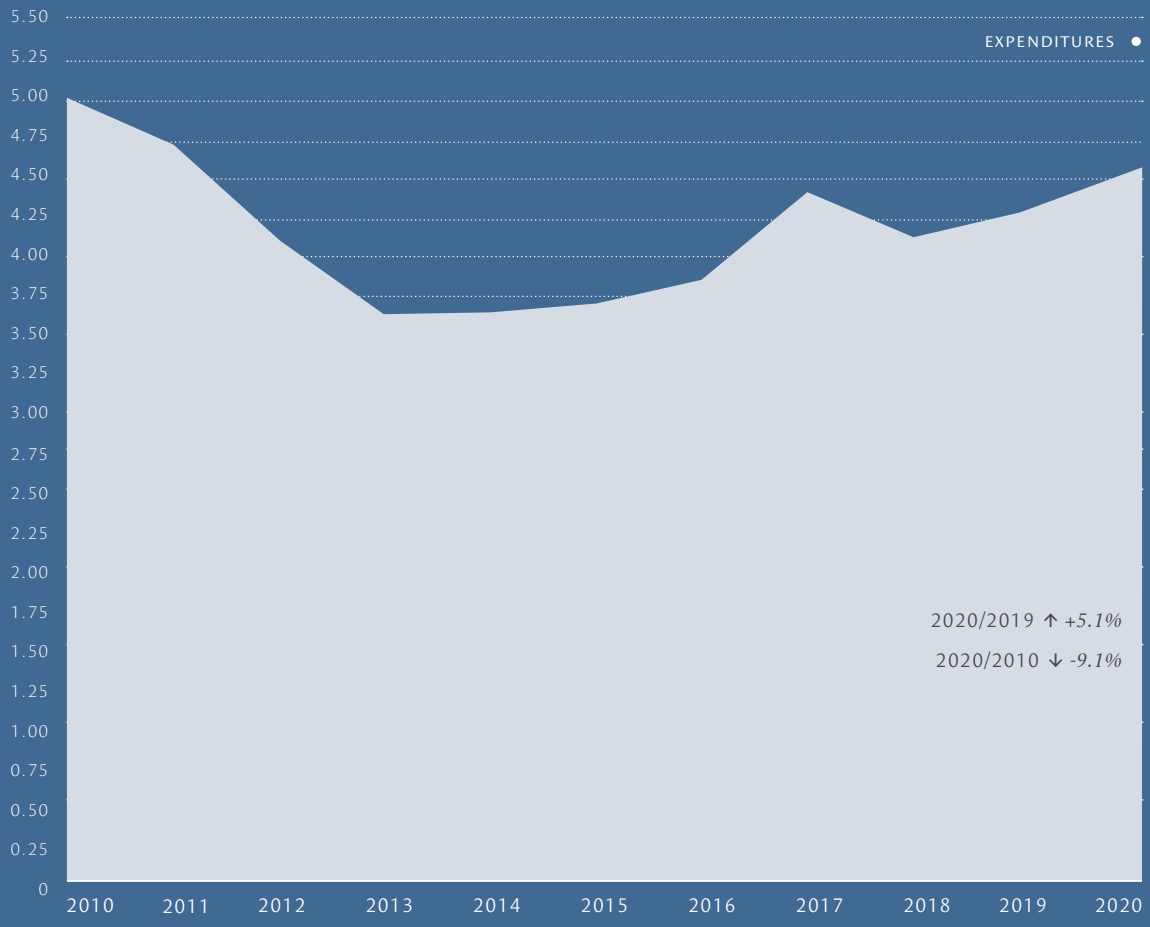
Distribution of Expenditures 2020

(see page 109)



Financial Plan Outturn by Year (in EUR mil.)

(see page 109)



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 2020 there remained eighteen unimplemented Constitutional Court decisions, seventeen 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 worsened compared to 2019, as fourteen decisions remained unimplemented as of the end of 2019. While it falls within the competence of the National Assembly as the legislature to remedy unconstitutionalities in laws, the duty of the Government, as the constitutionally appointed proposer of draft laws, to prepare draft laws promptly and submit them for the legislative procedure must be stressed as well. It falls within the competence of municipal authorities to remedy unconstitutionalities and illegalities in local regulations.

The oldest unimplemented decision remains a decision from 1998 (Decision No. U-I-301/98, dated 17 September 1998, Official Gazette RS, No. 67/98) that declared the unconstitutionality of certain provisions of the Establishment of Municipalities and Municipal Boundaries Act defining the territory of the Urban Municipality of Koper. Furthermore, Decision No. U-I-345/02, dated 14 November 2002 (Official Gazette RS, No. 105/02), whereby the Constitutional Court established the inconsistency of certain municipal charters with the Local Self-Government Act as these charters did not provide that representatives of the Roma community are to be included as members of the respective municipal councils, still remains partly unimplemented.

While other municipalities have remedied the established illegality of their charters, the Municipality of Grosuplje has not responded to the decision of the Constitutional Court by amending its municipal charter. In this regard, it must be added that the state already ensured the constitutionality and legality of the composition of municipal councils through the adoption of the Act Amending the Local Self-Government Act (Official Gazette RS, No. 79/09). In accordance with the seventh paragraph of Article 39 of the Local Self-Government Act, the election of a representative of the Roma community is carried out by the National Electoral Commission if a municipality fails to ensure the right of the Roma community to a representative in the municipal council.

The time limit for remedying the unconstitutionality established by Decision No. U-I-50/11, dated 23 June 2011 (Official Gazette RS, No. 55/11), expired already in 2012, and the legislature has not yet responded appropriately thereto. By that decision the Constitutional Court found that the Parliamentary Inquiries Act and the Rules of Procedure on Parliamentary Inquiries are inconsistent with the Constitution as they failed to regulate a procedural mechanism that would ensure that motions to present evidence that are manifestly intended to delay proceedings, to mob the participants, or which are malicious or entirely irrelevant to the subject of the parliamentary inquiry are dismissed promptly, objectively, predictably, reliably, and with the main objective being to ensure the integrity of the legal order. As a result of this legal gap, the effective nature of the parliamentary inquiry, which is required by Article 93 of the Constitution, is diminished in an unconstitutional manner.

In 2016, the time limits expired for the elimination of the unconstitutionality of two decisions of the Constitutional Court to which the legislature has not yet responded. By Decision No. U-I-269/12, dated 4 December 2014 (Official Gazette RS, No. 2/15), the Constitutional Court found that the regulation of the financing of private primary schools determined by the Organisation and Financing of Education Act is inconsistent with the second paragraph of Article 57 of the Constitution, which ensures pupils the right to attend compulsory state-approved primary education programmes free of charge in public and private schools. By Decision No. U-I-227/14, Up-790/14, dated 4 June 2015 (Official Gazette RS, No. 42/15), the Constitutional Court established the unconstitutionality of the Deputies Act as it did not ensure effective judicial protection against a decision on the termination of the office of a deputy of the National Assembly.

In 2020, the time limit expired for the elimination of the unconstitutionality established by Decision of the Constitutional Court No. U-I-32/15, dated 8 November 2018 (Official Gazette RS, No. 82/18). The Constitutional Court established that Article 4 of the Act Establishing Constituencies for the Election of Deputies to the National Assembly, which determines the areas of electoral districts, is inconsistent with all the criteria for their formation determined by Article 20 of the National Assembly Elections Act (i.e. an equal number of inhabitants, geographical completeness, and the highest possible integrity of municipalities). It assessed that the inconsistency of the laws is such that the principles of a state governed by the rule of law determined by Article 2 of the Constitution are violated.

In twelve decisions out of a total of eighteen decisions to which the legislature has not yet responded, although the time limit determined for remedying the established unconstitutionality or illegality has expired, the Constitutional Court determined the manner of implementation of its decision on the basis of the second paragraph of Article 40 of the Constitutional Court Act. In doing so, the Court ensured effective temporary protection of the human rights of individuals in concrete proceedings. However, determination of the manner

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

In 2014, the time limit for remedying the unconstitutionality established by Constitutional Court Decision No. U-I-249/10, dated 15 March 2012 (Official Gazette RS, No. 27/12), expired; this Decision determined that the provision of the Public Sector Salary System Act according to which a collective agreement may be concluded regardless of the opposition of a representative trade union in which civil servants whose position is regulated by such collective agreement are members interferes with the voluntary nature of such as an element of the freedom of the activities of trade unions. Remedying such an unconstitutionality should be even more urgent as the Constitutional Court determined in the manner of implementing the Decision that, due to the complexity of the subject matter, the unconstitutional statutory regulation shall continue to apply until the established inconsistency is remedied.

In 2016, the time limits for remedying the unconstitutionalities established by 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.

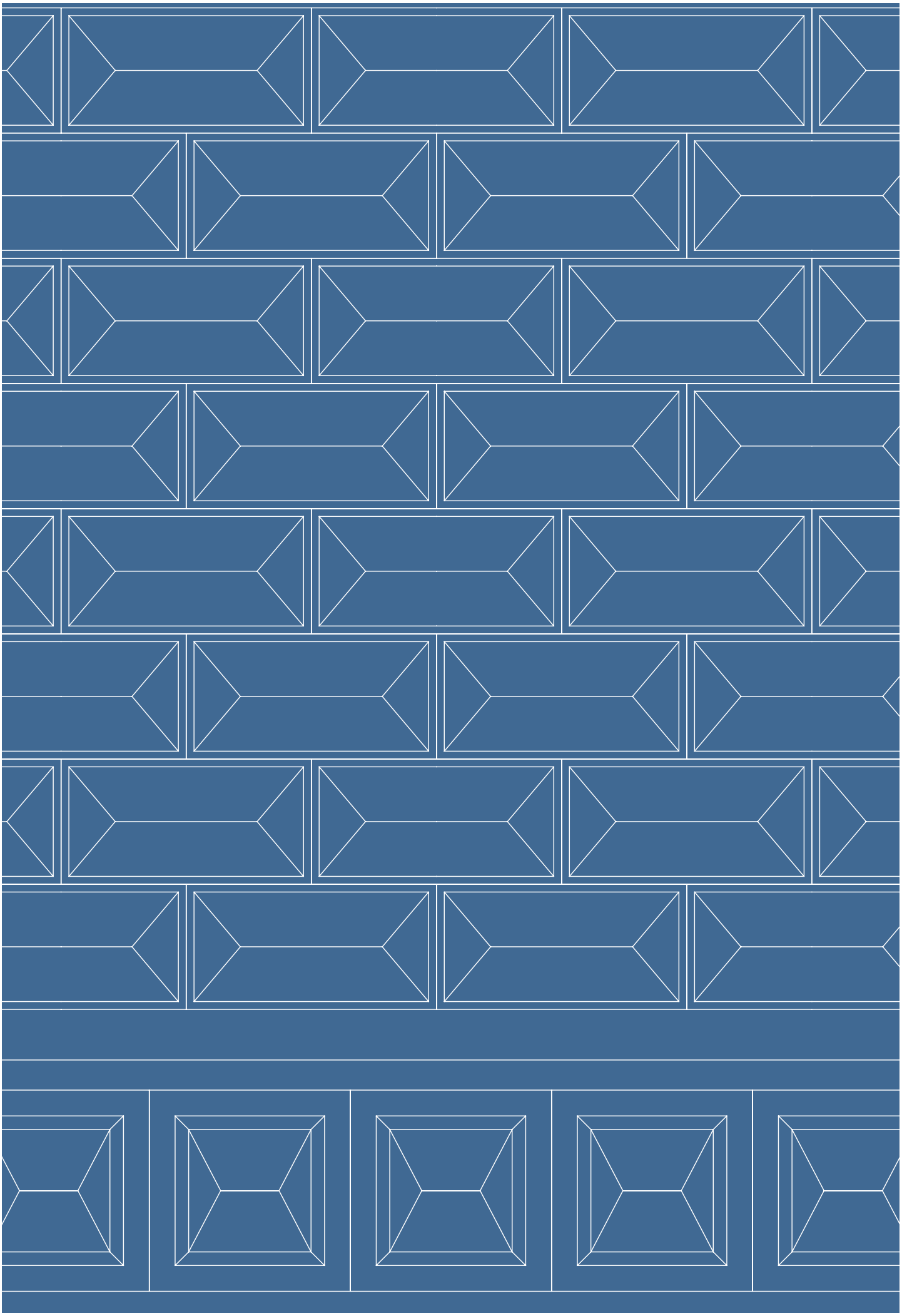
In 2018, the time limit expired for the elimination of the unconstitutionality established by Decision No. U-I-64/14, dated 12 October 2017 (Official Gazette RS, No. 66/17). The Constitutional Court held that the Construction Act is unconstitutional as it does not ensure prior judicial review of the 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 unconstitutionalities 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.

In 2020, the time limits expired for the elimination of the unconstitutionalities established by four decisions of the Constitutional Court. By Decision No. U-I-477/18, Up-93/18 (Decision dated 23 May 2019, Official Gazette RS, No. 44/19), the Constitutional Court established that the statutory regulation of the committal of a person to a secure ward of a social care institution without consent is inconsistent with the first and second paragraphs of Article 19 (protection of personal liberty) and the first paragraph of Article 21 of the Constitution (protection of human personality and dignity in legal proceedings). By Decision No. U-I-44/18, dated 7 November 2019 (Official Gazette RS, No. 69/19), the Constitutional Court established that the third paragraph of Article 310 and the third paragraph of Article 311 of the Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act are unconstitutional because the regulation of the termination of the right to separation in bankruptcy proceedings excessively interferes with the right to private property determined by Article 33 of the Constitution. By Decision No. U-I-391/18, dated 14 November 2019 (Official Gazette RS, No. 70/19), the Constitutional Court held that the challenged regulation determined by point 9 of Article 394 of the Civil Procedure Act is inconsistent with the principle of equality before the law, as determined by Article 14 of the Constitution, because the proposers of the reopening of proceedings referred to in the challenged provision – who have to observe a five-year objective time limit for reopening proceedings – are, as regards the possibility of effectively exercising such extraordinary legal remedy, treated unequally compared to the proposers of the reopening of proceedings referred to in point 11 of Article 394 of the Civil Procedure Act, and there exist no reasonable grounds that, in view of the subject matter of the legislation at issue and the goals that the legislature wished to achieve thereby, objectively justify the disputed differentiation between these legal positions that are essentially equivalent. By Decision No. U-I-479/18, Up-469/15, dated 24 October 2019 (Official Gazette RS, No. 73/19), the Constitutional Court established that the Minor Offences Act is inconsistent with Article 2 of the Constitution, as it fails to define a time limit that would limit the duration of the proceedings of a new trial following the abrogation of a final decision regarding a minor offence.

There remains another decision to which the legislature has only responded 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

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

4. 1. The Judges of the Constitutional Court

Prof. Dr Rajko Knez, President
Prof. Dr Matej Accetto, Vice President
Dr Dunja Jadek Pensa
Assist. Prof. Dr Špelca Mežnar
Marko Šorli
Acad. Prof. Dr Marijan Pavčnik
Dr. Dr. Klemen Jaklič (Oxford UK, Harvard USA)
Prof. Dr Katja Šugman Stubbs
Dr Rok Čeferin

Assumed the office of judge	Assumed the office of President
25 April 2017	19 December 2018

Prof. Dr Rajko Knez, President,

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

Assumed the office of judge

27 March 2017

Assumed the office of Vice President

28 September 2019

Prof. Dr Matej Accetto, Vice President,

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

Assumed the
office of judge

15 July 2011

Dr Dunja Jadek Pensa

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

Assumed the
office of judge

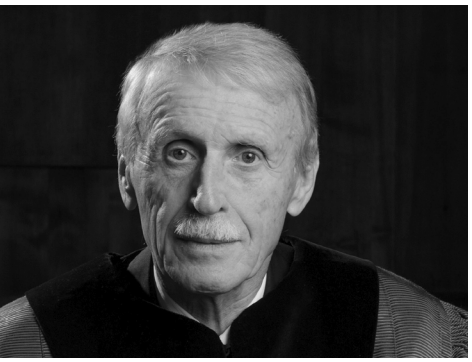
31 October 2016

Assist. Prof. Dr Špelca Mežnar

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

Assumed the
office of judge

20 November 2016

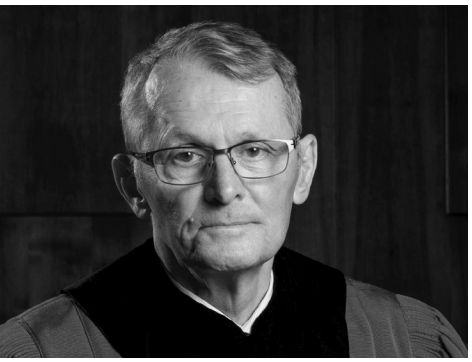


Marko Šorli

graduated from the Faculty of Law of the University of Ljubljana. Following a period as judge at Kranj Municipal Court from 1977 to 1981, he was judge at Ljubljana Higher Court until 1996, when he was appointed Supreme Court judge. Since 1999, he was in charge of the Department for International Judicial Cooperation of the same court and in 2000 he was appointed head of the Criminal Law Department and Vice President of the Supreme Court (a position he held until 2010). He is a member of the state legal examination commission for criminal law. In 1994, he was appointed to the Judicial Council and for the last two thirds of his term of office first held the position of Vice President and then President of the Council. In addition to his work on criminal law, throughout his entire judicial career he has actively participated in solving issues regarding the organisation and democratisation of the judiciary. He has presented papers at various conferences, seminars, and discussions in Slovenia and abroad. In 1997, at an international conference of representatives of Judicial Councils held in Poland he presented a contribution with the title "The Role of the Judicial Council in ensuring the independence of the Judiciary." At the fifth meeting of the Presidents of European Supreme Courts, under the theme "The Supreme Court: publicity, visibility and transparency" organised by the Council of Europe in Ljubljana in 1999, he presented the keynote speech entitled "Publicity of the activities of the Supreme Court." In 2002, he became a member of the European Commission for the Efficiency of Justice – CEPEJ. His written work includes more than 40 articles in professional publications and reviews and he is also a co-author of the Komentar Ustave Republike Slovenije [Commentary on the Constitution of the Republic of Slovenia], Fakulteta za državne in evropske študije. He commenced duties as judge of the Constitutional Court on 20 November 2016.

Assumed the
office of judge

27 March 2017



Acad. Prof. Dr Marijan Pavčnik

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

Assumed the
office of judge

27 March 2017

Dr. Dr. Klemen Jaklič (Oxford UK, Harvard USA)

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

Assumed the
office of judge

19 December 2018

Prof. Dr Katja Šugman Stubbs

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

Assumed the
office of judge

28 September 2019

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.

4. 2. The Secretary General of the Constitutional Court

Dr Sebastian Nerad

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

5. Important Decisions

In 2020, 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 and its application in practice are summarised 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. Judicial Protection regarding Active Employment Policy Programmes

Upon a request of the Supreme Court, in Decision No. U-I-171/17, dated 6 February 2020 (Official Gazette RS, No. 11/20), the Constitutional Court reviewed the constitutionality of Article 47 of the Labour Market Regulation Act, which regulated the procedure for the selection of employers to be included in active employment policy programmes. On the basis of this provision, the Employment Service of the Republic of Slovenia decided on the selection of employers. Employers whose offers are not accepted are informed thereof by a letter from the Employment Service, and such decision may be challenged in the framework of proceedings for judicial review of administrative acts. The Supreme Court alleged that the challenged statutory provision is, *inter alia*, inconsistent with Article 2 of the Constitution (the principle of the clarity and precision of regulations) as it does not contain clear procedural and substantive rules that would form the basis for deciding on the selection of employers to be included in active employment policy programmes and that would enable effective judicial protection in cases where the rights or legal interest of entities applying for public funds are allegedly affected.

The Labour Market Regulation Act regulates the state's labour market measures and is therefore one of the regulations that entail fulfilment of the constitutional obligation determined by Article 66 of the Constitution. It binds the state to create opportunities for employment and work, and to ensure the protection of both by law. It is a programmatic provision that requires the state to adopt appropriate measures to enable employment and work. On this basis, the state must adopt measures aimed at attaining the highest employment rate possible, ensuring freely available employment services for all workers, and providing occupational guidance, training and rehabilitation. What is at issue is predominantly the obligation of making an effort and not the obligation of achieving a success.

The Constitutional Court reviewed the challenged statutory provision from the point of view of the principle of the clarity and precision of regulations (Article 2 of the Constitution). It follows from the principle of legal certainty and the principle of the clarity and precision of regulations that all relevant elements of judicial protection must be clearly and precisely defined in the law in cases where such is required by the special nature of this form of judicial protection. If the legislature fails to clearly determine rules on the basis of which a court may decide in a concrete dispute, it thereby interferes with legal certainty and the possibility of effective judicial protection. In addition, parties to judicial proceedings must know in advance which possible irregularities they may invoke in judicial proceedings and what competences the court will have if it upholds their claims. Only such enables parties to judicial proceedings to substantiate their legal remedies appropriately.

The Constitutional Court assessed that it cannot be clearly established from the statutory regulation which procedural rules are binding on the Employment Service of the Republic of Slovenia in the public invitation procedure for the selection of employers to be included in active employment policy programmes. In regulating judicial protection, the legislature also failed to consider the special nature of judicial protection against the notification that an employer was not selected, which is not an administrative act, but falls within the scope of the performance of the developmental function of the administration. In the absence of a special regulation, the scope of the court's competence when it assessed the substantive correctness of the notification could not be clearly established. In the assessment of the Constitutional Court, the legislature failed to clearly determine the rules on the basis of which a court could decide in a concrete set of proceedings for the judicial review of administrative acts. Employers could thus not know in advance which possible irregularities they may invoke in judicial proceedings and what competences the court will have if it upholds their claims. The absence of clear rules enables the arbitrary allocation of public funds. Such vagueness and deficiency essentially impact exercise of the right of employers to judicial protection against the notification that their application to be included in active employment policy programmes was not accepted. The Constitutional Court therefore established that the challenged provision of the Labour Market Regulation Act is inconsistent with Article 2 of the Constitution, and imposed on the legislature the obligation to remedy the established unconstitutionality within a month. In doing so, the legislature will have to comprehensively regulate all the issues regarding judicial protection against the notification that an employer was not selected and observe the obligations arising from the Constitution, as well as the principle of the economic and efficient use of public funds, the principle of transparency, the principle of proportionality, the principle of competitiveness, and the principle of equal treatment.

5. 2. Substantiation of the Risk of Recidivism when Deciding on Detention

By Decision No. Up-984/19, dated 13 February 2020, the Constitutional Court decided on the constitutional complaint of a complainant against whom a court ordered detention due to a risk of recidivism. The complainant filed an appeal against the court order and lodged a request for the protection of legality. Both legal remedies were dismissed. In his constitutional complaint, the complainant claimed, *inter alia*, that the appellate court and the Supreme Court failed to take a position regarding his allegations referring to the existence of a risk of recidivism.

The Constitutional Court proceeded from the established constitutional case law, from which it follows that detention due to a risk of recidivism may only be ordered if concrete circumstances are established from which a conclusion based on practical experience can be drawn as to the existence of a real threat that the specific defendant will repeat a particular criminal offence. The circumstances of the commission and the severity of the alleged criminal offence do not by themselves suffice to arrive at such a conclusion. Detention due to a risk of recidivism may only be ordered once also the personality of the defendant, the environment, and the circumstances in which he or she lives, as well as his or her hitherto life, enable a reliable concretised conclusion to be made as to the existence of a real threat that a specific criminal offence will be repeated before the judgment is imposed. Apart from the risk of recidivism demonstrated in such a manner, it must also be demonstrated that the safety of people cannot be ensured with more lenient measures (the principle of necessity) and that in the case at issue the threat to people's safety, which the release of the defendant could entail, is such a significant interference with the constitutional right of others to safety that it outweighs the interference with the defendant's right to personal freedom (the principle of proportionality in the narrower sense).

The complainant claimed that the Higher Court and the Supreme Court, *inter alia*, failed to respond to his allegations that detention was ordered a year after the criminal offence was alleged to have been committed, and that during this period of time the police carried out covert investigative measures against him but did not find anything suspicious in this regard. The Constitutional Court agreed with the complainant that the courts failed to take a position regarding these allegations. It also established that the allegations were relevant for the decision on whether to order detention. In the opinion of the Constitutional Court, the time that elapsed from the alleged commission of the criminal offence until the decision on whether to order detention was made may be decisive for an assessment of the risk of recidivism. If this time span is longer and if in this time no additional circumstances are ascertained that indicate that the suspect has repeated or will repeat the criminal offence, the conclusion that a risk of recidivism exists may be unsubstantiated. This is even truer if during this period of time covert investigative measures were carried out that could have disclosed the suspect's further criminal activities, if such existed. The courts should have taken a position regarding the complainant's mentioned allegation. They should have explained whether the complainant's allegations are true and if so, how this – in relation to the other relevant circumstances – affects the assessment of the risk of recidivism. Since the Higher Court and the Supreme Court failed to do so, the Constitutional Court established that they violated the complainant's right to a reasoned judicial decision determined by Article 22 of the Constitution.

5. 3. The Procedure for Selecting Candidates for the Office of Judge before the Judicial Council

By Decision No. Up-757/19, dated 20 February 2020 (Official Gazette RS, No. 46/20), the Constitutional Court decided on the constitutional complaint of an unsuccessful candidate for the office of Supreme Court judge. The complainant challenged the Supreme Court judgment that rejected her lawsuit against the decision of the Judicial Council to propose to the National Assembly another candidate for the office of judge of the Supreme Court. The complainant, whom the Judicial Council did not propose for the office at issue, alleged that the selection procedure was unfair as she was not served the opinion of the relevant department of the Supreme Court as regards which of the candidates it deemed the more appropriate, although the

Judicial Council stated in the challenged decision that the fact that the proposed candidate was almost unanimously assessed as the most appropriate one also by the Supreme Court judges carried decisive weight in the selection.

In accordance with established constitutional case law, an individual who applies for the office of judge does not have the right to fill such position but has the right to apply for such under equal conditions as other candidates. The Constitutional Court reviewed whether the position of the Supreme Court that the Judicial Council was not required to serve the relevant court department's opinion on the complainant and thus enable her to make a statement thereon was in conformity with the complainant's right to be heard determined by Article 22 of the Constitution.

The procedure for selecting the most appropriate candidate before the Judicial Council entails discretionary decision-making and a judicial review of the decision of the Judicial Council is accordingly limited. It must be evident from the decision on the selection (i) whether the proposed candidate fulfils the statutory requirements and criteria for the office of judge for which he or she applied, and (ii) what the substantive reasons are that justify the selection of a specific person. When conducting the selection procedure, the Judicial Council must observe the right of the individual candidate to apply for the office of judge of the Supreme Court in a fair (i.e. consistent with the Constitution and law) procedure under equal conditions as other candidates. Within this scope, the candidates are guaranteed judicial protection against the selection decision in proceedings for the judicial review of administrative acts.

The Constitutional Court clarified that a procedure before the Judicial Council is fair (Article 22 of the Constitution) if it is transparent and if the selection is based on objective criteria that confirm the professional competence and required personal qualities of the selected candidate. A candidate may effectively protect his or her right to apply for the office of Supreme Court judge in a fair procedure by accessing the file of the Judicial Council regarding his or her selection procedure in order to verify whether the decision of the Judicial Council is based on objective criteria that prove the professional competence and required personal qualities of the selected candidate. Only this may be the subject of a judicial review in proceedings before the Supreme Court. A judicial review of the decision of the Judicial Council does not include a review as to which out of several candidates who fulfil the statutory requirements is professionally and personally the most appropriate for the position, but merely a review of the fairness of the selection procedure.

The Constitutional Court established that the complainant did not allege that she was denied access to the file of the Judicial Council, which also contained the opinion of the relevant department of the Supreme Court. She also did not allege that the selection of the most appropriate candidate was based on criteria that the Judicial Council may not consider. She did not allege this in the constitutional complaint either. In light of the above-stated, the Constitutional Court assessed that the transparency and thus fairness of the procedure before the Judicial Council was guaranteed to the complainant by the possibility to access the file of the Judicial Council. Therefore, the position of the Supreme Court that the Judicial Council was not required to enable the complainant to make a statement on the opinion of the relevant department of the Supreme Court does not violate Article 22 of the Constitution, which ensures the complainant a fair procedure.

5. 4. The Right to a Defence in Connection with Deciding on the Extension of Detention

By Decision No. Up-529/19, dated 5 March 2020, the Constitutional Court decided on the constitutional complaint of a complainant against whom a court ordered a two-month extension of detention due to the risk of recidivism. The complainant filed an appeal against the court order, which was dismissed by the Higher Court. In his constitutional complaint, the complainant essentially claimed that the court violated his right to a defence because it failed to consider a timely statement of one of his representatives regarding the proposal of the Specialised State Prosecutor's Office on the extension of detention. In so doing, the court allegedly prevented the complainant's representative from contributing to the gathered procedural materials on the basis of which his detention was extended and thus rendered his active defence impossible.

The Constitutional Court reviewed the complainant's allegations from the viewpoint of the right to a defence determined by the second indent of Article 29 of the Constitution. The right to defend oneself with the assistance of a counsel is enshrined in the Constitution as a fundamental human right, and professional assistance that can be provided only by specialised counsel is one of the safeguards ensured by the Constitution to any defendant in criminal proceedings in order to enable the effective exercise of the defendant's other human rights, primarily the right to a fair trial before an impartial court. The Constitutional Court has emphasised the special importance of the right to defend oneself with the assistance of a counsel in situations in which such defence is mandatory by law or in which a sufficient guarantee of a fair trial can only be provided by such mandatory defence. One of the key instances where the law presupposes that a defendant cannot successfully defend him- or herself alone and therefore determines a mandatory defence by a counsel is when detention is being decided on. A defendant exercises the right to a defence *inter alia* also through the right to make a statement regarding the proposal of a state prosecutor on the extension of detention, either by him- or herself or through his or her representative. If a defendant has more than one representative submitting such statements, the court has a duty to consider all of them, provided the procedural requirements are fulfilled, and to take a position on the issues raised that are relevant for the decision.

In the case at issue, the court failed to consider a statement submitted by one of the complainant's representatives regarding the proposal of the Specialised State Prosecutor's Office to extend his detention. It also failed to explain why it did not consider the mentioned statement. In addition to that, the Constitutional Court adopted the position that, from the viewpoint of the complainant's right to a defence, the standpoint of the court, i.e. that it is irrelevant how many of a defendant's representatives submit a statement regarding the proposal of the state prosecutor that detention be ordered or extended as in order to ensure the defendant's right to a defence it suffices if the court considers at least one statement, is untenable. Such standpoint namely entails an inadmissible selection of the complainant's possibilities as to a defence and thus a violation of his right to a defence. As at the time of the decision-making of the Constitutional Court the challenged court orders were no longer in force, in accordance with its established case law the Constitutional Court merely established a violation of the complainant's right to a defence determined by the second indent of Article 29 of the Constitution.

5. 5. The Retroactive Application of a More Lenient Law in the Field of Minor Offences

In Case No. Up-150/19, Up-151/19 (Decision dated 5 March 2020) the Constitutional Court decided on the constitutional complaints filed against a final judgment by which a legal entity and the person in charge of its operations were found to have committed a minor offence under the Public Procurement Act.

The Constitutional Court began by explaining that it decides on constitutional complaints against individual acts issued in minor offence cases only if they entail a decision on an important constitutional issue that exceeds the importance of the specific case (the second and third paragraphs of Article 55a of the Constitutional Court Act). In the constitutional complaint at issue, the complainants' allegations referring to the non-application of a subsequently adopted more lenient law raised such a question. The Constitutional Court reviewed the allegations of the complainants from the perspective of the requirement to apply a subsequently adopted more lenient law as determined by the second paragraph of Article 28 of the Constitution. It noted that it has already taken a position on the constitutional aspects of the requirement to apply a subsequently adopted more lenient law several times, but the case at issue required the consideration of a specific aspect of this institution, which the Constitutional Court has not yet addressed. What was at issue is the effective exercise of the requirement to apply a subsequently adopted more lenient law and observance of the principle of concreteness, which requires that in the assessment of whether the subsequently adopted law is more lenient towards the offender only the conduct that is the subject of the charges contained in the accusatory instrument and not some other conduct may be taken into consideration.

In the second paragraph of Article 28, the Constitution determines that acts which are criminal shall be established and the resulting penalties pronounced according to the law that was in force at the time the act in question was committed, except where a subsequently adopted law is more lenient towards the offender. This constitutional provision requires that a court shall, in each concrete case, (1) verify whether the law was amended after the criminal offence had been committed, (2) perform a comprehensive assessment of which of the relevant laws is more lenient towards the offender, and (3) apply the law that is more lenient towards the offender. In assessing which law is more lenient towards the offender, the court must take into consideration the methods of interpretation that are admissible in criminal law. If the court exceeds the admissible interpretative framework and bases its assessment that a new law is not more lenient towards the offender on an inadmissible interpretative argument, it thereby undermines the significance of the requirement to apply the more lenient law. The same applies in cases where, in the framework of such assessment, a court does not consider the conduct that is the subject of the charges but instead takes into account some other conduct that is not the subject of the charges. The Constitutional Court considers all of the above steps in its review of whether the courts observed the constitutional requirement to apply a subsequently adopted more lenient law.

The second paragraph of Article 28 of the Constitution also applies in the field of minor offence law. Throughout the proceedings, minor offence authorities and the courts that decide on minor offences must also ascertain whether the material regulation determining a minor offence and the sanction for such were amended after the minor offence had been committed. If they establish that the regulation was amended, they must assess which regulation is more lenient towards the offender by comparing the provisions of all relevant regulations.

In the case at issue, the Constitutional Court held that both the court of first instance and the appellate court violated the mentioned constitutional requirement. The court of first instance violated it as in its assessment of whether the subsequent law decriminalised the alleged conduct it exceeded the possible meaning of the wording of a statutory element of the minor offence. With regard to the argumentation of the appellate court, the Constitutional Court pointed out that in cases where the law determining a minor offence changed after the alleged act had been committed, the court must first assess, in accordance with the second paragraph of Article 28 of the Constitution, whether the alleged conduct fulfils the statutory elements of a minor offence pursuant to the new law as well. The subsequent law is namely the most lenient when it does not define the alleged conduct as a minor offence (it decriminalises it). A court must thus assess whether the legally relevant facts of the concrete case, which are derived from the accusatory instrument, correspond to the statutory definition (the statutory elements) of the minor offence pursuant to the new law. If the court finds that a subsequently adopted law no longer defines the alleged conduct as a minor offence, it must stay the minor offence proceedings regardless of whether under the new law the statutory elements of the minor offence correspond to some other conduct that is not the subject of the charges. The appellate court violated the complainants' right to apply a subsequently adopted more lenient law as it failed to assess the alleged conduct but instead assessed conduct that was not the subject of the charges contained in the accusatory instrument. The Constitutional Court therefore abrogated the challenged judgments and remanded the case to the court of first instance for new adjudication.

5. 6. Public Financing of Private Primary Education

By Decision No. U-I-110/16, dated 12 March 2020 (Official Gazette RS, No. 47/20), the Constitutional Court reviewed, on the basis of several petitions, the regulation of the scope pf public financing of state-approved primary education programmes carried out by private schools. The petitioners challenged the first sentence of the second paragraph of Article 86 of the Organisation and Financing of Education Act, in the part that refers to the 85% public financing of morning and afternoon out-of-school-hours care, and remedial education in private primary schools with a state-approved primary education programme. They alleged the unconstitutionality of the challenged provision since, in their opinion, 100% public financing of private primary school programmes should allegedly have been provided. In the opinion of the petitioners, the second paragraph of Article 57 of the Constitution ensures pupils the right to attend a compulsory state-approved primary education programme free of charge regardless of whether it is carried out by entities of public or private law. Therefore, primary education, which is compulsory for pupils, must be financed from public funds, whereby such obligation does not refer to educational institutions but to the prescribed content of education programmes.

The Constitutional Court has already reviewed the challenged statutory provision. By Decision No. U-I-269/12, dated 4 December 2014, it found this provision to be inconsistent with the second paragraph of Article 57 of the Constitution, as it failed to provide 100% public financing of state-approved primary education programmes carried out by private schools, and instead ensured only 85% public financing of such programmes. A number of unsuccessful attempts to exercise the stated provision have demonstrated that its interpretation varies. In the case at issue, the Constitutional Court thus first had to answer the question whether its past decision refers only to the public financing of the compulsory part of

primary education or of the entire primary education programme. Since the human right to attend a compulsory primary education programme free of charge only encompasses 100% public financing of the part of the programme that is compulsory for pupils attending primary schools with state-approved programmes, the Constitutional Court emphasised that in Decision No. U-I-269/12 it found the challenged provision to be inconsistent with the Constitution only in the scope that refers to the public financing of the part of the education programme in private primary schools with state-approved programmes that corresponds to the content of the compulsory part of the primary education programme in public schools. In the stated decision, the Constitutional Court did not address the issue of the conditions for private primary school programmes to be approved by the state, it also did not review the regulation of the financing of morning care, after-school extended stay, and remedial education in private primary schools with state-approved programmes.

With regard to the disrespect for decision No. U-I-269/12, to which the legislature, despite the expiration of the time limit, has not yet responded by the adoption of an appropriate law, the Constitutional Court assessed that the irresponsiveness of the legislature does not only maintain but also deteriorates the unconstitutional situation and entails a violation of the 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 Constitutional Court deemed the petition to be a repeated petition in the part that refers to the public financing of the part of the state-approved programme in private schools that corresponds to the content of the compulsory part of the programme in public primary schools and which was found to be unconstitutional by Decision No. U-I-269/12. It assessed that all the grounds due to which such Decision was adopted still continue to exist. Nevertheless, the Constitutional Court still could not abrogate the challenged statutory provision on which the 85% public financing of primary education programmes in private schools with a state-approved programme is based. Such abrogation would namely entail an even more severe interference with the constitutional right to attend compulsory primary education free of charge. The Constitutional Court once again did not choose to determine the manner of implementation of Decision No. U-I-269/12. It emphasised that disrespect for a decision of the Constitutional Court is, in itself, not a reason for determining the manner of its implementation. It depends on the circumstances of the individual case, the conduct of the legislature, the technical characteristics of the regulation, and the complexity of the affected real-life relationships whether the Constitutional Court temporarily enters the legislature's field and determines the manner of implementation of its decision. The regulation of the financing of primary education is complex and a change in the system of financing education requires comprehensive consideration of issues that are not merely of legal nature. The Constitutional Court underline that the legislature must ensure, in accordance with the constitutional requirements, that the established unconstitutionality be eliminated without delay.

The Constitutional Court deemed the petition to be a new petition in the part that refers to the public financing of the content of the non-compulsory part of the public school programme in private schools with a state-approved programme. It reviewed the regulation of the public financing of morning and afternoon out-of-school-hours care and remedial education in private primary schools with a state-approved programme from the perspective of the second paragraph of Article 57 of the Constitution. In accordance with the cited constitutional provision, the Constitutional Court held that the state must fully finance only that

part of the state-approved programme in private primary schools that corresponds to the content of the compulsory part of the programme of public primary schools. The extended part of the public primary education programme, which includes morning and afternoon out-of-school-hours care and remedial education, is voluntary. Such entails that the stated contents are not compulsory for the fulfilment of the constitutional obligation of primary education in private primary schools with a state-approved programme; therefore, the challenged regulation is not inconsistent with the second paragraph of Article 57 of the Constitution in this part.

5. 7. The Disqualification of an Appellate Court Judge in Criminal Proceedings

By Decision No. Up-96/15, U-I-208/18, dated 12 March 2020 (Official Gazette RS, No. 55/20), the Constitutional Court decided on the constitutional complaint of a complainant whose conviction for committing the criminal offence of instigating someone to commit the criminal offence of abusing a position or rights had become final. He lodged a constitutional complaint against the Supreme Court judgment dismissing his request and the request of his counsel for the protection of legality. The complainant alleged, *inter alia*, that he learned of the fact that his appeal was allocated to a judge whose impartiality was allegedly in doubt only after he received the judgment of the Higher Court. In the challenged judgment, the Supreme Court concluded that the complainant was precluded from claiming a violation of the appearance of impartiality because the complainant and his counsel should have, in order to be able to request the disqualification of a judge of the court in due time, made inquiries regarding the composition of the Higher Court panel before the beginning of its session.

When deciding on the constitutional complaint, doubts arose as to whether the legislature regulated, by the Criminal Procedure Act, the manner of the exercise of the right determined by the first paragraph of Article 23 of the Constitution in such a manner that a defendant can effectively propose the disqualification of a Higher Court judge in cases in which the Court decides on a case at a session that is closed to the public and of which the parties are not notified. The Constitutional Court, therefore, initiated proceedings to review the constitutionality of Article 41 of the Criminal Procedure Act, which regulates the procedure wherein a party may request the disqualification of a judge and which does not require a defendant to request a notification from the court regarding the composition of the court's panel or oblige the court to notify the defendant thereof.

The Constitutional Court reviewed the challenged statutory regulation from the perspective of the right to an impartial judge. It defined the institution of the disqualification of a judge as one of the most vital procedural institutions for ensuring the right to an impartial trial. The statutory regulation must clearly define the possibility of parties to learn in a timely manner which judges are to decide on their legal remedies in judicial proceedings and thereby ensure them the possibility to effectively exercise the right to request the disqualification of a judge. The procedural rules ensuring such must, therefore, be determined by the Criminal Procedure Act. What must be precisely defined is in particular the rule determining how parties must act and when they must indicate whether they will request the disqualification of an individual judge in order for their request to be deemed to be on time and to enable that a decision thereon can be made before the court decides on their legal remedy. As in

most cases appellate courts decide at sessions in the parties' absence, the parties in such cases learn of the composition of the panel only when they receive the decision of the court. They can, therefore, effectively exercise their right to an impartial court only if they request that the court notify them of the composition of the panel deciding on their appeal before such decision-making has begun.

The Constitutional Court held that Article 41 of the Criminal Procedure Act does not ensure effective exercise of the right to an impartial judge determined by the first paragraph of Article 23 of the Constitution. It explained that the preclusion of invoking allegations regarding the composition of a Higher Court panel is not in itself unconstitutional. What is unconstitutional is the fact that the law does not contain any rule that would either require courts to notify parties of the names of the panel members or impose the burden of taking the necessary steps to obtain a prior notification regarding such on the parties, thus providing the basis for a preclusive effect. What is at issue is a case in which a law has failed to regulate an issue that must necessarily be regulated under constitutional law. The Constitutional Court therefore issued a declaratory decision. It established the unconstitutionality of Article 41 of the Criminal Procedure Act since the preclusion of the exercise of the right follows from this Article. However, the legislature is free to choose where to place the elimination of the established unconstitutionality. The Constitutional Court determined the manner of the implementation of its Decision in order to protect the right to an impartial judge in criminal case appeals as one of the central safeguards of any fair proceedings until the established unconstitutionality is remedied.

Due to the reasons for the establishment of the unconstitutionality of Article 41 of the Criminal Procedure Act, the Constitutional Court found that such position of the Supreme Court violated the complainant's right determined by the first paragraph of Article 23 of the Constitution. It therefore abrogated the challenged judgment and remanded the case to the Supreme Court for new adjudication.

5. 8. The Maintenance of Contact between Grandparents and Their Minor Grandchildren in Foster Care

By Decision No. Up-677/19, dated 12 March 2020, the Constitutional Court decided on a constitutional complaint filed by the grandparents of two minors. They challenged the decision by which courts in non-litigious civil proceedings dismissed their motion for a change in the contact arrangements with their grandchildren, namely that the contacts take place also during weekends, national and school holidays, and without supervision by a social work centre.

The Constitutional Court first assessed the applicants' allegations regarding the procedure. The applicants claimed that in determining the contact arrangements the court did not sufficiently take into account the expert opinion of a court-appointed expert and did not concurrently examine the two experts who participated in the proceedings, although their written opinions allegedly diverged as to the essential circumstances of the case.

The Constitutional Court established that from the courts' reasoning of the rejection of the motion to examine the court-appointed expert there follow two key reasons, i.e. 1) the expert opinion was produced in the framework of an administrative dispute for establishing the ability of the first applicant to foster a minor grandchild and not in order to establish whether

contacts between the children and their grandparents were beneficial; and 2) the expert, as a court-appointed expert in adult clinical psychology, could not give an opinion as to the benefits of contacts for the minors as he does not possess the requisite expertise in child clinical psychology. As the Constitutional Court assessed that, with regard to constitutional procedural safeguards, the courts' reasoning of the rejection of the motion to examine the court-appointed expert is sufficient, it did not establish that in the taking of such evidence the complainants' procedural safeguards stemming from Article 22 of the Constitution were violated. It also did not consider justified the complainants' allegation that the courts did not take a position in a concrete manner on their statements submitted in connection with the expert opinion. In the opinion of the Constitutional Court, the fact that the complainants do not agree with the responses and decisions of the courts does not suffice to arrive at the conclusion that their right determined by Article 22 of the Constitution was violated.

The Constitutional Court also did not uphold the complainants' thesis regarding the necessity of the minors' participation in the court proceedings and obtaining their opinion. In the assessment of the Constitutional Court, the courts' reasoning that the children were sufficiently included in the procedure for deciding on the complainants' contact rights, since their guardian, who ensured that their rights and interests were secured, participated in the proceedings, is sufficient from the aspect of the requirement that children be appropriately represented in court proceedings, which is a part of the right determined by Article 22 of the Constitution. As the courts based their assessment that the minor children were incapable of giving their opinion in the court proceedings at issue on the opinion of the court-appointed expert, also from this perspective there are no grounds for concluding that the right determined by Article 22 of the Constitution was violated.

The Constitutional Court also dismissed the complainants' allegation that their rights determined by Articles 14 and 22 of the Constitution were violated as the court's decision that the contacts were to continue to take place under supervision allegedly deviated from the established case law. It explained that the circumstances of determining the contact arrangements in the concrete case are so specific that it is difficult to compare them with other case law. The complainants' reference to the standpoint expressed in the case law, i.e. that contacts are supervised only when there exists no family link between the persons involved or such link was severed for a long period of time and consequently a certain amount of time is needed for a genuine relationship to be established, therefore cannot be decisive.

The court further dismissed the complainants' allegation regarding a violation of their right to family life (Article 53 of the Constitution and Article 8 of the Convention for the protection of human rights and fundamental freedoms). It emphasised that the specific circumstances of the case at issue (particularly the prior media exposure of the case, which entails a risk of a new invasion of privacy by the media and the public as regards all persons involved, and also the need for further counselling by a social worker during contacts) shift the balance in favour of the protection of the children's interests when weighing the right of the complainants to maintain unsupervised contact with their minor grandchildren and the interests of the children. As regards the frequency and manner of the contacts, the position that the complainants' interests must give way to the best interests of the affected minor children are not disputable under the Constitution or the Convention.

Since the complainants failed to demonstrate the alleged violations of human rights and fundamental freedoms, the Constitutional Court rejected their constitutional complaint.

5. 9. The Principle of the Separation of Powers with regard to the Intervention Culling of Bears and Wolves from the Wild

By Decision No. U-I-194/19, dated 9 April 2020 (Official Gazette RS, No. 58/20), upon the initiative of two non-governmental organisations functioning in the public interest in the field of environmental protection and nature conservation, the Constitutional Court decided on the constitutionality of the Act Regulating the Intervention Culling of Specimens of Brown Bear (*Ursus Arctos*) and Common Wolf (*Canis Lupus*) from the Wild. This law determined the scope and conditions for the selective and limited intervention culling of 200 bears and 11 wolves from the wild until 30 September 2020 and the supervision of the culling and record-keeping of the animals culled from the wild.

The Constitutional Court established that the challenged Act with annexes substantially determined in a concrete manner the exact number of culled bears and wolves in terms of time and territory and the conditions and restrictions that must be observed when carrying out such culling. It held that the challenged regulation was essentially an individual legal act, although it was adopted in the form of a law. In terms of content, it was essentially the same decision as adopted by the Government in past years by ordinances, whose legality has been the subject of review before the Administrative Court several times. As, in accordance with the legal regulation in force, the regulation of concrete individual relationships and the adoption of appropriate measures related to the protection of protected animal species, including the species brown bear and common wolf, fall within the competence of the Government, the Constitutional Court had to assess whether the legislature acted in accordance with the principle of the separation of powers determined by the second sentence of the second paragraph of Article 3 of the Constitution when it adopted the statutory regulation with the stated content.

The principle of the separation of powers has two important elements: the separation of the individual branches of power and the existence of checks and balances among them. From this constitutional principle there also follows the requirement that no individual branch of power may assume the powers of the other branches, nor may a branch inadmissibly interfere with the exercise of the authority of the other branches. The legislative branch of power may therefore not assume powers that are of a typically executive nature and thus pertain to the executive (or administrative) branch, and it may also not interfere with the typical powers of the judicial branch to decide on the rights, obligations, and legal benefits of individuals and legal entities or to conduct administrative judicial review of the exercise of the executive power to decide on concrete individual relationships. If deciding on concrete individual relationships is previously reserved for executive (or administrative) decision-making, the latter must be subject to an independent review by the judicial branch of power since such mutual relationship of the individual branches of power is defined by the Constitution (the first paragraph of Article 157 of the Constitution). The requirement of an independent court competent to decide impartially on a right, obligation, or legal benefit is the reason for separating the judicial branch not only from the executive branch but also from the legislative branch, which significantly defines the content of the principle of the separation of powers.

The Constitutional Court held that by adopting the challenged law the legislature did not exercise its typical (legislative) power within the system of state authority but assumed the substantive power of the executive branch, while simultaneously also inadmissibly interfering with the powers of the judicial branch as it prevented it from exercising an independent

judicial review of the work of the executive branch or a review of the legality of individual acts issued by its bodies in accordance with the first paragraph of Article 157 of the Constitution. The legislature deprived the non-governmental organisations that play a significant role in the system of environmental protection, and the protection of endangered animal species as a significant part thereof, of an important right that derives from international law and enables them to challenge individual acts related to environmental protection before the Administrative Court in order to protect common legal interests in the field of environmental protection and nature conservation. It thereby failed to take into account the right to effective judicial review of the work of the executive branch of power as envisaged by the first paragraph of Article 157 of the Constitution. A constitutional review of a law cannot substitute for such right. In a review of the constitutionality of individual legal acts the Constitutional Court merely plays a subsidiary role that is exercised only within its competence to decide on constitutional complaints against the decisions of regular courts (the sixth indent of the first paragraph and the third paragraph of Article 160 of the Constitution). By enacting the challenged law, the legislature thus substantially enacted a concrete individual act, thereby inadmissibly assuming the typical function of the executive branch of power and interfering with the authority of the judicial branch of power. The Constitutional Court therefore decided that the challenged law is inconsistent with the principle of the separation of powers determined by the second paragraph of Article 3 of the Constitution and abrogated it.

5. 10. Reimbursement of the Costs of Basic Military Training

In case No. U-I-82/17 (Decision dated 9 April 2020, Official Gazette RS, No. 63/20), the Constitutional Court decided on a request of the Supreme Court to review the constitutionality of the second paragraph of Article 93 of the Defence Act. In accordance with the challenged part of the provision, members of the permanent composition of the Slovene Armed Forces are obliged to reimburse a proportional part of their basic military training costs if they terminate their employment contract before the expiry of a ten-year period.

The Constitutional Court reviewed the challenged statutory regulation from the perspective of the right to freely choose one's employment (the second paragraph of Article 49 of the Constitution) and the principle of equality before the law (the second paragraph of Article 14 of the Constitution).

In the review from the perspective of the right to freely choose one's employment, the Constitutional Court reiterated its standpoint that it would be relevant, from the viewpoint of this right, if the statutory regulation prohibited the performance of certain work, if it determined the conditions for the performance of certain work, or if it limited the scope of work. It established that the subject matter of the challenged regulation does not comprise the stated elements. Workers are free to choose what they will do after the termination of their military duties. The decision whether to continue their employment relationship or to terminate it and reimburse a proportionate part of the basic military training costs provided by their employer to enable them to pursue a military career, and find employment elsewhere, is left to them. The challenged provision does not determine disproportionate conditions for the performance of work, the amount of work, or the prohibition of employment elsewhere. In light of the above, the Constitutional Court concluded that the challenged regulation does not extend onto the field protected by the right to freely choose one's employment determined by the second paragraph of Article 49 of the Constitution.

In the review from the perspective of the principle of equality, the Constitutional Court compared the position of the members of the Slovene Armed Forces who are obliged to reimburse the costs of their basic military training with the position of other members of the Slovene Armed Forces who are obliged to reimburse the costs of other types of education and training, and with the position of public servants who are obliged to reimburse the costs of their additional education. It established that these positions are different. Basic military training is indispensable for the performance of military duties, which cannot be claimed for the other forms of education and training referred to by the applicant, which are merely of a complementary nature and do not have a substantial impact on the performance of work. As the Constitutional Court established that the positions at issue are not comparable situations that would have to be regulated in the same manner, it held that the challenged provision is also not inconsistent with the principle of equality determined by the second paragraph of Article 14 of the Constitution.

5. 11. Local Self-Government and the Regulation of Funerary and Cemetery Services

Upon the request of the National Council, in case No. U-I-223/16 (Decision dated 23 April 2020, Official Gazette RS, No. 65/20), the Constitutional Court reviewed the constitutionality of the nineteenth indent of the second paragraph of Article 4 of the Funerary and Cemetery Services Act, which enabled municipalities to impose a new local public charge, i.e. a funeral fee intended to raise funds for the management of cemeteries. It also reviewed the second paragraph of Article 5 of the Funerary and Cemetery Services Act, which determined that the majority of previously mandatory local commercial public services related to the death of an individual and the holding of a funeral service would be liberalised. The mentioned law enabled funerary services, i.e. the transport of the body of the deceased (except for 24/7 emergency service), the preparation of the body of the deceased, the cremation of the body of the deceased, and the preparation and performance of the funeral service, to be performed for profit. The National Council asserted the standpoint that the organisation of funerary services is at the constitutionally protected functional core of local self-government. By having deprived municipalities of the mentioned power, the legislature allegedly interfered with the functional autonomy of municipalities. It allegedly caused significant financial damage to municipalities by depriving them of their own source of funding without providing an alternative one.

The Constitutional Court reviewed the statutory provision on the liberalisation of funerary services from the point of view of the functional autonomy of local self-government, which is guaranteed by the first paragraph of Article 140 of the Constitution. It explained that the mentioned constitutional provision protects the functional core of local self-government and the original powers of municipalities necessary for the exercise of their constitutional function, i.e. meeting public needs and serving the residents' interests at the local community level. These are the powers that enable residents to autonomously organise and manage their common life on the territory of a municipality. They range from the regulation of general conditions for the common life and work of the people, to possibilities for exploiting the natural and other features of a municipality in order to achieve the economic, social, cultural, and other development of the local community. There must exist a direct territorial, functional, and interest link between such powers and municipalities. They primarily encompass the following: the management of municipal assets, the spatial management of the municipal territory, the construction and maintenance of local infrastructure, the provision of communal services to residents and the economy,

the provision of primary level medical care, the provision of day care and primary education for children, the provision of non-profit housing, care for the socially deprived, the regulation of local traffic, ensuring possibilities for the enhancement of economic, social, cultural, and other development, ensuring order and peace, and ensuring environmental protection. Such powers are fundamental for the existence of local self-government as otherwise municipalities would not be able to exercise local self-government, which is guaranteed by the Constitution.

The Constitutional Court held that funerary services do not fall within the scope of these powers as they are not services that ensure general conditions for the common life of the residents on a certain territory. A local community must regulate common life and the rules for such regarding activities that by the nature of the matter require collective organisation and management due to their communal legal nature or the necessary limitation of goods. Funerary services do not have such characteristics as they are intended to satisfy the individual needs of the individual residents of a municipality and do not require the collective reconciliation of interests. They enable residents to have a funeral ceremony to commemorate their late relative in accordance with their personal wishes. The local community as a whole, however, has a common interest in ensuring that funerary services be performed on its territory in accordance with the right of deceased persons to respect, which is guaranteed by Article 35 of the Constitution, and must therefore have the right to organise and perform supervision over how such activity is performed. The legislature took this into consideration when reserving the power to supervise the performance of funerary services on the territory of a municipality for the municipal inspectorate. The Constitutional Court therefore assessed that the performance of funerary services is not directly connected to municipalities in terms of territory, function, or interests and that these powers are not imminently necessary for municipalities to exercise local self-government, while by adopting the second paragraph of Article 5 of the Funerary and Cemetery Services Act, the legislature did not interfere with the constitutionally guaranteed functional core of local self-government.

The Constitutional Court also reviewed the challenged provision from the point of view of the financial autonomy of local self-government. The Constitutional Court has already emphasised several times that the financial autonomy of local self-government is a prerequisite for its existence. It is guaranteed by Article 142 of the Constitution, which determines that municipalities shall finance themselves from their own sources, while only municipalities that are unable to fully provide for the performance of their duties due to their insufficient economic development are ensured additional funding by the state in accordance with the law. The Constitutional Court has already adopted the position that an unconstitutional interference with the financial autonomy of municipalities can be established only in cases in which an imbalance between the revenues and the expenditures of a municipality for the exercise of the duties stemming from its original powers is demonstrated. It also adopted the position that depriving a municipality of its own revenue without providing an alternative financing source of its own is inconsistent with Article 142 of the Constitution. However, in the case at issue, it assessed that by its general allegations regarding significant financial damage or the hypothetical need for the provision of additional funds from the budget, the applicant failed to demonstrate that revenues and expenditures for the exercise of duties stemming from original powers are imbalanced. The legislature envisaged a number of financial sources for the performance of cemetery services, thereby enabling municipalities to ensure sufficient funds for the performance of cemetery services if managed appropriately. The applicant also could not demonstrate an interference with financial autonomy by alleging in a general manner that municipalities were deprived of a financial source of their own.

With regard to the statutory regulation of the funeral fee, the Constitutional Court established that it gives municipalities the authorisation to introduce such, prescribes the manner of its introduction, determines the object that the fee applies to and the person liable for the payment of such, and is therefore not inconsistent with Article 147 of the Constitution (the principle of legality with regard to taxes and other duties). It also dismissed the applicant's allegation that the challenged statutory provision is inconsistent with the principle of equality determined by the second paragraph of Article 14 of the Constitution. With regard to the statutory regulation of local taxes, the Constitutional Court has adopted the position that different legal positions of taxable persons (with regard to the amount of their tax liabilities) do not entail an interference with the principle of equality before the law if constitutional standards of statutory precision in prescribing taxes are observed and if the application of law is not arbitrary. In accordance with the argument *a maiori ad minus*, the same position applies to other local public duties. As long as the statutory regulation of a local public duty is consistent with the requirements determined by Article 147 of the Constitution, it cannot be inconsistent with the second paragraph of Article 14 of the Constitution.

5. 12. The Principle of Equality in the Personal Bankruptcy Procedure

Upon the request of the Higher Court in Ljubljana, in case No. U-I-512/18 (Decision dated 23 April 2020, Official Gazette RS, No. 74/20), the Constitutional Court reviewed the constitutionality of the second indent of point 2 of the second paragraph of Article 399 of the Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act. In instances where the debtor's motion for remission was dismissed due to a violation of the duty to cooperate, the challenged provision did not permit the remission of any obligation within ten years of the date the order of dismissal became final. In the personal bankruptcy procedure, the Act namely requires that debtors cooperate with the court and respond to the court's letters and the instructions issued by the insolvency administrator, and imposes on such debtors the obligation to submit to the court and the insolvency administrator their identification and contact details to ensure that they can be contacted (Article 383b of the Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act).

The applicant asserted that the challenged provision entails a violation of the principle of equality determined by the second paragraph of Article 14 of the Constitution as by absolutely prohibiting a new motion for the remission of obligations for a ten-year period the legislature determined the same legal consequence for all instances of a violation of the duty to cooperate. It namely does not permit, under any circumstance, the remission of any obligations within a period of ten years from the date the order dismissing the debtor's motion for the remission became final, thus at the same time also preventing the submission of a new motion in the same (i.e. unfinished) bankruptcy procedure in all instances of a violation of the duty to cooperate.

The Constitutional Court assessed the challenged provision from the perspective of the general principle of equality determined by the second paragraph of Article 14 of the Constitution. Due to the fact that in the personal bankruptcy procedure (*inter alia*) the state of a debtor's assets must be established and monitored and the extent of the bankruptcy estate must be ascertained, the requirements that the debtor be available and to cooperate are, in the opinion of the Constitutional Court, reasonable and necessary from the viewpoint of ensuring the purpose of the personal bankruptcy procedure, and within such also the purpose of the procedure for the remission of obligations, which imposes additional obligations on the debtor.

Article 383b of the Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act determines a wide range of possible violations of obligations that debtors may commit. Violations of a debtor's duty to cooperate entail omissions that may occur on purpose, through negligence, and in exceptional cases perhaps even without a significant basis for a negative value judgment that could justifiably be addressed to the debtor. Such may also entail violations that in themselves do not necessarily always have negative consequences for the bankruptcy estate and the extent of and time frame for the repayment of creditors. Debtors' attitudes towards individual instances of violations and the (felt) weight of the situation they are facing in the exceptional case of personal bankruptcy (and within such, the remission of obligations), which is a legal expression of an attempt to resolve a threat to their economic existence, can also vary substantially. As a consequence, the firmness of the basis for a negative value judgment that can justifiably be addressed to a debtor can also vary substantially. In spite of this, the legislature envisaged a uniform and very strict sanction for all possible violations of Article 383b of the Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act. It therefore does not, in any event (including instances of extremely minor violations), allow the courts to implement the principle of equality in a manner that could exceptionally permit the use of a different legal consequence in the form of a more lenient sanction (in terms of scope or type).

The purpose of the remission of obligations is to enable honest and attentive debtors to be free from obligations that they are unable to fulfil from the assets they have at the start of the personal bankruptcy procedure or assets they may gain during such procedure until the end of the probation period. A regulation that necessarily requires that courts apply an identical (strict) sanction in all instances of violations of debtors' statutory duties presupposes that in the event of any violation, even the most minor one, the debtor is necessarily always also negligent and dishonest. Such a conclusion, however, cannot be adopted in all those instances of violations of the duty to cooperate which may, if at all, substantiate only an extremely weak basis for a negative value judgment regarding the debtor. The actual effect of the contested regulation may therefore be contrary to the purpose of the remission of obligations as defined by the Act. Thus, the Constitutional Court could not discern any reasonable grounds that would justify the equal treatment of all – even the most minor – violations of debtors' statutory duties. It therefore held that the challenged statutory provision is inconsistent with the principle of equality determined by the second paragraph of Article 14 of the Constitution.

5. 13. A Change in the Land Use Regime in the Procedure for Adopting a Spatial Act

In the case at issue (Decision No. U-I-139/15, dated 23 April 2020, Official Gazette RS, No. 74/20), the Constitutional Court reviewed the constitutionality and legality of the challenged provision of the Ordinance on the Municipal Spatial Plan of the Municipality of Bled, by which the municipality changed the category of existing land use from construction land to agricultural land and determined a special protection forest regime for this land, declaring it a special-purpose forest. The petition was lodged before the Constitutional Court by the owner of the land whose right to private property was allegedly violated due to the change in the land use regime.

The Constitutional Court reviewed the ordinance from the viewpoint of the principle of legality (the third paragraph of Article 153 of the Constitution), which requires that municipal

general acts be consistent with the law. In so doing, it took into account the fact that the right to private property determined by Article 33 of the Constitution is also a constitutional restriction that is binding on the drafter of spatial acts when defining their content. Its purpose is to safeguard the freedom of action in the field of property.

The Constitutional Court emphasised that a change in the category of land use from building land to land that may not be built on severely interferes with the expectations of land owners, but also significantly co-defines new expectations that follow from the right protected by Article 33 of the Constitution. Taking into consideration the case law of the European Court of Human Rights, it therefore once again weighed its own hitherto standpoints expressed in the review of municipal spatial acts which change the category of land use from building land to land that may not be built on. It adopted the position that such a change of the category of existing land use entails an interference with the right to private property. This entails that in the assessment of the admissibility of the measure, the question of whether the local authority had reasonable grounds for determining the manner of exercise of such right cannot be the only important factor. It must also be assessed whether in protecting the right to peaceful enjoyment of one's real property whose substance has already been defined in the past by a local community spatial act in a manner that permitted construction, the condition of a fair balance between the interests of the community and the interests of the individual is fulfilled.

In such context, it must be taken into consideration that in the case of spatial planning, a local community has wide discretion regarding the choice of the measure for the execution of a constitutionally admissible objective and regarding assessment of whether the consequences of the measure are justified from the viewpoint of the benefits of the pursued public interest. Nevertheless, the requirement that the interests of the community and the interests of the individual be fairly balanced must not be overlooked. The Constitutional Court emphasised that the required balance cannot be attained if the affected person must bear an excessive individual burden.

Effective protection of the property right in procedures for the adoption of municipal spatial acts that change the category of the existing land use from building land to land that may not be built on requires cooperation between land owners, the municipality, and the state-level bearers of the authority to carry out land use planning already in the phase of the adoption of such acts. The land owner must notify the municipality already before the adoption of a municipal spatial act of all concrete circumstances that may affect his or her right to private property. In the procedure for the adoption of a municipal spatial act, the municipality must examine the concrete objections of the land owner and take a position on such from the viewpoint of the requirement to find a fair balance between the interests of the community and the interests of the individual. The constitutional requirement to find an appropriate balance between such interests is also binding on the state-level bearers of the authority to carry out land use planning when they draft guidelines and opinions.

In the procedures of a public unveiling [of a spatial plan], the petitioner submitted comments on an excessive interference with his property right. The municipality failed to take a position on his comments from the viewpoint of the requirement to find a fair balance between the interests of the community and the interests of an individual. The Constitutional Court established that in the procedure for the adoption of the ordinance, the municipality failed to observe Article 7 and the first sentence of the sixth paragraph of Article 50 of the Spatial Planning Act; therefore, it held that the ordinance is inconsistent with the third paragraph of Article 153 of the Constitution (the principle of legality of municipal regulations).

5.14. House Arrest as an Alternative Form of Serving a Prison Sentence

By Decision No. U-I-14/20, Up-844/16, dated 14 May 2020 (Official Gazette RS, No. 89/20), the Constitutional Court reviewed the constitutionality of the regulation of house arrest. A local court rejected the complainant's motion to convert his three-month prison sentence to house arrest as it was filed too late. The complainant alleged that the regulation according to which a motion to convert a prison sentence to house arrest may only be filed within fifteen days of the judgement of conviction becoming final, while a motion to convert a prison sentence to imprisonment at weekends may also be filed during the service of a prison sentence, violates the right to equality before the law determined by the second paragraph of Article 14 of the Constitution.

Imprisonment at weekends, house arrest, and community work are alternative forms of enforcement of prison sentences that are determined by the Slovene legal order and reflect a humane criminal justice policy that aims to limit repression in the enforcement of criminal sanctions when the enforcement of a prison sentence in a correctional institution is not necessary or feasible.

In the case at issue, the Constitutional Court established that the position of persons who have filed a motion for the alternative enforcement of a prison sentence in the form of house arrest is the same as the position of persons who have filed a motion for imprisonment at weekends, since a prison sentence based on a final judgment was imposed on both groups of persons and the law enables their prison sentences to be enforced in a more humane manner that interferes with their personal freedom to a lesser extent. Although the substantive conditions for the imposition of the individual alternative forms of enforcement of prison sentences are different and they reflect the slightly different purpose of each individual institution (i.e. the purpose of enabling a prisoner to work or pursue an education is in the foreground as regards imprisonment at weekends, whereas this does not apply to house arrest), in the assessment of the Constitutional Court, this does not justify different time limits for filing such motions. With regard to the regulated subject matter, the substantive conditions are similar in that some of them (i.e. enrolment in educational activities, illness, and disability) are more likely to arise while serving a prison sentence than others (i.e. taking up employment, being of an advanced age, and a change of other personal and professional circumstances).

The Constitutional Court held that some conditions for house arrest, such as illness and disability, entail even more severe and unforeseeable circumstances, which may lead to the deterioration of a convict's health and may occur while serving a prison sentence. It concluded from the above that, with regard to the regulated subject matter, petitioners requesting either of the alternative forms of enforcement of a prison sentence are in essentially the same position. In the opinion of the Constitutional Court, the differences should in fact dictate more favourable and not more stringent regulation of the procedural requirements for house arrest than for imprisonment at weekends.

Although petitioners who request house arrest are in an essentially equal position as those who request imprisonment at weekends, they are treated unequally regarding the possibility to effectively request the conversion of the manner of enforcement of their prison sentence. The time limit for filing a motion for house arrest is namely significantly shorter than the time limit accorded to those filing a motion for imprisonment at weekends, i.e. merely up to 15 days after the judgement of conviction becomes final, while petitioners who request imprisonment at weekends may file a motion during the entire time of serving their prison sentence.

The Constitutional Court established that the proposers of the regulation at issue envisaged house arrest also, for example, for those convicted persons who fall seriously ill while serving a prison sentence, so they can serve their prison sentence in a more humane manner. It held that the time limit for filing a motion for house arrest that was subsequently determined by the second paragraph of Article 129a of the Criminal Procedure Act drastically limited the attainment of one of the aims due to which the institution of house arrest had been enacted in the first place. As the legislature did not have objective grounds that could justify a different (less favourable) manner of regulating the length of the objective time limit for filing a motion for house arrest as compared to filing a motion for imprisonment at weekends, the Constitutional Court established the partial inconsistency of the second paragraph of Article 129a of the Criminal Procedure Act with the second paragraph of Article 14 of the Constitution and required the legislature to eliminate such. It decided that until the established inconsistency is eliminated, a motion to convert a prison sentence into house arrest may be filed until the end of the period of serving a prison sentence. It further concluded that the complainant's right to equality before the law was violated by the challenged court decisions for the same reasons that render the challenged statutory regulation inconsistent with the second paragraph of Article 14 of the Constitution.

5. 15. The Right to be Present at Trial at a Session of the Appellate Court

In cases No. U-I-122/19, Up-700/16 and No. U-I-123/19, Up-1550/18 (both Decisions dated 28 May 2020, Official Gazette RS, No. 97/20), the Constitutional Court considered the constitutional complaints of complainants who alleged a violation of their right to be present at trial determined by the second indent of Article 29 of the Constitution because the Higher Court did not notify them of the appellate session. It also reviewed the constitutionality of Article 445 of the Criminal Procedure Act, which determines that a second instance court shall notify parties to proceedings of a panel session only if it establishes that their presence would help clarify issues.

The Constitutional Court reviewed the challenged regulation from the viewpoint of consistency with the right to be present at trial determined by the second indent of Article 29 of the Constitution. This right enables the defendant to have direct insight into the progress of the proceedings, to actively participate therein, and to exercise various entitlements that are part of the right to a defence. The right of a defendant to (also) conduct his or her own defence is not restricted to the stage of the trial before the court of first instance. The purpose of the defendant's presence at the Higher Court session is to enable him or her to clarify the standpoints stated in the appeal or in his or her response to the appeal and to allow him or her to gain direct insight into the progress of the proceedings also by following the report of the judge-rapporteur and requesting that it be complemented. The defendant's presence at the appellate session is ultimately important also from the perspective of the right to an effective legal remedy determined by Article 25 of the Constitution. The Constitutional Court stressed that defendants do not always have the right to be present at trial at the appellate level; the particularities of the concrete proceedings namely have to be taken into account. It established that the recent case law of the European Court of Human Rights maintains the position that the court's duty to ensure public appellate proceedings is not absolute. Since the physical presence of defendants in appellate proceedings is not as important for them as it is in proceedings before a first instance court, a contracting state has complete discretion in the area at issue as to when differences in otherwise comparable positions would justify different treatment.

In the assessment of the Constitutional Court, it cannot be concluded, either on the basis of the recent constitutional case law or with consideration of the development of the case law of the European Court of Human Rights, that the right to be present at trial (which is guaranteed by the second indent of Article 29 of the Constitution and Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms) would require appellate courts to ensure, without exception, the defendant's presence at the appellate session. It still applies that the physical presence of the defendant in appellate proceedings does not necessarily have the same significance as his or her presence in the first instance proceedings, and also that the right to a trial without undue delay, as well as the requirements that proceedings be managed well and the number of cases received be dealt with, must be observed. This applies in particular to an appellate session in summary proceedings. Criminal offences decided on in summary proceedings are namely considered to be less serious and entail a lower level of stigmatisation of the offender than criminal offences that are decided on in regular criminal proceedings. In the assessment of the Constitutional Court, the characteristics of an appeal in summary proceedings are not such so as to always require the defendant's direct participation in the appellate session. Also European Union law and the case law of the German Federal Constitutional Court have led to a completely identical conclusion. The Constitutional Court therefore held that Article 445 of the Criminal Procedure Act is not inconsistent with the Constitution; it has to, however, be interpreted in accordance with the Constitution, namely in such a manner that, considering the circumstances of the individual case, it does not inadmissibly interfere with the right determined by the second indent of Article 29 of the Constitution.

The Constitutional Court further reviewed whether the complainants' right to be present at trial was violated because the Higher Court did not notify them of the appellate session and thereby did not enable them to be present at such, while the Supreme Court failed to eliminate such violation. In case No. U-I-122/19, Up-700/16, it established that the complainant did not invoke anything that the court of first instance did not take a position on in its judgment in a sufficiently convincing and thorough manner. In case No. U-I-123/19, Up-1550/18, the Constitutional Court established that some of the allegations made in the appeal were of a legal nature, while the alleged procedural violations, taking into account the available data, were not committed. The Constitutional Court held that in the cases at issue the complainants' presence at the appellate session would have been an end in itself and could not have contributed to the success of the appeal. It therefore established that the alleged violation of the second indent of Article 29 of the Constitution was not committed and dismissed the constitutional complaints.

5. 16. Reimbursement of Litigation Costs in Small Claim Disputes

By Decision No. U-I-180/17, U-I-415/18, U-I-482/18, U-I-4/19, U-I-162/19, dated 4 June 2020 (Official Gazette RS, No. 89/20), the Constitutional Court decided on several substantively equal requests of the Local Court in Maribor to review the constitutionality of the second paragraph of Article 155 of the Civil Procedure Act. The applicant court did not agree with the obligation to fully apply the Attorneys' Tariff, as required by the challenged statutory provision, when deciding on the reimbursement of litigation costs to the plaintiff in disputes concerning (particularly) small claims. The Constitutional Court reviewed the challenged provision from the viewpoint of the human right to private property determined by Article 33 of the Constitution.

The Constitutional Court did not share the applicant's opinion. In the reasoning of its decision, it clarified that the second paragraph of Article 155 of the Civil Procedure Act is the basis for determining the scope of the redistribution of assets from one party to proceedings to the other in cases where such party was represented in proceedings by an attorney, as this is the basis for determining the amount of a certain type of costs of proceedings that an unsuccessful party must pay to the opposing party in a dispute (including in small claim disputes). In the opinion of the Constitutional Court, this does not entail that the mentioned provision interferes with the human right of the unsuccessful party to private property determined by Article 33 of the Constitution. A constituent part of the content of the human right to private property is also a set of obligations of owners to provide compensation, from their property, to persons whose property was reduced due to the owners' active or passive conduct. In the assessment of the Constitutional Court, the manner of exercise of the human right to private property is therefore regulated by the stated provision – also inasmuch as it applies in disputes concerning (particularly) small claims.

In instances where in terms of substance a statutory regulation does not entail the restriction of a constitutional right but merely the determination of the manner of its exercise, the Constitutional Court examines only whether the legislature had a sound reason for determining such manner of exercise of the right at issue. The Constitutional Court held that the reviewed regulation could not be deemed unreasonable as on the basis of such regulation the party who was successful in proceedings (despite the low value of the claim) is reimbursed the amount paid to his or her attorney or at least an amount that approximates the amount paid to the attorney much more closely than would be the case if courts, as the applicant court proposed in its request, determined the amount to be reimbursed on a case-by-case basis in proportion to the value of the claim and therefore in a lower amount. The Constitutional Court decided that the second paragraph of Article 155 of the Civil Procedure Act is not inconsistent with the Constitution in the part determining that attorneys' fees are calculated in order to reimburse to the opposing party the necessary litigation costs in small claim disputes.

5. 17. Legal Protection of the Right to Vote in Local Elections

By Decision No. Up-676/19, U-I-7/20, dated 4 June 2020 (Official Gazette RS, No. 93/20), the Constitutional Court decided on a constitutional complaint by which the complainant, as an unsuccessful candidate for the office of mayor, challenged the judgment of the Administrative Court and the decision of the Municipal Council of the Šmarješke Toplice Municipality that dismissed her appeals against the report on the results of the mayoral elections due to irregularities in the election procedure. While deciding on the constitutional complaint, the Constitutional Court initiated proceedings to review the constitutionality of Articles 100, 101, and 102 of the Local Elections Act, which regulate the legal remedy for the protection of the right to vote before a municipal council and judicial protection of the right to vote before the Administrative Court.

The Constitutional Court stressed that the active and passive rights to vote in elections of members of the representative bodies of local self-government and mayors (at least if they are elected directly) are guaranteed as human rights by Article 43 of the Constitution. The principles of free, universal, and equal suffrage as well as the principles of direct and secret ballot, which are typical of the right to vote at the state level, namely fully apply also to local elections. The right to vote in local elections also has a special legal nature as, despite being a

personal right, it can only be exercised in a collective manner, i.e. together with other voters in an organised manner and according to a procedure that has been determined in advance. Due to these similarities, the requirements regarding its legal protection are similar to the requirements regarding the legal protection of the right to vote at the state level, which must be adapted to the special nature of such right in all cases. The purpose of the legal protection of the right to vote in local elections is primarily not to protect the subjective legal position of individual voters or candidates but to protect the public interest and constitutional values. These values comprise a fair election procedure (i.e. compliance with the election rules), the credibility of election results, and the trust of citizens in the fair conduct of elections. The objective character of the legal protection of the right to vote is also ensured in local elections by not taking into account all the established irregularities but only those that affected or could have affected the election results. Irregularities that could not have affected the results cannot be taken into consideration, except for such irregularities that, due to their quality (not their number), could have fundamentally affected the objective fairness of the elections (e.g. the discrimination of certain groups with regard to the existence of their right to vote). In such cases, it must be assessed whether, in view of the circumstances of the case in question and the established irregularities, a reasonable person would question the fairness of the election results.

The Constitutional Court held that the regulation of the procedure for filing an appeal before the municipal council in the Local Elections Act does not include all the essential elements that would have to be determined in order to ensure the effective exercise of the right to a legal remedy determined by Article 25 of the Constitution. It cannot be derived from the mentioned regulation which irregularities can be invoked by a complaint. Furthermore, the Local Elections Act does not contain any provisions regarding the conduct of the procedure before the municipal council adapted to the special nature of the right to vote in local elections (e.g. shorter procedural time limits, determination of the burden of allegation and the burden of proof, rules on the taking of evidence and conducting a public hearing) and it does not regulate the particularities of such procedure from the viewpoint of the division of competences within the framework of the decision-making on the appeal between the commission for public office, elections, and appointments and the municipal council. The criteria by which the municipal council must review violations as well as the competences of the municipal council when deciding on such violations are also not determined. In the opinion of the Constitutional Court, such a deficient regulation renders the effective exercise of the right to a legal remedy determined by Article 25 of the Constitution significantly difficult or even impossible. What is at issue is therefore not only the manner of the exercise of this human right but an interference with this right and consequently also with the right to judicial protection, which is guaranteed before the Administrative Court. Since there is no constitutionally admissible reason for such a deficient and vague regulation of the procedure before the municipal council, the Constitutional Court held that the regulation is inconsistent with the right to a legal remedy determined by Article 25 of the Constitution.

The Constitutional Court also established that the regulation of electoral disputes in local elections before the Administrative Court is vague and deficient. As it renders the effective exercise of the right to judicial protection impossible or significantly difficult, it entails an interference with this human right. As the Constitutional Court did not establish any constitutionally admissible reason that could substantiate such a deficient regulation, it held that the regulation at issue is inconsistent with the right to judicial protection determined by the first paragraph of Article 23 of the Constitution.

Although the established unconstitutionalities regarding the regulation of judicial protection before the Administrative Court and the appeal procedure before the municipal council refer to the deficiencies of the entire regulation of the legal protection of the right to vote, the Constitutional Court established only the unconstitutionality of Articles 100, 101, and 102 of the Local Elections Act. Since this is a special law that already regulates certain issues of the procedure with respect to the legal protection of the right to vote in local elections, the Constitutional Court located the established unconstitutionalities in its statutory provisions. It noted, however, that what is unconstitutional is primarily the fact that the legislation does not regulate everything necessary for the exercise of the right to an appeal and the right to judicial protection, and that it would be reasonable to regulate all issues concerning the procedure for the legal protection of the right to vote in local elections in the relevant law, which is a special law for the regulation of local elections. It determined a time limit by which the legislature must eliminate the established inconsistencies and adopted the manner of implementation of its decision, by which it provisionally determined only the most urgent rules for the adjudication of the Administrative Court in such judicial disputes.

With regard to the allegations stated in the constitutional complaint, the Constitutional Court held that the municipal council violated the complainant's right to a public hearing determined by Article 22 of the Constitution when it excluded the public from the initial session at which it decided on the complainant's appeal. The complexity of deciding on the complaint against the report of the municipal election commission on the election results cannot be the reason for excluding the public from the municipal council session. The Constitutional Court further established that the municipal council violated the complainant's right to equal treatment determined by Article 22 of the Constitution by preventing her and her legal representative from attending the session of the public office commission and the municipal council, while simultaneously permitting the attendance of the president of the electoral commission, whose decision was challenged by the complainant in her appeal before the municipal council. It also established a violation of the complainant's right to judicial protection determined by the first paragraph of Article 23 of the Constitution as the municipal council and the Administrative Court refused to review the asserted irregularities that allegedly occurred in the election campaign and that allegedly affected the election results. The Constitutional Court therefore abrogated the judgment of the Administrative Court and the decision of the municipal council in the part that refers to the dismissal of the appeal (not the part that refers to the establishment of the election of the mayor), and remanded the case to the Administrative Court for new adjudication.

5. 18. The Limitation Period with regard to Compulsory Portion Claims in Succession Proceedings

By Decision No. Up-155/16, U-I-40/16, dated 4 June 2020, the Constitutional Court decided on a constitutional complaint filed against a final decision of the courts rejecting the complainant's claim to have certain gifts returned due to the deprivation of his compulsory portion of an estate. The courts rejected his claim as the three-year limitation period for filing such a claim determined by Article 41 of the Inheritance Act, which runs from the day of the testator's death, had already expired on the day the action was filed.

The Constitutional Court noted that it has already adopted the position that the successful objection of a defendant claiming that the time limit for filing a claim has expired may entail

that the plaintiff's right determined by the first paragraph of Article 23 of the Constitution was affected. The existence of limitation periods in itself, however, is not incompatible with the right to access to court. The Constitutional Court stressed that the purpose of the institution of a limitation period is primarily to ensure the legal protection of the debtor against time-barred claims. In addition, limitation periods prevent the court from ruling on events that took place in the too distant past and with regard to which sufficient and reliable evidence no longer exists. However, overly strict application of limitation periods whereby the court fails to take into consideration the circumstances of the individual case may entail an inadmissible interference with the right to access to court if such application makes it disproportionately difficult for the parties to apply an available legal remedy or prevents them from doing so.

In the assessment of the Constitutional Court, in light of the safeguarding of the effective exercise of the applicant's right to judicial protection, the particular circumstances of the case at issue (i.e. primarily the circumstance that the probate court failed to serve the applicant the decision that succession proceedings – due to the fact that no property existed – would not be carried out, and the circumstance that the defendant allegedly misled the applicant both regarding the existence of the estate and the progress of the succession proceedings) indicate the need for a more flexible interpretation of the time-barring rule determined by Article 41 of the Inheritance Act in conjunction with Article 360 of the Obligations Code (which regulates the suspension of time-barring in cases involving insurmountable obstacles). As the courts did not evaluate the particular circumstances of the case at issue from the viewpoint of Article 360 of the Obligations Code, they violated the complainant's right to judicial protection determined by the first paragraph of Article 23 of the Constitution. Therefore, the Constitutional Court granted the constitutional complaint, abrogated the challenged judicial decisions, and remanded the case to the court of first instance for new adjudication.

5. 19. The Constitutional Fiscal Rule

By Decision No. U-I-129/19, dated 1 July 2020 (Official Gazette RS, No. 108/20), upon the request of a group of deputies of the National Assembly, the Constitutional Court reviewed the constitutionality of a provision of the Amending Budget of the Republic of Slovenia for the Year 2019 (hereinafter referred to as the AB2019) and provisions of the Implementation of the Republic of Slovenia Budget for 2018 and 2019 Act (hereinafter referred to as the IRSB1819).

Although at the end of the budget year 2019, the effects of the AB2019 ceased to be in force and the IRSB1819 was no longer valid (and, as a general rule, the Constitutional Court is not competent to review acts that are no longer in force), the Constitutional Court opted to decide on the merits of the request to review constitutionality in the part in which the applicant alleged the unconstitutionality of the mentioned acts. When reviewing the request, it took into consideration two factors. Firstly, it considered that the challenged acts are regularly adopted for a certain period of time and as a rule have effects in the specified period and they cease to be in force when this period of time expires. Secondly, it acknowledged that it is not possible to exclude the possibility that the duration of validity of the act is too short for the Constitutional Court to decide on the merits of such act before its validity expires. The decision-making process in the case at issue led to exactly such a situation. The request to decide on the constitutionality of the AB2019 and the IRSB1819, in the part addressing the issue of their consistency with the Constitution, raised a number of particularly important precedential constitutional questions of a systemic nature to which the Constitutional Court has thus far not had the

opportunity to respond as they refer to the interpretation of the Constitutional Act on the Amendment of Article 148 of the Constitution. In the remaining part, i.e. in the part in which the AB2019 was challenged with regard to its alleged inconsistency with the Fiscal Rule Act, and in the part in which the Decree on the Framework for the Preparation of the Budgets for the State Sector for the Period from 2018 to 2020 was challenged, the request did not address such questions, therefore the Constitutional Court rejected it in this part.

In its decision on the merits, the Constitutional Court first took a position on the question whether it is competent to decide on the consistency of the Rb2019 with the second paragraph of Article 148 of the Constitution or the relevant provisions of the Fiscal Rule Act. In order to respond to the question of competence, it had to take a position on the legal nature of the budget and its classification in the hierarchical system of general legal acts. It concluded that a state budget is a *sui generis* legal act. As a general and abstract legal act with external legal effect, it has the power of a law. The same applies to the budget amending it. This follows not only from hitherto constitutional case law, but also from its content, weight, and significance for the financing of the exercise of state authority, and from the regulation of the procedure for adopting a budget, which is essentially similar, although not identical, to the legislative procedure. The special hierarchical position of the state budget, indicating its importance for the functioning of the state and dictating its statutory power, also follows from the fact that the state budget is a constitutional category. It must therefore be acknowledged that the state budget has the legal nature of a regulation and the hierarchical position of a law, and the Constitutional Court is competent to review its consistency with the Constitution. This entailed that in the case at issue the Constitutional Court was competent to review the constitutionality of Article 2 of the AB2019. The Constitutional Court further explained that the democratically elected parliament has broad discretion when adopting a budget; therefore, a constitutional review of the state budget must be restrained.

The constitutional fiscal rule is contained in the second paragraph of Article 148 of the Constitution. In the assessment of the Constitutional Court, the interpretation of the first sentence of the second paragraph of Article 148 of the Constitution, which contains the principle of the medium-term balance, was decisive. In the framework of this part of the review, the applicant's allegations that the Fiscal Rule Act assumed constitutional content and *de facto* became part of the Constitution had to be addressed in particular. The Constitutional Court pointed out that the constitutional order of the Republic of Slovenia does not allow for the existence of laws that are hierarchically equal to the Constitution or superior to regular laws. In light of such, the Constitutional Court established that, in relation to the constitutional fiscal rule, the Fiscal Rule Act is neither an act that amended the Constitution nor an act that determined the implementation of a new constitutional regulation or transition to such. The Fiscal Rule Act is thus not an act amending the Constitution and does not have a special hierarchical position. Although the mentioned act is an implementing act for the constitutional fiscal rule and is adopted by a qualified majority, in relation to the Constitution it is not equal, and the level of such legal regulation is by no means constitutional.

The Constitutional Court therefore interpreted the significance of the constitutional fiscal rule without directly basing its interpretation on statutory fiscal rules. By means of the generally established methods of legal interpretation, particularly historical and teleological interpretation, it ascertained that the second paragraph of Article 148 of the Constitution dictates a rational and long-term sustainable fiscal policy that, based on a reasonable professional assessment, will not lead to the inability of the state to finance its own functions. The intention of the constitution-framers was to ensure the long-term sustainability of the state's fiscal policy

at the constitutional level and prevent excessive indebtedness and the occurrence of budget deficits and high levels of public debt, which could lead to the illiquidity and insolvency of the state and consequently cause the inability of the state to fulfil its obligation to ensure the constitutionally guaranteed values. In the assessment of the Constitutional Court, the medium-term balance determined in the constitutional provision entails the duty to manage and plan a fiscal policy that focuses on the state of public finances throughout the entire economic cycle and not only in the current budget year, and takes into account the current state of the national economy in the cycle for each year. The medium-term balance of state budgets without having to borrow may be achieved in several ways, whereby the constitution-framers left the choice of the manner thereof to the legislature.

The applicant failed to submit its allegations against the AB2019 in a manner that takes into consideration the stated interpretation of the constitutional fiscal rule and the principle of medium-term balance. It based its allegations exclusively on the violation of the statutory fiscal rule. The Constitutional Court could not accept the applicant's understanding of the constitutional fiscal rule according to which the formulae determined by Article 3 of the Fiscal Rule Act reach the constitutional level or the content thereof could be raised to such a level by interpretation and taken into consideration as a direct criterion for a review of the constitutionality of the state budget. The Constitutional Court therefore held that Article 2 of the AB2019 was not inconsistent with the second paragraph of Article 148 of the Constitution.

The applicant challenged the IRSB1819 for the same reasons that it challenged the AB2019. The Constitutional Court assessed that the applicant's allegations concerning the unconstitutionality of the IRSB1819 were manifestly unfounded; therefore, it decided that the challenged statutory provisions thereof were also not inconsistent with the Constitution.

5. 20. Restrictions of Freedom of Movement due to the COVID-19 Epidemic

In Case No. U-I-83/20 (Decision dated 27 August 2020, Official Gazette RS, No. 128/20), the Constitutional Court reviewed the consistency of two ordinances adopted by the Government in order to contain and manage the risk of the COVID-19 epidemic, namely the Ordinance on the Temporary General Prohibition of Movement and Gatherings in Public Places and Areas in the Republic of Slovenia and the Prohibition of Movement outside the Municipality of One's Permanent or Temporary Residence and the Ordinance on the Temporary General Prohibition of Movement and Gatherings in Public Places and Areas in the Republic of Slovenia and the Prohibition of Movement outside the Municipality of One's Permanent or Temporary Residence.

It carried out the review despite the fact that during the proceedings before the Constitutional Court the ordinances ceased to be in force as it assessed that the petition raises a particularly important precedential constitutional question of a systemic nature on which the Constitutional Court had not yet had the opportunity to take a position and which could also arise in connection with possible future acts of the same nature and with comparable subject matter. The question at issue is whether the prohibition of movement outside the municipality of one's permanent or temporary residence determined by the challenged ordinances was consistent with the first paragraph of Article 32 of the Constitution, which guarantees freedom of movement to everyone.

The Constitutional Court conducted the review on the basis of the test of legitimacy, which entails an assessment of whether the legislature pursued a constitutionally admissible objective, and on the basis of the strict test of proportionality, which comprises an assessment of whether the interference was appropriate, necessary, and proportionate in the narrower sense.

The Constitutional Court assessed that by restricting movement to the municipality of one's residence the Government pursued a constitutionally admissible objective, i.e. containment of the spread of the contagious disease COVID-19 and thus the protection of human health and life, which this disease puts at risk. It emphasised that striving to achieve this goal is also a constitutional obligation of state authorities; a slow and inadequate response to the emergence of a contagious disease that could put human health or even life at risk would be inconsistent with the positive obligations of the state to protect the right to life (Article 17 of the Constitution), the right to physical and mental integrity (Article 35 of the Constitution), and the right to health care (the first paragraph of Article 51 of the Constitution). While the Constitutional Court stressed that in the event of a contagious disease particular emphasis must be placed on the positive obligations of the state, it also underlined that every individual has the duty to protect other people's health, particularly the health of vulnerable groups, which may also affect restrictions of freedom of movement.

In the assessment of the proportionality of the interference with freedom of movement, the Constitutional Court underlined as an important circumstance the fact that state authorities were inevitably faced with considerable uncertainty when introducing the measures at issue, since, particularly at the beginning of its spread, there existed almost no scientific or medical research on COVID-19. This does not mean that when drafting the measures at issue the state authorities were not required to take into account the already existing scientific findings and actively obtain, in collaboration with medical experts, expert opinions and forecasts that would have minimised such uncertainty to the greatest extent possible. Despite such uncertainty, these measures have to be based on verifiable grounds and forecasts that could be taken into consideration at the time of their adoption. In this framework, the deciding authorities responsible for epidemic risk management have wide discretion regarding the choice of measures.

The Constitutional Court assessed that the prohibition of movement outside the municipality of one's permanent or temporary residence was an appropriate measure for achieving the pursued objective since there existed the requisite probability that – according to the data available at the time of the adoption of the challenged ordinances – it could have contributed towards reducing or slowing down the spread of COVID-19, primarily by reducing the number of actual contacts between persons living in areas with a higher number of infections and consequently at a higher risk of transmission of the infection, and persons living in areas with a lower number of infections or even no infections at all.

In the review of the necessity of the interference, the Constitutional Court deemed it crucial that the previously adopted measures (i.e. the closure of educational institutions, the suspension of public transport, the general prohibition of movement and gatherings in public places and areas, including exhaustively determined exceptions) did not in themselves enable, at the time of the adoption of the challenged ordinances, the assessment that they would prevent the spread of infection to such an extent that – with regard to the actual systemic capacity – adequate health care could be provided to every patient. In such conditions, further measures to prevent the spread of infection and thereby the collapse of the health care system were necessary.

The measure restricting movement to the municipality of one's residence was also proportionate in the narrower sense, which means that the demonstrated level of probability of a positive impact of the measure on the protection of human health and life outweighed the interference with the freedom of movement. In this assessment, the Constitutional Court deemed it important that the measure included several exceptions to the prohibition of movement outside the municipality of one's residence.

In the framework of the review of proportionality in the narrower sense, the Constitutional Court also assessed the limitations of the measure as regards the time and territory of its application. It emphasised that the longer such a measure lasts, the more invasive the interference becomes. Regular review of the situation and adjustments of the restrictive measures for the future (made with reasonable cautiousness) are therefore required. At the time of their entry into force, the challenged ordinances did not contain an explicit prior limitation of their temporal validity; however, this does not in itself entail that they regulated such invasive interferences with the right to freedom of movement that they were disproportionate in the narrower sense in light of their temporal dimension. The Constitutional Court emphasised that the regulations were in force for a relatively short period of time and that in the days of their validity their original invasiveness could by no means have been exceeded. With regard to the territorial limitation of the measures, it stated that such measures can apply to the territory of the whole country if it is ascertained, on the basis of existing scientific information, that the areas where there is a risk of infection are scattered all over the country and if the constitutionally admissible objective cannot be achieved in any other manner.

Due to the stated reasons, the Constitutional Court decided that the prohibition of movement outside the municipality of one's residence did not disproportionately interfere with freedom of movement as determined by the first paragraph of Article 32 of the Constitution. As the remaining allegations stated in the petition did not raise any particularly important precedential constitutional questions and the petitioner failed to demonstrate legal interest for a constitutional review regarding certain allegations, the Constitutional Court rejected the petition in the remaining part.

The Constitutional Court also stressed that in addition to the petition at issue a number of other petitions were lodged before the Constitutional Court alleging the inconsistency of the challenged ordinances with the Constitution and the Communicable Diseases Act, as well as the inconsistency with the Constitution of certain statutory provisions on which the challenged ordinances were based; however, the Constitutional Court has not yet decided thereon. It emphasised that in the case at issue it did not take a position on the constitutional consistency of the statutory bases for the adoption of the challenged ordinances. In the case at issue, the decision on the merits only includes a review of the consistency of the measure of the prohibition of movement outside the municipality of one's residence with those requirements of the Constitution regarding which such measure was challenged.

5.21. Prohibition of Fishing in a Natural Resource Protection Area

By Decision No. U-I-195/16, dated 17 September 2020 (Official Gazette RS, No. 134/20), the Constitutional Court decided on the request of a fishing club for a review of the constitutionality and legality of the ordinance by which the local community protected the Tivoli, Rožnik, and Šišenski Hrib Landscape Park as a natural resource and determined the rules of conduct,

i.e. the protection regime in the protected area. By the mentioned ordinance, it, *inter alia*, prohibited fishing in the protected area of the landscape park. The fishing club challenged the ordinance with the argument that such directly interferes with its legal position as it interferes with its rights acquired by the concession contract by which it acquired a concession for fisheries management in the protected area.

In the case at issue, the Constitutional Court had to review the mutual relationships between the measures for the protection of natural resources and the measures for fisheries management, as fish are a natural resource under special nature protection. The dispute between the fishing club and the local community concerned the question of whether the local community may prohibit fishing, in order to protect natural resources, without such prohibition being stipulated in advance in the fish-rearing plans, which determine the use of an individual fishing region. The Constitutional Court carried out the assessment of the challenged ordinance from the viewpoint of the third paragraph of Article 153 of the Constitution (the principle of the legality of local community regulations).

It stressed that fishing is one of the activities encompassed by fisheries management. The concessionaire does not carry out fishing in the public interest. Freshwater fishing entails the exploitation of a natural resource and is, as a general rule, intended for economic gain, therefore the concessionaire must pay a concession fee. The challenged ordinance is an act on the protection of a natural resource. The local community thereby prohibited fishing in the natural resource protection area. Fishing must therefore adapt to the protection regime of the natural resource that is in the public interest. The concrete concession relationship between the grantor of the concession and the concessionaire must adapt to such protection regime as well. The prohibition of fishing as a type of measure for the protection of natural resources thus entails a legal basis for adapting the management of fisheries and a legal basis for a potential change in the concession relationship between the state and providers of fisheries management. The Constitutional Court established that the challenged ordinance was not inconsistent with the Freshwater Fisheries Act and the third paragraph of Article 153 of the Constitution.

The fishing club further claimed that the challenged ordinance interfered with its acquired rights; therefore, the Constitutional Court had to assess whether the challenged regulation was consistent with the principle of trust in the law (Article 2 of the Constitution). The mentioned principle is binding also on local communities when they regulate issues falling within their competence. The Constitutional Court held that the adoption of the ordinance at issue interfered with the acquired rights of the fishing club. It deemed the protection of the natural resource to be a legitimate reason for determining the prohibition of fishing. The Constitutional Court took into consideration that there was no interference with other activities of the concessionaire carrying out fisheries management in the public interest, that the prohibition of fishing applies to only a small part of the area managed by the concessionaire, and that the concessionaire could have expected fishing in Tivoli Pond to be prohibited. It also took into consideration that the fishing club could have requested that the concession fee be reduced and that the concession contract be changed by an amendment as soon as the challenged ordinance entered into force. The fishing club also did not allege that the immediate prohibition of fishing in Tivoli Pond reduced the amount of expected revenue to such an extent that it was no longer able to carry out the tasks of fisheries management performed in the public interest. All of the above were the reason why the Constitutional Court gave priority in its assessment to the public interest and why it held that the challenged regulation was not inconsistent with the principle of the protection of trust in the law determined by Article 2 of the Constitution.

5.22. Tax Assessment of Undeclared Income

By Decision No. U-I-113/17, dated 30 September 2020 (Official Gazette RS, No. 145/20), the Constitutional Court decided on a request of the Administrative Court to review the constitutionality of Article 68a of the Tax Procedure Act, which determined that a 70% tax rate shall apply to undeclared income and that the assessment of such tax was admissible for the period of the last ten years prior to the year in which the tax assessment procedure was initiated. It abrogated this provision insofar as the 70% tax rate determined therein exceeded the tax rate that was prescribed by the regulation previously in force for the taxation of undeclared income and insofar as also undeclared income that originated from the periods before 1 January 2009 could be subject to taxation on the basis thereof.

The Constitutional Court first assessed the legal nature of the increased tax rate on undeclared income. Although the challenged regulation enacted a measure that is formally determined as a tax in the law, it was important for the review whether also in a constitutional sense it can be considered to be such. The fundamental characteristic of taxes follows from Article 146 of the Constitution, which in the first paragraph determines that the state and local communities raise funds for the performance of their duties by means of taxes and other compulsory charges, as well as from revenues from their own assets. From a constitutional point of view, a tax is a duty that is primarily intended to pursue the objective of financing public spending, although not necessarily merely that, as the purpose of imposing taxes is not necessarily only to ensure budgetary funds; namely, also other objectives are attained by levying taxes, such as restructuring the economy, boosting employment, and fostering the development of demographically and otherwise marginalised areas. Hence, in addition to fiscal objectives, also concrete social objectives can be directly realised by means of taxes.

The regulation of the tax assessment of undeclared income that was in force prior to the challenged regulation made the tax rate that was applicable for these taxes dependant on the tax rates that follow from the law regulating income tax (that law determines a 50% rate as the highest income tax rate for the highest income tax class). Therefore, the Constitutional Court proceeded from the assessment that, by determining a 70% tax rate, the legislature substantively enacted, in addition to tax assessed in accordance with the income tax rate otherwise in force, also an increase, i.e. a surcharge on the regular income tax rate. The surcharge serves to dissuade taxable persons from violating tax law obligations and to encourage them to observe these obligations. The Constitutional Court assessed that by enacting a surcharge, the legislature did not pursue the objective of financing public spending or any socio-political objective (within the framework of social or economic policy), which, in accordance with the constitutional determination of taxes and the case law of the Constitutional Court, are admissible objectives of taxes. Therefore, it concluded that, in a constitutional sense, the surcharge is not a tax but a measure intended to either remedy the damage sustained by public finances and its incomes due to a violation of the obligation to declare income and nullify the benefits that the taxable persons had as a result of such violations (i.e. a restitutive measure) or punish the taxable persons for such violations (i.e. a punitive measure).

The Constitutional Court assessed the reasons by which the Government claimed that the surcharge is a restitutive measure by its nature. In this respect, the key argument advanced by the Government was that the surcharge is intended to compensate for the loss of funds

acquired through compulsory social contributions. The Constitutional Court recognised that this argument has some weight; however, it attributed even greater importance to the fact that the surcharge in question does not entirely compensate for the loss of social contributions and also does not produce an equal effect on all of its addressees. The Constitutional Court dismissed the remaining reasons by which the Government substantiated that the surcharge is of a restitutive nature (e.g. compensation for interest due to the payment of taxes not being made in due time, compensation for procedural costs), as in these instances no objective or reasonable connection existed between the measure at issue and the alleged objective that the measure purportedly pursued (i.e. remedying the damage or nullifying the unjustified benefit), or because these reasons were too general. In view of the non-demonstrated restitutive nature of the surcharge, the Constitutional Court deemed it to be a measure that is at least partially of a punitive nature.

The legislature must regulate procedures in which measures of a punitive nature are adopted in such a manner that the persons who can be affected are ensured the constitutional guarantees determined by Article 29 of the Constitution. Essentially, these guarantees apply to procedures in all criminal law cases, not only to procedures relating to criminal offences. If such a measure is to be decided on in a single procedure jointly with tax assessment, the legislature must ensure in such a procedure at least the essence of the constitutional procedural guarantees determined by Article 29 of the Constitution. Since the regulation of the tax procedure in which also the imposition of the mentioned surcharge is decided on failed to ensure these constitutional procedural guarantees, the Constitutional Court assessed that the challenged regulation, insofar as it enabled the surcharge to be imposed in a tax procedure, was inconsistent with Article 29 of the Constitution.

Furthermore, the Constitutional Court assessed that the challenged regulation has a partial retroactive effect. In view of the fact that it enables the assessment of taxes for the last ten calendar years, and that it entered into force on 1 January 2014, it enabled taxes to be assessed also for income that originated from 2004. The previous regulation that ceased to be in force upon the entry into force of the challenged regulation allowed taxes to be assessed only for the last five calendar years before the year of the initiation of a tax inspection. Hence, as the regulation previously in force ceased to be valid, the possibility to initiate a tax assessment procedure for income that originated from the period prior to 2009 ceased, whereby taxable persons obtained a legally protected guarantee that it would no longer be possible for their income from that period to become subject to taxation. Therefore, the challenged regulation, insofar as it enabled the initiation of a procedure and the assessment of taxes also for income originating from the period prior to 2009, had the effect of retroactively interfering with the legal positions of taxable persons that had already been concluded due to the fact that the regulation previously in force ceased to be valid. Such a retroactive effect of a law is only exceptionally admissible when the conditions determined by the second paragraph of Article 155 of the Constitution are fulfilled. These conditions include the condition that such retroactive effect is required in the public interest. In accordance with the established case law of the Constitutional Court, such public interest must be expressly established and explained as early as in the legislative procedure. In the case at issue, the Constitutional Court established that the legislature failed to demonstrate that the public interest required the challenged regulation to have retroactive effect, and also the Government failed to do so in the procedure for the review of constitutionality. The Constitutional Court therefore concluded that, in the relevant scope, the challenged provision was inconsistent with the first paragraph of Article 155 of the Constitution.

5. 23. Positive Discrimination Measures for Persons with Disabilities in the Exercise of Their Right to Vote

In Case No. U-I-168/16 (Decision dated 22 October 2020, Official Gazette RS, No. 168/20), upon the petition of several individuals and the Slovene Disability Rights Association, the Constitutional Court reviewed the constitutional consistency of statutory measures for the positive discrimination of persons with disabilities in the exercise of their right to vote, which are regulated by the National Assembly Elections Act. The main allegation of the petitioners was that the legislature's omission of voting machines is inconsistent with the Constitution as it fails to ensure persons with disabilities personal, independent, and secret voting at polling stations.

The right of persons with disabilities to non-discriminatory treatment requires that the exercise of their human rights and fundamental freedoms be in fact as similar as possible to the regular exercise of such rights. In order to ensure persons with disabilities exercise of their right to vote, the state must make the voting procedure accessible to such persons in the broadest sense of the word, by adopting so-called positive discrimination measures. When the active right to vote is at issue, this entails that the legislature must ensure persons with disabilities the possibility to exercise such right personally, independently, secretly, and possibly at polling stations, to the greatest extent possible and in a manner that is as similar as possible to the exercise of such right by other voters; however, the legislature does not have to adopt measures that would entail a disproportionate or unnecessary burden (reasonable accommodation).

The Constitutional Court established that the legislation in force requires that physical access to all polling stations be ensured to persons with disabilities, and, in addition, enables persons with disabilities to vote by means of ballot papers adapted to disabilities, by mail, with the assistance of another person, or at home before a polling station committee. With respect to voting by means of ballot papers adapted to disabilities, it held that such ballot papers must be available at all polling stations, that they must be available at least to blind and visually impaired persons, and that the term ballot papers adapted to disabilities must be understood in the broadest sense of the word, which includes various devices (such as templates, magnifying glasses etc.). With respect to voting by mail, it established that the National Assembly Elections Act enables wide application of such type of voting and that it entails a positive discrimination measure that in fact enables the equal treatment of persons with disabilities. With respect to voting with the assistance of another person, it held that the latter only acts as 'an extended arm' of the person with a disability, who thereby expresses his or her own will, and that the duty to protect the secrecy of the vote and the prohibition of being held responsible applies to such assistants as well. The National Assembly Elections Act does not explicitly determine voting with the assistance of another person when persons with disabilities vote by mail, but it is not excluded that when voting by mail persons with disabilities may be assisted by another person whom they trust and choose themselves. With respect to voting at home before a polling station committee, the Constitutional Court established that, according to the National Assembly Elections Act, such type of voting is connected with an illness and not explicitly with a disability, but, based on the argument of analogy, the statutory wording must be interpreted in a manner that would allow such a voting possibility also for persons with disabilities. Such interpretation is consistent with the Constitution as it guarantees yet another positive discrimination measure that facilitates the exercise of independent, personal, and secret voting by persons with disabilities that is very similar to voting at polling stations. This is all the more important since voting before

a mobile polling station committee is also carried out by means of ballot papers adapted to disabilities or with the assistance of another person, if the voter so wishes.

The Constitutional Court thus ascertained that the National Assembly Elections Act determines several positive discrimination measures for persons with disabilities in the exercise of their active right to vote. It assessed that by adopting the latest amendment to the law at issue the legislature made significant progress in facilitating the exercise of personal, independent, and secret voting by persons with disabilities and in ensuring their equal integration into society when it determined that all polling stations must be made physically accessible to persons with disabilities.

The Constitutional Court devoted special attention to persons with disabilities who need technical assistance in order to vote personally, independently, and secretly, and who previously exercised their right to vote by means of voting machines. It established that such persons with disabilities may vote with the assistance of another person at all polling stations, by mail, and at home before a polling station committee. It held that such voting is appropriate from the viewpoint of the right to personal, independent, and secret voting (the second paragraph of Article 43 of the Constitution) as well as from the viewpoint of the right to non-discriminatory treatment (the first paragraph of Article 14 of the Constitution). In such context, it emphasised that the assistance of another person must be limited to technical assistance in filling in and delivering the ballot paper; however, voting decisions must be made and expressed by voters themselves. It highlighted the significance of the relationship of trust that must be established between the person with a disability and his or her assistant, whereby the person with a disability can freely decide to whom he or she assigns the role of assistant, while the latter is bound by the duty to respect the free decision of the person with a disability and the duty to keep such decision secret.

In light of the above, the Constitutional Court decided that the elimination of voting machines, taking into consideration the regulation of other positive discrimination measures as a whole, does not interfere with the right of persons with disabilities to non-discriminatory treatment in the exercise of their right to vote and that the statutory regulation is thus not inconsistent with the Constitution.

5. 24. The Legal Regime of Pharmacy Practice as a Public Service

In Case No. U-I-166/17 (Decision dated 5 November 2020, Official Gazette RS, No. 173/20), upon the request of the Municipality of Tolmin, the Constitutional Court reviewed the constitutionality of the transitional provision of Article 121 of the Pharmacy Practice Act. The provision regulates the harmonisation of concession decisions and contracts of indefinite duration with the fourth paragraph of Article 39 of the same law, which determines that a concession to perform a pharmacy practice may only be granted for a limited period of time.

The statutory regulation of pharmacy practice is based on Article 51 of the Constitution, which regulates the right to health care. The mentioned right requires that the state must foster human health (a legally protected value), which is one of the most important constitutional values. The right to health care is therefore granted to everyone. The right to health care is a positive human right, which requires active conduct from the state. By adopting appropriate measures, the state must ensure effective exercise of this human right. Article 51 of the Constitution requires the legislature to establish an effective system to ensure the health care protection service. In

this framework, the legislature determined that pharmacy practice shall be performed as a non-economic public service, which is an original competence of municipalities on the primary level and a competence of the state on the secondary and tertiary levels.

The transitional provision of the Pharmacy Practice Act explicitly regulates only the harmonisation of concession decisions and contracts for concessions that were granted after the Public Private Partnership Act entered into force, but it does not regulate the harmonisation of concession decisions and contracts that were granted or concluded before the mentioned law entered into force, i.e. under the Pharmacy Practice Act previously in force, which allowed concessions to be granted only to natural persons and did not determine a time limit for such. The Constitutional Court thus had to answer the question of whether it is possible, by means of the methods of interpretation of legal regulations, to solve the legally unregulated case of the harmonisation of concession decisions and contracts with an indefinite duration that were concluded before the Public Private Partnership Act entered into force with the regulation under the new Pharmacy Practice Act. A question arose in particular as to what happens to those concessions that were granted without a time limit to individuals whose business later transformed into a commercial company, i.e. a legal entity.

The Constitutional Court assessed that the legislature should regulate the possibility of transferring the majority share of the share capital of a legal entity with a concession that is owned by a pharmacy practice holder. It should determine whether such transfer (which may take place multiple times) is at all admissible, and if so, under what conditions, for example, if the consent of the concession grantor is needed. It should also determine whether in the case of the stated transfer the concession relationship remains unchanged even if the pharmacy practice holder has changed and consequently the ownership structure of the legal entity with a concession has essentially changed. In regulating these issues, the legislature should take into consideration the rules that a concession may only be granted on the basis of a public tender and only for a limited period of time. The transfer of a majority share of the share capital of a legal entity (a concessionaire) and consequently the covert transfer of the concession would namely enable the transfer, without a public tender, of a concession for an unlimited period of time. Furthermore, the legislature should determine procedural rules by which concession transfers are carried out and the content of new concession decisions and contracts.

In the opinion of the Constitutional Court, the provisions of the Pharmacy Practice Act do not answer several complex legal questions raised by the potential transfer of the ownership share of a pharmacy practice holder. The Constitutional Court therefore held that the challenged transitional regulation is unconstitutional already because it contains an unconstitutional legal gap, which is as such inconsistent with the principle of legal certainty (Article 2 of the Constitution).

5. 25. Alternative Form of the Enforcement of a Prison Sentence

In Case No. U-I-418/18, Up-920/18 (Decision dated 5 November 2020, Official Gazette RS, No. 191/20), the complainant challenged a final decision that dismissed her request to postpone the enforcement of her prison sentence. She alleged that before the court issued the order to serve a prison sentence, it should have decided by a final decision on her motion for an alternative form of enforcement of her prison sentence or it should have postponed the enforcement of the sentence despite the fact that the Enforcement of Penal Sentences Act does not

determine that a motion for an alternative form of enforcement of a prison sentence that was filed on time but that has not yet been decided on by a final decision is a circumstance that is a reason for the postponement of the enforcement of a prison sentence.

The petitioner challenged the regulation determined by the Enforcement of Penal Sentences Act, while the Constitutional Court adopted an order initiating proceedings for a review of the constitutionality of the Criminal Procedure Act. It established that the legal order allows that a convict for whose benefit a motion for the alternative enforcement of his or her prison sentence was filed when he or she was still at large will begin serving his or her prison sentence in prison even before such motion has been decided on by a final decision. A final judgement containing the imposition of a prison sentence without a decision on the alternative enforcement of such sentence establishes the duty of the convict to serve the imposed sentence in prison. Decision-making on a motion for the alternative enforcement of a prison sentence imposed by a final judgement entails decision-making on the stated duty of the convict. Proceedings regulated by law in which a motion for the alternative enforcement of a prison sentence is decided on must therefore observe the constitutional requirements despite the fact that the Constitution does not guarantee the right to such proceedings. These requirements include, *inter alia,* the right to judicial protection ensured by the first paragraph of Article 23 of the Constitution, which determines that everyone has the right to have any decision regarding his or her rights and duties made without undue delay by an independent, impartial court constituted by law.

The Constitutional Court clarified that the effective enforcement of a prison sentence, which entails the final execution of the aim of criminal prosecution (i.e. the criminal sanctioning of criminal offenders), is an important constitutional value and entails a constitutionally admissible objective for an interference with human rights. By the effective enforcement of imposed prison sentences respect for the principle of the finality of legal decisions determined by Article 158 of the Constitution is ensured, which has an important constitutional status that is additionally guaranteed by the human right to judicial protection. The Constitutional Court nevertheless held that as the statutory regulation does not contain a mechanism excluding the risk that a final decision in favour of a motion for the alternative enforcement of a prison sentence filed for the benefit of a convict who is at large at the time when such motion was filed will be adopted only when the convict is already serving his or her prison sentence in prison, it narrows the convict's right to judicial protection to such an extent that it is not proportionate, in the narrow sense, with the benefits it pursues. In such instance, the effectiveness of the alternative enforcement of a prison sentence is significantly impaired and respect for the finality of legal decisions cannot outweigh the lost benefit. Such applies even more since in proceedings in which a motion for the alternative enforcement of a prison sentence is decided on the finality of legal decisions does not have the weight that it normally has because the proceedings at issue are special proceedings enabling an interference with a final judicial decision.

In the opinion of the Constitutional Court, as the regulation does not contain a mechanism for excluding the risk that due to the passing of time a convict may have even already served his or her prison sentence before the decision on the merits regarding the motion for the alternative enforcement of the prison sentence is adopted, it hollows out the convict's right to judicial protection. What is at issue in this case is not that the interference is disproportionate in the narrow sense, but the fact that the hollowing out of a human right cannot be justified, not even by an objective that could be constitutionally admissible for other interferences. The Constitutional Court therefore held that the mentioned statutory regulation is inconsistent with the right to judicial protection determined by the first paragraph of Article 23 of the Constitution.

The complainant began to serve her prison sentence before the final decision on her motion for the alternative enforcement of the prison sentence was adopted. The Constitutional Court therefore held that for the same reasons that render the challenged statutory regulation inconsistent with the Constitution, the challenged judicial decisions violated the complainant's right to judicial protection. Since the challenged decisions were no longer effective, the Constitutional Court merely established a violation of the human right at issue.

5. 26. The Secondary Sanction of the Seizure of Items Determined by the Minor Offences Act

By Decision No. Up-431/17, dated 5 November 2020, the Constitutional Court decided on a constitutional complaint against a final judgment by which the court seized the complainant's personal vehicle on the basis of the second paragraph in conjunction with the first paragraph of Article 25 of the Minor Offences Act. The vehicle was seized in minor offence proceedings against another person who committed two minor road traffic offences with the mentioned vehicle.

The Constitutional Court began by stressing that the purpose of the secondary sanction of the seizure of items determined by Article 25 of the Minor Offences Act is not to punish offenders but to prevent them from using the item with which they could commit the minor offence again, or to eliminate the risk stemming from the mere existence of the item. The basis for the seizure of items is thus not guilt but the risk of recidivism. It is not intended to be applied in a punitive manner but exclusively in a preventive manner. In this context, the seizure of items is not punitive in nature but has the character of a safety measure.

The Constitutional Court further cited its existing case law, according to which the seizure of items entails an interference with the human right to private property guaranteed by Article 33 of the Constitution. The seizure of items is therefore admissible only if it pursues a constitutionally admissible objective (the third paragraph of Article 15 of the Constitution) and if it is consistent with the general principle of proportionality (which follows from Article 2 of the Constitution), i.e. if it is appropriate, necessary, and proportionate in the narrower sense with respect to the benefits arising due to such seizure.

In the case at issue, the court seized the complainant's vehicle to prevent the offender from repeating the minor road traffic offences and consequently from threatening human health and life. The Constitutional Court agreed with the standpoint of the court that there was a likelihood that the offender, who had already been convicted several times of committing serious minor road traffic offences, could repeat such minor offences. However, it did not agree with the court's assessment that from the established circumstances there follows a likelihood that the offender would repeat such offences with the complainant's vehicle and that the seizure of the complainant's vehicle was the appropriate means to prevent the risk of the offender's recidivism. The Constitutional Court therefore held that the seizure of the vehicle entailed a disproportionate interference with the complainant's right to private property determined by Article 33 of the Constitution. It abrogated the challenged final judgment in the part deciding on the secondary sanction of the seizure of items and remanded the case in this scope to the court of first instance for new adjudication.

5. 27. Validity of Regulations and Their Publication During the COVID-19 Epidemic

In case no. U-I-445/20 (partial Decision and Order dated 3 December 2020, Official Gazette RS, No. 179/20), the Constitutional Court decided on the petition of two minor children attending primary school for children with special needs. They challenged the regulation that, during the COVID-19 epidemic, prohibited gatherings in educational institutions and determined that educational work be temporarily carried out at a distance. The petitioners disputed that, on the basis of the mentioned regulation, educational work was to be carried out at a distance also for children with special needs.

The measures in question were adopted by the challenged Ordinance Temporarily Prohibiting Gatherings of People in Educational Institutions and Universities and Independent Higher Education Institutions. Its validity was limited to seven days following its publication. The Government decided to extend the validity of the measures determined by the relevant Ordinance three times. The Constitutional Court established that by adopting the orders the Government determined in an original manner the extended validity of the measures referred to in the Ordinance. By so doing, it regulated in an abstract manner the legal position of an indefinite number of the legal entities and natural persons to whom such measures applied (educational institutions, and particularly the pupils attending them). This entails that, in terms of content, the mentioned orders of the Government were regulations. The Constitutional Court namely considers any act that contains general and abstract legal norms regulating the rights and obligations of legal entities or any act that contains norms that cause external legal consequences (so-called external effects) to be a regulation.

The Constitutional Court emphasised that, in accordance with the Constitution, regulations must be published before they enter into force. A regulation enters into force on the fifteenth day after its publication, unless otherwise determined in the regulation itself. State regulations are to be published in the official gazette of the state. The Constitutional Court established that the orders of the Government in question were not published in the Official Gazette of the Republic of Slovenia and decided that as a consequence they could not have entered into force. This circumstance also affected the validity of the measures determined by the Ordinance.

Due to the closure of schools, an order of the minister competent for education was also adopted which determined that, in light of the deteriorated epidemiological situation, educational work in primary and music schools was to be temporarily carried out at a distance. The Constitutional Court explained that the legislature left it to the minister competent for education to decide whether educational work was to be carried out at a distance. The challenged order of the minister therefore entailed an original decision of the minister regarding carrying out education at a distance. By so doing, it regulated in an abstract manner the legal position of an indefinite number of the legal entities and natural persons to whom such measures applied. The contested order of the minister was thus by its nature a regulation as well. The Constitutional Court noted that a regulation can enter into force only if it is published in an appropriate manner. Since the challenged order of the minister was not published in an appropriate manner, the Constitutional Court held that it had not entered into force and its application was not allowed.

In view of the fact that the Constitutional Court established that there was no appropriate legal basis for the temporary prohibition of gatherings in educational institutions in which such

measures were deemed to be extended by invalid government orders, such organisations should have been reopened immediately. As the Constitutional Court was aware that the epidemiological situation in the country might not yet permit gatherings in such large numbers and that certain guidelines and organisational adaptations might be necessary for these organisations to reopen, it determined the manner of implementation of its decision. It decided that the adopted decision would apply only after the expiry of a three-day period following its publication in the Official Gazette of the Republic of Slovenia. By so doing, it allowed sufficient time for the authorities competent to decide on the closure of educational institutions and competent to order that education be carried out at a distance to once again assess whether such measures are scientifically justified and on the basis of such assessment respond in an appropriate manner and order whatever might be necessary for educational work to resume in the relevant institutions.

5. 28. The Financial (Budgetary) Independence of the National Council, the Constitutional Court, the Court of Audit, and the Human Rights Ombudsman

In Case No. U-I-474/18 (Decision dated 10 December 2020, Official Gazette RS, No. 195/20), upon the request of the National Council, the Constitutional Court reviewed the provisions of the Public Finance Act that regulate (1) the inclusion of the proposed financial plans of direct budget users in the draft of the state budget; (2) measures to balance the budget during a fiscal year; (3) the inspection supervision carried out by the Ministry of Finance over the implementation of the Public Finance Act and other public finance regulations by non-governmental users; and (4) the competence of the Minister of Finance to issue detailed instructions regarding the end of the fiscal year for the central and local government budgets no later than by 30 September of the current year. It reviewed the challenged provisions insofar as they refer to the National Council, the Constitutional Court, the Court of Audit, and the Human Rights Ombudsman.

It established that these are constitutionally determined authorities that are ensured by the Constitution an autonomous and independent position, an element of which is financial (i.e. budgetary) independence. This independence is (*inter alia*) ensured by these authorities proposing to the National Assembly by themselves the determination of an appropriate amount of funds in the state budget for their effective and undisturbed operation, such that they independently decide on the expenditure of the allocated funds, and such that the expenditure of these funds is supervised by another – equally autonomous and independent – authority such as the Court of Audit, which is independent of state power. According to the Constitutional Court, it does not follow from the Constitution that influence by the executive power on the financial independence of autonomous and independent constitutional authorities is admissible, which entails that the amount of funds for the operation of these authorities must not depend on the Government but only on the National Assembly, which is the general representative body. In order for these independent constitutional authorities to be able to exercise their constitutional role, in the procedure for drafting the state budget adopted by the National Assembly they must have a position that is constitutionally equivalent to that of the Government.

The Constitutional Court concluded that Article 20 of the Public Finance Act, which enables the Government to request that necessary alignments of proposed financial plans submitted by independent constitutional authorities be carried out and requires these authorities to align their proposals with those of the Government, causes them to yield to the will of the line

ministry, which is part of the executive power. Since this Article interferes with the right of independent constitutional authorities to formulate a proposal regarding the funds necessary for their operation independently of the Government, it establishes their financial dependence on the executive power. In the assessment of the Constitutional Court, this finding cannot be changed by the fact that while the Government, by itself, formally proposes a different financial plan for independent constitutional authorities, it includes the proposal submitted by these constitutional authorities in the reasoning of its own draft state budget. In this respect, the Constitutional Court stressed that the financial independence of autonomous and independent constitutional authorities does not entail that in the procedure for including proposed financial plans in the draft state budget the Government or the competent ministry thereof should not be allowed to warn the independent constitutional authorities of possible departures from the fundamental economic starting points for drafting a budget in their financial plans. Namely, in order for the state power as a whole to be able to operate, it is necessary for the authorities in different branches of power to cooperate, just as it is also necessary for the Government and the other independent constitutional authorities to cooperate. However, the Government must not require independent constitutional authorities to submit to its policies and interests when drafting the budget. Therefore, the Constitutional Court decided that Article 20 of the Public Finance Act, insofar as it refers to the National Council and the Constitutional Court, is inconsistent with the second sentence of the second paragraph of Article 3 of the Constitution, that insofar as it refers to the Human Rights Ombudsman, it is inconsistent with the first sentence of Article 159 of the Constitution, and that insofar as it refers to the Court of Audit, it is inconsistent with the third paragraph of Article 150 of the Constitution.

As regards the measures to balance the budget during a budget year (Article 40 of the Public Finance Act), the Constitutional Court established that the provisions intended for the adoption of urgent temporary measures by the executive power in the event of significant imbalances in the budget caused by unforeseen events merely provide for temporary measures with a strictly determined time of validity that apply equally to all direct budget users, with regard to which the measures are to be determined in cooperation therewith, i.e. also in cooperation with the constitutional authorities that are independent of the Government. Therefore, such regulation does not reduce the financial independence of the autonomous and independent constitutional authorities, which are also independent of the Government. Conversely, the provision that allows the Government to also determine that under conditions involving the temporary suspension of individual expenditures direct budget users must obtain the prior consent of the Ministry of Finance to enter into any contract – i.e. independent constitutional authorities as well – prevents the National Council, the Constitutional Court, the Human Rights Ombudsman, and the Court of Audit from determining by themselves the use of funds for their operations provided from the state budget. This authorisation allows the executive power to intensively and inadmissibly interfere with the work of the autonomous and independent constitutional authorities; therefore, insofar as the authorisation refers thereto, it is inconsistent with the constitutionally guaranteed financial independence of these authorities.

In the assessment of the Constitutional Court, observance of the financial independence of the National Council, the Constitutional Court, the Human Rights Ombudsman, and the Court of Audit can only be ensured by a regulation determining supervision over the expenditure of budgetary funds that is performed by an autonomous and independent state authority, or, insofar as the Court of Audit is concerned, by an institution independent of state power. The statutory regulation that authorises public officials of the Ministry of Finance to carry out that task does not meet that requirement and is thus unconstitutional.

The Constitutional Court also established that neither the statutory provision that authorises the Minister of Finance to adopt rules annually regarding the end of the implementation of the state and local government budgets for an individual fiscal year, nor any other provision of the Public Finance Act includes any framework or guideline for the issuance of more detailed implementing regulations by the Minister of Finance. Therefore, the Constitutional Court decided that the first paragraph of Article 95 of the Public Finance Act, to the extent to which it was subject to constitutional review, is inconsistent with the second paragraph of Article 120 of the Constitution.

5. 29. Legal Remedies in Judicial Protection Proceedings in Expedited Minor Offence Proceedings

In case No. Up-991/17, U-I-304/20 (Decision dated 17 December 2020, Official Gazette RS, No. 5/21), the Constitutional Court considered the constitutional complaint of a complainant who alleged that a local court violated the right determined by Article 22 of the Constitution when deciding on her request for judicial protection. In the procedure for deciding on the constitutional complaint, the Constitutional Court also initiated proceedings for a review of the constitutionality of the second paragraph of Article 66 of the Minor Offence Act. In the majority of expedited minor offence proceedings, the mentioned Act does not enable the applicant of a request for judicial protection to request, within the court system, that violations committed by the court of first instance be remedied. The Constitutional Court had reservations as to whether such statutory regulation is consistent with the human rights determined by Articles 22, 23, and 25 of the Constitution.

Initially, the Constitutional Court emphasised that access to the Constitutional Court in minor offence cases became very limited with the entry into force of the Act Amending the Constitutional Court Act (the CCA-A). The Constitutional Court accepts a constitutional complaint for consideration if it concerns a violation of human rights or fundamental freedoms that had serious consequences for the complainant, or if the constitutional complaint concerns an important constitutional question that exceeds the importance of the concrete case. In accordance with the regulation in force, with regard to minor offences it is deemed that there has been no violation of human rights or fundamental freedoms which had serious consequences for the complainant, therefore a constitutional complaint is as a general rule not admissible. The Constitutional Court considers such constitutional complaints only in especially well-founded cases, i.e. when a decision concerns an important constitutional question that exceeds the importance of the concrete case. Despite that, the Constitutional Court still faces cases in which a violation of human rights and fundamental freedoms occurs due to a decision of a court on a request for judicial protection.

The Constitutional Court therefore reconsidered its position from Decision No. U-I-56/06, dated 15 March 2007, according to which the absence of a legal remedy against a decision of a court dismissing a request for judicial protection does not entail an interference with the right to a legal remedy determined by Article 25 of the Constitution. The purpose of legal remedies is namely not only to eliminate a violation of substantive and procedural statutory provisions, but also to eliminate violations of constitutional rights already within the framework of the regular judiciary.

By this Decision, the Constitutional Court decided to depart from its previous position. Thereby it took into account the nature of minor offence law as part of punitive law. As is the case regarding criminal offences, decision-making on minor offences is based on a "charge", which can substantially interfere with the position of an individual and his or her rights. In most cases the applicant of a request for judicial protection does not have at his or her disposal a single ordinary or extraordinary legal remedy against a decision of the local court. It is, however, not excluded that precisely this court in the framework of single-stage judicial protection applies procedural or substantive law incorrectly. The violation can even amount to a violation of human rights and fundamental freedoms, and applicants cannot invoke these violations within the regular judiciary. Although the applicant of a request for judicial protection can lodge a constitutional complaint against the decision of a local court, a constitutional complaint is, by its nature, not a substitute for legal remedies before the regular courts as it is based on the principle of subsidiarity. In accordance with the principle of a state governed by the rule of law, a review of violations and the elimination thereof are primarily left to the regular courts.

By taking the above into account, the Constitutional Court decided that a statutory regulation that does not allow an appeal in expedited minor offence proceedings, and thereby limits the court's decision-making primarily to single-stage proceedings, entails an interference with the right to a legal remedy determined by Article 25 of the Constitution. With regard to the admissibility of the interference, the Constitutional Court established that the challenged regulation pursues the constitutionally admissible aim of ensuring effective proceedings and thereby respecting the right to a trial without undue delay as an important aspect of the right to judicial protection. Without assessing the appropriateness and necessity of the regulation, it, however, established that such is not proportionate in the narrower sense as the criteria that the legislature determined for an appeal against a decision on a request for judicial protection to be admissible do not in all cases adequately reflect the gravity of the interference of a state authority with the sphere of the perpetrator of the offence. The Constitutional Court added that the mere fear of the possible unjustified exercise of rights cannot justify an interference with the right determined by Article 25 of the Constitution. The Constitutional Court therefore decided that the reviewed statutory regulation is unconstitutional and required the legislature to remedy the unconstitutionality within one year of the publication of the Decision.

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.

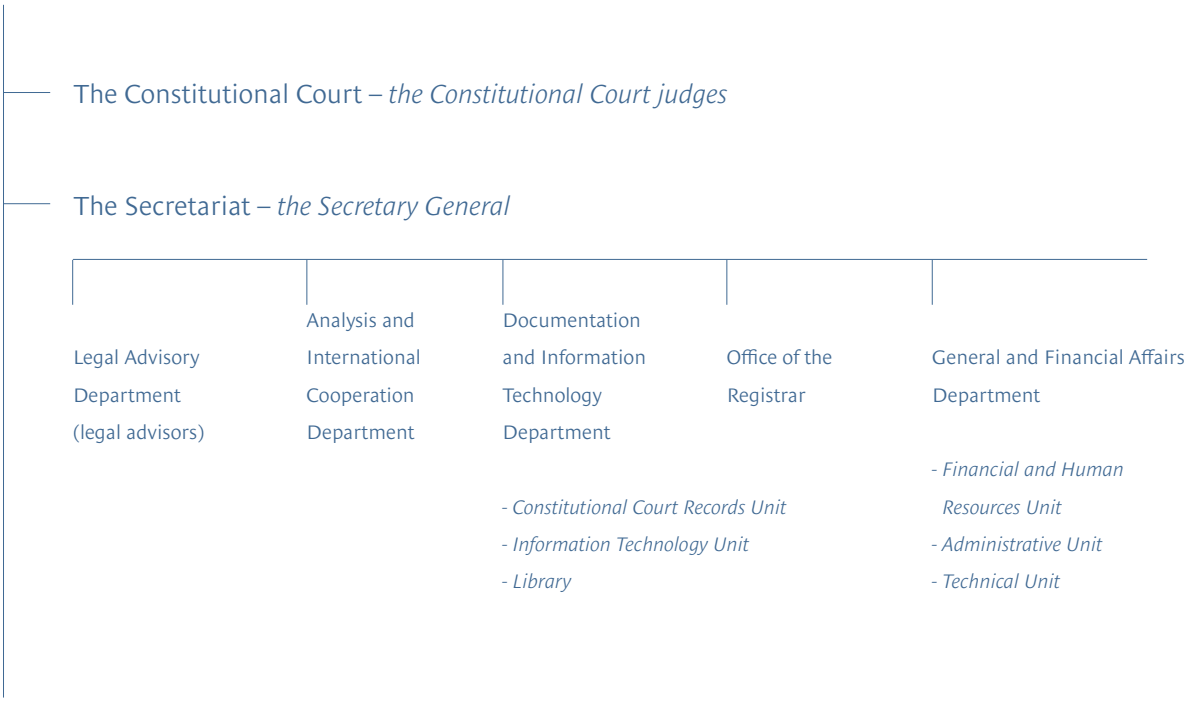
6.2. The Secretariat

The Secretariat of the Constitutional Court performs legal advisory work and provides administrative and technical assistance to Constitutional Court judges. It is composed of five organisational units: the Legal Advisory Department, the Analysis and International Cooperation Department, the Documentation and Information Technology Department, the Office of the Registrar, and the General and Financial Affairs Department. The Secretary General, who is appointed by the Constitutional Court, directs the functioning of all services of the Secretariat. The Deputy Secretary General and Assistant Secretary Generals assist him or her in the performance of management and organisational tasks. The work of the advisors in the Legal Advisory Department is of particular importance in exercising the competences of the Constitutional Court, as is the work of the advisors in the Analysis and International Cooperation Department.

As of the end of 2020, in addition to nine Constitutional Court judges and the Secretary General, 77 court personnel were employed at the Constitutional Court, 74 of whom were

employed for an indefinite period of time and three for a fixed term. Currently, the rights and obligations arising from the employment relationship of one member of the court personnel are suspended. Among those employed for an indefinite period of time, 34 were advisors in the Legal Advisory Department of the Constitutional Court, and five were advisors in the Analysis and International Cooperation Department. In 2020, the Constitutional Court employed three new advisors due to resignations, two of them in the Legal Advisory Department and one in the Analysis and International Cooperation Department.

6. 3. The Internal Organisation of the Constitutional Court



6.4. Judicial Personnel

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

SEZNAM SVETOVALCEV

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

DEPARTMENT HEADS

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

7. International Activities of the Constitutional Court

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

In 2020, the international activities of the Constitutional Court were strongly affected by the COVID-19 pandemic. In spite of this, the Constitutional Court endeavoured to maintain and deepen its existing relationships with other constitutional courts, international courts, and other institutions ensuring the protection of human rights and fundamental freedoms.

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 the inauguration of the President of the Constitutional Court of Austria in Vienna in February. The President and Vice President of the Constitutional Court also attended an international event devoted to the dialogue between judges and academics, which was held at the Faculty of Law of the University of Ljubljana in March. In December, the President of the Constitutional Court also presented a paper at an online regional conference of constitutional courts on the role of separate opinions in the case law of constitutional courts, which was organised by the Constitutional Court of Bosnia and Herzegovina and the German Foundation for International Legal Cooperation.

In February, Dr Marko Bošnjak, judge at the European Court of Human Rights, paid a working visit to the Constitutional Court upon the invitation of the President. At the working meeting, he initially engaged in discussions with the judges of the Constitutional Court, and continued by holding a lecture for the advisors of the Constitutional Court on the recent case law of the European Court of Human Rights.

In 2020, numerous events to which judges of the Constitutional Court were also invited were unfortunately not held due to the COVID-19 pandemic. The Conference of European Constitutional Courts and the Circle Presidents were postponed until February 2021. The international conference addressing the question of how diversity unites us in the EU (*EUnited in Diversity: Between Common Constitutional Traditions*), organised by the Court of Justice of the European Union and the Constitutional Court of Latvia, was postponed until September

2021. Furthermore, the visit of the judges of the Constitutional Court to both the CJEU and the ECtHR, which was scheduled for November 2020, was postponed until such a time when the pandemic is over. Due to the cancellation of the event, the planned participation of the President of the Constitutional Court in a meeting of the Avosetta Group, which operates in the field of environmental law, did not transpire.

Otherwise, judges of the Constitutional Court also participated in a number of international events that addressed the issue of dealing with the measures adopted to contain the coronavirus disease while also ensuring respect for human rights and fundamental freedoms. In such framework, the President of the Constitutional Court attended a meeting of the Presidents of the Constitutional Courts of Bosnia and Herzegovina, Montenegro, the Republic of Croatia, the Republic of North Macedonia, and the Republic of Slovenia, which was organised by the AIRE Centre (*Advice on Individual Rights in Europe*) in May and June 2020. In October, the President of the Constitutional Court also participated in the Seventh Regional Rule of Law Forum for South-East Europe. The forum addressed COVID-19 and the rights protected by the ECHR.

The Constitutional Court also devotes a great deal of attention to encouraging the training of its employees. As the Constitutional Court is ingrained in the European environment, it is necessary for its personnel to receive continuous training in order to be able to provide high-quality professional assistance to the Constitutional Court judges in the performance of their office. In such framework, a group of advisors of the Constitutional Court attended a seminar organised by the Academy of European Law (ERA) on the topic of freedom of expression in the latest case law of the European Court of Human Rights, which was held in Strasbourg, France. Last year, advisors of the Constitutional Court also attended numerous webinars and online courses, for instance an online conference on artificial intelligence and the criminal justice system and an online conference on the latest case law of the European Court of Human Rights and the Court of Justice of the European Union in the field of privacy and the protection of personal data, which were organised by the ERA.

8. The Constitutional Court in Numbers

The statistical data must be interpreted in light of the fact that in 2020, as well as already in 2018 and 2019, the Constitutional Court received multiple sets of cases concerning exactly the same issue, with each set consisting of a large number of cases. Thus, in 2020 a total of 570 so-called mass cases were received (i.e. 237 petitions for a review of constitutionality and 333 constitutional complaints), which is almost one third of all cases received (29%). In the overview of the work for 2020, mass cases are excluded from all figures and comparisons, unless otherwise stated. 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 time and effort in them (of a procedural nature in particular).

8. 1. Cases Received

In 2020, the trend of an increasing number of cases received reversed, as the Constitutional Court received fewer cases than in 2019. In 2020, the Constitutional Court received 1,319 cases, which is 17.5% fewer than in 2019, when it received 1,599 cases. These data do not include mass cases.

The decrease in the total number of cases received was a consequence of receiving a lower number of constitutional complaints (the Up register), while the number of applications for a review of the constitutionality or legality of regulations (the U-I register) increased. In 2020, the Constitutional Court received 255 requests and petitions for a review of the constitutionality or legality of regulations, which represents a 54.5% increase compared to 2019, when it received 165. In 2020, the Constitutional Court received 1,058 constitutional complaints, which represents a 26% decrease compared to 2019, when it received 1,429 constitutional complaints.

As regards applications for a review of the constitutionality or legality of regulations, the Constitutional Court has recorded a downward trend in the number of such cases at least since 2013, the only exceptions being 2018 and in particular 2020, when the number of such cases significantly increased. Among these, the Constitutional Court received 43 requests for a review of constitutionality, which in accordance with the Constitution and law can be filed by privileged applicants. This entails a 48.3% increase compared to 2019 (when it received 29 requests). Among privileged applicants, relatively significant activity by the regular courts was observed.

Within the distribution of all cases received in 2020, there was as usual a strong preponderance of constitutional complaints, which represented 80.2% of all cases received. In some instances,

constitutional complaints were filed together with petitions for a review of the constitutionality or legality of a regulation on which judicial decisions are based; in 2020, there were 80 such cases (and even more among the mass cases). These are so-called joined cases, on which the Constitutional Court decides by a single decision.

In 2020, the number of constitutional complaints received by the individual panels of the Constitutional Court differed to some extent. As in previous years, the Civil Law Panel received the most cases, although in 2020 it received almost 24% fewer cases than the year before. The number of constitutional complaints received by the Administrative Law Panel also decreased, namely by 6.1%; however, this panel also received 172 mass cases, which nevertheless 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 decreased by almost a half (i.e. by 48.5%), but that panel also received 161 mass cases in 2020. In absolute figures, the Civil Law Panel received the highest number of cases in 2020 (500 cases), which amounts to almost half (47.3%) of all constitutional complaints received. Then followed the Administrative Law Panel with 355 cases, and the Criminal Law Panel, which received the fewest new cases, i.e. 203. In this context, it has to be taken into consideration that both the Administrative Law Panel and the Criminal Law Panel received a significant number of mass cases.

In terms of their content, the majority of the constitutional complaints received in 2020 originated in disputes connected to civil law litigation (26.5%). They were followed by constitutional complaints from the criminal law field; compared to 2019, the number thereof indeed decreased by 13.5% and accounted for 14% of all constitutional complaints received in 2020. Then followed administrative disputes (12.9%), labour disputes (10.4%), commercial disputes (6.4%), execution proceedings (5.6%), and minor offences (5.1%). The total share of other disputes was less than 5%.

As regards proceedings for a review of the constitutionality or legality of regulations (U-I cases), the number of cases received in 2020 was significantly higher than in 2019. The increase was as high as 54.5%. Of the 255 cases received, 43 (16.8%) were initiated on the basis of requests submitted by privileged applicants (Articles 23 and 23a of the Constitutional Court Act); the remainder were petitions filed by individuals. In this context, the activity of the regular courts must be highlighted, as they filed 23 requests for a review of the constitutionality of laws, which amounts to more than half of all requests filed.

Of the 255 petitions and requests for a review of the constitutionality or legality of regulations, in 80 cases (31.4% of all petitions) the petitioners concurrently filed a constitutional complaint. Hence, it is apparent that petitioners are taking into consideration the established case law of the Constitutional Court, according to which, as a general rule, they 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 filing a constitutional complaint against the individual act.

As regards the type of regulation challenged, it can be concluded that, as usual, also in 2020 most often laws were challenged, as applicants challenged laws in 175 instances; laws were followed by acts of the Government (50 governmental regulations were challenged) and regulations of local communities (27 municipal regulations were challenged), while acts of the

Ministries were challenged 12 times and regulations of other authorities 10 times. In particular as regards laws, but also executive regulations, it must be taken into consideration that numerous regulations were challenged multiple times. With regard to laws, it can be seen that most often provisions of the laws to which the mass cases refer were challenged (these cases are not considered in the statistical data). The most frequently challenged provisions of other laws include provisions of two laws on intervention measures for containing the COVID-19 epidemic (89 times), the Civil Procedure Act (14 times), the Attorneys Act (12 times), the Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act (12 times), and the Infectious Diseases Act (12 times).

In view of the statistical data, it should be underlined that the burden on the Constitutional Court cannot be measured merely 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 2020, the Constitutional Court resolved quite a few more cases than in 2019 (1,442 cases compared to 1,143 cases, i.e. more than a 26% increase). Nevertheless, 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. This report is therefore only one in a series of calls for appropriate normative (statutory or even constitutional) amendments that the Constitutional Court has addressed to the legislature and the constitution-framers, as regards both narrowing the powers of the Constitutional Court and the various procedural questions that concern access to the Constitutional Court in the framework of its different powers.

The distribution of cases resolved was similar to the distribution of cases received. In 2020, the Constitutional Court resolved 226 cases relating to the constitutionality and legality of regulations (U-I cases), amounting to a 15.7% share of all cases resolved. In comparison to 2019, when it resolved 129 petitions and requests for a review of the constitutionality of regulations, this represents a 75.2% increase (with mass cases excluded). In 2020, as has been the case every year thus far, constitutional complaints represented the majority of cases resolved. The Constitutional Court resolved 1,213 such cases, amounting to an 84.1% share of all cases resolved (excluding mass cases). Such a number of resolved constitutional complaints represents a 20.3% increase in comparison to 2019, when the Constitutional Court resolved 1,008 constitutional complaints.

From the perspective of the individual panels of the Constitutional Court, in 2020 the highest number of constitutional complaints was resolved by the Civil Law Panel, i.e. 563; the Administrative Law Panel resolved 388 constitutional complaints, and the Criminal Law Panel 262. Compared to the previous year, in 2020 the number of constitutional complaints resolved by the Civil Law Panel increased by 25.7% and those resolved by the Administrative law Panel by 31.5%, while the number of cases resolved by the Criminal Law Panel slightly decreased, namely by 1.1%.

In addition to proceedings for a review of the constitutionality or legality of regulations and constitutional complaints, the Constitutional Court also resolved three jurisdictional disputes (P cases) in 2020.

In terms of content, the greatest number of constitutional complaints resolved referred to civil law litigation (24.1%), followed by criminal cases (14.3%), labour disputes (10.6%), administrative disputes (9.2%), commercial disputes (8.5%), minor offences (7.2%), and enforcement proceedings (5.9%).

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 1,442 cases resolved in 2020 (excluding mass cases), the Constitutional Court adopted 58 decisions; the other cases were resolved by orders. If substantive decisions according to the individual registers are considered, it can be observed that in 226 proceedings for a review of the constitutionality or legality of regulations (U-I cases), the Constitutional Court adopted 33 decisions (14.6%), and in constitutional complaint proceedings it resolved 23 out of 1,213 cases by a decision (1.9% of Up cases). Statistically speaking, in 2020 the Constitutional Court adopted more decisions in proceedings for a review of the constitutionality or legality of regulations than in the previous year (33 compared to 24), while in constitutional complaint proceedings it adopted fewer decisions than in 2019 (23 compared to 55), of which one was adopted by a panel. The total number of decisions – the Constitutional Court also adopted two decisions regarding jurisdictional disputes (P cases) – was also lower than in 2019 (58 compared to 83). The most important decisions are briefly presented in the present report. Constitutional Court judges submitted 72 separate opinions, of which 37 were dissenting, 29 were concurring, three were partially concurring and partially dissenting, while three were partially dissenting.

In 2020, the success rate of complainants, petitioners, and applicants, taken as a whole, was, statistically speaking, lower than in 2019. This was due to the lower success rate in constitutional complaint cases, as well as the lower success rate in cases for a review of the constitutionality or legality of regulations. Of the 226 resolved petitions and requests for a review of the constitutionality or legality of regulations, in 13 cases the Constitutional Court established that the law was unconstitutional (5.8% of all U-I cases), of which it abrogated the relevant statutory provisions in three cases, whereas in ten cases it adopted a declaratory decision in which it established an unconstitutionality and imposed on the legislature a time limit by which the unconstitutionality must be remedied. With regard to the challenged implementing regulations, the Constitutional Court abrogated six of them. The combined success rate in U-I cases was thus 8.4%. In comparison, the success rate amounted to 11.6% in 2019. The success rate of constitutional complaints was quite significantly lower than the year before. Out of all constitutional complaints resolved in 2020 (1,213 excluding mass cases), the Constitutional Court granted 18 of them (i.e. 1.5%), and by a decision dismissed five constitutional complaints as unfounded. In comparison, the success rate amounted to 4.4% in 2019. The success rate with regard to constitutional complaints (and other applications) must, of course, always be interpreted carefully, as the figures do not reflect the true importance of these cases. These cases refer to matters that provide answers to important constitutional questions; therefore, their significance for the development of (constitutional) law far exceeds their statistically expressed quantity. In particular, it is not possible to explain the lower success rate in 2020 in comparison to previous years by the Constitutional Court possibly being more stringent when deciding whether to accept a constitutional complaint for consideration. It is likely that this rate was more affected by the structure of the constitutional complaints resolved (e.g. fewer decisions concerning the same issue, fewer decisions adopted by panels) or possibly by the nature of the constitutional allegations in the constitutional complaints.

With regard to successful constitutional complaints, it can be concluded that the Constitutional Court most often (10 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. In addition, in four cases the Constitutional Court established a violation of Article 23 of the Constitution and in two cases a violation of the second paragraph of Article 28 of the Constitution. The second paragraph of Article 14, Article 33, and the second indent of Article 29 of the Constitution were violated once each.

The average period of time it took to resolve a case in 2020 was significantly longer than in 2019 because greater emphasis was placed on resolving "old" cases. On average, the Constitutional Court resolved a case in 563 days (as compared to 428 days in the previous year). This annual report presents the duration of proceedings without taking into account the mass cases, otherwise the average time it took to resolve a case would be shorter. The average duration of proceedings for a review of the constitutionality or legality of regulations was 530 days, which is considerably longer than in the previous three years. Constitutional complaints were resolved by the Constitutional Court on average in 571 days, which is also significantly longer than in 2019 (420 days). Attention must be drawn to the fact that one needs to be careful when interpreting these data, because average data do not reflect the entire picture and can be misleading. In fact, until a case is decided on it is not included in the statistical data. This means that if the Constitutional Court decides mostly on newer cases, the average time needed to decide on a case is shorter. The time needed for deciding on a case in and of itself does not reflect how relevant the decision is, because older cases represent a greater issue for the Court and, as a general rule, are more demanding. In other words, the older the cases resolved by the Constitutional Court are, the longer is the average time for resolving a case in the statistical data. Simpler cases are, as a general rule, resolved faster by the Constitutional Court, whereas the resolution of more complex cases often takes much longer than the average amount of time it takes to resolve a case. Due to the significant burden on Constitutional Court judges and advisors, it can take up to a few years to resolve individual cases. However, the average time it takes to resolve a case must be distinguished from the time period in which the Constitutional Court is obliged to ensure the right to a decision within a reasonable time. The maximum duration of proceedings from the perspective of the right to a trial within a reasonable time must naturally be adapted to more complex cases. For the majority of cases at the Constitutional Court, this time period is at least two years. Consequently, only cases older than two years can be classified as backlog cases.

8. 3. Unresolved Cases

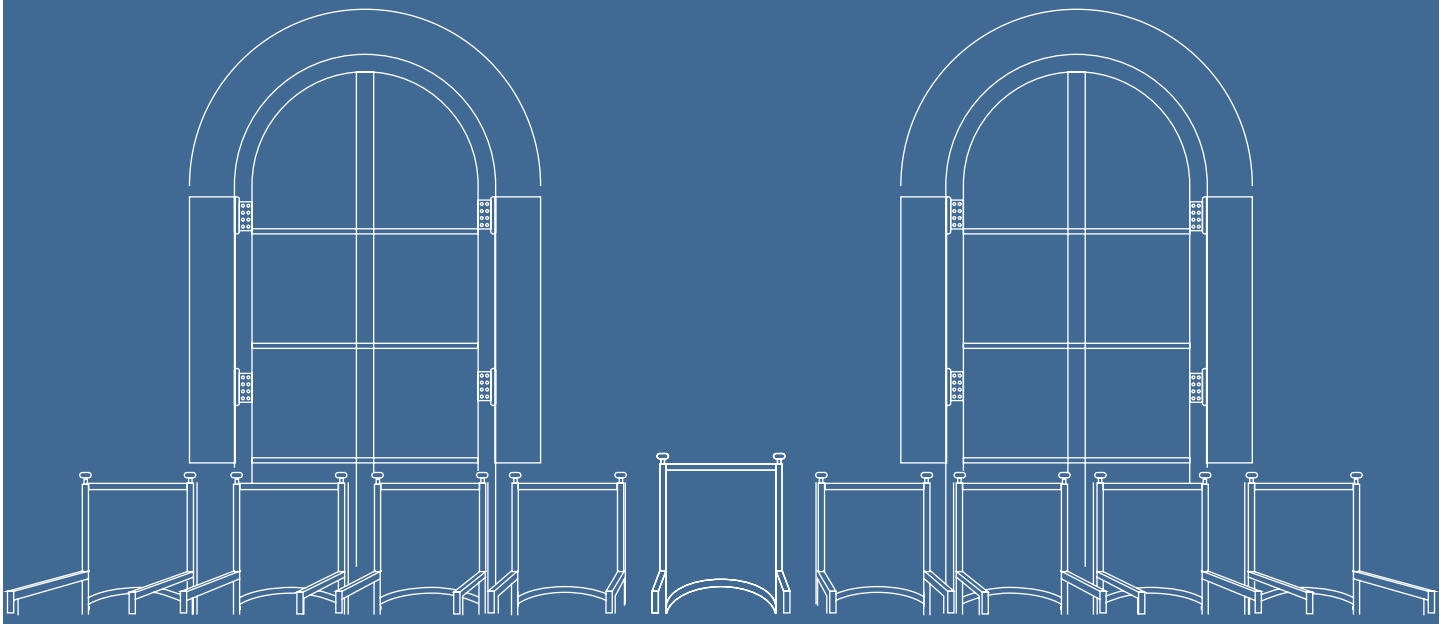
As of the end of 2020, the Constitutional Court had a total of 2,100 unresolved cases remaining (mass cases excluded), of which 17 were from 2016, 109 from 2017, 348 from 2018, and 698 from 2019. The remaining unresolved cases (928) were received in 2020. Among the unresolved cases, 560 cases were priority cases and 98 were absolute priority cases. Such a designation is assigned particularly to cases that due to their nature also the regular courts must consider expeditiously. However, 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 seven cases the Constitutional

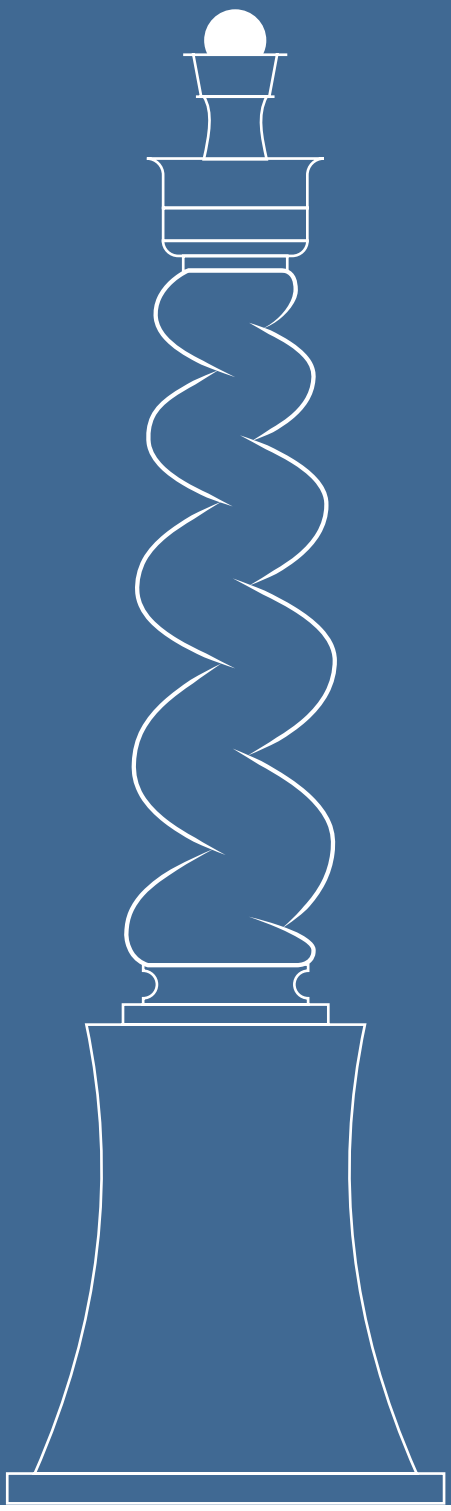
Court suspended the implementation of the challenged individual acts until the adoption of its final decision. Among the cases involving a review of the constitutionality or legality of regulations that remained unresolved as of the end of the year, the suspension of the implementation of the challenged regulation was ordered in nine cases.

The number of unresolved cases decreased significantly in 2020 compared to 2019. At the end of 2017 the Constitutional Court had 1,609 unresolved cases, at the end of 2018 the number thereof amounted to 1,952, at the end of 2019 as many as 2,408 cases remained unresolved, and at the end of 2020 the number thereof amounted to 2,100. This entails that in 2020 the number of unresolved cases decreased for the first time since 2013, namely by 12.8%.

Understandably, the information regarding the unresolved cases and the backlog of cases does not reflect the complexity of the cases considered by the Constitutional Court and the burden they entail. The data regarding the unresolved cases also do not entail that the Constitutional Court has not yet considered these cases at all; it has considered a significant number of them but had not yet adopted 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 its advisory personnel are significantly burdened. At the same time, there is no mechanism available that would allow the Constitutional Court 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 perform 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 an increase in its financial (budgetary) means and that an appropriate solution to the lack of space in the Constitutional Court building be found.





9. Summary of Statistical Data for 2020

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

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

The Constitutional Court examines constitutional complaints in the following panels:

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

Introductory note:

Substantively equal cases of the same type are not included in the tables and figures; such cases are hereinafter referred to as mass cases. In 2020 there were a total of 570 such mass cases received (i.e. 237 petitions for a review of constitutionality and 333 constitutional complaints), which is almost one third of all cases received (29%).

Table **1** Summary Data on All Cases in 2020 (Including Mass Cases and R-I Cases)

REGISTER	CASES PENDING AS OF 31 DECEMBER 2019*	CASES RECEIVED IN 2020	CASES RESOLVED IN 2020	CASES PENDING AS OF 31 DECEMBER 2020
Up	2151	1391	1445	2097
U-I	411	492	517	386
P	1	5	3	3
U-II		1		1
R-I	10	34	36	8
Rm				
Mp				
Ps				
Op				
Total	**2573**	**1923**	**2001**	**2495**

* Due to subsequent erroneous entries, the number of cases pending as of 31 December 2019 does not completely match the data provided in the overview for 2019.

Table **1a** Summary Data on All Cases in 2020 (Excluding Mass Cases and R-I Cases)

REGISTER	CASES PENDING AS OF 31 DECEMBER 2019*	CASES RECEIVED IN 2020	CASES RESOLVED IN 2020	CASES PENDING AS OF 31 DECEMBER 2020
Up	1889	1058	1213	1734
U-I	333	255	226	362
P	1	5	3	3
U-II		1		1
Rm				
Mp				
Ps				
Op				
Total	**2223**	**1319**	**1442**	**2100**

* Due to the subsequent classification of certain cases as mass cases, the number of cases pending as of 31 December 2019 does not completely match the data provided in the overview for 2019 (i.e. certain mass cases were not classified as such in 2019).

Table **2** Summary Data regarding R-I Cases in 2020

REGISTER	CASES RECEIVED IN 2020	CASES RESOLVED IN 2020
R-I	34	36

Table **2a** Summary Data on Mass Cases in 2020

REGISTER	CASES RECEIVED IN 2020	CASES RESOLVED IN 2020
U-I	237	291
Up	333	232

Table **3** Summary Data regarding Up Cases by Panel in 2020 (Including Mass Cases)

PANEL	CASES PENDING AS OF 31 DECEMBER 2019	CASES RECEIVED IN 2020	CASES RESOLVED IN 2020	CASES PENDING AS OF 31 DECEMBER 2020
Civil Law	810	500	563	747
Administrative Law	684	527	619	592
Criminal Law	657	364	263	758
Total	**2151**	**1391**	**1445**	**2097**

Table **3a** Summary Data regarding Up Cases by Panel in 2020 (Excluding Mass Cases)

PANEL	CASES PENDING AS OF 31 DECEMBER 2019*	CASES RECEIVED IN 2020	CASES RESOLVED IN 2020	CASES PENDING AS OF 31 DECEMBER 2020
Civil Law	810	500	563	747
Administrative Law	605	355	388	572
Criminal Law	474	203	262	415
Total	**1889**	**1058**	**1213**	**1734**

* Due to the subsequent classification of certain cases as mass cases, the number of cases pending as of 31 December 2019 does not completely match the data provided in the overview for 2019 (i.e. certain mass cases were not classified as such in 2019).

Table **4** Pending Cases according to Year Received as of 31 December 2020

YEAR	2016	2017	2018	2019	2020	SKUPAJ
U-I	8	29	64	101	160	362
Up	9	80	284	596	765	1734
P				1	2	3
U-II					1	1
Total	**17**	**109**	**348**	**698**	**928**	**2100**

9.1. Cases Received

Figure **1** Distribution of Cases Received in 2020

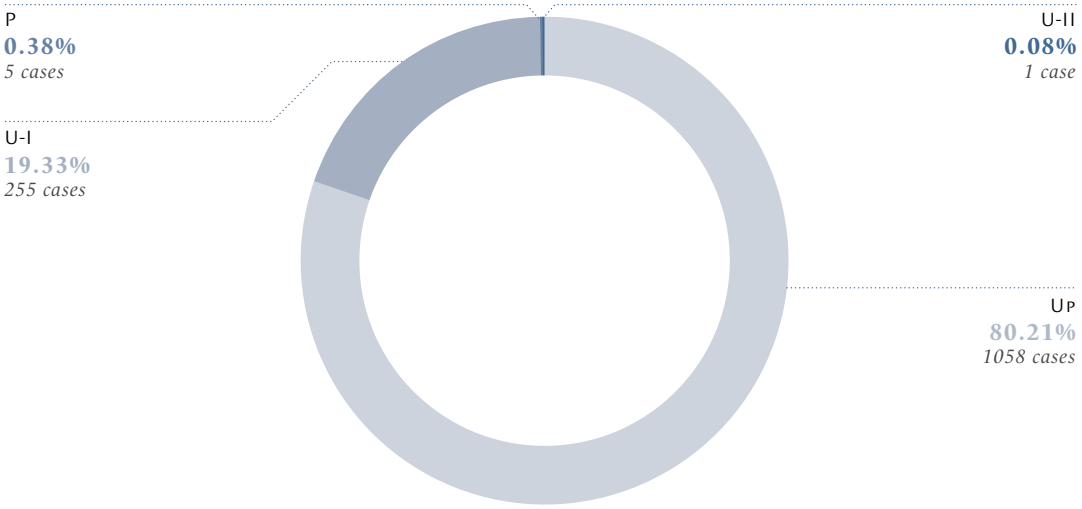


Table **5** Cases Received according to Type and Year

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
2019	165	1429	4			1		1599
2020	**255**	**1058**	**5**	1				**1319**
2020/2019	**54.5%**	**-26.0%**	**25.0%**					**-17.5%**

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

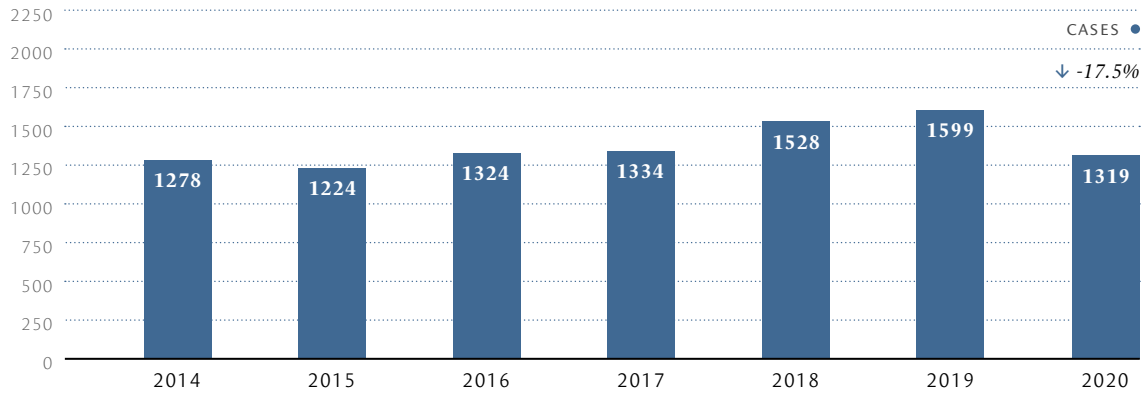


Figure **3** Number of U-I Cases Received by Year

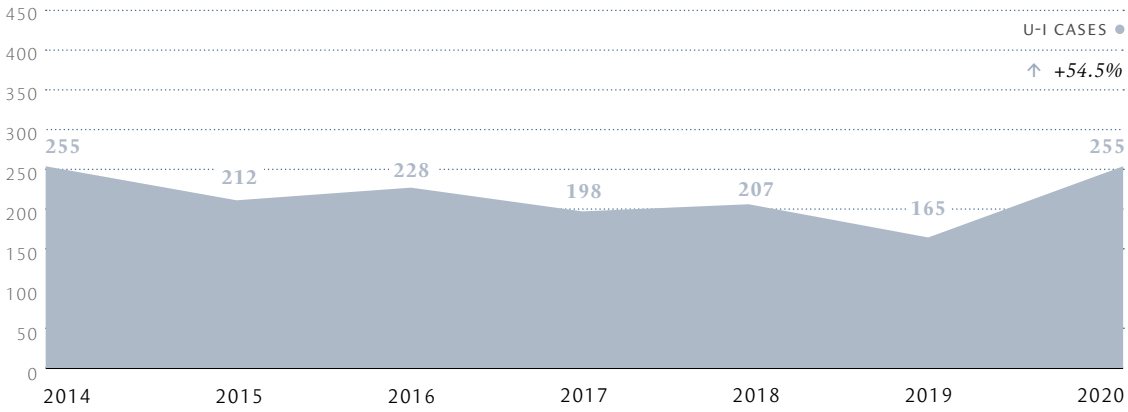


Table **6** Number of Requests for a Review Received according to Applicant

APPLICANTS REQUESTING A REVIEW	NUMBER OF CASES
Vrhovno sodišče Republike Slovenije (Supreme Court of the Republic of Slovenia)	8
Okrajno sodišče v Mariboru (Local Court in Maribor)	6
Višje sodišče v Ljubljani (Higher Court in Ljubljana)	4
Delovno in socialno sodišče v Ljubljani (Labour and Social Court in Ljubljana)	3
Državni svet Republike Slovenije (National Council of the Republic of Slovenia)	3
Banka Slovenije (Bank of Slovenia)	2
Skupina poslank in poslancev Državnega zbora (Deputy Groups of the National Assembly of the Republic of Slovenia)	2
Natural Persons (Article 21a of the RPIA)	2
Upravno sodišče Republike Slovenije (Administrative Court of the Republic of Slovenia)	2
Društvo državnih tožilcev Slovenije (The Slovene Association of State Prosecutors)	1
Konfederacija sindikatov Slovenije Pergam in drugi (Pergam Confederation of Trade Unions of Slovenia and Others)	1
Mestna občina Koper – Mestni svet (Urban Municipality of Koper – City Council)	1
Občina Hoče-Slivnica – Občinski svet (Hoče-Slivnica Municipality – Municipal Council)	1
Občina Radenci – Občinski svet (Radenci Municipality – Municipal Council)	1
Okrajno sodišče v Kranju (Local Court in Kranj)	1
Policijski sindikat Slovenije – PSS (Police Trade Union of Slovenia)	1
Računsko sodišče Republike Slovenije (Court of Audit of the Republic of Slovenia)	1
Sindikat finančnih organizacij Slovenije (Trade Union of Financial Organisations of Slovenia)	1
Vlada Republike Slovenije (Government of the Republic of Slovenia)	1
Zagovornik načela enakosti (Advocate of the Principle of Equality)	1
Total	**43**

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
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
2019	118	10	5	24	5
2020	**175**	**50**	**12**	**27**	**10**

Table **8** Acts Challenged Multiple Times in the Cases Received in 2020

ACTS CHALLENGED MULTIPLE TIMES IN THE CASES RECEIVED IN 2020	NUMBER OF CASES
Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy	79
Civil Procedure Act	14
Attorneys Act	12
Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act	12
Communicable Diseases Act	12
Act Determining the Intervention Measures to Mitigate and Remedy the Consequences of the COVID-19 Epidemic	10
Criminal Procedure Act	9
Minor Offences Act	7
Pension and Disability Insurance Act	6
Trade Act	6
Banking Act	4
Personal Income Tax Act	4
Tax Procedure Act	3
Claim Enforcement and Security Act	3
Criminal Code	3
Road Transport Act	3

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

YEAR	CIVIL LAW	ADMINISTRATIVE LAW	CRIMINAL LAW	TOTAL
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
2019	657	378	394	1429
2020	**500**	**355**	**203**	**1058**
2020/2019	**-23.9%**	**-6.1%**	**-48.5%**	**-26.0%**

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

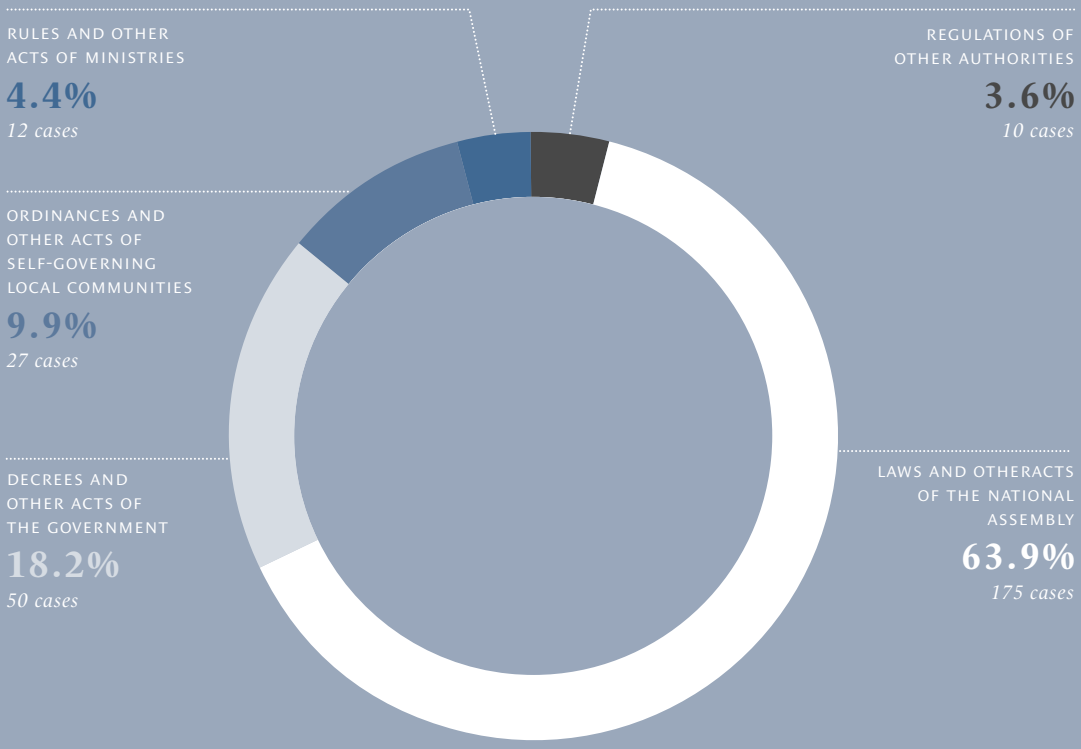


Figure **5** Number of Up Cases Received according to Panel in 2020 (Excluding Mass Cases)

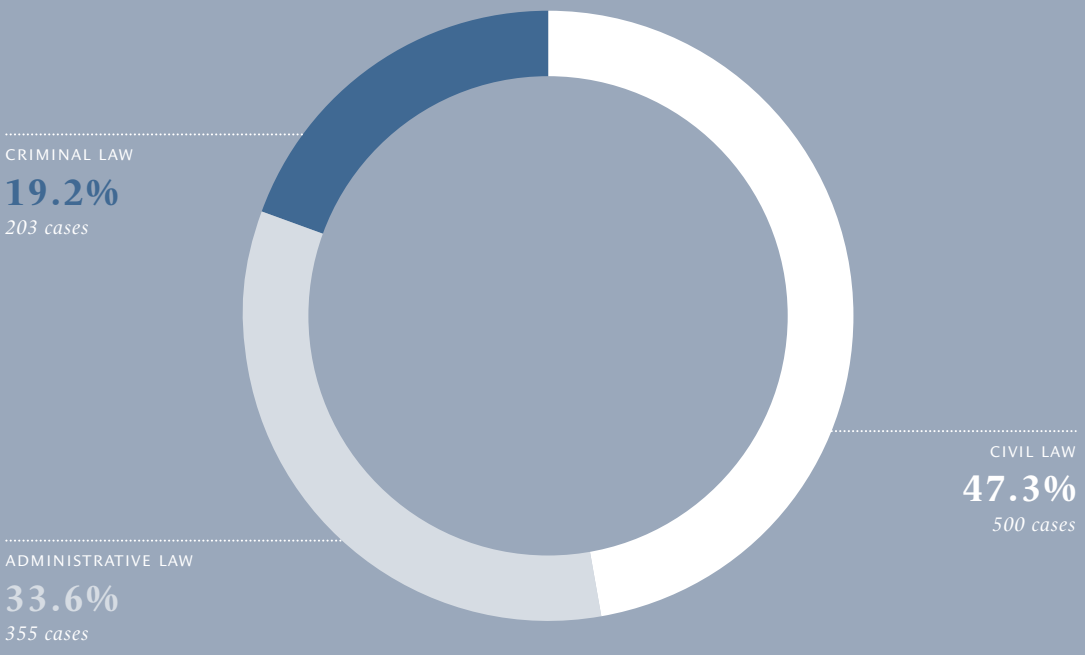


Figure **6** Number of Up Cases Received by Year

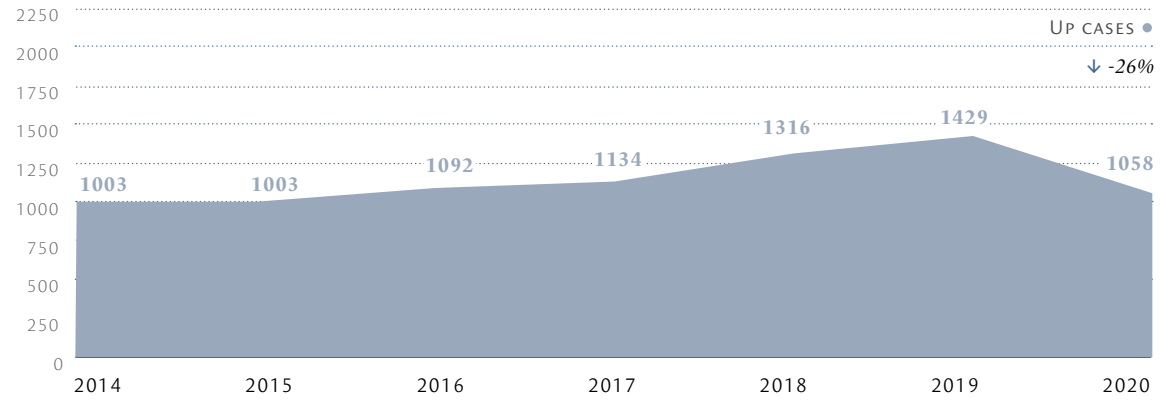


Table **10** Up Cases Received according to Type of Dispute

TYPE OF DISPUTE	2020	SHARE	2019	2020/2019
Civil Law Litigation	280	26.5%	369	-24.1%
Criminal Cases	148	14.0%	171	-13.5%
Other Administrative Disputes	137	12.9%	92	48.9%
Labour Law Disputes	110	10.4%	107	2.8%
Commercial Law Disputes	68	6.4%	88	-22.7%
Enforcement Proceedings	59	5.6%	85	-30.6%
Minor Offences	54	5.1%	221	-75.6%
Taxes	43	4.1%	59	-27.1%
Non-litigious Civil Law Proceedings	40	3.8%	45	-11.1%
Social Law Disputes	35	3.3%	61	-42.6%
Insolvency Proceedings	27	2.6%	29	-6.9%
Proceedings related to the Land Register	17	1.6%	16	6.3%
Matters concerning Spatial Planning	11	1.0%	11	0.0%
Civil Status of Persons	7	0.7%	9	-22.2%
Succession Proceedings	7	0.7%	14	-50.0%
Denationalisation	6	0.6%	15	-60.0%
No Dispute	4	0.4%	10	-60.0%
Other	4	0.4%	13	-69.2%
Election	1	0.1%	14	-92.9%
Total	**1058**	**100.0%**	**1429**	**-26.0%**

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

INITIATORS OF THE JURISDICTIONAL DISPUTE	NUMBER OF CASES
Mestna občina Ljubljana (Urban Municipality of Ljubljana)	3
Okrožno sodišče v Ljubljani (District Court in Ljubljana)	1
Zavod za prestajanje kazni zapora Dob (Dob Prison)	1

9.2.

Cases Resolved

Figure **7**

Distribution of Cases Resolved in 2020

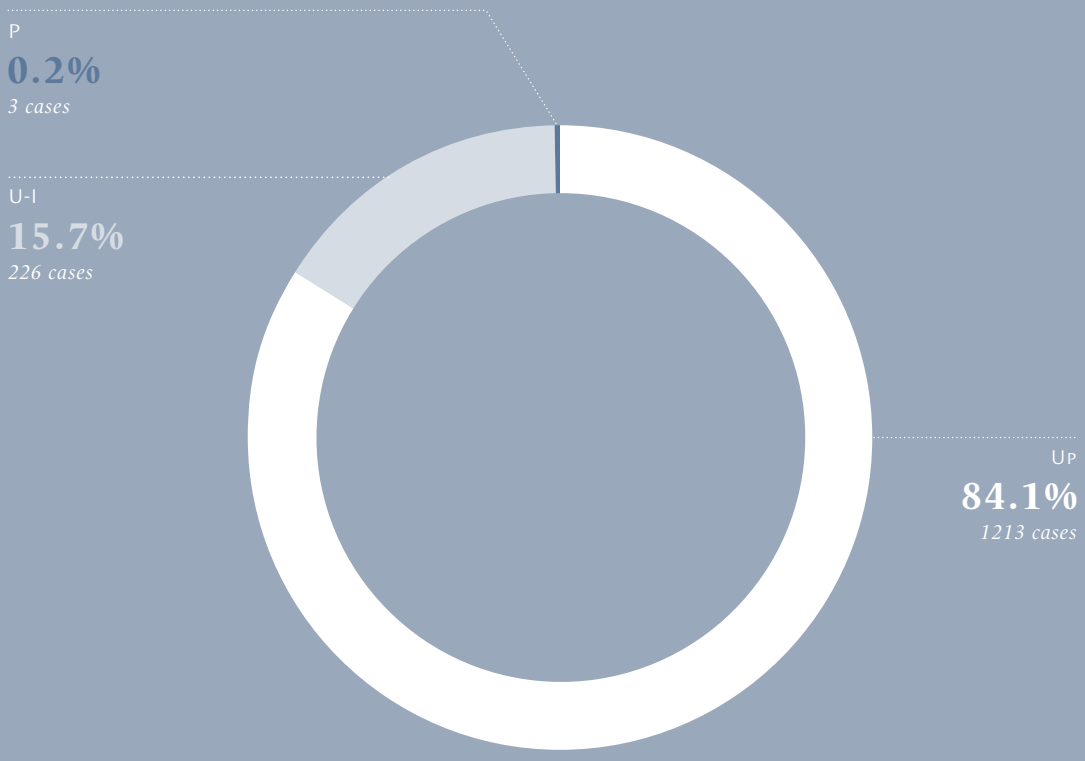


Table **12** Number of Cases Resolved according to Type of Case and Year Resolved

YEAR	U-I	Up	P	U-II	Ps	Rm	Mp	TOTAL
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
2019	129	1008	5	/	/	/	1	1143
2020	**226**	**1213**	**3**	/	/	/	/	**1442**
2020/2019	**75.2%**	**20.3%**	**-40.0%**	/	/	/	/	**26.1%**

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

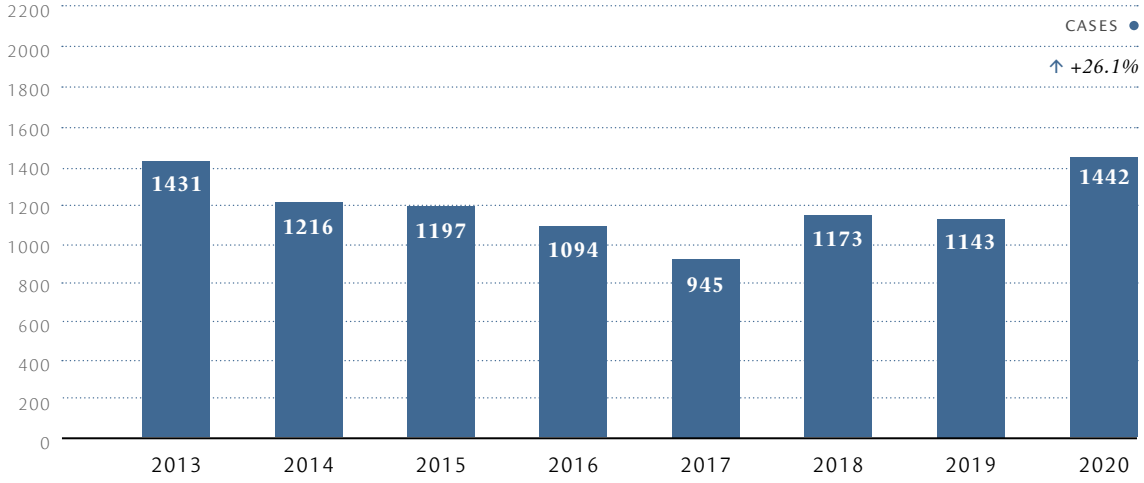


Figure **9** Number of U-I Cases Resolved according to Year

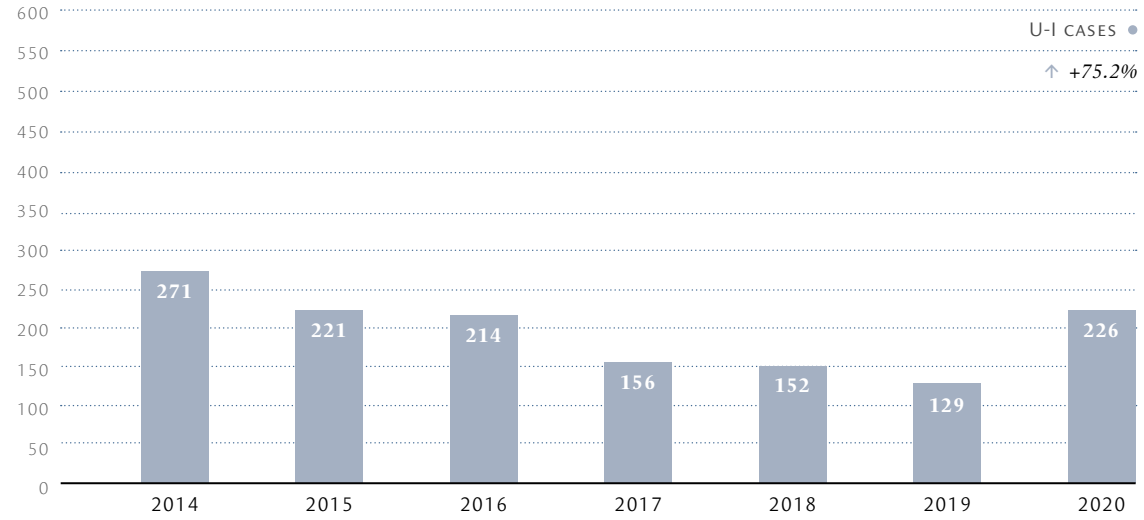


Figure **10** Distribution of Cases Resolved according to Type of Case and Year Resolved

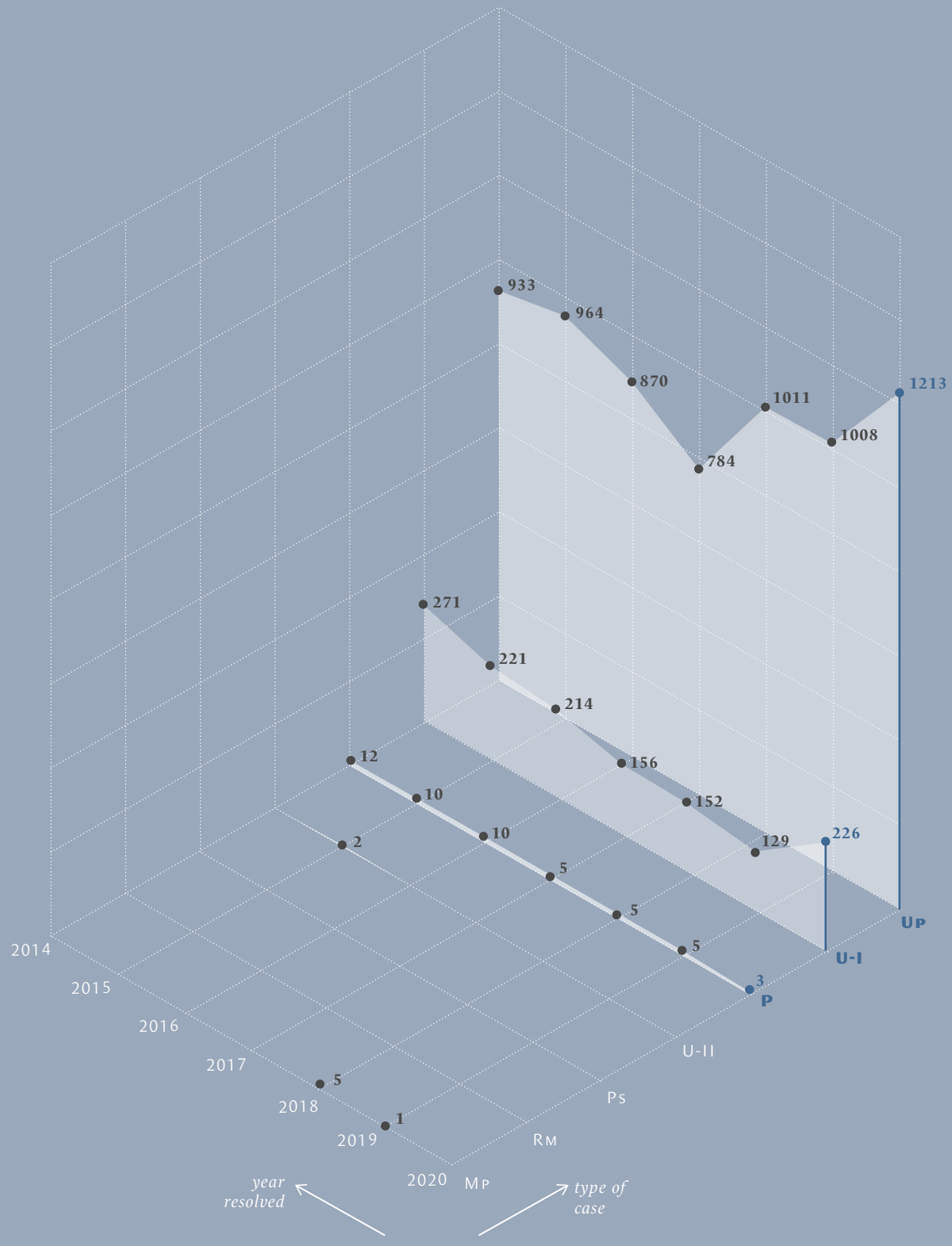


Table **13** U-I Cases Resolved on the Merits by Year

YEAR	RESOLVED	RESOLVED ON THE MERITS	PERCENTAGE
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%
2019	129	24	18.6%
2020	**226**	**33**	**14.6%**

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

TYPE OF RESOLUTION	2020 REQUESTS	2020 PETITIONS / *SUA SPONTE*	2020 TOTAL	2019	2018	2017	2016	2015	2014
Abrogation of statutory provisions	2	1	3	9	7	6	5	9	11
Inconsistency with the Constitution – statutory provisions	0	0	0	2	3	2	5	5	4
Inconsistency with the Constitution and determination of a deadline – statutory provisions	5	5	10	4	4	3	9	2	5
Not inconsistent with the Constitution – statutory provisions	10	4	14	7	9	7	14	10	0
Inconsistency, abrogation, or annulment of the provisions of regulations	1	5	6	1	3	2	8	5	7
Not inconsistent with the Constitution or the law – provisions of regulations	1	2	3	1	1	0	1	0	2
Dismissed		47	47	30	19	39	41	37	38
Rejected	8	134	142	81	105	111	132	154	156
Proceedings were stayed	1	18	19	3	11	10	8	8	31

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

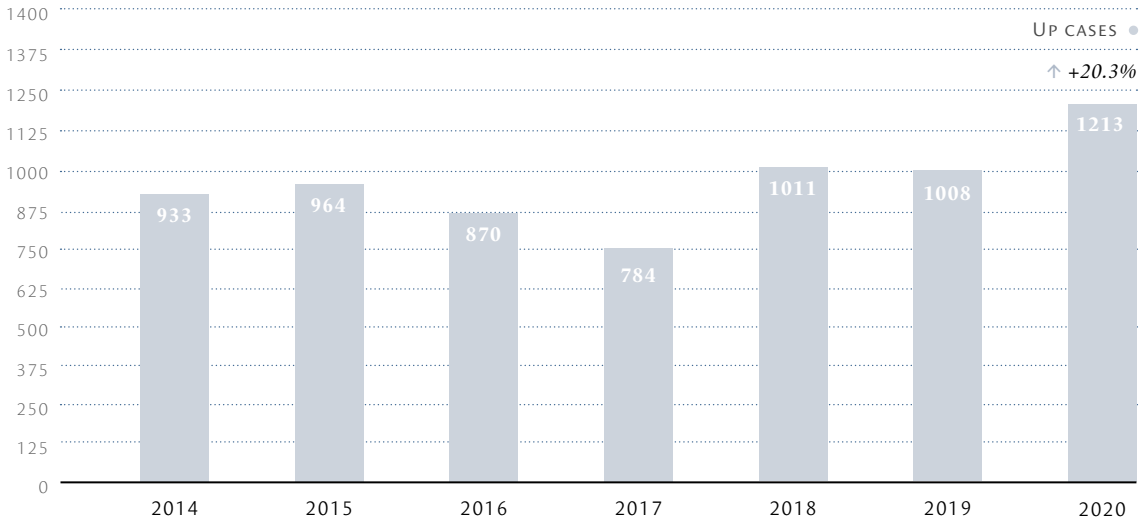


Table **15** Number of Up Cases Resolved according to Panel and Year

YEAR	CIVIL LAW	ADMINISTRATIVE LAW	CRIMINAL LAW	TOTAL
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
2019	448	295	265	1008
2020	**563**	**388**	**262**	**1213**
2020/2019	**25.7%**	**31.5%**	**-1.1%**	**20.3%**

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

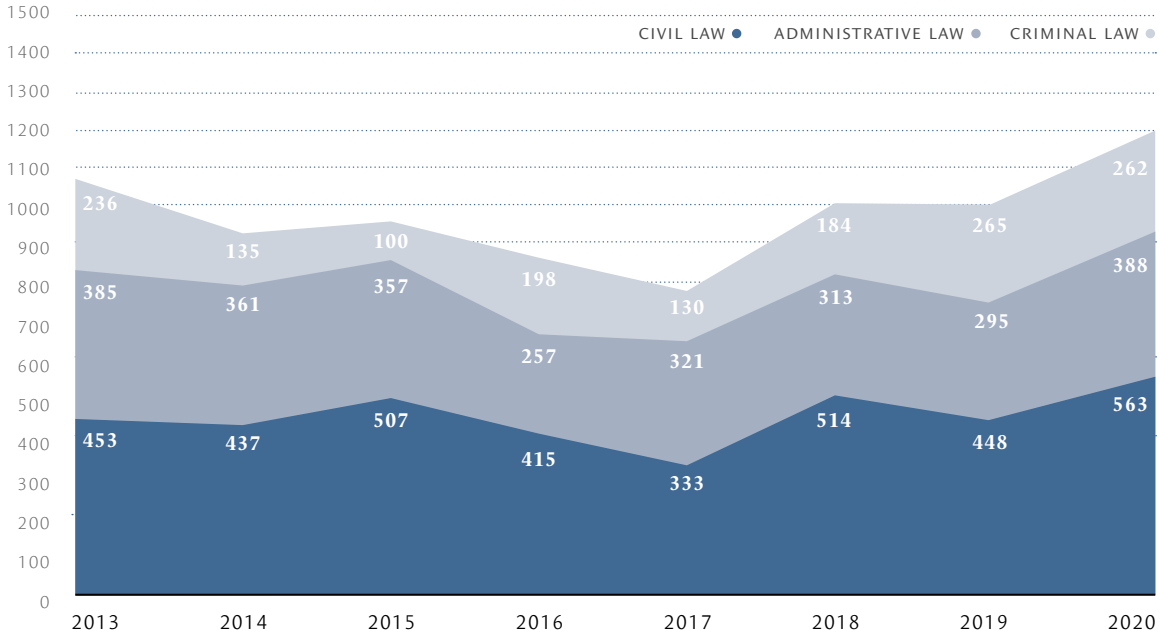


Table **16** Number of Up Cases Resolved according to Type of Dispute

TYPE OF DISPUTE	2020	SHARE	2019	2020/2019
Civil Law Litigation	292	24.1%	235	24.3% ↑
Criminal Cases	174	14.3%	169	3.0% ↑
Labour Law Disputes	128	10.6%	49	161.2% ↑
Other Administrative Disputes	112	9.2%	95	17.9% ↑
Commercial Law Disputes	103	8.5%	41	151.2% ↑
Minor Offences	87	7.2%	95	-8.4% ↓
Enforcement Proceedings	71	5.9%	79	-10.1% ↓

Taxes	46	3.8%	57	-19.3% ↓
Social Law Disputes	42	3.5%	44	-4.5% ↓
Non-litigious Civil Law Proceedings	41	3.4%	40	2.5% ↑
Insolvency Proceedings	37	3.1%	37	0.0% ↑
Matters concerning Spatial Planning	26	2.1%	3	766.7% ↑
Proceedings related to the Land Register	13	1.1%	13	0.0% ↑
Denationalisation	10	0.8%	1	900.0% ↑
Civil Status of Persons	8	0.7%	6	33.3% ↑
Succession Proceedings	8	0.7%	13	-38.5% ↓
No Dispute	7	0.6%	7	0.0% •
Other	4	0.3%	11	-63.6% ↓
Election	2	0.2%	12	-83.3% ↓
Registration in the Companies Register	2	0.2%	1	100.0% ↑
Total	**1213**	**100.0%**	**1008**	**20.3%**

Table **17** Up Cases Granted and Resolved on the Merits

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
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%
2019	1008	55	5.5%	44	4.4%
2020	**1213**	**24**	**1.9%**	**18**	**1.5%**

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

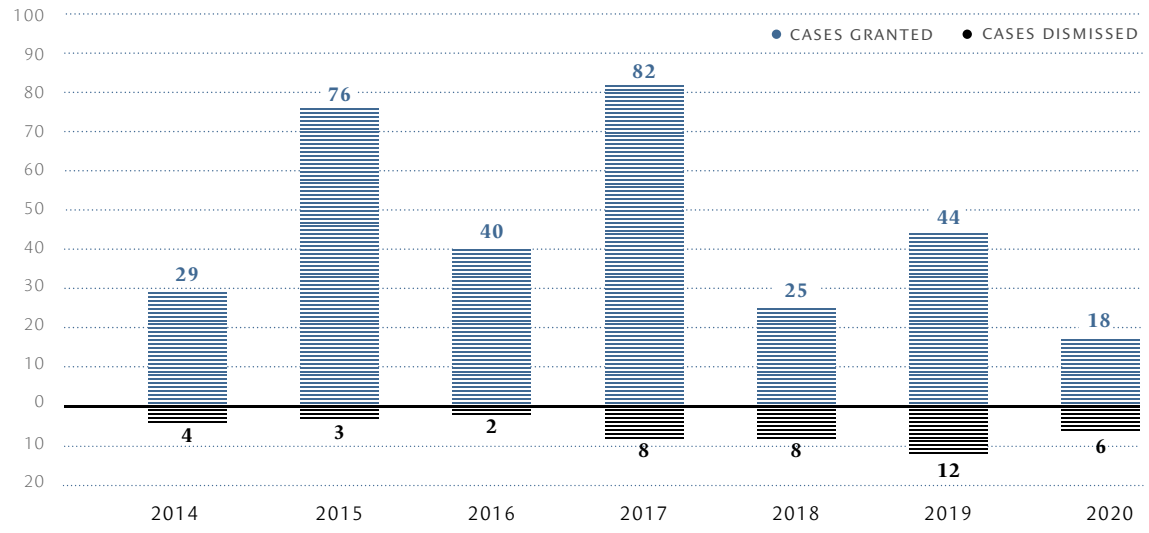


Table **18** Certain Other Types of Resolutions in Up Cases

YEAR	NOT ACCEPTED FOR CONSIDERATION	REJECTED
2012	798	537
2013	644	496
2014	605	340
2015	633	334
2016	539	334
2017	424	338
2018	614	387
2019	537	427
2020	**817**	**419**

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

YEAR	RESOLVED	RESOLVED ON THE MERITS	PERCENTAGE
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%
2019	5	4	80.0%
2020	**3**	**2**	**66.6%**

Table **20** Average Number of Days Needed to Resolve a Case in 2020 according to Register

REGISTER	AVERAGE DURATION IN DAYS
U-I	530
Up	571
P	50
Total	**563**

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

PANEL	2020	2019	CHANGE 2020/2019
Civil Law	516	309	67.0%
Administrative Law	578	461	25.4%
Criminal Law	677	563	20.2%
Total	**571**	**420**	**36.0%**

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

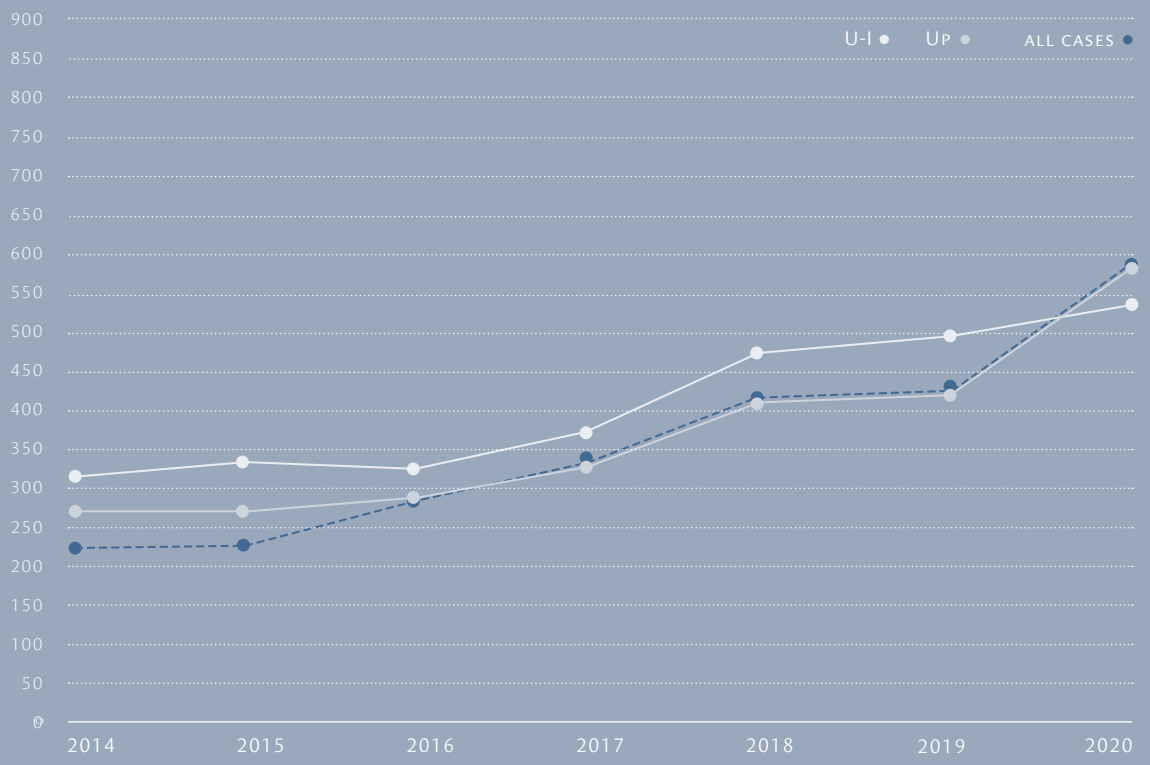
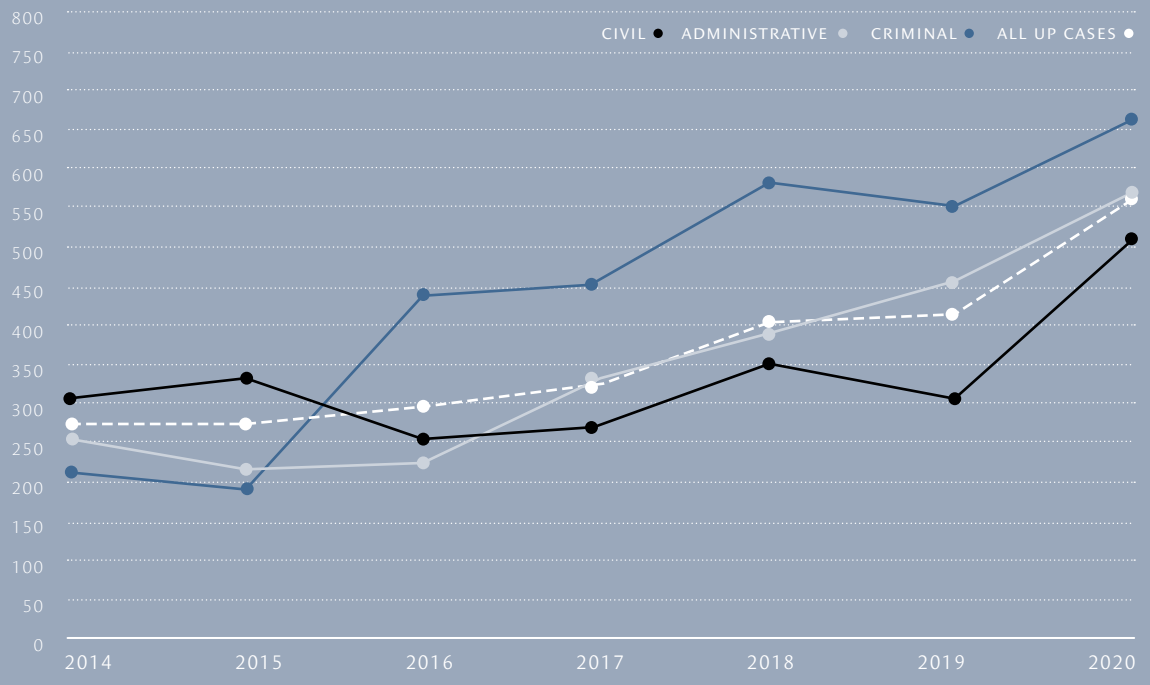


Figure **14 a** Average Number of Days Needed to Resolve Up Cases according to Panel



9. 3. Unresolved Cases

Table **22** Unresolved Cases by Year Received as of 31 December 2020

YEAR	2016	2017	2018	2019	2020	TOTAL
U-I	8	29	64	101	160	362
Up	9	80	284	596	765	1734
P				1	2	3
U-II					1	1
Total	**17**	**109**	**348**	**698**	**928**	**2100**

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

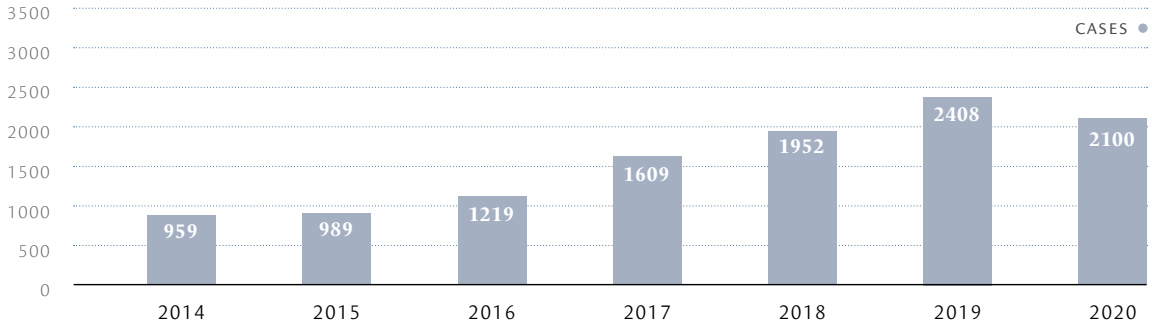
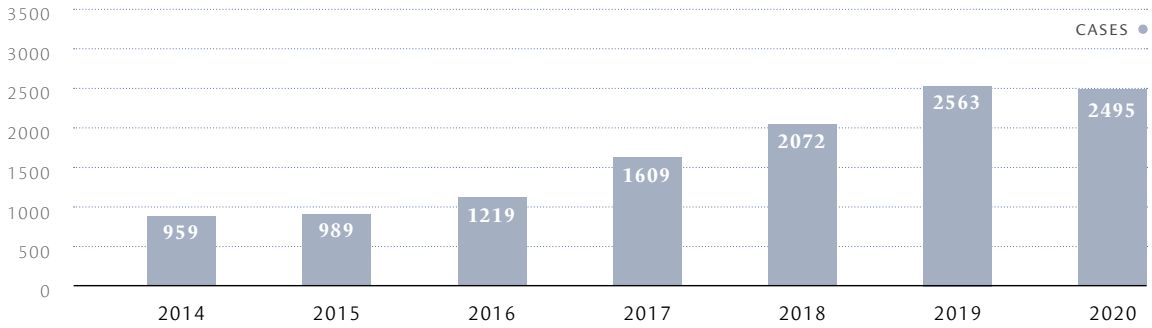


Figure **15a** Number of Cases Pending at Year End (Including Mass Cases)*

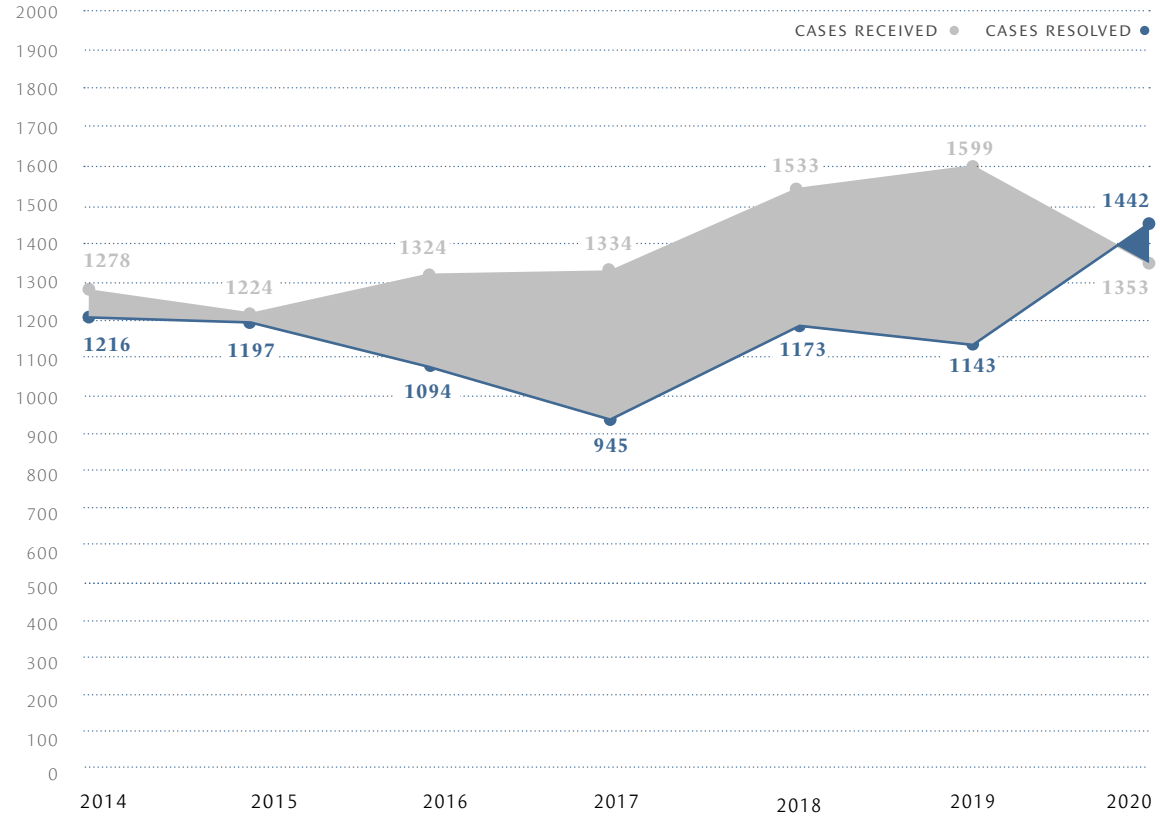


* The data regarding unresolved cases may differ from the data provided in the overviews for the previous years due to subsequent erroneous entries and the subsequent classification of certain cases as mass cases.

Table **23** Priority Cases Pending as of 31 December 2020

REGISTER	ABSOLUTE PRIORITY CASES	PRIORITY CASES	TOTAL
Up	20	503	523
U-I	78	53	131
P		3	3
U-II		1	1
Total	**98**	**560**	**658**

Figure **16** Cases Received and Resolved



9. 4. Financial Plan Outturn*

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

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% ↓
2019	3,527,567	611,428	180,650	4,319,645	3.82% ↑
2020	**3,732,169**	**541,142**	**265,059**	**4,538,370**	**5.1%** ↑

***** The data on the expenditure of public resources refer to resources from the state budget, earmarked funds, and cohesion funds, with the latter amounting to 2% of the outturn in 2020.

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

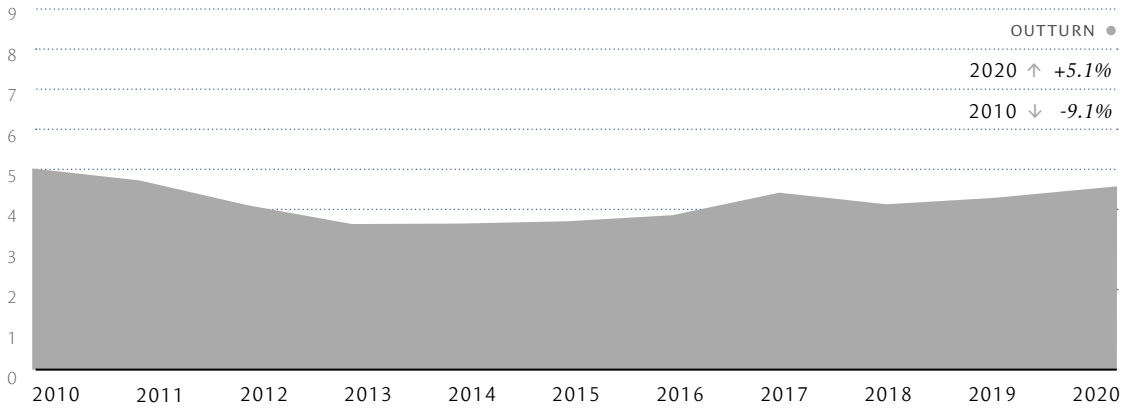


Figure **18** Distribution of Expenditures in 2020

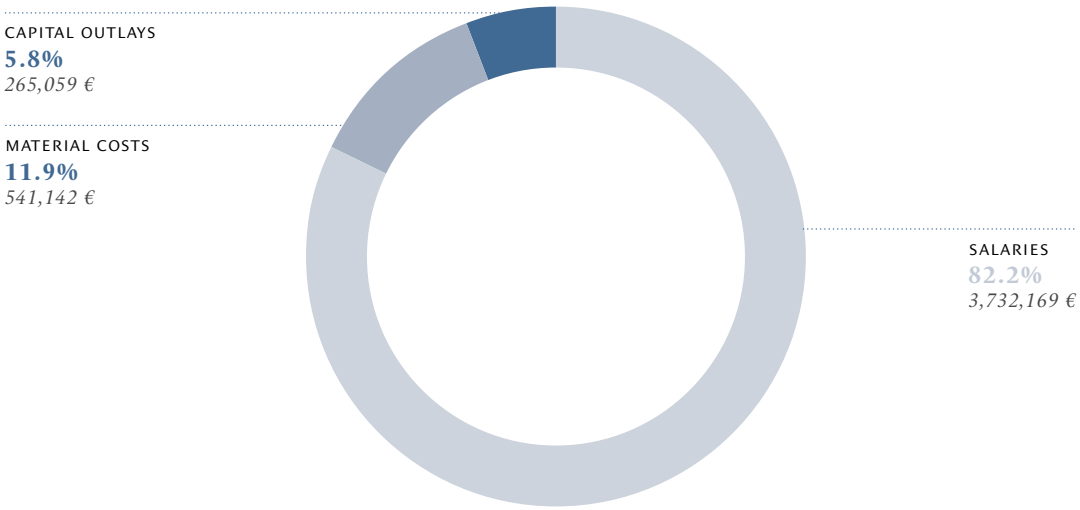
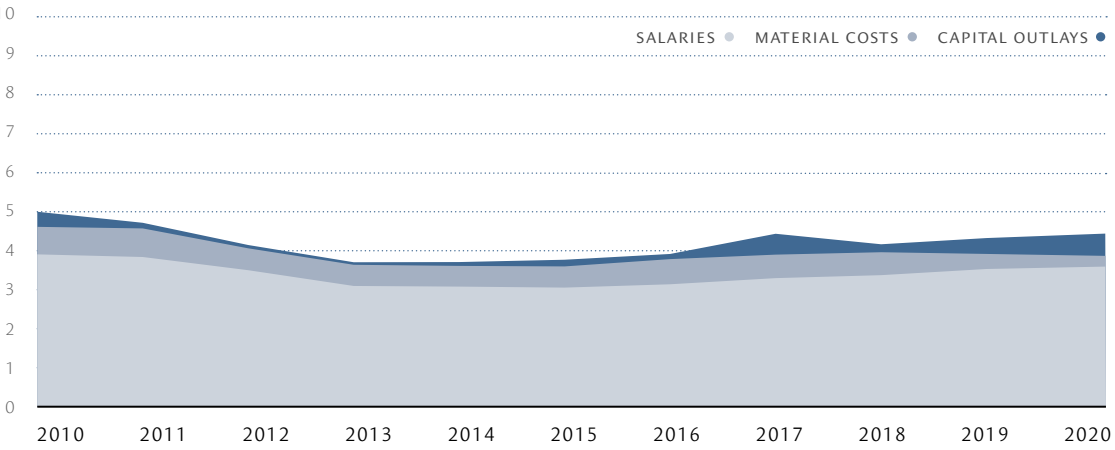


Figure **19** Distribution of Expenditures by Year (in EUR mil.)



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

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

Leonid Pitamic

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