

**Conference of European Constitutional Courts  
XIIth Congress**

*The relations between the Constitutional Courts  
and the other national courts,  
including the interference in this area  
of the action of the European courts*

**Report of  
the Constitutional Court  
of the Republic of Slovenia**

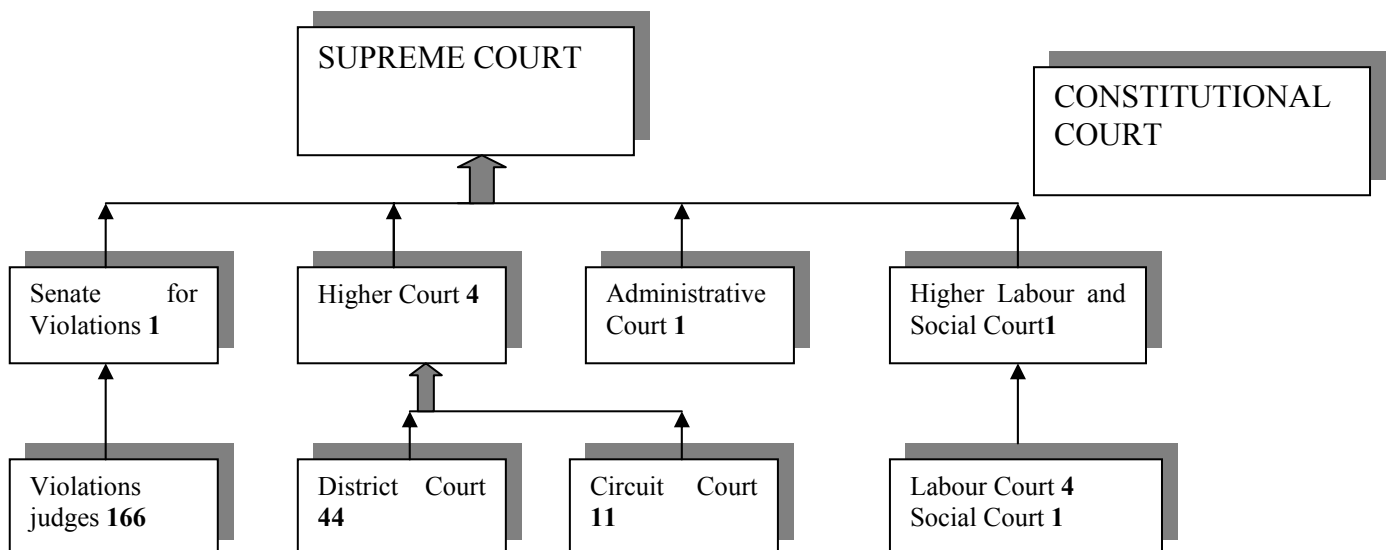
# I. The constitutional court, the other courts and the constitutionality review

## A. The judicial organization of the State

### 1. The judicial system

1. Please give a brief presentation, using diagrams if necessary, of the different courts that exist in your State and the organization of their powers. This concerns the ordinary courts as well as the administrative or other courts, the courts of the Federal State as well as the courts of the federated States.

**Diagram of the judicial system in the Republic of Slovenia**



#### **§ 1. Introduction**

In the Republic of Slovenia judicial power is exercised by judges in courts of general jurisdiction and in specialized courts, by violations judges, and by judges of the Constitutional Court of the Republic of Slovenia.

The Constitution provides that the organization and jurisdiction of courts (except the Constitutional Court) is determined by law (Article 126, para. 1 of the Constitution). Extraordinary courts may not be established, nor may military courts be established in peacetime (Article 126, para. 2 of the Constitution). According to Article 127 of the Constitution the Supreme Court is the highest court in the State. The Supreme Court decides on ordinary and extraordinary legal remedies - it is the court of appellate jurisdiction - and performs other functions provided by law.

The Courts Act (Official Gazette of RS, No. 19/94 and following) establishes district and circuit courts as the courts of general jurisdiction, which exercise first-instance jurisdiction, higher courts as the appellate courts, and the Supreme Court of the Republic of Slovenia.

The Courts Act provides that first–instance specialized courts, established by separate law (unless otherwise provided), have the position of circuit courts if their appellate instance is a specialized higher court, and the position of higher courts if their appellate instance is the Supreme Court. In accordance with this, the Labour and Social Courts Act (Official Gazette of RS, No. 19/94) establish specialized first–instance labour courts (4) and the social court (1) as well as the appellate court (Higher Labour and Social Court). The Judicial Review of Administrative Acts Act (Official Gazette of RS, No. 50/97 and following) establishes the Administrative Court of the Republic of Slovenia as the first–instance specialized court, which has the position of a higher court.

In accordance with the regulations in force (Violations Act, Official Gazette of SRS, No. 25/83 and following), specialized bodies which decide on violations are a constituent part of the judicial branch as well. Violations judges decide on violations in the first–instance.<sup>1</sup> The appellate instance against the decisions issued in the first instance is the Senate of the Republic of Slovenia for Violations.

## ***§ 2. Courts of General Jurisdiction***

**District courts** (44 established) in the first instance:

- adjudicate on criminal offence cases carrying a fine or a prison term of up to three years as the principal penalty, except for criminal offence cases against honour and reputation committed by mass media;
- adjudicate on civil matters in property disputes in which the value of a claim does not exceed two million Slovenian tolar, if the law does not determine the jurisdiction of a circuit court;
- adjudicate on civil matters irrespective of the value of a claim in cases of disputes on trespassing, disputes on easements or property encumbrance, disputes on lease relations, and disputes on statutory maintenance, if the statutory maintenance is the subject of a dispute;
- adjudicate on probate cases and other non–litigious civil matters, and keep a land register;
- adjudicate on the execution of some matter.

**Circuit courts** (11 established) in the first instance:

- adjudicate on cases of criminal offences which are not under the jurisdiction of district courts;
- adjudicate criminal offence cases of minors;
- decide on the implementation of criminal judgements;
- decide on permitted violations of human rights or fundamental freedoms;
- supervise the treatment of convicted persons and persons detained;
- adjudicate civil matters which are not under the jurisdiction of district courts;
- adjudicate disputes concerning family relations;
- adjudicate business disputes;
- decide on the recognition of foreign decisions;

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<sup>1</sup> Other bodies decide in the first-instance on some violations as well, in cases provided by law (administrative bodies).

- decide on matters of composition and bankruptcy, as well as liquidation;
- adjudicate disputes on intellectual property rights;
- keep a register of companies.

**Higher courts** (4 established) decide in the second instance on appeals against the decisions of district and circuit courts, decide on jurisdictional disputes between districts or circuit courts in their region, and on the delegation of jurisdiction to other district or circuit courts in their region.

**The Supreme Court** is the “peak” of all courts of general and as well has specialized jurisdiction. It is introduced at the end of this chapter.

### **§ 3. Specialized Courts**

Labour courts (4 established) in the first instance decide on individual labour disputes concerning e.g. disputes between employees and employers concerning inventions, industrial design, paintings or drawings, and technical improvements, disputes related to contracts for work for the performance of temporary or periodic work, disputes between companies and students concerning company sponsored scholarships, and temporary or periodic performance of work. The law does not regulate disputes on damages for injuries at work and occupational diseases decided in the first-instance in district or circuit courts according to the value of the subject of the dispute. Furthermore, labour courts decide in the first-instance on collective labour disputes.

The Labour Court, which has its seat in the capital, is also established as the social court (Ljubljana Labour and Social Court; as the social court it adjudicates at its seat or at the external divisions of that court or other labour courts) in the first instance for the entire State. As the **social court** it decides in first instance on disputes concerning pension and disability insurance, health insurance, unemployment insurance, as well as on disputes concerning family and social support benefits.

**The Higher Labour and Social Court** (1 established) decides on appeals against decisions decided by labour courts and the social court in the first instance.

**The Administrative Court** of the Republic of Slovenia (which adjudicates at its seat as well as at three external divisions) has the jurisdiction to exercise judicial review of administrative acts, except in cases where the law provides for the first instance jurisdiction of the Supreme Court. The judicial review of administrative acts includes:

- judicial protection of decisions and actions of administrative or other state authorities, local community authorities, and bearers of public authority;
- decisions on the legality of final individual acts of the authorities listed above;
- decisions on the legality of individual acts and actions which violate the constitutional rights of an individual, if some other form of judicial protection is not provided;
- decisions on the legality of the acts of the authorities listed above, issued in the form of a regulation, as long as they regulate individual relations (Article 1 of the Judicial Review of Administrative Acts Act).

**Violations judges** (166 established) have the jurisdiction to decide in the first instance on most violations – i.e. a breach of public order carrying a sanction for a violation provided by

law or other regulation (e.g. a Government regulation, an ordinance of the Municipal Council).

**The Senate for violations** decides on appeals against decisions of violations judges as well as on appeals against decisions on violations issued by other authorities.

#### ***§ 4. The Supreme Court***

The Supreme Court has the jurisdiction:

- a) - to adjudicate on extraordinary legal remedies against the decisions of courts, except in cases when another court has jurisdiction (e.g. in a new trial);
  - to adjudicate in the third instance on ordinary legal remedies against the decisions of courts in the second instance in cases explicitly provided by law;
  - to decide on jurisdictional disputes between lower courts, except in cases provided by law that such decisions are under the jurisdiction of another court;
  - to decide on the delegation of jurisdiction in cases provided by law;
  
- b) - to adjudicate in the first instance and:
  - decide on the legality of the acts of electoral bodies for elections to the National Assembly, the National Council, and the election of the President of the Republic;
  - decide on disputes related to the legality of candidature, election, appointment and the dismissal of persons elected, appointed or dismissed by the President of the Republic, the National Assembly, the National Council or the Government, except for the higher administrative officers appointed by the Government;
  - decide on disputes related to decisions of the Judicial Council or the Personnel Commission on the rights and obligations of judges and state prosecutors;
  - decide on the legality of acts issued in the form of a regulation, as far as they regulate individual relations;
  - decide on the legality of administrative acts issued by the Government or the Bank of Slovenia or other state authority similar in position.
  
- c) to decide on appeals against decisions of the Administrative Court and on appeals against decisions of a Supreme Court Senate issued in the first instance;
  
- d) to decide on the extension of detention a further three months for a person against which there is an ongoing criminal investigation, after the person has already been in detention for three months on the basis of decisions of courts in the first instance (such jurisdiction is provided in the Constitution, Article 20/1);
  
- e) to decide on claims for legal protection as an extraordinary legal remedy against decisions of the Senate for Violations.

## **2. The Constitutional Court**

*2. What is the place of the constitutional court in the judicial organization of the State? If it is a part of the judiciary, what is its status within the judiciary?*

The Constitution regulates the judiciary in Articles 125 through 134. Article 127, para. 1 of the Constitution provides, as mentioned above, that the Supreme Court is the highest court in the State. In this chapter, which is a part of a more extensive chapter on the organisation of the State, the Constitutional Court is not regulated. It is regulated in a separate chapter (VIII.), “The Constitutional Court”, where all the fundamental powers of the Constitutional Court and the position of the Constitutional Court judges are provided. The Constitution does not explicitly provide that the Constitutional Court is a constituent part of the judicial power. This fact, however, (undoubtedly) follows from the constitutional definition of the Constitutional Court’s position and its powers. Nevertheless, according to Article 160, para. 1, subpara. 6 of the Constitution, the Constitutional Court has the power to decide on constitutional complaints stemming from the violation of human rights and fundamental freedoms by individual acts. Additionally it is provided that the Constitutional Court decides on a constitutional complaint only if legal remedies have been exhausted (Article 160, para. 3 of the Constitution). This means that, as a rule, the subject of scrutiny by the Constitutional Court are the decisions of the Supreme Court, which is in most legal matters the court of last resort. The body that has the jurisdiction to review decisions of courts can only be, in a state governed by the rule of law, the unbiased (independent) court.

The Constitutional Court is a constituent part of the judicial branch, explicitly defined in Article 1 of the Constitutional Court Act (Official Gazette of RS, No. 15/94), which provides that the Constitutional Court is the highest body of the judicial branch for the protection of constitutionality, legality, human rights and fundamental freedoms. In relation to other state bodies the Constitutional Court is an autonomous and independent body.

Considering the above-mentioned Article 127 of the Constitution it is needed to say that the Supreme Court is the highest court in the State except in cases where the highest court is the Constitutional Court. When a question of the constitutionality of laws arises, the Constitutional Court has exclusive jurisdiction, when a question of the protection of human rights and fundamental freedoms arises, the Constitutional Court is the highest court in the State.

## ***B. The respective jurisdictions of the constitutional court and the other courts in the area of constitutionality review***

### **1. Review of laws and other acts**

#### ***§ 1. Type of review***

*3. What acts (of domestic law and international law) are reviewed by the constitutional court in relation to the higher standards that are the Constitution, the principles of constitutional value and the provisions of international law?*

*5. Is the review carried out by the constitutional court a prior or subsequent review?*

*6. Is the review carried out by the constitutional court an abstract or a concrete review?*

International treaties, statutes, executive regulations, local community acts and individual legal acts (judicial decisions) can be subject to review by the Constitutional Court.

The Constitutional Court carries out prior review of international treaties and subsequent review of all the other mentioned acts. The jurisdiction of the Constitutional Court is determined in Article 160 of the Constitution, which provides for the possibility that the jurisdiction of the Court is determined by statute.

### **Prior review**

In the process of ratifying a treaty, the Court issues an opinion on the conformity of such treaty with the Constitution; the National Assembly is bound by such opinion (Article 160, para. 2 of the Constitution).

### **Subsequent review**

a) Abstract Review (Article 160, para. 1 of the Constitution):

The Constitutional Court decides:

- whether statutes conform to the Constitution;
- whether statutes and other regulations conform to ratified treaties and to the universal principles of international law;
- whether regulations conform to the Constitution and to statute;
- whether local government regulations conform to the Constitution and statute;
- whether general acts issued for the exercising of public authority conform to the Constitution and statute as well as to regulations.

In these matters the Constitutional Court also decides on the constitutionality and legality of the proceedings that represent the basis of these acts (Article 21, para. 3 of the Constitutional Court Act).

In deciding on the constitutionality and legality of a regulation or a general act issued for the exercise of public authority, the Constitutional Court is entitled to review the constitutionality or legality of other provisions of the respective (or other) regulations or general acts issued for the exercise of public authority whose constitutionality or legality have not been submitted for review, if such proposals are mutually related, or if this is absolutely necessary to resolve the case (Article 30 of the Constitutional Court Act). If the Constitutional Court, while deciding on a constitutional complaint, establishes that a given abolished act was founded on an unconstitutional regulation or general act issued for the exercise of public authority, such act may be abrogated ab initio (*ex tunc*) or abrogated (*ex nunc*) (Article 161, para. 2 of the Constitution, Article 59, para. 2 of the Constitutional Court Act). The Constitutional Court shall issue a decision stating which authority is competent and may also abrogate, retroactively or prospectively, the general act, or the general act for the exercise of public authority whose unconstitutionality or illegality has been established (Article 61, para. 4 of the Constitutional Court Act).

b) Concrete Review

The Court carries out the concrete review of provisions when requested by the ordinary courts, the Public Prosecutor, the Bank of Slovenia and the Court of Audit, if a question relating to constitutionality or legality arises during the proceedings they are conducting or if such is submitted by the Ombudsman and refers to individual cases discussed (Article 156, para. 1 of the Constitution, Article 23, para. 1, subparas. 5 and 6 of the Constitutional Court Act).

### **Other Powers**

Article 160, para. 1 of the Constitution further provides for the Court's jurisdiction with respect to:

- constitutional complaints in relation to violations of human rights and fundamental freedoms by individual acts;
- disputes in relation to powers between the National Assembly, the President of the Republic and the Government, the State and local community bodies and among such local government bodies, between the courts and other State bodies;
- the unconstitutionality of acts and activities of political parties;
- charges against the President of the Republic;
- charges against the Prime Minister or against any other Minister.

In addition to the mentioned powers, the Constitution vests in the Constitutional Court also the explicit power to adjudicate on appeals against decisions of the National Assembly on confirming the election of deputies (Article 82, para. 3 of the Constitution; electoral disputes). It also allows for additional powers of the Constitutional Court to be regulated by statute (Article 160, para. 1, subpara. 11 of the Constitution). Accordingly, the following powers of the Constitutional Court are determined by statute:

- appeals against decisions of the National Council on confirming the election of National Council members (Article 50, para. 3 of the National Council Act, Official Gazette RS, No. 44/92);
- under Article 16 of the Referendum and Peoples Initiative Act (Official Gazette RS, Nos. 15/94 and 13/95) the Court's jurisdiction includes adjudication with respect to a request by the National Assembly concerning the calling of a referendum;
- the Court decides on the request of the filer of a referendum request asking the Court to review a National Assembly decision not to call the referendum since the filer failed to supplement their request as advised by the National Assembly (Article 15, para. 3 of the Referendum and People's Initiative Act).

*4. Is this competence exclusive? If not, which are the other competent courts in this area? How about the other acts and decisions?*

All the mentioned powers of the Constitutional Court are exclusive.

## **§ 2. Referral to the constitutional court**

### **a. Types of referral**

*7. How can the constitutional court be accessed (action for annulment, preliminary question, constitutional appeal, etc.)? How many cases have there been for each type of referral?*

Proceedings for the review of the constitutionality of an international treaty subject to the ratification process is commenced upon a proposal of the President of the Republic, the Government or one third of the National Assembly Deputies.

Constitutional-Court proceedings for the review of the constitutionality of statutes or the constitutionality and legality of executive regulations, local community regulations or general acts for the exercise of public authority can be commenced upon a request of those authorized by statute or upon a Constitutional Court ruling on the acceptance of a petition by the individual person or legal entity (Articles 22, 23 and 24 of the Constitutional Court Act).

Proceedings deciding upon constitutional complaints are commenced following a Constitutional Court ruling accepting the filed complaint.



In jurisdictional disputes the Constitutional Court decides upon a request by a body or community filed within a time limit of 90 days from the day when they learned of the body, State or local community having interfered with its jurisdiction or having assumed it. If there occurs a jurisdictional dispute due to the fact that several bodies refuse their jurisdiction in a specific case, the body which was assigned to hear the case, however which refuses such, may request that the jurisdictional dispute be resolved. Also, a party to the proceedings for reason of which a jurisdictional dispute occurred may file a request that it be resolved.

Proceedings to establish the accountability of the President of the Republic, the Prime Minister or any other Minister, are commenced upon a National Assembly order on their impeachment.

Proceedings to decide on the unconstitutionality of acts and activities of political parties may be commenced by the persons determined in the subsequently presented Art. 23, para. 1 of the Constitutional Court Act (Point b) 9). An initiative for commencing such proceedings can be filed by anyone.

A complaint against a National Assembly decision confirming deputy mandates may be filed by each candidate or the representative of a list of candidates who appealed in accordance with statute to the National Assembly against an electoral commission decision that may affect the confirmation of the mandates.

The affected National Council member may appeal to the Constitutional Court against a National Council decision rejecting the confirmation of the councillor mandate.

Concerning referendum requests, the Constitutional Court decides on: (1) a request of the filer of a referendum request that the Court review the National Assembly decision rejecting the calling of a referendum since the filer failed to supplement their request as advised by the National Assembly; and on (2) a National Assembly request that the substance of a request to call a referendum is unconstitutional.

The statistics concerning the cases referred to the Constitutional Court in the years between 1995 and 200 is as follows:

- review of the constitutionality and legality of regulations – 2016 (petitions – 1751, requests – 265)
- review of international treaties – 3
- appeals concerning the confirmation of mandates – 2
- jurisdictional disputes – 71
- constitutional complaints – 2085.

## **b. Actions for annulment**

*8. Does direct recourse exist to the constitutional court against statutes? And against other regulations and acts?*

There exists direct recourse concerning the review of the constitutionality of statutes or the review of the constitutionality and legality of other regulations or general acts for the exercise of public authority.

*9. Who can bring such actions and within what time limit?*

Persons or bodies authorized by statute to commence, by their request, proceedings for the review of constitutionality and legality are the following:

- the National Assembly,
- at least one third of Deputies,
- the National Council,
- the Government,
- a court, the State prosecutor, the Bank of Slovenia, the Court of Audit if a question of constitutionality and legality arises in relation to the proceedings they are conducting,
- human rights Ombudsman,
- representative bodies of local communities if the rights of these communities are threatened,
- representative statewide trade unions if workers rights are threatened (Article 23, para. 1 of the Constitutional Court Act).

These filers cannot file requests against a regulation that they themselves have adopted.

In addition, requests for the review of the constitutionality of regulations can be filed by:

- municipalities against State regulations that interfere with their constitutional position and rights,
- the Mayor of a municipality against the unconstitutional or unlawful general acts of the municipal council.

Anyone (any natural person or legal entity) may commence proceedings for the review of the constitutionality of statutes or the constitutionality and legality of other regulations or general acts for the exercise of public authority provided that they demonstrate their legal interest. The legal interest to file a petition is demonstrated if the regulation or general act for the exercise of public authority, the review of which has been suggested by the petitioner, directly interferes with their rights, legal interests or legal position (Article 24, para. 2 of the Constitutional Court Act).

Filing requests or petitions to commence proceedings for the review of the constitutionality or legality of regulations or general acts for the exercise of public authority is not limited by time.

*10. Can the constitutional court suspend statutes or other regulations and acts?*

The Constitutional Court may fully or partially suspend the implementation of regulations or general acts for the exercise of public authority until the final decision on constitutionality or illegality if, due to such implementation, irreparable consequences could develop.

**c. Preliminary issues – plea of unconstitutionality**

*Who can refer cases to the constitutional court?*

*11. Which courts can refer cases to the constitutional court? If any court can put a preliminary question, does that mean that a broad or a restrictive interpretation is given to the notion of »court«?*

Article 156 of the Constitution provides that:

If a court deciding some matter deems a law which it should apply to be unconstitutional, it must stay the proceedings and initiate proceedings before the Constitutional Court. The proceedings in the court may be continued after the Constitutional Court has issued its decision.

Any of the courts presented in the above diagram of the Slovenian court system (see under Question 1) may commence proceedings before the Constitutional Court for the review of the constitutionality of statutes.

The above-mentioned applies to statutes. Article 125 of the Constitution *inter alia* determines that judges are bound by the Constitution and statutes. Thus, when adjudicating a case, they have the so-called right of *exceptio illegalis* (exception of illegality), which allows them to refuse to apply those executive regulations which they deem to be unconstitutional or unlawful.

*12. Are the courts obliged to put the question?*

If a court deems a statute to be unconstitutional it must request the commencement of proceedings before the Constitutional Court for the review of its constitutionality.

*13. Is it possible to oppose, by a procedure of objection, opposition or recourse, the submission of all or part of a case to the constitutional court by a decision of referral? If so, who can initiate this procedure and how does it proceed? What are the consequences?*

Parties to court proceedings have no special objection or legal remedy by which they could ensure that the court files a request before the Constitutional Court.

*14. What is the procedure for referral to the constitutional court? What is the role of the parties in drawing up the preliminary question? Can the preliminary question be raised ex officio? In that case, are the discussions on the question reopened?*

Parties to court proceedings are not involved in Constitutional Court proceedings as parties. The parties to (this type of) Constitutional Court proceedings are the court that requested the review and the National Assembly as the legislature. The Constitutional Court may invite the parties to the court proceedings to attend a public hearing, as persons whose presence at the hearing is considered necessary. There is no need to mention that decisions in these proceedings have the same *erga omnes* effects as any decision brought in the field of abstract review. The decision is published in the Official Gazette and its effects extend beyond the case that triggered the constitutional dispute. It is interesting that ordinary courts only relatively infrequently use this possibility: nine times in 1998, eleven times in 1999, eighteen times in 2000 and two times so far (until the end of April) in 2001. The Supreme Court has availed itself of this procedural possibility only twice so far.

If parties assert in their statements made to the court that the statute is unconstitutional, the court must consider such assertion as any other statements made by parties to proceedings that could be relevant for the decision in that case. The decision to file a request before the Constitutional Court rests completely with the court.

Certainly the parties can directly file a petition to commence proceedings for the review of the constitutionality of (such) statute, which actually occurs. In such a case, they must demonstrate their legal interest for review of the statutory provision to be applied in the court proceedings in particular by means of some pending concrete judicial proceedings. In such a case, the parties inform the court that they have filed a petition before the Constitutional Court.

However, such a legal remedy is separate from the proceedings, the court is not obliged to stay proceedings upon a petition filed by the party. Nevertheless, a deadlock in fact occurs in the court proceedings, if these have not already been formally stayed by a court ruling, in those cases in which the Constitutional Court, upon the petition filed, suspends until the final decision the implementation of the statutory provision that should be applied in the proceedings.

*15. Do the courts that put the question rule on the constitutionality or unconstitutionality of the regulation at issue?*

No. As already mentioned, the Slovenian constitutional review follows that tradition in which constitutional review is concentrated in a single court, that is, in a constitutional court. The court that puts before the Constitutional Court a question of the unconstitutionality of a certain regulation must state the reasons for that and then comply with any decision the Court makes on this matter.

#### *Screening*

*16. Is there a screening procedure which allows the constitutional court to limit the number of cases or to speed up the hearing of those cases (nonsuit, quick reply, demurrer, evident answered)? What is the proportion of cases screened in this way?*

In cases in which a court files a request for the review of the constitutionality of a statutory provision, the Constitutional Court may only examine whether the legal requirements for filing the request have been fulfilled. A court may file a request in relation to the proceedings it is conducting and, provided this is demonstrated, the Constitutional Court must carry out constitutional-review proceedings and decide on the request.

When the individual or legal entity files a petition to commence proceedings for the review of the constitutionality of a statute or other regulation, the Constitutional Court Act provides for special proceedings to examine the petition. In the framework of these proceedings, what is established in the first place is whether the individual has demonstrated their legal interest for a Constitutional-Court decision to be made. The Constitutional Court may also dismiss the petition if it is evidently unsubstantiated or no important legal question is expected to be resolved by the decision.

The petitioner must file a complete petition, which enables the Constitutional Court to examine whether the conditions for commencing proceedings have been fulfilled. If the petition is not complete the Constitutional Court calls the petitioner to supplement it. If the petitioner does not respond to such a call within a specified time limit, the Constitutional Court, with an advance warning, dismisses the proceedings.

In the year 2000, of 339 resolved cases in which the subject of review was the constitutionality or illegality of a regulation, the petition was rejected in 111 cases, dismissed as evidently unfounded in 67 cases, and proceedings were dismissed in 50 cases.

The Constitutional Court as a rule adjudicates according to the order of precedence of received petitions, except in cases where it is possible, pursuant to Article 52 of the Rules of Procedure of the Constitutional Court of the Republic of Slovenia, to more quickly or, in accordance with subpara. 2 of this Article, more slowly resolve a certain issue. The examples determined in Article 52 of the Rules of Procedure are as follows:

- when simpler cases are at issue that can be considered and adjudicated already in the phase of examination or in the phase of preliminary proceedings;
- when consideration and adjudication according to the order of precedence are prevented by the length and complexity of preliminary proceedings or the proceedings for considering an individual case;
- when such cases are at issue for which the regulations that are applied on the basis of Article 6 of the Constitutional Court Act determine that the Court must consider and adjudicate them rapidly;
- when the Constitutional Court Act or other regulations determine a time limit by which the Constitutional Court must consider a case and decide it;
- when a decision on a jurisdictional dispute is at issue;
- when the resolution of an important legal question is at issue, and in other cases
- when the Court so determines.

#### *Scope of referral of the constitutional court*

*17. What is the import of the considerations of unconstitutionality given by the court that puts the question (court a quo)? Must the constitutional court take these considerations into account or can it ignore them? Can it raise, ex officio or at the request of the parties, the arguments of unconstitutionality not envisaged by the court a quo or is it restricted by the decision of referral? Can the constitutional court review regulations not intended by the preliminary question yet linked thereto?*

The court that files a request for review of the constitutionality of statutory provisions must state in the request also the constitutional provisions that have allegedly been violated by those statutory provisions and the reasons for the violation. A request is therefore not considered a question but an instrument by virtue of which the court asserts a lack of conformity of statutory provisions with the appropriate constitutional provisions and state the reasons for such position.

The subject of a Constitutional Court review are as a rule only the challenged provisions. However, the Constitutional Court is, in Article 30 of the Constitutional Court Act, vested with the authority to review as an official duty (the principle of linking issues) also the constitutionality of other statutory provisions or the constitutionality or legality of other regulation (statute, executive regulation) or general act for the exercise of public authority, for which the review of constitutionality or legality was not requested, if these provisions are mutually related or if this is necessary to resolve the case.

The Constitutional Court cannot simply ignore the reasons for the unconstitutionality of a statute stated by the court, but must dismiss them, if unfounded, by means of appropriate

arguments. However, the Constitutional Court is not limited by the legal definition of the asserted unconstitutionality, nor by the suggested technique of decision making to be applied (e.g. if the court suggests the annulment of a statutory provision, the Constitutional Court may pass down a so-called interpretative decision).

*18. Are all aspects, both in law and in fact, of the action pending before the court a quo referred to the constitutional court?*

An ordinary court submits for review by the Constitutional Court only questions of law concerning the (un)constitutionality of a statute that the court should apply in a concrete case. The Constitutional Court is by its very existence limited to review only questions of constitutionality (and legality).

#### *Relevance of the question*

*19. Can the constitutional court dismiss the question on the ground that it is not useful to the settlement of the action brought before the court a quo?*

A question of the constitutionality of a statute must be related to the matter in dispute.

#### *Interpretation of the question*

*20. Can the constitutional court reformulate the question in order to make it clearer and to define the constitutional debate better? If so, what use is made of this option?*

#### *Interpretation of the reviewed regulation*

*21. Must the constitutional court adhere to the interpretation of the reviewed regulation given by the court a quo?*

As for Questions 20 and 21, the Constitutional Court has not so far taken any position on that.

#### *Jus superveniens*

*22. What is the impact of a legislative amendment to the challenged regulation subsequent to the decision of referral?*

If, during the proceedings, a statute is altered to conform with the Constitution or it ceases to be in force, but the consequences of unconstitutionality were not eliminated, the Constitutional Court may declare that such act was not in conformity with the Constitution. In the case of regulations or general acts issued for the exercise of public authority, the Constitutional Court decides whether its ruling on constitutionality or legality has retroactive or prospective effects. This is determined by Article 47 of the Constitutional Court Act, which in such a case requires that the Constitutional Court, prior to deciding on the constitutionality of a statute, answer the question whether the constitutional review is necessary to remedy the unconstitutionality – whether there exists the so-called legal need for constitutional review. If

this exists (since the court must apply the statutory provision despite its having no effects at the time of decision making), the Constitutional Court must also review the statutory provision that ceased to apply due to the subsequent statutory amendment.

### *Parties*

*23. Can the parties before the court a quo or third parties (individuals, institutions, other courts, etc.) participate (voluntarily or compulsorily) in the procedure before the constitutional court? If so, in what way? How are they informed of the procedure before the constitutional court? Can one intervene before the constitutional court on the mere grounds of being a party before a court deciding on merits in an action similar to the one that led the court a quo to put the preliminary question?*

As has been stated above, parties to proceedings before the court that filed a request do not have the position of parties to Constitutional-Court proceedings. Thus, they are not specifically informed of the Court proceedings. However, such a person, given their demonstrated legal interest and the consent of the judge rapporteur in the case pending before the Constitutional Court, can inspect the file, and the applications of such person addressed to the Constitutional Court would be put in it. The Constitutional Court would therefore learn about them.

The court that filed the request and the legislature, i.e. the National Assembly, have the position of parties. But the Constitutional Court can obtain from parties to court proceedings as well as from other persons, State bodies, local community bodies or bearers of public authority, explanations needed; it can also obtain opinions by experts, expert and other organizations, examine witnesses and expert witnesses and take other evidence, or acquire individual evidence from other courts or bodies (Article 28, para. 2 of the Constitutional Court Act).

At the same time, it is possible that the party to court proceedings that were stayed for reason of the request filed by the court, file a petition for the review of the constitutionality of the same statutory provision (by stating other reasons and a different constitutional definition from those stated by the court, this in fact extending the review of the constitutionality of the challenged statutory provision). If such were filed, the Constitutional Court would consider it as such and then join the two procedures into one for reason of joint consideration and decision making. In such procedure the party to court proceedings would also become a party to Constitutional Court proceedings, which would mean that they have the opportunity to make their statements on all the assertions made by the opposing party (the legislature).

It has not yet occurred that in a case where a request is filed by the court, also the party to such court proceedings would file a petition for the review of the constitutionality of the same statutory provision, however it has occurred many times that petitions of other petitioners, who also demonstrated their legal interest for the review of the same statutory provision, were considered and decided upon together with the request filed by the court.

*24. Is there a counsel for the defense? If so, in what form? Is there a counsel for the prosecution with the constitutional court?*

There is no special counsel with the Constitutional Court either for the defense or the prosecution.

#### *Points of law in the constitutional proceedings*

*25. Does the withdrawal of suit before the court a quo of the death of a party before the same court subsequent to the decision of referral have an impact on the progress of the constitutional action?*

Since a party to Constitutional Court proceedings is a court, not a party to the proceedings of such court, in such a case (or in the case of the cessation of a legal entity if this is a party to court proceedings) the withdrawal of the request should be proposed by the court provided that there are no other pending proceedings which would still require constitutional review. If the court withdraws the request, the Constitutional Court must dismisses the proceedings. So far the Constitutional Court has not addressed such a question. However, it has often dismissed proceedings if the petitioner, a party to Constitutional Court proceedings, passed away during the proceedings for the examination of the petition or during the proceedings deciding on the constitutionality of a regulation.

#### **d. The constitutional appeal**

##### *Object of the constitutional appeal*

*26. What is the object of the constitutional appeal? Against which acts can such an appeal be lodged? Once a constitutional appeal has been referred to it, can the constitutional court examine the facts of the case?*

According to Article 160, para. 6 of the Constitution, the Constitutional Court decides on constitutional complaints stemming from the violation of human rights and fundamental freedoms by individual acts.

According to Article 50 of the Constitutional Court Act, a constitutional complaint may be lodged against an individual act of a State body, local community body or bearer of public authority if a person believes that their human rights or basic freedoms have been violated with such an act. Because of the requirement of the prior exhaustion of legal remedies, constitutional complaints are mostly lodged against decisions of the Supreme Court or the appellate courts, if no extraordinary legal remedies are allowed against their decisions before the Supreme Court.

In proceedings on a constitutional complaint the Constitutional Court does not review whether the court has established the factual situation correctly and fully, or whether it has used procedural and substantive law correctly. It only determines whether there is a case of the violation of human rights – i.e. whether a court has interpreted the law in a manner violating human rights or fundamental freedoms. It also establishes whether the application of the law is so obviously incorrect or arbitrary, that a court decision could be reproached for judicial arbitrariness and consequently result in an unfair trial. Only in the described aspect may the Constitutional Court review established factual situation determined by a court.



## *Allowability of the appeal*

### *27. Who can refer an appeal to the constitutional court? How?*

Any person (natural person and legal entity if it can be a bearer of a human right which it claims to have been violated) may lodge a constitutional complaint if they believe that their human rights or fundamental freedoms have been violated. The Ombudsman may lodge a constitutional complaint concerning a particular case they are dealing with, with the consent of the person whose human rights or fundamental freedoms they are protecting in a particular case.

A constitutional complaint must be lodged within 60 days from the day the individual act against which a constitutional complaint is permitted is served. A constitutional complaint must state the challenged individual act, the facts supporting the complaint and the nature of the human rights and fundamental freedoms alleged to have been violated. A constitutional complaint must be lodged in writing. A copy of the disputed individual act and documents supporting the complaint must be enclosed.

### *28. Is appeal to the constitutional court only possible once all other avenues of appeal have been tried?*

The precondition for lodging a constitutional complaint is the prior exhaustion of legal remedies. As an exception to this condition, the Constitutional Court may hear a constitutional complaint even before all extraordinary legal remedies have been exhausted in cases of *prime sacre* violations and if carrying out of the individual act would have irreparable consequences for the complainant (Article 51, para. 2 of the Constitutional Court Act).

Legal remedies have to be exhausted formally as well as substantively. The latter means that the complainant has to assert a violation of human rights already in the proceedings before the court. Article 15, para. 1 of the Constitution, where the principles of the exercise and limitation of human rights are determined, provides that human rights and fundamental freedoms shall be exercised directly on the basis of the Constitution.

From that it follows that in proceedings on a constitutional complaint the judgements of the Supreme Court are challenged; when extraordinary legal remedies before the Supreme Court against decisions of the appellate courts are not allowed, the judgements of the appellate courts are challenged. The latter may be the subject of premature review according to Article 51, para. 2 of the Constitutional Court Act also in cases when extraordinary legal remedies before the Supreme Court are allowed, if the alleged violation is obvious and if the complainant would incur irreparable consequences as a result of the implementation of an individual act (both conditions must be fulfilled; the Constitutional Court interprets this provision restrictively).

## *Screening*

### *29. Is there a screening procedure which allows the constitutional court to limit the number of cases or to speed up the hearing of those cases (selection of cases, nonsuit, quick reply, demurrer, evident unfoundedness, etc.)? What is the proportion of cases screened in this way?*

A decision on whether to accept a constitutional complaint and begin proceedings is brought by the Constitutional Court in a panel of three judges at an in camera session.

The panel rejects a constitutional complaint if:

- it was lodged too late,
- all legal remedies have not been exhausted,
- it was lodged by a person not entitled to do so,
- a constitutional complaint was not supplemented as required by the complainant within the specified period of time for unjustified reasons in accordance with the request of the Constitutional Court,
- the complainant does not demonstrate legal interest as determined by the Constitutional Court in a constitutional complaint.

The panel does not accept a constitutional complaint:

- if there is obviously no violation of human rights or fundamental freedoms,
- if the decision cannot be expected to provide a solution to an important legal question and if the violation of a human right or fundamental freedom did not have any important consequences for the complainant.

The panel decides upon the rejection or acceptance of a constitutional complaint unanimously. An appeal against such decision is not permitted. The decision on the non-acceptance of the constitutional complaint and the decision on the rejection of a constitutional complaint are submitted to all the Constitutional Court judges. If any group of three judges of the Constitutional Court decides to accept a constitutional complaint within 15 days, the constitutional complaint is accepted for hearing.

The already mentioned Article 52 of the Rules of Procedure of the Constitutional Court of the Republic of Slovenia also applies to constitutional complaints providing that the cases are adjudicated according to the order of precedence of received petitions, except in cases specifically provided by law. Especially important in proceedings on constitutional complaints is the provision of indent 3 of this Article, providing that the Constitutional Court must consider constitutional complaints rapidly in cases for which the court proceedings determine that the courts must consider them rapidly or adjudicate them in specified short time limits.

From the following table one can see that the majority of the proceedings with constitutional complaints are finished in the procedure for examining a petition, only a small proportion of constitutional complaints is accepted for hearings (in 2000 6%), and an even smaller proportion of complainants is awarded a positive decision by the Constitutional Court.

Table

year	complaints filed	decisions issued	admitted to the plenum	breach found
1995	205	133	25	11
1996	351	232	17	13
1997	376	329	28	25
1998	355	298	35	33
1999	348	319	39	29
2000	450	458	27	26

### *Parties*

*30. Does the plaintiff participate in the procedure before the constitutional court? If so, in what form? What about the other parties? Can or must certain public authorities intervene in the proceedings?*

Pursuant to Article 57 of the Constitutional Court Act, if a constitutional complaint is accepted, it is heard by the Constitutional Court at an in camera session as a rule, or in open court if the Constitutional Court so chooses. In the latter case, the complainant can normally participate in the public hearing. He or she can be represented by a counsel if he or she appoints one or if the defence is mandatory. Concerning the participation in constitutional complaint proceedings of the other parties, in accordance with Article 56 of the Constitutional Court Act, after being accepted, a constitutional complaint is sent to the body which issued the individual act against which the constitutional complaint was lodged, in order that they may reply to the constitutional complaint within a determined period.

The complainant must be informed of the answer of the Court and given an opportunity to state their opinion on it. The constitutional complaint is sent to the opposing party to which the judicial decision challenged by the constitutional complaint refers (e.g. if a constitutional complaint was lodged by a plaintiff in a civil procedure, the constitutional complaint is sent to the defendant as well, and they are given an opportunity to state their opinion of its statements). If the Constitutional Court in the process of deciding on a constitutional complaint calls a public hearing, it has to invite such party to the public hearing and they must be given an opportunity to state their opinion of the statements of the complainant.

The complainant and the mentioned party who is given an opportunity to state their opinion have, according to Article 4, para. 1 of the Constitutional Court Act, the right to inspect documents pertaining to their cases at all times during the proceedings, while other persons may exercise such right with the permission of the President of the Constitutional Court.

*31. Is there a counsel for the defence? If so, in what form? Is there a counsel for the prosecution with the constitutional court?*

A complainant may lodge a complaint themselves. In proceedings on a constitutional complaint an authorized person who submits a special authorization to represent a party in proceedings before the Constitutional Court, may represent them. The authorized person may be (and most often is) an attorney; a party may however be represented by an authorized person who is not an attorney.

If a party does not have means for an attorney, a competent court in first instance may appoint one in the procedure for assuring free legal aid for lodging a constitutional complaint (Free Legal Aid Act, Official Gazette of RS, 48/2000).

The same applies to a party drawn into proceedings after the acceptance of the constitutional complaint for hearing.

## **2. Settlement of conflicts between courts**

*32. Is it the task of the constitutional court to circumscribe the respective jurisdictions of the other courts? If so, how does it proceed?*

Yes, but only in relation to jurisdictional disputes between them and other State authorities. According to Article 160, para. 1, subpara. 8 of the Constitution, the Constitutional Court decides on jurisdictional disputes between courts and other State authorities. This constitutional provision has been detailed in Article 61 of the Constitutional Court Act, which provides that: (1) A request for a decision on disputes concerning jurisdiction between courts and other State bodies ... may be submitted by an affected body within ninety days from the day such body became aware of the interference of another party in its area of jurisdiction. (2) If a jurisdictional dispute occurs because several bodies refuse to be competent in a particular case, a solution to the case may be proposed by the body to which the case was assigned, but believes that the matter does not fall within its jurisdiction. (3) An initiative for resolving a jurisdictional dispute may also be submitted by a party to the proceedings which caused the jurisdictional dispute. (4) The Constitutional Court shall issue a decision stating which body is competent and may also abrogate, retroactively or prospectively, the general act, or the general act issued by the public authority whose unconstitutionality or illegality has been established.

## **II. The relations between the constitutional court and the other courts**

### ***A. The organic link***

*33. What are the organic links between the constitutional court and the other national courts (conditions of admission, appointment procedure, etc.)?*

In the case of both types of courts, judges are elected by the Parliament (the National Assembly), however, the proposers of judges are different: i.e. the President of the Republic for Constitutional Court judges, the Judicial Council for judges (of ordinary courts).

For the conditions for the office of Constitutional Court judge the Constitution (Article 163, para. 2) provides that judges are elected from among legal experts. Article 9 of the Constitutional Court Act provides an age limit of 40 years. Election of the Constitutional Court judges is not related to the career advancement within a judiciary. The conditions for judges of ordinary courts are determined in the Judicial Office Act. Special general conditions are required for election to a judicial office, among others, having passed the state examination for lawyers (not required of a Constitutional Court judge), for appointment to special office in the judicial hierarchy additional special conditions are required as well, which are mainly connected to a certain number of years in judicial office or a longer period of experience practicing law in other areas.

Otherwise there is no organic connection between Constitutional Court judges and judges of other courts. The possibility that e.g. a Supreme Court judge is elected a Constitutional Court judge depends on whether the Supreme Court judge wishes to run for a vacancy on the Constitutional Court, whether the President of the Republic proposes them for election, and finally on their election in the National Assembly. In the present composition of the Constitutional Court there are two judges who were elected to the position of Constitutional Court judge as Supreme Court judges.

## ***B. The procedural link***

*34. Are there procedural links between the constitutional court and the court referring the case to it or against which the appeal was lodged (for example, a judge-to-judge meeting in order to clarify or refine the question)? If so, what use is made of this option?*

Formally no procedural links between the court and the Constitutional Court are envisaged. The court can only be a party to Constitutional Court proceedings.

According to Article 160, para. 6 of the Constitution, the Constitutional Court decides on constitutional complaints stemming from the violation of human rights and fundamental freedoms by individual acts.

According to Article 50 of the Constitutional Court Act, a constitutional complaint may be lodged against an individual act of a State body, local community body or bearer of public authority if a person believes that their human rights or basic freedoms have been violated with such an act. Because of the requirement of the prior exhaustion of legal remedies, constitutional complaints are mostly lodged against decisions of the Supreme Court or the appellate courts, if no extraordinary legal remedies are allowed against their decisions before the Supreme Court.

In proceedings on a constitutional complaint the Constitutional Court does not review whether the court has established the factual situation correctly and fully, or whether it has used procedural and substantive law correctly. It only determines whether there is a case of the violation of human rights – i.e. whether a court has interpreted the law in a manner violating human rights or fundamental freedoms. It also establishes whether the application of the law

is so obviously incorrect or arbitrary, that a court decision could be reproached for judicial arbitrariness and consequently result in an unfair trial. Only in the described aspect may the Constitutional Court review established factual situation determined by a court.

### ***C. The functional link***

#### ***§ 1. The review and its effects***

*35. Do the rulings of the constitutional court always constitute a binding precedent for the other courts?*

Decisions of the Constitutional Court are legally binding (Article 1, para. 3 of the Constitutional Court Act).

In the framework of abstract review, Court decisions have erga omnes effect, which means that they are binding on everybody regardless of their being parties to a particular constitutional dispute. Constitutional complaint decisions have, on the other hand, only inter partes effect, meaning that they are binding only on the parties of the constitutional dispute. However, they may have erga omnes effect provided that the requirements determined in Article 59, para. 2 of the Constitutional Court Act are fulfilled (If the Constitutional Court establishes that an individual act so retroactively abrogated was based on an unconstitutional general act or general act issued by a public authority, it may abrogate such act with retroactive or prospective effect by applying the provisions on the review of the constitutionality and legality of general acts).

Constitutional complaint decisions against individual court decision formally have inter partes effect, and as such they are not binding precedents. Such decisions have the effect of precedents on court practice only de facto, as reasons for a decision – because of the adherence to the equality principle - demand an equal decision in equal legal and actual conditions

*36. What are the review methods of the constitutional court (annulment, dismissal, declaration of constitutionality, declaration of unconstitutionality, interpretative decisions, interpretation reserves, annulment of a judicial decision, establishment of deficiencies, establishment of limited validity, etc.)? If necessary, distinguish for the different types of referral (action for annulment, prejudicial question, constitutional appeal).*

The Constitutional Court may in matters in its jurisdiction decide to:

a) in proceedings to review the constitutionality and legality of general acts including those issued for the exercise of public authority:

- reject a petition or request to initiate proceedings if procedural conditions have not been fulfilled;
- dismiss a petition to initiate proceedings if it is obviously unfounded;
- abrogate a statute completely or partly;
- abrogate prospectively or ab initio a regulation;
- reach a declaratory decision if the Constitutional Court determines that a statute or a regulation was unconstitutional;
- issue an interpretative decision that the challenged provision of an act is not contrary to the Constitution;

- determine with a decision that a statute is not contrary to the Constitution.

b) in the proceedings on a constitutional complaint:

- reject the constitutional complaint if the procedural requirements are not fulfilled;
- not accept a constitutional complaint if there is obviously no violation of human rights or fundamental freedoms;
- accept a constitutional complaint and in the process of deciding:
  - dismiss a constitutional complaint,
  - accept a constitutional complaint, abrogating retroactively or prospectively a challenged individual act,
  - accept a constitutional complaint, abrogating retroactively or prospectively a challenged individual act, and decide on a contested right or freedom.

Furthermore, the Court may:

- in the proceedings of jurisdictional disputes issue a decision stating which body is competent and may also abrogate, retroactively or prospectively, a general act or general act for the exercise of public authority, whose unconstitutionality or illegality has been established.
- in proceedings to establish the accountability of the President of the Republic, the Prime Minister or Ministers, issue a decision acquitting the accused party, if it finds the proposal for impeachment to be unfounded; establish the basis of the impeachment with a decision; it may decide that the individual should cease to hold office; if the accused resigns from office during the proceedings, the Constitutional Court terminates the proceedings with a ruling.
- in proceeding adjudicating the unconstitutionality of acts and activities of political parties abrogate an unconstitutional act and prohibit the unconstitutional operation of a political party with a decision; it may order the deletion of a political party from the register.
- in proceeding adjudicating the confirmation of the election of deputies, in the event that the Constitutional Court decides that an appeal is justified, it shall abrogate the National Assembly decision with a decision, and decide whether or not the deputy's election is to be confirmed and
- give opinion on the conformity of treaties with the Constitution during the process of ratification, binding on the legislator.

*37. What are the legal effects of the rulings of the constitutional court (ex tunc; erga omnes, inter partes; etc.), individually, on the original action and on all actions before common law courts, on other regulations, administrative acts – statutory or individual – or judicial decisions, etc. (for example, is there a re-examination procedure)? Can the constitutional court limit or sustain the effects in time?*

Decisions of the Constitutional Court issued in proceedings for the review of the constitutionality and legality of general acts have erga omnes effect. An opinion on the conformity of treaties with the Constitution is binding on the National Assembly, which may not approve the ratification of the treaty in the event of ascertained unconformity with the Constitution without the adequate previous amendment of constitutional provisions.

Other decisions of the Constitutional Court have inter partes effect.

The Constitutional Court may abrogate a statute only with ex nunc effect; a statute abrogated by the Constitutional Court shall not apply to relations that had arisen before the day such abrogation came into effect, if by that day such relations had not been finally adjudicated. The Constitutional Court may abrogate (with ex nunc effect) or abrogate ab initio – i.e. with ex tunc effect – executive regulations or general acts issued for the exercise of public authority.

The Constitutional Court has already adopted the position that an individual person or a legal entity may secure the beginning of the effect of finality, if they lodge a constitutional complaint in due time against the final court decision issued on the basis of a statute abrogated by the Constitutional Court after the finality of the court decision.

The Constitutional Court may abrogate a statute with a suspensive time – limit of up to one year, if there are constitutional reasons for the suspension of the immediate effects of the abrogation.

In well founded cases the Constitutional Court may soften the harshness of only the ex nunc abrogation of a statute with the determination of the manner of the implementation of its decision.

If the Constitutional Court abrogates ab initio a regulation or general act issued for the exercise of public authority, any person who suffers detrimental consequences due to the existence of such act, is entitled to request the remedying of such consequences. If such consequences were incurred as a result of an individual act adopted on the basis of an ab initio abrogated regulation or general act issued for the exercise of public authority, the injured party has the right to submit a request to the competent authority which brought the decision in the first instance to change or ab initio abrogate such individual act. If the consequences arose directly as a result of a general act or a general act issued for the exercise of public authority abrogated ab initio by the Constitutional Court, the remedying of consequences may be required from the authority which issued such act. If such consequences cannot be remedied, the injured party may claim damages in a court of justice.

In proceedings of examining a constitutional complaint, the Constitutional Court sets aside or sets aside ab initio the judicial decisions which were examined– it is merely a terminological distinction - judicial decisions are set aside, administrative decisions are set aside ab initio – and returns the case to the competent body to decide anew or may itself decide on the matter in accordance with the conditions provided by law. The legal position established on the basis of such Constitutional Court decision, is the same as if e.g. the Supreme Court set aside the judicial decision and returned the matter (depending where the violation occurred) to the court in the first or second instance to decide anew or, in case of an administrative matter, to the competent administrative body.

*38. Is the authority of the rulings of the constitutional court always respected? Does it sometimes meet with opposition from institutions or courts? Do the other courts sometimes experience difficulties in implementing the rulings of the constitutional court?*

The Constitutional Court Act explicitly provides that decisions of the Constitutional Court are legally binding (Article 1, para. 3 of the Constitutional Court Act).

The Constitutional Court has so far come across the problem of non – adherence to its decisions in some cases where the unconstitutionality of a statute was established. The National Assembly was given a time limit to abolish the unconstitutionality, however it did not adopt an adequate statutory regulation in the time limit given. In some decisions the Constitutional Court declared the unconstitutionality of certain statutory provision(s) and, on the basis of Article 48 of the Constitutional Court Act, determined a time limit for the legislature to eliminate the respective unconstitutional provision(s). In some cases the legislature responded to such decisions, however not always before the respective time limit



expired. There are some other cases which caused problems when the time limit expired, but the legislature has not fulfilled its obligation (in some cases even after many years). Concerning such situations, the Constitutional Court has often declared that such omissions of the legislature signify actions against the principle of the Rule of Law and the principle of the separation of powers. Furthermore, the Court has stated that any branch of power must exercise its powers strictly.

Our Constitutional Court is, in relation to other courts, in the position of having the last resort authority to assure adherence to its former decisions in case courts did not adhere to them. This power is assured by the reformatory authority, which it has in the proceedings of a constitutional complaint. In court practice thus far concerning decisions reached in constitutional complaint proceedings, it has not yet met with obvious opposition to the reasoning of the Constitutional Court.

## **§ 2. Interpretation by the constitutional court**

### **a. The case law of other courts accepted by the constitutional court in the exercise of its own jurisdiction**

*39. Does the constitutional court consider itself bound by the interpretations of the challenged act given by the Supreme Court or other courts (theory of living law, for example)? Can the constitutional court, however, give another interpretation?*

The Constitutional Court interprets the Constitution, regular courts interpret statutes except for cases of violation of the Constitution.

### **b. The effects of the interpretation of the constitutional court and the acceptance of the case law of the constitutional court by the other courts in the exercise of their own jurisdiction**

*40. Is the interpretation of the constitutional rules and the legislative rules given by the constitutional court binding on the other courts? What happens in case of non-adherence to the interpretation of the constitutional court?*

Decisions of the Constitutional Court are legally binding and have erga omnes effect in the framework of the review of the constitutionality of acts. The interpretation of constitutional provisions given by the Constitutional Court is legally binding, as well. In the context of a constitutional complaint, review decisions have inter partes effect, however, erga omnes effect is also possible. For the interpretation of statutory provisions this is not necessarily true. It is possible, however, in instances when the statutory provision could e.g. be interpreted in two ways, one of which would be counter to the Constitution, the other one, however, in agreement with the Constitution, as determined by the Constitutional Court in a so called interpretative decision. Such interpretation of a statutory provision is undoubtedly legally binding on courts. If the statutory provision allows many possible interpretations, none of which is unconstitutional, then in such cases it is the affair of ordinary courts in what way such statutory provision is used. If a court did not follow the interpretation of the Constitutional Court, the party would have, in a case on the protection of human rights and

fundamental freedoms, the possibility to ensure adherence to the position of the Constitutional Court with a constitutional complaint.

If the courts or other State authorities do not adhere to the interpretation of the Constitutional Court, there is no formal sanction. However, if the Constitutional Court abrogates an individual act with retroactive effect, it may also decide on a disputed right or freedom if such proceedings are necessary in order to remedy the consequences that have already occurred on the basis of the retroactively abrogated individual act, or if such is the nature of the constitutional right or freedom, and if a decision can be reached on the basis of the data of the record (Article 60, para. 2 of the Constitutional Court Act).

*41. Can the constitutional court declare that a rule is constitutional only in the exact interpretation given by it? Can this interpretation deviate from that of “living law”? If so, what use is made of this option?*

Yes, when it comes to the case described in the previous answer. Such interpretation may be different from “living law”. In such cases the Constitutional Court issues an interpretative decision deciding which interpretation is in conformity with the Constitution.

*42. What are the effects for the other courts of a purely interpretative decision?*

An interpretative decision by the Constitutional Court is legally binding on courts as well.

### **III. The interference of the European courts**

#### ***A. The constitutional court and the other courts vis-à-vis the European Convention on Human Rights and the case law of the European Court of Human Rights***

*43. Is the constitutional court bound by the case law of the European Court of Human Rights? If this case law is not binding, does it influence the course of action of the constitutional court?*

According to Article 8 of the Constitution, in the Republic of Slovenia the European Convention on Human Rights applies directly as the ratified and published treaty. On the basis of the already mentioned Article 15, para. 5 of the Constitution, all human rights and fundamental freedoms provided in the Constitution have constitutional protection. If rights in the Convention are broader the Constitutional Court has to, because of this constitutional provision, directly apply the adequate provision of the Convention. As a rule, it is quite the opposite. In some instances the provisions of our Constitution protect to a higher level or a broader scope, the individual constitutional right or with lesser extent of restriction as provided in the European Convention on Human Rights.

In the Republic of Slovenia the precedent system does not apply formally, therefore the judicial practice of the European Court of Human Rights does not have the position of precedent. However, it has such a position in practice. It influences decisions of the Constitutional Court; for it is often used for the interpretation of the contents in the

constitutionally provided human rights, in cases where the provisions of the Slovenian Constitution and the Convention are identical.

*44. Can the court base its decision on a provision of the European Convention and, in doing so, possibly deviate from the action of the constitutional court?*

If the court uses the provision of the European Convention on Human Rights directly (which it can) and therefore distances itself from the enforced position of the Constitutional Court on the particular issue, such position could be the subject of constitutional review in proceedings on a constitutional complaint.

*45. Must a lawsuit have been brought before the constitutional court before an appeal can be made to the European Court of Human Rights (after having tried all internal avenues of appeal)?*

In our opinion, the constitutional complaint is a legal remedy which an individual has to exhaust before lodging a complaint with the European Court of Human Rights.

### ***B. The Constitutional court and the other courts vis-à-vis the case law of the Court of Justice of the European Communities***

*46. Is the constitutional court bound by the case law of the Court of Justice of the European Communities? If this case law is not binding, does it influence the course of action of the constitutional court?*

*47. Has the constitutional court already referred, or could it refer, cases to the Court of Justice of the European Communities? What is the role of the constitutional court and the other courts in case of non-application of national regulations that are incompatible with Community law?*

*48. Do national courts have a choice between referring cases to the constitutional court and to the Court of Justice of the European Communities?*

The Republic of Slovenia is not a member of the European Community and therefore questions 46 through 48 are not applicable.