AN OVERVIEW OF THE WORK FOR 2021

The Constitutional Court of the Republic of Slovenia

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An Overview of the Work for 2021

Foreword by the President of the Constitutional Court

The overview of the work of the Constitutional Court in 2021 has once again confirmed two realities of constitutional justice that have characterised the work of the Constitutional Court for a number of years: on the one hand, the exceptional importance of the role of the Constitutional Court for the functioning of the Slovene legal order, which is reflected in performing control over the work of the regular courts in concrete proceedings as well as in proceedings for the review of the constitutionality and legality of laws and other regulations of state and local authorities, and, on the other hand, in the overburdening of a court with broad jurisdiction, which is marked by an extremely high number of cases received. These two realities are connected to a certain extent. The high workload is at least in part an expression of the confidence (and hope placed) in the Constitutional Court and an affirmation of the importance of its role as guardian of constitutionality. At the same time, however, the difficult to manage workload also threatens to paralyse or weaken this role of the Court, and the increasing (average) length of time required for the resolution of a case, which is an inevitable consequence thereof, entails that the majority of applicants (as well as other directly or indirectly affected individuals) have to wait ever longer – and sometimes undoubtedly too long – for the final resolution of the disputed legal relationships or issues.

The law is frequently characterised – at a symbolic but also concrete level of reasoning and decision-making – by a search for the right balance. Such a balance must also be sought when regulating the working conditions of the Constitutional Court in order to enable the Court to productively perform its core tasks – namely to establish precedential standards of the protection of human rights and fundamental freedoms and, within the system of checks and balances, to ensure the constitutionality of the functioning of other bearers of state power. Although at first sight a regulation allowing for broad access to the Constitutional Court may appear to be a welcome or, in terms of ensuring the highest possible standard of human rights protection, even the best solution, the Constitutional Court cannot and must not be understood as the last resort of judicial protection in all cases. A system that would aim at guaranteeing constitutional judicial protection to everyone would in fact provide it to no one, at least not within a reasonable time. It should be added here that the regulation and position of constitutional courts are very different in comparable European countries: some have not introduced the institution of the constitutional complaint, others have introduced mandatory representation by an attorney, court fees, or other forms of restrictions; although the reality of constitutional justice is very diverse, the search for the right balance ensuring the effective functioning of the constitutional court is one of the challenges that all systems have in common.

The Constitutional Court has been aware of the fact that this balance has not yet been fully achieved in Slovenia for a long time and has been drawing attention to the problem and seeking solutions. This year marks more than 12 years since the attempt to introduce a constitutional amendment that would have granted the Constitutional Court – with due consideration of the fact that the regular courts are already required and able to take into account the requirements of the Constitution when adjudicating – greater discretion when deciding which submitted applications raise precedential issues that require a substantive decision by the Constitutional Court. At that time, despite initial support, the proposed constitutional amendment ultimately did not receive sufficient support from the bearers of political power. Instead of an amendment to the Constitution, the statutory regulation was amended a number of times; once, in 2007, in the direction of narrowing access to the Constitutional Court and facilitating the management of its workload, but subsequently also in the direction of expanding the jurisdiction of and access to the Court.

In recent years, the Constitutional Court has aimed at addressing the problem at least by increasing the number of personnel in the advisory department, which, however, would require additional office space. Unfortunately, following initial indications of support and cooperation from the bearers of political power, even these efforts have not led to a positive solution. The final nail in the coffin of these efforts was the Government's proposed amendments to the budget for 2022 and draft budget for 2023, which also included the financial plan of the Constitutional Court. With regard to the latter, the Government – contrary to the constitutional requirements as regards the autonomy and independence of the Constitutional Court, which also extend to the budgetary level – namely unilaterally and without harmonisation drastically reduced the financial plan proposed by the Constitutional Court, which had previously been harmonised in cooperation with the specialised services of the Ministry of Finance, thereby preventing the acquisition of additional office space.

This complication and the problem of the backlog of cases are described in more detail in the following chapters of the annual report. In this foreword I can only add a loud warning regarding the consequences of all of the above: the duration of proceedings before the Constitutional Court has been increasing and has become excessively long, and therefore, at least in some cases, there is a threat that the right to a trial within a reasonable time will be violated. It is quite possible that Slovenia will receive such a message also from the European Court of Human Rights already in the near future. Such a message would not come as a surprise to the Constitutional Court, and it should not come as a surprise to the Government or the National Assembly either – the Constitutional Court has been drawing attention to the problem of its high workload for over a decade and throughout this time it has continuously been seeking solutions, which, however, it cannot implement on its own without the necessary constitutional or at least statutory amendments and without sufficient funding for additional personnel and office space. The Constitutional Court is aware of possible solutions and necessary measures that could provide a more permanent solution. However, these require appropriate cooperation from the legislature and the executive branch of power and the shared awareness that they entail changes that are not intended to serve the Constitutional Court as such, but which are aimed at ensuring an effective system of constitutional justice. The Constitutional Court is merely a means to such an end, and not the end itself.

It is also important to highlight the second of the two realities mentioned in the introduction, which was also confirmed in 2021: the exceptional importance of the role of

the Constitutional Court for the functioning of the Slovene legal order, which is reflected not only in the quantitative sense of the statistical data, but above all in the content of the important decisions adopted by the Constitutional Court over the last year.

I would like to briefly summarise the most important decisions that are presented in further detail in a later chapter of the report: therein the Constitutional Court reviewed different aspects of the principle of the separation of powers (the protection of the independence of judges and state prosecutors in parliamentary inquiry procedures, the admissibility of the authentic interpretation of a law) and the functioning of the bearers of political power (free-of-charge advertisements of political parties, the suspension of the publication of a general act of a municipality due to a referendum petition, the inadmissibility of a legislative referendum on urgent investments in the armed forces, the legality of the procedure for renaming a street); fundamental procedural guarantees (the use of psychological tests in criminal proceedings, the position of the opposing party in procedures for the recognition and enforcement of foreign judgments, safeguards in connection with the issuance of restraining orders, disciplinary proceedings against a judge and the composition of a panel of the disciplinary court, effective judicial protection in the procedure for the verification of foreign-currency savings); different issues concerning the family and personal statuses of individuals (the maximum age limit for access to biomedically-assisted procreation, the right to family life and the best interests of the child, the costs of proceedings for being discharged from a psychiatric hospital or social care institution); labour law disputes (the termination of an employment contract at the employer's initiative without substantive justification) and the functioning of the market (consumer protection with regard to consumer credit contracts, the opening hours of shops); and the position and obligations of public law entities (the legal status of a university and its members, the autonomy and independence of the central bank, the right of access to public information in connection with the results of schools in external examinations of students' knowledge).

In addition, it should not be overlooked that a quarter of the cases presented amongst the important decisions of the Constitutional Court from last year referred to different aspects of measures adopted to fight the COVID-19 epidemic (the exclusion of a legislative referendum on measures for remedying the consequences of an epidemic as a natural disaster, restrictions on the movement and gathering of people during an epidemic, the temporary prohibition of the gathering of people in schools and educational institutions for children with special needs and the performance of educational work at a distance, limitations of the freedom of work and free economic initiative in order to prevent the spread of a communicable disease, the condition of recovery or vaccination for employees in the state administration). The epidemic namely strongly impacted the work of the Constitutional Court also in 2021: both as regards the substantive significance of epidemic-related cases and its more general effects on the functioning of the Constitutional Court.

In total, the Constitutional Court has thus far (i.e. since the beginning of the epidemic in March 2020) received almost 900 cases that in some way refer to the epidemic. Due to the significance, nature, and time sensitivity of the highly restrictive measures required by the characteristics of the epidemic, the Constitutional Court considered these cases with absolute priority and has already resolved the majority thereof. While numerous petitions failed to pass the first stage of their examination, some resulted in substantive decisions. Seven of the most important epidemic-related decisions from amongst those adopted in 2021 were already mentioned above and are included in the chapter of this report presenting the precedential decisions adopted during the last year.

All of these cases required a certain amount of time to be resolved. Due to the nature of the work of the Constitutional Court, such applies even to the simpler cases, wherein the Constitutional Court established that a procedural requirement had not been met or that a petition could be dismissed as manifestly unfounded. As they concern petitions, the Constitutional Court always has to adopt decisions in such cases at a plenary session of all judges. Such applies even more to cases that lead to a substantive decision. At the Constitutional Court, substantive decision-making can never take place in a flash: in addition to the time needed to ensure respect for the principle of adversarial proceedings (i.e. the possibility of the opposing party to reply to a petition and submit opinions regarding such, followed by the possibility of the petitioner to submit positions regarding such replies or opinions), the necessary materials for the consideration of the case at a plenary session have to be prepared, and at the plenary session a decision has to be arrived at and formulated in such a manner that it addresses all the questions raised during the discussions and enjoys the support of at least a majority of the constitutional judges, if not all of them.

This is also one of the reasons why the Constitutional Court – sometimes *ex officio*, but frequently upon a motion of the applicants – in some cases decides to temporarily suspend the challenged regulation. If an application is not manifestly unfounded and the Constitutional Court considers that the exercise of the possibly unconstitutional regulation could result in serious and difficult to remedy consequences that exceed those that could be caused by the temporary suspension of the possibly constitutionally consistent regulation, it suspends the implementation of the challenged regulation until a final decision is adopted. In 2021, the Constitutional Court adopted such a decision in 17 cases, a number that stands out slightly when compared to previous years, when in a single year between six (in 2018) and 15 (in 2017) decisions to temporarily suspend a challenged regulation were adopted.

As numerous COVID-19 related cases had to be considered with absolute priority, work on other cases slowed down further during the last year. The backlog of such cases has increased and reached a scale that is cause for serious concern. The epidemic will hopefully finally subside and as a result there will be ever fewer measures related to such and consequently also ever fewer corresponding applications to the Constitutional Court. Such would enable the Constitutional Court to once again devote greater focus to resolving the issues concerning managing of its workload under "normal circumstances". However, as already mentioned, even in such circumstances, having exhausted its internal reserves, the Constitutional Court cannot provide long-term solutions on its own.

I therefore conclude by reiterating the appeal that the Constitutional Court has repeatedly addressed to the bearers of political power – i.e. that, with their assistance and assumption of their part of this shared responsibility, we ought to adapt the system so as to enable the Constitutional Court to continue to effectively fulfil the core of its mission: to establish precedential standards of the protection of human rights and fundamental freedoms and to safeguard the Slovene constitutional order.

Prof. Dr Matej Accetto
President

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 of the Republic of Slovenia. 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 or indirectly) 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 alleged 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 an alleged 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 in proceedings for a review of the constitutionality of the Public Finance Act by which it addressed this issue of the constitutionally guaranteed budgetary autonomy and independence of direct budget users. 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 established the unconstitutionality of several provisions of the Public Finance Act that regulated (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 established the unconstitutionality of the challenged provisions insofar as they referred to the National Council, the Constitutional Court, the Court of Audit, and the Human Rights Ombudsman. These are namely 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 not supervised by the executive branch of power, but by another – equally autonomous and independent – authority, such as the Court of Audit, which is independent of state power.

Henceforth, Constitutional Court Decision No. U-I-474/18 must be taken into consideration in the procedure for adopting the budget of the state. By this Decision, the Court abrogated

certain provisions of the Public Finance Act and, until its amendment, determined the manner of the implementation of the Decision, in accordance with which the ministry responsible for finance shall include the proposed financial plan of the Constitutional Court in the draft of the state budget, which is determined by the Government and submitted to the National Assembly. Prior to that, the ministry responsible for finance may notify the Constitutional Court of any possible significant departures of its proposed financial plan from the fundamental economic starting points for drafting the budget and enable the Court to rectify such within a reasonable time limit. The same applies to other constitutionally determined authorities that are independent budget users (i.e. the Ombudsman for Human Rights, the Court of Audit, and the National Council). Following the mentioned Constitutional Court Decision, these rules are also applicable to budgetary revisions (i.e. rebalancing). In other words, the Government, while retaining the right to open a dialogue with the Constitutional Court concerning significant departures, must submit the financial plan proposed by the Constitutional Court to the National Assembly.

The Constitutional Court notes with regret that in 2021, when adopting the proposed financial plan for 2022, the procedure was not conducted in the outlined manner. The proposed financial plan of the Constitutional Court had been harmonised in cooperation with specialised services of the Ministry of Finance. The Constitutional Court received no subsequent request from the Government for further harmonisation. At the end of 2021, it came to the Court's attention that on 1 October 2021 the Government submitted to the National Assembly Draft Amendments to the Budget of the Republic of Slovenia for 2022 and a Draft Budget for 2023, with the latter also including a [revised] financial plan of the Constitutional Court. The Constitutional Court was only able to inspect the draft budget that the Government submitted to the National Assembly upon obtaining the materials from the National Assembly and in so doing it noted a significant departure from the financial plan it had proposed. The Constitutional Court had not been notified of these changes and consequently no harmonisation had been foreseen in this regard. The Government's unilateral reduction of the financial plan proposed for 2022 to approximately the level of the financial plans adopted in past years entails funding amounting to EUR 949,796 less than in the proposal submitted by the Constitutional Court.

The Constitutional Court increased the amount of funds in its proposed financial plan due to the fact that it needs additional office space for its advisory department. This is urgent to enable it to deal with the high caseload. The Constitutional Court has undertaken every possible effort to ensure that the right of complainants, petitioners, and applicants to effective judicial protection would not be violated due to the length of proceedings, thereby also preventing convictions of the Republic of Slovenia before the European Court of Human Rights for such reason. In order to be able to ensure such, however, it requires, *inter alia*, an appropriate financial framework and adequate working conditions. The adaptation of the Constitutional Court in order to ensure such working conditions, i.e. the acquisition of new office space, is urgent.

Already in 2020 the President of the Constitutional Court addressed to the competent Government services a request for additional office space and thus additional funding. This has not hitherto been realised, although the funds were harmonised in cooperation with the Ministry of Finance. As a result, the Constitutional Court finds it increasingly difficult to accept responsibility for lengthy proceedings. In addition to its numerous competences and the broad access to the Court, it has an enormous yearly caseload and more than 2,000 unresolved cases. Such entails that even if no new cases were received there are already enough pending cases

to require approximately two years of decision-making, and there are no further internal reserves. The Constitutional Court judges established already in 2019 that such reserves had been exhausted under previous leadership and compositions of the Court.

Due to its constantly high caseload and the ensuing unsustainably excessive burden, the Constitutional Court has been striving to acquire additional office space that would enable the recruitment of additional advisors. In the absence of a more radical overhaul of the constitutional regulation of the jurisdiction of the Constitutional Court and access to it, which was proposed to the National Assembly more than a decade ago, this is potentially the last measure that could help the nine judges of the Constitutional Court manage the caseload and ensure adjudication within a reasonable time. The Constitutional Court has been dealing with an increase in the amount of time needed to resolve a case for some time. The high caseload, which has not decreased over the years but has only continued to increase, as well as the increasing complexity of the cases do not enable the speed at which cases had been resolved in the past to be maintained. The increase in the number of legal rules and in the complexity of the national legal order, the law of the European Union, and international law also entails an increase in the complexity of the decision-making of the highest court in the country for the protection of human rights and fundamental freedoms. The Constitutional Court has been making great efforts to control its caseload. As the number of judges cannot be increased (such could provide a solution, but would likewise require the amendment of the Constitution as well as an increase in the number of advisors), augmentation of the assistance provided at the level of advisors is truly necessary. In spite of promises and expressions of willingness to provide assistance at the level of various ministries, this goal has not been attained. In fact, the last proposal of the financial plan of the Constitutional Court for 2022, wherein the Constitutional Court proposed the one-time approval of additional funds for the envisaged solution of the issue of office space and personnel, was also rejected.

The current number of pesonnel could manage the caseload from ten or more years ago, but they have been exceeding their sustainable capacity for some time. Under the current conditions, the prediction that proceedings before the Constitutional Court in some cases might last up to four, five, or even more years has become realistic. First and foremost, this entails that the applicants in such proceedings will have to wait too long for a decision. In addition, at least in some of the cases, it may result in the conviction of the Republic of Slovenia before the European Court of Human Rights due to a violation of the right to effective judicial protection. As was established by the pilot judgment in the Lukenda Case, i.e. that in the Republic of Slovenia there exist systemic issues regarding the time needed for the adoption of a decision before the regular courts, it is not impossible to expect a similar message also as regards adjudication before the Constitutional Court. Therefore, the President of the Constitutional Court has addressed appeals with the above outlined content to the competent authorities on numerous occasions, most recently prior to the adoption of the budget or, more precisely, the amendment of the budget for 2022. On this last occasion, the competent authorities did not act in accordance with Constitutional Court Decision No. U-I-474/18, which strengthened the standard of the budgetary autonomy of independent constitutional authorities, and simply rejected the Court's proposed financial plan. Such a stance is not appropriate in light of the role of the Constitutional Court in ensuring constitutional judicial protection.

In light of the above, in this annual report the Constitutional Court once again calls upon the competent authorities of the executive branch of power to ensure that the Court's working conditions are adequately adapted to its caseload and backlog of cases.

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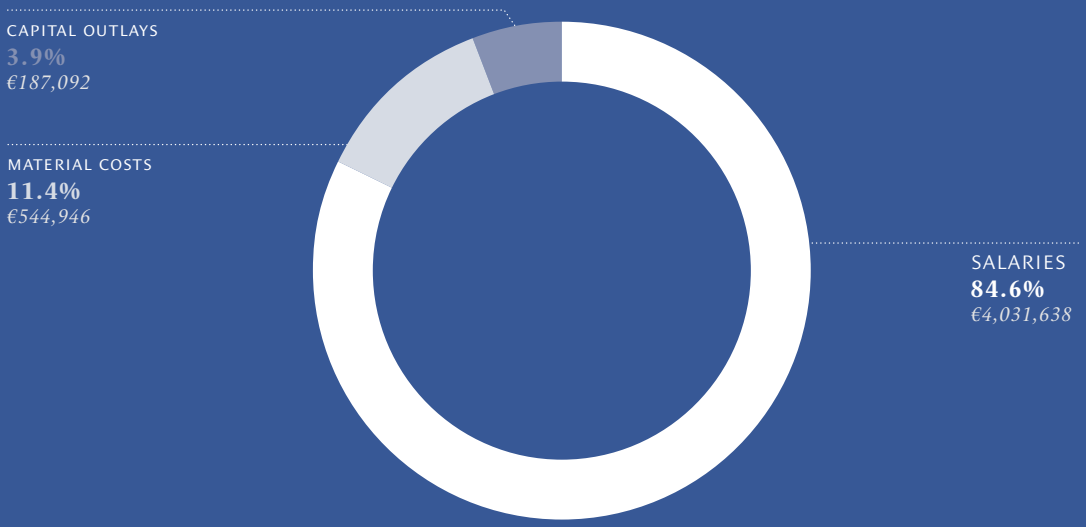
In 2021, the financial plan of the Constitutional Court amounted to EUR 4,763,676 and increased by 4.96% in comparison to 2020. The bulk of the funds were used for salaries. Whereas material costs remained at the level of the past year, the realisation of capital outlays and maintenance costs was significantly lower. In comparison to 2010, when the budget outturn amounted to EUR 4,993,377, which was the highest amount thus far, it can be noted that the expenditure of the Constitutional Court in 2021 was still nominally 4.6% lower than more than a decade ago.

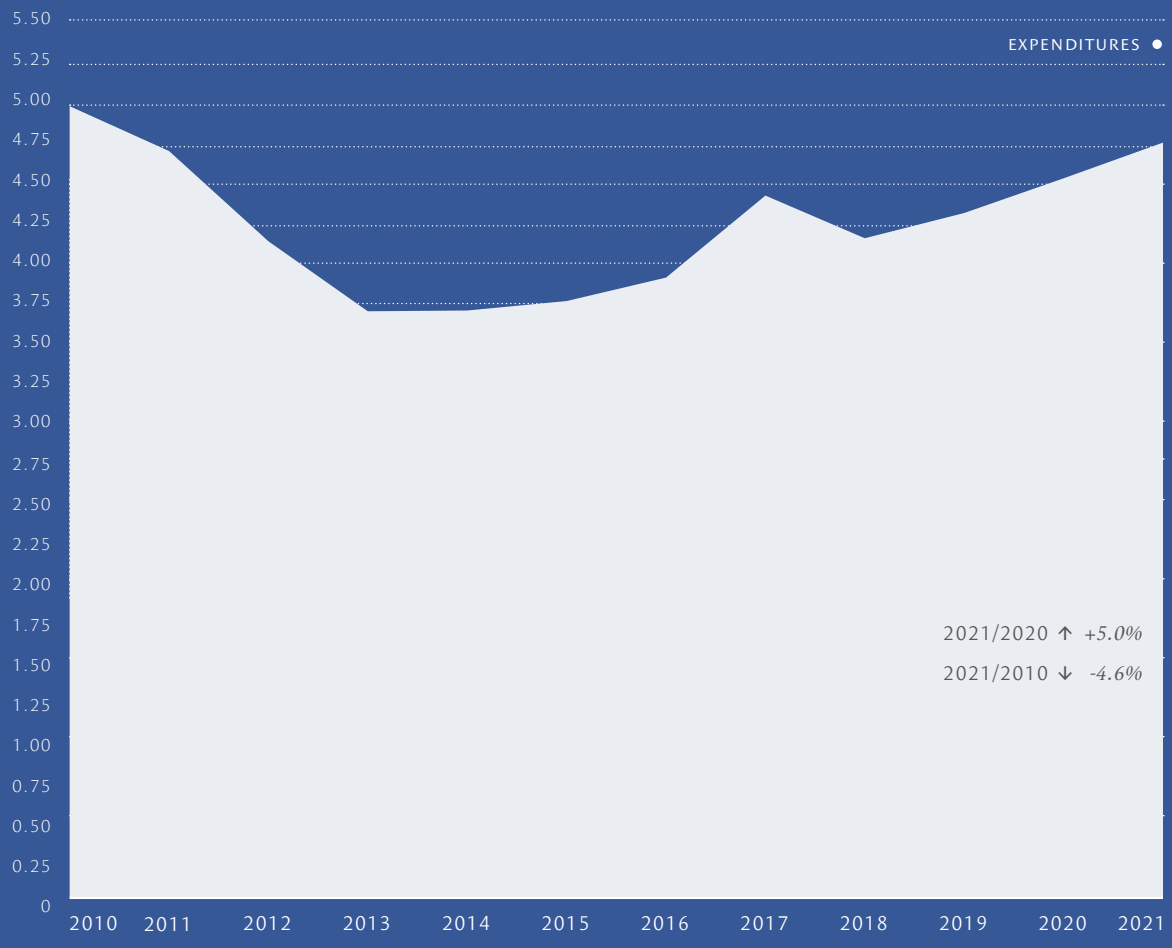
Distribution of Expenditures 2021

(see page 108)



Financial Plan Outturn by Year (in EUR mil.)

(see page 108)



3. Respect for the Decisions of the Constitutional Court

As already stressed, Constitutional Court decisions are binding and final, which entails that they have to be observed and implemented in an appropriate manner. The Constitutional Court therefore monitors the work of the addressees of its decisions and draws attention to instances of a lack of an appropriate response to individual decisions.

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 2021 there remained twenty-three unimplemented Constitutional Court decisions, twenty-one of which refer to statutory provisions and two to regulations of a local community. The situation regarding respect for the decisions of the Constitutional Court worsened compared to 2020, as eighteen decisions remained unimplemented as of the end of 2020. 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.

3. 1. Unimplemented Decisions Not Containing the Manner of Implementation

Among the mentioned twenty-three decisions, there are six wherein the Constitutional Court did not determine the manner of the implementation of its decision due to the nature of the established unconstitutionality. In such instances, the issue of respect for Constitutional Court decisions is even more pronounced as a Constitutional Court decision in and of itself cannot guarantee the temporary protection of human rights or constitutionally consistent solutions in concrete proceedings. The oldest unimplemented decision from amongst those decisions, as well as overall, remains a decision from 1998 (Decision No. U-I-301/98, dated 17 September 1998, Official Gazette RS, No. 67/98) that established the unconstitutionality of certain provisions of the Establishment of Municipalities and Municipal Boundaries Act defining the territory of the Urban Municipality of Koper. As in light of the amount of time that has passed since the Decision was rendered, and also considering the overall development of the regulations that concern the Urban Municipality of Koper, there is no possibility that in the future the legislature would in any manner respond to the constitutional decision, the Constitutional Court will no longer list this case among the unimplemented decisions of the Constitutional Court.

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.

The time limit for remedying the unconstitutionality established by Decision No. U-I-227/14, Up-790/14, dated 4 June 2015 (Official Gazette RS, No. 42/15), whereby 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, expired in 2016.

In 2021, the time limits for the elimination of the unconstitutionalities established by three decisions of the Constitutional Court expired. By Decision No. U-I-166/17, dated 5 November 2020 (Official Gazette RS, No. 173/20), the Constitutional Court established that the transitional regulation in the Pharmacy Practice Act is unconstitutional because it contains an unconstitutional legal gap, which is as such inconsistent with the principle of legal certainty enshrined in Article 2 of the Constitution. This Act namely failed to answer several complex legal questions raised by the potential transfer of the ownership share of a pharmacy practice holder within the special regime of pharmacy practice as a public service. By Decision No. U-I-139/15, dated 23 April 2020 (Official Gazette RS, No. 74/20), the Constitutional Court established that Article 156 of the Ordinance on the Municipal Spatial Plan of the Municipality of Bled, in the part transforming the relevant part of a plot of land from construction land into agricultural land, is inconsistent with provisions of the Spatial Planning Act, and therefore with

the third paragraph of Article 153 of the Constitution, which requires that regulations of local communities be in conformity with the Constitution and laws. By Decision No. U-I-151/15, dated 4 June 2020 (Official Gazette RS, No. 90/20), the Constitutional Court established the inconsistency of the Ordinance on the Implementing Spatial Plan of the Urban Municipality of Kranj in the part that refers to the relevant spatial unit with the third paragraph of Article 153 of the Constitution because during the procedure for adopting the mentioned act the Urban Municipality of Kranj failed to duly establish and consider all the circumstances that are relevant from the perspective of ensuring a fair balance between the interests of the community and the interests of individuals.

3. 2. Unimplemented Decisions Containing the Manner of Implementation

In seventeen decisions out of the total of twenty-three decisions to which the competent authority has not yet responded in an appropriate manner, 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, the 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. In addition, by means of a manner of implementation the Constitutional Court can decide that, until the unconstitutionality is remedied, the challenged unconstitutional regulation continues to apply, particularly in instances of complex regulations that cannot be replaced by a Constitutional Court decision, not even transitionally. 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 brief 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 implementation of 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 the elimination of the unconstitutionality of two decisions of the Constitutional Court expired to which the legislature has not yet responded. 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 (1) is 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 2019, the time limits for the elimination of the unconstitutionalities established by three decisions of the Constitutional Court expired. 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 before the Supreme Court 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 call upon 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 a legal remedy 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 for the elimination of the unconstitutionalities established by four decisions of the Constitutional Court expired. By Decision No. U-I-477/18, Up-93/18, 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 the second paragraph of 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.

In 2021, the time limits for the elimination of the unconstitutionalities established by seven decisions of the Constitutional Court expired. By Decision No. U-I-171/17, dated 6 February 2020 (Official Gazette RS, No. 11/20), the Constitutional Court established that the Labour Market Regulation Act does not satisfy the requirement that regulations be clear and precise determined by Article 2 of the Constitution, as the legislature failed to clearly determine the rules on the basis of which a court could decide in a concrete dispute and thus employers cannot know in advance which possible irregularities they may invoke in judicial proceedings and what competences the court will have if it upholds their claims. By Decisions No. U-I-512/18, dated 23 April 2020 (Official Gazette RS, No. 74/20), and No. U-I-222/18, dated 14 May 2020 (Official Gazette RS, No. 85/20), the Constitutional Court held that the Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act (1) is inconsistent with the second paragraph of Article 14 of the Constitution because the second indent of point 2 of the second paragraph of Article 399 necessarily requires that courts apply an identical (strict) sanction in all instances of violations of the duty to cooperate, including instances of extremely minor violations of the duty determined by Article 383b of this Act, and (2) is inconsistent with Article 22 of the Constitution because Article 221j does not allow debtors to effectively participate in compulsory composition proceedings and essentially limits the content of the review of creditors' motions for compulsory composition to whether the creditors' claims fulfil the determined quota and therefore gives too much weight to the principle of accelerated proceedings and the interests of creditors with financial claims at the expense of debtors' right to be heard and their right to a fair trial. By Decision No. Up-676/19, U-I-7/20, dated 4 June 2020 (Official Gazette RS, No. 93/20), the Constitutional Court held that Articles 100, 101, and 102 of the Local Elections Act are unconstitutional because the regulation of the procedure for judicial protection of the right to vote before the Administrative Court is inconsistent with the right to judicial protection determined by the first paragraph of Article 23 of the Constitution. By Decision No. U-I-79/20, dated 13 May 2021 (Official Gazette RS, No. 88/21), the Constitutional Court established the inconsistency of points 2 and 3 of the first paragraph of Article 39 of the Communicable Diseases Act with the second paragraph of Article 32 and the third paragraph of Article 42 of the Constitution because the legislature authorised the Government, in order to prevent communicable diseases, to decide on interferences with the freedom of movement and the right of assembly and association without also determining a sufficient substantive basis for the exercise of such authorisation (the principle of legality). By Decision No. U-I-418/18, Up-920/18, dated 5 November 2020 (Official Gazette RS, No. 191/20), the Constitutional Court held that the Criminal Procedure Act is inconsistent with the right to judicial protection determined by the first paragraph of Article 23 of the Constitution as it does not contain a 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 has not yet begun serving his or her prison sentence at the time such motion was filed is adopted only when the convict is already serving his or her prison sentence in prison or even

the risk that due to the passing of time a substantive decision on the motion will not be adopted at all. By Decision No. U-I-474/18, dated 10 December 2020 (Official Gazette RS, No. 195/20), the Constitutional Court established that neither the provision of the Public Finance Act 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 this Act includes any framework or guideline for the issuance of more detailed implementing regulations by the Minister of Finance. It therefore held that the first paragraph of Article 95 of the Public Finance Act, insofar as it refers to the National Council, the Constitutional Court, the Ombudsman for Human Rights, and the Court of Audit, is inconsistent with the second paragraph of Article 120 of the Constitution.

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

The Judge who completed her term in 2021:
Dr Dunja Jadek Pensa

Assumed the office of judge	Assumed the office of Vice President	Assumed the office of President
27 March 2017	28 September 2019	16 December 2021

Prof. Dr Matej Accetto, 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. He assumed the office of Vice President on 28 September 2019 and the office of President on 16 December 2021.

Assumed the office of judge

28 September 2019

Assumed the office of Vice President

16 December 2021

Assist. Prof. Dr Rok Čeferin, Vice President,

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). He delivered a lecture at the Judicial School for Civil Law Seminar (2016) and a talk at the Slovene State Prosecutors Days (2017). He has participated in seminars organised by the Slovene Academy of Sciences and Arts on the topics of hate speech and freedom of speech (2015) and 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 and assumed the office of Vice President on 16 December 2021.

Assumed the office
of judge

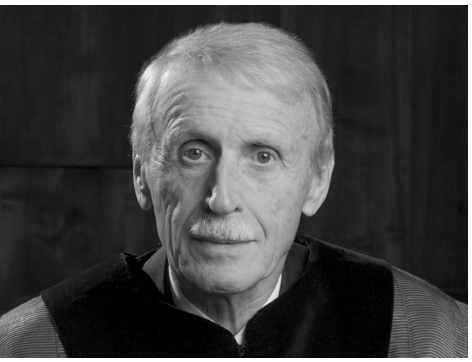
31 October 2016

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 coauthor and editor of the lexicon Pravo [Law] (1987; second edition: 2003). He also published the bilingual selection of Leonid Pitamic's treatises Na robovih čiste teorije prava / An den Grenzen der Reinen Rechtslehre [At the Limits of the Pure Theory of Law] (together with an introductory study; 2005, reprint: 2009). He was a fellow of the Alexander von Humboldt Foundation for twenty three months; he spent most of this time at the Institute of Philosophy of Law and Legal Informatics at the University of Munich and the Institute for Interdisciplinary Research at the University of Bielefeld. In 2001, he received the Zois Award for outstanding achievements in legal sciences. In 2003, he was elected an associate member of the Slovenian Academy of Sciences and Arts, and a full member in 2009. He has been a member of the European Academy (Academia Europaea) since 2010, a member of the Executive Committee of the International Association for the Philosophy of Law and Social Philosophy since 2011, and an international correspondent member of the Hans Kelsen Institute in Vienna since 2012. A more detailed biography, including a bibliography, is accessible on the website of the Slovenian Academy of Sciences and Arts. He commenced duties as judge of the Constitutional Court on 27 March 2017.

Assumed the office of judge

27 March 2017

Prof. Dr. 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	Assumed the office of President
25 April 2017	19 December 2018

Prof. Dr Rajko Knez

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 held the office of President of the Constitutional Court from 19 December 2018 until 15 December 2021.

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 office
of judge

10 November 2021

Prof. Dr Rok Svetlič

enrolled at the Faculty of Law of the University of Ljubljana in 1992 and at the Faculty of Arts of the University of Ljubljana (philosophy study programme) in 1994. In 2005, he obtained a PhD with a dissertation on Ronald Dworkin's philosophy of law under the mentorship of Acad. Prof. Dr Tine Hribar. In 2007, as a guest, he attended a seminar held by Prof. Dr Otfried Höffe at the University of Tübingen, Germany.

He researches legal science – which today axiologically falls within the social sciences – through the lens of humanistic studies. A departure from the perspective of (merely) the social sciences enables a view of the law that goes beyond policymaking for managing society and places legal institutes in the framework of the broadest Western and European spiritual tradition that binds us. Such a view enables both an understanding of the role that legal institutes play in the structure of democratic culture and a holistic interpretation of such legal institutes.

In such manner, Dr Svetlič has approached the issues of legal decision-making, legal principles, legal interpretation, legal positivism, criminal sanctions, civil disobedience, totalitarianisms, differentiation between law and ethics, human rights, etc. He has published a series of scientific articles and five monographs of which he was the sole author. His first research series was dedicated to the issue of the legitimation of coercion in the post-modern period. His findings were published in the monograph *Dve vprašanji sodobne etike* [Two Questions of Modern Ethics] (Založba Goga, 2003).

In his subsequent research series, Dr Svetlič addressed R. Dworkin's theory and philosophy of law (*Filozofija prava Ronalda Dworkina* [The Philosophy of Law by Ronald Dworkin], Nova revija, 2008) and the issue of human rights (*Filozofija človekovih pravic* [Philosophy of Human Rights], Založba Annales, 2009). He also published a university textbook (*Izbrana poglavja iz politične morale* [Selected Chapters from Political Ethics], Založba Univerze na Primorskem, 2010). In 2015, he published the monograph *Prenašati bit sveta – ontologija prava in države* [To Endure the Being of the World – Ontology of Law and State], which sheds light upon the reasons for the worrying affinity for violence that can be found in numerous modern criticisms of democracy and human rights. This monograph was also published in German (Königshausen-Neumann Verlag, 2019) and Croatian translations (Demetra, 2020). His latest research series is dedicated to the tension between two elements of the democratic organisation of coexistence, i.e. universal human rights and a particular state (*Sobivanje med univerzalnim in partikularnim* [Coexistence of the Universal and the Particular], Annales, 2016).

In addition to performing research work, Dr Svetlič also lectures at the *European Faculty of Law* of the New University and at *Institutum Studiorum Humanitatis* of Alma Mater Europaea. He is also a member of the editorial board of the journals *Poligrafi* and *Revija za kriminologiju i krivično pravo* (Beograd). He commenced duties as judge of the Constitutional Court on 10 November 2021.

Assumed the office of judge

15 July 2011

Completed her term of Office

10 November 2021

4. 2. The Judge Who Completed Her Term of Office in 2021

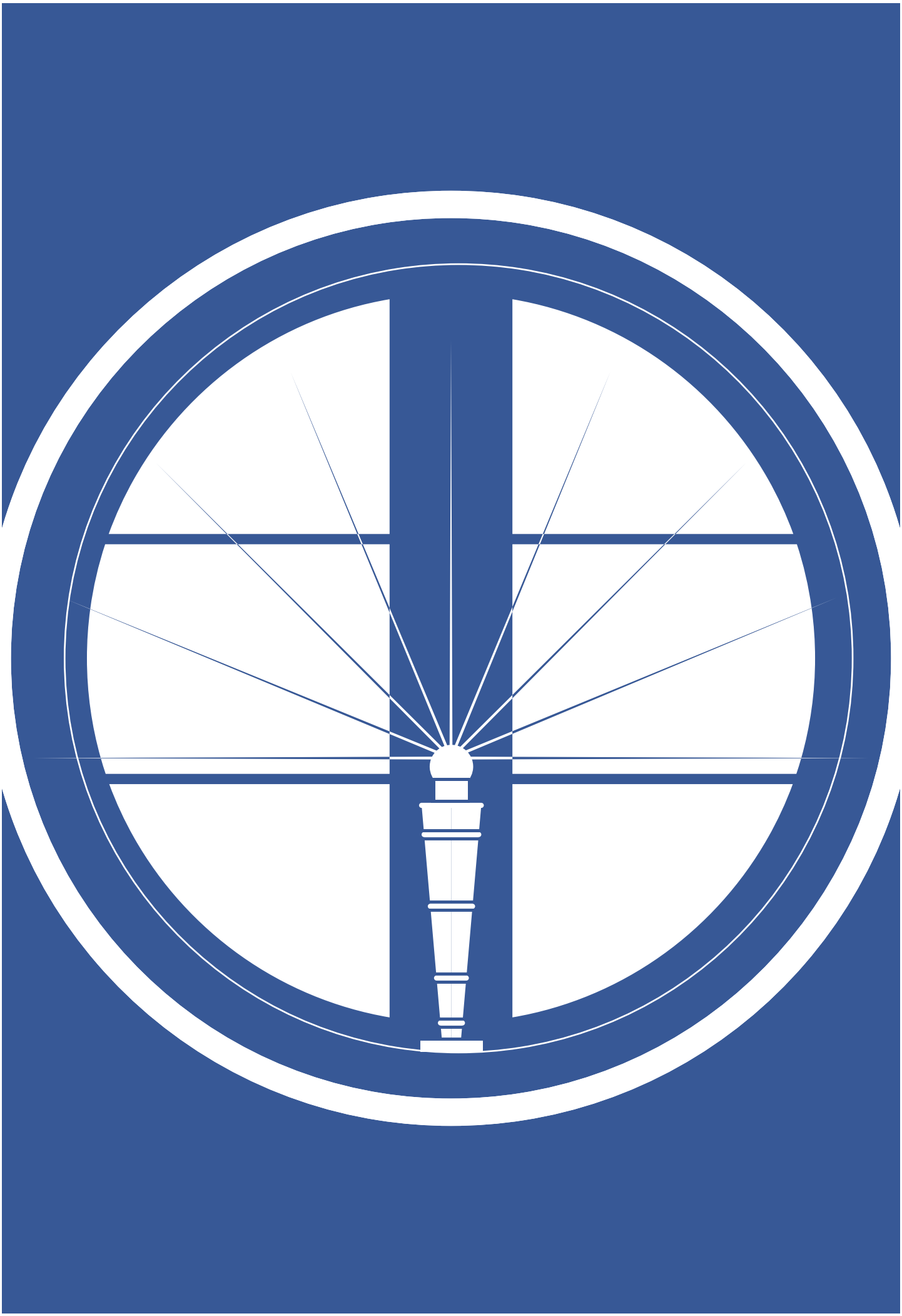
Dr Dunja Jadek Pensa

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 postgraduate 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 held the office of judge of the Constitutional Court from 15 July 2011 until 10 November 2021.

4. 3. The Secretary General of the Constitutional Court

Dr Sebastian Nerad

graduated from the Faculty of Law of the University of Ljubljana in 2000. For a short period after graduation he worked as a judicial intern at the Higher Court in Ljubljana. After becoming a Lecturer at the Faculty of Law in Ljubljana at the end of 2000, he concluded his internship at the Higher Court as an unpaid intern. He passed the state legal examination in 2004. From December 2000 until July 2008 he was a lecturer at the Department of Constitutional Law of the Faculty of Law in Ljubljana. During this period his primary field of research was constitutional courts. In 2003, he was awarded a Master's Degree in Law by the Faculty of Law on the basis of his thesis entitled "Pravne posledice in narava odločb Ustavnega sodišča v postopku ustavnosodne presoje predpisov" [Legal Consequences and the Nature of Constitutional Court Decisions in the Procedure for the Constitutional Review of Regulations]. He was also awarded a Doctorate in Law by this Faculty in 2006, following the completion of his doctoral thesis entitled "Interpretativne odločbe Ustavnega sodišča" [Interpretative Decisions of the Constitutional Court]. In 2007, he worked for six months as a lawyer-linguist at the European Parliament in Brussels. In August 2008, he commenced employment 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 2021, the Constitutional Court adopted a number of important decisions and orders. Only some of the decisions and orders that have a constitutional precedential value because they significantly contribute to an understanding and the application of the Constitution and the laws are presented below. The decisions and orders are arranged in chronological order according to the date of their adoption. The full texts of the Decisions in Slovene are also available on the website of the Constitutional Court.

5. 1. The Protection of Judicial Independence in Parliamentary Inquiry Procedures

In Case No. U-I-246/19 (Decision dated 7 January 2021, Official Gazette RS, No. 22/21), the Constitutional Court decided on a request of the Judicial Council to review the constitutionality of the Parliamentary Inquiries Act and the Rules on Parliamentary Inquiries. The applicant alleged that the stated regulations are inconsistent with the Constitution because they fail to regulate an appropriate mechanism that would prevent unconstitutional interferences with the independent performance of the judicial function by means of a parliamentary inquiry. The applicant also alleged that the Act Ordering a Parliamentary Inquiry in the Case of *Franc Kangler and Others* entails an unconstitutional violation of the constitutional principle of the independence of judges.

At the outset, the Constitutional Court considered whether the Constitution imposes any restrictions on the proposers of parliamentary inquiries (Article 93 of the Constitution) or on the National Assembly when deciding on the initiation of a parliamentary inquiry in connection with the protection of the independence of judges guaranteed by Article 125 of the Constitution. Relying on its hitherto case law, the Constitutional Court clarified that the constitutional position of the judiciary does not require the complete exclusion of the judiciary from the control exercised by the National Assembly by means of parliamentary inquiries. Within the framework of parliamentary inquiries, the National Assembly may investigate the functioning of the judicial branch of power as a whole as well as trends in the development of the judiciary. Even the investigation of historical events that are also the subject of judicial proceedings does not, in itself, interfere with the independence of judges. However, in conducting parliamentary inquiries into judicial proceedings, the National Assembly may not obstruct or influence in any way the decisions of judges in concrete judicial proceedings. This includes the prohibition on discussing *ex post*, within its own procedures, the legality or adequacy of individual court decisions or the handling of judicial proceedings, as well as the

prohibition on questioning judges as witnesses or investigated persons regarding questions that relate to concrete (pending or concluded) judicial proceedings.

If a parliamentary inquiry is ordered or requested in order to scrutinise the correctness of court decisions and/or to establish the liability of judges for decisions adopted during proceedings, the mere ordering of such a parliamentary inquiry is inconsistent with the constitutional principle of the independence of judges. This does not entail that judges are beyond reproach in the performance of their judicial function and that their decisions cannot be changed. Irregularities in the handling of proceedings may, however result in a judge being subject to disciplinary as well as criminal sanctions, and even dismissal.

The Constitutional Court then proceeded to the issue of the procedural protection of judicial independence in the procedure for ordering a parliamentary inquiry. It established that the legislation does not provide for judicial protection, a legal remedy, or any other effective procedure that could prevent parliamentary inquiries that unconstitutionally interfere with the independence of judges, although the existence of such a procedure is of crucial importance for ensuring judicial independence (Article 125 of the Constitution) and thereby the right of everyone to an independent and impartial court (the first paragraph of Article 23 of the Constitution). The Constitutional Court held that such a procedure could be regulated in accordance with the constitutional system of the separation of powers in a manner that would not jeopardise the effective conduct of parliamentary inquiries. In light of such, it held that the Constitution requires such a procedure.

Since the legislature failed to regulate the legal protection of judicial independence in the framework of the procedure for ordering parliamentary inquiries, the Constitutional Court established that the challenged Parliamentary Inquiries Act and the Rules on Parliamentary Inquiries are inconsistent with Article 125 of the Constitution. It required the National Assembly to remedy the established unconstitutionality within one year following the publication of its decision in the Official Gazette of the Republic of Slovenia. It further determined the manner of implementation of its decision, holding that, until the established unconstitutionality is remedied, the Constitutional Court shall decide on the conformity of an act ordering a parliamentary inquiry with the constitutionally guaranteed independence of judges upon the request of the Judicial Council.

In accordance with the mentioned manner of implementation, the Constitutional Court proceeded to decide on the constitutional consistency of the Act Ordering a Parliamentary Inquiry in the Case of *Franc Kangler and Others*. In the framework of the review, it analysed the parts of the Act that refer to judges and assessed that in this part the inquiry refers to a review of the correctness of judicial decisions and to the establishment of the liability of judges for decisions adopted in concrete court proceedings. It therefore decided that in this part the Act Ordering a Parliamentary Inquiry in the Case of *Franc Kangler and Others* is inconsistent with the constitutional principle of the independence of judges determined by Article 125 of the Constitution and abrogated it in this part.

5. 2. Psychological Tests in Criminal Proceedings

By Decision No. Up-511/17, dated 7 January 2021 (Official Gazette RS, No. 24/21), the Constitutional Court decided on a constitutional complaint against the precautionary

measure of mandatory psychiatric treatment without confinement imposed by a final order. The complainant alleged that her right to a defence was violated because the court of first instance rejected as unnecessary the defence's evidentiary motion that the clinical psychologist submit the MMPI-201 personality test and the Rorschach projective test, which were used in the drafting of the expert opinion.

The Constitutional Court stressed that maintaining the validity of psychological tests as a means of psychological assessment by not making them available to the public is important for ensuring effective and fair court proceedings when the court requires the assistance of an expert from the relevant field in order to clarify the facts of a case. It pointed out that in criminal proceedings the necessity of maintaining the validity of such tests must be balanced against the fundamental constitutional safeguards that guarantee a fair trial. The participants in proceedings can namely only understand and critically examine an expert opinion and the methods the court-appointed expert used in its drafting if the expert submits the relevant documentation. From the right to a defence (the first indent of Article 29 of the Constitution) it follows that court-appointed experts must explain their findings in such a manner that all participants in proceedings can understand the thought processes underlying the answers to the individual questions. The conclusions of a court-appointed expert may be recognised by the court if the methods used to arrive at such conclusions can be verified either by the defence or at least by another professionally qualified person assisting the defence. Only in this manner can the defendant fully exercise his or her right to be heard, which in the framework of criminal proceedings is guaranteed by Article 22 of the Constitution.

In the assessment of the Constitutional Court, the necessity of maintaining the validity of tests does not substantiate the complete and unconditional rejection of the defence's motion for the submission of the clinical psychologist's documentation. In the framework of the measures for the organisation of proceedings, the court could namely have adopted specific measures to secure the substance of the test materials by preventing their disclosure to the public. It could have, for instance, required that the clinical psychologist who had participated in the drafting of the expert opinion of the court-appointed expert from the field of psychiatry submit the materials only to a clinical psychologist chosen by the defence. In doing so, the court could have ensured that the materials were accessible to neither the complainant's legal counsel nor the complainant herself, but only to a person who is bound by the same standards of confidentiality as the person who administered the tests. As it failed to adopt any such measures, the court of first instance violated the complainant's right to a defence determined by the first indent of Article 29 of the Constitution. Both the Higher Court and the Supreme Court failed to remedy this violation.

5. 3. The Maximum Age Limit for Access to Biomedically-Assisted Procreation

By Decision No. Up-459/17, U-I-307/19, dated 21 January 2021 (Official Gazette RS, No. 42/21), the Constitutional Court decided on the constitutional complaint of a complainant who challenged a judgment by which the Supreme Court granted an appeal of the Health Insurance Institute of Slovenia before the Supreme Court and modified the judgments of the first and second instance Social Courts such that it dismissed the claim of the complainant to annul the first and second instance decisions of the Institute. The Institute namely dismissed her

request for reimbursement of the costs of two biomedically-assisted procreation procedures carried out in the Czech Republic because the complainant underwent the two procedures without the authorisation of the National Commission for Biomedically-Assisted Procreation and after having reached 43 years of age. The Supreme Court stressed that in order to be able to successfully invoke the right to reimbursement of the costs of treatment in another EU Member State, the insured person must first fulfil the conditions for obtaining the medical service in question in accordance with the regulations in force in the Republic of Slovenia. Since the complainant did not fulfil the age requirement determined by the second paragraph of Article 37 of the Rules on Compulsory Health Care Insurance as regards the invocation of the right to biomedically-assisted procreation, she was not entitled to reimbursement of the costs of the medical services carried out in the Czech Republic.

By an order, the Constitutional Court initiated, *ex officio*, proceedings for the review of the constitutionality and legality of the second paragraph of Article 37 of the Rules on Compulsory Health Care Insurance insofar as it determined that within the framework of specialist outpatient activities, women have the right to biomedically-assisted procreation until they reach 43 years of age. It stressed that the legislature regulated the right to health care, insofar as this right encompasses medical procedures enabling couples to conceive a child (i.e. the treatment of infertility and biomedically-assisted procreation) and thus the exercise of the right determined by Article 55 of the Constitution, by the Infertility Treatment and Procedures for Biomedically-Assisted Procreation Act. When determining who is entitled to procedures for biomedically-assisted procreation, the legislature also determined that the age of the beneficiary is important, along with the other circumstances determined by that Act. It namely determined that the woman must be of an age appropriate for giving birth. This Act does not contain other provisions concerning this condition that the beneficiary of such procedures for biomedically-assisted procreation must fulfil.

The Health Insurance Institute of Slovenia adopted the Rules on Compulsory Health Care Insurance, which constitute a general act issued for the exercise of public authority, and which, with regard to the right to biomedically-assisted procreation, determine, *inter alia*, that within the framework of specialist outpatient activity, women have the right to biomedically-assisted procreation from 18 years of age until they reach 43 years of age. The Health Insurance Institute of Slovenia stated that by determining the upper age limit it only concretised the statutorily determined condition regarding age for a woman to be entitled to biomedically-assisted procreation, namely that she must be of an age appropriate for giving birth. The Constitutional Court did not concur with such justification provided by the Institute. Had the legislature wished that the Institute concretise the mentioned condition regarding age by determining an (absolute) age limit after which biomedically-assisted procreation is no longer admissible, it should have expressly authorised it to do so. However, the Infertility Treatment and Procedures of Biomedically-Assisted Procreation Act does not contain such an authorisation.

In light of the above, the Constitutional Court assessed that the implementing act, i.e. the Rules on Compulsory Health Care Insurance, limited, without express statutory authorisation, the right to biomedically-assisted procreation of those couples wherein the woman has reached 43 years of age. Thereby, the Rules on Compulsory Health Care Insurance exceeded the framework of the constitutionally admissible regulation of the human right to health care determined by the first paragraph of Article 51 of the Constitution by implementing regulations. As the Constitutional Court stressed, the statutory authorisation should be precise

to such a degree that the Rules would only determine the manner in which the right should be exercised. By lacking such precision, the implementing act interferes with the subject matter of the statutory regulation.

Consequently, the Constitutional Court abrogated the second paragraph of Article 37 of the Rules on Compulsory Health Care Insurance insofar as it determined that within the framework of specialist outpatient activities, women have the right to biomedically-assisted procreation until they reach 43 years of age. The challenged Supreme Court judgment was based on the abrogated provision of the Rules on Compulsory Health Care Insurance; therefore, it violated the complainant's right to health care determined by the first paragraph of Article 51 of the Constitution. The Constitutional Court abrogated the judgment and remanded the case to the Supreme Court for new adjudication.

5. 4. Free-of-Charge Advertisements of Political Parties

In Case No. U-I-12/16, (Decision dated 4 February 2021, Official Gazette RS, No. 24/21), upon the request of the Court of Audit, the Constitutional Court reviewed the constitutionality and legality of multiple municipal acts that enabled political parties to publish advertisements free-of-charge during the time of ordinary operations of parties and during the time of an elections or referendum campaign. At the time of the decision-making of the Constitutional Court, only the Ordinance on the publication of the municipal bulletin "Municipality Bulletin" of the Municipality of Trebnje still remained in force. The applicant asserted that such benefit enables the financing of political parties contrary to the Political Parties Act and the Elections and Referendum Campaign Act.

During the consideration of the Case by the Constitutional Court, the Court of Audit concluded auditing procedures concerning the functioning of multiple political parties. To be consistent with its established case law, the Constitutional Court should have rejected such request of the applicant. However, the Constitutional Court reassessed the position of the Court of Audit in the constitutional order and changed the understanding of the procedural condition that the Court of Audit may file requests only concerning cases that are pending before it. It established that the Court of Audit is the highest authority for supervising state accounts, the state budget, and all public spending, and that in accordance with the Constitution it performs an important supervisory function as regards the spending of public funds. The Court of Audit supervises state authorities of all three branches of power and concurrently provides them independent and objective data on public spending and thereby assists them in performing supervision over each other. Although the Court of Audit is not directly involved in the system of checks and balances, it significantly contributes to the functioning of this system and to respect for the constitutional principle of the separation of powers. Therefore, in the constitutional order the Court of Audit is the key authority for protecting public interest in the field of public finances. The Constitutional Court held that the legislature conferred on the Court of Audit the competence to file requests especially with a view to enable it, as the guardian of public interest in the field of public finances, to request the review of constitutionality of regulations from this field. Therefore, it allowed the Court of Audit to file requests if it demonstrates that it had to apply the challenged regulation in an auditing procedure which was within its competence and if it filed the request at the time when the auditing procedure had not yet been concluded. Since the Court of Audit fulfilled this condition in the case at issue, the Constitutional Court carried out the substantive review of the request.

The Constitutional Court decided on the question of whether a municipality can adopt a regulation by which it enables political parties to publish political advertisements free-of-charge in a local bulletin published by the municipality. It explained that, on the basis of the first paragraph of Article 140 of the Constitution, a municipality can adopt regulations by which it regulates the rights and obligations of legal entities, but in doing so it must not exceed the constitutional framework and interfere with the competences of the state. If the regulation of a specific field lies in the competence of the state, it must be deduced from the legislature's intention whether it wished to regulate that field exhaustively or whether it allowed the possibility that a municipality adopts additional regulation. If such was not envisaged, regulation by a municipality is contrary to the principle of legality determined by the third paragraph of Article 153 of the Constitution.

The Constitutional Court clarified the legal regulation of financing political parties during the time of ordinary operations (which is regulated by the Political Parties Act) and during the time of an elections or referendum campaign (which is regulated by the Elections and Referendum Campaign Act). The Constitutional Court established that in both instances the intention of the legislature was to regulate these fields exhaustively. The Constitutional Court decided that the adoption of a regulation that enables political parties to advertise free-of-charge in a local public media outlet is contrary to the general prohibition of political parties being financed by local community authorities as is determined in both Acts. It adopted the position that this entails indirect financing from public funds because the municipality allows parties to exercise the activity of political advertising without the assets of these parties being reduced as a result. Such financing must be allowed by law, otherwise it is prohibited. The Political Parties Act and the Elections and Referendum Campaign Act do not envisage such source of funding. Therefore, by adopting the second paragraph of Article 3 of the challenged ordinance (which enabled free-of-charge advertising during the time of ordinary operations of parties) and the third paragraph of Article 3 of the challenged ordinance (which enabled the same during the time of an elections or referendum campaign), the Municipality of Trebnje introduced a new source of funding of political parties and thus exceeded its competences. The Constitutional Court held that the Municipality acted illegally and unconstitutionally and abrogated the mentioned provisions of the Ordinance in the parts referring to the financing of political parties.

5. 5. The Position of the Opposing Party in Procedures for the Recognition and Enforcement of Foreign Judgments

In Decision No. U-I-473/19, U-I-400/20, dated 4 February 2021 (Official Gazette RS, No. 31/21), the Constitutional Court decided on the requests of the Maribor District Court for a review of the constitutionality of the sixth paragraph of Article 109 of the Private International Law and Procedure Act, which determines that an order recognising a foreign judicial decision relating to divorce shall not be served on the opposing party if the person applying for recognition is a citizen of the Republic of Slovenia and the opposing party has neither permanent nor temporary residence in the Republic of Slovenia.

The Constitutional Court reviewed the challenged provision from the perspective of conformity with the human rights determined by Articles 22 and 25 of the Constitution. On the basis of the challenged provision, in a situation such as allegedly existed in the original

cases, the opposing party is deprived of the possibility to be heard and even to participate in the procedure for the recognition of a foreign judgment if the competent court assesses that the conditions for its recognition are fulfilled. Namely, in a procedure for the recognition and enforcement of a foreign judgment, the opposing party is as a general rule only informed that a procedure has been initiated against him or her when the order recognising the foreign judgment is served on him or her, and it is only by submitting an objection against that order that he or she obtains for the first time the opportunity to be heard in the procedure. The Constitutional Court established that the effect of the challenged regulation is such that the opposing party is no longer the bearer of that human right, as the right to be heard and to participate in the procedure is not ensured in either the procedure before the court of first instance or in the procedure before the court of second instance. According to the Constitutional Court, the challenged provision addresses the very core of the human right to be heard, i.e. to participate in a procedure for the recognition and enforcement of a foreign judgment, and thus interferes not only with the right of the opposing party determined by Article 22 of the Constitution, but also with his or her right to a legal remedy determined by Article 25 of the Constitution.

In the assessment of the Constitutional Court, such an interference with the rights determined by Articles 22 and 25 of the Constitution does in fact pursue the constitutionally admissible goal of accelerating the judicial procedure for the recognition and enforcement of a foreign judgment and is also appropriate for and necessary to attain the pursued goal, but it fails to pass the test of proportionality in the narrower sense. Namely, the benefits of the challenged regulation do not outweigh the consequences that that regulation has for the affected individuals from the viewpoint of the right to participate in a procedure for the recognition and enforcement of a foreign judgment. Not only is the opposing party inadmissibly deprived of the right to be heard before the court of first instance, but he or she also cannot challenge the decision of the court of first instance before an appellate court. Thereby, the possibility of the opposing party making a statement on all relevant aspects of the case that interferes with his or her rights or interests and influencing the decision of the court is entirely precluded. The court conducting the procedure for the recognition and enforcement of the foreign judgment would hence be unable to establish, by merely consulting the foreign judicial decision, whether the opposing party perhaps was not given an opportunity to participate in judicial proceedings or he or she declined to participate. It is not certain that the court conducting the procedure for the recognition and enforcement of a foreign judgment will, merely on the basis of consulting the submitted certified translation of the foreign judicial decision, learn of the circumstances that could affect the ascertainment of those procedural requirements for recognising the foreign judicial decision that that court must observe on its own motion. Furthermore, the inability of the opposing party to participate in the procedure for the recognition and enforcement of a foreign judgment also deprives him or her of the possibility to submit objections that the court would not otherwise take into consideration on its own motion.

Since the Constitutional Court decided that the challenged statutory provision is inconsistent with the right to be heard, which follows from right to the equal protection of rights guaranteed by Article 22 of the Constitution and the right to a legal remedy determined by Article 25 of the Constitution, it abrogated it.

5. 6. Suspension of the Publication of a General Act of a Municipality due to a Referendum Petition

In Case No. U-I-5/19 (Decision dated 11 February 2021, Official Gazette RS, No. 28/21), the Constitutional Court reviewed the constitutional consistency of three spatial acts of the Municipality of Piran, i.e. the Ordinance on the Municipal Detailed Spatial Plan "Ob Belokriški", the Ordinance on the Municipal Detailed Spatial Plan "Park Cvetja", and the Ordinance on the Municipal Detailed Spatial Plan "Med Vrtovi". The petition was lodged by the individual who in the procedure for the adoption of all three spatial acts initiated the voters' petition to file a request to call for a referendum. The ordinances were published and entered into force before the Administrative Court decided on the petitioner's action filed against the mayor's decision that the referendum petition was not lodged. The petitioner alleged that in the procedure for the adoption of these ordinances the effective exercise of his right to initiate a petition for calling a subsequent referendum as regulated by the Local Self-Government Act was rendered impossible.

The Constitutional Court reviewed the challenged ordinances 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. It stated that the suspension of the publication of a municipal general act is an important legal consequence of a request or petition to call for a subsequent referendum, since only by preventing a regulation to be published before the referendum procedure is finished and consequently preventing its entry into force the effectiveness of the subsequent local referendum as a form of direct decision-making by voters on the confirmation or rejection of a municipal regulation can be ensured. A subsequent referendum would lose its meaning if a municipal regulation had entered into force even before the referendum would be held. In fact, a request for calling a subsequent referendum entails the request that voters decide directly and with finality on whether a general act adopted by a municipal council should be preserved or not. At the statutory level, the request to suspend the publication of a municipal general act in the case of a referendum petition is regulated by the third paragraph of Article 46 of the Local Self-Government Act, which determines that in cases in which a proposal to call for a referendum is lodged or a petition of the voters to file a request to call for a referendum is initiated, the mayor shall suspend the publication of a general act until the proposal or petition is decided on or until the referendum decision is known.

The Constitutional Court took into consideration that in the framework of the regulation of the procedure for deciding on a referendum petition, the legislature determined that the mayor's decision be subject to a judicial review before the Administrative Court. In the light of the mentioned judicial protection against the mayor's decision envisaged by the law and the definition of the term local referendum on a municipal general act as a subsequent (rejecting) referendum, the Constitutional Court adopted the position that the only possible interpretation of the third paragraph of Article 46 of the Local Self-Government Act is that in the event a petitioner challenges the mayor's decision before the Administrative Court, the mayor must suspend the publication of a general act until the decision on the referendum petition becomes final. In the case of a negative decision by the mayor, this provision of the Local Self-Government Act is therefore to be understood in a manner such that after the mayor adopts a decision thereon, the publication of a municipal general act is admissible only if an action against such a decision has not been filed and can no longer be filed. If judicial protection against the mayor's decision is invoked, the publication of the regulation

at issue must be suspended until the Administrative Court has decided on the action. If the Administrative Court abrogates the mayor's decision, the mayor must suspend the publication of the regulation until he or she has decided thereon anew and in the case an action is filed also against this new decision, the publication must be suspended at least until the Administrative Court has decided thereon.

Since in the procedure for the adoption of the challenged ordinances, the requirement that the publication thereof be suspended was not observed, but the mayor sent the challenged ordinances for publication even before the Administrative Court decided on the petitioner's action against the mayor's decision on the referendum petition, the Constitutional Court decided that the challenged ordinances are inconsistent with the third paragraph of Article 46 of the Local Self-Government Act and consequently also with the third paragraph of Article 153 of the Constitution; therefore, it abrogated them.

5. 7. Consumer Protection with regard to Consumer Credit Contracts

In Case No. U-I-27/17 (Decision dated 18 February 2021, Official Gazette RS, No. 29/21), upon the petition of a commercial entity providing consumer credit services, the Constitutional Court reviewed the constitutional consistency of the provision of the Consumer Credit Act that limits the amount of costs that can be charged due to failure to make repayments under a credit contract in time. Namely, the default costs must not exceed the actual costs the creditor has incurred due to the consumer's default, while at the same time such costs may not be higher than the amount of default interest determined by the law regulating the statutory default interest rate.

The Constitutional Court conducted the review from the perspective of consistency with the right to free economic initiative as protected by the first paragraph of Article 74 of the Constitution, which also guarantees the freedom to manage a commercial entity in accordance with economic principles.

The challenged regulation determines the amount of costs linked to a consumer's failure to make repayments under a credit contract in time that the petitioner may charge to a consumer. By means of the challenged regulation, the legislature determined the upper limit of the price of services that the petitioner may charge for a specific situation, i.e. an instance of default under a credit agreement, and in doing so it directly regulated (applicable to all existing contractual relationships) this aspect of the contractual relationship between the petitioner and the consumer who obtained credit. The Constitutional Court held that the challenged provision does not entail an interference with the right to free economic initiative but merely a manner of its implementation. By the adopted statutory provision the legislature did not narrow the field of economic freedom in an unusually intense manner, and in the assessment of the Constitutional Court the statutorily determined maximum price of the costs of payment reminders has a real substantive connection with the provision of consumer credit services. In addition, the legislature's objectives, i.e. consumer protection as a general objective and protection against unfair business practices as a special objective, are closely connected with the subject matter of the statutory regulation, i.e. consumer credit services. The Constitutional Court assessed that the legislature had a sound reason for adopting the challenged provision. It particularly stressed that consumer protection is an important value that enjoys constitutional protection on the basis of individual human rights and fundamental freedoms, as well as a

value that holds a special place in EU law as it is a fundamental principle pursuant to the Charter of Fundamental Rights of the European Union.

The Constitutional Court further held that the challenged regulation of maximum default costs is not inconsistent with the general principle of equality determined by the second paragraph of Article 14 of the Constitution, as the position of the petitioner differs from the position of other commercial entities that do not provide consumer credit services and to whom the rules of consumer law do not apply. In addition, the statutory regulation applies in the same manner to all commercial entities that provide consumer credit services, regardless of whether the creditors are banks and regardless of whether they are financially strong or weak.

Therefore, the Constitutional Court decided that the challenged provision of the Consumer Credit Act is not inconsistent with the Constitution.

5. 8. The Legal Status of a University and Its Members

In Decision No. U-I-163/16, dated 11 March 2021 (Official Gazette RS, No. 42/21), the Constitutional Court decided on a request of the Court of Audit for a review of the constitutionality of the provision of the Higher Education Act that regulates the legal status of universities and their members. The main allegation of the applicant was that the challenged provision is inconsistent with the principle of clarity and precision of legal regulations because it does not clearly determine whether the members of a university are independent legal entities, which in practice causes problems in a number of fields.

The Constitutional Court reviewed the challenged provision from the viewpoint of conformity with the requirement of clarity and precision of regulations, which is one of the principles of a state governed by the rule of law determined by Article 2 of the Constitution. The principle of clarity and precision of regulations requires, *inter alia*, that norms be defined clearly and precisely so that they can be implemented, so that they do not allow arbitrary actions, and so that they determine the legal situation of the entities to which they refer unambiguously and with sufficient precision.

The first paragraph of Article 58 of the Constitution determines that universities and state institutions of higher education shall be autonomous. The right to autonomy entails the right to decide on an entity's own matters, i.e. on the matters that pertain to a university field and concern a university or an institution of higher education. Regardless of the fact that the first paragraph of Article 58 of the Constitution does not determine that the legislature must prescribe by law the manner of implementation of this constitutional right, it follows from the constitutional case law that state universities and institutions of higher education cannot exercise their right to autonomy directly on the basis of the Constitution. In fact, this provision of the Constitution binds the state to determine the border between what is completely autonomous and what is public, and to regulate higher education such that it determines the fundamental frameworks for the functioning of state universities and institutions of higher education concerning their status, personnel management, management, and finances, and to regulate the fundamental relations between the entities within universities and the position of the public in the management of universities and in the supervision of their functioning. In doing so, the state must not limit the autonomy of state universities or institutions of higher education as regards their scientific and pedagogical component.

The Constitutional Court established that the Higher Education Act clearly determines that universities are legal entities and that, within the framework of a university, faculties and artistic academies shall be established, and also higher technical schools or other institutions can be established (i.e. the members of a university). The Act introduces a distinction between two different positions of university members; namely, for exercising a national higher education programme for which the Republic of Slovenia provides funding, and for "other instances" of the functioning of university members. The Higher Education Act does not contain other provisions that would determine the status of university members more precisely and in more detail. In the assessment of the Constitutional Court, it is hence (still) not clear what the status of university members is and whether also university members are legal entities. Such lack of clarity and precision of the legal regulation cause numerous practical problems (e.g. when carrying out an auditing procedure before the Court of Audit, when making entries in the register of companies, when registering, i.e. recording, ownership of property that a university member acquires from public and other sources, and when drafting and submitting balance sheets). Hence, since the challenged provision does not determine the legal status of university members in a substantively precise and unambiguous manner, such that their due conduct would be predictable, the Constitutional Court established that it is inconsistent with the principle of clarity and precision of regulations determined by Article 2 of the Constitution.

5. 9. The Exclusion of a Legislative Referendum on Measures for Remedying the Consequences of the COVID-19 Epidemic as a Natural Disaster

The proceedings for a review of constitutionality in Case No. U-I-480/20 (Decision dated 11 March 2021, Official Gazette RS, No. 57/21) were initiated upon a request of a voter who filed such on the basis of Article 21a of the Referendum and Popular Initiative Act. The Constitutional Court decided on the conformity of Article 52 of the Act Determining Intervention Measures to Mitigate the Consequences of the Second Wave of the COVID-19 Epidemic (ADIMMCSWE) with the first indent of the second paragraph of Article 90 of the Constitution.

In accordance with this provision of the Constitution, a legislative referendum may not be called on laws on urgent measures to ensure the defence of the state, security, or the elimination of the consequences of natural disasters. By the challenged statutory provision, the legislature amended the previous provision of Article 38 of the Act Amending the Higher Education Act (HEA-K), in accordance with which the National Agency of the Republic of Slovenia for the Quality of Higher Education (NARSQHE) had to verify, during the first next extension of the accreditation of an institution of higher education after the entry into force of the HEA-K, whether the stricter conditions for establishing an institution of higher education determined by the first and second paragraphs of the amended Article 14 of the Higher Education Act are fulfilled. As the challenged Article 52 of the ADIMMCSWE entered into force, the statutory regulation was amended such that the NARSQHE verifies whether the stricter conditions for establishing an institution of higher education are fulfilled only during the second extension of the accreditation of an institution of higher education. The National Assembly substantiated the inadmissibility of a referendum on the ADIMMCSWE by the fact that it is a law referred to in the first indent of the second paragraph of Article 90 of the Constitution. With regard to the above, the Constitutional Court had to assess whether the challenged statutory measure (i.e. the extension of the period within which the existing higher education institutions must fulfil

the changed, stricter conditions for establishing a higher education institution) is substantively an urgent measure to ensure the elimination of the consequences of a natural disaster.

Firstly, the Constitutional Court explained the terms "natural disaster", "elimination of the consequences thereof", and "urgency" contained in the first indent of the second paragraph of Article 90 of the Constitution. The Constitution does not contain special provisions as regards the term "elimination of the consequences of a natural disaster" that would define it, nor has the Constitutional Court in its hitherto case law interpreted its content. According to the Constitutional Court, a characteristic of natural disasters is that they arise in nature and negatively affect society by causing damage to the life or health of people, or their property. The term "elimination of the consequences of a natural disaster" in the first indent of the second paragraph of Article 90 of the Constitution must in such framework be understood in particular as an endeavour to remedy or mitigate the negative consequences caused by a natural disaster. As regards urgency, the Constitutional Court established that it is connected with the measures, not with the law; hence, it is the criterion whose application in a concrete case depends on factual circumstances that refer to the questions of which measures or types of measures are envisaged as urgent and in what time the measures can be realised, i.e. carried out. It also depends on the concrete circumstances whether the effectiveness of the measures would already be affected by postponing the entry into force of the law (due to calling and carrying out a referendum) or only by the possible rejection of the law in a referendum. The Constitutional Court also stressed that the COVID-19 epidemic is a natural disaster, therefore the law that allegedly entails the basis for urgent measures for ensuring that the consequences of this epidemic are remedied is a law referred to in the first indent of the second paragraph of Article 90 of the Constitution.

Taking into account that the urgency of measures is to a significant degree a question of fact, the facts that demonstrate urgency must be convincingly substantiated. The decision of the National Assembly that a referendum is inadmissible must be reasoned, and the order must contain the reasons due to which it is not admissible to call a referendum. It is admissible to explain these reasons in more detail or to additionally elaborate on them also in proceedings before the Constitutional Court. The National Assembly or the Government, which possess concrete data, must therefore substantiate that the case at issue concerns a law on urgent measures, with regard to which the reasons must essentially follow already from the order declaring that the referendum is inadmissible. This holds all the more true when a law is concerned whose provisions refer to numerous fields of society, while in proceedings before the Constitutional Court only individual provisions thereof or individual measures are challenged. In such an instance it is of key importance that in proceedings before the Constitutional Court the National Assembly and the Government concretise the generalised substantiation contained in the order declaring that a referendum regarding the law as a whole is inadmissible and that within the framework of the reasons stated in the order they substantiate that the challenged concrete measures are urgent.

The Constitutional Court established that in the case at issue this requirement was not met. Since the Government and the National Assembly failed to demonstrate or reasonably substantiate that the COVID-19 epidemic has consequences for the possibility of fulfilling (stricter) conditions to establish an institution of higher education and for the related procedures for extending the accreditation of institutions of higher education, the Constitutional Court, for this reason alone, established that the challenged statutory provision is inconsistent with the first indent of the second paragraph of Article 90 of the Constitution. Therefore, it abrogated Article 52 of the ADIMMCSWE in conjunction with Article 38 of the HEA-K, which is amended by the challenged statutory provision.

5. 10. The Costs of Proceedings for Discharge from a Psychiatric Hospital or Social Care Institution

By Decision No. U-I-60/20, dated 18 March 2021 (Official Gazette RS, No. 57/21), the Constitutional Court decided on the request of the Maribor Higher Court for a review of the constitutionality of the regulation in the Mental Health Act which determines that an individual (i.e. a patient) who has filed a motion to be discharged from a psychiatric hospital or social care institution, either by him- or herself or through an attorney, shall bear the costs of the discharge proceedings if the motion is dismissed.

The Constitutional Court reviewed the challenged regulation from the perspective of the right to judicial protection and the principle of equality before the law. It follows from constitutional case law that the right to judicial protection determined by the first paragraph of Article 23 of the Constitution does not merely ensure formal access to the courts, but also the right to effective judicial protection, which entails that the state must ensure everyone the opportunity to effectively exercise this right, irrespective of his or her financial circumstances and obstacles. This right prohibits the legislature from enacting insurmountable financial obstacles to the actual and effective exercise thereof.

The Constitutional Court stressed that the costs of discharge proceedings that must eventually be borne by an unsuccessful applicant are always advanced by the court, and the court also advances the funds for the applicant's mandatory representation by an attorney. Therefore, the affected individual's inability or unwillingness to pay these costs cannot prevent the court from deciding on the merits regarding the admissibility of the individual's further confinement in a psychiatric hospital or social care institution. Since the court also advances the funds for the individual's mandatory representation by an attorney, there is no risk that the individual would remain without qualified legal aid in discharge proceedings due to his or her failure to pay for such. In addition, the Constitutional Court stressed that, on the basis of the Free Legal Aid Act, the costs of providing legal aid to socially disadvantaged persons are covered from the state budget and such persons are exempt from paying the costs of court proceedings.

The Constitutional Court therefore deemed that, in the part that refers to a motion for discharge filed by an individual or his or her attorney, the challenged regulation does not interfere with the individual's human right to judicial protection, but merely entails a manner of the exercise of this right. Pursuant to the established constitutional case law, the manner of the exercise of a human right is consistent with the Constitution already if it is not unreasonable. The Constitutional Court substantiated its assessment that the challenged regulation is reasonable primarily with the position that a regulation that ultimately requires the state to bear the costs of proceedings initiated upon an individual's unsuccessful motion for discharge in all instances could create an incentive for filing multiple consecutive motions for discharge in manifestly unfounded cases. It held that the challenged regulation is not inconsistent with the first paragraph of Article 23 of the Constitution.

The Constitutional Court dismissed the applicant's allegations regarding the inconsistency of the challenged regulation with the principle of equality before the law determined by the second paragraph of Article 14 of the Constitution due to the fact that the legislature based the equal treatment of essentially different positions on reasonable grounds that were objectively related to the subject matter regulated. The legislature namely applied the principle that

parties shall cover the costs of proceedings according to their success in proceedings with regard to both the first group of individuals, i.e. close relatives and – in instances of minors or individuals who are unable to safeguard their rights and interests themselves – statutory representatives who are adversely affected by the rules on the costs of proceedings if they lodged an unsuccessful motion for the admission of an individual to a psychiatric hospital, as well as the second group of individuals, i.e. individuals who, either by themselves or through an attorney, lodged an unsuccessful motion for discharge. In so doing, the legislature pursued a reasonable (and essentially the same) purpose with regard to both groups.

5. 11. The Inadmissibility of a Legislative Referendum as Regards Urgent Investments in the Slovenian Armed Forces

In Case No. U-I-483/20 (Decision dated 1 April 2021, Official Gazette RS, No. 64/21), the Constitutional Court decided on a request for a review of the constitutionality of the Act on the Provision of Funds for Investments in the Slovenian Armed Forces in the Years 2021 to 2026, with respect to which the National Assembly prohibited a legislative referendum because allegedly it was a law on urgent measures to ensure the defence of the state and security as determined by the first indent of the second paragraph of Article 90 of the Constitution. The applicant alleged that the challenged law is not a law on urgent measures to ensure the defence of the state and security; therefore, a referendum on this law should be admissible.

The Constitutional Court has already adopted the position that the constitution-framers *a priori* excluded a referendum on the laws mentioned in the second paragraph of Article 90 of the Constitution. As in such instances the right to request a referendum does not even exist, the Constitutional Court does not weigh the affected constitutional values (the right to a referendum, on the one hand, and the other constitutional values that are protected by the laws regarding which a referendum is excluded, on the other) when assessing the decision of the National Assembly that a referendum is inadmissible, but – within the framework of a legal syllogism and by taking into account all the relevant circumstances of the case – it assesses whether the law at issue concerns a law referred to in the second paragraph of Article 90 of the Constitution.

Therefore, in the case at issue the Constitutional Court first had to ascertain the meaning, i.e. the content, of the constitutional terms "defence of the state" and "security", and had to determine the content and approach to the review of the requirement that the measures for ensuring these constitutional values be urgent. It established that the wording "to ensure the defence of the state and security" in the first indent of the second paragraph of Article 90 of the Constitution does not only refer to situations wherein the state is under a threat of military aggression or some other violation of its territorial inviolability and sovereignty, i.e. situations wherein national security is already under serious threat, but must instead be understood as a positive obligation of the state to actively monitor the situation in the field of the defence and security of the state and to adopt the necessary measures in relation thereto which ensure, continuously and without interruption, the ability of the state to defend itself from the aggression of other states, on the one hand, and which in the spirit of a policy of peace and non-violence contribute to averting aggression and to maintaining peace (the preventive function of defence), on the other. The constitutional concept of defence also includes the duty of the state to observe the adopted international obligations both as regards the state of its defence system and also cooperation in international efforts to prevent armed conflicts regionally and globally, as well as to ensure and maintain peace.

With respect to the term "security", the Constitutional Court established that the Constitution does not contain specific provisions that would substantively define this term. As regards the substance thereof, it can only be established at the constitutional level that the term "security" is not synonymous with the term "defence"; hence, the content of "security" is different than that of "defence of the state". On such basis, it can be established that the efforts of the state to ensure defence are directed outwards, while the efforts to ensure security are directed inwards (e.g. when protecting the state border and when carrying out other police powers to ensure security on the territory of the state).

The central question when interpreting the first indent of the second paragraph of Article 90 of the Constitution was how the term "urgent" should be understood. The Constitutional Court established that in assessing the urgency of measures it is not the characteristics of the procedure for the adoption of a law on urgent measures that are decisive; instead, irrespective of the nature of the legislative procedure, the term "urgent" must be interpreted in a substantively and constitutionally autonomous way. In the assessment of the Constitutional Court, urgent measures are those measures that must not be abandoned or delayed because otherwise unwanted (harmful) consequences would occur, i.e. measures without which the defence and security of the state cannot be sufficiently ensured. Hence, urgency is the criterion whose application in a concrete case depends on factual circumstances that refer to the questions of which measures or types of measures are envisaged as urgent, in what time the measures can be realised, i.e. carried out, which harmful consequences would allegedly occur in the field of the defence of the state or security without those measures, and how serious (how intensive) such would be, what the nature of the threat, i.e. the danger of them occurring, is (whether the possibility is real or hypothetical), and in what time the consequences would allegedly occur. It also depends on the concrete circumstances whether the effectiveness of the measures would already be affected by postponing the entry into force of the law (due to calling and carrying out a referendum) or by the possible rejection of the law in a referendum. Since the assessment of the urgency of measures depends on factual circumstances and is in this respect a factual question, the facts that demonstrate urgency must be convincingly substantiated.

The key building block of the defence of the state within the meaning of its defence capability and power (both nationally and within the system of collective defence) is the preparedness and equipment of the Slovenian Armed Forces. It must be such that it ensures at least the satisfactory defence capability of the state, which means that it must at any moment (even in peacetime) be able to avert any attacks, to defend the independence and integrity of the state, and to cooperate in the system of collective defence. In the assessment of the Constitutional Court, as regards ensuring the preparedness and equipment of the Slovenian Armed Forces, it also has to be taken into consideration that this is a continuous process and that individual major investments cannot, as a general rule, be carried out in a short period of time. According to the Constitutional Court, it is therefore essential for the assessment in the case at issue whether due to the rejection of the challenged law in a referendum a delay could occur for a longer or indeterminate period of time as regards urgent medium-term investments in the Slovenian Armed Forces.

The Constitutional Court stressed that it can only assess whether the National Assembly and the Government presented reasonable grounds (i.e. facts, circumstances) from which it follows that the preparedness and equipment of the Slovenian Armed Forces are in such a poor state that, without further delay, short-term and medium-term investments are necessary in order for the satisfactory defence capability of the state to be progressively ensured (the rationality test). When assessing whether the urgency of the measures is reasonably substantiated by

the alleged facts, the Constitutional Court, as a general rule, presupposes that the envisaged measures have a sufficient basis in the requisite expertise, and it only reviews questions concerning such expertise in order to ascertain whether they are manifestly unreasonable. Hence, the purpose of a constitutional review of whether investments are urgently necessary to ensure the defence of the state can only be an integral assessment of whether investments in the Slovenian Armed Forces are urgently necessary due to the poor state of their equipment and consequently their unsatisfactory defence capability.

The Constitutional Court established the facts concerning the preparedness and equipment of the Slovenian Armed Forces and consequently their defence capability and on such basis held that the National Assembly and the Government reasonably substantiated that investments in the Slovenian Armed Forces are urgently necessary because their equipment and power are such that in the event of a military threat or security crisis they cannot ensure the satisfactory defence capability of the state, and they also cannot fulfil their international obligations to the expected degree. In the assessment of the Constitutional Court, such finding is not changed by the fact that the Slovenian Armed Forces are relatively well prepared for functioning in peacetime. In its assessment, the Constitutional Court took into consideration that the investments that are planned on the basis of the challenged law entail neither above-standard armaments (i.e. equipment) of the Slovenian Armed Forces, nor are they required to merely maintain the already good level of equipment of the Armed Forces, but evidently the issue is that the Slovenian Armed Forces do not attain the minimum standards as regards equipment because investments therein have come more or less to a standstill in recent years. Hence, the urgency of the need to invest in the Slovenian Armed Forces is not a response to concrete threats or dangers, but instead the urgent necessity that an immediate, serious, and responsible approach is undertaken to ensure that the Slovenian Armed Forces have such equipment and capability that they will be able, at any moment, alone or within the framework of an alliance, to ensure the satisfactory defence capability of the state. Ensuring appropriate funds is a prerequisite for ensuring good defence and security.

The Constitutional Court held that the decision of the National Assembly not to allow a legislative referendum on the challenged law was justified and that therefore this law is not inconsistent with the first indent of the second paragraph of Article 90 of the Constitution.

5. 12. The Autonomy and Independence of the Central Bank

In Decision No. U-I-413/20, dated 8 April 2021 (Official Gazette RS, No. 64/21), the Constitutional Court decided on a request of the Bank of Slovenia to review the constitutionality of provisions of the Bank of Slovenia Act and the Act Amending the Bank of Slovenia Act. The applicant challenged the constitutionality of the power of the Court of Audit to review the regularity and performance of the supervisory practices carried out by the Bank of Slovenia during the period from 21 October 2002 until 4 November 2014 that resulted in the use of funds from the budget of the Republic of Slovenia. In addition, it challenged the constitutional consistency of the statutory provision that authorised the Court of Audit to audit the regularity and performance of the functioning of the Bank of Slovenia also during the last 15 years, i.e. the period from 21 October 2002 until 21 October 2017.

The Constitutional Court held that the applicant failed to demonstrate that the guarantees of the independence of central banks under European Union law should be considered when

deciding on the allegations raised by the applicant in the case at issue. These safeguards namely apply only in the exercise of the tasks and competences of the European Central Bank and of other members of the System of European Central Banks that are grounded in primary and secondary European Union law.

The Constitutional Court also rejected the applicant's allegation that the challenged decisions were not sufficiently clear and precise, as it demonstrated that the challenged decisions can be interpreted. The review of the regularity of the applicant's supervisory practices, *inter alia*, encompasses monitoring of the consistency of the supervisory practices with regulations, i.e. the correct application and interpretation of substantive and procedural law. The Court of Audit may also review all segments of the applicant's functioning within the statutorily determined audit period, except those that are explicitly excluded. In the opinion of the Constitutional Court, such cannot be deemed to enable arbitrariness on the part of the Court of Audit.

In this Decision, the Constitutional Court adopted important positions regarding the principle of the independence of the central bank as determined by the first paragraph of Article 152 of the Constitution. Such does not extend to its entire functioning but only to the performance of the vital functions that define the Bank of Slovenia as a central bank. As supervision of the functioning of banks does not constitute a competence or task that defines the constitutional concept of the central bank, the autonomy (i.e. independence) of the central bank does not encompass bank (or other) supervision. The autonomy of the central bank primarily entails its independence in the exercise of monetary policy. The Constitution does not ensure the Bank of Slovenia independence in the performance of bank supervision.

5. 13. The Opening Time of Shops

By Decision No. U-I-446/20, U-I-448/20, U-I-455/20, U-I-467/20, dated 15 April 2021 (Official Gazette RS, No. 72/21), upon the petition of multiple companies, all of which carry out retail activities, the Constitutional Court reviewed the statutory regulation of the opening time of shops in accordance with which shops must not be open on Sundays and non-working days.

The Constitutional Court has already adopted a position on the opening time of shops in a number of past decisions. It adopted the position that this is an objective condition for the performance of retail activities that may be determined by the legislature in pursuit of a public interest, provided it is not excessive. Since the constitutional case law has changed to some degree and has become stricter, the Constitutional Court reassessed whether what is at issue is the manner of implementation of the right to free economic initiative determined by the first paragraph of Article 74 of the Constitution or already an interference therewith. It held that the statutory determination of the opening time of shops narrows the field of free enterprise to such an extent that the determination of this condition for carrying out retail activities has become an interference with the right to free economic initiative. The legislature demonstrated the existence of a public benefit for such interference, namely the special protection of children and family life, as well as ensuring the weekly rest of workers.

Therefore, the Court had to further assess whether the interference is in conformity with the general principle of proportionality (Article 2 of the Constitution). When assessing the admissibility of interferences with Article 74 of the Constitution, the Constitutional Court applies an adapted proportionality test entailing solely the assessment of whether the weight

of the consequences of the restriction of the right to free economic initiative is proportionate to the value of the pursued objective or to the benefits that will result from the restriction. As the carrying out of retail activities is intended to supply consumers, in addition to the interests of the companies carrying out retail activities (i.e. economic entities) and the interests of their workers, the interests of consumers must also be taken into account. The challenged statutory regulation does not give precedence to any of the mentioned groups. The companies carrying out retail activities and consumers may freely decide their opening times or satisfy their supply needs on all days of the year, except Sundays, public holidays, and non-working days. On the other hand, workers employed in retail may rest, enjoy their free time, and exercise their right to family life on Sundays, public holidays, and non-working days. As the legislature determined exceptions when the restriction of opening time does not apply, it also took into account that in certain instances the interests of consumers must be given a greater weight than the interests of retail workers. The Constitutional Court therefore decided that the legislature did not excessively interfere with the right to free economic initiative determine by the first paragraph of Article 74 of the Constitution.

The Constitutional Court also held that the challenged statutory regulation of the opening time of shops is not inconsistent with the right to private property determined by Article 33 of the Constitution. The regulation of opening time namely only entails a manner of the enjoyment of property for which reasonable grounds exist, i.e. the protection of children and family life and ensuring the weekly rest of workers, which have a reasonable connection with the social function of property highlighted by Article 67 of the Constitution.

5. 14. Restrictions of the Movement and Gathering of People during the COVID-19 Epidemic

In Case No. U-I-79/20 (Decision dated 13 May 2021, Official Gazette RS, No. 88/21), upon a petition submitted by multiple petitioners, the Constitutional Court reviewed points 2 and 3 of the first paragraph of Article 39 of the Communicable Diseases Act, which authorise the Government to prohibit or restrict the movement and gathering of people in order to prevent the introduction or spread of a communicable disease in the state. It also reviewed a number of ordinances that were adopted by the Government on the basis of the mentioned statutory provisions from April through October 2020 in order to contain and manage the threat of the COVID-19 epidemic.

The petitioners alleged, *inter alia*, that the challenged statutory regulation grants the Government the authorisation to decide, at its own discretion, without any statutory limitations or criteria, i.e. in an originary manner, on the restriction of the rights of individuals. The Constitutional Court assessed these allegations from the viewpoint of the second paragraph of Article 32 and the third paragraph of Article 42 of the Constitution, which expressly determine that freedom of movement and the right of assembly and association may be limited by law, in conjunction with the principle of legality determined by the second paragraph of Article 120 of the Constitution, which requires that the executive branch of power perform its work on the basis and within the framework of laws.

The Constitutional Court began by drawing attention to its hitherto case law in accordance with which the executive branch of power must not regulate questions falling within the field

of legislative decision-making in an originary manner, i.e. without a statutory authorisation. Whenever the legislature authorises the executive branch of power to adopt an implementing regulation, it must first by itself regulate the foundations of the content that is to be the subject of the implementing regulation, and determine the framework and guidelines for regulating the content in more detail by the implementing regulation. A blank (*bianco*) authorisation granted to the executive branch of power (i.e. an authorisation not containing substantive criteria) entails the legislature's failure to legislate statutory subject matter, which is inconsistent with the constitutional order.

The Constitutional Court stressed that the requirement that the statutory basis be precise is particularly stringent where a restriction of human rights and fundamental freedoms is at issue. A general act that directly interferes with the human rights or fundamental freedoms of an indeterminate number of individuals can only be a law. In the assessment of the Constitutional Court, when the regulation of restrictions on the movement and gathering of people in order to prevent the spread of a communicable disease is at issue, it is actually not inconsistent with the Constitution if the legislature – in order to effectively protect human rights and fundamental freedoms, as well as to ensure fulfilment of the positive obligations that stem from the Constitution – exceptionally leaves it to the executive branch of power to prescribe measures by which the freedom of movement and right of assembly and association of an indeterminate number of individuals are directly interfered with. However, the law must determine the purpose of these measures or their purpose must be clearly evident therefrom. Furthermore, the law must determine with sufficient precision the admissible types, scope, and conditions regarding the restriction of the freedom of movement and of the right of assembly and association, as well as other appropriate safeguards against the arbitrary restriction of human rights and fundamental freedoms.

The Constitutional Court concluded that the challenged statutory regulation does not fulfil these constitutional requirements, as it allows the Government to choose, upon its own discretion, the types, scope, and duration of restrictions, which interfere – possibly very intensely – with the freedom of movement of – possibly all – residents on the territory of the Republic of Slovenia. The legislature also leaves it to the Government to freely assess, throughout the entire period while the threat of the spread of the communicable disease lasts, in which instances, for how long, and in how extensive an area in the state it will prohibit the gathering of people in those public places where, according to the Government's assessment, there exists a heightened risk of spreading the communicable disease. The regulation also lacks safeguards that could limit the discretion of the Government, such as the duty to consult or cooperate with the expert community and to inform the public of the circumstances and opinions of experts that are important for deciding on such measures.

The Constitutional Court concluded that points 2 and 3 of the first paragraph of Article 39 of the Communicable Diseases Act are inconsistent with the second paragraph of Article 32 and the third paragraph of Article 42 of the Constitution. The challenged ordinances adopted by the Government were also inconsistent with the mentioned two provisions of the Constitution, namely in the part where they were adopted on the basis of an unconstitutional statutory regulation.

The established unconstitutionality requires that the challenged statutory regulation be abrogated. However, the Constitutional Court had to take into consideration that by abrogating points 2 and 3 of the first paragraph of Article 39 of the Communicable Diseases

Act, the executive branch of power would lose the statutory basis to limit the movement and gathering of people in order to prevent communicable diseases, including COVID-19. Until the legislature adopts a new statutory regulation, the state would therefore perhaps be unable to fulfil its positive constitutional obligation to protect the health and life of people. Since the rights to health and life are fundamental constitutional values, the abrogation of the challenged statutory regulation could lead to an even worse unconstitutional situation than in the event the unconstitutional regulation remains in force for a certain period of time. For such reason, the Constitutional Court was unable to abrogate the challenged statutory regulation. Therefore, the Constitutional Court merely established that the challenged statutory provisions are inconsistent with the Constitution and that the National Assembly shall remedy this inconsistency within two months following the publication of this decision in the Official Gazette of the Republic of Slovenia. The Constitutional Court further ordered that the unconstitutional points 2 and 3 of the first paragraph of Article 39 of the Communicable Diseases Act shall continue to apply until the established inconsistency is remedied. Hence, in order to protect the health and life of individuals, the Constitutional Court enabled the application of unconstitutional statutory provisions until the established unconstitutionality is remedied. Thereby, it established for the future a statutory basis for the adoption of implementing regulations that regulate the measures determined by points 2 and 3 of the first paragraph or Article 39 of the Communicable Diseases Act, and at the same time also for all implementing regulations adopted on the basis of the challenged statutory provisions that are still in force.

5. 15. The Legality of a Procedure for Renaming a Street

By Decision No. U-I-2/21, U-I-3/21, dated 20 May 2021 (Official Gazette RS, No. 88/21), the Constitutional Court decided on the constitutionality and legality of the procedure for renaming Titova cesta (Tito Street) as Cesta osamosvojitve Slovenije (Independence of Slovenia Street) in the Municipality of Radenci. The petition for the review of the procedure for adopting an Ordinance Amending the Ordinance on the Naming of Streets, Squares, and Settlements in the Spa Resort Town of Radenci, by which the street was renamed, was filed by the residents of the street and a group of members of the municipal council.

The petitioners alleged, *inter alia*, that the challenged ordinance was adopted contrary to the third paragraph of Article 46 of the Local Self-Government Act. This provision determines that a request to call a referendum on a municipal regulation must be filed or the written notification of an initiative for voters to file a request to call a referendum must be submitted to the municipal council within fifteen days of the adoption of the regulation. In such instances, the mayor suspends the publication of the regulation until the request or initiative is decided on or until a decision is reached in a referendum. The Constitutional Court explained that the mentioned time limit of fifteen days is an independent phase of the procedure for adopting a municipal regulation in the broader sense, which lasts from the adoption of the municipal regulation by the municipal council until its promulgation and publication in the official gazette of the municipality. This time limit enables the proposers or initiators of a referendum to learn of the content of the adopted regulation and to decide whether they will propose the calling of a referendum or petition with voters for the calling of a referendum. The time limit is also intended for the collection of the necessary number of signatures in support of an initiative for calling a referendum if the statute of the municipality so requires. The mayor would act arbitrarily if he or she promulgated and published the regulation adopted in the municipal council before the

mentioned time limit expired, as in such manner the mayor would prevent the residents of the municipality from directly participating in the management of local public affairs.

The Constitutional Court established that the mayor of the Municipality of Radenci promulgated and published the challenged ordinance before the fifteen-day time limit expired and thereby prevented the residents of the municipality and the members of the municipal council from initiating a referendum procedure. Therefore, it decided that the challenged ordinance was adopted in a procedure inconsistent with the third paragraph of Article 46 of the Local Self-Government Act and, consequently, with the third paragraph of Article 153 of the Constitution. The Constitutional Court annulled the ordinance and enabled the harmful consequences caused by its unconstitutionality and illegality to be remedied. To prevent the street at issue from remaining nameless, the Constitutional Court also determined the manner of implementation of its Decision. It decided that until a new regulation is adopted, the street in question shall be named in accordance with the Ordinance on the Naming of Streets, Squares, and Settlements in the Spa Resort Town of Radenci, which was in force prior to the entry into force of the change made by the challenged Ordinance.

5. 16. The Right to Family Life and the Principle of the Best Interests of the Child

By Decision No. Up-1243/18, dated 3 June 2021, the Constitutional Court decided on the constitutional complaint of a complainant, a Slovene citizen, against a judgment of the Administrative Court and decisions of the Ministry of the Interior and of the Ljubljana Administrative Unit, by which an application to extend the Slovene residence permit of her spouse, who is a foreign citizen, was rejected. The applicant alleged that, by the positions they adopted, the two administrative authorities and the Administrative Court interfered with the right to respect for one's family life and the right of minor children to have contact with their father. The Constitutional Court reviewed the allegations of the applicant from the viewpoint of the right to family life determined by the third paragraph of Article 53 of the Constitution and the principle of a child's best interests determined by the first paragraph of Article 56 of the Constitution.

The third paragraph of Article 53 of the Constitution determines, *inter alia*, that the state shall protect the family and create the necessary conditions for such protection. The positive aspect of this provision is the duty of the state to enable, by an appropriate legal regulation and by creating appropriate conditions, the establishment and protection of one's family life in its territory. The negative aspect of the right to respect for one's family life entails the protection of individuals from interferences by the state and its authorities. In the field of immigration, the right to family reunification and to maintain a family life entails, for the state, a negative obligation when it is required to not expel a foreigner, and a positive obligation when it must allow a foreigner entry into its territory and residence therein. The third paragraph of Article 53 of the Constitution mentions protection of the family, but does not specify the substance and scope of the right to respect for one's family life. When interpreting this right, the Constitutional Court also took into account numerous international instruments.

By taking into account the case law of the European Court of Human Rights and the hitherto constitutional case law, the Constitutional Court adopted the position that rejecting the

application of a foreigner – who is in a state wherein his close relatives live – for the issuance of a residence permit, or the expulsion of such foreigner, can entail an interference with his or her right to respect for one's family life. This also applies in instances when an application for a residence permit submitted by a foreigner who has committed a criminal offence is rejected. When assessing the fair balance between ensuring the security of the host state and the right to respect for one's family life, multiple criteria have to be taken into account. The Constitutional Court established that in the case at issue, the first-instance authority failed to take into account all the assessment criteria that follow from the constitutional case law and the case law of the European Court of Human Rights and that are relevant when assessing the proportionality of an interference with the right to respect for one's family life. Above all, the assessment of the first-instance authority was deficient from the viewpoint of taking into consideration the best interests of the minor children. Therefore, the reasons stated by the first-instance authority were insufficient to justify thereby such an interference. In view of the above, the challenged first-instance decision violated the third paragraph of Article 53 and the first paragraph of Article 56 of the Constitution. Since the second-instance authority and the Administrative Court did not remedy the mentioned violation, they themselves also violated these two human rights.

5. 17. Abrogation of the Institute of the Authentic Interpretation of a Law

In Case No. U-I-462/18 (Decision dated 3 June 2021, Official Gazette RS, No. 105/21), the Constitutional Court decided on a request of the State Prosecutor General for a review of the constitutionality of the fourth paragraph of Article 153 and the second paragraph of Article 154 of the Criminal Procedure Act (which were no longer in force at the time of the decision-making of the Constitutional Court), according to which material obtained through covert investigative measures was destroyed under the supervision of the investigating judge if the state prosecutor declared that he or she would not initiate criminal proceedings against the suspect or if he or she did not make such a declaration within two years after the covert investigative measures ceased to be carried out. The applicant alleged, *inter alia*, that the challenged statutory regulation disproportionally hindered criminal prosecution and thus the protection of the rights of victims of criminal offences. Since the legislature adopted an authentic interpretation of the challenged statutory provisions and the Constitutional Court was faced with the question of the conformity of the institute of an authentic interpretation with the Constitution, it first reviewed the constitutional conformity of the provisions of the Rules of Procedure of the National Assembly that regulate the authentic interpretation of a law.

According to established constitutional case law, the authentic interpretation of a regulation forms an integral part of such regulation from the moment of its entry into force, irrespective of its subsequent adoption. This entails that the authentic interpretation is binding or that the regulation must be regarded as having the meaning given to it by the authentic interpretation and that the authentic interpretation also has a retroactive (*ex tunc*) effect. An authentic interpretation may, however, not amend the law, which means that it may not give a statutory provision content that it did not have upon its entry into force. Amendments of laws can namely only be adopted through the constitutionally determined legislative procedure. If an authentic interpretation thus gives a law content that, at the time of its entry into force, could not be deduced from the statutory text by established methods of interpretation, there is a violation of the constitutionally prescribed legislative procedure.

The Constitutional Court held that the institute of the authentic interpretation of a law, as such is regulated by the provisions of the Rules of Procedure of the National Assembly, is inconsistent with the principle of the separation of powers (the second sentence of the second paragraph of Article 3 of the Constitution) and the principle of the independence of judges (Article 125 of the Constitution). The provisions of the Rules of Procedure namely give the legislative branch the possibility to interpret a law authoritatively after it has been adopted, with retroactive effect (*ex tunc*). This allows it to influence decisions on the application of the law to individual legal subjects in concrete cases. This influence extends not only to all those legal relationships that have not yet been decided on by the courts when the authentic interpretation comes into force; by means of an authentic interpretation the legislature can also achieve that court decisions that have already been issued are changed. This enables the legislature to influence *ex post* the outcome of individual court proceedings and thus interfere with the constitutional competence of the judiciary and the executive branch of power. In view of the established inconsistency, the Constitutional Court abrogated the provisions of the Rules of Procedure of the National Assembly that regulate the authentic interpretation of a law. Consequently, it found that the concrete authentic interpretation of the challenged provisions of the Criminal Procedure Act was also inconsistent with the Constitution.

The Constitutional Court then also assessed the constitutional conformity of the challenged provisions of the Criminal Procedure Act in their wording before the entry into force of the authentic interpretation thereof. It explained that the right to privacy of individuals is not only interfered with by the implementation of covert investigative measures, but also by the retention of data obtained through these measures. As the retention of these data may, after a certain period of time, become an excessive interference with privacy and thus a violation of the right to privacy, the law must set time limits as regards the retention thereof in a clear and predictable way in order to prevent such violations. On the other hand, the statutory regulation of the collection and retention of evidence must not be so restrictive as to disproportionately hinder criminal prosecution and thereby interfere with the right of others to security.

In the view of the Constitutional Court, the challenged statutory regulation could not be reproached for having provided an excessively short retention period of data obtained through covert investigative measures in all cases. The law should, however, adequately address cases in which the public prosecutor does not, for justified reasons, file a request to initiate criminal proceedings within two years after these measures have ceased to be carried out. In the Constitutional Court's view, since the law did not provide a special regulation for such cases, it disproportionately interfered with the right of individuals to security determined by Article 34 of the Constitution. As the challenged statutory provisions ceased to be in force during the proceedings before the Constitutional Court, the Constitutional Court merely established that they were inconsistent with the Constitution.

5. 18. Prohibition and Restrictions of Public Protests during the COVID-19 Epidemic

In Case No. U-I-50/21 (Decision dated 17 June 2021, Official Gazette RS, No. 119/21), the Constitutional Court assessed the proportionality of multiple provisions of the ordinances issued by the Government during the COVID-19 epidemic in the part in which between 27 February and 17 March and between 1 April and 18 April 2021 public protests were completely

prohibited, and then between 18 March and 31 March, and between 23 April and 14 May 2021, they were limited to up to ten participants.

In spite of the fact that the mentioned provisions of the ordinances were inconsistent with the Constitution already due to a lack of a sufficient substantive statutory basis (the principle of legality) and it was not necessary to review the other alleged violations of human rights, the Constitutional Court nevertheless decided to conduct a review on the merits. It also adopted such decision because there was no constitutional case law that referred precisely to public protests as a form of the collective expression of opinions on public matters.

As regards both measures (the prohibition of public protests and limiting the number of participants to a maximum of ten persons), the Constitutional Court established that due to their length and effects they severely interfered with the right of peaceful assembly and public meeting guaranteed by the first paragraph of Article 42 of the Constitution. The two measures were adopted in order to prevent the spread of a communicable disease, which is a constitutionally admissible objective for limiting the mentioned human right. The balancing of the right to health and life, on the one hand, and the right of peaceful assembly and public meeting, on the other, concerns two conflicting rights that both enjoy a high level of constitutional protection. However, the Constitutional Court held that the mentioned measures were not necessary, as from a comparison of the regulations in other states it was apparent that there exists a whole set of measures by which it is possible to prevent the spread of communicable diseases at public protests and which interfere to a lesser extent with the right of peaceful assembly and public meeting than the complete prohibition of public protests or the limitation thereof to a maximum of ten people. As examples of reasonable measures adopted by other states, it mentioned the distribution of face masks and hand sanitizers to protesters, the closing of public spaces and roads to ensure sufficient space for maintaining an appropriate interpersonal distance between protesters, the issuance of clearly determined permits for public protests that are in conformity with epidemiological recommendations, and the duty of protest organisers to present a plan regarding hygienic measures. The Constitutional Court took into account that, prior to the entry into force of the challenged measures, the Government had not ascertained whether the objective of ensuring public health could be attained by such milder measures for limiting public protests. In accordance with the assessment of the Constitutional Court, such entails that in the adoption of these measures the Government did not take into consideration the positive duty of the state to ensure to a reasonable degree, in view of the circumstances, the exercise of the right of peaceful assembly, as well as the duty to cooperate with organisers of public protests.

Since the Constitutional Court established that the Government failed to demonstrate the necessity of the measures imposed by the challenged Ordinances as regards public protests, it did not assess the proportionality of the measures in the narrower sense. As the reviewed provisions of the ordinances ceased to be in force, the Constitutional Court merely established that they were inconsistent with the Constitution in the part wherein they prohibited all public protests or limited them to a maximum of ten participants. It decided that the establishment of such inconsistency shall have the effect of abrogation.

5. 19. Protection of the Independence of the State Prosecutor's Office in Parliamentary Inquiry Procedures

By Decision No. U-I-214/19, Up-1011/19, dated 8 July 2021 (Official Gazette RS, No. 130/21), the Constitutional Court decided on a petition and constitutional complaint of the State Prosecutor General, the Office of the State Prosecutor General, and the Supreme Court against Article 1 of the Parliamentary Inquiries Act in conjunction with the Act Ordering a Parliamentary Inquiry in the Case of *Franc Kangler and Others*. The State Prosecutor General and the Office of the State Prosecutor General also challenged the mentioned Act and the Rules on Parliamentary Inquiries because these two acts allegedly failed to regulate an appropriate mechanism by which it would be possible to prevent parliamentary inquiries that unconstitutionally interfere with the autonomy and independence of the performance of the function of the State Prosecutor's Office.

To begin with, the Constitutional Court drew attention to its established case law, in accordance with which the State Prosecutor's Office is part of the executive branch of power, but autonomous in relation to other authorities of the executive branch of power and independent in relation to the legislative and judicial branches of power. It explained that state prosecutors do not in any way entail a part of the executive branch of power, which could be subject to political supervision and political accountability. On the contrary, the autonomy and independence of state prosecutors, which follows from the constitutional function of criminal prosecution, prohibit political meddling in the performance of the function of the State Prosecutor's Office in concrete cases. The mentioned constitutional position of the State Prosecutor's Office must also be taken into consideration when ordering and carrying out parliamentary inquiries. In the assessment of the Constitutional Court, such does not entail that the Constitution prohibits any parliamentary inquiry that refers to the performance of the function of the State Prosecutor's Office. It entails, however, that it is not admissible to influence, by a parliamentary inquiry, the decision of state prosecutors on whether in a certain concrete case they will initiate or discontinue criminal prosecution and how they will handle the criminal prosecution procedure. If a parliamentary inquiry is ordered or requested with the intention of scrutinising the correctness of concrete decisions or actions of state prosecutors that fall within the remit of the function of the State Prosecutor's Office or to assess the liability of state prosecutors for such decisions or actions, the mere ordering of such parliamentary inquiry is inconsistent with the constitutionally guaranteed independence of state prosecutors determined by Article 135 of the Constitution and with the principle of the separation of powers determined by the second sentence of the second paragraph of Article 3 of the Constitution.

In the Decision, the Constitutional Court further addressed the question of the procedural protection of the independence of the State Prosecutor's Office in a procedure for ordering a parliamentary inquiry. It explained that the legislation does not envisage judicial protection, a legal remedy, or any other effective procedure by which it would be possible to prevent parliamentary inquiries that unconstitutionally interfere with the independence of state prosecutors, although the existence of such procedures is of key importance for the functioning of a state governed by the rule of law, the protection of human rights, and for independent, impartial, and fair judicial decision-making. The Constitutional Court decided that such a procedure could be introduced in conformity with the constitutional system of the separation of powers and in a manner that would not jeopardise the effective performance of parliamentary inquiries. According to the Constitutional Court, the Constitution requires the existence of such a procedure.

In view of the above, the Constitutional Court established that the challenged Parliamentary Inquiries Act and the Rules on Parliamentary Inquiries are inconsistent with the first paragraph of Article 135 and the second sentence of the second paragraph of Article 3 of the Constitution.

Within the framework of the review of the constitutionality of the Act Ordering a Parliamentary Inquiry in the Case of *Franc Kangler and Others*, the Constitutional Court analysed the parts of the Act that refer to the performance of the function of the State Prosecutor's Office and assessed that in this part the inquiry refers to the assessment of whether it was lawful to initiate and carry out a criminal prosecution procedure in that concrete case. It concluded that the Act Ordering a Parliamentary Inquiry in the Case of *Franc Kangler and Others* is in this part inconsistent with the independence of state prosecutors, and thus abrogated it to that extent.

5. 20. The Issuance of Restraining Orders

In Case No. Up-26/19, U-I-227/19 (Decision dated 2 September 2021, Official Gazette RS, No. 153/21), the Constitutional Court considered the constitutional complaint of a complainant who challenged decisions ordering and extending a restraining order prohibiting a person from approaching a certain person, location, or territory. He claimed that he was unable to make a statement on the measure or on the proposal of its extension. As during the procedure for examining the constitutional complaint the question arose whether the regulation of the measure of prohibiting a person from approaching a certain person, location, or territory under Articles 60 and 61 of the Police Tasks and Powers Act ensures effective protection of rights in accordance with Article 22 of the Constitution, the Constitutional Court *sua sponte* initiated proceedings for a review of the consistency of this Act with the Constitution.

The Constitutional Court stressed that on the basis of Article 22 of the Constitution the adversarial nature of judicial proceedings must be ensured in order to safeguard the perpetrators right to influence his or her legal position in proceedings and in order to ensure the equality of arms of the parties. As regards Article 60 of the Police Tasks and Powers Act, which regulates the procedure for exercising judicial control over ordering the measure at issue, the Constitutional Court found that it interferes with the perpetrator's right to be heard stemming from Article 22 of the Constitution, but that it is not unconstitutional. The exclusion of an adversarial nature of the proceedings before the court of first instance is namely necessary to ensure the effectiveness of the measure.

As regards Article 61 of the Police Tasks and Powers Act, by which the procedure for deciding on a proposal to extend a restraining order is regulated, the Constitutional Court held that it is contrary to the right to be heard stemming from Article 22 of the Constitution, because neither the prior adversarial nature nor the subsequent adversarial nature of the proceedings before the court of first instance are ensured, although the legislature could ensure the adversarial nature of proceedings in a manner that would not reduce the effectiveness of the measure.

The Constitutional Court held that for the same reasons due to which the statutory regulation is inconsistent with the Constitution, the challenged two orders deciding on the extension of the measure at issue and on the appeal against such decision violated the complainant's right to the equal protection of rights determined by Article 22 of the Constitution.

5.21. The Right of Access to Public Information

In Case No. U-I-45/16, Up-321/18, Up-1140/18, Up-1244/18 (Decision dated 16 September 2021, Official Gazette RS, No. 173/21), the Constitutional Court decided on a petition to review the constitutionality of the Primary School Act and the Matura Examination Act, as well as the constitutional complaints lodged against decisions that had denied the complainants access to public information on the basis of the eighth paragraph of Article 64 and Article 65 of the Primary School Act and the third paragraph of Article 18a of the Matura Examination Act. The complainants namely requested access to information on the results of all primary and secondary schools in external examinations of knowledge (i.e. the results of primary schools in the national external assessment of knowledge and the results of individual secondary schools in the *matura* school-leaving examination). They sought to use the requested information in order to rank primary and secondary schools according to the results achieved in external examinations of knowledge. The complainants were denied access to the requested information with the substantiation that the challenged statutory provisions prohibit the use of the results of individual schools in external examinations of knowledge for the purpose of ranking schools. The persons subject to the statutory prohibition determined by the mentioned acts may namely not interconnect the data from the electronic database in such a manner that they would enable them to rank schools.

In its decision, the Constitutional Court clarified the content of the right of access to public information as determined by the Constitution. It adopted the position that this right is a constituent part of the right to freedom of expression. Such entails that Article 39 of the Constitution protects access to public information that is connected with the exercise of the right to freedom of expression. The constitution-framers highlighted the importance of the right of access to public information for the exercise of the freedom of expression by regulating it in a separate paragraph. The second paragraph of Article 39 of the Constitution grants its beneficiaries the right of access to information held by a public entity that originates from its work area, that is readily available in the moment the request is lodged, and that by its nature or substance is such that it can influence the effective exercise of the right to freedom of expression. The Constitutional Court adopted the position that the constitutional term of public information does not have the same content as the same term in the Access to Public Information Act, it does, however, have the same meaning and content as are ensured by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 19 of the International Covenant on Civil and Political Rights. Therefore, protection of the right of access to public information is guaranteed in the framework of Article 39 of the Constitution without its beneficiaries having to demonstrate a legal interest under law.

The right of access to public information is not absolute. The Constitutional Court stressed that when regulating restrictions of access to public information the legislature must proceed from the presumption that the functioning of public authorities must be public and transparent. A restriction of access to public information is admissible only exceptionally, namely if the disclosure of the information in question would compromise the achievement of a constitutionally admissible objective.

When reviewing the proportionality of the interference with the right to freedom of expression due to the restriction of access to the requested information, it must be assessed, on the one hand, to what extent access to the requested information (and consequently its public disclosure) would compromise the achievement of the constitutionally admissible objective

and, on the other hand, how the restriction of access to the requested public information would affect the effective exercise of the right to freedom of expression.

Taking into consideration the above-stated starting points, the Constitutional Court held that the eighth paragraph of Article 64 and Article 65 of the Primary School Act and the third paragraph of Article 18a of the Matura Examination Act are not inconsistent with Article 39 of the Constitution. Information on the results of primary and secondary schools in external examinations of knowledge is, by its substance and nature, such that the rejection of access to such information could affect the effective exercise of the right to freedom of expression, and therefore the challenged provisions fall within the scope of protection of this right under Article 39 of the Constitution. However, the Constitutional Court held that the challenged provisions do not prevent persons entitled to access public information from accessing other information related to external examinations that enable public discussion of the quality of education.

The Constitutional Court adopted the position that access to information may also be important for the exercise of other human rights and fundamental freedoms, therefore protection of this right is guaranteed not only within the framework of the right to freedom of expression but also within the framework of certain other human rights and fundamental freedoms. The petitioners namely claimed that the challenged provisions that restrict access to information on the ranking of individual primary and secondary schools according to the results achieved in external examinations of knowledge impede the choice of an appropriate primary or secondary school. Therefore, they allegedly also entail a violation of the right to education (the first paragraph of Article 57 of the Constitution) and the rights and duties of parents relating to ensuring their children's education (the first paragraph of Article 54 of the Constitution). The Constitutional Court found that the challenged provisions of the Primary School Act and the Matura Examination Act do not fall within the scope protected by the mentioned rights and therefore the challenged provisions are not unconstitutional.

The central arguments raised in two of the constitutional complaints requesting the Constitutional Court to review the decisions rejecting access to information on the results of all primary and secondary schools in the external assessment of knowledge were, in their essence, the same as the arguments raised in the petition for the review of constitutionality. The Constitutional Court therefore dismissed these constitutional complaints. It did, however, grant the constitutional complaint that concerned the review of the decision rejecting access to the *matura* examination results of one particular secondary school. It held that the third paragraph of Article 18a of the Matura Examination Act cannot be understood as prohibiting the entity liable to provide access to public information from creating, on the basis of the existing data contained in the relevant database, information regarding the connection between an individual secondary school and its matura examination results. It must rather be understood as only prohibiting the creation of a document containing information that enables the ranking of secondary schools according to the *matura* examination results. The Administrative Court thus attributed to the third paragraph of Article 18a of the Matura Examination Act a meaning that cannot be construed by means of the established methods of legal interpretation. Therefore, the Constitutional Court established a violation of the right to the equal protection of rights determined by Article 22 of the Constitution.

5. 22. The Temporary Prohibition of the Gathering of People in Primary Schools and Educational Institutions for Children with Special Needs and the Performance of Educational Work at a Distance

In Case No. U-I-445/20, U-I-473/20 (Decision dated 16 September 2021, Official Gazette RS, No. 167/21), upon petitions of children with special needs, the Constitutional Court reviewed several ordinances of the Government and an order of the Minister of Education by which, during the COVID-19 epidemic in the period from the end of October 2020 until the beginning of January 2021, the gathering of people in primary schools and educational institutions for children with special needs was temporarily prohibited, and the performance of educational work at a distance was ordered in these institutions.

The Constitutional Court established that the challenged regulation, even though it also included the measure of distance learning, entailed an interference with the right of children with special needs to education and training for an active life in society (the second paragraph of Article 52 of the Constitution). The Constitutional Court specifically underlined that during the validity of the challenged regulation children with special needs were, as a general rule, completely deprived of special, i.e. therapeutic, treatments and of social contacts, which they are otherwise provided in educational institutions.

The Constitutional Court reviewed the challenged regulation from the perspective of its conformity with the principle of legality determined by the second paragraph of Article 120 of the Constitution. In the case at issue, implementing regulations interfered in an originary manner with the right of children with special needs to education and training determined by the second paragraph of Article 52 of the Constitution. The Constitutional Court established that the challenged implementing regulations were based on a statutory regulation (point 3 of the first paragraph of Article 39 of the Communicable Diseases Act and the first paragraph of Article 104 of the Act Determining Temporary Measures to Mitigate and Remedy the Consequences of COVID-19) that did not entail a sufficient substantive basis for the adoption thereof and is inconsistent with the second paragraph of Article 120 of the Constitution. Consequently, the Constitutional Court decided that also the challenged implementing regulations were inconsistent with the second paragraph of Article 120 of the Constitution.

The Constitutional Court further reviewed the challenged regulation from the perspective of its consistency with the second paragraph of Article 52 of the Constitution, which is a special provision in relation to the right to education and schooling determined by Article 57 of the Constitution and regulates the right of children with special needs to education and training.

It stressed that this right guarantees children with special needs special protection in the field of education, which also applies during a time of crisis in society, such as the period of the COVID-19 communicable disease epidemic. Also in such circumstances, the state must take special care to ensure that the right of children with special needs to education and training is not disproportionately affected. The Constitutional Court clarified that the scope of the right determined by the second paragraph of Article 52 of the Constitution includes not only ensuring the education of children with special needs in the strictest meaning of the word, namely in the sense of acquiring the classical knowledge set out in school curricula. The right of children with special needs to the provision of various complementary activities to basic education, which, according to the opinion of experts, are indispensable for their fullest possible development or for the retention of

the skills and abilities they have already acquired, must also be considered as part of the right determined by the second paragraph of Article 52 of the Constitution. Such includes different types of therapy or special treatment, such as physiotherapy, occupational therapy, speech therapy, and psychological treatments, which can be even more important for these children than the learning process itself. In addition, the right of children with disabilities to social and emotional learning, in the sense of developing their social skills or learning to cope effectively with peer situations, which is achieved by ensuring that these children have social contact with other persons and, in particular, with their peers, must also be included in the scope of the second paragraph of Article 52 of the Constitution. The development of their full potential, which is the purpose of their right to education and training, is also ensured in such manner.

In the assessment of the Constitutional Court, the challenged measures of the prohibition of the gathering of people in educational institutions for children with special needs and the distance learning and training of these children pursued the constitutionally admissible goal of protecting the health and lives of people who are threatened by the COVID-19 communicable disease. The two measures were also appropriate and necessary. However, they were not proportionate in the narrower sense. In fact, in the assessment of the Constitutional Court, the negative effects of the general closure of educational institutions for children with special needs on the exercise of the right of these children to education and training were greater than the benefits that the performance of these measures could have on protection of the health and lives of people who are threatened by the COVID-19 communicable disease. The challenged regulation thus entailed a disproportionate interference with the right of children with special needs determined by the second paragraph of Article 52 of the Constitution. In that context, the Constitutional Court underlined that such can only hold true under the assumption that, had these educational institutions remained opened, measures by which the negative effects of the continued operation of these institutions on the spread of the epidemic could be mitigated would have been sufficiently observed, and that, as the educational institutions would have remained opened, the individuals for whom or for whose family members an infection with the SARS-CoV-2 virus could be expected to entail a heightened risk of the occurrence of severe health complications would have been appropriately protected.

5. 23. Distance Learning in Primary Schools and Educational Institutions for Children with Special Needs

In Decision No. U-I-8/21 (Partial Decision dated 16 September 2021, Official Gazette RS, No. 167/21), the Constitutional Court reviewed the constitutionality of Article 104 of the Act Determining Temporary Measures to Mitigate and Remedy the Consequences of COVID-19, which authorises the Minister of Education to order the performance of educational work at a distance in different educational organisations and if necessary to mitigate and remedy the consequences of this communicable disease, and stipulates that by providing distance education, the realisation of lessons and objectives determined by educational programmes shall be achieved. The Constitutional Court reviewed the mentioned statutory provision, which interferes with the human rights to education and to education and training, in the part in which it refers to ordering distance learning in primary schools as well as schools and educational institutions for children with special needs.

In the review, the Constitutional Court focused on the allegation of the petitioners that the

challenged statutory regulation grants the Minister of Education a blanket authorisation to decide by him- or herself on the content, manner, and duration of distance learning. In light of such, the Constitutional Court reviewed the challenged regulation from the perspective of its conformity with the principle of legality determined by the second paragraph of Article 120 of the Constitution. The Constitutional Court explained that from the principle of legality there follows the requirement that a regulation by which human rights and fundamental freedoms are regulated in an originary manner, i.e. without a statutory authorisation, as is the situation regarding the challenged regulation, must be a law. Only in special instances where the measures by which an implementing regulation determines the manner of implementation of human rights and fundamental freedoms or interferes therewith entail a response to an outbreak of a communicable disease may the legislature exceptionally leave the adoption of such measures to the executive power. However, it must first determine sufficiently precise substantive criteria in the law that the executive power must take into consideration when doing so. Therefore, in ordinary circumstances, by conferring on the Minister of Education the authorisation to interfere in an originary manner, by him- or herself, with the human rights to education and to education and training by ordering the performance of educational work at a distance, the legislature would have violated the second paragraph of Article 120 of the Constitution. However, in special circumstances when an authorisation to adopt a measure is at issue that entails a response to the outbreak of a communicable disease which requires a prompt response, in the assessment of the Constitutional Court, the legislature exceptionally had the authorisation to leave the decision to order a measure that interferes with human rights and fundamental freedoms to the Minister of Education. Nevertheless, the legislature should have determined, by itself, in a law, and with sufficient precision, the substantive limitations by which the Minister of Education is bound when adopting such measure, limitations that entail safeguards against arbitrary determinations of the manner of implementation of human rights and fundamental freedoms or the limitation thereof.

The Constitutional Court assessed that the challenged statutory regulation does not meet the mentioned constitutional requirement. It established that the measure of the Minister of Education ordering the performance of educational work at a distance is not sufficiently substantively determined in the law at issue. Furthermore, the challenged law does not determine with sufficient precision the criteria or circumstances by which it is possible to order distance learning in primary schools and in schools and institutions for children with special needs. In addition, the legislature failed to include any guarantees in the law by which it would take care of those participants in the educational process for whom distance learning can entail a particular obstacle due to various actual of technical hurdles. It also failed to determine how those who need additional assistance when learning or other special types of assistance, which they are provided in ordinary circumstances in educational institutions, will be taken care of. The legislature also failed to limit the measure in question in terms of space and time. The legislature further did not include the duty of the minister to consult the expert community or to cooperate therewith, or the duty to appropriately notify the public of the adopted measures.

In view of the above, the Constitutional Court established that the challenged statutory provision gives the Minister of Education, at least in the reviewed scope, i.e. insofar as it refers to primary schools as well as schools and educational institutions for children with special needs, too wide a margin of discretion with respect to the ordering of a measure that entails an interference with the rights to education and to education and training. This statutory provision is therefore inconsistent with the second paragraph of Article 120 of the Constitution.

5. 24. Limitations of the Freedom of Work and Free Economic Initiative in order to Prevent the Spread of the COVID-19 Communicable Disease

In Case No. U-I-155/20 (Decision dated 7 October 2021, Official Gazette RS, No. 178/21), upon a petition submitted by multiple economic entities of different legal forms, the Constitutional Court reviewed the provision of the Communicable Diseases Act that authorises the Government to prohibit or restrict trade in individual types of goods and products in order to prevent the introduction or spread of a communicable disease in the state. It also reviewed a government ordinance that was adopted on the basis of the mentioned statutory provision in order to contain and manage the COVID-19 communicable disease, which temporarily prohibited the offering and sale of goods and services to consumers in the Republic of Slovenia.

The considered petition raised an important constitutional question as regards the constitutional conformity of the statutory provision and the challenged ordinance based on this provision, which was followed by numerous substantively comparable ordinances, because the mentioned provision of the Communicable Diseases Act allegedly does not contain criteria that are sufficiently precise to limit constitutionally guaranteed rights. Therefore, the Constitutional Court assessed the challenged regulations from the perspective of the freedom of work determined by Article 49 of the Constitution and free economic initiative determined by the first paragraph of Article 74 of the Constitution in conjunction with the second paragraph of Article 120 of the Constitution, which requires that the executive branch of power only perform its work on the basis and within the framework of laws.

The Constitutional Court drew attention to its established case law, in accordance with which the executive branch of power must not regulate questions falling within the field of legislative decision-making in an originary manner. Whenever the legislature authorises the executive branch of power to adopt an implementing regulation, it must first by itself regulate the foundations of the content that is to be the subject of the implementing regulation, and determine the framework and guidelines for regulating the content in more detail by means of the implementing regulation. The Constitutional Court stressed that the requirement that the statutory basis be precise is particularly stringent where a restriction of human rights and fundamental freedoms is at issue. A general act that directly interferes with the rights of an indeterminate number of economic entities must be a law.

In the assessment of the Constitutional Court, it is in fact not inconsistent with the Constitution if the legislature exceptionally leaves the prescription of measures by which the freedom of work and free economic initiative are interfered with in order to prevent the spread of a certain communicable disease to the executive power. However, the law must determine appropriate safeguards against arbitrary limitations of human rights and fundamental freedoms. The Constitutional Court established that the challenged statutory regulation does not meet this constitutional requirement because the legislature granted the Government a margin of discretion that is significantly too wide. Given the lack of criteria for determining the admissible duration of measures, the duty to consult and cooperate with the expert community, and the appropriate informing of the public, the legislature left it to the Government to select, at its own discretion, the scope and duration of the measures by which business activities and the right to work of all individuals and legal entities on the territory of the Republic of Slovenia can (also very intensively) be interfered with. It only instructed the Government to assess whether

the introduction or spread of a communicable disease could be prevented by other measures referred to in the Communicable Diseases Act. The Constitutional Court concluded that the legislature waived its exclusive constitutional power to decide on limitations of constitutionally guaranteed rights on a general and abstract level by taking into account the general principle of proportionality. Therefore, the Constitutional Court established that the challenged provision of the Communicable Diseases Act is inconsistent with Articles 49 and 74 of the Constitution. It also established that this Act does not even provide a basis for adopting measures in the field of providing or offering services, but only provides such as regards goods and products.

5. 25. Disciplinary Proceedings against a Judge and the Composition of a Panel of the Disciplinary Court

In Case No. U-I-445/18 (Decision dated 14 October 2021, Official Gazette RS, No. 178/21), upon a request of the Supreme Court, the Constitutional Court decided on the constitutionality of the provisions of the Judicial Council Act that regulated the petitioners who can initiate a disciplinary procedure against a judge and the composition of the disciplinary court that decides on the judge's disciplinary responsibility. The challenged statutory regulation determined that a member of the Judicial Council participates in the composition of a panel of a disciplinary court also in the event the Judicial Council submits a petition to initiate a disciplinary procedure.

The Constitutional Court reviewed the challenged provision from the perspective of the right to a fair procedure (Article 22 of the Constitution). A component part of a fair procedure is also the requirement that the fundamental procedural guarantee of impartial decision-making is observed in the procedure. The authorities that decide on the disciplinary responsibility of judges must fulfil the requirements of impartial decision-making. One of the fundamental conditions for ensuring impartial decision-making is the prohibition of a member of a collegial body to decide on a matter if circumstances exist that raise doubts as to his or her impartiality or objectivity. A possible connection with other participants in a procedure or a double role that a member of a disciplinary court could have in a procedure can also be circumstances that affect the appearance of impartiality.

The Constitutional Court established that the petitioners for the initiation of a disciplinary procedure have a significant influence on the initiation thereof. By the nature of the matter, a petitioner is informed of the circumstances of the concrete case and must have already formed a certain opinion in order to be able to adopt the decision to submit a petition to initiate a disciplinary procedure. Therefore, in instances wherein the Judicial Council submits a petition for the initiation of a disciplinary procedure, in relation to the judge in question the Judicial Council acts on the side that is connected with the initiation of the disciplinary procedure against him or her. The participation of a member of the Judicial Council when deciding on a petition to initiate a disciplinary procedure is therefore an objective circumstance that can, in a reasonable person, raise justified doubt as to the impartiality of that person in the composition of the disciplinary court when deciding on disciplinary responsibility. In such an instance, the same person would namely participate in the decision-making concerning the reasons for initiating a disciplinary procedure as well as in the decision-making on disciplinary responsibility. Furthermore, the Constitutional Court established that the Judicial Council and the disciplinary court are systemically connected in such a manner that mere membership in the Judicial Council is a circumstance that could raise doubt as to the impartiality of a member of

the panel of the disciplinary court. The institute of the exclusion of an individual member of the panel of the disciplinary court and the possibility of appointing supplementary members of the disciplinary court cannot guarantee observance of the right to impartial decision-making. In the opinion of the Constitutional Court, the challenged statutory regulation entailed an interference with the right to impartial decision-making determined by Article 22 of the Constitution, which guarantees the general right to a fair procedure. Therefore, the Constitutional Court established that the challenged provisions of the Judicial Council Act are unconstitutional.

5. 26. Termination of an Employment Contract at the Employer's Initiative without Substantive Justification

In Case No. U-I-16/21, U-I-27/21 (Decision dated 18 November 2021, Official Gazette RS, No. 202/21), upon the request of seven representative trade unions, the Constitutional Court decided on the constitutionality of the regulation of the Employment Relationship Act and the Public Servants Act, on the basis of which an employer or a superior could terminate the employment contract of an employee or public servant for business reasons without having to justify the business reason in any way, provided that the employee met the conditions for acquiring the right to an old-age pension. A request for a review of the constitutionality of the challenged regulation was also filed by the Advocate of the Principle of Equality, alleging discriminatory treatment on the grounds of age as regards the statutory regulation of the regular termination of an employment contract after the fulfilment of the statutory conditions for obtaining an old-age pension. The applicants alleged, *inter alia*, that this regulation is inconsistent with Article 4 of ILO Convention No. 158 concerning Termination of Employment at the Initiative of the Employer and Article 24 of the European Social Charter (Revised) in conjunction with Article 8 of the Constitution, in so far as it allowed the possibility of the unsubstantiated termination of an employment contract that was not based on the existence of a serious or justified reason, but rather on the fulfilment of retirement conditions and the employer's subjective decision.

In its assessment of the challenged statutory regulation, the Constitutional Court emphasised that in order to terminate an employment contract at the initiative of the employer under both of the mentioned international instruments there must exist a valid reason related to the employee's capacity or conduct or to the operational requirements of the particular employer that justifies the termination of the employment contract. This entails the requirement to substantiate the grounds for termination as an essential element of the protection of workers against the unjustified termination of an employment contract by the employer. If the statutory reason for the termination of an employment contract does not satisfy these substantive requirements, it cannot constitute a valid reason for termination within the meaning of Article 4 of ILO Convention No. 158 and Article 24 of the European Social Charter (Revised) in concrete cases.

The legislature's allegations that fulfilment of the conditions for entitlement to an old-age pension constitutes a valid reason for termination on business grounds, without the employer in question being required to justify the termination as such would allegedly entail an administrative burden for the employer, did not satisfy these substantive requirements. The exclusion of the employer's obligation to justify the business reason also deprived workers who would have been dismissed under the challenged regulation of adequate labour law protection with regard to the termination of the employment relationship, since the challenged regulation did not enable a substantive review of the justification of the reason for termination. The

Constitutional Court therefore held that the termination of an employment contract at the initiative of the employer for a business reason because the employee meets the conditions for acquiring the right to an old-age pension, without the employer's decision being justified by serious objective reasons arising from the employer's own sphere, and as a result depriving the employee of adequate labour law protection with regard to the termination of the employment relationship, is inconsistent with Article 4 of ILO Convention No. 158 and Article 24 of the European Social Charter (Revised), and consequently with Article 8 of the Constitution.

5.27. The Condition of Recovery or Vaccination in the State Administration

By Decision No. U-I-210/21, dated 29 November 2021 (Official Gazette RS, No. 191/21), the Constitutional Court decided on a request of the Police Union of Slovenia to review the constitutionality and legality of Article 10a of the Ordinance on the Manners of Complying with the Recovered-Vaccinated-Tested Requirement to Contain the Spread of Infection with the SARS-CoV-2 Virus, which determined that to perform tasks at their workplace on the premises of their employer or on the premises of another body of the state administration employees in the bodies of the state administration, which also includes the Police as a specialised body within the Ministry of the Interior, must fulfil the recovered-vaccinated requirement, with the alternative possibility of fulfilling the tested requirement no longer applying to them.

The Constitutional Court stressed that the determination of the recovered-vaccinated requirement entailed a condition under labour law to perform work in the state administration and thus the situation was essentially comparable to situations wherein a vaccination is determined as a condition under labour law to perform various types of work and professions. The legal basis for regulating such vaccination is Article 22 in conjunction with Article 25 of the Communicable Diseases Act, which regulate different types of (mandatory) vaccinations. However, this law does not prescribe vaccination against COVID-19 as a condition for performing the work of a certain group or groups of employees who are exposed to communicable diseases while performing their work and persons liable to transmit an infection to other persons while working. Likewise, the provision of the Government of the Republic of Slovenia Act, which at the general level determines the competences of the Government with respect to the organisation of work in the state administration, cannot entail the statutory basis for introducing vaccination as a condition for performing work in state administration bodies. The Constitutional Court also established that the Health and Safety at Work Act cannot entail the basis for the challenged measure, as it refers to the adoption of internal measures by employers that are related to the type and nature of an individual activity and are in conformity with the safety statement of an individual employer, whereas vaccination against communicable diseases as a measure for ensuring health and safety at work is specifically regulated by the Communicable Diseases Act.

The Constitutional Court held that the challenged measure, which the Government adopted by the Ordinance and which applied to employees of the state administration, was not adopted in conformity with the statutory requirements, i.e. conditions, determined by Article 22 in conjunction with Article 25 of the Communicable Diseases Act for the determination of the vaccination of employees. Therefore, it decided that Article 10a of the Ordinance was inconsistent with the second paragraph of Article 120 of the Constitution.

5. 28. Effective Judicial Protection in the Procedure for the Verification of Foreign-Currency Savings on the Basis of the AREECtHRJ

In Case No. U-I-502/18 (Decision dated 9 December 2021, Official Gazette RS, No. 1/22), upon the request of the Administrative Court, the Constitutional Court decided on the constitutionality of the third sentence of the first paragraph of Article 146 of the Civil Procedure Act, insofar as it relates to an administrative dispute against a decision of the Succession Fund of the Republic of Slovenia in the procedure for the verification of unpaid old foreign-currency savings on the basis of the Act Regulating the Enforcement of the European Court of Human Rights Judgment in Case No. 60642/08 (the AREECtHRJ). The challenged provision, which applies in an administrative dispute on the basis of the first paragraph of Article 22 of the Judicial Review of Administrative Acts Act, provides that if a person authorised to receive court documents in the Republic of Slovenia is not appointed within the time limit set by the court, the action must be rejected. This concerns cases in which the plaintiff or his or her legal representative who is abroad but does not have a representative in the Republic of Slovenia must appoint a person authorised to receive court documents in the Republic of Slovenia in accordance with Article 146 of the Civil Procedure Act when filing an action. The applicant is of the opinion that the challenged provision interferes with the right to judicial protection in an excessively formalistic manner.

The Constitutional Court emphasised that the challenged provision entails a sanction for failure to comply with the procedural requirement of appointing a person authorised to receive court documents. If a plaintiff who is abroad fails to appoint a person authorised to receive court documents within the set time limit, the court rejects the action. When assessing whether there exists an interference with a human right, the degree (intensity) of the influence of the negative consequence that the disregard of a statutory provision has on that right needs to be taken into account. Rejecting the action will lead to the court not considering the merits of the action. As the rejection of an action does not constitute a decision on the merits of the case, the plaintiff may, in principle, lodge such action again if the procedural requirements are met. The AREECtHRJ, however, has set a preclusive time limit for the submission of a request for the verification of old foreign-currency savings. By issuing a decision rejecting the action, the possibility of obtaining a substantive judicial review of the decision taken in the verification procedure is, in fact, irretrievably lost as a result of the preclusive time limit for lodging an application in the administrative procedure.

The Constitutional Court held that the sanction of the rejection of the action, insofar as it relates to an administrative dispute against a decision of the Succession Fund of the Republic of Slovenia in the procedure for the verification of unpaid old foreign-currency savings on the basis of the AREECtHRJ, entails an interference with the right to judicial protection determined by the first paragraph of Article 23 of the Constitution and the right to a legal remedy determined by Article 25 of the Constitution. Having established that the objectives of the challenged provision (i.e. the acceleration of judicial proceedings, ensuring the right to a trial without undue delay, and ensuring an effective judicial system as a whole) are constitutionally admissible, the Constitutional Court assessed, on the basis of a strict proportionality test, that the interference in question, although appropriate and necessary, is not proportionate in the narrower sense, because the challenged provision entails an excessive interference with the mentioned two rights. In the view of Constitutional Court, the benefits of the institution of appointing a person authorised to receive court documents do not, in the given

circumstances, outweigh the gravity of the interference with the plaintiff's right to judicial protection and the right to a legal remedy in the event of the rejection of the action. The Constitutional Court emphasised that in determining whether an interference is proportionate, special attention must be devoted to the special position of the proceedings under the AREECtHRJ and the circumstances in which this Act was adopted. It took into consideration that the purpose of an administrative dispute against decisions adopted in procedures for the verification of unpaid old foreign-currency savings on the basis of the AREECtHRJ is also to remedy a violation of the right to an effective legal remedy determined by Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as established by the European Court of Human Rights in its judgment in the case of *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and Macedonia*, dated 16 July 2014. In view of the above, the Constitutional Court established that the statutory provision is unconstitutional to the extent challenged.

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.

The term of office of Constitutional Court judge Dr Dunja Jadek Pensa came to an end on 10 November 2021, the same day on which the term of office of her replacement, Dr Rok Svetlič, began.

On 16 December 2021, the hitherto Vice President of the Constitutional Court Dr Matej Accetto began his three-year term of office as President of the Constitutional Court and Constitutional Court judge Dr Rok Čeferin assumed the position of Vice President of the Constitutional Court.

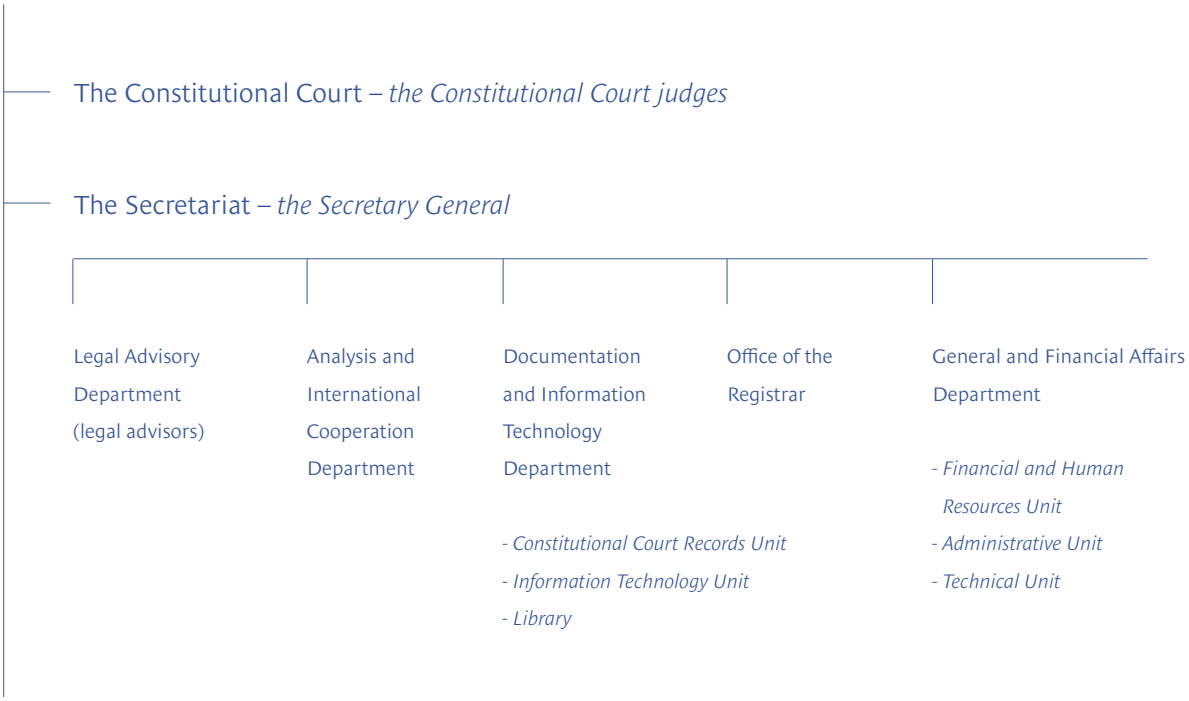
6. 2. The Secretariat

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

Deputy Secretary General and 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 2021, in addition to nine Constitutional Court judges and the Secretary General, 77 judicial personnel were employed at the Constitutional Court, 76 of whom were employed for an indefinite period of time and one for a fixed term. Currently, the rights and obligations arising from the employment relationship of two members of the court personnel are suspended. Among those employed for an indefinite period of time, 37 were advisors in the Legal Advisory Department of the Constitutional Court, and five were advisors in the Analysis and International Cooperation Department. In 2021, the Constitutional Court employed four new advisors in the Legal Advisory Department due to resignations.

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*

LIST OF ADVISERS

Mag. Uroš Bogša	Mag. Karin Merc
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Jan Čejvanovič	Liljana Munh
Dr Martin Dekleva	Constanza Pirnat Kavčič
Dr Eneja Drobež	Andreja Plazl
Jasna Hudej	Maja Pušnik
Nika Hudej	Leon Recek
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Gregor Janžek	Dr Iztok Štefanec
Uršula Jerše Jan	Jurij Švajncer
Andreja Kelvišar	Mag. Jerica Trefalt Kepic
Samo Košir	Dr Katarina Vatovec, LL.M.
Luka Kovač	Igor Vuksanović
Andreja Krabonja	Dr Mojca Zadravec
Jernej Lavrenčič	Dr Renata Zagradišnik, spec., LL.M.
Simon Leohar	Dr Sabina Zgaga Markelj
Marcela Lukman Hvastija	Boštjan Zrnec Orlič
Mag. Maja Matičič Marinšek	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

International cooperation with key stakeholders in the field of constitutional law and human rights protection entails an important contribution to the effectiveness and quality of the functioning of the Constitutional Court. The Constitutional Court devotes special attention 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 entrusted with the tasks of performing constitutional review and protecting human rights. 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 representatives of other institutions with equivalent jurisdiction.

In the past year, similarly as in 2020, the international activities of the Constitutional Court were strongly affected by the COVID-19 pandemic. In spite of this, the Constitutional Court continued efforts to maintain and deepen its existing relationships with other constitutional courts, international courts, and other institutions charged with protecting human rights. Due to the COVID-19 pandemic, the international activities of the Constitutional Court were curtailed especially during the first half of the year. Most of the international activities took place just before the summer and in the second half of the year, and many events were held with a reduced number of participants or were carried out online. Due to the unfavourable epidemiological conditions, the international conference on the occasion of the 30th anniversary of the Constitutional Court was postponed until 2022.

In February, a delegation of the Constitutional Court participated in the XVIII Congress of the Conference of European Constitutional Courts and the Circle of Presidents. The Congress was organised by the Constitutional Court of the Czech Republic to commemorate its 100th anniversary and was held in the form of a videoconference. In May, the President of the Constitutional Court met with the President of the Austrian Constitutional Court, and in June he participated in the opening of an exhibition marking the 100th anniversary of the Austrian Constitution at the *Slovenska gimnazija*, i.e. Slovene Secondary School, in Klagenfurt.

At the beginning of September, the President and one judge of the Constitutional Court attended the International Conference *EUnited in Diversity: Between Common Constitutional Traditions and National Identities*. The event was organised by the Constitutional Court of Latvia in cooperation with the Court of Justice of the European Union and was held in Riga (Latvia). The same month, the President of the Constitutional Court attended a meeting of judges at the European Court of Human Rights in Strasbourg (France). Within the framework of

that meeting, a seminar entitled *The Rule of Law and Justice in a Digital Age* was also held. The President participated in the seminar with a presentation on privacy and digital technology.

In September, two Constitutional Court judges participated in an international conference organised by the Turkish Constitutional Court on the issue of the effective enforcement of judgments in the field of fundamental rights (Ankara, Turkey). In October, upon the invitation of the European University Institute in Florence, the President of the Constitutional Court participated in a meeting entitled *High-Level Policy Dialogue: How to Secure Compliance with the Rule of Law?* In October, the President of the Constitutional Court also accepted an invitation to a meeting with representatives of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) of the European Parliament, who visited the Republic of Slovenia in order to take stock of the developments in the country in the area of the rule of law, media freedom, and the fight against corruption. The same month, upon the invitation of the President of the Constitutional Court of Hungary, the President of the Constitutional Court attended a working lunch in Hungary.

In October, a judge of the Constitutional Court participated in an online regional conference on the topic of protection of the right to family life in constitutional case law, which was organised by the German Foundation for International Cooperation (*Die Deutsche Stiftung für internationale rechtliche Zusammenarbeit*) and the Constitutional Court of Serbia. In November, the President of the Constitutional Court also attended the "FIDE 2021" Congress of the International Federation of European Law, which took place in the Hague (the Netherlands). Towards the end of the year, the Vice President of the Constitutional Court participated in the World Law Congress and the XXIII International Congress on European and Comparative Constitutional Law, which took place in Barranquilla (Colombia).

At the end of May, Dr Koen Lenaerts, President of the Court of Justice of the European Union, Dr Marko Ilešič, a judge of the same court, and Dr Grega Strban, Dean of the Faculty of Law of the University of Ljubljana, visited the Constitutional Court of the Republic of Slovenia. In a working meeting with the judges of the Constitutional Court, they discussed how certain challenges posed by the COVID-19 pandemic crisis were addressed within national constitutional law and European Union law. In June, upon the joint invitation of the President of the Constitutional Court and the President of the Supreme Court, a delegation of the European Court of Human Rights, led by the Court's President, Prof. Róbert Ragnar Spanó, visited the Republic of Slovenia. The delegation also included judges Yonko Grozev and Dr Marko Bošnjak and registrar Dr Marialena Tsirli. Judge Bošnjak visited the Constitutional Court again in November, when he discussed the recent case law of the Strasbourg Court with the Constitutional Court judges and advisors.

As the Constitutional Court is ingrained in the European environment and due to the fact that challenges in the field of human rights protection exceed the borders of individual states, 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. Within this framework, the Constitutional Court therefore also encourages the participation of its personnel in international training activities. In 2021, the majority of such activities moved online. A Constitutional Court advisor thus attended the XIII European Regional Congress of the International Society for Labour and Social Security Law on the topic *Work in the Digital Era – Legal Challenges*. Another Constitutional Court advisor participated in a summer school in the field of environmental law organised by the Academy of European

Law and held online. Constitutional Court advisors also participated in webinars organised by the European Court of Human Rights on the topics *Hate Speech and Vulnerable Groups* and *Mass Protest*. The Head of the Analysis and International Cooperation Department attended the 4th Annual Meeting of the Focal Points of the Superior Courts Network, which functions under the auspices of the European Court of Human Rights, as well as the 19th Session of the Joint Council of Constitutional Justice of the Venice Commission; both events were held online.

8. The Constitutional Court in Numbers

The statistical data must be interpreted in light of the fact that in 2021, as well as already in 2018, 2019, and 2020, the Constitutional Court received a large number of cases of the same type. Thus, in 2021 a total of 593 so-called mass cases were received (i.e. 555 petitions for a review of constitutionality and 38 constitutional complaints), which is more than one fifth of all cases received (21.7%). 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). In the overview of the work for 2021, mass cases are excluded from all figures and comparisons, unless otherwise stated.

8. 1. Cases Received

In 2021, the Constitutional Court received more cases than in 2020. In 2021, the Constitutional Court thus received 1,364 cases, which is 3.5% more than in 2020, when it received 1,319 cases. These data do not include mass cases.

The increase in the total number of cases received was a consequence of receiving a higher number of applications for the review of the constitutionality or legality of regulations (the U-I register), while the number of constitutional complaints (the Up register) remained almost the same. In 2021, the Constitutional Court received 296 requests and petitions for a review of the constitutionality or legality of regulations, which represents a 16.1% increase compared to 2020, when it received 255. In 2021, the Constitutional Court received 1,060 constitutional complaints, which represents a 0.2% decrease compared to 2020, when it received 1,058 constitutional complaints.

As regards applications for a review of the constitutionality or legality of regulations, the Constitutional Court recorded a downward trend in the number of such cases between 2013 and 2017; however, after 2018, and in particular in 2020, the number of such cases significantly increased once again. The same applies to 2021 when the number of such cases increased by 16.1%. Among these, the Constitutional Court received 42 requests for a review of constitutionality, which in accordance with the Constitution and law can be filed by privileged applicants. This entails a slight decrease compared to 2020 (when it received 43 requests). In addition, the Constitutional Court received 555 so-called mass petitions for a review of the constitutionality and legality of regulations. The increase in the number of proceedings for the review of the constitutionality and legality of regulations can be explained by the high number of petitions (including in mass cases) concerning measures adopted to mitigate the spread of the COVID-19 communicable disease.

Within the distribution of all cases received in 2021, there was as usual a strong preponderance of constitutional complaints, which represented 77.7% of all cases received. In some instances, constitutional complaints were filed together with petitions for the review of the constitutionality or legality of a regulation on which the challenged judicial decisions were based; in 2021, there were 42 such cases (there was also a considerable number of such instances amongst the mass cases). These are so-called joined cases, on which the Constitutional Court decides by a single decision.

In 2021, 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 2021 it received almost 4.2% fewer cases than the year before. The number of constitutional complaints received by the Administrative Law Panel also decreased, namely by 19.2%. The number of constitutional complaints received by the Criminal Law Panel increased significantly (i.e. by 44.8%), and this panel also received a significant number of mass cases, which entail additional work for the advisors and judges as well as the other court personnel. In absolute figures, the Civil Law Panel received the highest number of cases in 2021 (479 cases), which amounts to almost half (45.2%) of all constitutional complaints received. Then followed the Criminal Law Panel with 294 cases, and the Administrative Law Panel, which received the fewest new cases in the last year, i.e. 287. In this context, it has to be taken into consideration that both the Administrative Law Panel and the Criminal Law Panel also received a large number of mass cases.

In terms of their content, the majority of the constitutional complaints received in 2021 originated in disputes connected to civil law litigation (22.5%). They were followed by constitutional complaints from the field of minor offences. In comparison to 2021, the number of such increased by 185.2% and accounted for 14.5% of all constitutional complaints. Then followed criminal law cases with a 13.3% share, other administrative disputes (10.5%), enforcement proceedings (7.3%), commercial disputes (7.1%), and labour disputes (5.9%). 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 2021 was significantly higher than in 2020. The increase amounted to 16.1%. Of the 296 cases received, 42 (14.2%) 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 16 requests for a review of the constitutionality of laws.

Of the 296 petitions and requests for a review of the constitutionality or legality of regulations, in 42 cases (14.2% 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 also in 2021 most often laws were challenged, although their share was not as high as in previous years. Applicants thus

challenged laws in 145 cases. Laws were followed by acts of the Government (challenged in 116 cases), regulations of local communities (challenged in 36 cases), and acts of the Ministries (challenged in 19 cases), while regulations of other authorities were challenged in 6 cases. 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 the Communicable Diseases Act (14 times), the Act Regulating the Enforcement of the European Court of Human Rights Judgment in Case No. 60642/08 (12 times), and the Act Determining Intervention Measures to Assist in Mitigating the Consequences of the Second Wave of the COVID-19 Epidemic and the Civil Procedure Act (10 times each). Other laws were challenged fewer than 10 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 2021, the Constitutional Court resolved fewer cases than in 2020 (1,274 cases compared to 1,442 cases, i.e. an almost 12% decrease), but the number of resolved cases was still higher than in previous years. However, the Constitutional Court should not be expected to increase the number of cases resolved year after year, and even less so while the share of complex cases is increasing. 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 the excessively broad jurisdiction 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 2021, the Constitutional Court resolved 259 cases relating to the constitutionality and legality of regulations (U-I cases), amounting to a 20.3% share of all cases resolved. In comparison to 2020, when it resolved 226 petitions and requests for a review of the constitutionality of regulations, this represents a 14.6% increase (with mass cases excluded). In 2021, as has been the case every year thus far, constitutional complaints represented the majority of cases resolved. The Constitutional Court resolved 1,007 such cases, amounting to a 79% share of all cases resolved (excluding mass cases). Such a number of resolved constitutional complaints represents a 17% decrease in comparison to 2020, when the Constitutional Court resolved 1,213 constitutional complaints, but is still comparable to that of 2018 and 2019, when more cases were resolved than in previous years.

From the perspective of the individual panels of the Constitutional Court, in 2021 the highest number of constitutional complaints was resolved by the Civil Law Panel, i.e. 413; the Administrative Law Panel resolved 400 constitutional complaints, and the Criminal Law Panel 194. Compared to the previous year, in 2021 the number of constitutional complaints resolved by the Civil Law Panel decreased by 26.6%, the number of cases resolved by the Administrative law Panel increased by 3.1%, and the number of cases resolved by the Criminal Law Panel also decreased, namely by 26%.

In addition to proceedings for the review of the constitutionality and legality of regulations and constitutional complaints, in 2021 the Constitutional Court also resolved five jurisdictional disputes (P cases) and three cases concerning the review of the constitutionality of referendum questions (U-II cases). The latter were particularly important precedents and complex in terms of their content, as they concerned the exercise of the special competence conferred upon the Constitutional Court by Articles 21 and 21a of the Referendum and Popular Initiative Act.

In terms of content, the greatest number of constitutional complaints resolved referred to civil law litigation (21.7%), followed by criminal law cases (13.7%), administrative disputes (9.9%), labour disputes (9.5%), social disputes (8.1%), disputes concerning taxes (7%), enforcement proceedings (5.9%), minor offences (5.6%), and commercial disputes (5%).

In addition to the data regarding the total number of cases resolved, also the information regarding how many cases the Constitutional Court resolved by a decision on the merits is important. Out of a total of 1,274 cases resolved in 2021 (excluding mass cases), the Constitutional Court adopted 69 decisions; the other cases were resolved by orders. If substantive decisions according to the individual registers are considered, it can be observed that in 259 proceedings for a review of the constitutionality or legality of regulations (U-I cases), the Constitutional Court adopted 43 decisions (16.6% of U-I cases), and in constitutional complaint proceedings it resolved 24 out of 1,007 cases by a decision (2.4% of Up cases). Statistically speaking, in 2021 the Constitutional Court adopted more decisions in proceedings for a review of the constitutionality or legality of regulations than in the previous year (43 compared to 33), while in constitutional complaint proceedings it adopted one more decision than in 2020 (24 compared to 23) and three of these decisions were adopted by a panel. The total number of decisions – the Constitutional Court also adopted two decisions regarding jurisdictional disputes (P cases) – was also higher than in 2020 (69 compared to 56). The most important decisions are briefly presented in the present report. Constitutional Court judges submitted 80 separate opinions, of which 41 were concurring, 30 dissenting, eight partially concurring and partially dissenting, and one partially dissenting.

In 2021, the success rate of complainants, petitioners, and applicants, taken as a whole, was, statistically speaking, higher than in 2020. This is mostly due to the higher success rate in cases for the review of the constitutionality or legality of regulations. Of the 259 resolved petitions and requests for a review of the constitutionality or legality of regulations, in 21 cases the Constitutional Court established that the law was unconstitutional (8.1% of all U-I cases), of which it abrogated the relevant statutory provisions in ten cases, whereas in three cases it adopted declaratory decisions in which it established an unconstitutionality, and in eight cases it also imposed on the legislature a time limit by which the established unconstitutionality must be remedied. In seven cases the Constitutional Court abrogated implementing regulations (or determined that its decision shall have the effect of an abrogation); in this regard, it should be taken into account that a single case could include the review of a number of different implementing regulations (especially in cases connected to the COVID-19 epidemic). The combined success rate in U-I cases was thus 10.8%, while in 2020 it was 8.4%. The success rate of constitutional complaints was also slightly higher than in the previous year. Out of all constitutional complaints resolved in 2021 (1,007 excluding mass cases), the Constitutional Court granted 18 of them (i.e. 1.8%), and by a decision dismissed six constitutional complaints as unfounded. In comparison, the success rate amounted to 1.5% in 2020. 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.

With regard to successful constitutional complaints, it can be concluded that the Constitutional Court most often (in six cases) 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 of which the right to be heard and the right to a substantiated judicial decision are most often the subject of proceedings before the Constitutional Court. In addition, in three cases the Constitutional Court established a violation of Article 34 of the Constitution and a violation of the first paragraph of Article 23, Article 35 and Article 53 (in one case of the third paragraph thereof) of the Constitution were established in two cases each. The second paragraph of Article 14, the first indent of Article 29, the first paragraph of Article 36, Articles 37 and 50, the second paragraph of Article 50, the first paragraph of Article 51, Articles 53, 54 and 56, and the first paragraph of Article 56 of the Constitution were violated once each.

The average period of time it took to resolve a case in 2021 was slightly shorter than in 2020, but still longer than in 2019, mainly because greater emphasis was placed on resolving older cases. On average, the Constitutional Court resolved a case in 554 days (as compared to 563 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 significantly shorter. The average duration of proceedings for a review of the constitutionality or legality of regulations was 491 days. Constitutional complaints were resolved by the Constitutional Court on average in 573 days, which is approximately the same as in 2020 (571 days). Attention must be drawn to the fact that these data must be interpreted carefully, 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. If the Constitutional Court decided mostly on newer cases, such would entail that the average time needed to decide on a case would be 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 complex. 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 2021, the Constitutional Court had a total of 2,193 unresolved cases remaining (mass cases excluded), of which seven were from 2016, 27 from 2017, 163 from 2018, 356 from 2019, and 659 from 2020. The remaining unresolved cases (981) were received in 2021. Among

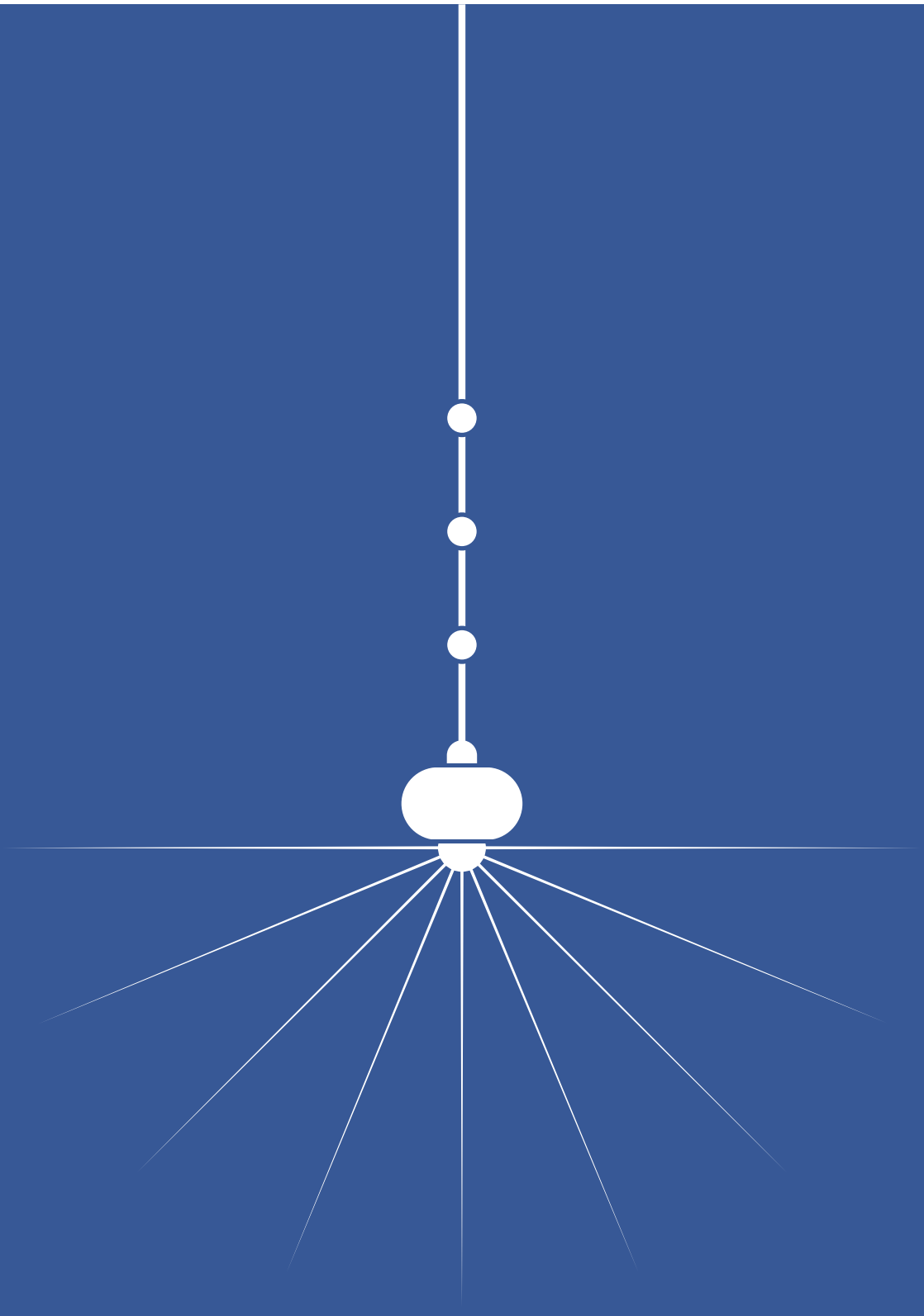
the unresolved cases including mass cases, 532 cases were priority cases and 715 were absolute priority cases. Such a designation is assigned particularly to cases that due to their nature also the regular courts must consider expeditiously. However, priority cases also include requests by courts for 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. These also include cases that are connected to the COVID-19 epidemic.

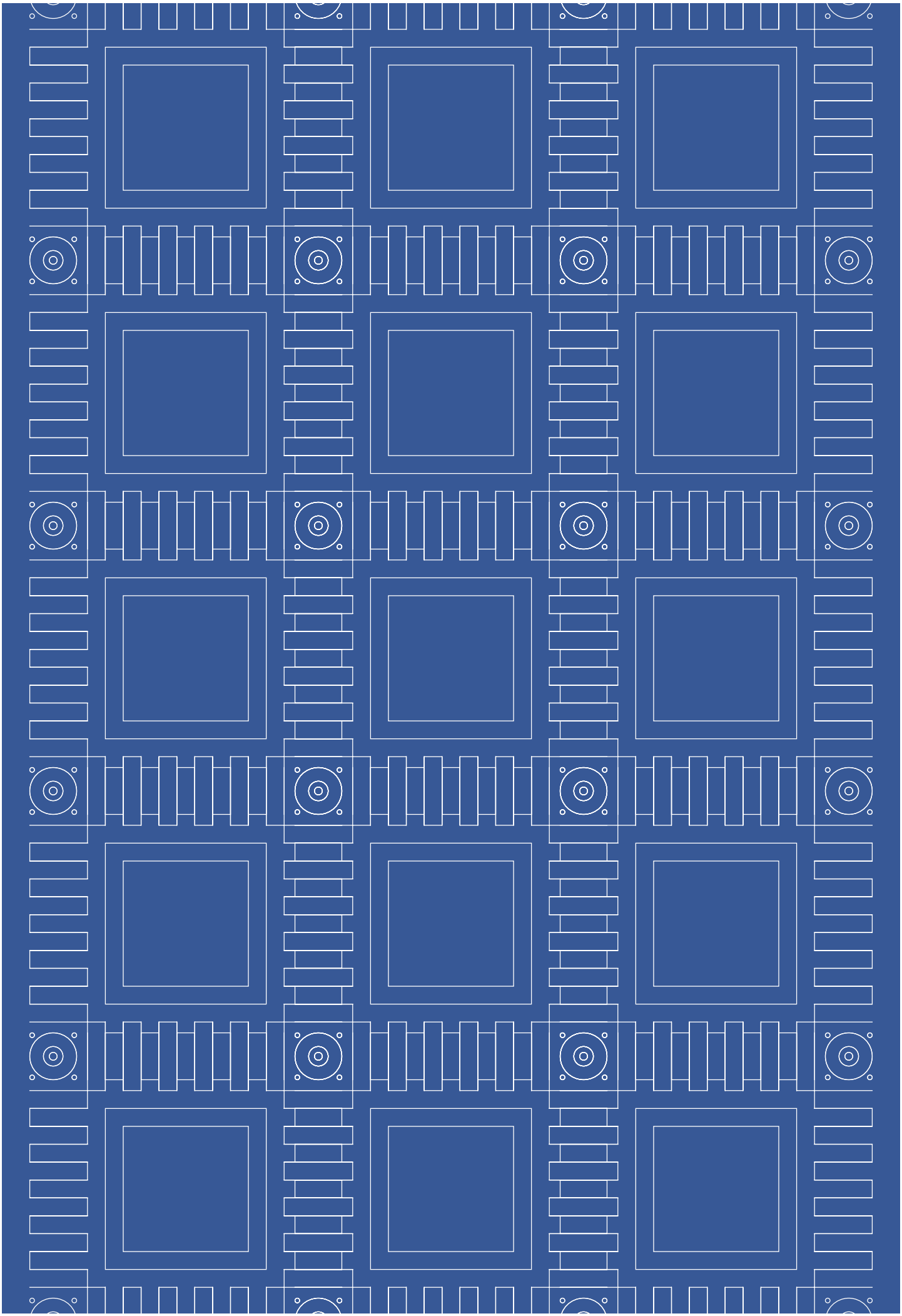
Among the constitutional complaints that remained unresolved as of the end of the year, in seven cases the Constitutional Court suspended the implementation of the challenged individual acts until the adoption of its final decision. Among the cases involving a review of the constitutionality or legality 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.

In 2021 the number of unresolved cases increased slightly compared to 2020. 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, at the end of 2020 this number decreased slightly, i.e. to 2,100 cases, and at the end of 2021 the number of such cases again increased slightly and amounted to 2,193 cases (2,736 cases including mass cases).

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 ensure its precedential role in the protection of human rights and fundamental freedoms, certain normative (statutory or even constitutional) amendments will have to be adopted or the Constitutional Court will have to recruit additional personnel, especially advisory personnel, which, of course, would also require its financial (budgetary) reinforcement as well as additional office space.





9. Summary of Statistical Data for 2021

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:

Unless explicitly stated, substantively equal cases of the same type are not included in the tables and figures; such cases are hereinafter referred to as the mass cases. In 2021, a total of 593 so-called mass cases were received (i.e. 555 petitions for a review of constitutionality and 38 constitutional complaints), while a total of 441 mass cases were resolved (i.e. 39 petitions for a review of constitutionality and 402 constitutional complaints).

Table **1** Summary Data on All Cases in 2021 (Including Mass Cases and R-I Cases)

REGISTER	CASES PENDING AS OF 31 DECEMBER 2020*	CASES RECEIVED IN 2021	CASES RESOLVED IN 2021	CASES PENDING AS OF 31 DECEMBER 2021
Up	2098	1098	1409	1787
U-I	384	851	298	937
P	3	6	5	4
U-II	1	2	3	
R-I	8	38	38	8
Rm				
Mp				
Ps				
Op				
Total	**2494**	**1995**	**1753**	**2736**

***** Due to subsequent erroneous entries, the number of cases pending as of 31 December 2020 does not match completely the data provided in the overview for 2020.

Table **1a** Summary Data on All Cases in 2021 (Excluding Mass Cases and R-I Cases)

REGISTER	CASES PENDING AS OF 31 DECEMBER 2020*	CASES RECEIVED IN 2021	CASES RESOLVED IN 2021	CASES PENDING AS OF 31 DECEMBER 2021
Up	1734	1060	1007	1787
U-I	365	296	259	402
P	3	6	5	4
U-II	1	2	3	
Rm				
Mp				
Ps				
Op				
Skupaj	**2103**	**1364**	**1274**	**2193**

***** Due to the subsequent classification of certain cases as mass cases, the number of cases pending as of 31 December 2020 does not match completely the data provided in the overview for 2020 (i.e. certain mass cases were not classified as such in 2020).

Table **2** Summary Data regarding R-I Cases in 2021

REGISTER	CASES RECEIVED IN 2021	CASES RESOLVED IN 2021
R-I cases	38	38

Table **2a** Summary Data on Mass Cases in 2021

REGISTER	CASES RECEIVED IN 2021	CASES RESOLVED IN 2021
U-I	555	39
Up	38	402

Table **3** Summary Data regarding Up Cases by Panel in 2021 (Including Mass Cases)

PANEL	CASES PENDING AS OF 31 DECEMBER 2020*	CASES RECEIVED IN 2021	CASES RESOLVED IN 2021	CASES PENDING AS OF 31 DECEMBER 2021
Civil Law	747	479	413	813
Administrative Law	593	299	432	460
Criminal Law	758	320	564	514
Total	**2098**	**1098**	**1409**	**1787**

***** Due to subsequent erroneous entries, the number of cases pending as of 31 December 2020 does not match completely the data provided in the overview for 2020.

Table **3a** Summary Data regarding Up Cases by Panel in 2021 (Excluding Mass Cases)

PANEL	CASES PENDING AS OF 31 DECEMBER 2020*	CASES RECEIVED IN 2021	CASES RESOLVED IN 2021	CASES PENDING AS OF 31 DECEMBER 2021
Civil Law	747	479	413	813
Administrative Law	573	287	400	460
Criminal Law	414	294	194	514
Total	**1734**	**1060**	**1007**	**1787**

***** Due to the subsequent classification of certain cases as mass cases, the number of cases pending as of 31 December 2020 does not match completely the data provided in the overview for 2020 (i.e. certain mass cases were not classified as such in 2020).

Table **4** Unresolved Cases according to Year Received as of 31 December 2021

YEAR	2016	2017	2018	2019	2020	2021	TOTAL
U-I	2	12	30	59	98	201	402
Up	5	15	133	297	560	776	1786
P					1	4	5
U-II							
Total	**7**	**27**	**163**	**356**	**659**	**981**	**2193**

9.1. Cases Received

Figure **1** Distribution of Cases Received in 2021

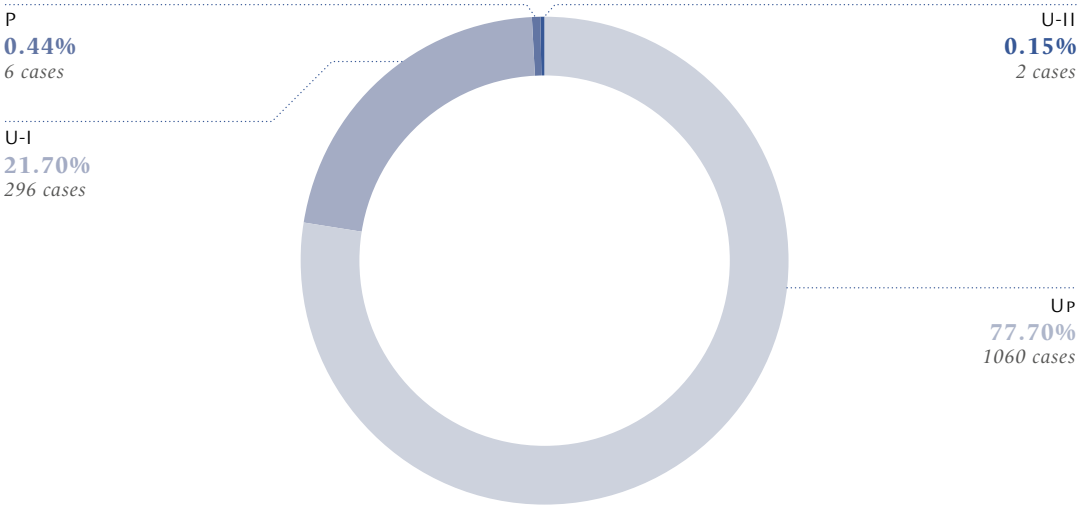


Table **5** Cases Received according to Type and Year

YEAR	U-I	UP	P	U-II	PS	MP	RM	YEAR
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
2021	**296**	**1060**	**6**	**2**				**1364**
2021/2020	**+16.1%**	**+0.2%**	**+20.0%**	**+100.0%**				**+3.49%**

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

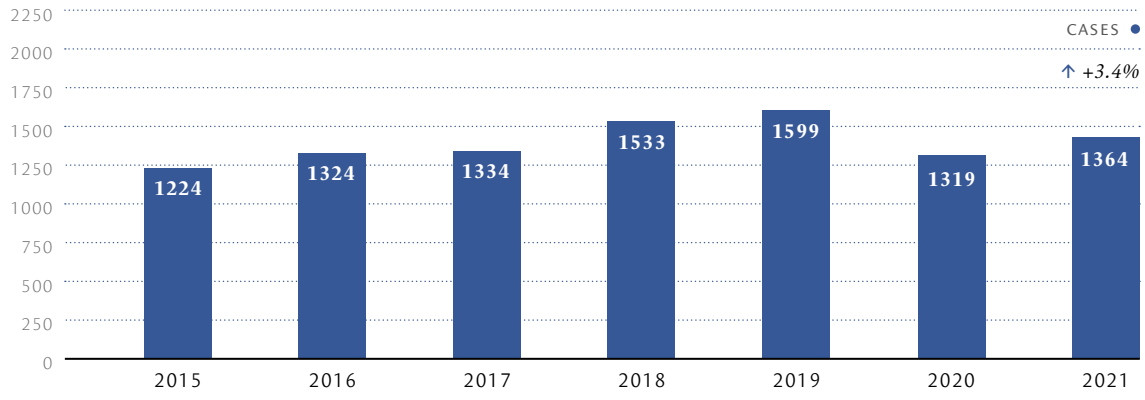


Figure **3** Number of U-I Cases Received by Year

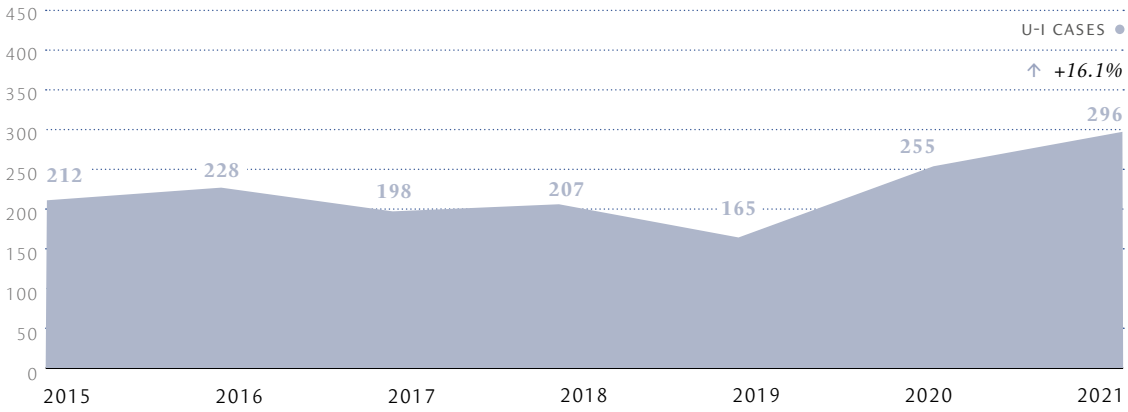


Table **6** Number of Requests for a Review Received according to Applicant

APPLICANTS REQUESTING A REVIEW	NUMBER OF CASES
Policijski sindikat Slovenije (Police Trade Union of Slovenia)	4
Vrhovno sodišče Republike Slovenije (Supreme Court of the Republic of Slovenia)	4
Sodni svet Republike Slovenije (Judicial Council of the Republic of Slovenia)	3
Višje sodišče v Kopru (Higher Court in Koper)	3
Zagovornik načela enakosti (Advocate of the Principle of Equality)	3
Delovno in socialno sodišče v Ljubljani (Labour and Social Court in Ljubljana)	2
Sindikat direktorjev in ravnateljev Slovenije (Trade Union of Directors and Headteachers of Slovenia)	2
Sindikat policistov Slovenije (Trade Union of Police Officers of Slovenia)	2
Združenje mestnih občin Slovenije (Association of Urban Municipalities of Slovenia)	2
Državni svet Republike Slovenije (National Council of the Republic of Slovenia)	1
Informacijski pooblaščenec (Information Commissioner)	1
Konfederacija novih sindikatov Slovenije - Neodvisnost in drugi (Confederation of New Trade Unions of Slovenia - Independence and Others)	1
Konfederacija sindikatov Slovenije Pergam in drugi (Pergam Confederation of Trade Unions of Slovenia and Others)	1
Mestna občina Kranj – Mestni svet (Urban Municipality of Kranj – City Council)	1
Občina Vrhnika, Občinski svet in drugi (Vrhnika Municipality, Municipal Council and Others)	1
Okrajno sodišče v Mariboru (Local Court in Maribor)	1
Okrajno sodišče v Slovenj Gradcu (Local Court in Slovenj Gradec)	1
Okrožno sodišče v Kopru (District Court in Koper)	1
Roman Leljak	1
Sindikat delavcev prometa in zvez Slovenije in drugi (Trade Union of Transportation and Communication Workers of Slovenia and Others)	1
Sindikat Ministrstva za obrambo, Konferenca sindikata Ministrstva za obrambo (Ministry of Defence Trade Union, Conference of the Ministry of Defence Trade Union)	1
Sindikat obrti in podjetništva Slovenije (Trade Union of Crafts and Entrepreneurship of Slovenia)	1
Upravno sodišče Republike Slovenije (Administrative Court of the Republic of Slovenia)	1
Upravno sodišče Republike Slovenije, Oddelek v Celju (Administrative Court of the Republic of Slovenia, Department in Celje)	1
Višje sodišče v Ljubljani (Higher Court in Ljubljana)	1
Višje sodišče v Mariboru (Higher Court in Maribor)	1
Total	**42**

Table **7** Legal Acts Challenged by Year

YEAR	LAWS AND OTHER ACTS OF THE NATIONAL ASSEMBLY	DECREES AND OTHER ACTS OF THE GOVERNMENT	RULES AND OTHER ACTS OF MINISTRIES	ORDINANCES AND OTHER ACTS OF SELF-GOVERNING LOCAL COMMUNITIES	REGULATIONS OF OTHER AUTHORITIES
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
2021	**147**	**116**	**19**	**36**	**6**

Table **8** Acts Challenged Multiple Times in the Cases Received in 2021

ACTS CHALLENGED MULTIPLE TIMES IN 2021	NUMBER OF CASES
Communicable Diseases Act	14
Act Regulating the Enforcement of the European Court Of Human Rights Judgment in Case No. 60642/08	12
Act Determining the Intervention Measures to Mitigate and Remedy the Consequences of the COVID-19 Epidemic	10
Civil Procedure Act	10
Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act	6
Pension and Disability Insurance Act	6
Public Sector Salary System Act	5
Organisation and Work of the Police Act	5
Family Code	5
Criminal Procedure Act	4
Local Self-Government Act	4
Tax Procedure Act	4
Attorneys Act	4
Claim Enforcement and Security Act	3
Personal Income Tax Act	3
Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy	3
Act Determining the Intervention Measures to Mitigate the Consequences of the Second Wave of the COVID-19 Epidemic	3
Judicial Service Act	3
Act on Judicial and Out-of-Court Protection Procedure for Former Holders of Eligible Liabilities of Banks	3

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

YEAR	CIVIL LAW	ADMINISTRATIVE LAW	CRIMINAL LAW	TOTAL
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
2021	**479**	**287**	**294**	**1060**
2021/2020	**-4.2%**	**-19.2%**	**+44.8%**	**+0.2%**

Figure **4**

Distribution of Challenged Acts (U-I Cases Received)

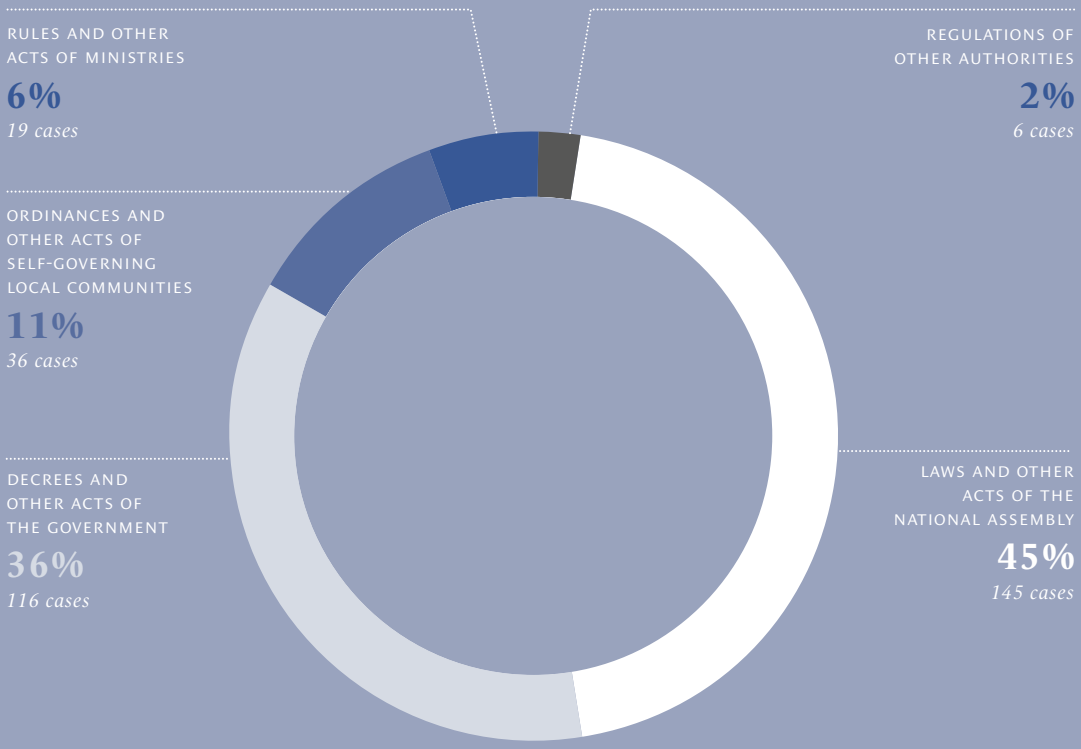


Figure **5**

Number of Up Cases Received according to Panel

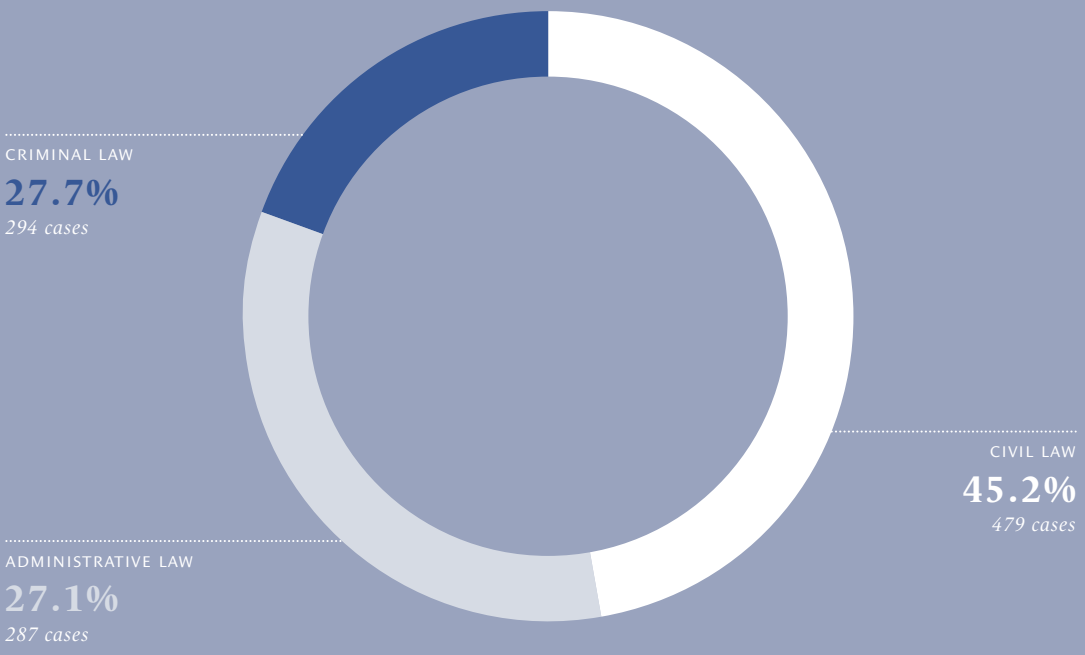


Figure **6** Number of Up Cases Received by Year

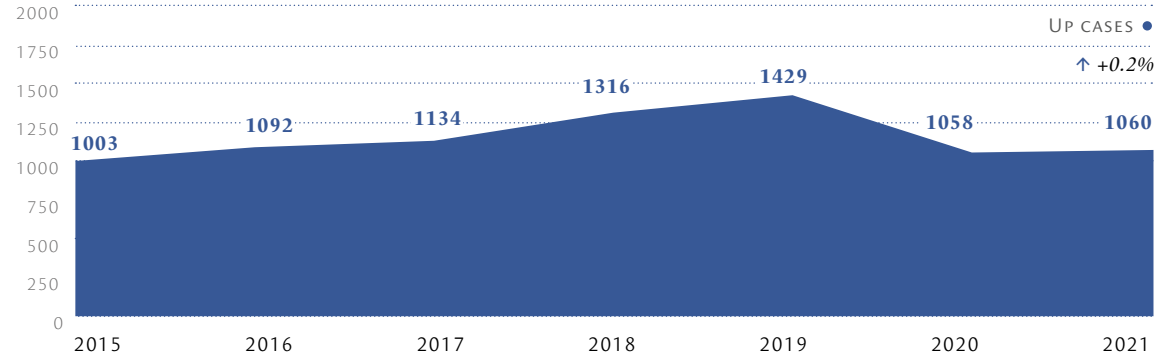


Table **10** Up Cases Received according to Type of Dispute

VRSTA SPORA	2021	SHARE	2020	2021/2020
Civil Law Litigation	239	22.5%	280	-14.6%
Minor Offences	154	14.5%	54	185.2%
Criminal Cases	141	13.3%	148	-4.7%
Other Administrative Disputes	111	10.5%	137	-19.0%
Enforcement Proceedings	77	7.3%	59	30.5%
Commercial Law Disputes	75	7.1%	68	10.3%
Labour Law Disputes	63	5.9%	110	-42.7%
Taxes	49	4.6%	43	14.0%
Non-litigious Civil Law Proceedings	28	2.6%	40	-30.0%
Social Law Disputes	28	2.6%	35	-20.0%
Insolvency Proceedings	24	2.3%	27	-11.1%
Proceedings related to the Land Register	15	1.4%	17	-11.8%
Other	12	1.1%	4	200.0%
Matters concerning Spatial Planning	11	1.0%	11	0.0%
Succession Proceedings	9	0.8%	7	28.6%
Denationalisation	7	0.7%	6	16.7%
Civil Status of Persons	7	0.7%	7	0.0%
No Dispute	5	0.5%	4	25.0%
Registration in the Companies Register	4	0.4%	0	
Election	1	0.1%	1	0.0%
Total	**1060**	**100.0%**	**1058**	**+0.2%**

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

INITIATORS OF THE JURISDICTIONAL DISPUTE	NUMBER OF CASES
Medobčinski inšpektorat in redarstvo (Inter-Municipal Inspectorate and Traffic Wardens Department)	1
Medobčinski inšpektorat in redarstvo, Skupna občinska uprava občin Trzin, Komenda, Lukovica, Mengeš, Moravče, Vodice (Inter-Municipal Inspectorate and Traffic Wardens Department, Joint Municipal Administration of the Municipalities of Trzin, Komenda, Lukovica, Mengeš, Moravče, and Vodice)	1
Mestna občina Ljubljana (Urban Municipality of Ljubljana)	1
Občina Ilirska Bistrica (Ilirska Bistrica Municipality)	1
Okrajno sodišče v Mariboru (Local Court in Maribor)	1
Sodni svet Republike Slovenije (Judicial Council of the Republic of Slovenia)	1

9.2.

Cases Resolved

Figure **7**

Distribution of Cases Resolved in 2021

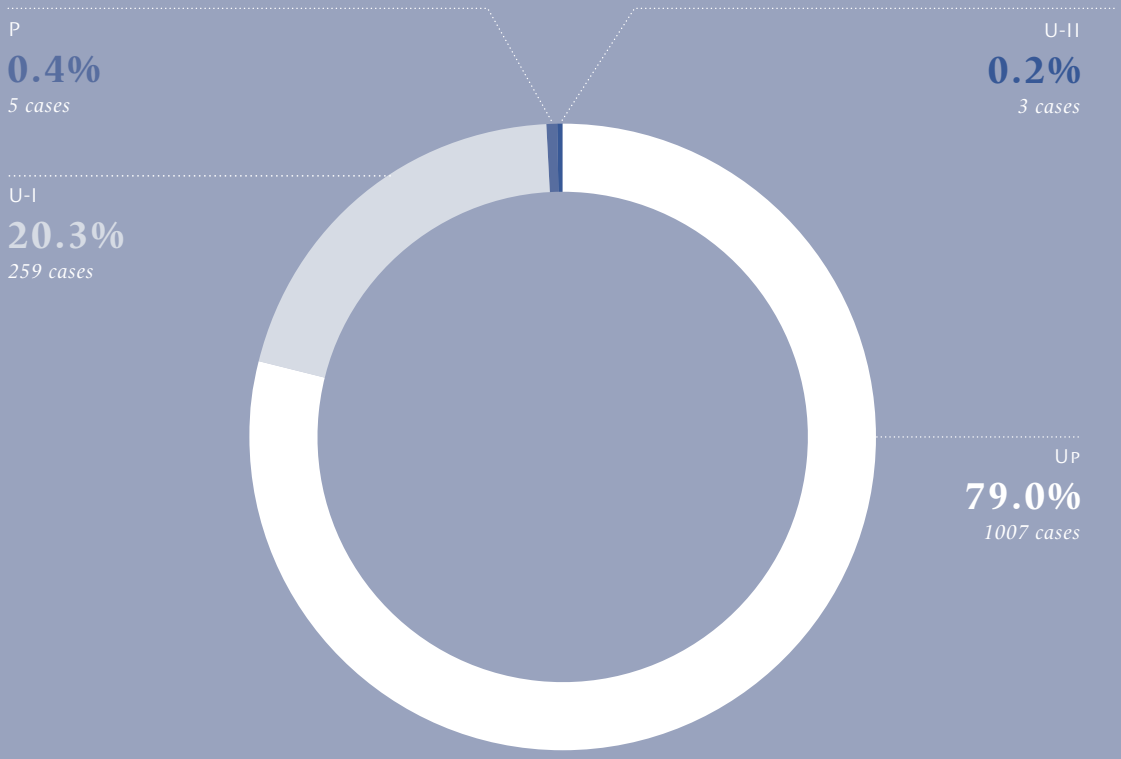


Table **12** Number of Cases Resolved according to Type of Case and Year Resolved

YEAR	U-I	Up	P	U-II	Ps	Rm	Mp	TOTAL
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
2021	**259**	**1007**	**5**	**3**				**1274**
2021/2020	**+14.6%**	**-17.0%**	**+66.7%**					**- 11.7%**

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

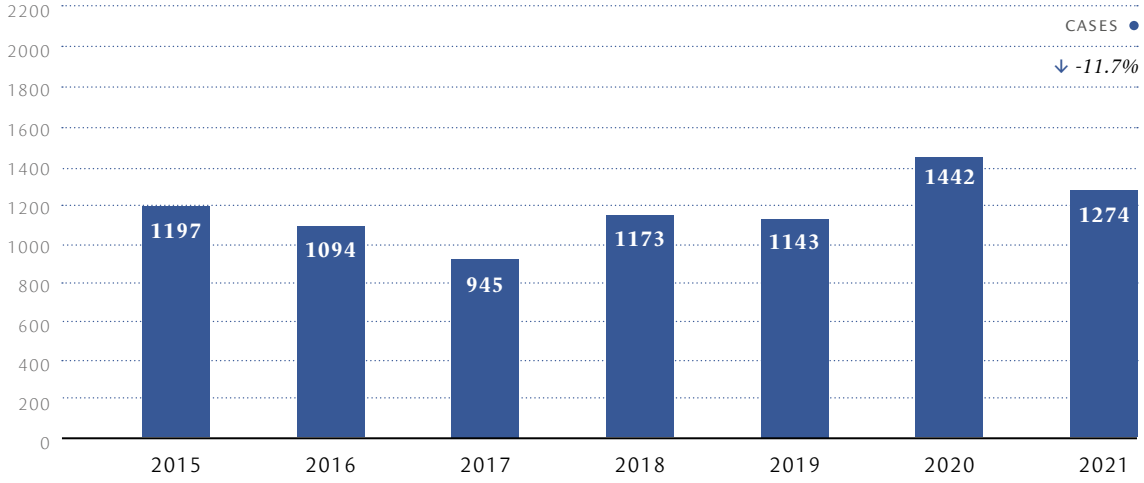


Figure **9** Number of U-I Cases Resolved according to Year

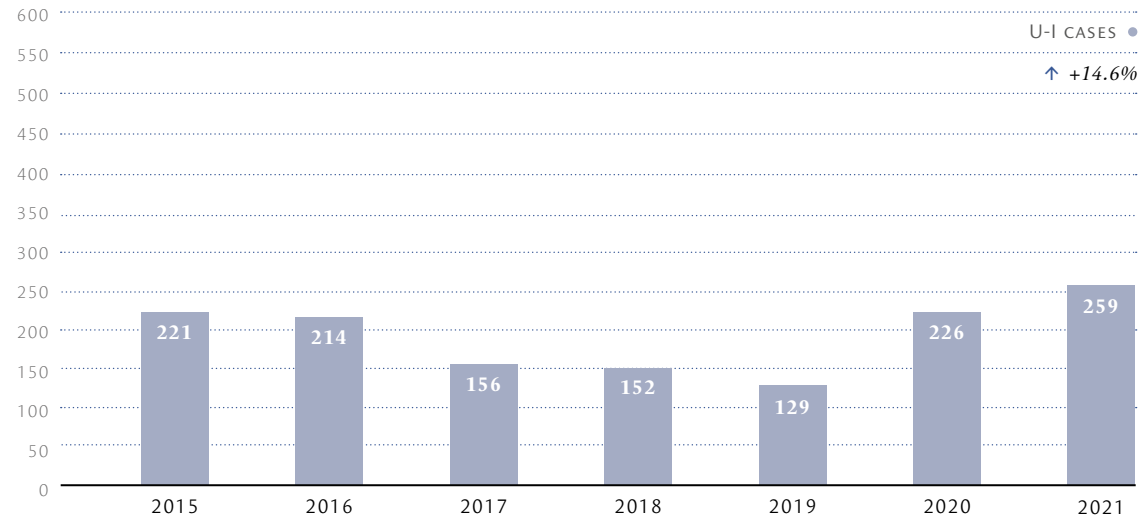


Figure **10** Distribution of Cases Resolved according to Type of Case and Year Resolved

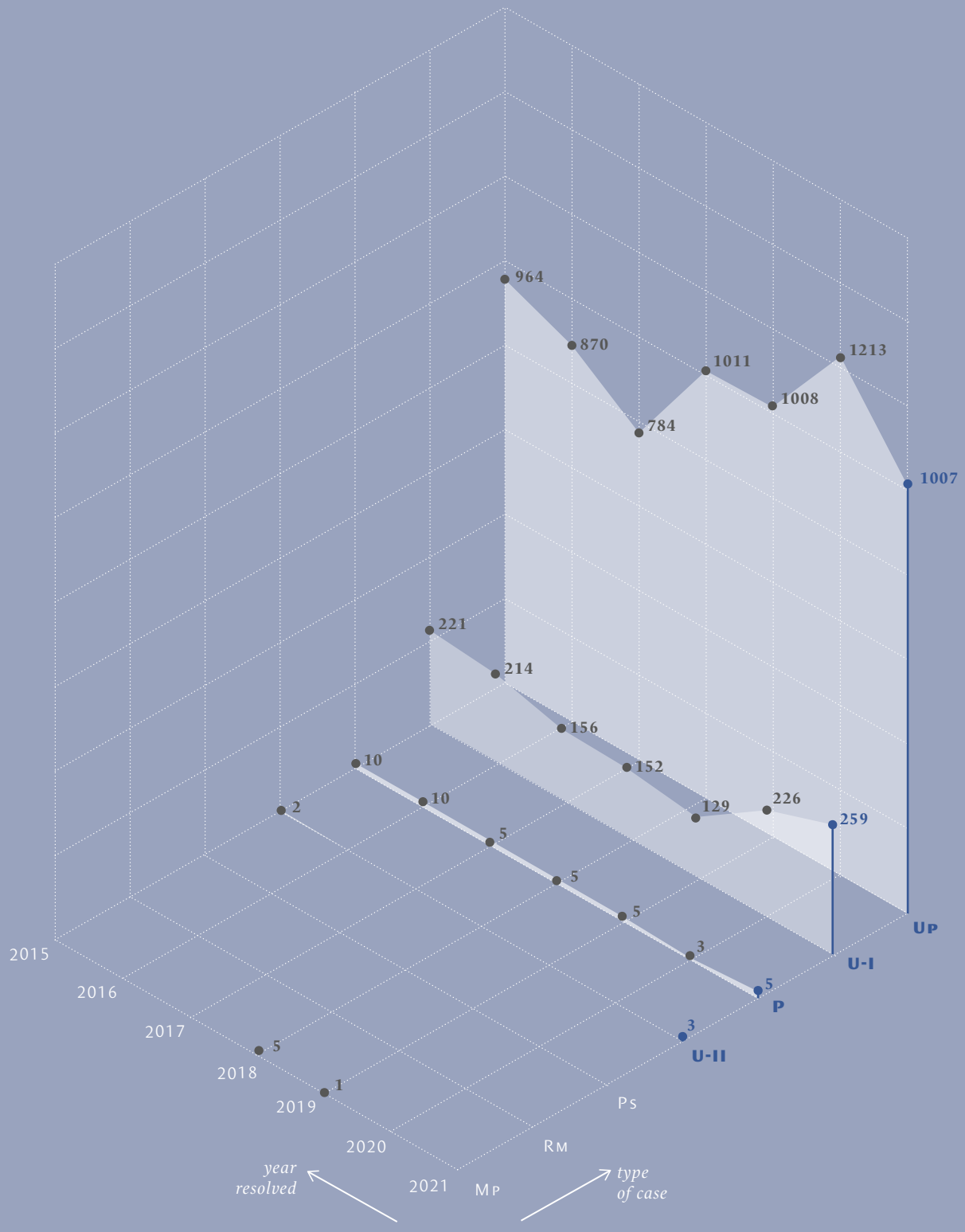


Table **13** U-I Cases Resolved on the Merits by Year

YEAR	RESOLVED	RESOLVED ON THE MERITS	PERCENTAGE
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%
2021	**259**	**43**	**16.6%**

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

TYPE OF RESOLUTION	2021 REQUESTS	2021 PETITIONS / *SUA SPONTE*	2021 TOTAL	2020	2019	2018	2017	2016	2015
Abrogation of statutory provisions	8	2	10	3	9	7	6	5	9
Inconsistency with the Constitution – statutory provisions	3	0	3	0	2	3	2	5	5
Inconsistency with the Constitution and determination of a deadline – statutory provisions	4	4	8	10	4	4	3	9	2
Not inconsistent with the Constitution – statutory provisions	7	8	15	14	7	9	7	14	10
Inconsistency, abrogation, or annulment of the provisions of regulations	1	6	7	6	1	3	2	8	5
Not inconsistent with the Constitution or the law – provisions of regulations	0	0	0	3	1	1	0	1	0
Dismissed	0	38	38	47	30	19	39	41	37
Rejected	24	157	181	142	81	105	111	132	154
Proceedings were stayed	3	11	14	19	3	11	10	8	8

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

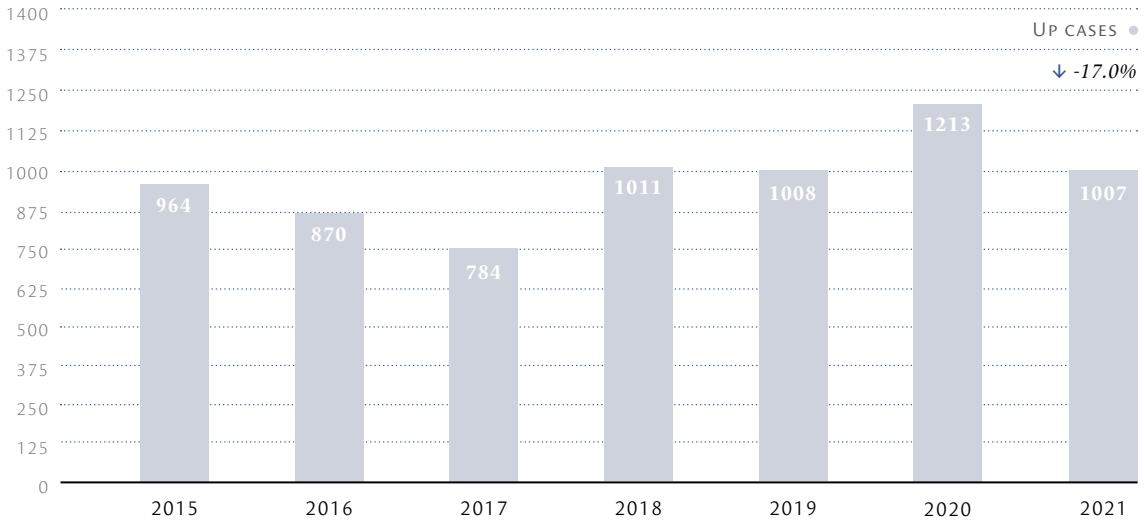


Table **15** Number of Up Cases Resolved according to Panel and Year

YEAR	CIVIL LAW	ADMINISTRATIVE LAW	CRIMINAL LAW	TOTAL
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
2021	**413**	**400**	**194**	**1007**
2021/2020	**-26.6%**	**+3.1%**	**-26.0%**	**-17.0%**

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

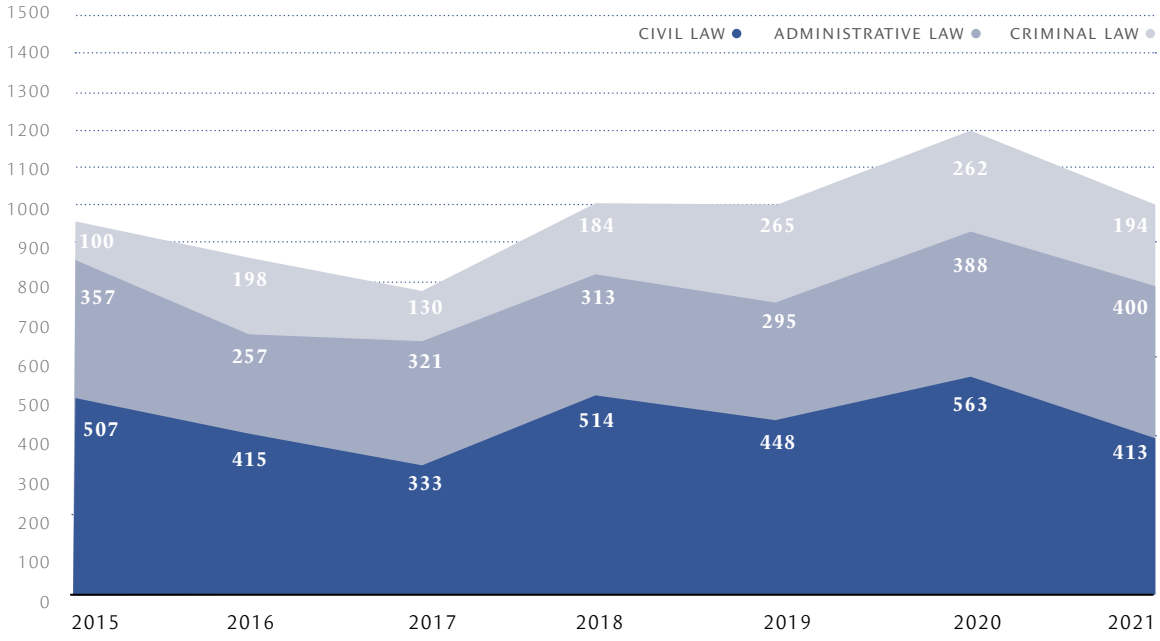


Table **16** Number of Up Cases Resolved according to Type of Dispute

TYPE OF DISPUTE	2021	SHARE	2020	2021/2020
Civil Law Litigation	219	21.7%	292	-25.0% ↓
Criminal Cases	138	13.7%	174	-20.7% ↓
Other Administrative Disputes	100	9.9%	112	-10.7% ↓
Labour Law Disputes	96	9.5%	128	-25.0% ↓
Social Law Disputes	82	8.1%	42	95.2% ↑
Taxes	70	7.0%	46	52.2% ↑
Enforcement Proceedings	59	5.9%	71	-16.9% ↓

Minor Offences	56	5.6%	87	-35.6% ↓
Commercial Law Disputes	50	5.0%	103	-51.5% ↓
Non-litigious Civil Law Proceedings	33	3.3%	41	-19.5% ↓
Matters concerning Spatial Planning	23	2.3%	26	-11.5% ↓
Insolvency Proceedings	20	2.0%	37	-45.9% ↓
Proceedings related to the Land Register	17	1.7%	13	30.8% ↑
Denationalisation	12	1.2%	10	20.0% ↑
Civil Status of Persons	9	0.9%	8	12.5% ↑
Other	8	0.8%	4	100.0% ↑
Succession Proceedings	7	0.7%	8	-12.5% ↓
No Dispute	5	0.5%	7	-28.6% ↓
Election	2	0.2%	2	0.0% ↑
Registration in the Companies Register	1	0.1%	2	-50.0% ↓
Total	**1007**	**100.0%**	**1213**	**-17.0% ↓**

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
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	23	1.9%	18	1.5%
2021	**1007**	**24**	**2.4%**	**18**	**1.8%**

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

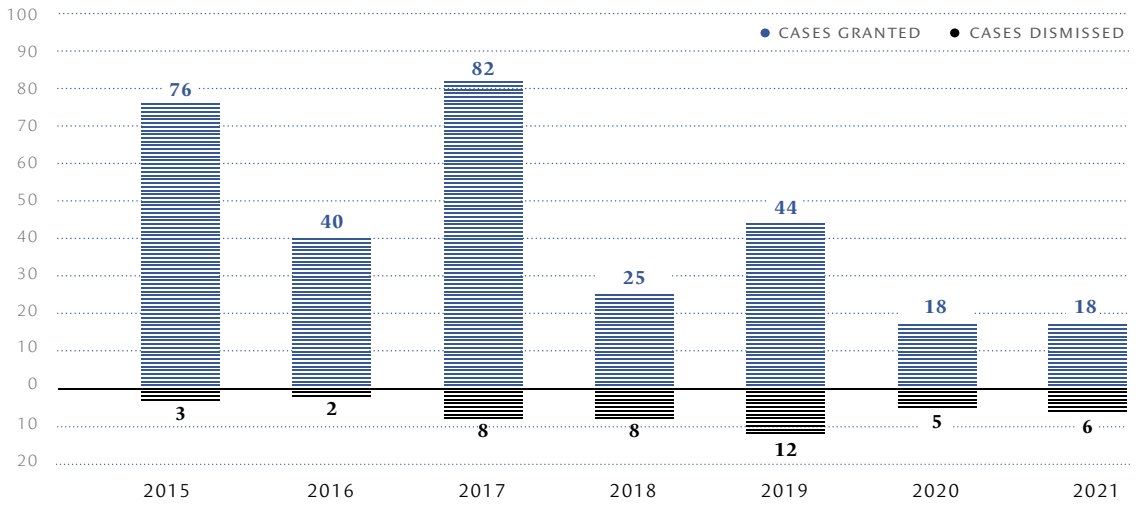


Table **18** Certain Other Types of Resolutions in Up Cases

YEAR	NOT ACCEPTED FOR CONSIDERATION	REJECTED
2015	633	334
2016	539	334
2017	424	338
2018	614	387
2019	537	427
2020	817	419
2021	**697**	**347**

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

YEAR	RESOLVED	RESOLVED ON THE MERITS	PERCENTAGE
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%
2021	**5**	**2**	**40.0%**

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

TYPE OF CASE	AVERAGE DURATION IN DAYS
U-I	491
Up	573
P	299
U-II	82
Total	**554**

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

PANEL	2021	2020	CHANGE 2021/2020
Civil Law	472	516	-8.5%
Administrative Law	602	578	4.2%
Criminal Law	727	677	7.4%
Total	**573**	**571**	**+0.4%**

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

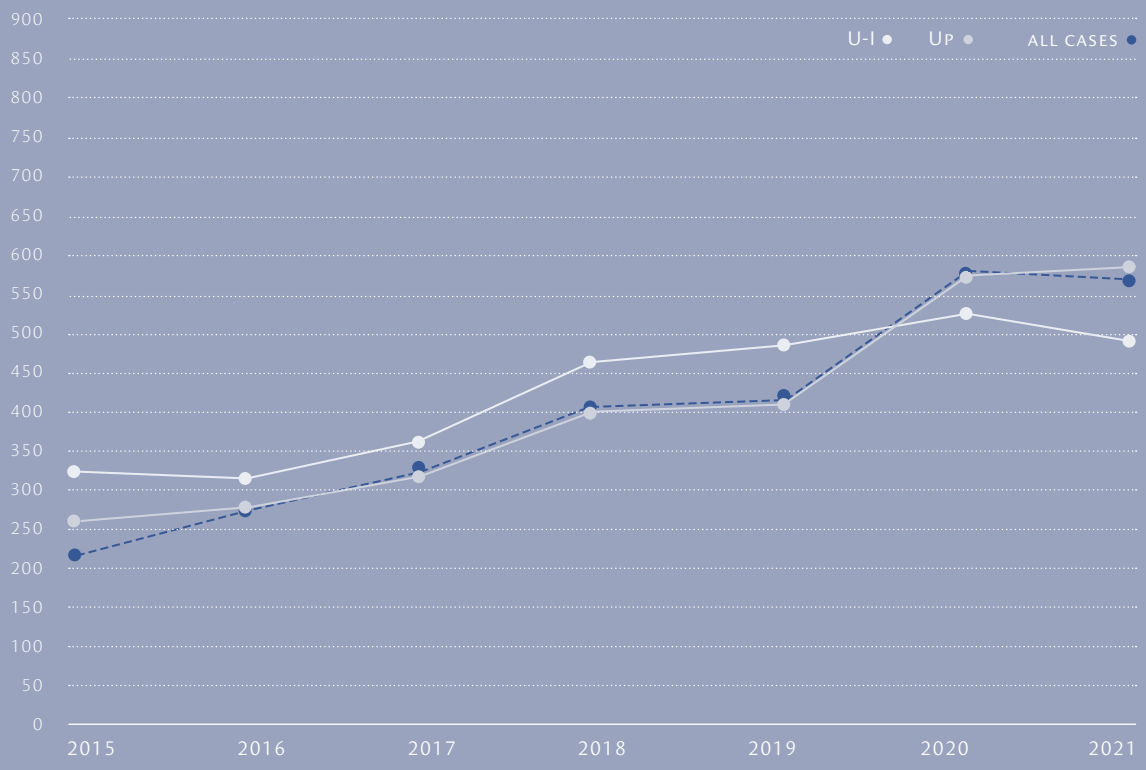
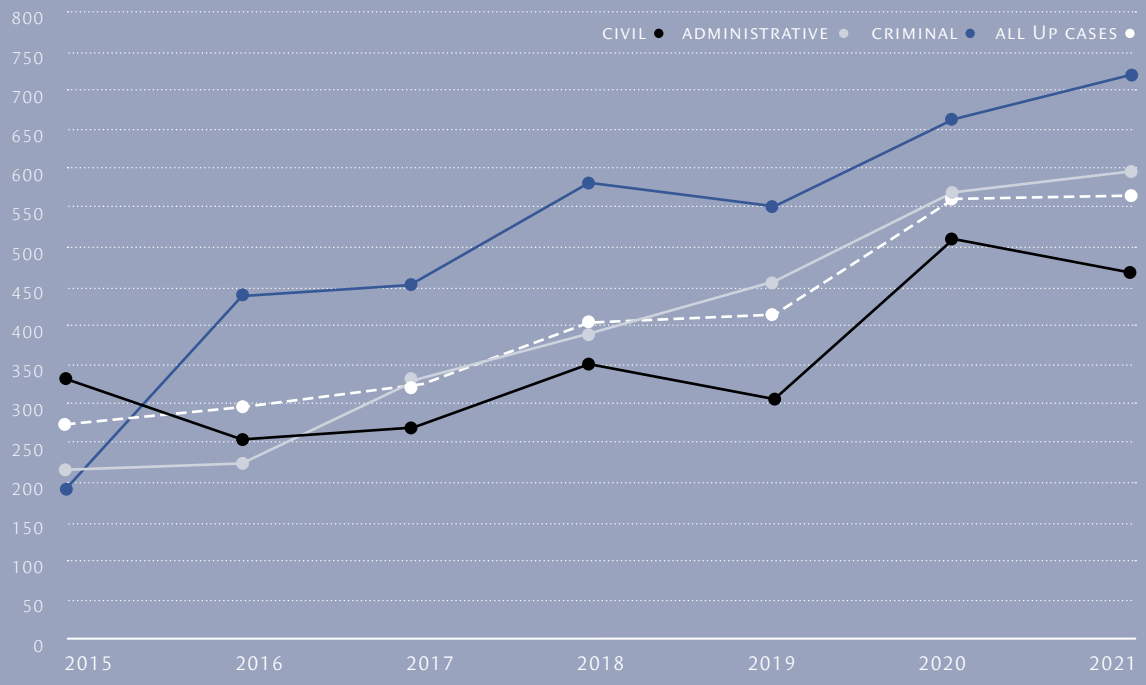


Figure **14 a** Average Number of Days Needed to Resolve Up Cases according to Panel

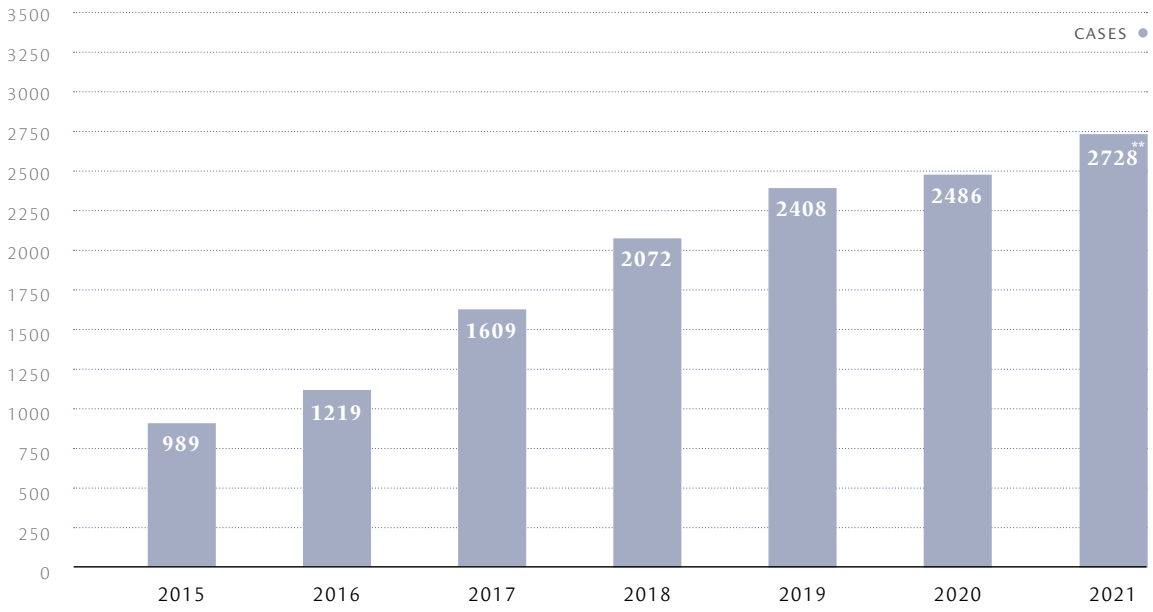


9. 3. Unresolved Cases

Table **22** Pending Cases according to Year Received as of 31 December 2021

YEAR	2016	2017	2018	2019	2020	2021	TOTAL
U-I	2	12	30	59	98	201	402
Up	5	15	133	297	560	776	1786
P					1	4	5
U-II							
Total	**7**	**27**	**163**	**356**	**659**	**981**	**2193**

Figure **15** 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.

** 2193 excluding mass cases.

Table **23** Priority Cases Pending as of 31 December 2021

REGISTER	ABSOLUTE PRIORITY CASES	PRIORITY CASES	TOTAL
Up	43	480	523
U-I	672	47	719
P		5	5
U-II			
Total	**715**	**532**	**1247**

Figure **16** Cases Received and Resolved

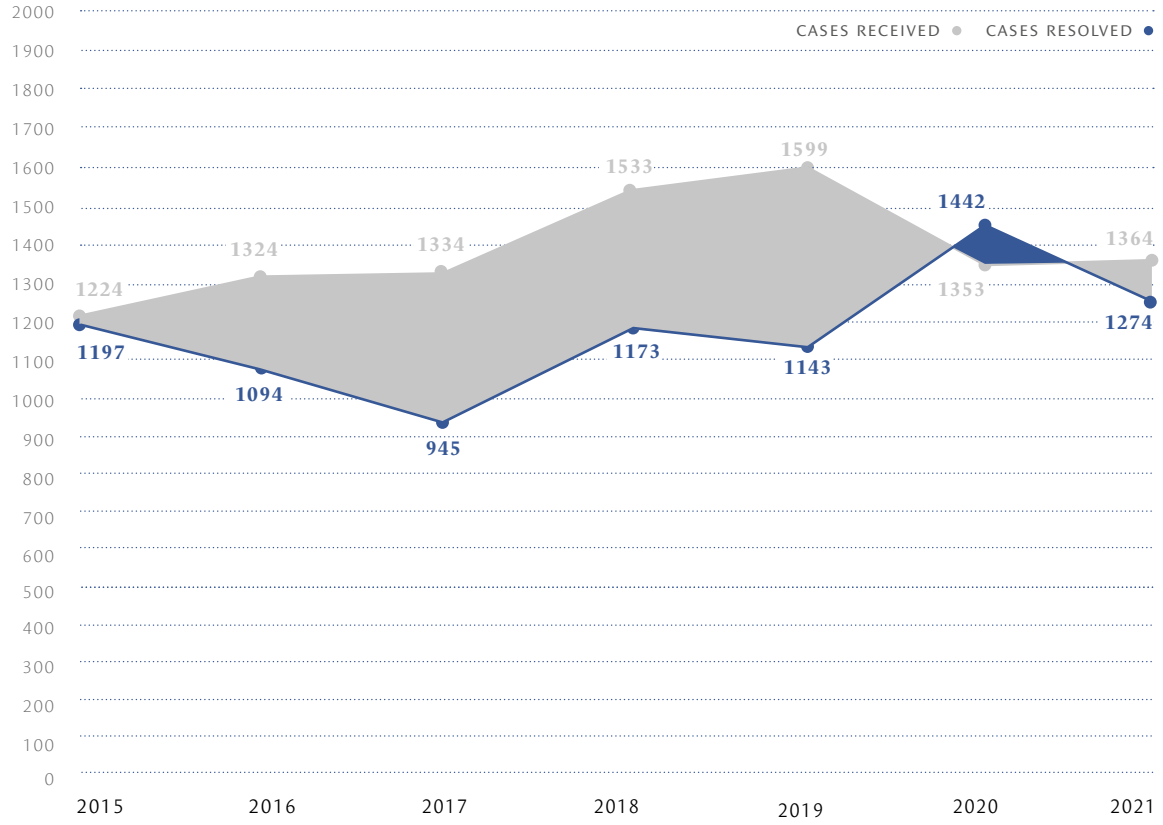


Table **24** Number of Temporary Suspensions according to Year

YEAR	U-I	UP	TOTAL
2021	**12**	**5**	**17**
2020	6	6	12
2019	5	6	11
2018	1	5	6
2017		15	15
2016		7	7
2015		10	10

9. 4. Financial Plan Outturn*

Table **25** Financial Plan Outturn by Year (in EUR)

YEAR	SALARIES	MATERIAL COSTS	CAPITAL OUTLAYS	TOTAL	CHANGE FROM PREVIOUS YEAR
2010	3,902,162	704,651	386,564	4,993,377	+7.2% ↑
2011	3,834,448	732,103	143,878	4,710,429	-5.7% ↓
2012	3,496,436	560,184	84,726	4,141,346	-12.1% ↓
2013	3,092,739	542,058	65,171	3,699,968	-10.7% ↓
2014	3,076,438	530,171	98,230	3,704,839	+0.1% ↑
2015	3,050,664	542,833	171,010	3,764,507	+1.6% ↑
2016	3,136,113	644,352	131,867	3,912,332	+3.9% ↑
2017	3,293,454	601,661	534,436	4,429,551	13.2% ↑
2018	3,369,433	587,518	203,570	4,160,521	- 6.1% ↓
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% ↑
2021	**4,031,638**	**544,946**	**187,092**	**4,763,676**	**+5.0%** ↑

***** The data on the expenditure of public resources refer to resources from the state budget, earmarked funds, and cohesion funds, with the later amounting to 1.23% of the outturn in 2021.

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

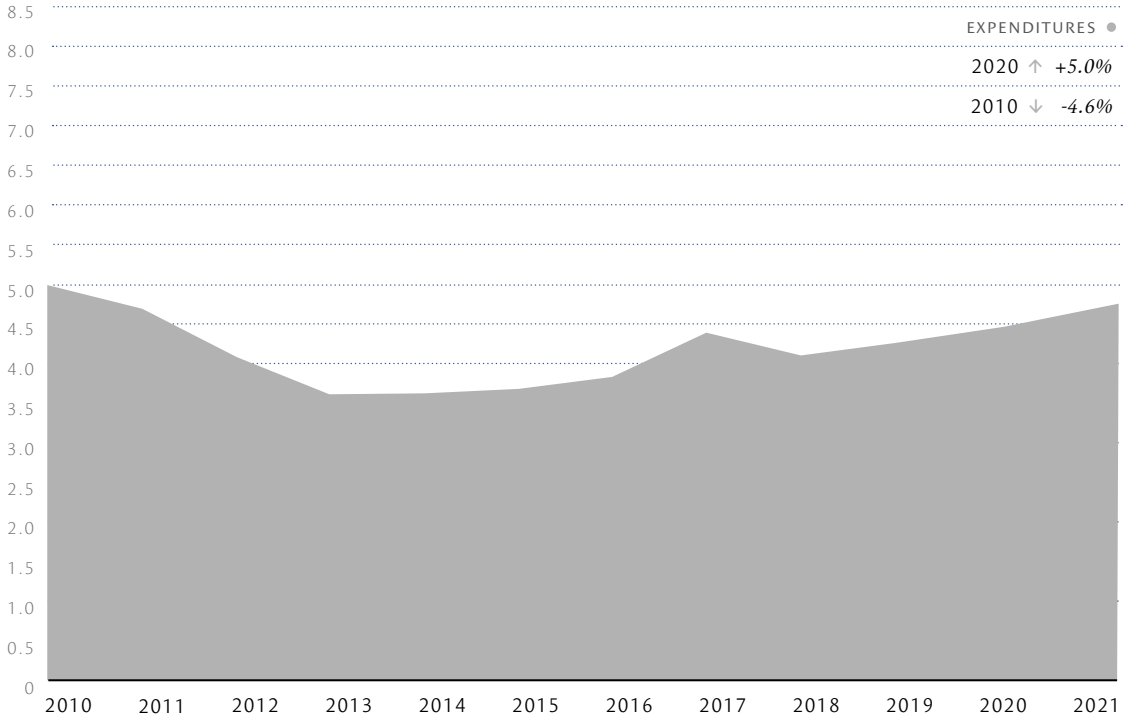


Figure **18** Distribution of Expenditures in 2021

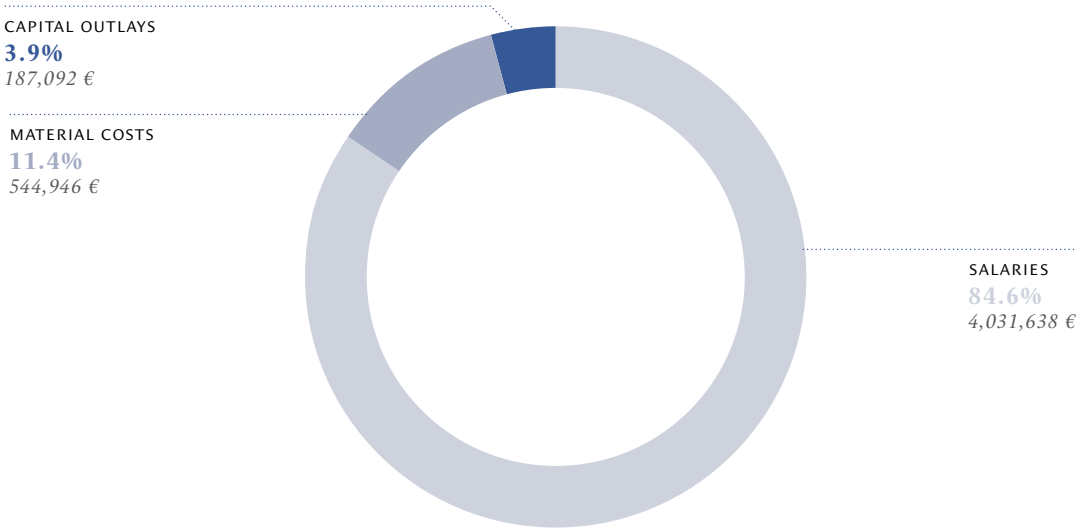
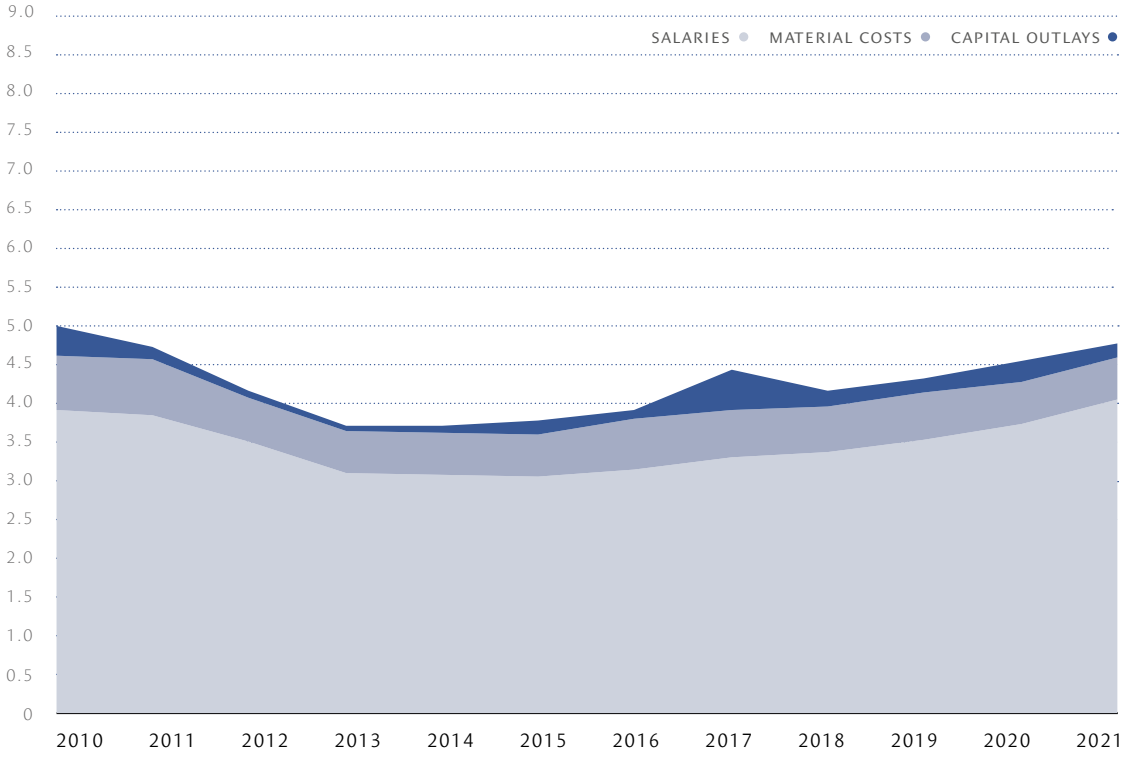


Figure **19** Distribution of Expenditures by Year (in EUR mil.)



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

REPUBLIC OF SLOVENIA
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