REPUBLIC OF SLOVENIA
CONSTITUTIONAL COURT

An Overview of the Work for 2022

President of the Constitutional Court, Prof. Dr Matej Accetto
Photo: Daniel Novakovič

Foreword by the President of the Constitutional Court

Like previous annual reports, this year's overview offers insight into the work of the Constitutional Court over the course of last year, and this insight can also provide a basis for assessing the situation in the area of respect for human rights and fundamental freedoms and the principles of a state governed by the rule of law from several viewpoints, and through such also for a more general diagnosis of the functioning of the constitutional order in Slovenia. The relevant picture is painted by both quantitative and qualitative data concerning the activities of the Constitutional Court, from the number and nature of individual applications received, to the content of the issues raised in proceedings before the Constitutional Court. However, this picture is not complete unless we also take into account the essential features of the activities of actors outside the Constitutional Court, representatives of other state authorities or branches of government, the addressees of its decisions, and other relevant public spheres, all of whom contribute to the exercise of and respect for the proper role of the Constitutional Court. In this foreword, I will briefly address all three of these aspects.

For years, one of the most pressing issues affecting the functioning of the Constitutional Court has been the extremely high number of cases in which applicants have sought a decision by the Constitutional Court on a wide range of issues from all different fields of law. Consequently, for many years now, the management of the caseload has been one of the main challenges for the Constitutional Court, which has led to a number of internal organisational measures, efforts to provide additional office space and staff, as well as proposals and initiatives to amend the legal regulation governing the functioning of the Constitutional Court, at both the constitutional and statutory level.

The issue of caseload management is further complicated by a system that requires a certain amount of time for the examination of every constitutional complaint, even those that are eventually not accepted for consideration and do not lead to a decision on the merits. As a general rule, this stage of the examination of individual cases must not take place only after the Constitutional Court has rendered a final decision on the merits in all its older cases; if that were the case, too many applicants would have to wait several years for this first stage of the examination, and in the end the decision in their case could still entail that the application would not be accepted for consideration on the merits or could even be rejected because the procedural requirements were not fulfilled. In navigating its excessive caseload, the Constitutional Court is thus constantly trapped between its own Scylla and Charybdis: the time devoted to the substantive consideration of accepted cases affects its capacity to examine new applications received, while the time devoted to such

initial examination interferes with the preparation of substantive decisions.

This may help an understanding of why the Constitutional Court has been calling for statutory and constitutional amendments of the rules governing its functioning for many years. Examples of such calls can be found in the foreword to the annual reports for 2005, 2006, and 2007, which in 2008 also led to an initiative by the President of the Republic to amend the constitutional provisions governing the competences and functioning of the Constitutional Court. The reasons underlying such calls and initiatives in those years have not disappeared, but still remain valid today. The caseload continues to be very high, and throughout the years ever more time has had to be devoted to applications already during the examination stage due to the increasing complexity of the arguments they invoke and the legal issues raised.

In the light of the outlined reasons, the Constitutional Court therefore welcomes and supports the reconsideration of constitutional amendments that would facilitate the management of its high caseload, primarily by authorising the Constitutional Court to decide freely which petitions or constitutional complaints it would consider. It must be particularly emphasised that the purpose of this amendment is in no way to relieve the Constitutional Court in favour of a more leisurely pace of the work of Constitutional Court judges at the expense of diminished protection of human rights and fundamental freedoms, but, on the contrary, to provide assistance to the Constitutional Court, which will thus be able to constructively fulfil its important and indispensable role. A key role of the Constitutional Court is namely to set generally applicable standards of constitutional protection that are binding on all direct and indirect addressees of its decisions, including the regular courts, which must themselves ensure adequate protection of constitutionally protected rights and which, from a systemic point of view, are even more capable of doing so today than they were when constitutional amendments were first attempted twelve or more years ago. Already in its annual report for 2007, the Constitutional Court pointed out that due to the excessive number of cases its efforts to ensure the right to a trial within a reasonable time have at times almost certainly compromised the quality of its decision-making and that the Constitutional Court can no longer accept responsibility for such. Similar warnings can be found in subsequent reports, and last year I also included such in the foreword to the annual report for 2021.

All of the above is not mitigated by the fact that, according to the statistical data, the Constitutional Court performed well in 2022. The Court's statistics are presented in more detail in a separate part of this report, and I only draw attention here to two categories of data.

The first concerns the total number of cases resolved. Last year, the Constitutional Court adopted a final decision in 2,658 cases (including those cases that were identified as mass cases and as such could be rather easily resolved by more or less uniform decisions) or 1,657 cases (excluding mass cases). This entailed a significant increase compared to 2021 (the Constitutional Court resolved 54.9% more cases including mass cases and 30.3% more cases excluding mass cases), as well as compared to previous years. In the years between 2015 and 2021, which are included in the statistical presentation for comparison, the Constitutional Court resolved on average 1,181 cases (excluding mass cases), whereas last year it resolved approximately 40% more compared to the average for the mentioned relatively long time period. The number of decisions on the merits was also above average, amounting to 97 decisions in total.

The second category of data that I would like to highlight concerns the age of pending cases, which we at the Constitutional Court also perceive as a particularly pressing issue. The time taken to consider a case can be the result of a variety of specific circumstances, ranging from the complexity of the case to the difficulty reaching a majority decision in a divided plenary or even waiting for some external procedural act (such as a preliminary ruling from the CJEU). However, in general terms, it is also at least partly due to systemic problems connected with caseload management. At the Constitutional Court we also tried to tackle this issue last year, and our work in this respect was relatively successful. One year earlier, at the end of 2021, the pending cases included 7 cases from 2016, 27 cases from 2017, 163 cases from 2018, and 356 cases from 2019, amounting to a total of 553 cases that were older than two years. At the end of 2022, however, the pending cases included 4 cases from 2018, 51 cases from 2019, and 260 cases from 2020, amounting to a total of 315 cases that were older than two years. Since many of the older cases are also additionally complex in terms of their content (the simplest cases can, after all, be resolved more promptly), this is certainly encouraging from the point of view of caseload management.

However, in the same breath, it must be stressed that such statistics are not sustainable in the long term without the above-mentioned necessary amendments to the legal regulation and additional staff, as they are the result of the considerable additional effort that everyone at the Constitutional Court, from judges to legal advisers and other judicial staff, put into the resolution of pending cases, knowing that from the applicants' point of view, the situation is becoming completely unacceptable already at a systemic level.

In the light of such, in the concluding part of my foreword I therefore return to the shared responsibility of other relevant actors for ensuring the effective functioning of the Constitutional Court and, more broadly, respect for the principles of a state governed by the rule of law and the protection of the Slovene constitutional order. This shared responsibility is primarily addressed to the political branches of power, in at least three respects: as shared responsibility for ensuring adequate conditions for the work of the Constitutional Court with regard to financing, office space, and staff; as shared responsibility for determining the appropriate statutory and constitutional conditions for its work; and as shared responsibility for ensuring that the decisions adopted by the Constitutional Court are respected. The Constitutional Court has been monitoring and recording statistical data concerning the latter issue for a number of years in a special part of its annual report, and this year's report also contains such a chapter presenting all decisions that are still awaiting a proper response from their addressees.

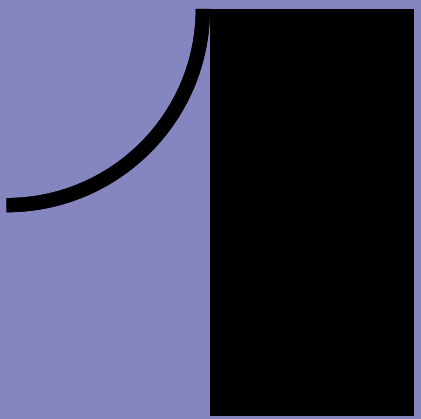
All of us, from the bearers of political power and judicial stakeholders, to the media and representatives of civil society, and down to every individual, bear a part of the shared responsibility for the implementation and protection of a sufficiently high level of political and legal culture enabling the Constitutional Court to focus its efforts on its primary mission, which is and must be the consideration of concrete cases and the adoption of concrete decisions. The fact that the Constitutional Court sometimes considers open questions of law on which neither the professional nor the general public is unanimous is a reality embedded in the very essence of its mission, if not in that of the judiciary in general. The same applies to those cases that address uncomfortable issues at the intersection of politics and the legal order: here too, within the framework of the principle of the separation of powers and the system of checks and balances linked thereto, the Constitutional Court is assigned the role of arbitrator which shall, in the event of a dispute or disagreement, make

the final decision on the resolution of such issues. What is essential, however, is that all direct and indirect addressees accept and respect these decisions.

Last year, as in previous years, the Constitutional Court adopted several important precedential decisions. The most important ones are presented in the report hereinafter. Some of these cases stirred up the public already before a decision was adopted, and, as in the previous year, we even witnessed a few rallies in front of the building of the Constitutional Court in support of one or another desired direction of the decision. Even more frequently, the decisions provoked different reactions after they were adopted. In this regard, the Constitutional Court accepts that opinions differ and that the reactions of a part of the (professional or general) public to the decisions of the Constitutional Court are sometimes critical, and even welcomes fair criticism that is supported by substantive arguments. Substantively expressed expert views, for example in scientific legal literature, shared prior to the decision-making of the Constitutional Court, are equally acceptable and potentially even more useful.

However, these reactions become problematic when they exceed the level of substantive disagreement with the decision and escalate into a more general undermining of the authority of the Constitutional Court or the fundamental requirements of a state governed by the rule of law. This is a particularly sensitive issue, as due to the required restraint that pertains to the position of the Constitutional Court, neither the Court as an institution nor its President may respond to such attacks on a regular basis. At such moments, we should all bear in mind the importance of the Constitutional Court's role as the arbitrator of the most difficult issues, as well as awareness that respect for the rule of law cannot be guaranteed by the Constitutional Court alone, but that it depends on all of us.

Prof. Dr Matej Accetto
President



About the Court

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).

Slovenia is a state of all its citizens and is founded on the permanent and inalienable right of the Slovene nation to self-determination.

The first paragraph of Article 3 of the Constitution
of the Republic of Slovenia

1.1

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.

> The Constitutional Court has numerous competences aimed at protecting constitutionality and legality and preventing violations of human rights and fundamental freedoms.

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 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, by which the Court abrogated certain provisions of the Public Finance Act and, until its amendment, determined the manner of the implementation of its 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 that is determined by the Government and submitted to the National Assembly, must be taken into consideration in the procedure for adopting the budget of the state. Prior to that, the ministry responsible for finance may caution the Constitutional Court of any possible significant departures of its proposed financial plan from the fundamental economic starting points for budget drafting and enable it to remedy them 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, the National Council). Following the mentioned Constitutional Court Decision, these rules are also applicable to budgetary revisions (rebalancing). In other words, the Government, reserving 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.

A problem that the Constitutional Court has been facing for some time in the exercise of its competences is the excessive length of time taken to reach a decision, which is particularly unacceptable in proceedings with constitutional complaints lodged by individuals seeking protection of their human rights and fundamental freedoms. In addition to its numerous competences and broad access to the Constitutional Court, the Court has an enormous yearly caseload and more than 2000 unresolved cases. The high caseload that has not decreased over the years but has only continued to increase as well as the increasing complexity of the cases do not allow that the speed at which cases had been resolved in the past would 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 our 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 without an amendment to the Constitution, a reinforcement of the assistance provided at the level of advisors is truly necessary. Due to a constantly high caseload and the ensuing unsustainable overload, the Constitutional Court has been striving to acquire additional office space that would enable the recruitment of additional advisors. Apart from a radical overhaul of the constitutional regulation of the jurisdiction of the Constitutional Court and access to it, a proposal which was submitted to the National Assembly more than a decade ago, and which has been revived in the last year and enjoys a certain level of political support, an increase in the number of advisors is one of the last measures that could help the nine judges of the Constitutional Court to control the caseload and ensure adjudication within a reasonable time. In current conditions, i.e. in the absence of a constitutional amendment and without an adequate reinforcement of the advisory staff, the prediction that proceedings before the Constitutional Court in some cases might last up to four, five, or even more years, have become realistic. First and foremost this entails that the applicants in these proceedings will have to wait too long for a decision.

In addition, at least in some of the cases, it may result in a conviction of the Republic of Slovenia before the European Court of Human Rights due to a violation of the right to effective judicial protection. Similarly as was established by the pilot judgment in the *Lukenda* Case that in the Republic of Slovenia there exist systemic issues regarding the time needed for the adoption of decisions before the regular courts, it is not impossible to expect a similar message also as regards the adjudication at the Constitutional Court.

The Constitutional Court has made every possible effort to ensure that the right of complainants, petitioners, and applicants to effective judicial protection is not violated due to the length of proceedings, thereby also preventing convictions of the Republic of Slovenia before the European Court of Human Rights. However, in order to be able to effectively realise such, it requires, *inter alia*, an appropriate financial framework and adequate working conditions. The adaptation of the working conditions of the Constitutional Court, i.e. the acquisition of new office space, is urgent. Already in 2020, the President of the Constitutional Court addressed to the competent institutions a request for additional office space and thus additional funding. This was not realised in 2022, and the Constitutional Court finds it increasingly difficult to accept responsibility for lengthy proceedings. In spite of promises and expressions of willingness at the level of various ministries, this goal has not been attained. Moreover, in 2021 the proposal of the financial plan of the Constitutional Court for 2022, wherein the Constitutional Court proposed the one-time approval of additional funds required to resolve the issues pertaining to office space and staff, was rejected.

In 2022, the Constitutional Court again proposed an increase in funds in its proposed financial plan for 2023 for the purpose of acquiring additional premises. This time, the proposal fell on more fertile ground, as the executive branch and the legislature (the Government and the National Assembly) approved the funds in the budget, and the representatives of the Government and the competent ministries further committed themselves to resolving the problem of the premises of the Constitutional Court as soon as possible.

After more than ten years, 2022 saw the revival of the idea of a constitutional amendment that would enable the Constitutional Court to effectively manage its caseload with regard to its jurisdiction. The starting point for this proposal to amend the Constitution is the attempted constitutional reform of 2008–2011, which has already been the subject of broad and in-depth expert discussions, but unfortunately did not enjoy sufficient political support in the National Assembly at the time.

The Constitutional Court agrees in principle with all the essential points of the proposed amendments, which can be summarised in three substantive sets: (1) the free choice of the Constitutional Court in deciding whether to accept petitions and constitutional complaints for consideration on the merits; (2) an intervention in the constitutional regulation of the competences of the Constitutional Court, including the possibility of transferring the competence to review the consistency of implementing regulations, regulations of local authorities, and general acts issued for the exercise of public authority to the regular courts; (3) the constitutional definition of privileged applicants for a constitutional review before the Constitutional Court. From the perspective of managing its caseload, the first set of amendments, which would introduce a selective jurisdiction of the Constitutional Court, is crucial for the Court. This selective jurisdiction would, of course, not be arbitrary, but it would allow the Constitutional Court to follow the guidelines that it already applies in its decisions (i.e. the precedential importance of a case for the legal order and the importance of a case for an individual) and enable it to examine all petitions and constitutional complaints more efficiently and to quickly identify those that require a decision on the merits.

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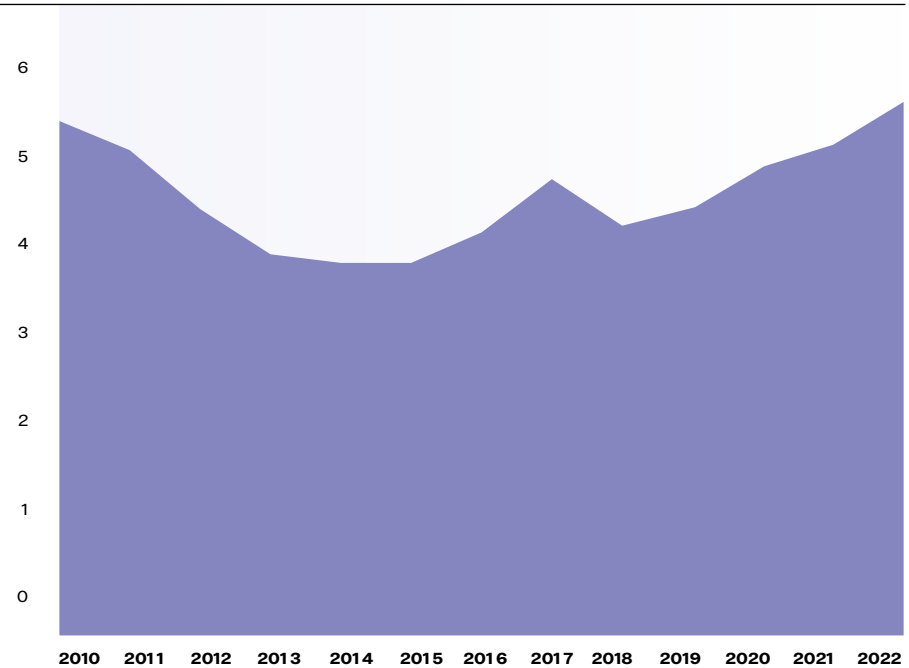
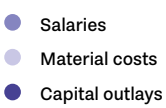
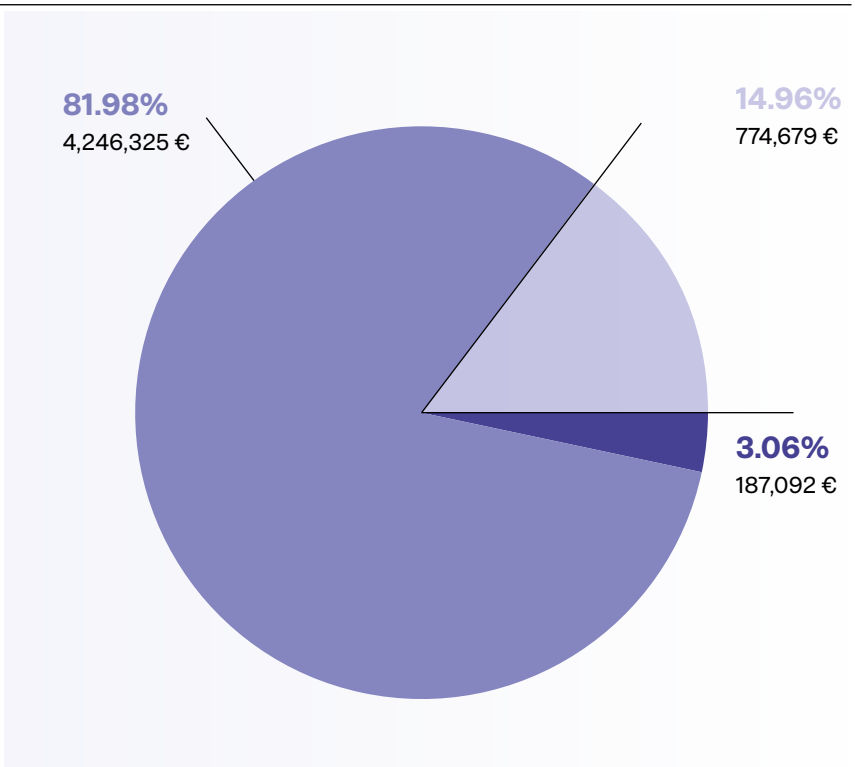
In 2022, the outturn of the financial plan of the Constitutional Court amounted to EUR 5,179,677. In comparison with 2021, the outturn increased by 8.7 percent. As in previous years, the bulk of the funds was used for salaries. Material costs increased slightly compared to the previous year. As in 2021, the outturn was again lower for capital outlays and maintenance costs.

Financial Plan Outturn by Year (in EUR mil.)



Distribution of Expenditures in 2022 (in EUR)





1.2

Respect for the Decisions of the Constitutional Court

The decisions of the Constitutional Court 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 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 2022 there remained twenty-eight unimplemented Constitutional Court decisions, twenty-six 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 previous years, as twenty-three decisions remained unimplemented as of the end of 2021, and eighteen 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.

1.2.1 Unimplemented Decisions not Containing a Manner of Implementation

Among the mentioned twenty-eight decisions, there are six wherein the Constitutional Court did not determine a manner of 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 the Constitutional Court decision as such cannot guarantee the temporary protection of human rights or constitutionally consistent solutions in concrete proceedings.

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), wherein 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 expired for the elimination of the unconstitutionality established by two decisions of the Constitutional Court. By Decision No. U-I-166/17, dated 5 November 2020 (Official Gazette RS, No. 173/20), the Constitutional Court established that the challenged transitional regulation in the Pharmacy Practice Act is unconstitutional already 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-151/15, dated 4 June 2020 (Official Gazette RS, No. 90/20), the Constitutional Court established an inconsistency of the Ordinance on the implementing spatial plan of the Urban Municipality of Kranj, in the part that referred to the relevant plot of land, 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.

In 2022, the time limits expired for the elimination of the unconstitutionality established in two further cases. By Decision No. U-I-163/16, dated 11 March 2021 (Official Gazette RS, No. 42/21), the Constitutional Court decided that the challenged provision of the Higher Education Act is inconsistent with the principle of clarity and precision of regulations determined by Article 2 of the Constitution, as it does not determine the legal status of university members in a substantively precise and unambiguous manner, such that their due conduct would be predictable. By Decision No. U-I-144/17, dated 3 June 2021 (Official Gazette

RS, No. 95/21), the Constitutional Court established an inconsistency of the Ordinance on the municipal spatial plan of the Municipality of Markovci, insofar as it changes the intended use of part of the relevant land from residential-agricultural-commercial to agricultural land, with the third paragraph of Article 153 of the Constitution, because, during the procedure for adopting the mentioned act, the Municipality of Markovci 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.

1.2.2 Unimplemented Decisions Containing a Manner of Implementation

In twenty-two decisions out of a total of twenty-eight decisions to which the legislature has not yet responded, although the time limit determined for remedying the established unconstitutionality or illegality has expired, the Constitutional Court determined the manner of implementation of its decision on the basis of the second paragraph of Article 40 of the Constitutional Court Act. In doing so, the Court ensured effective temporary protection of the human rights of individuals in concrete proceedings. However, 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, as 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 implementing the Decision that, due to the complexity of the subject matter, the unconstitutional statutory regulation shall continue to apply until the established inconsistency is remedied.

In 2016, the time limits expired for the elimination of the unconstitutionality of two decisions of the Constitutional Court 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 expired for the elimination of the unconstitutionalities established by three decisions of the Constitutional Court. By Decision No. U-I-191/17, dated 25 January 2018 (Official Gazette RS, No. 6/18), the Constitutional Court established that the Referendum and Popular Initiative Act is inconsistent with the Constitution as referendum disputes 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 expired for the elimination of the unconstitutionalities established by four decisions of the Constitutional Court. By Decision No. U-I-477/18, Up-93/18, 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 expired for the elimination of the unconstitutionalities established by six decisions of the Constitutional Court. 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 the debtor 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-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 is, insofar as it refers to the National Council, the Constitutional Court, the Ombudsman for Human Rights, and the Court of Audit, inconsistent with the second paragraph of Article 120 of the Constitution.

In 2022, the time limits expired for the elimination of the unconstitutionalities established by six decisions of the Constitutional Court as well. In Decision No Up-991/17, U-I-304/20, dated 17 December 2020 (Official Gazette RS, No. 5/21), the Constitutional Court held that the Minor Offence Act is not consistent with Article 25 of the Constitution, as the system of regulating legal remedies in expedited minor offence proceedings does not ensure constitutionally adequate protection of human rights and fundamental freedoms and at the same time it places the Constitutional Court in a role that does not pertain to

it under the Constitution. An effective legal remedy must be provided within the system of regular courts and not only before the Constitutional Court, whose systemic position in relation to the regular courts is determined by the principle of subsidiarity. By two decisions, the Constitutional Court established that the Parliamentary Inquiries Act and the Rules of Procedure on Parliamentary Inquires are unconstitutional, namely by Decision No. U-I-246/19, dated 7 January 2021 (Official Gazette RS, No. 22/21), on the ground that the legislature failed to regulate the protection of judicial independence in the procedure for ordering a parliamentary inquiry, and by Decision No. U-I-214/19, Up-1011/19, dated 8 July 2021 (Official Gazette RS, No. 130/21), on the ground that the legislature failed to regulate the protection of the independence of public prosecutors in the procedure for ordering a parliamentary inquiry. By Decision No. U-I-502/18, dated 9 December 2021 (Official Gazette RS, No. 1/22), The Constitutional Court held that the regulation under which a lawsuit is rejected if the plaintiff in an administrative dispute against a decision of the Succession Fund of the Republic of Slovenia issued in a 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 does not appoint a person authorised to receive court documents in time, entails an excessive 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. By Decision No. Up-26/19, U-I-227/19, dated 2 September 2021 (Official Gazette RS, No. 153/21), the Constitutional Court established the unconstitutionality of the challenged provision of the Police Tasks and Powers Act because the legislature failed to regulate the procedure of judicial decision-making on a motion for an extension of a restraining order in such a way that the perpetrator could effectively make statements concerning the allegations contained in the motion of the injured party, present potential evidence challenging the fulfilment of the substantive conditions for the extension of the order, or do everything that he or she deems appropriate to protect his or her interests. By Decision No. U-I-445/18, dated 14 October 2021 (Official Gazette RS, No. 178/21), the Constitutional Court established that the Judicial Council Act is inconsistent with the right to impartial decision-making determined by Article 22 of the Constitution because the regulation that allows members of the Judicial Council to participate as members of a disciplinary court in a disciplinary procedure for establishing the responsibility of an individual judge, even in cases where the disciplinary procedure was initiated upon a motion of the Judicial Council, does not meet the standard of objective impartiality.

Plečnik's Palace - The seat of the Constitutional Court of the Republic of Slovenia
Photo: Ajda Schmidt

The Composition of the Constitutional Court in 2022
Photo: Daniel Novakovič

1.3

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.

Constitutional Court Judge Dr Marijan Pavčnik resigned from office on 31 December 2022, and on 1 January 2023 Dr Neža Kogovšek Šalamon began her term of office as a Constitutional Court judge as his replacement.

Prof. Dr Matej Accetto

President

27 Mar 2017
Assumed the office of judge

28 Sep 2019
Assumed the office of Vice President

16 Nov 2021
Assumed the office of President

He 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.

Assist. Prof. Dr Rok Čeferin

Vice President

28 Sep 2019
Assumed the office of judge

16 Dec 2021
Assumed the office of Vice President

He 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.

Assist. Prof. Dr Špelca Mežnar

31 Oct 2016
Assumed the office of judge

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

Marko Šorli

20 Nov 2016
Assumed the office of judge

He graduated from the Faculty of Law of the University of Ljubljana. Following a period as judge at Kranj Municipal Court from 1977 to 1981, he was judge at Ljubljana Higher Court until 1996, when he was appointed Supreme Court judge. Since 1999, he was in charge of the Department for International Judicial Cooperation of the same court and in 2000 he was appointed head of the Criminal Law Department and Vice President of the Supreme Court (a position he held until 2010).

He is a member of the state legal examination commission for criminal law. In 1994, he was appointed to the Judicial Council and for the last two thirds of his term of office first held the position of Vice President and then President of the Council. In addition to his work on criminal law, throughout his entire judicial career he has actively participated in solving issues regarding the organisation and democratisation of the judiciary. He has presented papers at various conferences, seminars, and discussions in Slovenia and abroad. In 1997, at an international conference of representatives of Judicial Councils held in Poland he presented a contribution with the title "The Role of the Judicial Council in ensuring the independence of the Judiciary."

At the fifth meeting of the Presidents of European Supreme Courts, under the theme "The Supreme Court: publicity, visibility and transparency" organised by the Council of Europe in Ljubljana in 1999, he presented the keynote speech entitled "Publicity of the activities of the Supreme Court." In 2002, he became a member of the European Commission for the Efficiency of Justice – CEPEJ. His written work includes more than 40 articles in professional publications and reviews and he is also a co-author of the Komentar Ustave Republike Slovenije [Commentary on the Constitution of the Republic of Slovenia], Fakulteta za državne in evropske študije. He commenced duties as judge of the Constitutional Court on 20 November 2016.

Acad. Prof. Dr Marijan Pavčnik

27 Mar 2017
Assumed the office of judge

31 Dec 2022
Completed his term of office

He 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 and completed his term of office on 31 December 2022.

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

27 Mar 2017
Assumed the office of judge

He 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.

Prof. Dr Rajko Knez

25 Apr 2017
Assumed the office of judge

19 Dec 2018
Assumed the office of President

15 Dec 2021
Completed his term in the office of President

He 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.

Prof. Dr Katja Šugman Stubbs

19 Dec 2018
Assumed the office of judge

She 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.

Prof. Dr Rok Svetlič

10 Nov 2021
Assumed office of judge

He 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.

Everyone has the right to personal dignity and safety.

Article 34 of the Constitution of the Republic of Slovenia

1.4

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 2022, in addition to nine Constitutional Court judges and the Secretary General, 76 judicial personnel were employed at the Constitutional Court, 75 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 relationships of two members of the court personnel are suspended. Among those employed for an indefinite period of time, 37 judicial personnel were employed in the Legal Advisory Department of the Constitutional Court (legal specialist tasks), and five were advisors in the Analysis and International Cooperation Department.

The Secretary General of the Constitutional Court

Dr Sebastian Nerad

He 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.

The Internal Organisation of the Constitutional Court

Dr Sebastian Nerad
Secretary General

Legal Advisory Department (legal advisors)

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

Legal Advisors

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

Analysis and International Cooperation Department

Vesna Božič Štajnpihler
Head of the Analysis and International Cooperation Department

Documentation and Information Technology Department

- Constitutional Court Records Unit
- Information Technology Unit
- Library

Mag. Miloš Torbič Grlj
Head of the Documentation and Information Technology Department

Office of the Registrar

Nataša Lebar
Head of the Office of the Registrar

General and Financial Affairs Department

- Financial and Human Resources Unit
- Administrative Unit

Ivan Biščak
Director of the General and Financial Affairs Department

Plečnik's Palace - The seat of the Constitutional Court of the Republic of Slovenia
Foto: Ajda Schmidt

Important Decisions

In 2022, the Constitutional Court adopted a considerable 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.

2.1 Credit Agreements Denominated in Swiss Francs

Up-14/21
13. 1. 2022

By Decision No. Up-14/21, dated 13 January 2022 (Official Gazette RS, No. 16/22), the Constitutional Court decided on a constitutional complaint against the judgments by which courts rejected the claim of the complainants (who are consumers) to establish that their credit agreement denominated in Swiss francs is null and void and order the repayment of the allegedly excessive payments. During the proceedings, the complainants emphasised the particular sensitivity of their position due to the purchase of a family home and the risky nature of the concluded agreement. They also drew attention to the adverse consequences to their social status, the development of their personalities, and their family life. They further stressed the bank's expertise regarding the risks connected to the foreign exchange market, and contrasted it with the long-term nature of the credit agreement and the transparency of their own financial position in the contractual relationship.

The challenged judgments of the regular courts were based on two independent positions, each of which could have substantiated the decisions of the courts. The first position consisted of the premise that there is no need to assess the (un)fairness of the main subject matter of the contract (i.e. the currency clause) in the event that the duty to provide information was fulfilled, and of the assessment that this duty was fulfilled in the case at issue. In accordance with the second position, following a substantive assessment of the relevant contractual term (i.e. the currency clause), the courts found that it was not unfair. In this part, the review was mainly conducted within the framework of Council Directive 93/13/EEC of 5 April 1993 on Unfair Terms in Consumer Contracts. The courts substantiated the good faith of the bank by the finding that at the time of the conclusion of the contract the bank could not have foreseen (significant) changes in the exchange rate to the detriment of consumers and that it did not provide any specific (or misleading) guarantees regarding such. They substantiated the non-existence of a significant imbalance in the contractual rights and obligations by the finding that the bank also bore part of the currency exchange rate risk and was obliged to provide adequate insurance in accordance with banking legislation, so that the change in the currency exchange rate did not benefit the bank.

Due to the precedential importance of the constitutional issues raised by the two positions of the courts at different stages of the assessment, the Constitutional Court decided to examine both of them in their entirety.

In reviewing the first position, the Constitutional Court proceeded from the premise that the contractual freedom of the parties is an expression of the general freedom of action determined by Article 35 of the Constitution. The courts (relying on the case law of the Supreme Court) referred to the contractual freedom of the parties when interpreting the Consumer

Protection Act in order to substantiate the limitation of their assessment only to the issue of the clarity and comprehensibility of a specific contractual term (i.e. fulfilment of the duty to provide information). The general freedom of action is dependent on social positions and therefore, *inter alia*, on the principle of social inclusion, which is an element of the principle of a social state determined by Article 2 of the Constitution. The judicial branch of power is obliged to recognise and protect contractual dispositions and therefore, in principle, must not interfere therewith. However, the mentioned requirement only reflects the negative ("defensive") aspect of contractual freedom. To ensure its effective enforcement in social reality, however, the latter is placed in a process of mutual value-based co-determination with the positive aspect. This positive aspect is expressed as the obligation to assess the need for legal protection (i.e. the assessment of unfairness) on the basis of the broader legal position of the complainants. This is particularly accentuated in the context of a relationship between a bank and a consumer, which is markedly asymmetric (as regards the information, financial assets, and expertise at the parties' disposal). In such a relationship, the possibility of the excessive (or exclusive) consideration of the interests of the stronger party and thus the risk of establishing merely the ostensible autonomy of a consumer cannot be absolutely ruled out.

In the court proceedings, the complainants asserted the existence of such circumstances that cannot be deemed to be *apriori* irrelevant when considering the duty to provide information in the light of the positive duty of protection stemming from Article 35 of the Constitution. In the opinion of the Constitutional Court, the exclusive focus of the courts on the negative aspect of contractual freedom was therefore not in accordance with the general freedom of action (Article 35 of the Constitution). With regard to the review of the standard of the content of the duty to provide information, the Constitutional Court held that it is not clear from the reasoning of the challenged judgments which of the bank's explanations or materials could and should have resulted in an average consumer's awareness of the actual effect of a significant depreciation of the domestic currency on the amount of the assumed credit obligations. Due to the fact that such entails part of the essential content of the standard of the duty to provide information, as it is interpreted by the Court of Justice of the European Union on the basis of Directive 93/13/EEC, the courts further violated the right to a reasoned judicial decision determined by Article 22 of the Constitution.

With regard to the courts' second position (the assessment of the unfairness of the contractual term), the complainants have, throughout the proceedings, stressed the bank's professional expertise regarding the risks connected to the foreign exchange market, contrasting it to the long-term nature of the credit agreement and the transparency of their own financial position in the contractual relationship. These assertions entail relevant elements of an assessment of the (un)fairness of the relevant contractual term already on the basis of the first paragraph of Article 3 of Directive 93/13/EEC and the criteria the Court of Justice of the European Union developed for its interpretation. As the courts failed to adopt positions regarding these statements, the Constitutional Court deemed that they violated the complainants' right to a reasoned judicial decision determined by Article 22 of the Constitution.

As a result of the established violations, the Constitutional Court abrogated the challenged judgments and remanded the case to the court of first instance for new adjudication.

2. 2 The Kočevje Trials and the General Principles of Law Recognised by Civilised Nations

Up-629/17
13. 1. 2022

In Case No. Up-629/17 (Decision dated 13 January 2022), the Constitutional Court considered a constitutional complaint by a complainant whose father was convicted of the crime of national treason in 1943 before the Extraordinary Military Court of the National Liberation Army and Partisan Detachments of Slovenia as part of the so-called Kočevje Trials and was sentenced to death, and the sentence was also carried out. The subject of the review in the present constitutional complaint proceedings was the Judgment of the Supreme Court issued on the basis of a request for the protection of legality lodged by the complainant.

The final Judgment issued in 1943 as part of the so-called Kočevje Trials, against which the complainant lodged a request for the protection of legality, could be the subject of review in constitutional complaint proceedings only insofar as the Supreme Court could be reproached for having infringed human rights or fundamental freedoms when deciding on the legal remedy lodged against that Judgment. It should namely be noted that constitutional complaints are allowed only against individual acts issued after the Constitution entered into force. Therefore, the Constitutional Court could not review the allegations of violations insofar as they were aimed directly against the relevant final Judgment issued as part of the so-called Kočevje trials.

The violations in the Judgment of the Supreme Court that the complainant alleged had to be divided into two parts, and the reasoning of the Constitutional Court also followed this division.

The first part encompassed those alleged violations that the Supreme Court allegedly committed because it did not remedy the alleged violations in the final Judgment adopted as part of the so-called Kočevje trials. In this part, the Constitutional Court was only able to assess whether the positions of the Supreme Court were in conformity with the general principles of law recognised by civilised nations already at the time of the enactment (and validity) of the regulations in force at the relevant time. Namely, it had to be taken into consideration that procedural actions of a specific court can only be assessed in the light of the law in force at the time when the court adopted the relevant decisions. Such entails that the criterion for assessing the positions of the Supreme Court that refer to the Second World War trial does not originate from the current conception of the content of human rights. The Constitutional Court therefore deemed the complainant's view that her complaints against such positions of the Supreme Court must be assessed in the light of the current conception of the content of human rights to be erroneous. The major premise of the first part of the complainant's allegations could thus only be found in the fundamental principles that civilised nations recognised in the relevant period in trials before military courts during the Second World War. This entails that the Constitutional Court could only assess whether the content of the allegedly disputable positions of the Supreme Court is compatible with these principles.

In addition to the principle of legality, the following principles could, *inter alia*, be acknowledged or inferred as principles recognised in military court trials at the relevant time: the determination of the trial procedure by courts, the possibility to be informed of the charges and the allegations as to the criminal offence stated therein, the defendant's possibility to give a statement, the public nature of the trial, a defence with counsel, which, as a general rule, was assigned to the defendant, informing the defendant of the grounds for the conviction, the imposition of a penalty on the basis of the judgment, and the absence of a legal remedy against a judgment of conviction.

In the part in which the constitutional complaint

could be considered on the merits, the positions of the Supreme Court could not be deemed disputable from the perspective of the mentioned standards. In the part in which the Constitutional Court did not succeed in inferring what the minimum standard had been, which in the relevant time period had been accepted as a general legal principle, the Constitutional Court was unable to either dismiss or uphold the assessment of the Supreme Court *(non liquet)*. The Constitutional Court was unable to substantively assess the complainant's allegations in the constitutional complaint that were only general, or the allegations that the complainant substantiated by referring in general to the allegations in the reasoning of the request for the protection of legality. It was also unable to consider the allegations regarding which the complainant failed to demonstrate the so-called substantive exhaustion of legal remedies in the request for the protection of legality.

The second part of the constitutional complaint comprised allegations by the complainant regarding (the procedural aspect of) the violations allegedly committed by the Supreme Court when deciding on the individual allegations in the request for the protection of legality or when adopting positions thereon. In that part, the Constitutional Court carried out its assessment in accordance with current standards of human rights protection. It concluded that the Supreme Court did not violate the right determined by Article 22 of the Constitution because it adopted a position as to the allegations of the complainant that were relevant for the decision and also reasonably substantiated its assessment.

2. 3 The Use of Evidence Obtained Abroad in Criminal Proceedings

Up-127/16
20. 1. 2022

In Case No. Up-127/16 (Decision dated 20 January 2022, Official Gazette RS, No. 20/22), the Constitutional Court decided on the constitutional complaint of a complainant who was found guilty of unlawful trade in illicit drugs within a criminal organisation by the challenged final judgment. The Supreme Court dismissed the complainant's request for the protection of legality. The complainant alleged, *inter alia*, a violation of the right to privacy (Article 37 of the Constitution), claiming that the order by which the investigating judge ordered the acquisition of traffic data on the electronic communications network from the seized telephones and SIM cards did not contain a reasoning, and a violation of the rights determined by Articles 22, 23, and 29 of the Constitution, because the evidence obtained from abroad had not been excluded.

With regard to the use of evidence obtained abroad, the Constitutional Court clarified that when transferring evidence from abroad to the Slovene legal system, a distinction must be drawn between two actions: obtaining evidence abroad and using the evidence within the Slovene legal system. A violation of the provisions of the Slovene Constitution cannot occur in connection with the acquisition of evidence as part of an investigation carried out by foreign law enforcement authorities abroad, i.e. outside the territorial scope of the Slovene Constitution, without the cooperation of and without any initiative by Slovene law enforcement authorities. When evidence obtained in such manner is used in criminal proceedings in the Republic of Slovenia, the fundamental constitutional procedural safeguards of the accused guaranteed by Articles 22, 23, and 29 of the Constitution must be observed. However, such does not entail that the execution of investigative actions carried out abroad must be reviewed entirely and strictly in the light of the Slovene Constitution.

The Constitutional Court deemed that in the case at issue the right to equality of arms was guaranteed

to the complainant because the regular court verified that the constitutional procedural safeguards of the Italian Constitution protect against arbitrary police interferences in a manner comparable to that of the Slovene Constitution, that these safeguards were observed in obtaining the evidence in question, that there existed a statutory basis for the ensuing interference, and that the interference was authorised by a competent authority within the justice system. In the light of such, the Constitutional Court decided that the complainant's allegations were not substantiated and dismissed the constitutional complaint.

2. 4 The Taxation of Other Income under the Personal Income Tax Act

U-I-497/18
20. 1. 2022

In Case No. U-I-497/18 (Decision dated 20 January 2022, Official Gazette RS, No. 14/22), upon a request of the Supreme Court, the Constitutional Court reviewed the constitutionality of point 11 of the third paragraph of Article 105 of the Personal Income Tax Act, according to which income tax is levied on all other income that cannot be classified in any of the categories of income explicitly listed or defined by the Act. The applicant alleged that the challenged provision is inconsistent with the principle of the clarity and precision of regulations that follows from Article 2 of the Constitution as it does not define more precisely what "other income" means, and at the same time no more precise definition of other taxable income follows from the remaining provisions of the Personal Income Tax Act.

With regard to the applicant's argument that the challenged provision is inconsistent with Article 147 of the Constitution and that this provision should be the basis for a stricter assessment of the clarity and precision of tax regulations, the Constitutional Court clarified that there are no substantive grounds for introducing new and even stricter requirements for the clarity and precision of tax regulations based on Article 147 of the Constitution. Two positions follow from the established constitutional case law, namely that Article 2 of the Constitution requires that what the state requires of the taxpayer must be clear and foreseeable already from the law and that a law must define at least the taxpayer, the object of taxation, the tax base, and the tax rate. The Constitutional Court clarified that the Personal Income Tax Act does not define the concept of income in a positive manner, and therefore such entails an open-textured legal concept. According to established constitutional case law, the use of open-textured legal concepts does not in itself constitute a violation of the principle of the clarity and precision of regulations stemming from Article 2 of the Constitution. A regulation only becomes problematic from the point of view of legal certainty when the rules for interpreting regulations cannot be applied to construe its clear content, and not already where the wording of the regulation does not provide answers to all questions that may arise from its application in practice. In other words, the degree of vagueness of a legal concept must not be too high or exceed the limit that makes it impossible to determine the content of the legal concept.

Taking these positions into account, the Constitutional Court deemed that there existed sufficient reference points for determining the positive content of the legal concept of income as well as for determining the limits of this concept. It concluded that income within the meaning of the Personal Income Tax Act can only entail remuneration that is the fruit of the taxpayer's labour or property and that has been

realised and therefore constitutes clearly identifiable new property owned and possessed by the taxpayer. In the light of the above, the degree of vagueness of the concept of income in the challenged provision of the Personal Income Tax Act is not too high and does not exceed the limit which would make it impossible to define the content of the legal concept at issue. The Constitutional Court therefore held that the challenged provision is not inconsistent with Article 2 in conjunction with Article 147 of the Constitution, since the concept of other income contained therein is not unconstitutionally vague, and at the same time all further elements for the taxation of such other income are also clear (i.e. the taxpayer, the tax base, and the tax rate), as it clearly follows from the Personal Income Tax Act that income falling into the category of other income is included in the annual tax base and taxed together with the categories of income expressly determined by the Act.

2. 5 Regular Courts' Competence to Review the Constitutionality and Legality of Implementing Regulations and Regulations of Local Communities

U-I-327/20
20. 1. 2022

In Case No. U-I-327/20 (Decision dated 20 January 2022, Official Gazette RS, No. 20/22), the Constitutional Court decided on the request of the Administrative Court to review the constitutionality of Article 58 of the Spatial Management Act, which regulated judicial protection against spatial planning documents as general legal acts in administrative dispute proceedings. The Administrative Court deemed that, by determining that the Administrative Court decides on the legality of municipal ordinances, the legislature interfered with the constitutional regulation of the competence to decide on the legality of general legal acts. The Constitutional Court thus conducted a review of the constitutionality of the statutory regulation of judicial protection in administrative dispute proceedings against spatial planning documents, which have the nature of regulations.

In accordance with the established position of the Constitutional Court, substantive criteria are crucial for the assessment of whether an implementing regulation or an act of a local community should be considered a regulation (i.e. a general legal act). At the outset, the Constitutional Court established that spatial planning documents as they were regulated by the Spatial Management Act fulfilled these substantive criteria and could therefore be classified as general legal acts. By their legal nature, state spatial planning documents are implementing regulations of executive or administrative authorities, whereas municipal spatial planning documents are regulations of local communities. As such both categories form part of the hierarchical system of the legal order, wherein they are placed between laws, on the one side, and individual legal acts and material actions, on the other.

In accordance with the Constitution, the competence to decide on the consistency of implementing regulations and the regulations of local communities with the Constitution and laws is vested in the Constitutional Court, and the Constitution authorises it to abrogate or annul unconstitutional or illegal

implementing regulations or general acts of local communities. In light of the applicant's allegations, the Constitutional Court therefore had to assess whether the mentioned powers of the Constitutional Court as enshrined in the Constitution allow the legislature to regulate judicial protection against spatial planning documents as general legal acts by determining that (also) the Administrative Court is competent to decide on such in administrative dispute proceedings and granting it the power to (partially) annul or abrogate spatial planning documents.

Article 126 of the Constitution authorises the legislature to regulate the competence of the courts, including the determination of courts' competence regarding administrative judicial protection. The legislature may amend and supplement the existing regulation when exercising its legislative function, but, in so doing, it must respect the Constitution. Relying on established constitutional case law, the Constitutional Court noted that the fundamental rules governing the positions of and relations between the bearers of the individual functions of state power are determined already by the Constitution. Whereas constitutional subject matter may be further elaborated and determined in more detail by means of laws, these may not introduce control and balance mechanisms when such are in principle already envisaged by the Constitution.

The Constitutional Court clarified the constitutional powers of the Constitutional Court and the Administrative Court, among which the constitution-framers divided the competence to control the legal acts of the executive-administrative branch of power, and emphasised that the type of legal protection is dependent on the nature of the relevant legal act and its content. It concluded that the Constitution does not determine the competence of (regular) courts to review the constitutionality and legality of implementing regulations and general acts of local communities or the power to abrogate or annul such acts in the event of their inconsistency with the Constitution or laws. In accordance with the current constitutional order, the Constitutional Court is the only court that, as the guardian of constitutionality and legality, may intervene with binding effect for all (*erga omnes*) in laws, implementing regulations, and other general legal acts upon the request of privileged applicants or the petition of anyone who demonstrates legal interest. The Constitutional Court's constitutionally envisaged position within the judicial branch of power and its specific constitutionally determined powers, which the Constitution does not confer on the regular courts, lead to the conclusion that the Constitutional Court's competence to review the consistency of implementing regulations and regulations of local communities, including the power to annul or abrogate such regulations if they are found to be unconstitutional or illegal, is of an exclusive nature. The challenged statutory regulation, which granted the same powers to the administrative judiciary, was therefore inconsistent with the first paragraph of Article 160 of the Constitution in conjunction with the first paragraph of Article 161 of the Constitution.

2. 6 A House Search in the Absence of the Affected Individual and the Right to the Inviolability of Dwellings

U-I-144/19
17. 2. 2022

In Case No. U-I-144/19 (Partial Decision dated 17 February 2022, Official Gazette RS, No. 35/22), upon a request by a group of deputies of the National Assembly, the Constitutional Court reviewed the provision of the Criminal Procedure Act, which regulates a house search only in the presence of an authorised person appointed *ex officio* by a court from amongst attorneys if the person whose dwelling or premises are the subject of a house search or his or her representative is unreachable, and the house search is carried out by an investigating judge. The applicant challenged the mentioned provision due to both the disproportionality of the interference with the right to the inviolability of dwellings determined by the first paragraph of Article 36 of the Constitution and Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms and its inconsistency with the principle of the clarity and precision of regulations determined by Article 2 of the Constitution.

Article 36 of the Constitution regulates three separate, mutually independent constitutional procedural safeguards with regard to the conduct of a search of premises: a court order or consent (the second paragraph), the presence of the affected individual or his or her representative (the third paragraph), and the presence of two witnesses (the fourth paragraph). Hence follows that the safeguard determined by the third paragraph of Article 36 of the Constitution must be observed irrespective of the assurance of the safeguards determined by the second and fourth paragraphs of Article 36 of the Constitution. In accordance with the third paragraph of Article 36 of the Constitution, a person whose premises are being searched or his or her representative has the right to attend the house search. The Constitutional Court established that the term "his or her representative", which refers to the representative of a person whose dwelling or premises are being searched, cannot be interpreted so narrowly as to only encompass a representative appointed on the basis of the previously expressed will of the represented person, but can also include an authorised person appointed *ex officio* by a court if the person whose dwelling or premises are the subject of a search is unreachable.

Despite the possible different intent of the legislature, the Constitutional Court interpreted the term "unreachability" in the challenged provision as the affected individual or a representative appointed at his or her discretion not being physically present or being unreachable via means of communication. Therefore, it limited its assessment to only this instance. Hence, it did not adopt a position as to the questions that refer to the conduct of the affected individual (or the representative appointed at his or her discretion) after he or she has been notified that a house search would be carried out, either concerning the possible evasion of prosecuting authorities or the question of the affected individual's (or representative's) waiver of the safeguard determined by the third paragraph of Article 36 of the Constitution.

Since a house search is usually carried out by the Police on the basis of a written court order issued upon a reasoned written motion submitted by the state prosecutor, it is, as a general rule, the Police who will find at the location of the house search that the affected individual is unreachable and will attempt to trace him or her on the basis of data on the affected individual's contact information, workplace, possible other dwellings, etc. The state must make a reasonable and diligent effort to determine where the affected individual is and how to contact him or her in order

to be able to enforce the safeguard determined by the third paragraph of Article 36 of the Constitution. The obligation stemming from the third paragraph of Article 36 of the Constitution is fulfilled if on the basis of reasonable inquiries it is established that the affected individual or the representative appointed at his or her discretion are unreachable. In order to fulfil this standard, unreasoned positions of the authorities responsible for detecting or prosecuting criminal offences, which are not based on evidence, regarding the fact that the authorities attempted to reach the affected individual and the representative appointed at his or her discretion do not suffice; also the abuse of powers such as house searches planned at a time when it is known that the affected person is not at home is prohibited. As the Constitutional Court stressed, the constitutional safeguard stemming from the third paragraph of Article 36 of the Constitution must not be hollowed out in such manner.

The Constitutional Court adopted the position that only a court can establish, in view of the circumstances of a given case and by applying the standard of reasonable care, whether the affected individual and the representative appointed at his or her discretion are unreachable, and that can appoint a representative *ex officio*. In order for the standard of reasonable care to be fulfilled in a concrete case, it suffices that a motion to appoint a representative *ex officio* contains the allegations and evidence that document, prove, and enable the traceability of the conduct and activities of the Police and State Prosecutor's Office concerning the search for the affected individual and the representative appointed at his or her discretion, or that demonstrate that the Police and the State Prosecutor's Office have acted with due diligence. This standard requires that the decision that the affected individual and the representative appointed at his or her discretion are unreachable and the decision that, for such reason, the affected individual is to be appointed a representative *ex officio* be made in written form and substantiated. The above prevents a situation wherein the authorities responsible for detecting or prosecuting criminal offences would ascertain whether the conditions for carrying out a house search in the absence of the affected individual or the representative appointed at his or her discretion are fulfilled and that such authority (i.e. the Police) would determine who the representative is in a concrete case.

The Constitutional Court established that the third paragraph of Article 36 of the Constitution, under the mentioned conditions, enables a court to subsidiarily and exceptionally appoint a representative of an unreachable affected individual *ex officio* if the individual and the representative appointed at his or her discretion have been given a reasonable possibility to be informed of the house search.

The Constitutional Court reviewed the challenged provision from the point of view of its consistency with the principle of the clarity and precision of regulations stemming from Article 2 of the Constitution. In so doing it relied on its established constitutional case law according to which a regulation satisfies the requirement of clarity and precision if the content of the relevant rule can be construed through established methods of interpretation and thus the required conduct of its addressees is precisely defined and foreseeable. As it follows from the content of the challenged provision that such provision, in conjunction with other provisions of the CrPA, can be interpreted in a constitutionally consistent manner such that the requirements stemming from the third paragraph of Article 36 of the Constitution are fulfilled, the Constitutional Court decided that the challenged provision of the Criminal Procedure Act is not inconsistent with the Constitution.

2. 7 COVID-19 – the Recovered-Vaccinated-Tested Requirement

U-I-793/21, U-I-822/21
17. 2. 2022

By Decision No. U-I-793/21, U-I-822/21, dated 17 February 2022 (Official Gazette RS, No. 29/22), the Constitutional Court decided on petitions against the Ordinance on Temporary Measures for Preventing and Managing Infections with the COVID-19 Communicable Disease, which was in force from 8 November 2021 until 21 February 2022, i.e. also including the moment when this Decision was adopted. The petitioners alleged, *inter alia*, that the recovered-vaccinated-tested requirement (hereinafter: the RVT requirement) as determined by the challenged Ordinance limited their daily activities and access to various services because they had not been vaccinated or had not been in possession of an appropriate recovery certificate, and that the RVT requirement actually entailed compulsory vaccination. They also alleged that the challenged Ordinance did not have an appropriate statutory basis and that the alleged interferences with multiple human rights were disproportionate.

The Constitutional Court explained that the regulation in the challenged Ordinance prescribed the obligation to fulfil one of the requirements, namely either recovery, vaccination, or testing. It therefore disagreed with the petitioners that the Ordinance had in fact introduced compulsory vaccination. The decision regarding vaccination was namely left to the individual. The fact that public authorities or their representatives and experts encourage individuals to get vaccinated in various ways cannot have a decisive influence on the Constitutional Court's assessment, since the promotion and recommendation of vaccination are not part of a legally binding regulation and therefore do not produce legal effects for individuals. In fact, individuals could choose between vaccination and testing, with the simple and widely available HAG test being sufficient. Therefore, in the assessment of the Constitutional Court, such a regulation did not have the effect of compulsory vaccination and did not entail an interference with the right to voluntary medical treatment (the third paragraph of Article 51 of the Constitution) and the right to the protection of one's physical integrity (Article 35 of the Constitution).

In conformity with the principle of legality (the second paragraph of Article 120 of the Constitution), the challenged Ordinance had to have an appropriate statutory basis and its content had to remain within the framework of the law. Since the RVT requirement did not entail compulsory vaccination, the Constitutional Court took into account that for individuals who have not recovered from the COVID-19 communicable disease in the previous six months and have not opted for vaccination, the requirement of testing was legally binding. Such was also the case of the petitioners. On the basis of the first paragraph of Article 32 in conjunction with the first and second paragraphs of Article 31 of the Communicable Diseases Act, in the event of a direct threat of the spread of a communicable disease, it is possible to order compulsory medical hygienic examinations of persons who could transmit the communicable disease, including those who have recovered from such disease, healthy persons, passengers in international traffic, and other persons who in their work or conduct can transmit a communicable disease. Focused medical hygienic examinations also include the collection of human biological samples for laboratory testing for the purpose of preventing persons who are a source of infection from endangering the health and life of people through normal daily activities. With regard to the mentioned statutory regulation and the intensity of the interferences with human rights at issue, the Constitutional Court deemed that the determination of the obligation to apply the requirement of testing had a sufficient statutory basis in the Communicable Diseases Act. Likewise, the reviewed regulation remained within the defined statutory framework. Therefore, it was not inconsistent with the second paragraph of Article 120 of the Constitution.

The Constitutional Court further decided that testing carried out by professionals working for authorised testing providers, which enables people to obtain proof of the fulfilment of the RVT requirement, entails an interference with physical integrity (Article 35 of the Constitution). Since in accordance with the Ordinance this interference was also a condition for accessing a number of different services and publicly accessible places, the Constitutional Court, taking into account the allegations of the petitioners, held that the challenged regulation also entailed an interference with the right to freedom of movement (the first paragraph of Article 32 of the Constitution), the rights and duties of parents (the first paragraph of Article 54 of the Constitution), the right to health care (the first paragraph of Article 51 of the Constitution), and the right to free economic initiative (the first paragraph of Article 74 of the Constitution). The Constitutional Court reviewed whether the mentioned interferences with human rights were constitutionally admissible on the basis of a strict test of proportionality, with regard to which it established that in the given circumstances the interferences passed all three aspects of this test and were hence in conformity with the Constitution.

The mentioned interferences with human rights pursued a common constitutionally admissible objective, i.e. to protect the health and life of people, which also reflected a public benefit. In this respect, the Constitutional Court specifically stressed that an individual's right to health must be placed alongside the individual's duty to protect the health of other people from communicable disease, in particular vulnerable groups of individuals. According to the Constitutional Court, the testing prescribed by the challenged Ordinance was appropriate for achieving the constitutionally admissible objective because it prevented persons who could have been a source of infection from accessing various services or participating in the performance of particular activities, and, consequently, prevented the spread of the COVID-19 communicable disease. Since without testing, or with more lenient measures, it would not be possible in the given circumstances to ensure the achievement of this objective, testing was also an absolutely necessary measure. Although testing may cause discomfort and unpleasant and painful sensations for individuals, the intensity of the interference with physical integrity is not, in the assessment of the Constitutional Court, such that would outweigh its benefits. Therefore, the Constitutional Court concluded that the measure of testing was also proportionate in the narrower sense.

The Constitutional Court further found that the interference with the freedom of movement, the exercise of parental care, and the right to health care was appropriate, absolutely necessary, and strictly proportionate in order to achieve the constitutionally admissible objective. It also found that the interference with free economic initiative was constitutionally admissible because the weight of the negative consequences of the obligation to be tested to fulfil the RVT requirement in order to access services or to perform individual tasks in an economic activity did not outweigh the demonstrated benefit of the challenged measure.

On the basis of the above, the Constitutional Court held that the challenged provisions of the Ordinance, which related to the RVT requirement, were in no regard inconsistent with the Constitution.

2. 8 Publication of the Personal Data of the Actual Owners of Legal Entities in Tax Default

U-I-106/19, Up-190/17
10. 3. 2022

In Case No. U-I-106/19, Up-190/17 (Decision dated 10 March 2022, Official Gazette RS, No. 52/22), the Constitutional Court assessed the constitutional consistency of the challenged provision of the Tax Procedure Act, which provided that the personal data of the actual owners of a legal entity are made public even if those individuals become the actual owners of a legal entity only after the legal entity already has an outstanding unpaid tax liability, which was the reason for the legal entity's publication on the list of defaulters.

The Constitutional Court reviewed the challenged provision from the perspective of Article 38 of the Constitution, which guarantees the protection of personal data. It stressed that the purpose of the protection of personal data is to ensure respect for a specific aspect of an individual's privacy – i.e. information privacy. The Constitutional Court deemed that the challenged provision entails an interference with the human right to information privacy, and therefore it had to assess whether the interference pursues a constitutionally admissible aim and whether it passes the strict test of proportionality.

The Constitutional Court emphasised that the challenged provision pursues a constitutionally admissible aim, i.e. as it is clearly aimed at increasing the efficiency of the tax system, and an efficient tax system is undoubtedly in the public interest. As regards the appropriateness of the measure, it held that the legislature must be granted a wide margin of appreciation in the area of public finances and therefore the Court only reviews whether the legislature selected a measure that is evidently incapable of achieving the aim pursued. This cannot be said with regard to the challenged provision, since a reasonable expectation of at least certain special and general preventive effects of the challenged measure is sufficient to conclude that it is appropriate. The Constitutional Court also deemed that the challenged measure is necessary for the attainment of this aim.

However, it held that the challenged measure of the public disclosure of personal data did not satisfy the strict test of proportionality. The gravity of the interference with the right to information privacy is clear and pronounced. The publication of the personal data of the actual owners of legal entities in tax default is not merely the value-neutral disclosure of personal data, but creates the impression or external appearance that these are the persons responsible for the non-payment of the relevant legal entities' tax debt. The disclosure of such personal data stigmatises these persons. At the same time, the benefits brought about by the challenged measure due to its general preventive effects are vague and unclear. A regulation that threatens an individual with the automatic public disclosure of his or her personal data if he or she becomes the actual owner of a legal entity that is on the list of tax defaulters can discourage the individual from acquiring a business interest in such a legal entity, and this effect does not contribute to the attainment of the constitutionally admissible aim pursued by the measure. In light of the above, the Constitutional Court concluded that the challenged provision did not pass the strict test of proportionality and is therefore inconsistent with the right to information privacy determined by the first paragraph of Article 38 of the Constitution. It therefore annulled the challenged provision in the part that was under consideration.

2. 9 The Unconstitutionality of the Acts and Activities of Political Parties

Ps-1/22
10. 3. 2022

By Order No. Ps-1/22, dated 10 March 2022, the Constitutional Court decided on a petition to initiate proceedings to establish the unconstitutionality of the programme of the Levica [The Left] political party and of the activities of the Levica and Socialni demokrati [The Social Democrats] political parties. The petitioners alleged that it follows from the actions of these political parties and from the actions of their members and the programme of the Levica party that they did not distance themselves from the past totalitarian communist system, due to which their alleged unconstitutional activities and the challenged part of the programme of the Levica party must be prohibited.

The Constitutional Court stressed that the activities of political parties are necessarily connected with the exercise of the principle of the people's sovereignty and the freedom of expression. Therefore, political parties must be ensured freedom during their establishment, with regard to their programmes, in their activities, and in their influence on the formation of the political will of the people. The state must ensure effective implementation of these requirements, and must otherwise refrain from interfering and exerting influence in the field of political parties. The prohibition of their activities can thus only be a measure of last resort (*ultima ratio*). Therefore, a constitutional intervention by the Constitutional Court as regards the admissibility of the activities of a political party that remain within the admissible limits of the exercise of the freedom of expression merely because it perhaps criticises the constitutional order in force or individual parts thereof or strives in a non-forceful way to amend such, cannot be justified. Namely, the prohibition of the activities of a political party must not be a means to prohibit the expression of a certain worldview, political positions and beliefs, or even political ideologies. The Constitutional Court also stressed that, from the constitutional perspective, it is something completely different if individuals or groups of individuals advocate and support certain unconstitutional values within the framework of their personal (political) beliefs than if the authorities in power identify with such values through symbols when adopting general or individual authoritative decisions.

The Constitutional Court formulated the criteria for the review of the unconstitutionality of the activities and acts of political parties as follows: (1) Does the political party threaten the fundamental constitutional values determined by Article 63 of the Constitution that refer to respect for human dignity as determined by Article 1 of the Constitution and which are the core of a free democratic order? (2) Is the threat serious? A party must be acting systematically and in a planned manner to realise objectives that are contrary to the values enshrined in Article 63 of the Constitution; there must exist a realistic possibility that such objectives are realised. (3) Does the party operate in a constitutionally inadmissible manner or by means that are constitutionally inadmissible? The use of violence, threats, or other forms of intimidation is prohibited. (4) Does the unconstitutionality of the activities of the political party follow from its actions or the actions of its members or from the systematic and planned actions of its members or even sympathisers if their actions reflect clearly identifiable objectives of the party or the party has accepted their actions as its own?

In the case at issue, the Constitutional Court deemed that any advocation – in either the programme of the party or through the statements or actions of the party (i.e. of its members) – of a different system of economic and social order, including an ideology based on publicly-owned means of production and workers' management of companies, would

not entail unconstitutional activities or acts of the party because it would not threaten human dignity in relation to the fundamental constitutional values enshrined in Article 63 of the Constitution. Not even the possible use of the symbols of the communist system at events organised by a party (Socialni demokrati) that is not an authority in power and does not exert authoritative powers or the possible expression of an inclination towards the leading figures of such system would entail incitement to national, racial, religious, or other discrimination, or the inflaming of national, racial, religious, or other hatred, or incitement to violence and war. The same applies to the statement of a deputy that the Socialni demokrati party is the proud successor to the Zveza komunistov [The League of Communists]. This entails an expression of his political beliefs that does not threaten the fundamental constitutional values of a free democratic society, which are protected by Article 63 of the Constitution. In the assessment of the Constitutional Court, it is not possible to establish – on the basis of the allegations of the petitioner regarding the actions of the Socialni demokrati and Levica parties, even if they were true, or on the basis of the challenged provisions of the programme of Levica – that the parties did not distance themselves from the ideology of the former totalitarian regime in such a way that any threat to the constitutional values enshrined in Article 63 of the Constitution would follow from the party's alleged inclination and activities. Furthermore, the alleged actions of both political parties manifestly do not entail inadmissible activities involving the use of force or threats.

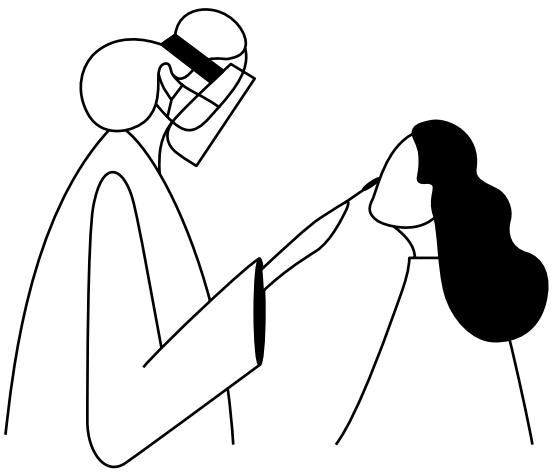
In view of the above, the Constitutional Court held that the allegations of the petitioners are manifestly unfounded and dismissed the petition.

2. 10 The Unjustified Exclusion of a Legislative Referendum on the Salary System for Doctors and Dentists

U-I-25/22
17. 3. 2022

In Case No. U-I-25/22 (Decision dated 17 March 2022, Official Gazette RS, No. 52/22), the Constitutional Court decided on a request to review the constitutionality of Article 48 of the Act on Additional Measures to Stop the Spread and to Mitigate, Control, Recover from, and Eliminate the Consequences of COVID-19. The applicants alleged that in the procedure for its adoption, the second paragraph of Article 90 of the Constitution was violated because the challenged provision does not entail an urgent measure related to the elimination of the consequences of the COVID-19 communicable disease and thus does not fall within the subject matter of an interventionist law regarding which no subsequent legislative referendum can be called. Therefore, the National Assembly should not have adopted the order stating that a legislative referendum regarding the challenged provision is inadmissible. By the challenged provision, the legislature allegedly departed from the salary system in the Public Sector Salary System Act for doctors and dentists and determined that individuals in posts and grades within that salary subgroup could reach a maximum of grade 63 for the period until 31 December 2022.

The Constitutional Court had to answer the question whether the challenged provision entails a statutory basis for urgent measures for remedying the consequences of a natural disaster that justifies the



exclusion of a legislative referendum. It established that the mass occurrence of the COVID-19 communicable disease entails a natural disaster even if an epidemic is not officially declared and that the challenged law, which entails the statutory basis for urgent measures to ensure that the consequences of the mass occurrence of the COVID-19 communicable disease are eliminated, entails such a law as is referred to in the first indent of the second paragraph of Article 90 of the Constitution. However, in the assessment of the Constitutional Court, the challenged amendment of the Public Sector Salary System Act, which by circumventing the statutorily determined requirements enables an increase in the base salaries of doctors and dentists and thus interferes with the foundations of the uniform salary system of public servants and undermines the set proportions between their salaries, is not an urgent measure for remedying the consequences of the mass occurrence of the COVID-19 communicable disease.

The Constitutional Court established that from the reasoning of the Order on the Inadmissibility of Holding a Legislative Referendum on the Act on Additional Measures to Stop the Spread and to Mitigate, Control, Recover from, and Eliminate the Consequences of COVID-19 and the reply of the National Assembly, it follows that one of the harmful consequences of the mass occurrence of the COVID-19 communicable disease is an increased burden on doctors and dentists at a time of difficult epidemiological circumstances. In the assessment of the Constitutional Court, it is not urgently necessary to eliminate this consequence by enacting a systemic change to the salary system that refers to the base salaries of all doctors and dentists regardless of the possible additional burden thereon due to the treatment of COVID-19 patients. Namely, the legislature has already thus far enabled bonuses to those doctors and dentists who were additionally burdened at their work due to the treatment of the patients with this disease. The Constitutional Court dismissed the allegations of the National Assembly and the Government that another harmful consequence of the mass occurrence of the COVID-19 communicable disease is a decrease in the number of doctors (due to the departure of doctors) and a shortage of doctors, and that the challenged measure allegedly helps young doctors in particular. It established that both the departure of doctors and the shortage thereof, as well as the low salaries of young doctors, are manifestly unrelated to the mass occurrence of the COVID-19 communicable disease but are a consequence of the already long-term dissatisfaction of doctors with the salary system and other work conditions, as well as of other factors such as the policy for educating doctors and the manner of securing specialisations. Furthermore, the possibility of an increase in the salaries of young doctors does not depend on the challenged measure, which enables an increase in the highest salaries of doctors. The salary grades of the posts of young doctors are significantly lower than the highest salaries of doctors and can be increased regardless of the validity of the challenged provision.

In view of the above, the Constitutional Court assessed that whereas the National Assembly reasonably substantiated that in the field of health care the COVID-19 communicable disease indeed caused an increased burden on doctors and dentists, the challenged measure is not an urgent measure for remedying such harmful consequence within the meaning of the fist indent of the second paragraph of Article 90 of the Constitution. Therefore, the National Assembly

unjustifiably did not allow a legislative referendum on the challenged provision, which entails that the provision was adopted by means of an unconstitutional procedure and is inconsistent with the first indent of the second paragraph of Article 90 of the Constitution. Therefore, the Constitutional Court abrogated Article 48 of the Act on Additional Measures to Stop the Spread and to Mitigate, Control, Recover from, and Eliminate the Consequences of COVID-19.

2. 11 The Referral of a Case to the Court of Justice of the European Union when Leave to Appeal to the Supreme Court Is Not Granted

Up-1133/18
31. 3. 2022

In Case No. Up-1133/18 (Decision dated 31 March 2022, Official Gazette RS, No. 67/22), the Constitutional Court decided on the constitutional complaint of a complainant who, in a commercial dispute, claimed the nullity of a contractual term on the basis of which it was allegedly not entitled to the reimbursement of value added tax concerning the implementation of a project financed from European structural funds. The complainant argued that the case at issue raised a question of interpretation and application of European Union law, that the contractual term was void under European Union law, and that it was entitled to a refund of the value added tax paid. Throughout the proceedings, it has referred to European Union law, including the case law of the Court of Justice of the European Union. At the same time, it has continuously (at least in the alternative) motioned for the courts to stay the proceedings and refer the case to the Court of Justice of the European Union for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union. The courts of first and second instance took a different view and held that, on the basis of European Union law rules, a Member State has the right of choice whether it will deem value added tax a justified expenditure that can be reimbursed. They did not submit the case to the Court of Justice of the European Union for a preliminary ruling. The Supreme Court did not grant leave to appeal holding that the conditions for granting such were not met and it did not adopt a position as to the complainant's motion that the case be submitted to the Court of Justice of the European Union for a preliminary ruling.

The Constitutional Court first examined whether the present case concerning the refund of value added tax entailed a case that raised questions of application and interpretation of European Union law, including the case law of the Court of Justice of the European Union and the obligation to refer a case to the Court for a preliminary ruling. It found that the case at issue concerned funding from cohesion policy funds, which (also) falls within the scope of regulation of the European Union. Such entails that courts must interpret national regulations in the light of European Union law and in accordance with its purpose, and, when interpreting the Constitution, the Constitutional Court must also take into account the Charter of Fundamental Rights of the European Union and the case law of the Court of Justice of the European Union that was formed on the basis thereof, because the application of European Union law is at issue.

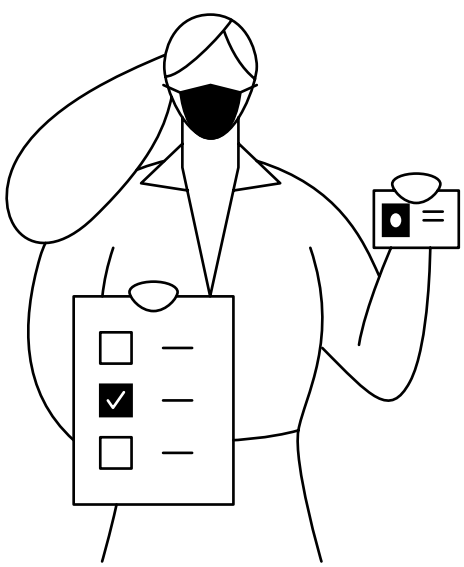
The Constitutional Court clarified that the right to a reasoned judicial decision, which is protected by Article 22 of the Constitution, is of special importance also in European Union law. It is determined by Article 296 of the Treaty on the Functioning of the European Union (for the institutions and authorities of the European Union) and in Article 47 of the Charter as a fundamental right, which requires the decision-making authority to take account of the parties' submissions by carefully and impartially examining all the relevant elements of the case and by providing detailed reasons for its decision, with the obligation to provide sufficiently specific and concrete reasons for the decision to enable the person concerned to be informed of the reasons for refusing his or her motion. The competent national court must adopt a position as to the motion for a preliminary ruling by the Court of Justice of the European Union with sufficient clarity and must, in doing so, take into consideration the criteria that stem from Article 267 of the Treaty on the Functioning of the European Union and the case law of the Court of Justice of the European Union. This duty to provide a reasoning also applies when the national procedural regulation determines that a court may only substantiate its decision by referring to the fact that the conditions for considering the case are not fulfilled (a so-called summary or abbreviated reasoning). Therefore, the Supreme Court, also in cases when it does not grant leave to appeal, must state the reasons why it did not refer the case to the Court of Justice of the European Union for a preliminary ruling. If the Supreme Court is required, as a matter of principle, to respond to a party's motion to refer the case to the Court of Justice of the European Union for a preliminary ruling, such a requirement must be balanced by the requirement that the party, on the other hand, must adequately substantiate its motion that may not remain on a merely general level. In the light of the above, the Supreme Court, when it does not grant leave to appeal, is not required to provide reasons concerning any unsubstantiated, manifestly unfounded, or nonsensical motions to refer the case to the Court of Justice of the European Union for a preliminary ruling, or motions that constitute an abuse of procedural rights.

Since the Supreme Court failed to substantiate why it did not grant the complainant's motion to refer the case to the Court of Justice of the European Union for a preliminary ruling in accordance with the requirements stemming from the right to the equal protection of rights determined by Article 22 of the Constitution and the right to judicial protection determined by the first paragraph of Article 23 of the Constitution, the Constitutional Court abrogated the challenged order and remanded the case to the Supreme Court.

2. 12 COVID-19 – the Recovered-Vaccinated-Tested Requirement and the Right to the Protection of Personal Data

U-I-180/21
14. 4. 2022

In Case No. U-I-180/21 (Decision dated 14 April 2022, Official Gazette RS, No. 60/22), upon a request of the Information Commissioner, the Constitutional Court reviewed the constitutionality and legality of a number of ordinances by which the Government regulated the verification of the recovered-vaccinated-tested requirement (hereinafter: the RVT requirement) with regard to the pandemic of the communicable disease COVID-19. The applicant alleged, *inter alia*, that the challenged regulation violates the right to the protection of personal data guaranteed by Article 38 of the Constitution. It argued that the challenged ordinances interfere with this right and that these interferences are not based on a law that defines in a sufficiently precise manner which data may be collected and processed and for what purpose.



The Constitutional Court deemed that by determining the manner of verifying the fulfilment of the RVT requirement the challenged ordinances regulated the processing of personal data by means of an application or by consulting a certificate or other form of proof. In accordance with established constitutional case law, any collecting and processing of personal data entails an interference with the right to the protection of personal data. On the basis of the second paragraph of Article 38 of the Constitution, an interference with this human right is admissible if a law precisely determines which data may be collected and processed, for what purpose they may be used, the supervision over the collection, processing, and use of such personal data, and the protection of the confidentiality of the collected personal data.

The Constitutional Court held that the statutory bases on which the challenged ordinances were adopted do not fulfil these conditions. It also rejected the Government's position that the General Data Protection Regulation (GDPR) itself can constitute an appropriate legal basis for the processing of personal data. The purpose of the General Data Protection Regulation is to protect individuals against the unauthorised collection, storage, use, and dissemination of details of their personal life, not to grant the state general permission to process personal data.

Since the participation of an individual in social, political, and religious life is conditional on his or her consent to the processing of personal data for the purpose of verifying the RVT requirement imposed by the state, the Constitutional Court held that such consent cannot be deemed to be voluntary and thereby a valid legal basis for an interference with the right to the protection of personal data.

The Constitutional Court held that the challenged ordinances (two were still in force at the time of the Decision) were inconsistent with the second paragraph of Article 38 of the Constitution and abrogated them. Since abrogation having immediate effect would have entailed that the Government – as the executive branch of power – could no longer fulfil its positive constitutional obligation to protect the health and life of the people, the Constitutional Court decided that the abrogation shall take effect one year after the publication of this Decision in the Official Gazette of the Republic of Slovenia.

2. 13 The Inadmissibility of a Legislative Referendum on an Act Ratifying a Treaty

U-I-71/22
14. 4. 2022

In Case No. U-I-71/22 (Decision dated 14 April 2022, Official Gazette RS, No. 59/22), upon the request of the Levica [the Left] political party as the petitioner of a referendum, the Constitutional Court decided on the consistency of the Order on the Inadmissibility of Holding a Legislative Referendum on the Act Ratifying the Agreement between the Government of the Republic of Slovenia and the Organisation for Joint Armament Co-operation (OCCAR) concerning the Management of the Boxer Programme by OCCAR with the third indent of the second paragraph of Article 90 of the Constitution. In accordance with the mentioned provision of the Constitution, a referendum may not be called on laws on the ratification of treaties. In view of the allegations of the applicant, in the case at issue the Constitutional Court had to assess whether the mentioned agreement is a treaty.

The Constitutional Court explained that the legal nature and the content of an international instrument that is the subject of a ratifying law, with regard to which the National Assembly adopted an order on the inadmissibility of a referendum, must be ascertained in accordance with international law rules. The assessment of whether it entails a treaty is reserved for the Constitutional Court within the framework of the exercise of its competences, which in this respect is not bound by the preliminary opinion of the Ministry of Foreign Affairs as to whether an international act is a treaty.

The Constitutional Court first assessed whether OCCAR corresponds to the criteria determined by international law doctrine for it to be deemed an international organisation. Since it entails an organisation that the states established by a treaty, i.e. the OCCAR Convention, since OCCAR is a legal entity under international law, and its staff, experts and the representatives of its Member States enjoy privileges and immunity, which is characteristic of international organisations, the Constitutional Court dismissed the applicant's allegation that OCCAR is not an international organisation as unfounded.

The Constitutional Court found that the basis for concluding the Agreement is stated in Articles 37 and 38 of the OCCAR Convention, in accordance with which OCCAR may cooperate with other international organisations and institutions, and with the governments, organisations, and institutions of non-Member States, and conclude agreements therewith, and such cooperation may take the form of participation by non-Member States in one or more programmes managed by OCCAR. It explained that by an agreement between OCCAR and a non-Member State such as the Agreement concerned, a relationship is established between OCCAR and that non-Member State, without which the cooperation of the non-Member

State in the programme is not possible. Therefore, the Agreement entails the legal basis for the cooperation of a non-Member State in the programmes managed by OCCAR. Taking into account the content of the Agreement at issue, the Constitutional Court assessed that also the key element of a treaty is fulfilled, i.e. that it is regulated by international law, which also encompasses the intent to create obligations under international law. The Agreement therefore establishes an international law relationship between the contracting parties. The fact that prior to the determination of the content of the Letter of Offer, negotiations on the conditions of the cooperation of the Republic of Slovenia in the Boxer Programme were carried out, and the use of terminology characteristic of treaties only additionally confirm the conclusion regarding the contractual nature of the Agreement and the intent of the contractual parties to establish a mutual legal relationship.

On the basis of the above, the Constitutional Court deemed that the Agreement is a treaty ratified by the National Assembly by a law. The Act Ratifying the Agreement between the Government of the Republic of Slovenia and the Organisation for Joint Armament Co-operation (OCCAR) concerning the Management of the Boxer Programme by OCCAR is thus a law on the ratification of a treaty within the meaning of the third indent of the second paragraph of Article 90 of the Constitution, with regard to which a referendum is excluded in accordance with the Constitution.

2.14 Exclusion of Evidence Obtained Abroad

Up-899/16, Up-900/16, Up-901/16
5. 5. 2022

In Case No. Up-899/16, Up-900/16, and Up-901/16 (Decision dated 5 May 2022, Official Gazette RS, No. 79/22), the Constitutional Court decided on the constitutional complaint of a complainant who claimed that in the criminal proceedings against him the courts used evidence obtained in the USA that should have been excluded, as it was obtained without a court order and therefore in violation of his right to communication privacy determined by Article 37 of the Constitution. FBI agents and an undercover agent thereof allegedly, *inter alia*, communicated with the complainant by email, documented such communication, and forwarded the recordings to the authorities of the Republic of Slovenia, whereby all of this was allegedly carried out without a court order. In addition, the complainant alleged that his access to the evidence, which was mainly in electronic form, was restricted in terms of time and scope despite his numerous repeated motions to inspect the electronic part of the file. As a consequence, he was allegedly not guaranteed the right to prepare an adequate defence determined by Article 29 of the Constitution and he was placed in an extremely unequal position compared to the prosecutor. The courts adopted the position that, since the complainant publicly advertised his email address and published it on a publicly accessible website, he had no reasonable expectation of privacy for his subsequent communication by email, and, consequently, the performance of the measures at issue was not subject to the conditions determined by the second paragraph of Article 37 of the Constitution, which, *inter alia*, requires a court order for interferences with communication privacy.

The Constitutional Court confirmed the position of the courts that the complainant's advertising of sales on the internet does not constitute private communication. However, as concerns his subsequent communication by e-mail, it decided differently. It emphasised that merely by making his or her email address public, an individual does not necessarily relinquish his or her reasonable expectation of the privacy of the contents of subsequent communication via the

email address in question. The Constitutional Court held that, in the light of all of the circumstances of the case at issue, the complainant had a reasonable expectation of the privacy of his communication by email, and therefore the surveillance of the latter entailed an interference with his right to communication privacy.

The Constitutional Court then proceeded to review the criteria for the admissibility of evidence obtained abroad. It reiterated its established position that the investigative authorities that obtained the evidence in the USA on the basis of American legislation, and in the absence of any intervention or initiative by the Republic of Slovenia, could not be bound by the provisions of the Slovene Constitution, because the evidence was obtained abroad, outside the territorial jurisdiction of the Slovene Constitution. When evidence is obtained in such circumstances, the provisions of the Slovene Constitution cannot be violated. However, the Constitutional Court emphasised that this does not entail that human rights are not protected outside of Slovenia's borders and that when evidence obtained abroad has been used it must be verified whether the domestic courts observed the complainant's fundamental procedural safeguards determined by Articles 22, 23, and 29 of the Constitution.

In this connection, the Constitutional Court found that the regular courts failed to provide the complainant with a substantive answer to the question of how substantive protection of human rights can be ensured in Slovene criminal proceedings, regarding which the Constitution explicitly requires a court order, if evidence is used despite the fact that it was obtained in the USA without a court order. This entails an important constitutional question concerning the use of evidence obtained abroad in accordance with lower procedural standards than those required in the Republic of Slovenia, and therefore, in accordance with the position of the Constitutional Court, the requirement to provide a clear, qualitative, and convincing reasoning determined by Article 22 of the Constitution is particularly accentuated. Since the courts failed to review the complainant's allegations regarding the unconstitutionality of the use of the evidence obtained abroad on the merits, the Constitutional Court held that they failed to respond to the constitutionally relevant allegations regarding the violation of a human right. In doing so, they deprived the complainant of a reasoned court decision and consequently violated his right to the equal protection of rights determined by Article 22 of the Constitution.

With regard to the complainant's allegation that his access to the evidence, which was mainly in electronic form, was restricted despite his numerous repeated motions to inspect the electronic part of the file, the Constitutional Court held that, due to the established restrictions in terms of the time and scope of his access to the case file during the proceedings, the complainant could not effectively dispute the allegations stated in the charge because he was not provided unlimited access to all the evidence in the case file or he was provided such only at a very late stage of the proceedings. The Constitutional Court therefore decided that by adopting the challenged standpoints regarding access to the case file, the courts violated the complainant's right to adequate time and facilities to prepare his defence determined by the first indent of Article 29 of the Constitution. The Constitutional Court clarified that this decision cannot be altered by the fact that the complainant's attorney was granted unlimited access to the case file, as the latter is merely the complainant's assistant regarding legal questions, but he cannot substitute for the complainant as regards factual questions, particularly if these are very specific, as in the case of the computer crimes at issue.

As a result of the established violations of the right to communication privacy, the right to a reasoned judicial decision, and the legal safeguards in criminal proceedings, the Constitutional Court abrogated the challenged judgments and remanded the case to the court of first instance for new adjudication.

2. 15 Exclusion from Public Procurement Procedures due to Labour Law Infringements

U-I-180/19
5. 5. 2022

In Case No. U-I-180/19 (Decision dated 5 May 2022, Official Gazette RS, No. 74/22), upon the petition of a private company, the Constitutional Court reviewed the regulation in the Public Procurement Act according to which contracting authorities must exclude from public procurement procedures tenderers who have infringed regulations concerning working time and rest periods. This applies at the stage of awarding the contract as well as during its performance. During the performance stage of a public contract, contracting authorities must periodically monitor whether the contractor has committed a minor offence relating to working time and rest periods, and they must determine in the public contract or framework agreement for the performance of the public contract that such an offence constitutes a resolutive condition. If the contracting authority's monitoring establishes the existence of a relevant minor offence, the contract shall be deemed terminated and the contracting authority shall initiate a new public procurement procedure.

The Constitutional Court first reviewed the challenged regulation of exclusion from public procurement procedures and the termination of contracts from the perspective of the principle of the clarity and precision of regulations. As one of the principles of a state governed by the rule of law determined by Article 2 of the Constitution, it requires that rules be defined clearly and with sufficient substantive precision, so that their content and purpose can be unequivocally construed. It held that what constitutes a minor offence pertaining to working time and rest periods already clearly follows from a linguistic interpretation of the law regulating employment relationships and therefore the challenged regulation is not inconsistent with this constitutional principle.

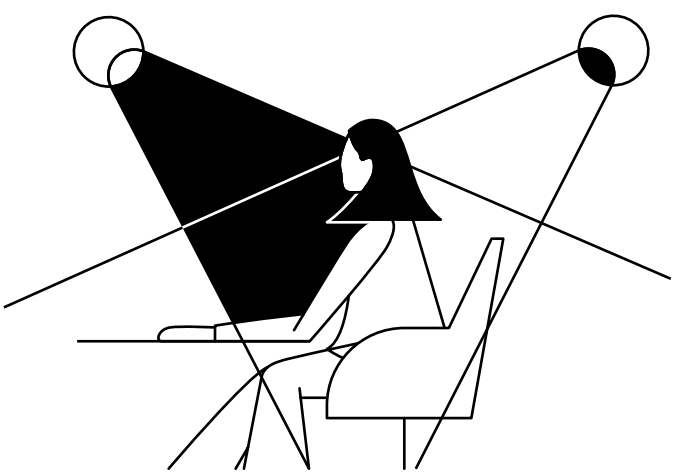
The Constitutional Court further reviewed the mandatory grounds for exclusion and the resolutive condition due to a tenderer's or contractor's minor offence pertaining to working time and rest periods from the perspective of the general principle of equality before the law determined by the second paragraph of Article 14 of the Constitution. It found that a comparison of different grounds for exclusion shows that with regard to certain grounds the contracting authority can apply a so-called corrective mechanism by means of which the tenderer or contractor can prove its reliability despite the existence of grounds for exclusion, whereas no corrective mechanism is envisaged with regard to the grounds for exclusion due to a minor offence pertaining to working time and rest periods. The Court made a similar finding with regard to the resolutive condition that applies during the performance stage of public procurement, as the termination of the contract is not envisaged in all instances where grounds for exclusion exist. The Constitutional Court could not establish a sound reason for such a distinction with regard to different grounds for exclusion that could substantiate the different treatment of tenderers or contractors who find themselves in comparable positions in public procurement procedures. It therefore held that, insofar as they refer to exclusion from public procurement procedures due to an infringement pertaining to working time and rest periods, the challenged provisions of the Public Procurement Act are inconsistent with the Constitution.

2. 16 The Right to Privacy in the Workplace

Up-1134/18
12. 5. 2022

In Case No. Up-1134/18 (Decision dated 12 May 2022), the Constitutional Court considered the constitutional complaint of a complainant who did not succeed in judicial proceedings with her claim to establish that the extraordinary termination of her employment contract was unlawful. The violations of her work obligations that entailed the basis for the challenged extraordinary termination were established on the basis of covert surveillance – which consisted of installing a recording device and a trap with earmarked banknotes. The complainant alleged, *inter alia*, that she was covertly monitored in the fulfilment of work obligations, which allegedly entailed an inadmissible interference with her right to privacy in the workplace. Therefore, in her opinion, the evidence obtained by a violation of her constitutional rights should be excluded from the file.

With respect to the spatial aspect of privacy, the Constitutional Court takes into account the concept of the expectation of privacy. In doing so, it balances two elements: the expectation of privacy and the justification of the expectation. It is essential whether a person can expect that he or she is ensured privacy in a certain space. Hence, there is only an interference with privacy when the person is in a space where he or she reasonably expects to be alone. From the state of the facts as was established by the courts in the case at issue, it follows that upon the instruction of the employer, the private detective installed a camera for audio and video recording in the room of the resident of the social care institution, and a so-called trap for petty thieves in a private drawer of his night table, which was not allowed to be opened without the resident's consent. The employees were not informed thereof. According to the findings of the courts, the inpatient's room and his private drawer were not spaces accessible to the general public. In view of the fact that the resident was always present in his room due to his immobility, employees' expectation of complete privacy (such as in a private office, in lavatories, etc.) would not be justified. It must nevertheless be taken into consideration that covert surveillance was carried out in a space that entails the employees' work environment on the employer's premises. In light thereof, the employees who performed their work in that space could expect privacy there to a certain extent. Therefore, the Constitutional Court established that exercising surveillance at the complainant's workplace entailed an interference with her constitutional right to privacy determined by Article 35 of the Constitution and proceeded to review whether the interference was excessive and consequently entailed a violation of this constitutional right.



In the case at issue, there existed specifically justified legitimate reasons for carrying out the measure of surveillance over employees in order to find the perpetrator of repeated thefts. In fact, money of the defendant's clients had already been going missing for a longer period of time and the applicant had not resolved this issue by notifying the Police, as the thefts did not cease as a result thereof.

Therefore, the Constitutional Court carried out a strict test of the proportionality of the established

interference with the right to privacy in the workplace. It took into account that the disputed measures (the video surveillance and cash trap) narrowly targeted the persons who might have taken the money from the drawer of the client's night table, that they were spatially and temporally limited to the smallest possible extent, that they were carried out in a room where the employees could not expect complete privacy, that they lasted only until a violation was established, and that the recordings were only seen by a very limited number of people. In the case at issue, the consequences for the complainant were severe (the termination of her employment relationship), but the covert surveillance was only carried out for the purpose of enabling the employer to track down the perpetrators and to carry out disciplinary procedures, and not for any other purposes. On the other side of the scales were the repeated serious violations of the right to privacy and property of the clients of the defendant, who cannot take care of themselves or enforce their rights entirely. The Constitutional Court also took into consideration the fact that the client with respect to whom surveillance was carried out was particularly vulnerable, as he was immobile. It is also important that the covert surveillance exonerated from suspicion other workers who did not perpetrate violations at their workplace. Therefore, the Constitutional Court assessed that the gravity of the repeated violations in the circumstances of the case at issue outbalanced the consequences of the interference with the right to privacy in the workplace, which were reduced to the smallest possible extent. Since the interference was not excessive, there was no violation of the constitutional right to privacy in the case at issue. Consequently, the Constitutional Court dismissed the constitutional complaint.

2. 17 COVID-19 – Protective Masks and Hand Disinfection

U-I-132/21
2. 6. 2022

In Case No. U-I-132/21 (Decision dated 2 June 2022, Official Gazette RS, No. 89/22), the Constitutional Court decided on the constitutionality and legality of three governmental ordinances that imposed the requirement of the usage of a protective mask or other protective covering of the nose and mouth area and the disinfection of hands in closed public spaces in order to contain and manage the COVID-19 epidemic or to prevent a recurrence of the COVID-19 communicable disease in closed public spaces. The two petitioners alleged that the Government did not have a basis in the Communicable Diseases Act for introducing these measures.

The Constitutional Court reviewed the challenged ordinances despite the fact that they ceased to be in force during proceedings before the Constitutional Court because it assessed that the case raises a particularly important precedential constitutional question of a systemic nature that could again become relevant if the epidemic situation worsens. In view of the allegation of the petitioners, the Constitutional Court reviewed the challenged ordinances from the perspective of the principle of legality determined by the second paragraph of Article 120 of the Constitution, which requires the executive branch of power to operate on the basis and within the framework of the Constitution and laws.

In the assessment of the Constitutional Court, the provisions of the challenged ordinances, which required all people on the territory of the Republic of Slovenia to use a protective mask or other protective covering of the nose and mouth area and to disinfect their hands when in closed public spaces, interfered with the general freedom of action guaranteed by Article 35 of the Constitution. It is already clear from constitutional case law that the general freedom of

action also includes the right to decide freely and independently on one's own health. The Constitutional Court has also already adopted the position that, when responding to the occurrence of a communicable disease, the legislature may exceptionally leave the determination of specific measures directly interfering with human rights and fundamental freedoms to the executive power, but it must lay down sufficiently precise substantive criteria in a law. The Constitutional Court reviewed the statutory provisions to which the challenged ordinances referred as well as other provisions of the Communicable Diseases Act and held that in none of these provisions can authorisation for the Government to introduce the general obligation to wear a protective mask and disinfect hands be found.

The Constitutional Court concurred with the argument that the state and the Government, acting as the executive branch of state power, have the positive constitutional obligation to create conditions that enable individuals to maintain their health within the state territory. In the event of an outbreak of a communicable disease, the Constitution requires the state to appropriately protect the health and lives of people, if necessary also by proportionately interfering with other human rights and fundamental freedoms. However, such does not entail that the Government adopt measures by which human rights and fundamental freedoms are interfered with in order to prevent the spread of communicable diseases without a statutory legal basis. Namely, one of the constitutional obligations of state power is not only to appropriately protect the health and lives of people but also to do so in a way that observes the principle of democracy, the principles of a state governed by the rule of law, and the principle of the separation of powers, all of which are also reflected in the principle of legality determined by the second paragraph of Article 120 of the Constitution.

The Constitutional Court thus established that the Government did not have a sufficient statutory basis in the Communicable Diseases Act for the introduction of the measures of the mandatory usage of a protective mask or other protective covering of the nose and mouth area and the mandatory disinfection of hands in closed spaces, and therefore the challenged provisions of the ordinances were inconsistent with the second paragraph of Article 120 of the Constitution. Since the challenged ordinances ceased to be in force, the Constitutional Court was not able to abrogate them, but only established that they were inconsistent with the Constitution and decided that in the case at issue such finding has the effect of abrogation.

2. 18 The Unlawful Discrimination of Same-Sex Couples with Regard to Marriage and Adoption

U-I-486/20, Up-572/18; U-I-91/21, Up-675/19
16. 6. 2022

In Cases No. U-I-486/20, Up-572/18, and No. U-I-91/21, Up-675/19 (both Decisions dated 16 June 2022, both Official Gazette RS, No. 94/22), the Constitutional Court reviewed the constitutionality of the statutory regulation which determined that (i) marriage may only be entered into by two persons of different sex and (ii) same-sex partners living in a formal civil union may not jointly adopt a child. The Constitutional Court initiated proceedings to review the constitutionality of the statutory provisions at issue of its own accord on the basis of the constitutional complaints of two same-sex couples who in administrative proceedings and in proceedings before the courts did not succeed with their requests to enter into marriage and to be entered in the register of potential candidates for joint adoption, respectively.

The legal regulation of same-sex unions in the Republic of Slovenia has been developing for a longer period of time. In 2006, a regulation was adopted that enabled same-sex partners to register their union and granted them certain rights following from such relationship and, in 2016, a regulation that introduced a formal union between same-sex partners termed a civil union. Although the latter is close in substance to marriage, it still differs from the institution of marriage both in its designation and in some of its legal consequences. The Constitutional Court reviewed the regulation of the conditions for entering into marriage from the perspective of its consistency with the prohibition of discrimination determined by the first paragraph of Article 14 in conjunction with the human right to enter into marriage determined by Article 53 of the Constitution. It held that a regulation that does not allow same-sex partners to marry is discriminatory. Such discrimination cannot be justified by the traditional conception of marriage as a union of husband and wife, nor can it be justified by the special protection of the family. The decision adopted by the Constitutional Court thus entails that same-sex partners may now enter into marriage in addition to different-sex partners.

The constitutional requirement of the equal treatment of persons regardless of their sexual orientation requires the equalisation of their legal positions also in the area of joint adoption. In the Republic of Slovenia, same-sex partners have thus far been able to establish joint parenthood if one partner adopted the child of the other partner (so-called unilateral adoption). The Constitutional Court conducted the review of the statutory regulation of joint adoption from the viewpoint of the prohibition of discrimination determined by the first paragraph of Article 14 in conjunction with the right to family life determined by the third paragraph of Article 53 of the Constitution.

The Constitutional Court held that the regulation of joint adoption under review constituted unequal treatment of same-sex partners and thus interfered with their right to non-discriminatory treatment. The Constitutional Court deemed that the aim of protecting the best interests of the child cannot justify the reviewed regulation of joint adoption, as the absolute prohibition of the entry of same-sex partners in the register of candidates for joint adoption is not an appropriate measure for achieving this aim. The best interests of the child can namely only be assessed in the context of an individual adoption procedure, in which the most suitable adoptive parents for the child are selected from among all potential candidates for joint adoption. The general *a priori* exclusion of same-sex partners from the possibility of being entered in the register of candidates for joint adoption merely results in a reduction in the number of possible candidates and therefore cannot constitute a measure that would increase the likelihood of a decision being made in accordance with the best interests of the child. The statutory regulation under review therefore constitutes an

excessive interference with the right of same-sex oriented persons to non-discriminatory treatment. This decision of the Constitutional Court entails that when regulating the special protection of children who are not (or are no longer) cared for by their biological parents and who are therefore unable to live with their primary family, the legislature must take into account the constitutional prohibition of discrimination and allow same-sex partners to be included in the register of candidates for joint adoption. In any event, the choice of the most suitable adoptive parents for a particular child is made by a social work centre, upon whose proposal a court decides on adoption, taking into account the best interests of the child.

2. 19 The Conversion of a Prison Sentence into Community Work

Up-290/17, U-I-51/17
23. 6. 2022

In Case No. Up-290/17, U-I-51/17 (Decision dated 23 June 2022, Official Gazette RS, No. 96/22), the Constitutional Court considered a constitutional complaint and a petition to initiate proceedings to review the constitutionality of the second paragraph of Article 129a of the Criminal Procedure Act insofar as it refers to the time limit for filing a motion for the conversion of a prison sentence into community work. The complainant lodged a constitutional complaint against the decisions by which the courts rejected his repeated motion to convert his prison sentence into community work as too late, because it was filed after the expiry of the statutorily determined fifteen-day time limit. In his constitutional complaint and petition, he claimed that he was placed in an unequal position compared to convicted persons who may file a motion for the alternative enforcement of a prison sentence in the form of imprisonment at weekends also while serving their prison sentences, i.e. after the expiry of the time limit determined by the challenged provision of the Criminal Procedure Act.

The Constitutional Court accepted for consideration his constitutional complaint and petition as it assessed that they concern an important constitutional question. When assessing whether all motions for the alternative enforcement of a prison sentence entail the same position from the perspective of the second paragraph of Article 14 of the Constitution, the Constitutional Court proceeded from the nature of criminal sanctions and the punishment imposed on the applicants by a final judgment of conviction and not from the nature of the alternative manner of enforcement of the sanction imposed. It held that the position of persons who have filed a motion for the alternative enforcement of a prison sentence in the form of community work is essentially the same as the position of persons who have filed a motion for imprisonment at weekends and applicants for house arrest. In the opinion of the Constitutional Court, the differences should in fact dictate more favourable and not more stringent regulation of the procedural requirements for community work than for imprisonment at weekends.

Although applicants who request a conversion of their prison sentences into community work are in an essentially equal position as those who request imprisonment at weekends, they are treated unequally regarding the possibility to effectively request the conversion of the manner of enforcement of their prison sentence. In order to file a motion to convert their prison sentence into community work they have namely a substantially shorter time limit than applicants for imprisonment at weekends, i.e. merely up to 15 days after the judgement of conviction becomes final. Applicants for imprisonment at weekends and applicants for house arrest may file a motion also throughout the service of their prison sentences. The Constitutional Court established that, with regard to

the challenged different treatment of legal positions that are essentially the same, the legislature failed to demonstrate objectively justified grounds reasonably connected to the regulated subject matter that would justify a different (i.e. less favourable) regulation of the objective time limit for filing a motion to convert a prison sentence into community work as compared to the time limit for filing a motion for imprisonment at weekends. Such differentiation cannot be justified by either the different purpose of or the different substantive conditions for the individual alternative forms of the enforcement of a prison sentence (i.e. house arrest, imprisonment at weekends, or community work).

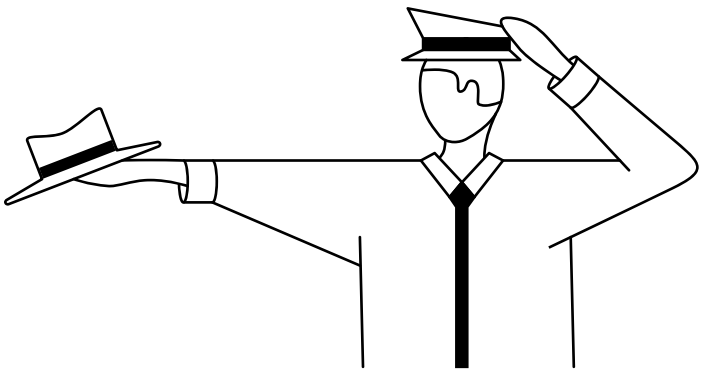
In light of the above, the Constitutional Court established that the challenged provision of the Criminal Procedure Act, insofar as it determines a fifteen-day time limit for filing a motion to convert a prison sentence into community work, which begins on the day the judgment becomes final or on the day of the last service of a copy of the judgment, is inconsistent with the right of equality before the law determined by the second paragraph of Article 14 of the Constitution. For the same reasons, the Constitutional Court further concluded that the complainant's right to equality before the law was violated by the court decisions challenged by the constitutional complaint. Since the complainant has already served the prison sentence, he no longer demonstrated a legal interest in the alternative enforcement of his prison sentence in the form of community work. In its decision, the Constitutional Court therefore merely established a violation of the complainant's right to equality before the law under the second paragraph of Article 14 of the Constitution.

2. 20 The Incompatibility of Work as a Police Officer and the Office of a Local Official

U-I-809/21
23. 6. 2022

By Partial Decision No. U-I-809/21, dated 23 June 2022 (Official Gazette RS, No. 99/22), in proceedings initiated upon a request of the Police Trade Union of Slovenia, the Constitutional Court decided on the constitutionality of the seventh and eighth paragraphs of Article 43 of the Organisation and Work of the Police Act, which prohibited the simultaneous performance of the duties of a police officer and the office of a non-professional mayor, a non-professional deputy mayor, or a municipal councillor. The employment contract of a police officer who assumes any of these non-professional offices is terminated on the basis of the law.

The Constitutional Court reviewed the challenged regulation from the viewpoint of its consistency with the passive right to vote determined by Article 43 of the Constitution. It established that such a prohibition entails an interference with the right to stand for election, which is protected within the framework of the passive right to vote. The prohibition namely constitutes a significant obstacle to the exercise of the passive right to vote due to its clear and intense deterrent effect, i.e. it deters police officers from freely deciding whether to stand as candidates in local elections. Before deciding whether to stand as candidates in local elections, police officers must decide whether they are prepared to risk the loss of secure employment and to put their professional career on hold in order to actively participate in the exercise of local self-government. In this context, the Constitutional Court took into consideration that secure employment has a significant impact on the property, private life, and



health of individuals. It enables them to plan a family, arrange their housing, and realise other personal plans, and it ensures their social security.

Having conducted a proportionality test, the Constitutional Court established that the interference with the passive right to vote is consistent with the Constitution. It held that the protection of the rights of others is a constitutionally admissible objective for an interference with the passive right to vote. An individual police officer must carry out his or her duties in a professional, politically, neutral and impartial manner, in order to protect the rights of others – i.e. all individuals against whom and for whose sake the Police carry out their duties. Police officers have a responsibility not to abuse their powers and to use them only in the public interest. There must be no doubt as regards individuals or the general public that the Police as a state authority within the executive branch of state power or any individual police officer performs his or her duties in the public interest but for other purposes. Such performance of police duties must not only be ensured in practice, but it must also be outwardly expressed. Therefore, the state has the duty to adopt such legislation that will prevent the creation of legal situations that would enable police officers to abuse the powers vested in them in order to further their own political objectives when deciding within the framework of public authorities. The state further has the duty to prevent the creation of legal situations that could give rise to justified doubts in the public regarding the politically neutral and impartial exercise of police powers of any individual police officer or the Police as a whole.

The Constitutional Court assessed that the challenged prohibition is appropriate for the achievement of this objective. By assuming the office of a local official, the police officer participates in the adoption of the most important political decisions in a municipality. The challenged prohibition therefore eliminates situations that could give rise to justified doubt in the public that police officers or the Police as a whole are not exercising their powers in the public interest. The Constitutional Court further assessed that such prohibition passes the test of necessity as it produces effects only after it becomes clear that an individual will assume the office of a local official and participate in the political decision-making process. In the framework of proportionality in the narrower sense, it then assessed that the gravity of the interference with the right of a police officer to stand in local elections is outweighed by the expected benefits that will ensue from ensuring the protection of the rights of others. It therefore found that the challenged regulation is not inconsistent with the second paragraph of Article 43 of the Constitution.

The Constitutional Court further held that the challenged regulation is not inconsistent with the principle of equality determined by the second paragraph of Article 14 of the Constitution, more specifically regarding the comparison between police officers, on the one hand, and soldiers, public officials, and other professional office holders who may carry out an additional activity, on the other.

2. 21 The Participation of the Public in Decision-Making in Environmental Matters

U-I-441/18
6. 7. 2022

In Case No. U-I-441/18 (Decision dated 6 July 2022, Official Gazette RS, No. 99/22), upon the petition of multiple petitioners, the Constitutional Court decided on the constitutionality and legality of the Decree on the Limit Values for Environmental Noise Indicators. The petitioners argued, *inter alia*, that the public was prevented from participating in the procedure for adopting the Decree.

The Constitutional Court reviewed the consistency of the Decree with the Constitution and laws from the perspective of the alleged violation of the requirement that the effective participation of the public in the procedure for adopting the Decree must be ensured. The Constitutional Court recognised that one petitioner – a non-governmental organisation in the field of environmental protection that operates in the public interest – has a legal interest in initiating proceedings to review the constitutionality and legality of the Decree, taking into account the position of the Constitutional Court that non-governmental organisations in the field of environmental protection that operate in the public interest fulfil the requirement of having a legal interest when, with the intention of protecting the environment, they challenge implementing regulations that regulate the field of environmental protection. It clarified that the participation of the public in environmental decision-making processes fulfils a dual purpose within the environmental protection system. It does not concern merely the right of the representatives of civil society to participate in environmental decision-making. The requirement to include the public in environmental decision-making also constitutes an essential procedural requirement aimed at environmental protection itself, since the fulfilment of this requirement is a necessary condition for enabling the representatives of civil society to effectively exercise their duty and concern for environmental protection. An allegation that the right of the public to participate in procedures for adopting implementing regulations that regulate environmental protection and that can have an impact on the environment had been violated therefore also entails an allegation that the procedural rules for adopting these regulations had been violated. According to the Constitutional Court, the petitioner – as a non-governmental organisation in the field of environmental protection that operates in the public interest – regardless of the fact that it did not participate in the procedure for adopting the Decree, has a legal interest to initiate a review of the constitutionality and legality of the challenged Decree because it alleged in the petition that in the procedure for drafting the Decree the participation of the public therein had not been ensured.

The Constitutional Court considered the allegations as to the violation of the principle of the participation of the public in the procedure for adopting the Decree from the perspective of its consistency with Article 34a of the Environmental Protection Act. It established that certain statutory requirements determined therein had not been observed in the case at issue. The Constitutional Court deemed that it is contrary to the mentioned statutory provision if following the public hearing the draft of the regulation is supplemented by completely new substantial solutions that the public had not even been acquainted with earlier and thus had not been able to react thereto. Such an instance entails a violation of the requirements as to the effective inclusion of the public in the procedure for drafting and adopting a regulation that can have a significant impact on the environment. Since following the conclusion of the public hearing, the draft of the Decree had been submitted for inter-departmental harmonisation, and as a result of such harmonisation substantively significant exceptions and solutions had been inserted in the Decree with which the public

had not been acquainted, the Constitutional Court established that the challenged Decree is inconsistent with Article 34a of the Environmental Protection Act, and, as a result, also with the second paragraph of Article 120 of the Constitution, in accordance with which administrative authorities carry out their work independently within the framework and on the basis of the Constitution and laws.

2. 22 The Use of Profits from the Provision of Pharmacy Services

U-I-59/18
8. 9. 2022

In Case No. U-I-59/18 (Decision dated 8 September 2022, Official Gazette RS, No. 132/22), the Constitutional Court reviewed the constitutional consistency of a provision of the Health Care Services Act that required providers of pharmacy services on the basis of a concession (i.e. private pharmacists) to use any surplus of revenue over expenditure from the provision of pharmacy services in a specifically defined manner. The petition was submitted by the Professional Association of Pharmacists of Slovenia and twenty-five other petitioners who are private pharmacists with concessions.

The Constitutional Court already reviewed the challenged statutory provision in Case No. U-I-194/17, wherein it annulled the provision insofar as it regulated the surplus of revenue over expenditure of providers of health care services within the framework of the public health care service who are companies and private doctors, but this annulment did not have any effect on pharmacists.

In answering the question of whether in the provision of pharmacy services private pharmacists enjoy the guarantees stemming from the right to free economic initiative (the first paragraph of Article 74 of the Constitution), the Constitutional Court proceeded from the significance of the fact that they had been granted a concession by public authorities to carry out their activity as pharmacists and the fact that that concession activities are not financed entirely from public funds, but entail a combination of public and private financing. In the framework of the provision of pharmacy services, private pharmacists namely also provide services that are financed directly or indirectly by the users of those services. The fact that private pharmacists are partly financed by the funds paid directly or indirectly by the users of their services through voluntary health insurance supports the position that, in the provision of pharmacy services, pharmacists must not be denied the constitutional safeguards guaranteed by the right to free economic initiative determined by the first paragraph of Article 74 of the Constitution.

Since the challenged statutory provision prohibits private pharmacists from freely using any surplus of revenue over expenditure, particularly with regard to services that are paid entirely out of their users' private funds, that prohibition severely restricts their ability to exercise an important element of the right to free economic initiative and interferes with the very core of that right. The Constitutional Court emphasised that the measure determined by the challenged provision that required all revenue from the provision of pharmacy services on the basis of a concession to be allocated to its continued operation and development is, in general terms, capable of effectively securing a public interest that can justify an interference with that right. It was therefore also necessary to assess whether the weight of the consequences of the challenged measure was proportionate to the benefits resulting from the interference it entailed. In that regard, the Court noted that the challenged measure, which prohibited private pharmacists from freely using any surplus of revenue over expenditure, could undeniably contribute to the sustainable provision of high-quality

and accessible pharmacy services, and that it is also in the interest of private pharmacists that the surplus revenue be invested in their activity, since, as private entities, they can carry out that activity only on the basis of a concession. However, the extent to which the challenged measure could contribute to that end was not demonstrated in more detail in the legislative materials or in the submissions of the parties. In the light of the above, The Court held that the benefits cannot outweigh the severe interference with the very core of the right to free economic initiative, and such a regulation that so significantly undermines the very core of that right cannot be proportionate to the potential benefits it might bring about.

Having established that the interference with the right to free economic initiative of private pharmacists was disproportionate, the Constitutional Court abrogated the challenged provision in the part that was under consideration.

2. 23 Compensation for Violations of Personality Rights

U-I-26/20
29. 9. 2022

In Case No. U-I-26/20 (Decision dated 29 September 2022, Official Gazette RS, No. 132/22), the Constitutional Court considered the request of the Supreme Court for a review of the constitutionality of Article 27 of the Personal Income Tax Act, which determines an exhaustive list of types of compensation that are exempt from personal income tax. The legislature included compensation for pecuniary and non-pecuniary damage resulting from various forms of personal injury (physical injury, illness, or death) among the types of compensation that are exempt from personal income tax, whereas compensation for mental distress resulting from a violation of personality rights is not exempt from personal income tax. The applicant submitted that there exists no sound reason for a different tax treatment of compensation paid for a violation of personality rights, which protect an individual's personality, the physical and moral essence thereof.

The Constitutional Court emphasised that in the field of taxation the legislature has a wide margin of appreciation, which includes the choice of the object of taxation, and therefore this choice is not subject to constitutional review. However, once the legislature chooses an object of taxation, it must, as far as possible, distribute the tax burden equally among taxpayers. The constitutional principle of equality before the law determined by the second paragraph of Article 14 of the Constitution is one of the safeguards that define and limit the legislature's margin of appreciation in the field of taxation.

The Constitutional Court reviewed the constitutionality of the challenged regulation from the perspective of the principle of equality. It compared the position of taxpayers who receive compensation for legally recognised non-pecuniary damage resulting from physical injury, illness, or death on the basis of a court judgment, a court settlement, or an out-of-court settlement, and the position of taxpayers who receive compensation for legally recognised non-pecuniary damage not resulting from physical injury, illness, or death on the basis of a court judgment, a court settlement, or an out-of-court settlement. It found that, with regard to the primary function of monetary compensation for non-pecuniary damage (i.e. satisfaction), the effect of such compensation on the injured party's financial situation (i.e. economic power) is the same for all forms of legally recognised non-pecuniary damage, irrespective of the cause of the damage. Therefore, the Constitutional Court held that with regard to the subject matter of the legal regulation at issue the two positions of injured parties being compared are identical.

The Constitutional Court then had to assess whether there existed a sound reason for the different tax treatment of the identical positions that was objectively related to the subject matter of the legal regulation. A reason substantiating the different treatment of the positions in question could not be derived from the legislative materials. In the case at issue, the Constitutional Court also deemed that the Government has not demonstrated any sound and objective reasons for the different tax treatment of the compared positions of taxpayers with regard to the taxability of compensation for non-pecuniary damage by means of personal income tax. Solely an increased possibility of tax fraud in relation to the claiming of tax exemptions with regard to compensation in cases of damage whose verification is objectively more difficult cannot justify the different tax treatment of taxpayers compensated for non-pecuniary damage, not even in instances of out-of-court settlements. The Constitutional Court therefore established that point 5 of Article 27 of the Personal Income Tax Act is inconsistent with the second paragraph of Article 14 of the Constitution.

2. 24 The Principle of Legality with Regard to the Rules of Compulsory Health Insurance

U-I-23/20
20. 10. 2022

In Case No. U-I-23/20 (Decision dated 20 October 2022, Official Gazette RS, No. 142/22), the Constitutional Court decided on a request of the Court of Audit to review the constitutionality of Articles 50, 51, and 52 of the Rules on Compulsory Health Insurance regulating the right of disabled persons to restorative rehabilitation, the right to participate in organised training groups, and the right of children and primary and secondary school students with medical issues to a holiday in a specialised facility. During an audit of the activities of the Health Insurance Institute of Slovenia, the Court of Audit deemed that, when regulating the mentioned rights, the Institute may have violated the constitutional principle of legality, in accordance with which the Institute may not modify (broaden or narrow) the statutorily determined scope of the human right to health care or regulate such by itself (instead of the legislature).

The Constitutional Court reviewed the constitutionality of the challenged provisions of the Rules of Compulsory Health Insurance in terms of their consistency with the first paragraph of Article 51 of the Constitution, which requires the state to regulate the manner of exercising the right to health care and is a special provision with regard to the relationship between the legislature and the executive branch of power and within this relationship also with regard to the second paragraph of Article 120 of the Constitution.

In order to be able to respond to the question of whether by means of the challenged provisions the

Institute unlawfully limited the scope of the rights guaranteed by law as part of to health care from compulsory health insurance or independently regulated subject matter that is reserved for the legislature in accordance with the first paragraph of Article 51 in conjunction with the second paragraph of Article 50 of the Constitution, the Constitutional Court first had to establish whether the Health Care and Health Insurance Act, which authorises the Institute to regulate in greater detail the rights determined by law as part of compulsory health insurance, in fact regulates the right of disabled persons to restorative rehabilitation, the right to participate in organised training groups, and the right of children and primary and secondary school students with medical issues to a holiday in a specialised facility. Taking into consideration the standpoints of the competent ministry and academic opinion, the Constitutional Court established that until the entry into force of the Act Amending the Health Care and Health Insurance Act on 1 January 2023, the Health Care and Health Insurance Act did not regulate such rights. Such entails that in Articles 50, 51, and 52 of the Rules on Compulsory Health Insurance, the Institute independently regulated the right of disabled persons to restorative rehabilitation, the right to participate in organised training groups, and the right of children and primary and secondary school students with medical issues to a holiday in a specialised facility, and determined to what extent these rights shall be financed from compulsory health insurance funds. The rules on compulsory health insurance thus regulated the right to health care and the manner of its exercise in an originary manner, which is expressly reserved to regulation by law. The Constitutional Court therefore held that the challenged provisions of the Rules on Compulsory Health Insurance are inconsistent with the right to health care determined by the first paragraph of Article 51 in conjunction with the second paragraph of Article 50 of the Constitution and abrogated them.

2. 25 The Importance of a Judgment of the Court of Justice of the European Union for the Clarity and Precision of National Regulations

U-I-152/17
17. 11. 2022

In Case No. U-I-152/17 (Partial Decision dated 17 November 2022, Official Gazette RS, No. 156/22), the Human Rights Ombudsman filed a request for a review of the constitutionality of three sets of provisions of the Police Tasks and Powers Act that are independent of each other. The Constitutional Court has already decided on the first two sets – i.e. on the use of unmanned aerial vehicles and the optical recognition of licence plates when carrying out police tasks. By this Partial Decision, it decided on the third and last set, which refers to the processing of passenger name records (PNR) data from the air ticket reservation system for the purposes of the prevention, detection, investigation, and prosecution of terrorist and other serious criminal offences. The challenged statutory regulation was adopted as a result of the obligation of the Republic of Slovenia to implement Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the

prevention, detection, investigation, and prosecution of terrorist offences and serious crime into its legal order. The Human Rights Ombudsman alleged that the statutory regulation violates Article 38 of the Constitution, which protects the right to the protection of personal data, as the legislature allegedly failed to determine with sufficient clarity and precision which personal data of airline passengers can be processed for the purposes of the prevention, detection, investigation, and prosecution of terrorist and other serious criminal offences.

Since in terms of their content the allegations as to the unconstitutionality of the statutory provisions also entailed the allegation that the provisions of Directive (EU) 2016/681 are inconsistent with the right to privacy and the right to the protection of personal data in the Charter of Fundamental Rights of the European Union, the Constitutional Court submitted a question for a preliminary ruling to the Court of Justice of the European Union, which is the sole jurisdiction competent to review the validity of EU law. It subsequently withdrew its question, as in its Judgment in Case C-817/19, *Ligue des droits humains/Conseil des ministres*, dated 21 June 2022, the Court of Justice of the European Union also answered the question concerning the clarity and precision of the personal data of airline passengers.

The Constitutional Court found that the personal data of airline passengers referred to in the challenged legal provision were not in themselves sufficiently clear and precise to enable an individual to foresee the extent to which his or her information privacy would be infringed, as they did not set any limits as to the nature and scope of the information that could be collected on that basis. However, as the Court of Justice of the European Union has delimited the personal data referred to in Directive (EU) 2016/681 by means of an interpretation, it also delimited the meaning of "personal data" in the challenged Act, which transposes the obligations imposed by the mentioned Directive. By such interpretation by the Court of Justice of the European Union, which has *erga omnes* effect and is thus binding for the national courts when they decide on the same question as the one in the case at issue, the requirement determined by Article 38 of the Constitution, which states that personal data must be precisely determined by law, was also fulfilled. Therefore, the Constitutional Court established that the challenged provision is not inconsistent with Article 38 of the Constitution.

2. 26 The Retroactive Regulation of Credit Agreements Denominated in Swiss Francs

U-I-64/22, U-I-65/22
17. 11. 2022

In Case No. U-I-64/22, U-I-65/22 (Decision dated 17 November 2022, Official Gazette RS, No. 157/22), upon the petition of nine banks, which the Bank of Slovenia granted permission to carry out banking services, the Constitutional Court assessed the constitutionality of the Limitation and Distribution of Currency Risk between Lenders and Borrowers of Loans Denominated in Swiss Francs Act. The petitioners' central allegation was that the challenged Act has a retroactive effect, which is prohibited on the basis of the first paragraph of Article 155 of the Constitution.

The Constitutional Court held that the statutory regulation that binds the triggering of the currency cap to the moment before it enters into force (i.e. the exchange rate on the day the credit is drawn) has a retroactive effect on the credit contracts denominated in a foreign currency that were concluded prior to the

entry into force of this Act under the conditions that were in force at the time of their conclusion. However, any retroactivity is not in itself inconsistent with the Constitution. The second paragraph of Article 155 of the Constitution sets out a number of criteria under which such retroactivity may be constitutionally admissible, namely: 1) only a law may establish retroactivity, 2) only certain provisions of a law may have retroactive effect, but only if 3) the public interest so requires, and 4) if the rights acquired are not thereby infringed. All criteria must be met cumulatively.

The Constitutional Court devoted special attention to the criterion that only certain provisions of the law have retroactive effect. It therefore had to respond to the question of whether only an individual provision of the challenged Act has a retroactive effect or whether such applies to the Act in its entirety. The Constitutional Court adopted the position that this assessment must be based on a substantive criterion and proceed from the question of what the relation between the Act (as a whole) and its individual provisions having a retroactive effect is. If namely a law regulates content that could apply prospectively even without the statutory provision having retroactive effect, this entails only the constitutionally admissible retroactive effect of an individual statutory provision, and not the constitutionally inadmissible retroactive effect of the law as a whole.

In the case at issue, the Constitutional Court adjudicated that what has the retroactive effect is the substantive law provision that regulates the methodology of the calculation of the currency cap, placing it at the moment of the drawing of the credit, i.e. the moment before the entry into force of the challenged Act. Concurrently, all its provisions that regulate the procedural steps of the contracting parties of credit agreements denominated in Swiss francs, as well as supervision and measure-taking by the Bank of Slovenia continue to apply for the future. The provision that regulates the methodology for calculating the currency cap also enables the retroactive effect thereof. Therefore, it is not that the whole statutory regulation that has a retroactive effect; instead, the challenged provision, due to its retroactive effect, causes the Act as a whole to have a retroactive effect, which entails a systemic renewal of credit agreements denominated in Swiss francs that were concluded prior to its entry into force. By abrogating the provision that regulates the methodology for calculating the currency cap and all provisions of the law that refer thereto, what would remain in the challenged Act would only be content that in and of itself, i.e. without the abrogated provisions, would have no meaning. Therefore, the Constitutional Court held that what is at issue is the retroactive effect of the challenged Act as a whole and not only the retroactive effect of its individual provisions. Such entails that the criterion determined by the second paragraph of Article 155 of the Constitution is not met.

Although in order to establish an inadmissible retroactive effect already the non-fulfilment of one of the cumulatively determined criteria in the second paragraph of Article 155 of the Constitution suffices, the Constitutional Court also assessed the further criterion for the constitutional admissibility of the retroactive effect of a regulation, i.e. the existence of a special public interest, which would exceptionally require that a statutory provision enters into force retroactively. It held that the arguments stated in the legislative materials by the proposer of the challenged Act cannot substantiate such public interest. In fact, when drafting the Act, the proposer proceeded from the legally erroneous positions that credit agreements denominated in a foreign currency are invalid and that the contractual term that denominates a loan in a foreign currency is unfair. Therefore, the Constitutional Court held that already two out of four criteria determined by the second paragraph of Article 155 of the Constitution are not fulfilled, which would be required for the retroactive effect of the statutory regulation of the renewal of credit agreements denominated in a foreign currency, by taking into account the currency cap, to be constitutionally admissible. Consequently, it abrogated the challenged Act.

2. 27 The Use of an IMSI Catcher

U-I-144/19
1. 12. 2022

By Partial Decision No. U-I-144/19, dated 1 December 2022 (Official Gazette RS, No. 2/23), upon a request of a group of deputies, the Constitutional Court decided on the consistency of Article 150a of the Criminal Procedure Act with the Constitution. The challenged provision regulated the purpose of the use of special technical means for surveilling mobile phone signals, i.e. an IMSI catcher, the conditions for the use of such, the content of the record of the use of such, the handling of the personal data of third persons, the prohibition of the use of an IMSI catcher for intercepting the content of the communications of persons who are not suspects or accused, and the exclusion of evidence. The IMSI catcher provides the Police with the information needed to identify communication device numbers and electronic communication numbers as well as the location of a communication device.

The Constitutional Court first reviewed the constitutional consistency of the challenged provision from the perspective of the principle of clarity and precision stemming from Article 2 of the Constitution, which requires that regulation be clear and precise, so that the content and the purpose of the norm can be construed. It held that the content of the challenged provision can be construed on the basis of established methods of interpretation and therefore the provision is not inconsistent with Article 2 of the Constitution.

Since the applicant also alleged that the challenged provision is too vague and that it allows for an excessively broad use of the IMSI catcher for acquiring the data required for the identification of communication device numbers and electronic communication numbers, and that it disproportionately interferes with the privacy of the affected persons – not only the suspect, but all persons in his or her vicinity –, the Constitutional Court reviewed the alleged inconsistency from the perspective of the right to information privacy determined by Article 38 of the Constitution.

The Constitutional Court first examined whether the use of an IMSI catcher for acquiring IMSI and IMEI numbers entails an interference with the protection of personal data under the first paragraph of Article 38 of the Constitution. It explained that the IMSI number is used to identify a SIM card and changes when the SIM card is replaced, while the IMEI number identifies a mobile device and can be used to identify the manufacturer and model of a phone; it changes when the device is replaced. These numbers are unique and therefore allow a SIM card and mobile device, and indirectly also their user's personal data, to be individualised. The use of an IMSI catcher by the Police thus results in the acquisition of data containing information about an identifiable individual and must therefore enjoy the protection afforded by Article 38 of the Constitution. The acquisition of such data by means of an IMSI catcher on the basis of the challenged provision entails an interference with the right determined by the first paragraph of Article 38 of the Constitution. This applies to the data of the person against whom the measure was ordered as well as to the data of third parties, which must be deleted immediately after the identification of the numbers pertaining to the person against whom the measure was ordered.

The Constitutional Court then reviewed whether the regulation pursues a constitutionally admissible objective and whether the interference is in conformity with the general principle of proportionality. The first condition for the admissibility of an interference with the right determined by the first paragraph of Article 38 of the Constitution is the existence of a constitutionally admissible objective. The Constitutional Court established that the regulation pursues such an objective (i.e. the effectiveness of pre-trial investigations and criminal proceedings). In this respect, the interference is not inadmissible, as the purpose of acquiring the personal data in question undoubtedly served the wider public interest (the third paragraph of Article 15 of the Constitution).

As part of the proportionality test, the Constitutional Court only reviewed whether the interference with the human right at issue is proportional in the narrower sense, i.e. if the weight of this interference

(in this case, an interference with the protection of personal data) is proportional to the value of the pursued objective, or to the expected benefits that will result from the interference (in this case, the effective investigation of complex crime and the effectiveness of pre-trial investigations and criminal proceedings). It stressed that, on the basis of a court order, the Police use an IMSI catcher and review the collected data. Due to the manner of the functioning of an IMSI catcher and the scope of the ensuing interference, it is important that the investigating judge has the possibility of carrying out thorough *ex post* judicial control on the basis of the collected material. Such must above all enable control over the actual use of an IMSI catcher and the data obtained thereby. Therefore, the investigating judge must first be familiar with the technical characteristics of the IMSI catcher used, and he or she must also be able to compare the scope of the acquisition of data as outlined by the court order with the actual measures carried out and to compare the scope of all the collected data with the scope of data marked in the record referred to in the fourth paragraph of Article 150a of the Criminal Procedure Act. Therefore, the investigating judge must have the possibility of accessing the data on when, how many times, how, and for what reason the IMSI catcher was used because that also enables the investigating judge to verify the connection between the issued court order and the use of the IMSI catcher in the concrete case. Such enables judicial supervision over, on the one hand, the measures that the device makes possible, i.e. its technical capabilities, and, on the other hand, the actually carried out measure and the obtained evidence, with regard to which the technical traceability of the measure and the device is also essential.

In accordance with the challenged Article 150a of the Criminal Procedure Act, the investigating judge carries out *ex post* judicial control over the use and inspection of the IMSI catcher on the basis of the material gathered and prepared by the Police. In general, it holds true that after the cessation of covert investigative measures, the Police must hand over all material gathered thereby to the state prosecutor. In instances of the use and inspection of an IMSI catcher, they must also attach to this material the records referred to in the fourth and fifth paragraphs of Article 150a of the Criminal Procedure Act. The state prosecutor hands over all the material to the investigating judge, who ascertains whether the measures were carried out in the manner as approved. In the event of the use and inspection of an IMSI catcher, the essential parts of this material are the mentioned records that do not contain the personal data of third persons. In fact, the latter are deleted already by the Police immediately after the use and inspection of the IMSI catcher. The mentioned records do not contain any element that would enable an understanding of the technical characteristics of the IMSI catcher used or the full extent of the data collected. In addition, the Criminal Procedure Act does not determine any procedural sanction for a deficient record, despite its crucial importance for the subsequent judicial control. The regulation of the mentioned records in the Criminal Procedure Act therefore enables only partial *ex post* judicial control over the use and inspection of the IMSI catcher, despite the expressed intention of the legislature to ensure the traceability of the measures.

The Constitutional Court found that the Criminal Procedure Act does not contain any provisions that would enable comprehensive *ex post* judicial control over the use of the IMSI catcher, i.e. it does not envisage any measures that could ensure the investigating judge a detailed overview of the use of the IMSI catcher and the data collected thereby, and that the Act furthermore does not contain any provisions that would ensure actual control over the location of the IMSI catcher when it is not in use. In light of the above, the Constitutional Court held that the investigating judge is prevented from carrying out an effective *ex post* judicial control of the use and inspection of the IMSI catcher and thus an effective *ex post* judicial control of the constitutional and statutory conditions for an interference with the right to information privacy stemming from established constitutional case law and the case law of the European Court of Human Rights. Therefore, it decided that point 1 of the first paragraph of Article 150a of the Criminal Procedure Act and other provisions of the Act that are directly related to this provision insofar as they refer to the measure at issue are inconsistent with the right determined by the first paragraph of Article 38 of the Constitution and abrogated them.

2. 28 The Financing of Social Care Services

U-I-780/21
1. 12. 2022

In Case No. U-I-780/21 (Decision dated 1 December 2022, Official Gazette RS, No. 157/22), in proceedings initiated by a request of a first instance court, the Constitutional Court decided on the constitutionality of the first paragraph of Article 100 of the Social Assistance Act, in accordance with which even a person who is committed to a secure ward of a social care institution without consent on the basis of Article 75 of the Mental Health Act is obliged to pay the costs of the stay and the health care provided during treatment in the secure ward.

The Constitutional Court first adopted a position as to the question of whether the regulation in accordance with which both a person committed to a secure ward of a social care institution with consent and a person committed to a secure ward thereof without consent must bear the costs of the stay and the health care provided in such a ward is in conformity with the principle of equality before the law. The Constitutional Court established that in view of the service provided to the mentioned two persons, they are in essentially equivalent positions. In the event of commitment to a secure ward with or without consent in accordance with Article 74 or 75 of the Mental Health Act, the person must fulfil the same conditions, among them also the condition that he or she needs constant care that cannot be provided in a home environment or otherwise. It is precisely to the latter that the legislature attributed decisive importance in determining the manner of financing institutional care. Namely, institutional care, one form of which is commitment to a secure ward of a social care institution, substitutes for or supplements the function of the beneficiary's home and his or her own family, in particular a residence, the organised provision of nutrition, care, and health care.

The Constitutional Court held that it is reasonable to require that the beneficiary of such services bear the costs of these services, provided that he or she can afford such. Otherwise, he or she can request relief from the payment of the services. The Constitutional Court also drew attention to the fact that persons committed to a secure ward of a social care institution (with or without consent) are not obliged to pay for health care services provided during the commitment to the secure ward because they are covered by the funds of the compulsory health care insurance scheme.

The Constitutional Court further adopted a position as to the question of whether a person who is committed to a secure ward of a social care institution without consent is unconstitutionally treated in an unequal manner in comparison to a person who is committed to a ward under special supervision in a psychiatric hospital without consent on the basis of a court order. It established that the mentioned two persons are not in essentially equivalent positions. In fact, while there indeed exist points of convergence between the compared two measures, there are also important differences between them. The Constitutional Court explained that one of the conditions for committing a person to a secure ward of a social care institution is that acute hospital treatment has been completed or is not necessary, while it is precisely the need for such treatment that is the grounds for committing a person to a ward under special supervision in a psychiatric hospital. The second condition is that the person needs constant care that cannot be provided in a home environment or otherwise. The Constitutional Court established that the main characteristic of this measure is care that cannot be provided at home or within the framework of a family, whereas an essential characteristic of the other measure is acute treatment. Therefore, in the assessment of the Constitutional Court, the legislature was allowed to determine that treatment in a ward under special supervision in a psychiatric hospital is financed equally as other health care services, namely from the funds of the compulsory health care insurance scheme; furthermore, commitment to a secure ward of a social care institution is financed equally as other social care services, namely

from payments by the beneficiaries of such services and other persons liable to pay therefor.

The Constitutional Court also had to adopt a position as to the allegation that persons who are placed in a secure ward of a social care institution are unconstitutionally treated unequally in comparison to persons on whom the security measure of mandatory psychiatric treatment and care in a health care institution determined by Article 70 of the Criminal Code has been imposed. It established that the mentioned persons are in manifestly different positions although the former are also committed to a secure ward of a social care institution without their consent. It stressed that mandatory psychiatric treatment and care in a health care institution as a security measure is a criminal sanction. In view of the above, the legislature was allowed to determine that funds for carrying out this criminal sanction are provided from the budget of the Republic of Slovenia, in the same way as for other criminal sanctions (e.g. a sentence of imprisonment).

The Constitutional Court therefore held that the challenged regulation is not inconsistent with the principle of equality before the law determined by the second paragraph of Article 14 of the Constitution.

2. 29 The Deferment or Suspension of the Enforcement of a Final Judgment of Conviction

U-I-409/19, Up-1455/19
8. 12. 2022

In Case No. U-I-409/19, Up-1455/19 (Decision dated 8 December 2022, Official Gazette RS, No. 7/23), the Constitutional Court reviewed a regulation in the Criminal Procedure Act according to which the court of first instance or the Supreme Court may, in the light of the content of a request for the protection of legality, suspend the enforcement of a final judgment of conviction.

The Constitutional Court emphasised that the case at issue raised an important constitutional question, namely the question of the consistency of the challenged regulation with the right to judicial protection determined by the first paragraph of Article 23 of the Constitution. It follows from this right that if the law provides for an (extraordinary) legal remedy, parties to proceedings must also be ensured effective exercise of that remedy. The intention of the Constitution is not merely the formal and theoretical recognition of human rights, but it is a constitutional requirement that also the possibility of the effective and actual exercise of human rights be ensured. One of the aspects of the effectiveness of the right to judicial protection is also that appropriate procedural means be provided that prevent the occurrence of acts during court proceedings due to which judicial protection cannot achieve its objective. Such judicial protection can be neither effective nor feasible.

Since the Constitution does not guarantee the right to extraordinary legal remedies, the scope of the protection afforded by Article 23 of the Constitution in proceedings on extraordinary legal remedies depends on the regulation of those proceedings and the intentions and objectives of the legislature in establishing the system of extraordinary legal remedies.

Imprisonment is the harshest penalty that can be imposed. It entails an interference with personal liberty, which, alongside the right to life, is an individual's most important good. A request for the protection of legality is an extraordinary legal remedy through which a convicted person can achieve the annulment or amendment of a final judgment of conviction imposing a prison sentence. If the affected person

achieves such, the legal basis for the state's interference with his or her personal liberty ceases to exist. If a convicted person has already begun serving a prison sentence on the basis of a challenged final judgment, but it subsequently becomes clear that the conviction was wrongful and, in accordance with a decision of the Supreme Court, must be annulled, consequences inevitably arise that neither the subsequent annulment nor the amendment of the relevant judgment can fully remedy.

The Constitutional Court – in the light of the harmful effects of unjustified imprisonment, the importance of the human right to personal liberty determined by Article 19 of the Constitution, and the current regulation of a request for the protection of legality – deemed that from the right to judicial protection determined by the first paragraph of Article 23 of the Constitution there also follows the requirement to establish appropriate procedural means for preventing instances of the unjustified serving of a prison sentence.

The Court further examined whether the Criminal Procedure Act contains effective and sufficient means for preventing, to the greatest extent possible, the enforcement of a prison sentence with regard to the fact that a final judgment of conviction could subsequently be annulled or amended in proceedings to decide on a request for the protection of legality. It found that the regulation contained in the challenged statutory provisions enables the Supreme Court and the court of first instance to suspend, of their own motion, the enforcement of a prison sentence if they deem such necessary in the light of the content of a request for the protection of legality. Information provided by the Supreme Court shows that the mentioned regulation is also applied in practice. By its very nature, such a regulation cannot constitute an interference with the right to judicial protection determined by the first paragraph of Article 23 of the Constitution.

However, the Criminal Procedure Act does not provide for a procedure in which a convicted person him- or herself could request the deferment or suspension of the enforcement of a final judgment of conviction in a request for the protection of legality. If the court deems that the conditions for the deferment or suspension of the enforcement of a final judgment are not met, it does not issue a negative decision regarding such, not even if the convicted person included such a motion in his or her request for the protection of legality. However, in light of the particular importance of the human right to personal liberty and the consequences of unjustified imprisonment, the existing powers of the courts are not sufficient to ensure the effectiveness of proceedings to decide on a request for the protection of legality. Since the court does not issue a decision if the conditions for deferring or suspending the enforcement of a prison sentence are not fulfilled, the convicted person has no possibility of learning if the court verified whether these conditions were fulfilled, nor can he or she request a decision from the court in this respect. A convicted person also cannot propose the adoption of a provisional measure that could achieve a similar effect. According to the Constitutional Court, this entails that the current regulation does not enable a convicted person to actively participate in court proceedings as effectively as required in connection with the most invasive criminal sanction, i.e. the deprivation of liberty. Due to the importance of the availability of provisional measures for the effectiveness of proceedings deciding on a request for the protection of legality, such thus entails an excessive interference with the right to effective judicial protection of a convicted person determined by the first paragraph of Article 23 of the Constitution.

3

International Activities

The Constitutional Court is involved in extensive international cooperation with key stakeholders in the field of constitutional law and human rights protection. The Constitutional Court devotes special attention particularly to the exchange of experiences with other international institutions competent to protect human rights and fundamental freedoms. It is a full member of the Conference of European Constitutional Courts, the World Conference on Constitutional Justice, and the Venice Commission of the Council of Europe, in the framework of which representatives of the Constitutional Court attend regular meetings and exchange knowledge and experiences with representatives of other institutions of equivalent jurisdiction. It also maintains regular contacts with the European Court of Human Rights and the Court of Justice of the European Union.

An important aspect of the Court's international activities is also cooperation with foreign constitutional courts and other highest national courts entrusted with the tasks of performing constitutional review and protecting human rights. Bilateral cooperation is organised within the framework of official and working meetings with colleagues abroad, as well as visits of delegations of foreign courts to the Republic of Slovenia. International cooperation thus significantly contributes to the effectiveness and quality of the functioning of the Constitutional Court.

After a period marked by measures to combat the COVID-19 pandemic, the international activities of the Constitutional Court returned to normal in 2022.

Feb

Paris, France

Conference of the Heads of the Supreme Courts of the Member States of the European Union

In February, Dr Matej Accetto, President of the Constitutional Court, attended the Conference of the Heads of the Supreme Courts of the Member States of the European Union, held in Paris, and gave a lecture on constitutional review during a pandemic in the context of a debate at the Constitutional Council.

Mar

Vienna, Austria

Visit to the Constitutional Court of Austria

In March, a delegation of the Constitutional Court, led by President Dr Matej Accetto, visited the Constitutional Court of Austria in Vienna. The official talks focused on measures to prevent the spread of COVID-19 and the role of the constitutional judiciary in a state governed by the rule of law.

Online Conference

Regional Conference "Constitutional Courts – Guardians of the Environment"

The President of the Constitutional Court gave a lecture at an online regional conference entitled "Constitutional Courts – Guardians of the Environment", organised by the Centre for Legal Research and Analysis in Skopje, North Macedonia.

Apr

Heidelberg, Germany

Heidelberg Round Table

In April, President Dr Matej Accetto attended the Heidelberg Round Table in Heidelberg, Germany.

Online Lecture

Legal Philosophy Seminar

Judge Dr Marijan Pavčnik gave an online lecture at a legal philosophy seminar on the symbolic meaning of Radbruch's formula, organised by the University of Cantazaro, Italy.

May

The Hague, The Netherlands

High-Level Study Visit

Judge Dr Špelca Mežnar accepted an invitation to the Hague, the Netherlands, for a high-level study visit on the rule of law.

Trieste, Italy

Meeting of Administrative Law Experts

Judge Dr Rajko Knez attended a meeting of administrative law experts at the University of Trieste, Italy.

Online Meeting

Preparatory Meeting for the XIX Congress of the Conference of European Constitutional Courts
President Dr Matej Accetto and Dr Sebastian Nerad, Secretary General of the Constitutional Court, participated in an online preparatory meeting for the XIX Congress of the Conference of European Constitutional Courts, organised by the presiding Constitutional Court of Moldova.

Jun

Croatia

Working Meeting of Judges of the Constitutional Courts of Croatia and Slovenia
In June, Croatia hosted the traditional one-day working meeting of judges of the constitutional courts of Croatia and Slovenia. The main topic of the meeting was the protection of the right to life.

Strasbourg, France

Opening of the Judicial Year of the European Court of Human Rights
At the end of June, a formal session was held in Strasbourg, France, to mark the opening of the judicial year of the European Court of Human Rights, which was attended by President Dr Matej Accetto and Judge Dr Katja Šugman Stubbs, who at a special seminar prior to the solemn meeting also gave a lecture on the Constitutional Court's review of the COVID-19 pandemic.

Jul

Munich, Germany

Forum of Legal Experts
In July, Judge Dr Rajko Knez participated in a forum of legal experts in Munich, Germany.

Sep

Luxembourg

Official Visit to the Court of Justice of the European Union
A delegation of the Constitutional Court paid an official visit to the Court of Justice of the European Union in Luxembourg, during which several discussions were held with judges of the Court and the General Court.

Riga, Latvia

25th Anniversary of the Constitutional Court of Latvia
Judge Dr Rajko Knez attended a conference on the occasion of the 25th anniversary of the Constitutional Court of Latvia in Riga.

Oct

Bali, Indonesia

5th Congress of the World Conference on Constitutional Justice
Two representatives of the Constitutional Court, President Dr Matej Accetto and Judge Dr Katja Šugman Stubbs, attended the 5th Congress of the World Conference on Constitutional Justice in Bali, Indonesia, in October.

Vilnius, Lithuania

30th Anniversary of the Constitution of Lithuania
Judge Dr Špelca Mežnar participated in a conference on the occasion of the 30th anniversary of the Constitution of Lithuania in Vilnius.

Tirana, Albania

30th Anniversary of the Constitutional Court of Albania
Judge Dr Rajko Knez attended a conference marking the 30th anniversary of the Constitutional Court of Albania in Tirana.

Brussels, Belgium

Conference of the Presidents of Constitutional Jurisdictions of EU Member States
In October, a high-level Conference of the Presidents of Constitutional Jurisdictions of EU Member States was held in Brussels, which was attended by Judge Dr Rajko Knez.

Ljubljana, Slovenia

Visit of a Delegation of the Constitutional Court of Korea
A delegation from the Constitutional Court of Korea paid a visit to the Constitutional Court in October. Within the framework of the study visit, a presentation on the functioning of the Constitutional Court and its information system was made.

Nov

Lisbon, Portugal

Visit to the Constitutional Court of Portugal
Advisors of the Constitutional Court, led by President Dr Matej Accetto and Secretary General Dr Sebastian Nerad, visited the Constitutional Court of Portugal in Lisbon.

Dec

Luxembourg

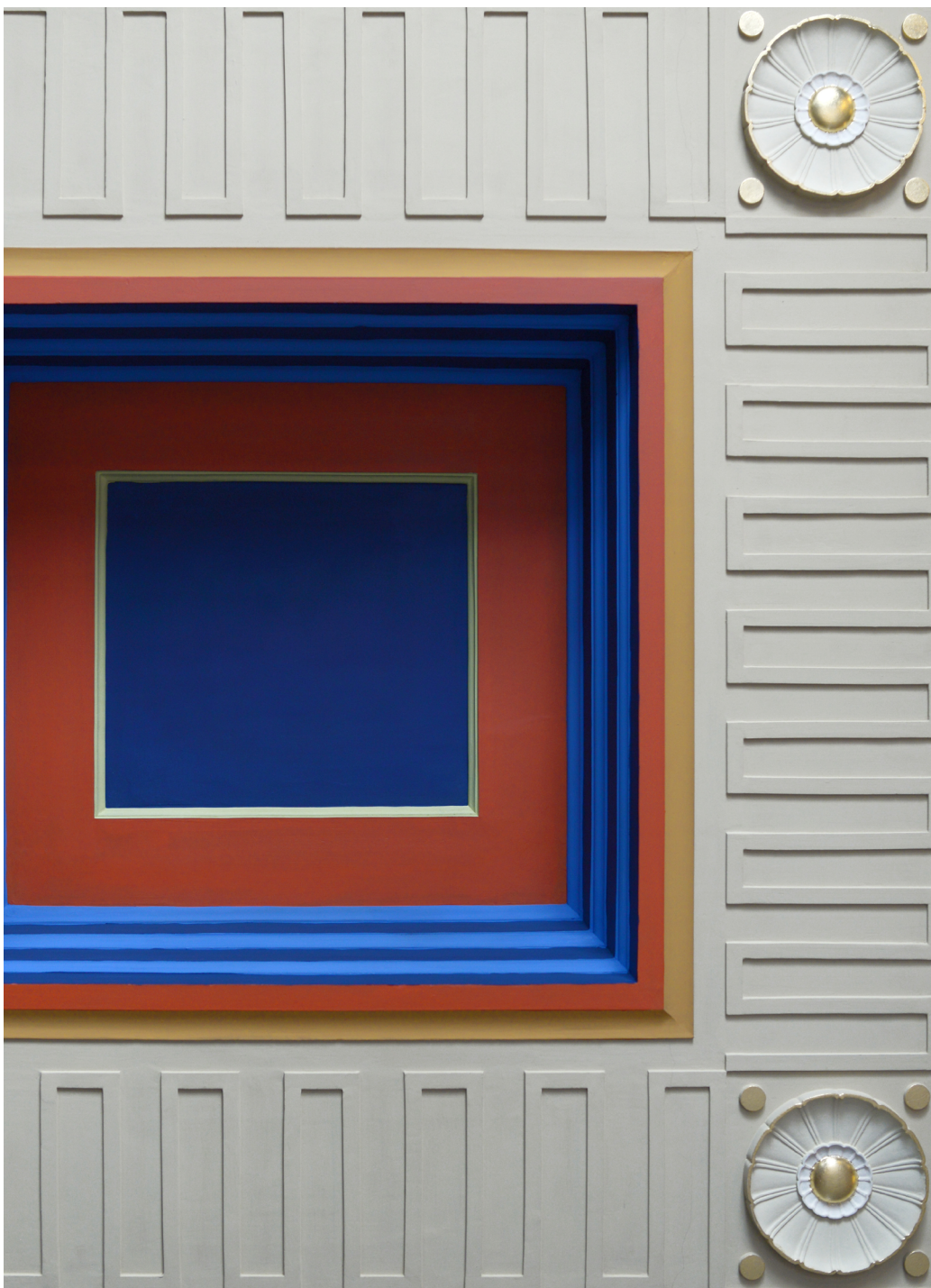
70th Anniversary of the Court of Justice of the European Union
At the beginning of December, President Dr Matej Accetto participated in a forum of judges on the occasion of the 70th anniversary of the Court of Justice of the European Union in Luxembourg, entitled "Bringing Justice Closer to the Citizen", and gave a lecture on judicial independence in the European Union at a plenary session.

Knowledge and Skill Improvement of the Court's Personnel

As the Constitutional Court is integrated 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 encourages the participation of its personnel in international training activities. In 2022, advisors of the Constitutional Court attended a conference on the economic aspects of competition law for competition law judges in Madrid, Spain, a conference of refugee and migration law judges (IARMJ) in Brdo pri Kranju, the online Annual Conference on European Family Law organised by the Academy of European Law (ERA), a seminar on public procurement within the framework of the European Judicial Training Network (EJTN) in Trier, Germany, and an ERA webinar in the field of privacy and data protection. The Head of the Analysis and International Cooperation Department attended the annual Focal Points Forum of the Superior Courts Network in Strasbourg, France, which functions under the auspices of the European Court of Human Rights, an online meeting of the European Union Judicial Network correspondents, and a workshop within the framework of the establishment of a database of decisions of constitutional courts initiated by the Constitutional Court of Hungary.

Madrid, Spain	Conference on the Economic Aspects of Competition Law for Competition Law Judges
Brdo, Slovenia	Conference of Refugee and Migration Law Judges
Online Conference	Annual Conference on European Family Law, organised by the Academy of European Law (ERA)
Trier, Germany	Seminar on Public Procurement within the Framework of the European Judicial Training Network
Webinar	ERA webinar on Privacy and Data Protection
Strasbourg, France	Annual Focal Points Forum of the Superior Courts Network
Online Meeting	Meeting of the European Union Judicial Network Correspondents
Budapest, Hungary	Workshop within the Framework of the Establishment of a Database of Decisions of Constitutional Courts

Plečnik's Palace - The seat of the Constitutional Court of the Republic of Slovenia
Photo: Ajda Schmidt



4

In Numbers

The statistical data must be interpreted in light of the fact that in 2022, as well as already in previous years, the Constitutional Court received a large number of cases of the same type. Thus, in 2022 a total of 1,087 so-called mass cases were received (i.e. 241 petitions for a review of constitutionality and 846 constitutional complaints), which is almost half of all cases received (48.2%). Although these cases are practically the same in terms of content and therefore relatively easy to resolve, the judges as well as the different services of the Constitutional Court nevertheless have to invest a significant amount of time and effort therein – of a procedural nature in particular. In the overview of the work for 2022, mass cases are included in all figures and comparisons, unless otherwise stated with respect to individual graphs and tables. Furthermore, it must be taken into consideration that mass cases as such were marked subsequently and retroactively, i.e. not when filed but only when resolved. Therefore, also the data from previous years as regards received and unresolved cases differ from the annual reports of previous years. Hence, the data in the graphs and tables are to a certain extent incomparable to the data in previous annual reports. In the chapter on statistical data, all the data in the tables and graphs include mass cases, unless otherwise stated.

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.

4.1

Cases Received

In 2022, the Constitutional Court received more cases than in 2021 if mass cases are taken into account and fewer cases than in 2021 if mass cases are disregarded. In 2022, the Constitutional Court thus received 2,254 cases (including mass cases), which is 15.1% more than in 2021, when it received 1,958 cases. If mass cases are disregarded, in 2022 the Constitutional Court received 1,167 cases, which is 6.3% less than in 2021, when it received 1,245 cases.

The increase in the total number of cases received was a consequence of receiving a higher number of mass cases. The Constitutional Court received fewer applications for a review of the constitutionality or legality of regulations (the U-I register) than in 2021, while the number of constitutional complaints (the Up register) increased significantly. In 2022, the Constitutional Court received 482 requests and petitions for a review of the constitutionality or legality of regulations, which represents a 43.4% decrease compared to 2021, when it received 851. If mass cases are disregarded, the decrease compared to 2021 amounts to 19.4%, because in 2022 the Court received 241 applications for an abstract review of regulations, whereas in 2021 it received 299 such cases. 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. In 2022, the trend reversed again, as the number of applications decreased by 43.4%, or 19.4% if mass cases are disregarded. As to constitutional complaints, in 2022 the Constitutional Court received 1,754 requests for a review of constitutionality, which entails as much as a 59.6% increase compared to the previous year (when it received 1,099 constitutional complaints). If mass cases are disregarded, in 2022 the Constitutional Court received an even somewhat lower number of constitutional complaints, namely 908, which entails a 3.3% decrease compared to 2021, when it received 938 constitutional complaints.

Within the distribution of all cases received in 2022, there was as usual a strong preponderance of constitutional complaints, which represented 77.8% 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 2022, there were 64 such cases. These are so-called joined cases, on which the Constitutional Court decides by a single decision. There were even more such joined cases among the mass cases.

In 2022, the number of constitutional complaints received by the individual panels of the Constitutional Court differed to some extent. If mass cases are disregarded, the Civil Law Panel received, as in previous

years, the most cases, although in 2022 it received 14.2% fewer cases than the year before. The number of constitutional complaints received by the Administrative Law Panel also decreased slightly, namely by 1.6%. The number of constitutional complaints received by the Criminal Law Panel increased (by 20.8%). In addition, both the Administrative Law Panel and the Criminal Law Panel 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, with mass cases excluded, the Civil Law Panel received the highest number of cases in 2022 (412 cases), which amounts to almost half (45.4%) of all constitutional complaints received. Then followed the Administrative Law Panel with 252 cases, and the Criminal Law Panel, which received 244 constitutional complaints. The picture is completely different if mass cases are taken into account, because then the Criminal Law Panel received the greatest number of cases (i.e. 857), followed by the Administrative Law Panel (485 cases), while the lowest number of such cases was received by the Civil Law Panel (412), which did not receive any mass cases at all.

In terms of their content, the majority of the constitutional complaints received in 2022 stemmed from minor offences (37.9% of all constitutional complaints), partially also because of mass cases, which entails a 266.8% increase in minor offence cases compared to the previous year. They were followed by administrative disputes (18.4%), complaints connected to civil law litigation (11.9%), and criminal law cases (11%). Lower percentages were seen in the fields of enforcement proceedings (5%), labour disputes (3.6%), commercial disputes (3%), and taxation (2.2%).

As regards proceedings for a review of the constitutionality or legality of regulations (U-I cases), the number of cases received in 2022 was significantly lower than in 2021. The decrease amounted to 19.4%, or even 43.4% if mass cases are also taken into account. A total of 51 cases were initiated on the basis of requests submitted by privileged applicants, in particular those determined by the Constitutional Court Act). In this context, the activity of the regular courts must be highlighted, as they filed 13 requests for a review of the constitutionality of laws. Among the applicants who filed requests there was also a large number (21) of individuals and other entities entitled to submit requests in so-called referendum cases under the Referendum and People's Initiative Act, where the review by the Constitutional Court is narrowed to the question of whether the National Assembly prevented the calling and holding of a legislative referendum in a constitutionally consistent manner. Other proceedings for the review of the constitutionality or legality of regulations were initiated upon the basis of petitions filed by individuals.

Of the 241 petitions and requests for a review of the constitutionality or legality of regulations, in 64 cases (26.5% of all petitions) the petitioners concurrently filed a constitutional complaint. There were many more such cases among mass cases. 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 2022 most often laws were challenged. Applicants thus challenged laws in 162 cases. Laws were followed by regulations of local communities (challenged in 54 cases) and acts of the Government and Ministries (challenged in 19 cases), while regulations of other authorities were challenged in 10 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. The most frequently challenged provisions were those of the Act Amending the Health Services Act (191 times), the War Disability Act (48 times), the Criminal Code (20 times), and the Act on Additional Measures to Stop the Spread and Mitigate, Control, Recover from, and Eliminate the Consequences of COVID-19 (16 times). Other laws were challenged fewer than 10 times.

4.2

Cases Resolved

In 2022, the Constitutional Court resolved significantly more cases than in 2021 (2,658 cases compared to 1,716 cases in the previous year, if mass cases are taken into account, which entails a 54.9% increase). If mass cases are disregarded, the Constitutional Court resolved 1,657 cases compared to 1,272, which is still a 30.3% increase.

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 2022, the Constitutional Court resolved 1,120 cases (380 excluding mass cases) relating to the review of the constitutionality and legality of regulations (U-I cases), amounting to a 42.1% share of all cases resolved (22.9% excluding mass cases). In comparison to 2021, when it resolved 298 petitions and requests for a review of the constitutionality of regulations (257 excluding mass cases), this represents a 275.8% increase (47.8% excluding mass cases). In 2022, as has been the case every year thus far, constitutional complaints represented the majority of cases resolved. The Constitutional Court resolved 1,523 such cases, amounting to a 57.3% share of all cases resolved (1,262 resolved Up cases and a 76.2% share excluding mass cases). Such a number of resolved constitutional complaints represents an 8% increase in comparison to 2021, when the Constitutional Court resolved 1,410 constitutional complaints (1,007 excluding mass cases).

From the perspective of the individual panels of the Constitutional Court, if mass cases are disregarded, in 2022 the highest number of constitutional complaints was resolved by the Civil Law Panel, i.e. 528; the Administrative Law Panel resolved 349 constitutional complaints, and the Criminal Law Panel 385. Compared to 2021, in 2022 the number of constitutional complaints resolved by the Civil Law Panel increased by 27.8%, the number of cases resolved by the Administrative Law Panel decreased by 12.8%, and the number of cases resolved by the Criminal Law Panel increased significantly, namely by 98.5%. Understandably, the picture is again quite different if mass cases are taken into account. That way, the Administrative Law Panel resolved the largest number of constitutional complaints, 609, followed by the Criminal Law Panel with 528 cases and the Criminal Law Panel with 386 cases.

In addition to proceedings for the review of the constitutionality and legality of regulations and constitutional complaints, in 2022 the Constitutional Court also resolved 12 jurisdictional disputes (P cases), two cases concerning the constitutionality of the acts and activities of political parties (Ps cases), and one case concerning the confirmation of the terms of office of deputies and members of the National Council (Mp cases).

In terms of content, the greatest number of constitutional complaints resolved, including mass constitutional complaints, referred to administrative disputes (24.5%), followed by criminal law cases (21%), civil law

litigation (18.2%), labour disputes (7.4%), and enforcement proceedings (5.6%). In other fields, the share was lower than 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 1,657 cases resolved in 2022 (excluding mass cases), the Constitutional Court adopted as many as 105 decisions; the other cases were resolved by orders. If substantive decisions according to the individual registers are considered, it can be observed that in 380 proceedings for a review of the constitutionality or legality of regulations (U-I cases), the Constitutional Court adopted 48 decisions (12.6% of U-I cases), and in constitutional complaint proceedings it resolved 49 out of 1,262 cases by a decision (2.6% of Up cases). Statistically speaking, in 2022 the Constitutional Court adopted more decisions in proceedings for a review of the constitutionality or legality of regulations than in the previous year (48 compared to 43), while in constitutional complaint proceedings it adopted 25 more decisions than in 2021 (49 compared to 24) and nine of these decisions were adopted by a panel. The total number of decisions – the Constitutional Court also adopted eight decisions regarding jurisdictional disputes (P cases) – was also significantly higher than in 2021 (105 compared to 69). The most important decisions are briefly presented in the present report. Constitutional Court judges submitted 77 separate opinions, of which 48 were concurring and 29 dissenting.

In 2022, the success rate of complainants, petitioners, and applicants, taken as a whole, was, statistically speaking, higher than in 2021. Of the 380 resolved petitions and requests for a review of the constitutionality or legality of regulations, in 25 cases the Constitutional Court established that the law was unconstitutional (6.6% of all U-I cases), of which it abrogated the relevant statutory provisions in nine cases, whereas in six cases it adopted declaratory decisions in which it established an unconstitutionality, and in ten cases it also imposed on the legislature a time limit by which the established unconstitutionality must be remedied. In 14 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 10.3%, while in 2021 it was 10.8%. The success rate of constitutional complaints was slightly higher than in the previous year. Out of all constitutional complaints resolved in 2022 (1,262 excluding mass cases), the Constitutional Court granted 33 of them (i.e. 2.6%), and by a decision dismissed 16 constitutional complaints as unfounded. In comparison, the success rate amounted to 1.8% in 2021. 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 16 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. The Constitutional Court established ten violations of the second paragraph of Article 14 of the Constitution, which guarantees equality before the law, and twice it established a violation of the first paragraph of Article 23 of the Constitution. The first paragraph of Article 28, Articles 29, 33, and 35, the first paragraph of Article 36, and Article 37 of the Constitution were violated once each.

The average period of time it took to resolve a case in 2022 was slightly longer than in 2021, mainly because greater emphasis was placed on resolving older cases. On average, the Constitutional Court resolved a case in 613 days (as compared to 554 days in the previous year). This annual report presents the information on the duration of proceedings without taking into account 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 522 days. Constitutional complaints were resolved by the Constitutional Court on average in 648 days.

4.3

Unresolved Cases

As of the end of 2022, the Constitutional Court had a total of 2,325 unresolved cases remaining, of which four were from 2018, 51 from 2019, 260 from 2020, and 595 from 2021. The remaining unresolved cases (1,415) were received in 2022. Among the unresolved cases, 370 cases were priority cases and 110 were absolute priority cases. Such a designation is assigned particularly to cases that due to their nature also the regular courts must consider expeditiously. However, priority cases also include requests by courts for a review of the constitutionality of laws and other cases that the Constitutional Court deems need to be considered expeditiously due to their importance to society.

Among the constitutional complaints that remained unresolved as of the end of the year, in two 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 2022, the suspension of the implementation of the challenged regulation was ordered in six cases.

In 2022, the number of unresolved cases decreased slightly compared to 2021. If mass cases are taken into account, the number of unresolved cases at the end of 2019 was 2,563, in 2020 2,487 cases, in 2021 2,732 cases (which is the highest figure thus far), and at the end of 2022 the number decreased again, to 2,325 cases. It must be taken into consideration that 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 and the number of cases considered and resolved every year, it must be underlined again that both the judges of the Constitutional Court and its advisory personnel are significantly burdened. At the same time, there is still 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.

Summary of Statistical Data

5.1 Key

Introductory note

The statistical data in reports from previous years did not include so-called mass cases. Mass cases are cases that are identical in terms of substance and therefore generally easy to resolve. In the present annual report, however, the data in the tables and figures, for 2022 as well as for previous years, also include mass cases, unless explicitly indicated otherwise. Therefore, the reported data differ to some extent from the data in the tables and figures in previous annual reports.

In 2022, the Constitutional Court received 1,087 mass cases (i.e. 241 petitions for a review of constitutionality and 846 constitutional complaints) and resolved 1,001 such cases (i.e. 740 petitions for a review of constitutionality and 261 constitutional complaints).

Registers

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

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**

Panels

The Constitutional Court examines constitutional complaints in the following panels:

Civil	**panel for the examination of constitutional complaints in the field of civil law**
Administrative	**panel for the examination of constitutional complaints in the field of administrative law**
Criminal	**panel for the examination of constitutional complaints in the field of criminal law**

5. 2 Summary of Statistical Data

Table 1
Summary Data on All Cases in 2022

Register	Cases pending as of 31 December 2021	Cases received in 2022	Cases resolved in 2022	Cases pending as of 31 December 2022
Up	1,789	1,754	1,523	2,020
U-I	936	482	1,120	298
P	4	12	12	4
Mp	0	4	1	3
Ps	0	2	2	0
Total	**2,729**	**2,254**	**2,658**	**2,325**

Table 1a
Summary Data on All Cases in 2022 (Excluding Mass Cases)

Register	Cases pending as of 31 December 2021	Cases received in 2022	Cases resolved in 2022	Cases pending as of 31 December 2022
Up	1,630	908	1,262	1,276
U-I	406	241	380	267
P	4	12	12	4
Mp	0	4	1	3
Ps	0	2	2	0
Total	**2,040**	**1,167**	**1,657**	**1,550**

Table 2
Summary Data on Mass Cases

Register	Cases received in 2022	Cases resolved in 2022
U-I	241	740
Up	846	261
Total	**1,087**	**1,001**

Table 3

Summary Data regarding Up Cases by Panel in 2022

Panel	Cases pending as of 31 December 2021	Cases received in 2022	Cases resolved in 2022	Cases pending as of 31 December 2022
Civil Law	814	412	528	698
Administrative Law	459	485	609	296
Criminal Law	516	857	386	987
Total	**1,789**	**1,754**	**1,523**	**2,020**

Table 3a

Summary Data regarding Up Cases by Panel in 2022 (Excluding Mass Cases)

Panel	Cases pending as of 31 December 2021	Cases received in 2022	Cases resolved in 2022	Cases pending as of 31 December 2022
Civil Law	814	412	528	698
Administrative Law	393	252	349	335
Criminal Law	423	244	385	282
Total	**1,630**	**908**	**1,262**	**1,276**

Table 4

Unresolved Cases according to Year Received as of 31 December 2022

Year	2018	2019	2020	2021	2022	Total
U-I	2	17	48	68	163	298
Up	2	34	212	527	1245	2,020
P					4	4
Mp					3	3
Total	**4**	**51**	**260**	**595**	**1415**	**2,325**

5.2.1

Cases Received

Figure 1

Distribution of Cases Received in 2022

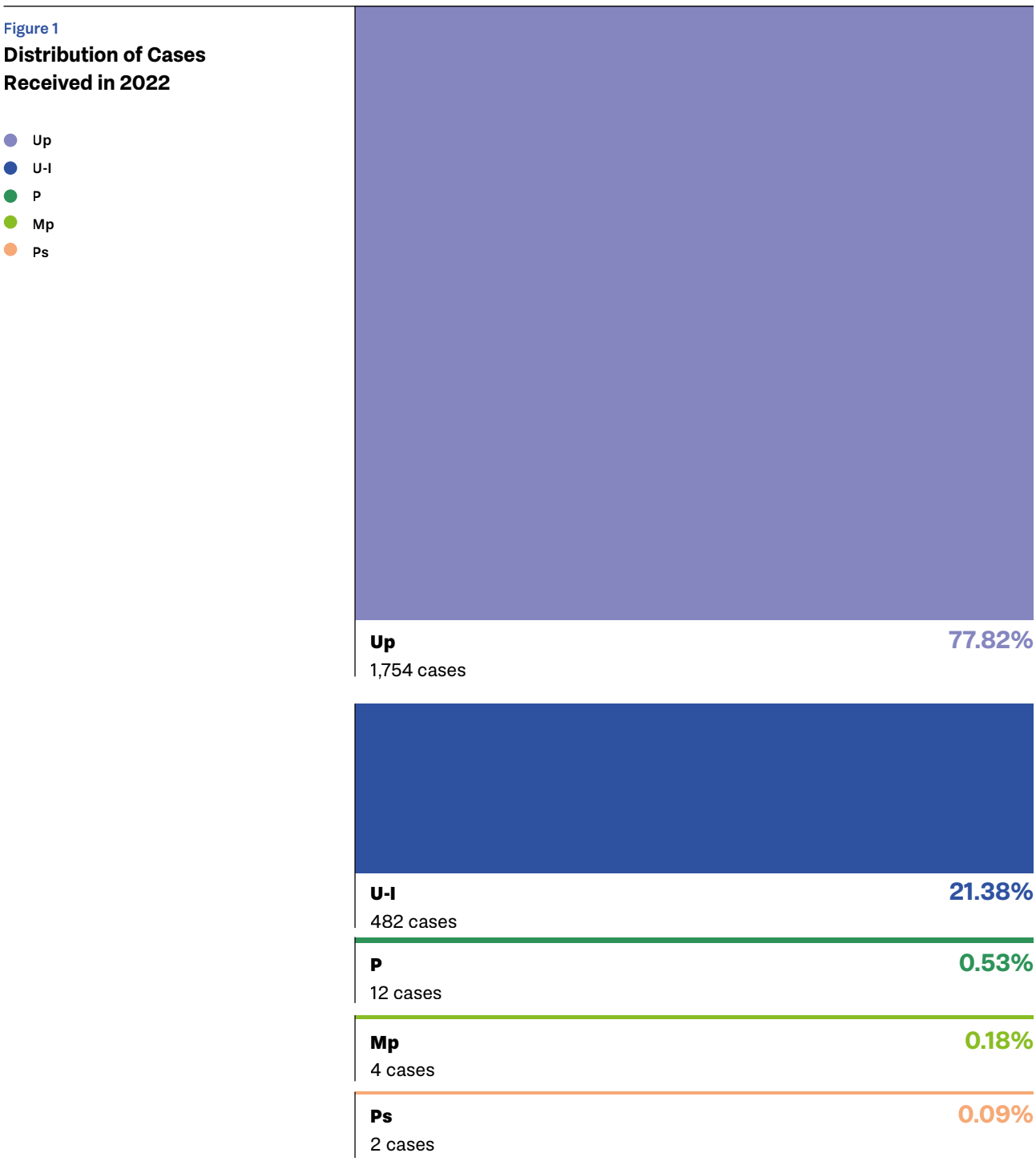


Table 5

Cases Received according to Type and Year

Year		U-I		Up	P	U-II	Mp	Ps	Total	Total
	Incl. mass cases	Excl. mass cases	Incl. mass cases	Excl. mass cases					Incl. mass cases	Excl. mass cases
2015	212	212	1,003	1,003	7	2			1,224	1,224
2016	226	226	1,092	1,092	4				1,322	1,322
2017	184	182	1,134	1,125	2				1,320	1,309
2018	518	208	1,628	1,287	5		5		2,156	1,505
2019	474	165	1,740	1,283	4		1		2,219	1,453
2020	489	257	1,391	1,022	5	1			1,886	1,285
2021	851	299	1,099	938	6	2			1,958	1,245
2022	**482**	**241**	**1754**	**908**	**12**		**4**	**2**	**2254**	**1,167**
2022/2021	**-43,36%**	**-19.40%**	**59.6%**	**-3.2%**	**100.00%**	**-100.00%**			**15.1%**	**-6.3%**

Figure 2

Total Number of Cases Received by Year

- Excluding mass cases
  2021 / 2022 ↘ -6.3 %
- Including mass cases
  2021 / 2022 ↗ +15.1 %

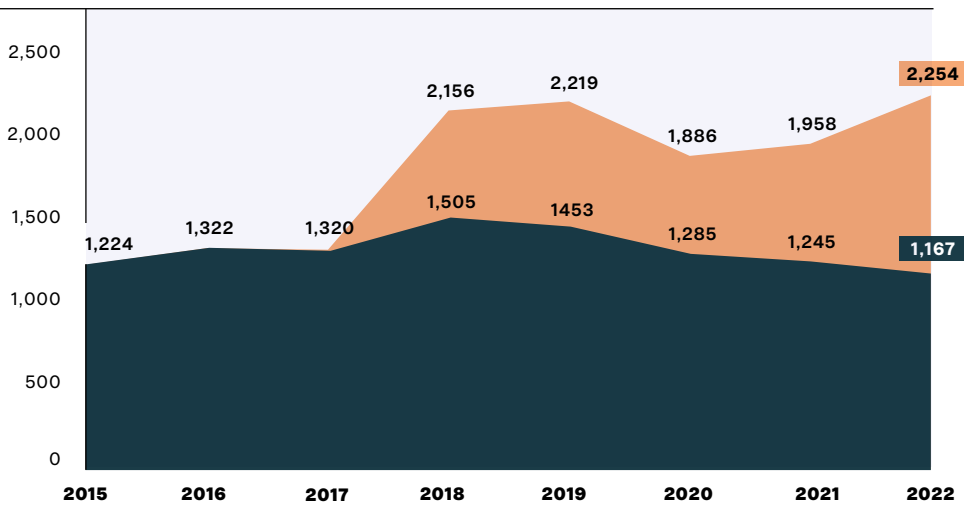


Figure 3

Number of U-I Cases Received by Year

- Excluding mass cases
  2021 / 2022 ↘ -19.4%
- Including mass cases
  2021 / 2022 ↘ -43.4%

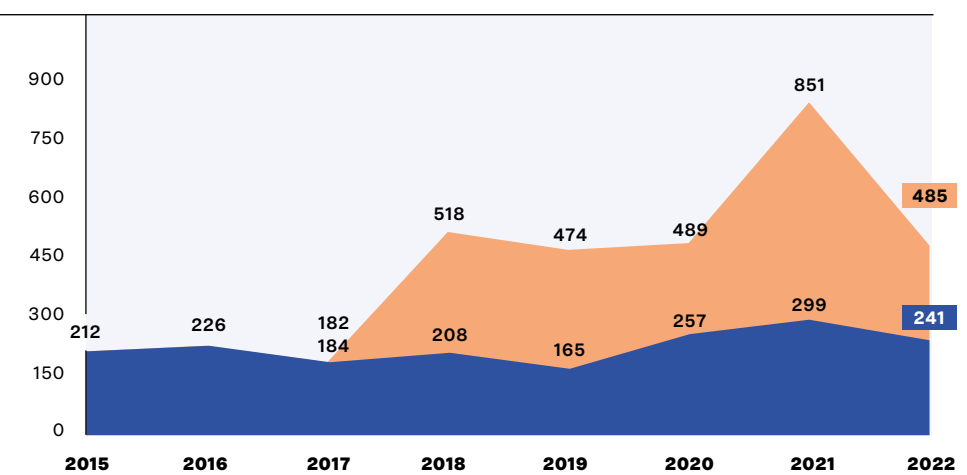


Table 6

Number of Requests for a Review Received according to Applicant

Applicants requesting a review	Number of cases
Upravno sodišče Republike Slovenije (Administrative Court of the Republic of Slovenia)	7
Državni svet Republike Slovenije (National Council of the Republic of Slovenia)	4
Deputy Group of the National Assembly	3
Vrhovno sodišče Republike Slovenije (Supreme Court of the Republic of Slovenia)	3
Bank of Slovenia	1
Branimir Štrukelj and Others	
Delovno in socialno sodišče v Ljubljani (Labour and Social Court in Ljubljana)	1
Information Commissioner	1
Mestna občina Ljubljana (Urban Municipality of Ljubljana)	1
Okrajno sodišče v Mariboru (Local Court in Maribor)	1
Policijski sindikat Slovenije (Police Trade Union of Slovenia)	1
Računsko sodišče Republike Slovenije (Court of Audit of the Republic of Slovenia)	1
Sindikat carinikov Slovenije in drugi (Trade Union of Customs Officers of Slovenia and Others)	1
Sindikat delavcev dejavnosti energetike Slovenije (Trade Union of Energy Sector Workers of Slovenia)	1
Sindikat poklicnega gasilstva Slovenije (Trade Union of Professional Firefighters of Slovenia)	1
Višje sodišče v Kopru (Higher Court in Koper)	1
Government of the Republic of Slovenia	1
Individuals and Other Applicants	22
Total	**52**

Table 7

Legal Acts Challenged by Year (Excluding Mass Cases)

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
2022	**162**	**13**	**6**	**54**	**10**

Figure 4

Distribution of Challenged Acts (U-I Cases Received, Excluding Mass Cases)

- Laws and other acts of the National Assembly
- Ordinances and other acts of self-governing local communities
- Decrees and other acts of the Government
- Regulations of other authorities
- Rules and other acts of ministries

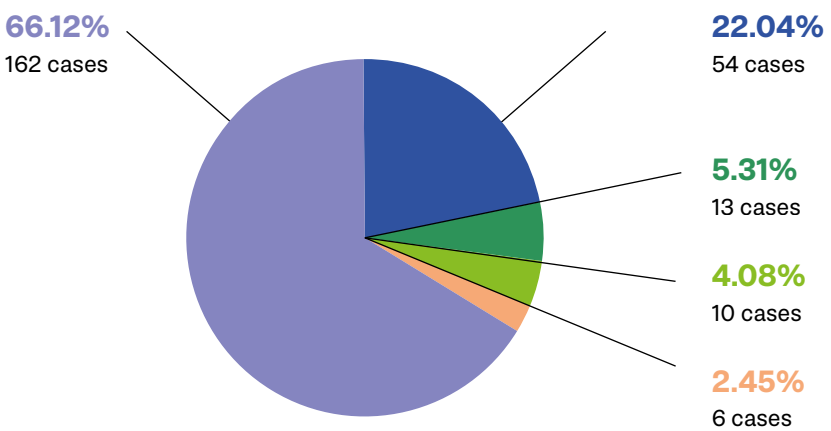


Table 8

Acts Challenged Multiple Times in the U-I Cases Received in 2022

Acts challenged multiple times in 2022	Number of cases
The Act Amending the Health Care Services Act	191
War Disability Act	48
Criminal Code	20
Additional Measures to Stop the Spread, Mitigate, Control, Recover from and Eliminate the Consequences of COVID-19 Act	16
Communicable Diseases Act	8
Building Act	8
Criminal Procedure Act	8
Pension and Disability Insurance Act	7
Civil Procedure Act	6
Claim Enforcement and Security Act	5
Free Legal Aid Act	5
Financial Administration Act	4
Spatial Management Act	4
Administrative Disputes Act	4
Act Determining Emergency Measures to Mitigate the Consequences of the Impact of High Energy Commodity Prices	4
Act Regulating the Enforcement of the European Court of Human Rights Judgment in Case No. 60642/08	3
Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act	3
Family Code	3
Attorneys Act	3
Personal Income Tax Act	3
Veterinary Practice Act	3
Act on the Limitation and Allocation of Currency Risk Between Creditors and Borrowers of Loans Denominated in Swiss Francs	3
Radiotelevizija Slovenija Act	3

Figure 5

Number of Up Cases Received according to Panel

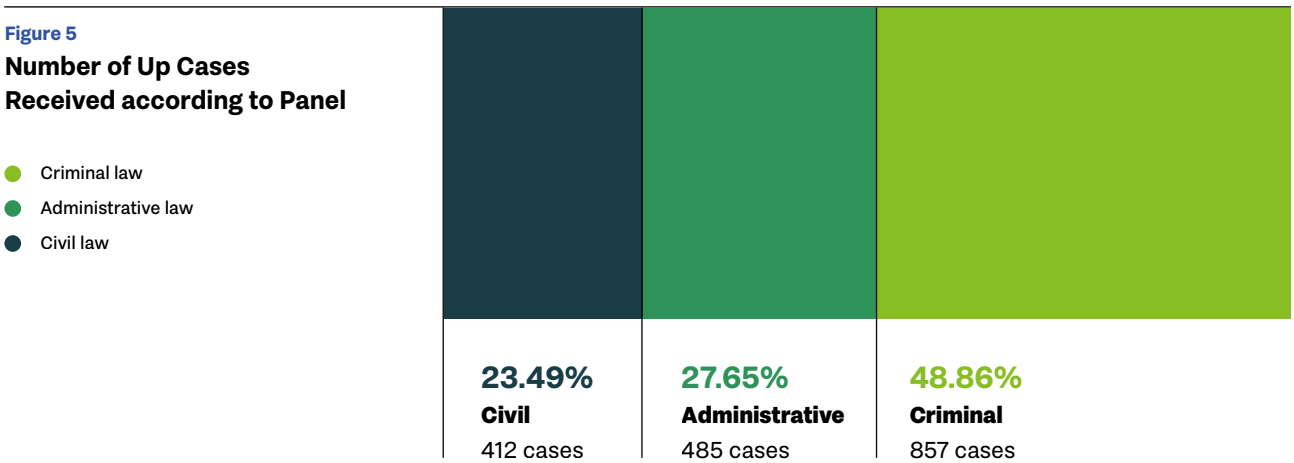


Figure 5a

Number of Up Cases Received according to Panel (Excl. Mass Cases)

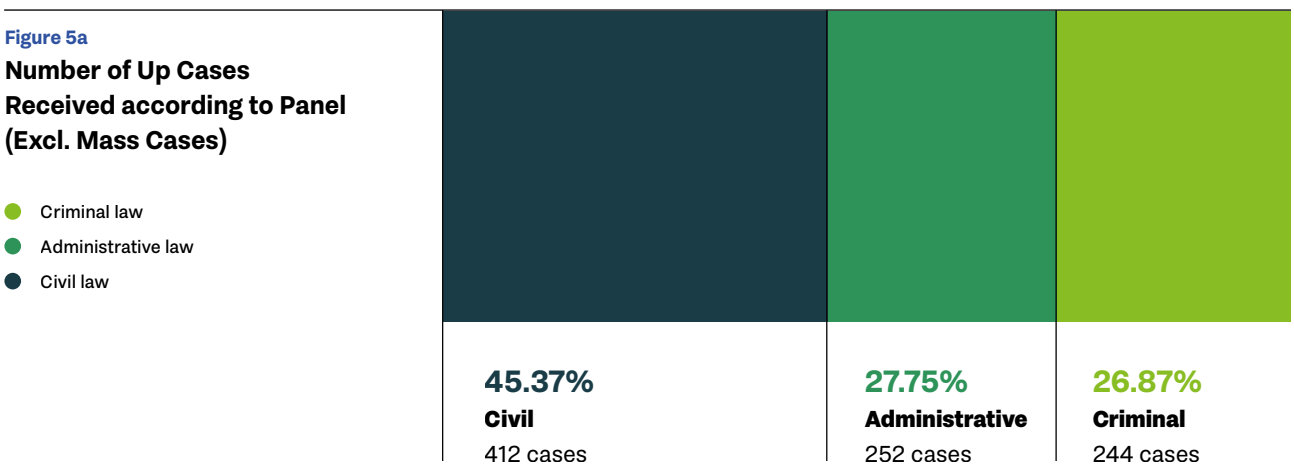


Table 9

Number of Cases Received according to Panel and Year

Year	Civil law		Administrative law		Criminal law		Total	
	Incl. mass cases	Excl. mass cases	Incl. mass cases	Excl. mass cases	Incl. mass cases	Excl. mass cases	Incl. mass cases	Excl. mass cases
2015	472	472	326	326	205	205	1,003	1,003
2016	453	453	389	389	250	250	1,092	1,092
2017	458	458	423	422	253	245	1,134	1,125
2018	615	615	732	421	281	251	1,628	1,287
2019	657	657	689	378	394	248	1,740	1,283
2020	500	500	527	319	364	203	1,391	1,022
2021	480	480	298	256	321	202	1,099	938
2022	**412**	**412**	**485**	**252**	**857**	**244**	**1754**	**908**
2022/2021	**-14.2%**	**-14.2%**	**62.8%**	**-1.6%**	**167%**	**20.8%**	**59.6%**	**-3.2%**

Figure 6

Number of Up Cases Received by Year

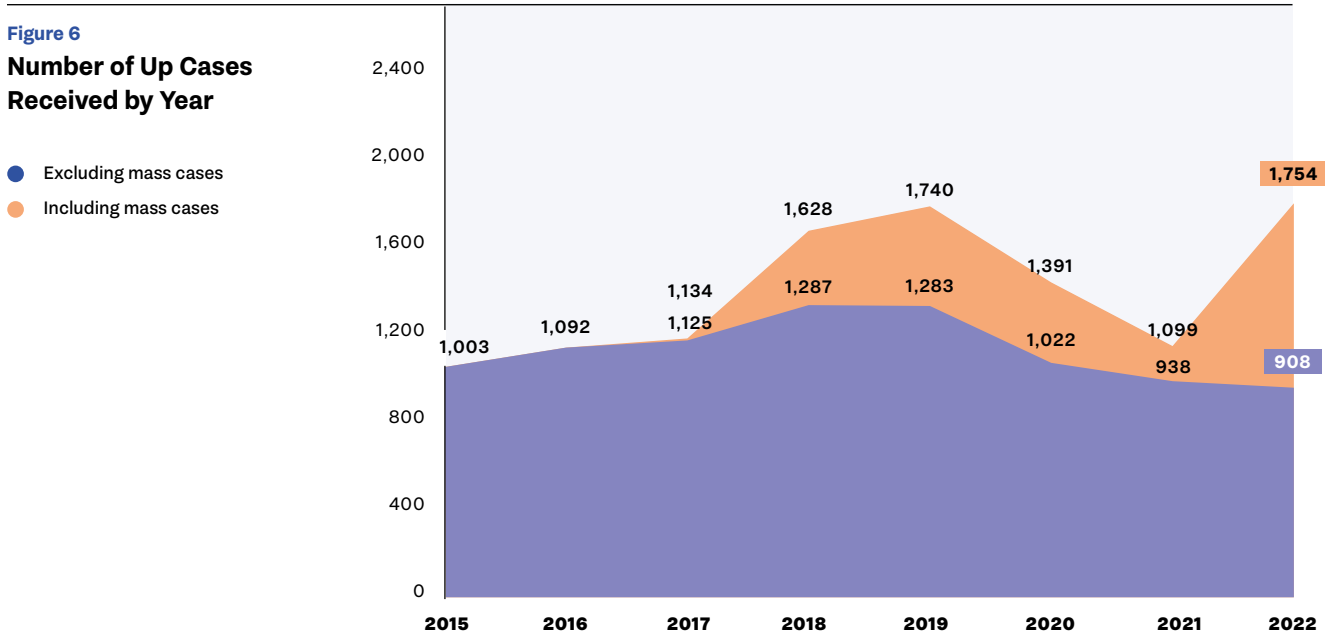


Table 10

Up Cases Received according to Type of Dispute

Type of dispute	Cases received in 2022	Share	Cases received in 2021	Change 2022/2021
Minor Offences	664	37.86%	181	266.85%
Other Administrative Disputes	322	18.36%	123	161.79%
Civil Law Litigation	208	11.86%	239	-12.97%
Criminal Cases	193	11.00%	141	36.88%
Enforcement Proceedings	87	4.96%	77	12.99%
Labour Law Disputes	63	3.59%	63	0%
Commercial Law Disputes	53	3.02%	75	-29.33%
Taxes	38	2.17%	49	-22.45%
Non-litigious Civil Law Proceedings	27	1.54%	28	-3.57%
Social Law Disputes	25	1.43%	28	-10.71%
Insolvency Proceedings	14	0.80%	24	-41.67%
Election	13	0.74%	1	1200%
Proceedings related to the Land Register	12	0.68%	15	-20%
Matters concerning Spatial Planning	10	0.57%	11	-9.09%
No Dispute	7	0.40%	5	40%
Other	7	0.40%	12	-41.67%
Civil Status of Persons	4	0.23%	7	-42.86%
Succession Proceedings	4	0.23%	9	-55.56%
Registration in the Companies Register	2	0.11%	4	-50%
Denationalisation	1	0.06%	7	-85.71%
Total	**1,754**	**100%**	**1,099**	**+59.6%**

5.2.1

Cases Resolved*

* The data reported in previous annual reports may differ by one or two cases for each respective year. This is a consequence of subsequent corrections of statistical data, which may occur for different reasons after the publication of the annual report.

Figure 7

Distribution of Cases Resolved in 2022

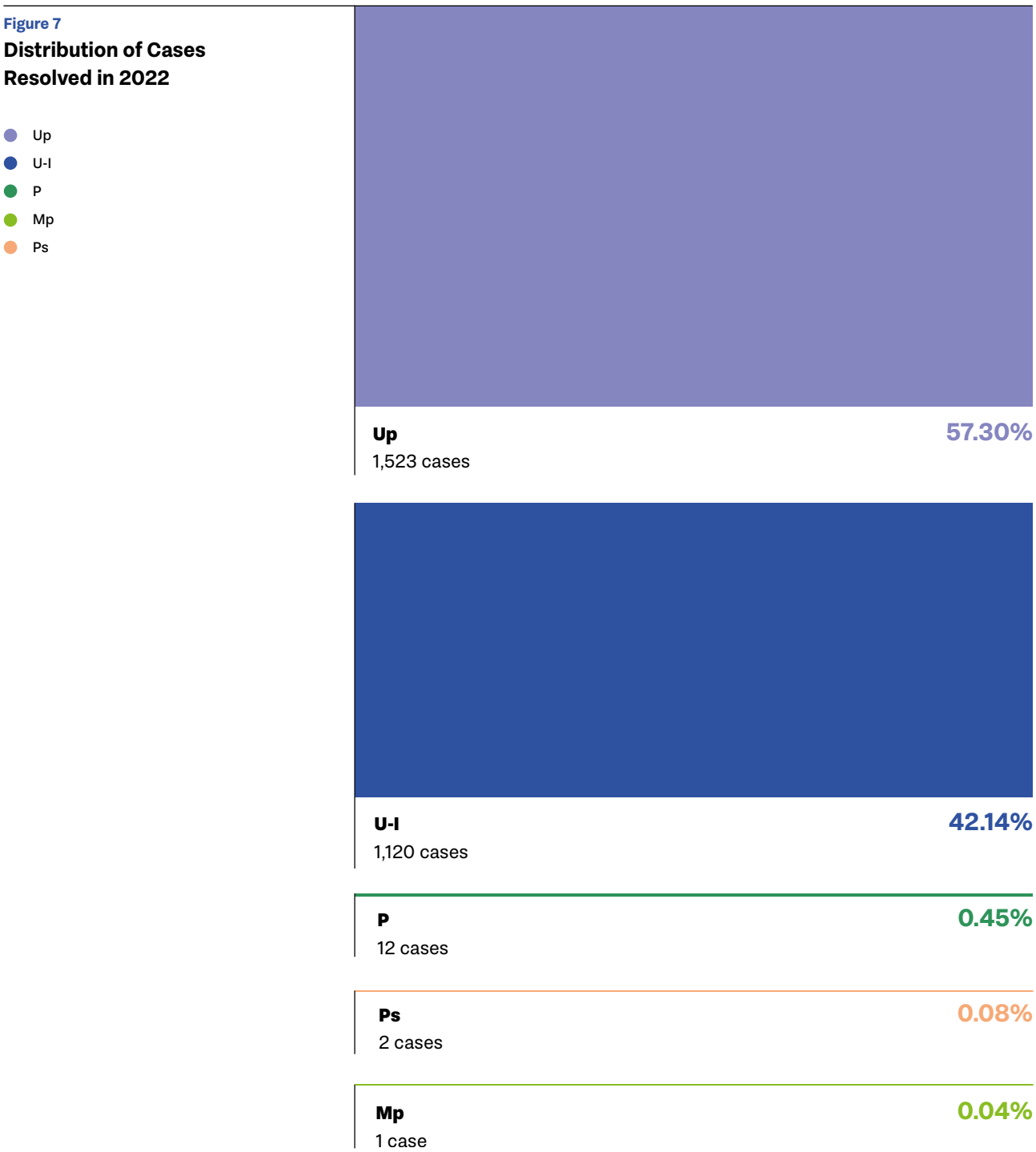


Figure 7a

Distribution of Cases Resolved in 2022 (Excl. Mass Cases)

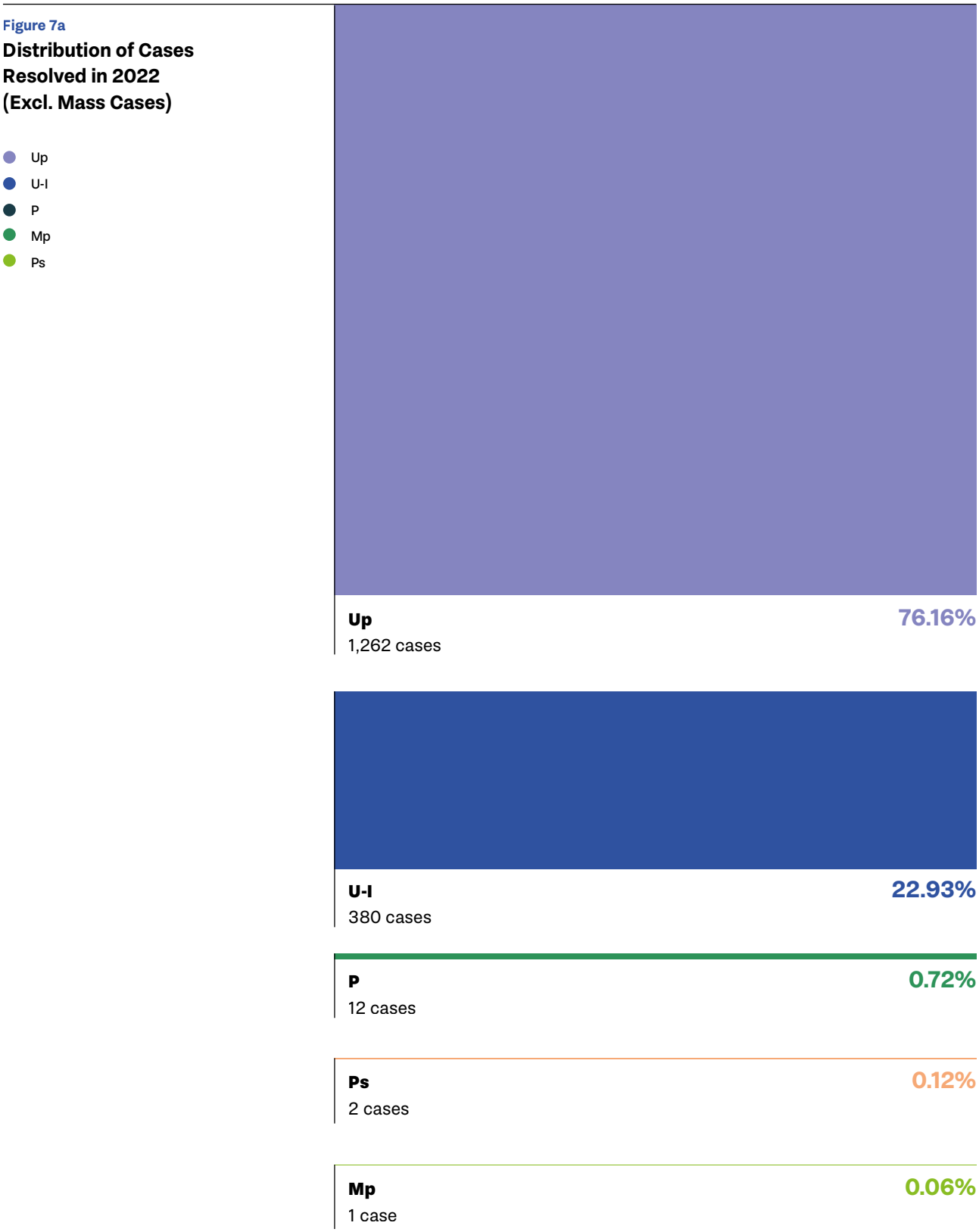


Table 11

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

Year	U-I		Up		P	U-II	Mp	Ps	Total	Total
	Incl. mass cases	Excl. mass cases	Incl. mass cases	Excl. mass cases					Incl. mass cases	Excl. mass cases
2015	221	221	964	964	10	2			1,197	1,197
2016	214	214	870	870	10				1,094	1,094
2017	156	156	785	785	5				946	946
2018	406	153	1,264	1,011	5		5		1,680	1,174
2019	420	130	1,298	1,007	5		1		1,724	1,143
2020	516	225	1,443	1,212	3				1,962	1,440
2021	298	257	1,410	1,007	5	3			1,716	1,272
2022	**1,120**	**380**	**1,523**	**1,262**	**12**		**1**	**2**	**2,658**	**1,657**
2022/2021	**275.8%**	**47.8%**	**8%**	**25.3%**	**140%**	**-100%**			**54.9%**	**30.3%**

Figure 8

Number of Cases Resolved according to Year Resolved

- Excluding mass cases
  2021 / 2022 ↗ +30.3%
- Including mass cases
  2021 / 2022 ↗ +54.9%

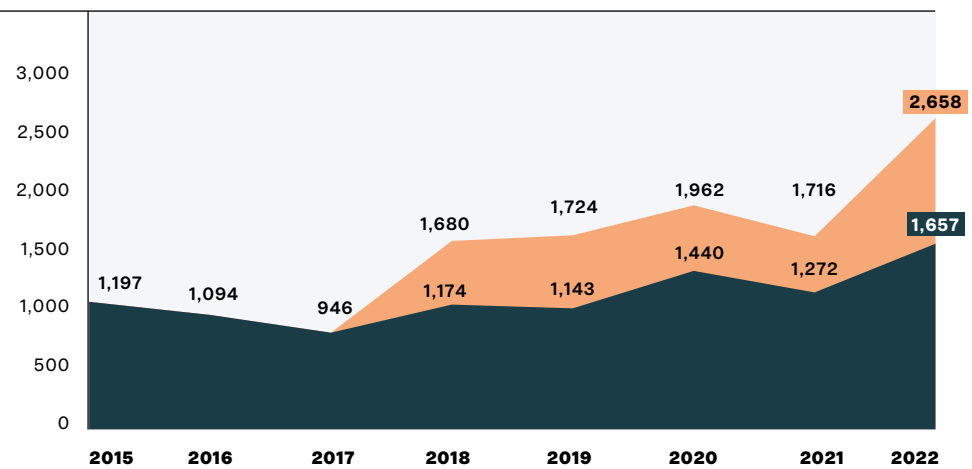


Figure 9

Number of U-I Cases Resolved according to Year

- Excluding mass cases
  2021 / 2022 ↗ +275.8%
- Including mass cases
  2021 / 2022 ↗ +47.7%

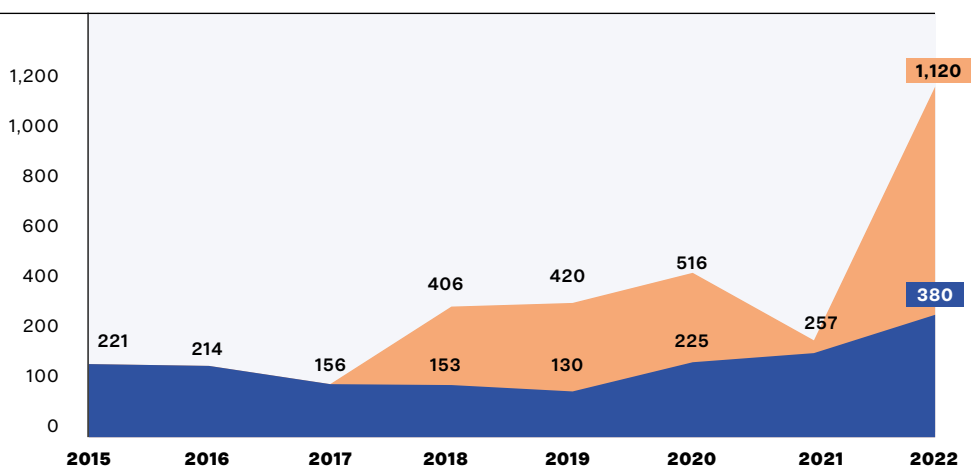
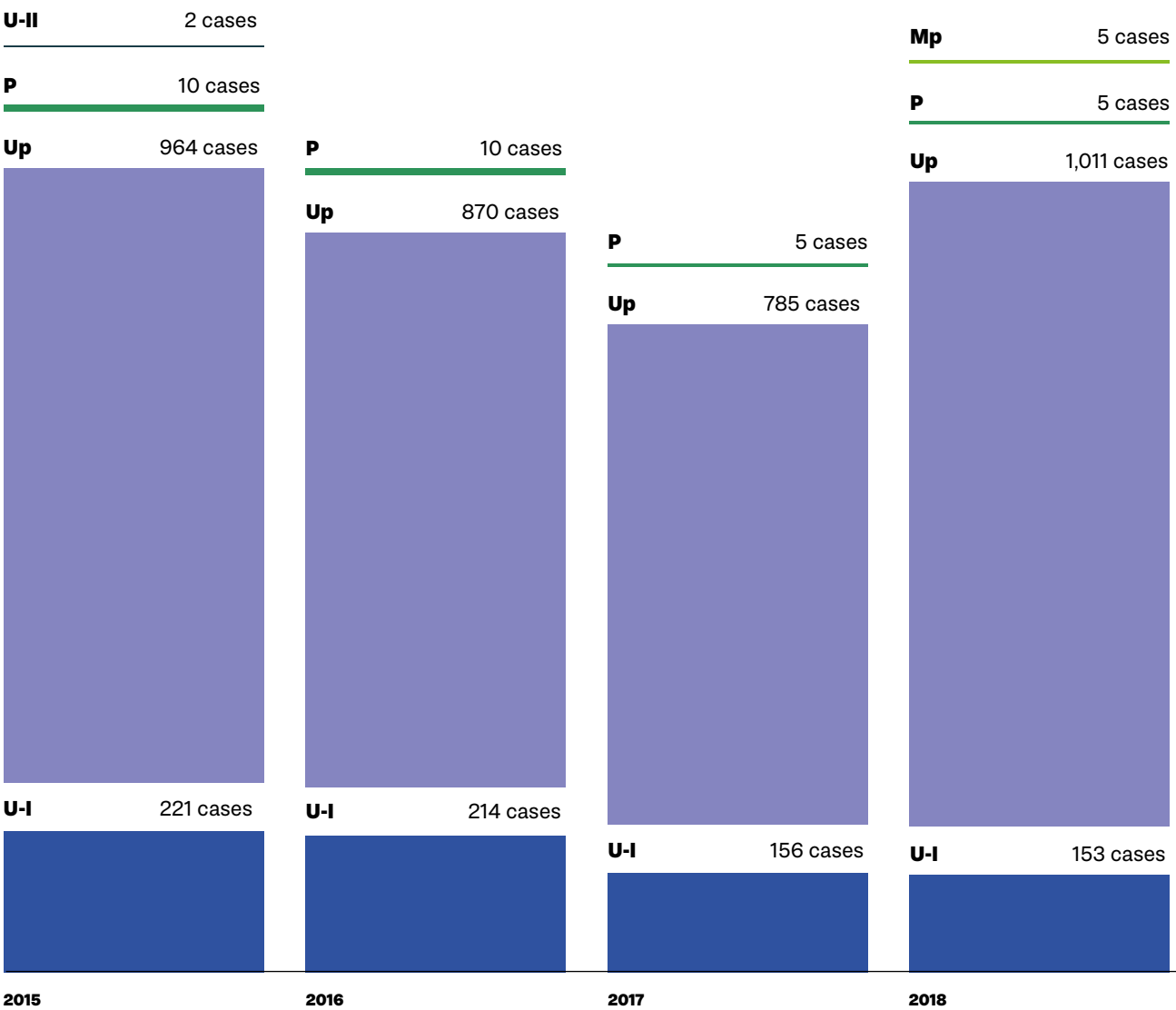


Figure 10

Distribution of Cases Resolved according to Type of Case and Year Resolved (Excl. Mass Cases)



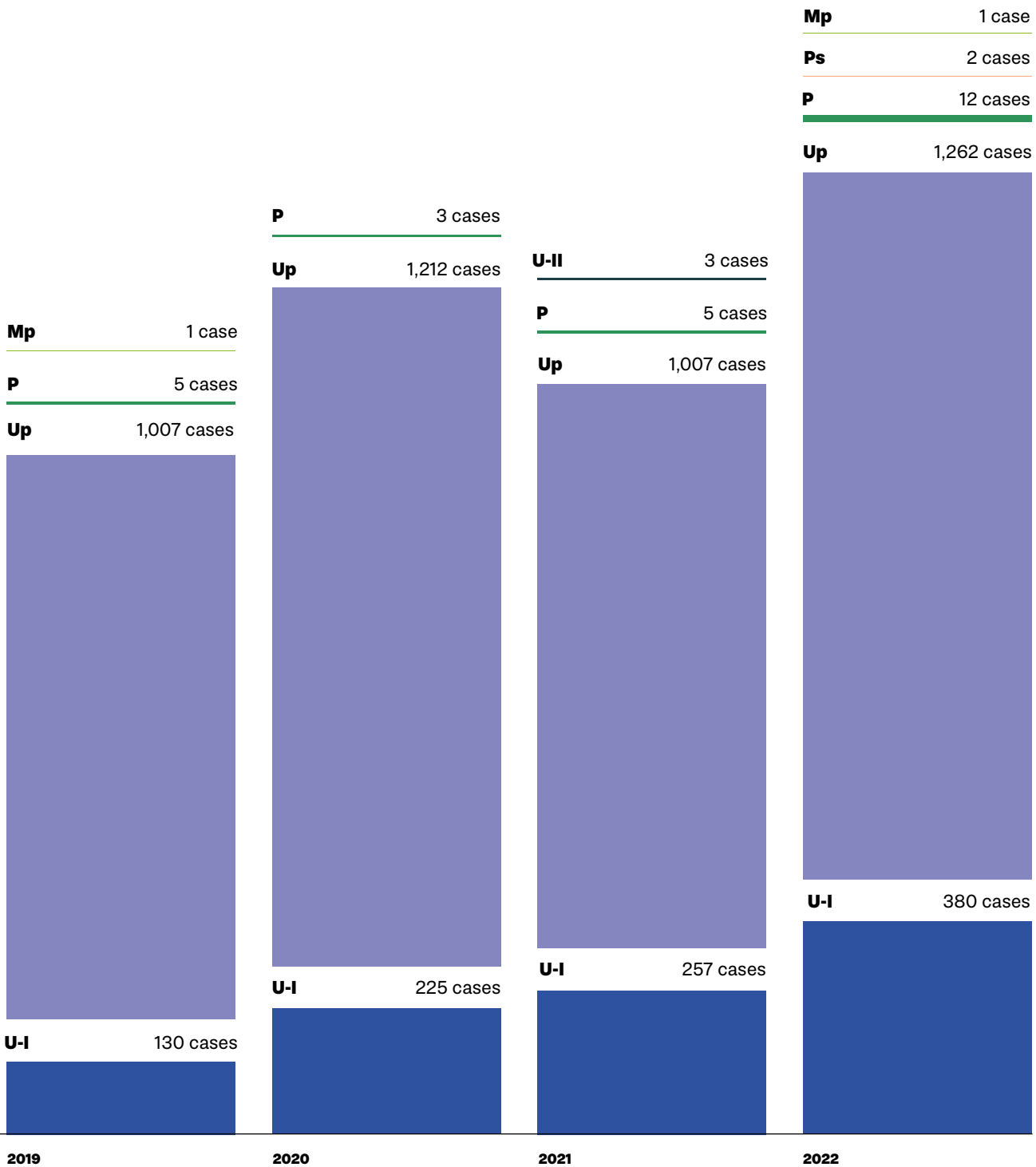

Mp 1 case
P 5 cases
Up 1,007 cases
U-I 130 cases
2019
P 3 cases
Up 1,212 cases
U-I 225 cases
2020
U-II 3 cases
P 5 cases
Up 1,007 cases
U-I 257 cases
2021
Mp 1 case
Ps 2 cases
P 12 cases
Up 1,262 cases
U-I 380 cases
2022

Table 12

U-I Cases Resolved by a Decision according to Year (Excl. Mass Cases)

Year	Resolved	Cases resolved on merits	Percentage
2015	221	33	14.9%
2016	214	38	17.8%
2017	156	19	12.2%
2018	153	28	18.3%
2019	130	24	18.5%
2020	225	33	14.7%
2021	257	43	16.7%
2022	**380**	**48**	**12.6%**

Table 13

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

Type of resolution	2022 requests	2022 petitions/ *sua sponte*	2022 Total	2021	2020	2019	2018	2017
Abrogation of statutory provisions	3	5	**9**	10	3	9	7	6
Inconsistency with the Constitution – statutory provisions	2	4	**6**	3	0	2	3	2
Inconsistency with the Constitution and determination of a deadline – statutory provisions	4	6	**10**	8	10	4	4	3
Not inconsistent with the Constitution – statutory provisions	9	4	**13**	15	14	7	9	7
Inconsistency, abrogation, or annulment of provisions of regulations	0	14	**14**	7	6	1	3	2
Not inconsistent with the Constitution or the law– provisions of regulations	12	5	**17**	0	3	1	1	0
Dismissed	0	76	**76**	38	47	30	19	39
Rejected	42	222	**264**	181	142	81	105	111
Proceedings were stayed	7	22	**29**	14	19	3	11	10

Figure 11

Number of Up Cases Resolved according to Year

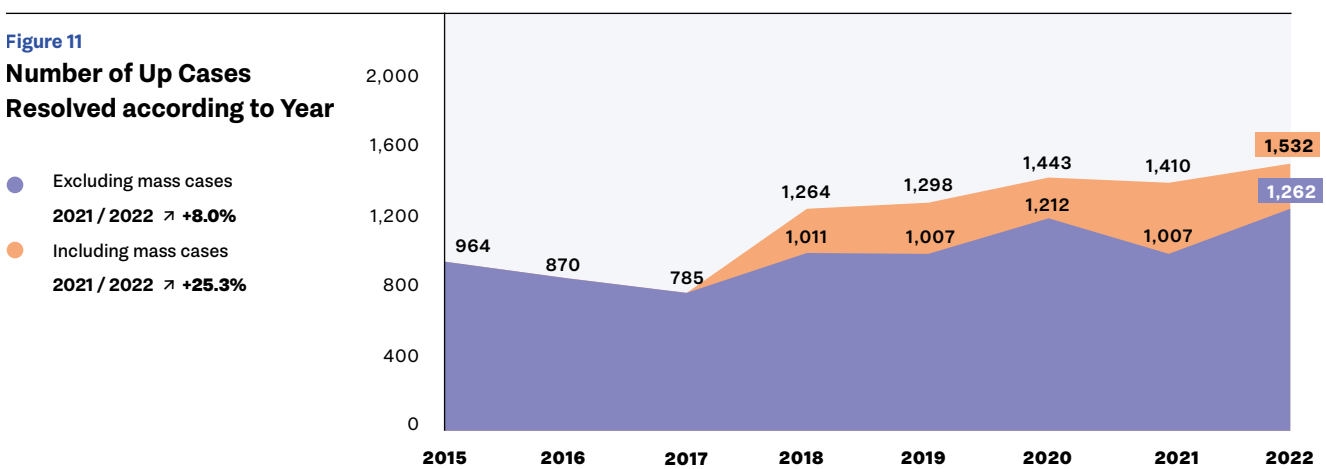


Table 14

Number of Up Cases Resolved according to Panel and Year

Year	Civil law		Administrative law		Criminal law		Total	
	Incl. mass cases	Excl. mass cases	Incl. mass cases	Excl. mass cases	Incl. mass cases	Excl. mass cases	Incl. mass cases	Excl. mass cases
2015	507	507	357	357	100	100	964	964
2016	415	415	257	257	198	198	870	870
2017	333	333	322	322	130	130	785	785
2018	514	514	566	313	184	184	1,264	1,011
2019	448	448	585	294	265	265	1,298	1,007
2020	563	563	619	388	261	261	1,443	1,212
2021	413	413	432	400	565	194	1,410	1,007
2022	**528**	**528**	**609**	**349**	**386**	**385**	**1,523**	**1,262**
2022/2021	**27.8%**	**27.8%**	**41%**	**-12.8%**	**-31.7%**	**98.5%**	**8%**	**25.3%**

Figure 12

Distribution of Up Cases Resolved according to Panel and Year

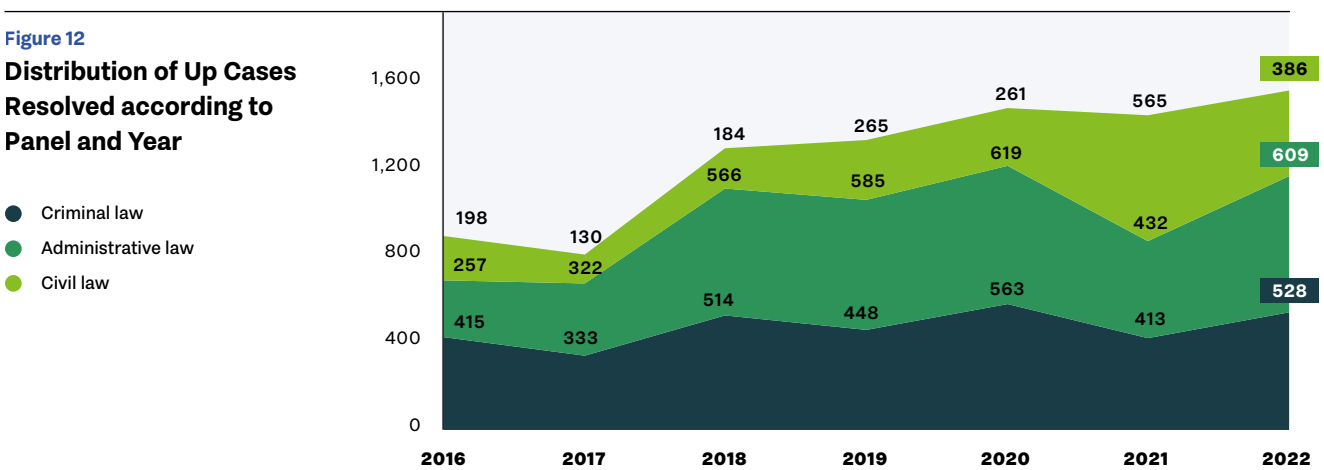


Figure 12a

Distribution of Up Cases Resolved according to Panel (Excl. Mass Cases)

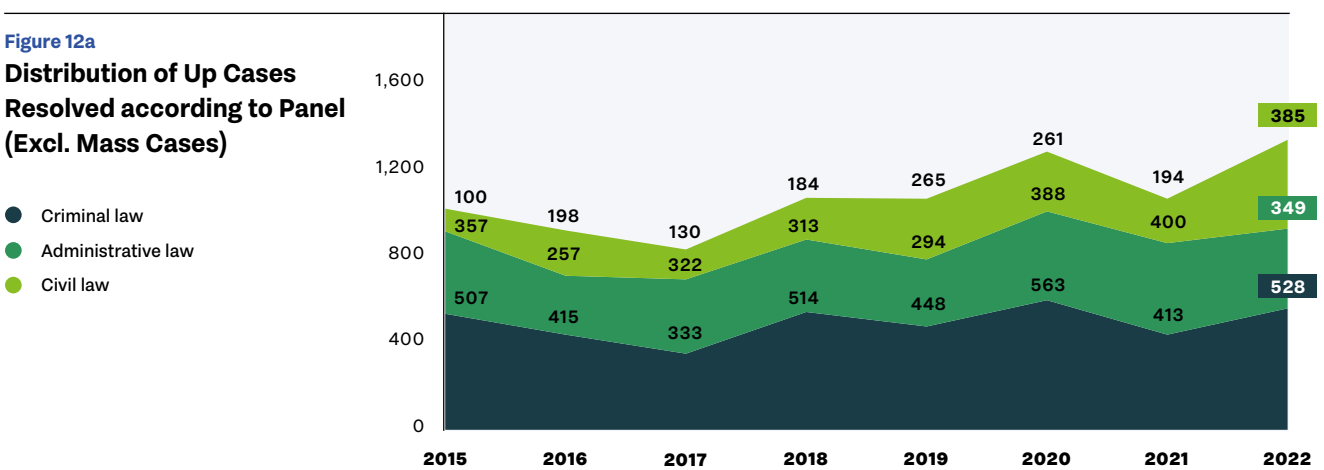


Table 15

Number of Up Cases Resolved according to Type of Dispute

Type of dispute	2022	Share in 2022	2021	2022/2021
Other Administrative Disputes	373	24.49%	132	182.58%
Criminal Cases	320	21.01%	138	131.88%
Civil Law Litigation	292	19.17%	219	33.33%
Labour Law Disputes	113	7.42%	96	17.71%
Enforcement Proceedings	85	5.58%	59	44.07%
Minor Offences	64	4.20%	427	-85.01%
Commercial Law Disputes	61	4.01%	50	22%
Social Law Disputes	43	2.82%	82	-47.56%
Non-litigious Civil Law Proceedings	42	2.76%	33	27.27%
Taxes	39	2.56%	70	-44.29%
Insolvency Proceedings	21	1.38%	20	5%
Election	13	0.85%	2	550%
Succession Proceedings	12	0.79%	7	71.43%
Other	10	0.66%	8	25%
Proceedings related to the Land Register	9	0.59%	17	-47.06%
Denationalisation	8	0.53%	12	-33.33%
Matters concerning Spatial Planning	8	0.53%	23	-65.22%
Civil Status of Persons	5	0.33%	9	-44.44%
No Dispute	3	0.20%	5	-40%
Registration in the Companies Register	2	0.13%	1	100%
Total	**1,523**	**100%**	**1,410**	**8.01%**

Table 16

Up Cases Granted and Up Cases Resolved on the Merits (Excl. Mass Cases)

Year	All Up cases resolved	Up cases resolved on merits	Percentage of Up cases resolved on merits / all Up cases resolved	Up cases granted	Percentage of Up cases granted/ all Up cases resolved
2016	870	42	4.8%	40	4.6%
2017	784	88	11.2%	82	10.4%
2018	1011	32	3.2%	25	2.5%
2019	1,008	55	5.5%	44	4.4%
2020	1,213	23	1.9%	18	1.5%
2021	1,007	24	2.4%	18	1.8%
2022	**1,262**	**49**	**3.9%**	33	2.6%

Figure 13

Type of Decision in Up Cases Accepted for Consideration on the Merits by Year

- Granted
- Dismissed

(by an individual decision an application may be partly granted and partly dismissed at the same time, which entails that the total number of decisions whereby applications were granted and dismissed does not necessarily equal the total number of decisions)

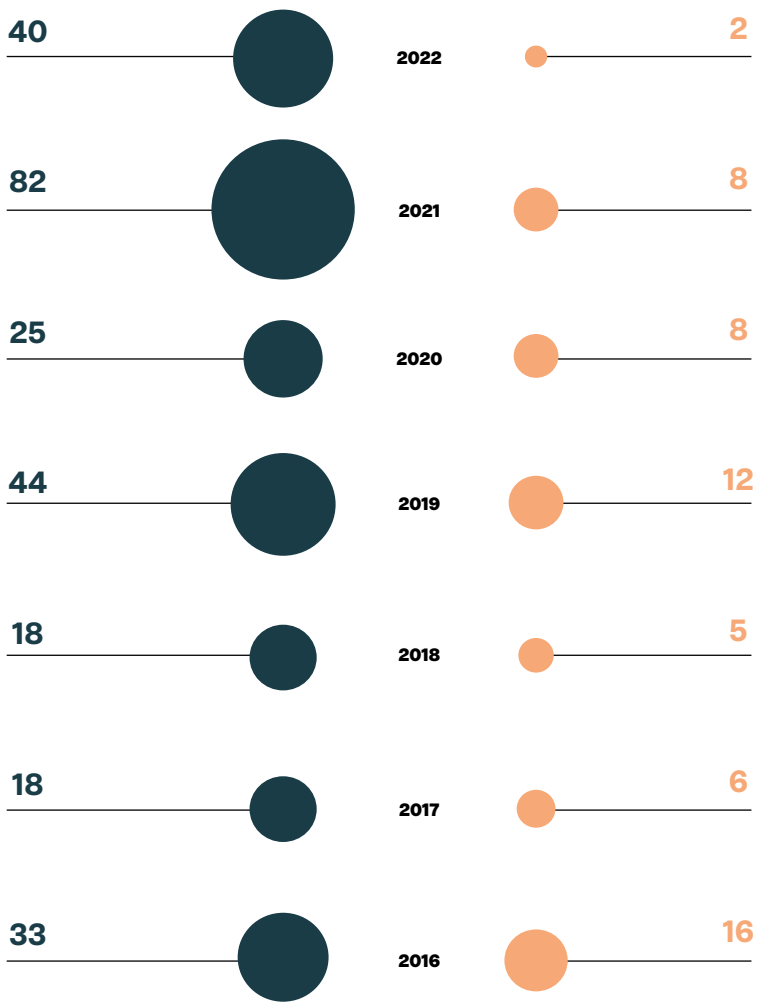


Table 17

Certain Other Types of Resolutions in Up Cases by Year

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
2022	**1,160**	**419**

Table 18

Number of P Cases Resolved on the Merits

Year	Resolved	Cases resolved on merits	Percentage
2015	10	8	80%
2016	10	6	60%
2017	5	4	80%
2018	5	4	80%
2019	5	4	80%
2020	3	2	66,6%
2021	5	2	40%
2022	**12**	**8**	**66,6%**

Table 19

Average Number of Days Needed to Resolve a Case according to Type of Case

Register	Incl. mass cases	Excl. mass cases
U-I	277	522
Up	575	648
P	112	112
Mp	51	51
Ps	136	136
Total	**445**	**613**

Figure 14

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

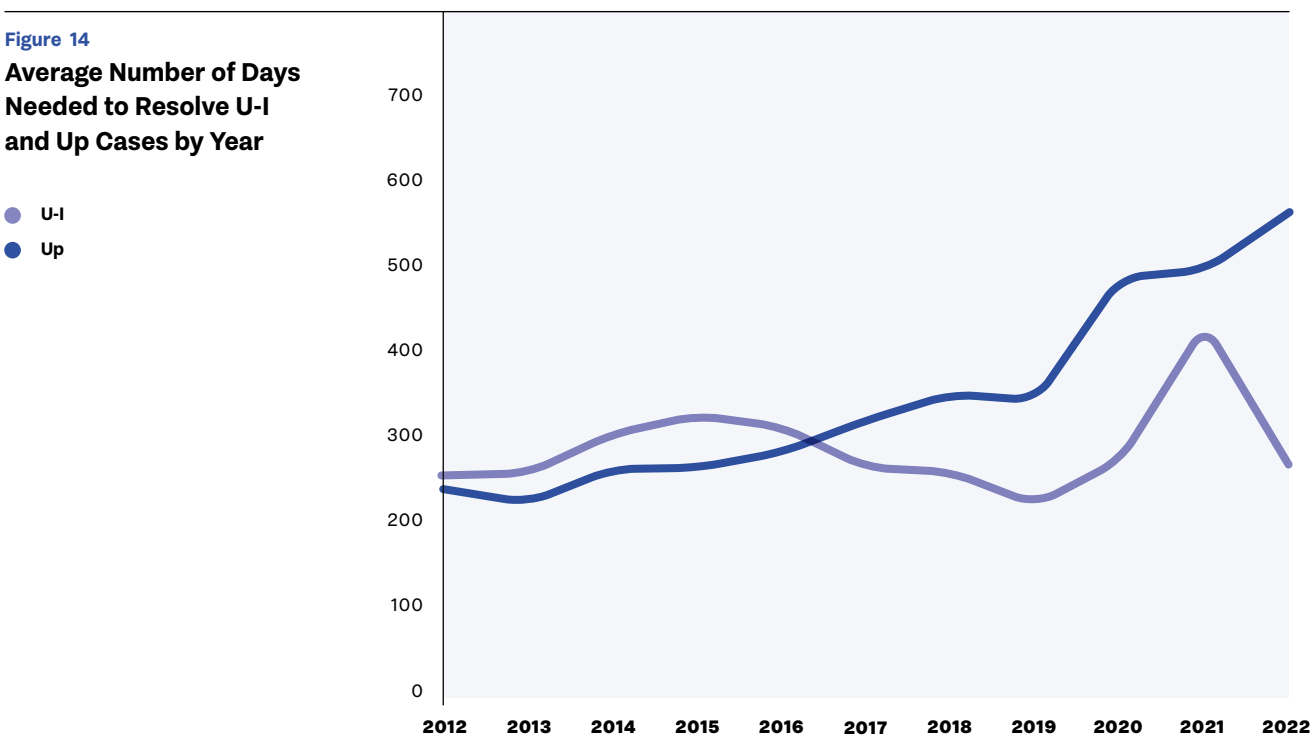
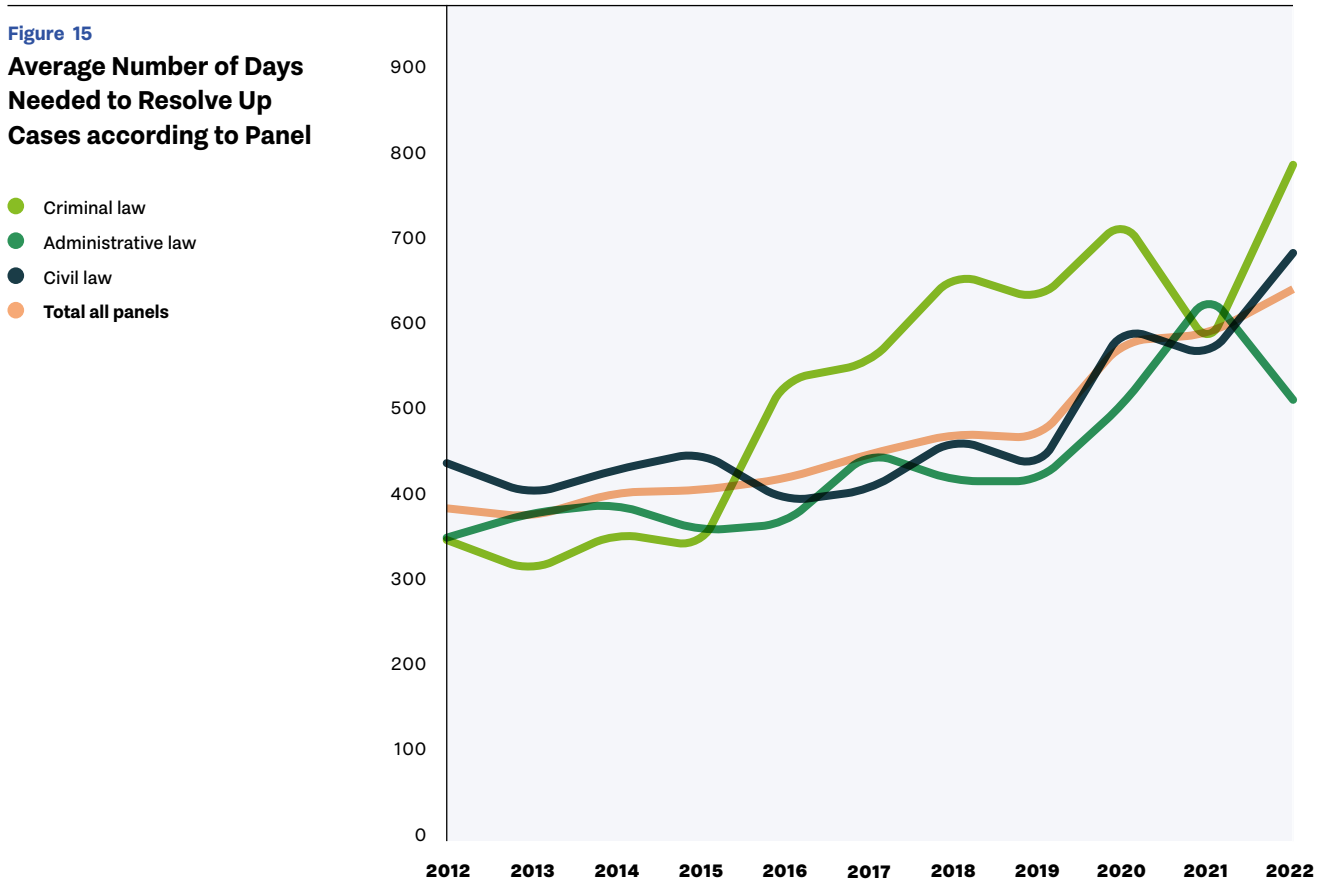


Figure 15

Average Number of Days Needed to Resolve Up Cases according to Panel



5.2.3

Unresolved Cases

Figure 15

Number of Cases Pending at Year End

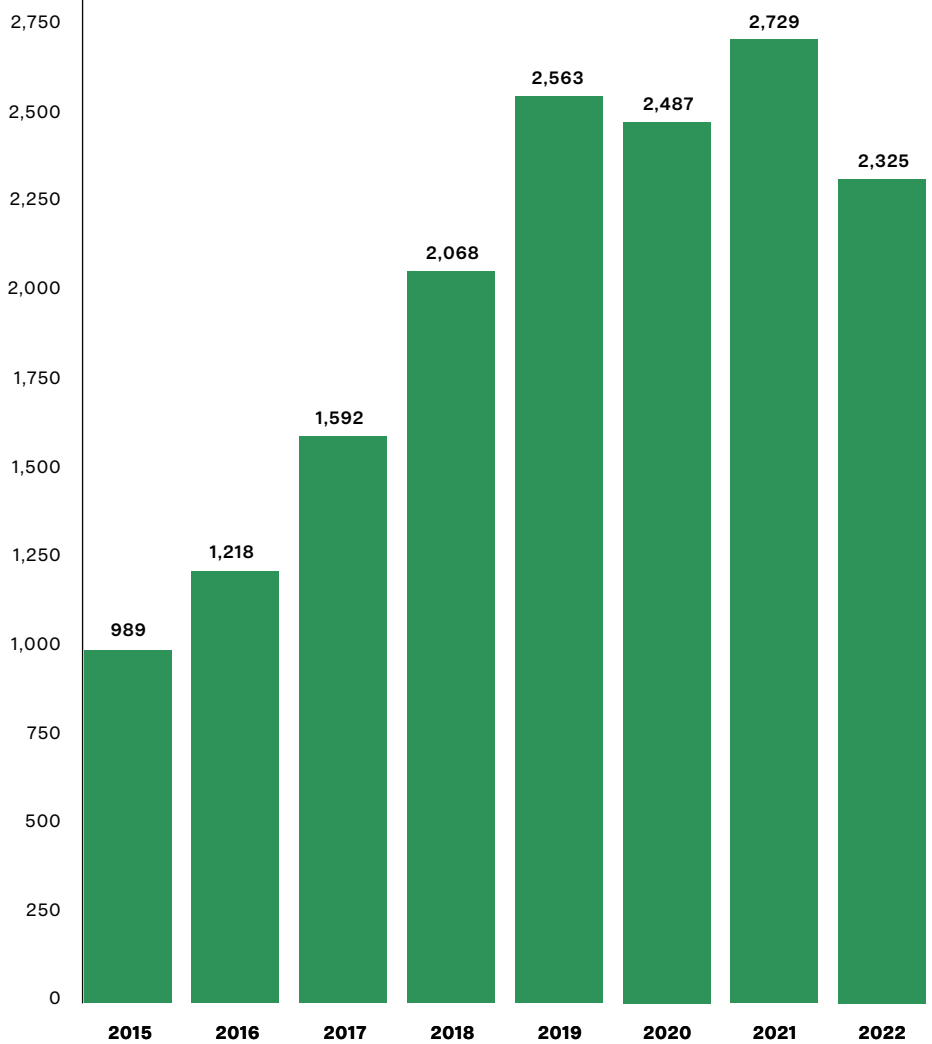


Table 20

Pending Cases according to Year Received as of 31 December 2022

Year	2018	2019	2020	2021	2022	Total
U-I	2	17	48	68	163	298
Up	2	34	212	527	1,245	2,020
P					4	4
Mp					3	3
Total	**4**	**51**	**260**	**595**	**1,415**	**2,325**

Figure 16

Cases Received and Resolved

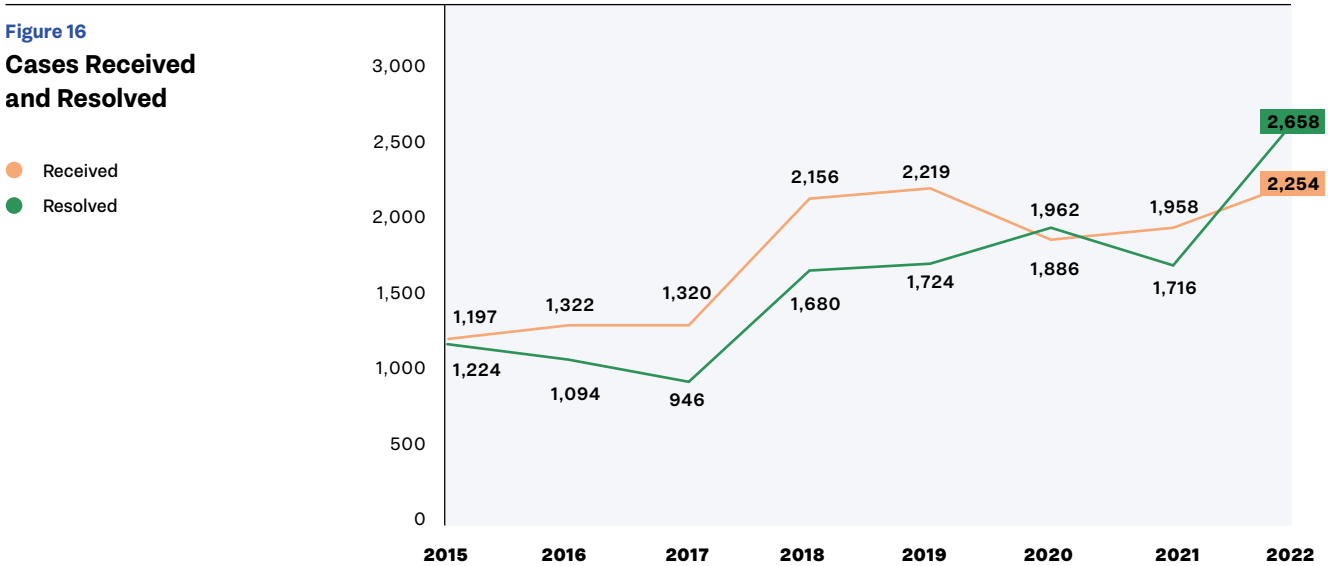


Figure 16a

Cases Received and Resolved (Excl. Mass Cases)

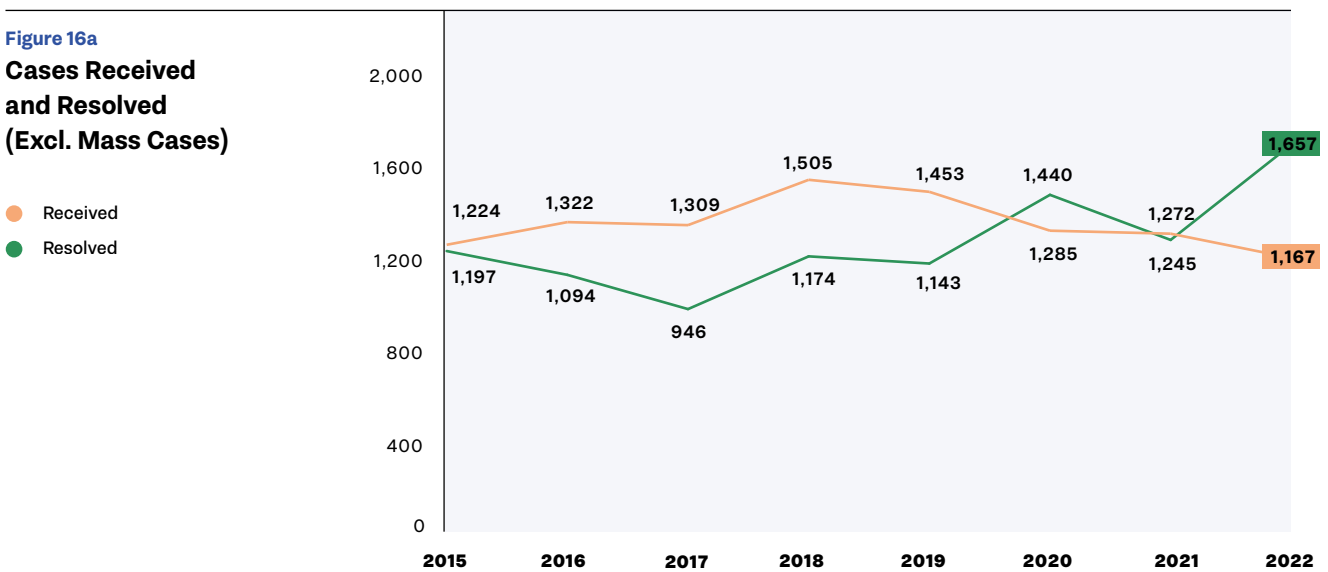


Table 21

Priority Cases Pending as of 31 December 2022

Register	Absolute priority cases	Priority cases	Total
U-I	46	31	77
Up	64	333	397
P		3	3
Mp		3	3
Total	**110**	**370**	**480**

5.2.4

Financial Plan Outturn*

* The data on the expenditure of public resources refer to resources from the state budget, earmarked funds, and cohesion funding, with the latter amounting to 2.19% of the outturn in 2022.

Table 22

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%
2022	**4,246,325**	**774,679**	**158,673**	**5,179,677**	**8.7%**

Figure 17

Financial Plan Outturn by Year (in EUR mil.)

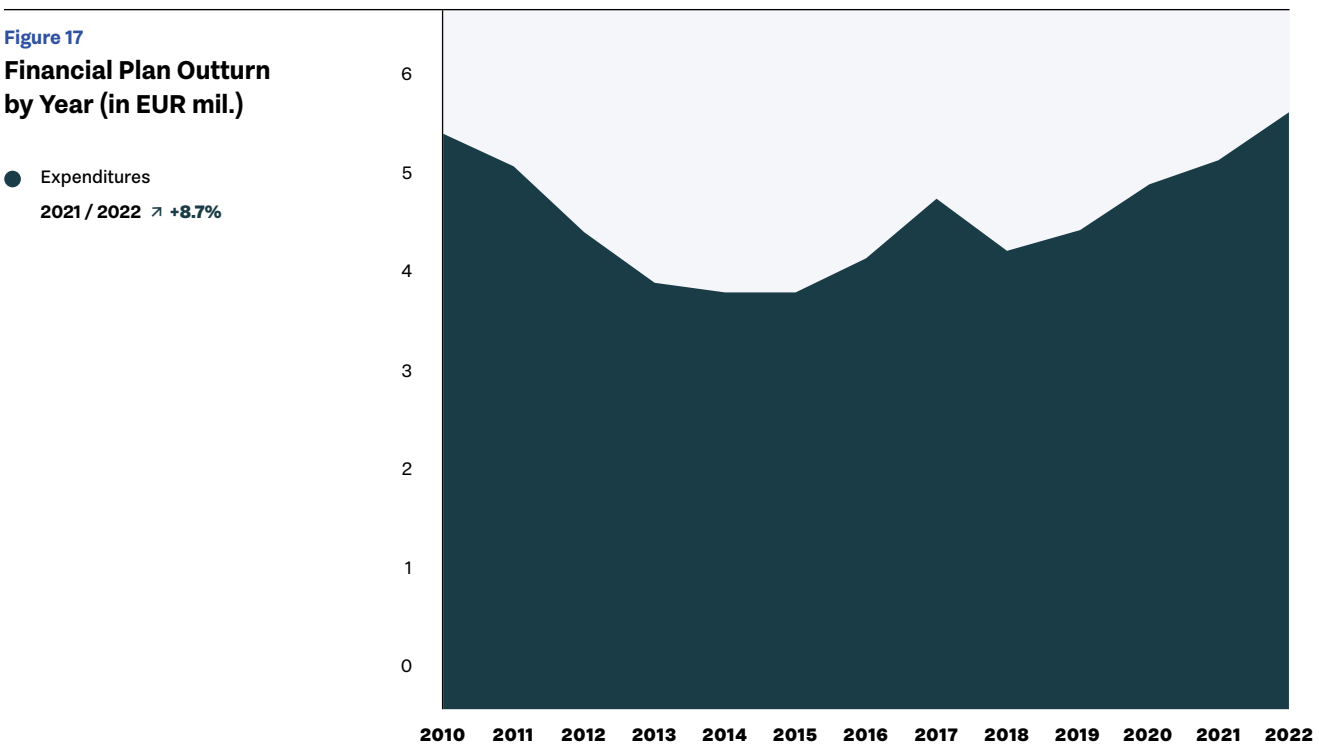


Figure 18

Distribution of Expenditures in 2022 (in EUR)

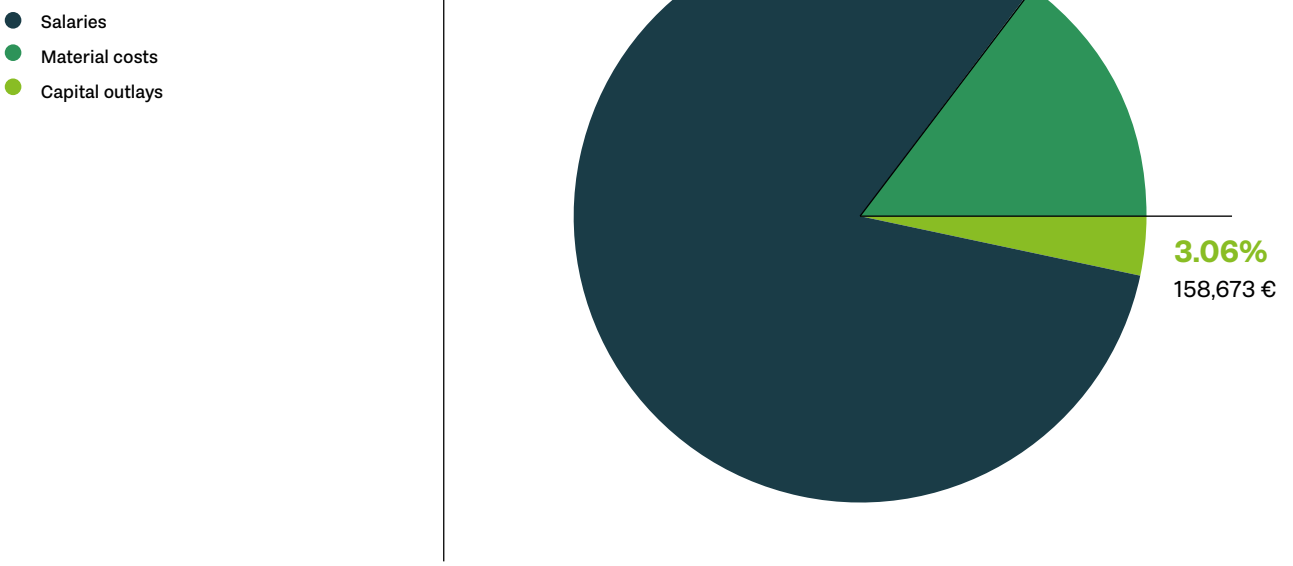
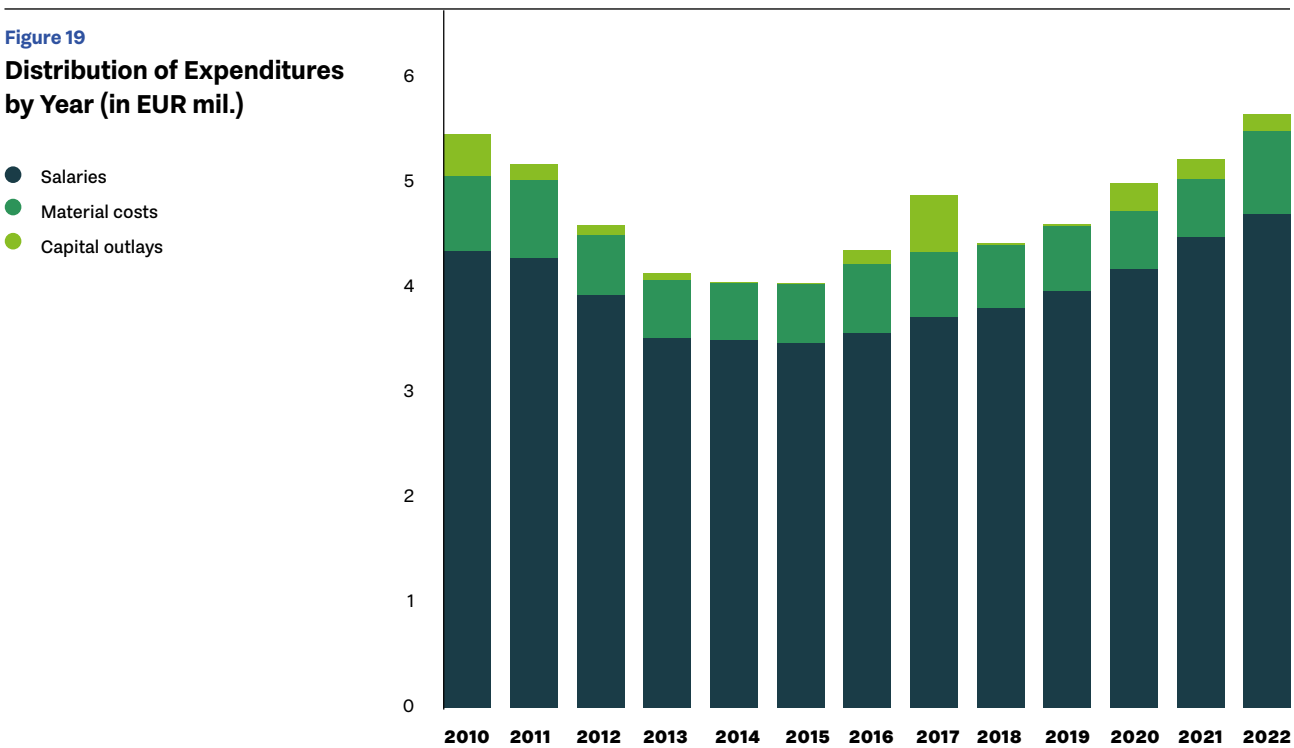


Figure 19

Distribution of Expenditures by Year (in EUR mil.)



The Constitutional Court of the Republic of Slovenia
An Overview of the Work for 2022

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