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The Constitutional Court of the Republic of Slovenia
Ustavno Sodišče Republike Slovenije

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Cooperation of Constitutional Courts in Europe – Current Situation and Perspectives

NATIONAL REPORT OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF SLOVENIA

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SUMMARY

The Constitutional Court is the highest body for the protection of constitutionality, legality, human rights, and fundamental freedoms in the Republic of Slovenia. When exercising its competences, most notably in its decisions, it takes into consideration, , also the international dimension, namely the European Convention on Human Rights and the case law of the European Court of Human Rights, and, since the accession of the Republic of Slovenia to the European Union in May 2004, increasingly frequently also the legal order of the European Union. The case law of foreign constitutional courts also plays an important role in the work of the Constitutional Court, even though this may often not be evident from its decisions. The Constitutional Court cooperates both formally and informally with other constitutional courts, the European Court of Human Rights, and the Court of Justice of the European Union. It endeavours to permanently exchange information and experience, including via the Venice Commission, and participates in key international events from its professional field.

I. Constitutional Courts between constitutional law and European law

1. Is the Constitutional Court obliged by law to consider European law in the performance of its tasks?

The Constitution of the Republic of Slovenia (hereinafter referred to as the Constitution) was adopted and entered into force on 23 December 1991, six months after the Republic of Slovenia became an independent state (on 25 June 1991). It is a modern constitution, which is based on the principles that are typical for modern European constitutional legal orders: the principle of democracy, the principles of a state governed by the rule of law, the principle of a social state, and the principle of the separation of powers. The constitution guarantees an extensive catalogue of human rights and fundamental freedoms. Human dignity, as the source and the common expression of all human rights, forms the foundations of our constitutional order. The integration into the Council of Europe in May 1993, together with the ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the ECHR), and the accession to the European Union (hereinafter referred to as the EU) in May 2004 acknowledged the commitment of the Republic of Slovenia to respecting modern European legal standards and to ensuring a high level of protection of human dignity.

The position and the functioning of international law in the Slovene legal order are regulated by numerous provisions of the Constitution. Article 8 of the Constitution determines that laws and other regulations must comply with generally accepted principles of international law and with treaties that are binding on Slovenia. Similarly, also Article 153 of the Constitution determines that laws must be in conformity with generally accepted principles of international law and with treaties ratified by the National Assembly of the Republic of Slovenia (whereas regulations and other general legal acts must also be in conformity with other ratified treaties, i.e. those that were ratified, in conformity with the law, by the Government of the Republic of

Slovenia). The Constitution admittedly does not mention customary international law, but the Constitutional Court has, in its case law, already defined the content of the notion »generally accepted principles of international law« so as to include the general legal principles recognised by civilised nations and rules of customary international law.[1] Customary international law thus remains an important formal source of international law, which is also applied, despite not being codified or written, by the Constitutional Court.

In the contemporary international community treaties form an ever increasing part of international law. From the perspective of the hierarchy of regulations, it proceeds from the mentioned provisions of the Constitution that in the Slovene (constitutional) legal order treaties are inferior to the Constitution, but superior to laws, because laws have to be in conformity with them. In addition, it is important to stress that Article 8 of the Constitution clearly states that ratified and published treaties shall be applied directly. Such entails that they have – if they are, by their nature, self-executing – direct legal effects for individuals, who can refer directly to them when invoking their rights.

With regard to the duty of the Constitutional Court to take into consideration EU law when adopting decisions, the provisions that regulate the competences of the Constitutional Court must also be considered, in addition to the mentioned substantive constitutional provisions.

The Constitutional Court has a number of competences. Most of them are determined by the Constitution (Article 160),[2] some of them also by laws. The two

[1] See, for instance, Decision of the Constitutional Court No. U-I-266/04, dated 9 November 2006 (Official Gazette RS, No. 118/06).

[2] Article 160 of the Constitution reads as follows:
»The Constitutional Court decides:
- on the conformity of laws with the Constitution;
- on the conformity of laws and other regulations with ratified treaties and with the general principles of international law;
- on the conformity of regulations with the Constitution and with laws;
- on the conformity of local community regulations with the Constitution and with laws;
- on the conformity of general acts issued for the exercise of public authority with the Constitution, laws and regulations;
- on constitutional complaints stemming from the violation of human rights and fundamental freedoms by individual acts;

fundamental competences of the Constitutional Court are to assess the conformity of laws and other regulations with the Constitution and to decide on constitutional complaints. In the framework of assessments of the constitutionality of laws it is important to underline that the Constitution expressly states that the Constitutional Court is also competent to decide on the conformity of laws and other regulations with ratified treaties and with the general principles of international law. Therefore, treaties can serve as a direct criterion (the upper premise) for the assessment of the constitutionality of national laws.

Among the treaties, the ECHR should be specifically mentioned, as it plays an important role in the work of the Constitutional Court, especially when deciding on constitutional complaints, with which individuals invoke violations of human rights and fundamental freedoms in concrete proceedings.[3] By ratifying the ECHR, the Republic of Slovenia adopted an obligation under international law to respect the standards of human rights and fundamental freedoms guaranteed by the ECHR. From the viewpoint of national constitutional law it is undisputable that the ECHR applies directly (Article 8 of the Constitution). Such entails that the ECHR must be taken into consideration by all authorities of the state, namely the courts, when deciding on rights and obligations of individuals. This also applies to the Constitutional Court.

Therefore, when the Constitutional Court decides whether a law is consistent with the Constitution or whether human rights or fundamental freedoms of individuals were

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- on jurisdictional disputes between the state and local communities and among local communities themselves;
- on jurisdictional disputes between courts and other state authorities;
- on jurisdictional disputes between the National Assembly, the President of the Republic and the Government;
- on the unconstitutionality of the acts and activities of political parties; and
- on other matters vested in the Constitutional Court by this Constitution or laws.

In the process of ratifying a treaty, the Constitutional Court, on the proposal of the President of the Republic, the Government or a third of the deputies of the National Assembly, issues an opinion on the conformity of such treaty with the Constitution. The National Assembly is bound by the opinion of the Constitutional Court.

Unless otherwise provided by law, the Constitutional Court decides on a constitutional complaint only if legal remedies have been exhausted. The Constitutional Court decides whether to accept a constitutional complaint for adjudication on the basis of criteria and procedures provided by law.«

[3] One of the conditions for lodging a constitutional complaint is that the judicial protection and all legal remedies before regular courts must be exhausted beforehand. Such entails that, as a general rule, constitutional complaints are lodged against decisions of the Supreme Court. An exception to the rule are proceedings in which the intervention of the Supreme Court is not envisaged in procedural regulations.

violated in procedures before the authorities of the state, it also regularly considers the ECHR and the case law of the European Court of Human Rights (hereinafter referred to as the ECtHR). This is not only an obligation under international law, but also a legal obligation of internal law that stems from national constitutional law. The Constitutional Court can apply the ECHR directly as the underlying reason for its decision; however, as a general rule, it considers it indirectly through the standpoints of the ECtHR when interpreting the provisions of the Constitution.[4]

With regard to the ECHR (the same applies also to other treaties that directly regulate certain rights) the fifth paragraph of Article 15 of the Constitution, which determines that no human right or fundamental freedom regulated by legal acts in force in Slovenia may be restricted on the grounds that the Constitution does not recognise that right or freedom or recognises it to a lesser extent, must further be mentioned. By this provision, the Constitution established the principle of the highest protection of rights, which means that a treaty can have priority even over the Constitution if it guarantees a higher level of protection of a human right.

In May 2004, the Republic of Slovenia joined the EU. It thereby transferred the exercise of part of its sovereign rights to the EU and accepted the *acquis communautaire* into its legal order. The internal constitutional basis for such was provided by Article 3a of the Constitution. The first paragraph of this Article states that pursuant to a treaty ratified by the National Assembly by a two-thirds majority vote of all deputies, Slovenia may transfer the exercise of part of its sovereign rights to international organisations which are based on respect for human rights and fundamental freedoms, democracy and the principles of the rule of law. The Constitution-framers namely adopted such an abstract and general diction with the EU in mind, even though it is not specifically expressed in this provision.

The third paragraph of Article 3a of the Constitution is relevant for the position of EU law in the legal system of the Republic of Slovenia: legal acts and decisions adopted in the framework of the EU apply in the Republic of Slovenia in conformity with the

[4] By Decision No. U-I-65/05, dated 22 September 2005 (Official Gazette RS, No. 92/05), the Constitutional Court specifically underlined that when assessing the constitutionality of a law it must take into consideration the case law of the ECtHR, regardless of the fact that it was adopted in a case in which the Republic of Slovenia was not involved in proceedings before the ECtHR.

legal regulation of the EU. This provision raises a series of questions, on which the Constitutional Court has not yet adopted final positions. In general, this provision establishes an internal constitutional foundation on the basis of which all authorities of the state, including the Constitutional Court, must, when exercising their competences, take account of EU law, including the case law of the Court of Justice of the European Union (hereinafter referred to as the CJEU), namely in conformity with the principles and rules of EU law. The emphasis, however, is on the fact that the authorities of the state take account of EU law "when exercising their competences", which are determined by national law. With regard to its competences, determined by Article 160 of the Constitution, the Constitutional Court has already adopted the position that it is not competent to assess the conformity of EU secondary legislation with the Constitution[5] and that it is also not competent to assess the conformity of national legislation with EU regulations or directives.[6] The Constitutional Court, however, has not refused the competence to review the constitutionality of a national law which implements an EU directive into the national legal order.[7]

2. Are there any examples of references to the international sources of law, such as:

a) the European Convention on Human Rights

In its decisions, the Constitutional Court very often refers to the ECHR and to the ECtHR case law, both in constitutional complaint proceedings and in procedures for the review of the constitutionality of general legal acts.[8]

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[5] See Order of the Constitutional Court No. U-I-280/05, dated 18 January 2007 (Official Gazette RS, No. 10/07).

[6] See, for instance, Decision of the Constitutional Court No. U-I-32/04, dated 9 February 2006 (Official Gazette RS, No. 21/06), and Orders of the Constitutional Court No. U-I-188/04, dated 8 September 2005, and No. U-I-44/05, dated 11 September 2007.

[7] See Order of the Constitutional Court No. U-I-113/04, dated 7 February 2007 (Official Gazette RS, No. 16/07), and Decision of the Constitutional Court No. U-I-37/10, dated 18 April 2013 (Official Gazette RS, No. 39/13).

[8] See, for instance, Decisions of the Constitutional Court No. U-I-60/03, dated 4 December 2003 (Official Gazette RS, No. 131/03); No. U-I-165/08, Up-1772/08, Up-379/09, dated 1 October 2009 (Official Gazette RS, No. 83/09); No. U-I-146/07, dated 13 November 2008 (Official Gazette RS, No. 111/08); No. U-I-67/09, Up-317/09, dated 24 March 2011 (Official Gazette RS, No. 28/11); and No. U-I-292/09, Up-1427/09, dated 20 October 2011 (Official Gazette RS, No. 98/11).

The Constitutional Court adopted different approaches to the assessment of a violation of a human right from the perspective of the ECHR.

If a particular right guaranteed by the ECHR is also guaranteed by the Constitution to an equal or greater degree, the Constitutional Court assesses the challenged statutory provision or the alleged violation of a human right only from the viewpoint of the provisions of the Constitution. Therefore, if the scope of a right from the Constitution matches that of the right from the ECHR or even exceeds it, then, as a general rule, formally only the Constitution serves as the criterion for the assessment of the Constitutional Court. By Decision No. U-I-98/04, dated 9 November 2006 (Official Gazette RS, No. 120/06), for instance, the Constitutional Court, when assessing the constitutionality of the regulation of the right to hunt, stated that Article 1 of Protocol No. 1 to the ECHR does not guarantee rights to a greater extent than they are guaranteed by the provisions of the Constitution. Therefore, it only assessed the petitioners' claims with regard to the violation of Article 1 of Protocol No. 1 to the ECHR from the viewpoint of consistency with Article 33 of the Constitution, which guarantees the right to private property.[9]

By Decision No. U-I-40/12, dated 11 April 2013 (Official Gazette RS, No. 39/13), the Constitutional Court assessed the legislation on the prevention of restriction of competition, which allowed the state authority competent for the protection of competition to conduct a search of business premises of business subjects who are legal entities without a prior court order. The constitutional questions at issue in this case were whether the Constitution protects the right of legal entities to privacy and, if it does, whether a prior court order is necessary for an interference with the privacy of a legal entity. The Constitutional Court addressed these questions from the viewpoints of spatial (Article 36 of the Constitution) and communication privacy (Article 37 of the Constitution). When interpreting both constitutional provisions, it made a reference to the ECHR and the case law of the ECtHR. With regard to the spatial aspect of privacy it established that the second paragraph of Article 36 of the Constitution guarantees basically the same level of protection of privacy as does Article 8 of the ECHR (as interpreted by the ECtHR). With regard to communication

[9] Similarly, see Decision of the Constitutional Court No. U-I-135/00, dated 9 October 2002 (Official Gazette RS, No. 93/02).

privacy of legal entities, however, it established that Article 37 of the Constitution affords it a higher level of protection than Article 8 of the ECHR. Therefore, with regard to both aspects of privacy it only conducted a review on the basis of provisions of the Constitution, without also assessing them from the viewpoint of the ECHR.

If the Constitution does not guarantee a particular human right or it guarantees such to a lower degree than the ECHR, the Constitutional Court conducts the assessment of the alleged violation or the disputed legislation from the viewpoint of its consistency with the ECHR. In the constitutional case law thus decisions can also be found, in which the Constitutional Court directly applied the ECHR as a criterion for its assessment and assessed the constitutionality of the challenged law directly from the viewpoint of the ECHR or, in constitutional complaint proceedings, it directly established the violations of rights determined by the Convention.

In light of the above, the Constitutional Court decided, by Decision No. Up-518/03, dated 19 January 2006 (Official Gazette RS, No. 11/06), that a court which in criminal proceedings refers to incriminating statements of undercover police agents must allow the defence to cross-examine the authors of these statements. In doing so, the Constitutional Court referred to the ECHR and the case law of the ECtHR. It adjudicated that everyone who is charged with a criminal offence has the right to cross-examine or to request a cross-examination of incriminating witnesses. However, as it established that such a guarantee is not specifically listed in the Constitution, it directly applied, on the basis of Article 8 of the Constitution, the relevant provision of the ECHR. Since the complainant did not have the possibility to cross-examine the incriminating witnesses, the Constitutional Court established that there was a violation of the right determined by indent d) of the third paragraph of Article 6 of the ECHR. In this case, the Constitutional Court thus applied the ECHR directly.

In its later decisions, in which the Constitutional Court also dealt with the question of the cross-examination of an undercover police agent, it referred to the ECHR and the case law of the ECtHR and interpreted Article 29 of the Constitution in such way that the right to defence, provided by that Article, also includes the right to cross-examine

incriminating witnesses, in cases in which a judgment is based on the reports of undercover police agents. By Decision No. Up-754/04, dated 14 September 2006 (Official Gazette RS, No. 101/06), it thus qualified the violation of the right to cross-examine an undercover police agent not only as a violation of a right determined by the Convention, but at the same time also as a violation of the right to defence determined by Article 29 of the Constitution.[10]

With regard to the above, attention should once again be drawn to the fifth paragraph of Article 15 of the Constitution, under which no human right or fundamental freedom regulated by legal acts in force in Slovenia may be restricted on the grounds that the Constitution does not recognise that right or freedom or recognises it to a lesser extent. Such entails that after all legal remedies, including the constitutional complaint, have been exhausted, not only the human rights and fundamental freedoms that are guaranteed by the Constitution, but also all the human rights and fundamental freedoms that are regulated by treaties that are binding on the Republic of Slovenia, thus also the ECHR, are constitutionally protected.

With regard to the frequency with which the Constitutional Court refers to the ECHR and to the case law of the ECtHR, it can be established that it applies the ECHR and the case law of the ECtHR as a part of constitutional law. Even though the ECHR is a treaty, it possesses the legal force of the constitution.[11]

b) the Charter of Fundamental Rights of the European Union

In its hitherto case law, the Constitutional Court has not yet dealt with a case in which it would have had to apply the Charter of Fundamental Rights of the EU (hereinafter referred to as the Charter) as a direct (formal) criterion for its assessment. It referred to the Charter from a comparative law perspective. The Charter served, above all, as an additional argument for the interpretation of constitutional provisions. In a few cases, however, the Constitutional Court defined the content of constitutional provisions by referring to the content of the Charter.

[10] The same decision was adopted, for instance, by Decision of the Constitutional Court No. Up-483/05, dated 3 July 2008 (Official Gazette RS, No. 76/08).
[11] The Constitutional Court adopted such position by Order No. Up-43/96, dated 30 May 2000.

Until the entry into force of the Treaty of Lisbon, with which the Charter became legally binding (the first paragraph of Article 6 of the Treaty on the European Union, consolidated version, UL C 326, 26 October 2012 – hereinafter referred to as the TEU), the Constitutional Court only seldom mentioned the Charter in its decisions.

By Decision No. U-I-146/07, dated 13 November 2008 (Official Gazette RS, No. 111/08), the Constitutional Court assessed the constitutionality of the Civil Procedure Act. It established that this Act unconstitutionally discriminates blind and visually impaired persons, because it does not regulate their access to court documents and written applications of parties and other participants in proceedings in a form that they can perceive. During the assessment from the viewpoint of the constitutional prohibition of discrimination on the basis of disability (the first paragraph of Article 14 of the Constitution), the Constitutional Court also made a reference to the Charter, which does not only emphasize the prohibition of discrimination on the basis of disability in the first paragraph of Article 21, but under Article 26 also expressly recognises and guarantees to disabled persons the respect of the right to benefit from measures designed to ensure their independency, social and occupational integration and participation in the life of the community.

By Decision No. U-I-92/07, dated 15 April 2010 (Official Gazette RS, No. 46/10), upon request of the National Council of the Republic of Slovenia, the Constitutional Court reviewed the manner of regulation of the registration and functioning of religious communities in the Republic of Slovenia. In this Decision it amply elaborated the subject of the protection of freedom of conscience and in particular that of freedom of religion. It also adopted a standpoint on the relationship between freedom of religion and the principle of the separation of the State and religious communities. The Constitutional Court specifically underlined that with the entry into force of the Treaty of Lisbon the Charter became legally binding and that, under Article 10, it guarantees the freedom of thought, conscience and religion.

By Decision No. U-I-109/10, dated 26 September 2011 (Official Gazette RS, No. 78/11), the Constitutional Court decided that a provision of the municipal ordinance, by which Ljubljana Municipality determined that the name of a street would be "Titova

cesta" ["Tito Street"], is inconsistent with the Constitution. When reviewing the constitutionality of the municipal ordinance, the Constitutional Court proceeded from the principle of respect for human dignity, which as a fundamental value permeates the entire legal order and has, therefore, also an objective significance in the functioning of authority, both in concrete proceedings and when adopting legislation. As the basis of a special constitutional principle of respect for human dignity, the Constitutional Court has already directly mentioned Article 1 of the Constitution, which determines that Slovenia is a democratic republic. Under the assessment of the Constitutional Court, the principle of democracy exceeds, by its substance and significance, the definition of the state order as merely a formal democracy, as it substantively defines the Republic of Slovenia as a constitutional democracy, thus as a state, in which the acts of authorities are legally limited by constitutional principles, human rights, and fundamental freedoms. In the reasoning of the Decision, the Constitutional Court referred also to the legally binding Charter, more precisely to its preamble, which states that "conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice." Moreover, it established that also the Charter protects human dignity as a special human right, as it determines already in Article 1 that it is inviolable and must be respected and protected.

By Decision No. Up-690/10, dated 10 May 2012 (Official Gazette RS, No. 42/12), the Constitutional Court abrogated an order by which the Supreme Court had decided on a deportation of a citizen of the Republic of Lithuania, therefore a citizen of the EU, from the Republic of Slovenia. In this case the constitutional review proceeded from the starting point that the state adopted an obligation to ensure a special protection of family and children. The Constitutional Court drew attention to the fact that as regards the criteria adopted by the ECtHR, which may also be derived from the legal order of the EU, when imposing an ancillary sentence entailing the deportation of an alien from a state as well as when deciding on a request for the mitigation of such sentence, courts must take into consideration certain circumstances of a personal nature and ensure that, by their decision, they do not excessively interfere with the

content of the right to family life. The essence of this right is that parents and children live together in a union which enables them to enjoy this right mutually. While conducting the assessment from the viewpoint of the Constitution and the ECHR, the Constitutional Court also stated that the right to respect for private and family life is defined by Article 7 of the Charter as well.

c) other instruments of international law at European level

While adopting its decisions, the Constitutional Court often refers to other instruments of international law on the European level, for instance to the European Social Charter – revised (Official Gazette RS, No. 24/99, MP, No. 7/99 – hereinafter referred to as the ESC) and to the European Convention on the Exercise of Children's Rights (Official Gazette RS, No. 86/99, MP, No. 26/99 – hereinafter referred to as the ECECR).

By Decision U-I-249/10, dated 15 March 2012 (Official Gazette RS, No. 27/12), for instance, the Constitutional Court confirmed the position that the freedom of the activities of trade unions represents an essential part of the freedom of trade unions (Article 76 of the Constitution). One of the aspects of this freedom is the right to unlimited collective bargaining, which is based on the free and voluntary concluding of collective agreements and on the autonomy of the contracting parties. In addition to interpreting Article 76 of the Constitution, the Constitutional Court underlined that the value of collective bargaining is also protected, as a fundamental right, by international instruments binding on Slovenia. It thereby referred to multiple Conventions of the International Labour Organization (hereinafter referred to as the ILO). Among the European international instruments it specifically mentioned the ESC, which under the second paragraph of Article 6 obliges the contracting states to efficiently exercise the right to collective bargaining. It also obliges them, if necessary, to stimulate the mechanisms enabling voluntary negotiations between the employers, their organisations, and the organisations of workers with a view to regulate the rules for employment on the basis of provisions of collective agreements. The Constitutional Court also referred to the position of the European Committee of Social Rights, under which the content of Article 6 of the ESC refers not only to employees in the private sector, but also to public officials, thereby taking into

consideration the necessary modifications for the persons who are not bound by contractual provisions, but by public law regulations. It should be noted that in this Decision, the Constitutional Court also referred to the Charter, which in Article 28 (the right of collective bargaining and action) determines that the workers and employees or their organisations have the right, in conformity with EU law and national legislations and customs, to negotiate and to conclude collective agreements on the appropriate levels.

In the above-mentioned Decision No. 690/10, dated 10 May 2012 (Official Gazette RS, No. 42/12), when assessing whether the complainant's constitutional right had been violated by an order of the Supreme Court, by which this court had rejected the complainant's request for an extraordinary mitigation of a sentence, the Constitutional Court also referred to the ECECR, which underlines the principle of the protection of the best interests of children in all proceedings that refer to their rights and best interests.

By Decision No. Up-13/99, dated 8 March 2001 (Official Gazette RS, No. 28/01), the Constitutional Court dealt with the question of the judicial immunity of states for *iure imperii* conduct of the state, namely a rule of international law under which it is not possible to institute a trial against a foreign state before domestic (national) courts. The Judgment of the International Court of Justice in the case *Germany v. Italy: Greece intervening*, dated 3 February 2012, also refers to this Constitutional Court Decision multiple times. In this Decision, when assessing whether there had been a violation of constitutionally protected human rights, the Constitutional Court made a reference to Article 31 of the European Convention on State Immunity, signed in Basel on 16 May 1972, which expressly states that the exceptions to the immunity determined by this Convention do not affect the conducts of armed forces of some Contracting State on the territory of another Contracting State.

d) other instruments of international law at international level

In its decisions, the Constitutional Court also mentions a series of instruments of international law at the international level.

With regard to the Universal Declaration of Human Rights from 1948, the Constitutional Court adopted the position that it expresses customary international law and that the parties can directly rely on it before the Constitutional Court (see the Orders of the Constitutional Court No. Up-97/02, dated 12 March 2004, and No. Up-114/05, dated 13 June 2004). The Constitutional Court often referred to the International Covenant on Civil and Political Rights (Official Gazette SFRY, No. 7/71, and Official Gazette RS, No. 35/92, MP, No. 9/92 – hereinafter referred to as the ICCPR), to the United Nations Convention on the Rights of the Child (Official Gazette SFRY, No. 15/90, Notification of Succession in Respect of United Nations Conventions and Conventions Adopted by the International Atomic Energy Agency, Official Gazette RS, No. 35/92, MP, No. 9/92 – hereinafter referred to as the CRC), and to numerous conventions of the ILO.

By Decision No. U-I-344/06, dated 20 November 2008 (Official Gazette RS, No. 113/08, the Constitutional Court reviewed the deprivation of liberty in the framework of execution proceedings from the viewpoint of the right to personal liberty. It differentiated between a debtor who is not able to fulfil his civil obligations because he is protecting his other assets and a debtor who only does not wish to fulfil his obligation. It adopted the position that the deprivation liberty of a debtor who is not able to fulfil his civil obligations would be inadmissible. In doing so, it drew attention to the fact that such also proceeds from Article 11 of the ICCPR and Article 1 of Protocol No. 4 to the ECHR.

By Decision No. U-I-386/06, dated 13 March 2008 (Official Gazette RS, No. 32/08), the Constitutional Court established, *inter alia*, that the Nature Conservation Act is inconsistent with Article 8 of the so-called Aarhus Convention, because it does not regulate the participation of the public during the preparation of implementing regulations.

In the mentioned Decision No. U-I-249/10, dated 15 March 2012, in which it dealt with the question of the freedom of trade unions and collective bargaining, the Constitutional Court, which referred to the Constitution, the ESC, and the Charter, also expressly referred to multiple conventions of the ILO that protect the value of collective bargaining as a fundamental right. ILO Convention No. 98 namely binds

the states to adopt measures for encouraging and accelerating the development and the use of mechanisms for voluntary negotiations between employers' and workers' organisations. ILO Convention No. 154 also binds the states to adopt measures for encouraging collective negotiation. ILO Convention No. 151 encourages, *inter alia*, the adoption of measures for encouraging and accelerating the procedures of negotiations on the conditions of employment between public administration authorities and the organisations of public officials for all the employees to whom the more favourable provisions of other conventions do not apply. The Constitutional Court established that by signing these ILO Conventions, the state assumed the obligation to recognise the right to collective negotiation in both the private and public sector, even though it may adopt special legislation for the employees in "public services". For certain categories of public officials (police officers, armed forces) it also may determine by itself to what extent it will recognise their right to collective negotiations.

3. Are there any specific provisions of the constitutional law imposing a legal obligation on the constitutional court to consider decisions by the European courts of justice?

The Constitution does not specifically mention the case law of foreign courts. However, the Constitutional Court has never problematized the fact that the duty to respect decisions of European courts, whose functioning is based on ratified treaties, stems from the same provisions of the Constitution that impose on the Constitutional Court the duty to respect these treaties.

The Constitution thus does not determine specifically that the Constitutional Court (or other courts or authorities of the state) must respect the decisions of the ECtHR. Nonetheless, it stems from the ECHR as a treaty that the Constitutional Court (as well as regular courts and other authorities of the state) is obliged to respect human rights guaranteed by the ECHR (Article 1 of the ECHR[12]). An established position of the Constitutional Court is that such also entails the requirement to respect the case law of the ECtHR, as it is only this court that interprets and gives meaning to the

[12] Article 1 of the ECHR reads as follows: »The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.«

provisions of the ECHR. The scope and the content of rights guaranteed by the ECHR are namely often evident precisely from the ECtHR judgements. By ratifying the ECHR, the Republic of Slovenia assumed an obligation to guarantee, on its territory, the respect of human rights and fundamental freedoms determined by the ECHR, and to execute the decisions of the ECtHR. It thereby also assumed the obligation that its courts will consider the case law of the ECtHR when interpreting the content of particular rights. The duty to respect this case law is not only an obligation under international law that stems from the ECHR as a treaty, but also an obligation that stems already from the above-mentioned provisions of the Constitution (Articles 8 and 153) that determine the position and the effects of international law in the internal legal order.

By Decision No. U-I-65/05, dated 29 September 2005 (Official Gazette RS, No. 92/05), for instance, the Constitutional Court specifically underlined that it is bound by the case law of the ECtHR and that it has to consider it, regardless of the fact whether it was adopted in a case in which the Republic of Slovenia was a party to proceedings before the ECtHR.

With regard to EU law it can be stated that the duty of the Constitutional Court to consider the standpoints of the CJEU when referring to EU law is indicated by Article 3a of the Constitution, which in its third paragraph determines that legal acts and decisions adopted within international organisations to which the Republic of Slovenia has transferred the exercise of part of its sovereign rights shall be applied in the Republic of Slovenia in accordance with the legal regulation of these organisations.

It is necessary to underline that the positions of the Constitutional Court are important also for considering EU law before regular courts. In this respect, by Decision No. Up-1201/05, dated 6 December 2007 (Official Gazette RS, No. 117/07), the Constitutional Court stressed that courts must apply EU law of their own motion, which is what also proceeds from the case law of the CJEU (the Constitutional Court referred to the Judgments in the case *Peterbroek Van Campenhout & Cie SCS v. Belgium*, C-312/93, dated 14 December 1995, and in joined cases *Van Schijndel and*

van Veen v. Stichting Pensioenfonds voor Fysiotherapeuten, C-430/93 and C-431/93, dated 14 December 1995).

4. Is the jurisprudence of the constitutional court influenced in practice by the jurisprudence of the European courts of justice?

The cooperation between national and European courts in the field of protection of human rights and fundamental freedoms is important. As the Constitutional Court is favourable to such cooperation, it diligently reviews and studies the case law of the ECtHR and/or the CJEU before the adoption of each important decision, especially in cases where the decision-making is characterised by a European dimension. It also reviews the case law of other constitutional courts which function in a comparable legal environment or which were established on the basis of a comparable legal tradition.

5. Does the constitutional court in its decisions regularly refer to the jurisprudence of the Court of Justice of the European Union and/or the European Court of Human Rights? Which are the most significant examples?

In its decisions, the Constitutional Court regularly refers to the case law of the ECtHR. As already stated, in cases in which a human right regulated by the ECHR is guaranteed at least to the same extent also by the Constitution, the Constitutional Court assesses the alleged violation only from the viewpoint of consistency with the constitutional provision. However, where the content of a particular human right as defined by the ECHR and the case law of the ECtHR is broader than the content of its counterpart from the Constitution, it follows from the fifth paragraph of Article 15 of the Constitution that it must be interpreted in the broader sense. Constitutionally protected are thus both the human rights and fundamental freedoms guaranteed by the Constitution and all the human rights and fundamental freedoms guaranteed by treaties in force that are binding on the Republic of Slovenia, thus including also the ECHR. The Constitutional Court referred to the ECtHR in numerous decisions from various legal fields. In addition, the following decisions, in which the Constitutional Court referred to the case law of the ECtHR, should be mentioned as well.

By Decision No. U-I-65/05, dated 29 September 2005 (Official Gazette RS, No. 92/05), the Constitutional Court decided that the Administrative Dispute Act is unconstitutional, because the legislature failed to ensure an effective judicial protection of the human right to trial within a reasonable time. The Decision of the Constitutional Court was adopted even before the ECtHR issued the Judgment in the case *Lukenda v. Slovenia,* No. 23032/02, dated 6 October 2005. The Constitutional Court established that the legal order does not contain special statutory provisions that would enable the affected person to enforce the right to just satisfaction in cases in which the violation in proceedings before the court has ceased, as the proceedings have been terminated in the meantime. Such is inconsistent with the right to an effective judicial protection determined by the first paragraph of Article 23 of the Constitution and with the fourth paragraph of Article 15 of the Constitution, which determines that judicial protection of human rights and the right to obtain redress for the violation of such rights and freedoms shall be guaranteed. In the assessment of the Constitutional Court, the issue concerned the question of satisfaction due to the omission of the positive duty of the state to ensure such a system or organisation of proceedings that will enable the individual to obtain a decision of a court within a reasonable time. In the reasoning, the Constitutional Court expressly stated that while assessing the challenged provisions it must consider the case law of the ECtHR, under which an effective judicial protection of the right to trial in a reasonable time is ensured only if it encompasses also the protection which includes an appropriate satisfaction. As the Constitutional Court stated, the case at issue was governed by clear and established case law of the ECtHR, which determined *in abstracto* the conditions that must be fulfilled so that it may be deemed that, with regard to the ECHR, the legal order of a contracting state entails an effective legal remedy against violations of the right to trial in a reasonable time also in instances when the violation has already ceased. With regard to the existing case law of the ECtHR, the Constitutional Court interpreted the fourth paragraph of Article 15 of the Constitution as the foundation of the requirement that in the framework of judicial protection of the right to trial without undue delay the possibility to claim just satisfaction must be guaranteed also in instances when the violation has already ceased. In such instances the criteria developed by the ECtHR shall apply: the complexity of the case, the conduct of the authorities of the state, the conduct of the complainant and the importance of the case for the complainant.

In conformity with the case law of the ECtHR, the Constitutional Court defined the right to an impartial judge. In Decision No. Up-365/05, dated 6 July 2006 (Official Gazette RS, No. 76/06), it referred to the position the ECtHR adopted in the Judgment in the case *Saraiva de Carvalho v. Portugal*, No. 15651/89, dated 22 April 1994, that for the assessment of whether someone's right was violated it is not only important if that right was in fact being ensured; there must also exist an impression of impartiality.

In numerous decisions, the Constitutional Court referred to positions that the ECtHR adopted with regard to basic procedural guarantees in criminal proceedings. In the above-mentioned Decision No. Up-518/03, dated 19 January 2006 (Official Gazette RS, No. 11/06), the Constitutional Court established a violation of the right to defence directly on the basis of the ECHR. In the reasoning of the Decision it referred to several relevant judgments of the ECtHR. In Decision No. U-I-271/08, dated 24 March 2011 (Official Gazette RS, No. 26/11), the Constitutional Court abrogated a provision of the Police Act regarding the conditions and decision-making procedure for relieving individuals of the duty to maintain the confidentiality of information with regard to the taking of evidence by means of the examination of a police employee in criminal proceedings. In this decision the Constitutional Court extensively referred to the vast case law of the ECtHR, including the Judgments in the cases *Kostovski v. Netherlands*, No. 11454/85, dated 20 November 1989; *Lüdi v. Switzerland*, No. 12433/86, dated 15 June 1992; and *Mild and Virtanen v. Finland*, Nos. 39481/98 and 40227/98, dated 26 July 2005. In addition to the violation of the right determined by the ECHR, the Constitutional Court also established the violation of a constitutional right. It held that the challenged provision inadmissibly interfered with the defendant's right to defence, determined by Article 29 of the Constitution, and also deprived the defendant of the judicial protection guaranteed by the first paragraph of Article 23 of the Constitution.

One of the cases, in which the ECHR expressly allows the deprivation of liberty, is the legal detention of mentally ill persons. When assessing the provisions of the Non-litigious Civil Procedure Act on compulsory detention in psychiatric health organisations in force at the relevant time (the above-mentioned Decision No. U-I-

60/13, dated 4 December 2003), the Constitutional Court considered the criteria that were established by the ECtHR in the case *Winterwerp v. Netherlands*, No. 6301/ 73, dated 27 November 1981. On such basis it established that the regulation was not consistent with the Constitution. In conformity with the standards that were introduced by the ECtHR, it adopted the position that compulsory detention entails an interference with personal liberty and, therefore, individuals must be ensured equal guarantees as in criminal proceedings.

The Constitutional Court also refers to the case law of the CJEU. In terms of numbers, such decisions are less frequent. The reasons for that may be, *inter alia*, related to the fact that the Republic of Slovenia joined the EU only in May 2004, whereas it has been bound by the ECHR as a signatory state for one decade longer. In addition, the EU acquired a legally binding catalogue of human rights only with the entry into force of the Treaty of Lisbon.

In conformity with such, the Constitutional Court drew attention to the case law of the CJEU in Decision No. U-I-321/02, dated 27 May 2004 (Official Gazette RS, No. 62/04), when it interpreted the challenged provision of the Medical Practitioners Act. It determined that also the CJEU follows the interpretation that the on-call health care service, in the framework of which a doctor must be available at his workplace, must be regarded in its entirety as the doctor's working time (Judgments in the case *Simap v. Conselleria de Sanidad y Consumo de la Generalidad Valenciana*, C-303/98, dated 3 October 2000, and in the case *Landeshauptstadt Kiel v. Norbert Jaeger*, C-151/02, dated 9 September 2003).

In Decision No. U-I-113/04, dated 8 July 2004 (Official Gazette RS, No. 83/04), the Constitutional Court was for the first time faced with a case where a(n) (implementing) regulation by which the Republic of Slovenia transposed Directive 2002/2/EC of the European Parliament and of the Council of 28 January 2002 amending Council Directive 79/373/EEC on the circulation of compound feedingstuffs and repealing Commission Directive 91/357/EEC (hereinafter referred to as the Directive 2002/2/EC) into its legal order was challenged. As the petitioners proposed the challenged Rules be suspended until the final decision of the CJEU on the validity of the contested provisions is reached, the Constitutional Court had to assess

whether in that particular case the conditions for such suspension were fulfilled. In doing so, it proceeded from the relevant case law of the CJEU (the Judgments in the case *The Queen v. Secretary of State for Transport, ex parte: Factortame Ltd and others*, C-213/89, dated 19 June 1990; in joint cases *Zuckerfabrik Süderdithmarschen AG v. Hauptzollamt Itzehoe and Zuckerfabrik Soest GmbH v Hauptzollamt Paderborn*, C-143/88 and C-92/89, dated 21 February 1991; and in the case *Atlanta Fruchthandelsgesellschaft mbH and others v. Bundesamt für Ernährung und Forstwirtschaft*, C-465/93, dated 9 November 1995) and examined whether the conditions set by the CJEU for the suspension of execution of a regulation of an EU member state by which an act is transposed into the internal legal order were fulfilled. The Constitutional Court suspended the challenged provisions of the Rules until the CJEU adopted a decision in case C-453/03. The Constitutional Court assessed that the requesting court, in the preliminary question addressed to the CJEU, encompassed in their entirety the reasons regarding the invalidity of provisions of the Directive 2002/2/EC that were also invoked by the petitioners before the Constitutional Court. It thus decided not to submit a preliminary question with regard to the validity of the challenged provisions and informed the CJEU thereof.

6. Are there any examples of divergences in decisions taken by the constitutional court and the European courts of justice?

In the hitherto constitutional case law there are no decisions from which a divergence of the positions of the Constitutional Court and either the ECtHR or the CJEU could be inferred.

Order No. U-I-223/09, Up-140/02, dated 14 April 2011 (Official Gazette RS, No. 37/11), should, however, be mentioned. In this Order, the Constitutional Court touched upon the question of the relationship between the Constitutional Court and the ECtHR, and the limitation of the ECtHR's competence. By Judgment in the case *Gaspari v. Slovenia*, No. 21055/03, dated 21 July 2009, the ECtHR established that in proceedings before the Constitutional Court a violation of the first paragraph of Article 6 of the ECHR occurred, because, due to an erroneous serving of the constitutional complaint of the opposing parties from the civil action, the applicant, who was requesting a new trial, was denied the possibility to participate in

constitutional complaint proceedings. Despite having established a violation, the ECtHR did not grant the applicant requesting a new trial indemnity for pecuniary damage (due to failure to demonstrate the existence of a causal link between the established violation and the alleged damage). The Court added that the most appropriate manner of reparation would be to ensure the party a possibility to be reinstated in the position in which she would have been if the requirements under Article 6 of the ECHR had been fulfilled. in the assessment of the ECtHR, in the case at issue such would best be attained if the domestic legislation enabled the party to re-open proceedings before the constitutional court.

Following the judgment of the ECtHR, the petitioner, *inter alia*, lodged a proposal to re-open constitutional complaint proceedings at the Constitutional Court. The Constitutional Court rejected her proposal. In the reasoning it adopted the position that the ECtHR does not have the competence to impose to a contracting party the adoption of precisely determined measures. The contracting party may of itself choose appropriate measures to remedy the consequences of a disputed individual act or measures by which it will be able to ensure the consistence of its domestic legislation with the requirements of the Convention. Only in exceptional circumstances, when a violation is such that it excludes every possibility of choice of measures, the ECtHR refers the contracting party to an adoption of a precisely determined measure. In the reasoning of the Judgment in case *Gaspari v. Slovenia*, the ECtHR actually stated what would be the most appropriate manner for the elimination of the violation. The Constitutional Court determined, however, that the reasons stated in the ECtHR Judgment do not mean in the present case that an obligation was thereby imposed on the Constitutional Court to unconditionally institute new constitutional complaint proceedings. The Constitutional Court Act namely does not determine the possibility to initiate new constitutional complaint proceedings. The ECtHR does not have the competence to impose that new domestic judicial proceedings be instituted. Therefore, also in the case at issue, such phrasing in the reasoning of the ECtHR Judgment cannot be interpreted otherwise than as constituting an indication of a possible measure that in the assessment of the ECtHR could be appropriate for the elimination of the consequences of the established violation.

Decision No. Up-2443/08, dated 7 October 2009 (Official Gazette RS, No. 84/09) should perhaps also be mentioned. By this decision the Constitutional Court decided on a constitutional complaint of two complainants in whose case the ECtHR adopted a decision as well(Judgment in the case *Šilih v. Slovenia*, No. 71463/01, dated 28 June 2007). The ECtHR adjudged that the Republic of Slovenia violated Article 2 of the ECHR, because in the case of the death of the complainants' son an effective and independent system that would enable the determination of the reasons and the responsibility for the death of patients in health care was not ensured. In the same case, by Judgment, dated 9 April 2009, the Grand Chamber of the ECtHR also established, a violation of the procedural aspect of Article 2 of the ECHR. It once again drew attention to the obligation of the state to ensure, in such cases, an effective and independent system that enables the determination of reasons and the responsibility for the death of a patient in health care. The Constitutional Court, conducting constitutional complaint proceedings after the Judgment of the Grand Chamber of the ECtHR had been promulgated, underlined in the reasoning of its Decision that it has different competences in these proceedings than the ECtHR had when assessing the complainants' allegations against the state. On the one hand, the Constitutional Court can abrogate the challenged decision of a court, which is something that the ECtHR cannot do, while, on the other hand, the Constitutional Court is limited to the examination of the allegations of procedural breaches that the complainants invoke in their constitutional complaint. As the Constitutional Court established a violation of the parties' right to give statements in proceedings, determined by Article 22 of the Constitution, it abrogated the challenged judgments and remanded the case for new adjudication to the District Court.

7. Do other national courts also consider the jurisprudence of European courts of justice as a result of the constitutional court taking it into consideration in its decisions?

The Constitutional Court stressed several times that regular courts carry the primary responsibility for ensuring the protection of human rights (see, for instance, Order No. Up-139/99, dated 30 May 2000). Human rights can only be effectively invoked if their invocation is, in conformity with the principle of subsidiarity, realised already in regular judicial proceedings. Thereby, it is attempted to eliminate possible violations

of human rights and fundamental freedoms already in the system of the regular judiciary, while the Constitutional Court only interferes in those cases in which these violations could not be eliminated in the framework of the regular judiciary.

The Constitutional Court notices that regular courts often refer to decisions of the Constitutional Court in their decisions, which leads to the conclusion that the ECHR and the case law of the ECtHR are transposed through decisions of the Constitutional Court into the case law of regular courts. It should be further noted that regular courts, especially the Supreme Court, refer also directly to the judgments of the ECtHR.

8. Are there any examples of decisions by European courts of justice influenced by the jurisprudence of national constitutional courts?

The Constitutional Court lacks specific information with regard to the question if and in what manner its case law has influenced decisions of European courts.

Regarding the judgments of the ECtHR, one may detect certain influences of constitutional case law in those cases in which the ECtHR adopted decisions against the Republic of Slovenia. Firstly, in the framework of abstract or concrete review, cases reached the Constitutional Court after all regular and extraordinary legal remedies had been exhausted and, following the adoption of the Constitutional Court decision, the complainants decided to lodge a complaint before the ECtHR. There were several such cases, for instance cases regarding violations of the right to trial without undue delay and with regard to the issue of the so-called »erased« persons.

The question regarding the so-called »erased« persons was raised several times before the Constitutional Court. The Constitutional Court first established the unconstitutionality of the statutory regulation that regulates the legal position of citizens of other republics of former Socialist Federal Republic of Yugoslavia (SFRY) erased from the civil register of permanent inhabitants in 1999 by Decision No. U-I-284/94, dated 4 February 1999 (Official Gazette RS, No. 14/99). By Decision No. U-I-246/02, dated 3 April 2003 (Official Gazette RS, No. 36/03), the Constitutional Court established that the law, which regulates the position of erased persons, is

unconstitutional. By Decision No. U-II-1/10, dated 10 June 2010 (Official Gazette RS, No. 50/10), it dealt with the question of admissibility of a referendum on an amending law on the regulation of the status of the so-called »erased« persons that eliminated the unconstitutionality, established by Decision No. U-I-246/02, in a constitutionally consistent manner. On 26 June 2012, the Grand Chamber of the ECtHR issued the Judgment in the case *Kurić and others v. Slovenia*, No. 26828/06, by which Slovenia was convicted for violations of several rights, determined by the Convention, and whereby the execution of Decisions of the Constitutional Court became a subject of an international obligation of a signatory state of the ECHR. In the reasoning of that Judgment, the ECtHR summarised the line of reasoning of the Constitutional Court with regard to the question at issue.

II. Interactions between constitutional courts

1. Does the constitutional court in its decisions refer to the jurisprudence of other European or non-European constitutional courts?

In its decisions, the Constitutional Court refers to the case law of other European and non-European constitutional courts or courts with comparable competences. The case law of foreign constitutional courts or courts with comparable competences is used as an additional interpretative argument of comparative law in constitutional assessments. It should be noted that the Constitutional Court's references to the case law of these courts figure, as a general rule, in the endnotes of the reasoning.

It follows from the constitutional case law that the Constitutional Court most often refers to the case law of the German Federal Constitutional Court (*Bundesverfassungsgericht)*. Among the non-European courts, the Constitutional Court made a few references to the Supreme Court of Canada and the Supreme Court of the United States.

By Decision No. U-I-98/11, dated 26 September 2012 (Official Gazette RS, No. 79/12), adopted on the request of the Information Commissioner, the Constitutional Court decided on the public nature of the Land Cadastre and the Cadastre of Buildings in the part that refers to data regarding real estate owners or real estate managers if they are natural persons. The Information Commissioner alleged that the publication of such data on the public unified web-based portal E-prostor [E-space], or the legal provisions that allow for such publication, interfere with the right to the protection of personal data under Article 38 of the Constitution. The Constitutional Court stressed that publicly accessible data regarding the name, address, and year of birth of a real estate owner in the Land Cadastre and the Cadastre of Buildings that indicate the state of an individual's property, provide information about where that individual lives, or even who he or she lives with, constitute constitutionally protected personal data. The fact that a certain piece of data had become publicly accessible due to its publication in a register does not entail that it thereby lost the quality of personal data and that henceforth any further processing of such data is admissible. A law that prescribes the public accessibility of personal data without the purpose of the public accessibility of such data also being determined is inconsistent with the requirement under the second paragraph of Article 38 of the Constitution that the purpose of processing personal data be stipulated by law. The realisation that an individual has the right to keep for himself information about himself and that it is him who decides how much of himself he wants to reveal and to whom he wants to reveal himself is the fundamental value basis of the information privacy as one of the aspects of the individual's privacy that are protected by the first paragraph of Article 38 of the Constitution. In this regard, the Constitutional Court also mentioned the informational self-determination (the *informationelle Selbstbestimmung*) from the German legal doctrine and the case law of the German Federal Constitutional Court, which developed its content.

By Decision No. Up-3367/07, dated 2 July 2009 (Official Gazette RS, No. 67/09), the Constitutional Court assessed, *inter alia*, whether the evidence obtained by polygraph tests are reliable. It decided that the refusal to take such evidence does not entail a violation of the right to take evidence to the benefit of the defendant determined by the third indent of Article 29 of the Constitution. When adopting this decision, the Constitutional Court also made use of a comparative review of the use

of polygraphs, which showed that the rules which regulate its use differ significantly in different European states. It also referred to the case law of the German Federal Supreme Court and the Federal Constitutional Court on the prohibition of the use of polygraphs in criminal proceedings, and to the decision of the Supreme Court of the United States on the rejection of the use of polygraphs due to unreliability of the results.

In a number of cases, the Constitutional Court studied the case law of foreign courts before reaching the final decision in a particular case, this is, however, not evident from the decision itself.

2. If so, does the constitutional court tend to refer primarily to jurisprudence from the same language area?

Considering the constitutional case law it would be possible to conclude that a comparable legal tradition and the persuasiveness or strength of the arguments in decisions of foreign courts are one of the most important criterions on the basis of which the Constitutional Court refers to the case law of foreign courts. With regard to the geographical position of Slovenia in Central Europe and with regard to its past it is not surprising that the Constitutional Court refers predominantly to decisions from the German language area, namely to German and Austrian decisions.

For instance, by Decision No. U-I-165/08, Up-1772/08, Up-379/09, dated 1 October 2009 (Official Gazette RS, No. 83/09), when assessing the institute of exclusion of shareholders from a company, which is regulated by the Companies Act, the Constitutional Court specifically mentioned the German regulation (i.e. the German act regulating shares – *Aktiengesetz*), which served as a model for the regulation of the institute of exclusion in the Slovene Companies Act. Consequently, also the case law of the German Federal Constitutional Court on the rejection of the petition for the initiation of proceedings for the constitutional review of that institute due to the protection of private property was relevant for the Constitutional Court. The Constitutional Court thus concluded that a complete loss of corporate rights from a share entails, despite compensation in the form of a pecuniary severance pay, an interference with the right to private property of minority shareholders determined by

Articles 33 and 67 of the Constitution; however, in conformity with the third paragraph of Article 15 of the Constitution, such an interference is admissible due to the protection of private property and the right to free economic initiative of the main shareholder. The Constitutional Court decided that on the basis of the challenged regulation the benefits of the main shareholder outweigh the weight of the interference with the private property of minority shareholders (due to the loss of shares in exchange for an appropriate pecuniary severance pay).

In the endnotes in the reasoning of its decisions, the Constitutional Court referred also to the case law of courts of those states, whose language belongs to the Slavic language group, which includes the Slovene language. For instance, in the above-mentioned Decision No. U-I-165/08, Up-1772/08, Up-379/09 it mentioned the Czech Constitutional Court Decision No. Pl. ÚS 56/05, dated 27 March 2008.

3. In which fields of law (civil law, criminal law, public law) does the constitutional court refer to the jurisprudence of other European or non-European constitutional courts?

Decisions in which the Constitutional Court referred to the case law of other European or non-European constitutional courts or courts with comparable competences belong to all legal fields. No legal field is exempted. As it was already indicated, it is especially the arguments of foreign courts and the comparable legal regulation or tradition that are convincing for the Constitutional Court.

4. Have decisions of the constitutional court noticeably influenced the jurisprudence of foreign constitutional courts?

Just like the case law of foreign courts is important when decisions of the Constitutional Court are being adopted, it may be assumed that in the framework of their work also foreign constitutional courts observe or study foreign constitutional case law. For instance, it is evident from the bilateral cooperation between the Constitutional Court and the Federal Constitutional Court of the Federal Republic of Germany that the latter follows Slovene constitutional case law. To what degree such case law is expressly mentioned in the reasoning of decisions of foreign

constitutional courts depends on the manner or method of work. Some courts are more favourably inclined to refer to foreign case law than others.

Available information show, for instance, that the Hungarian and the Albanian constitutional courts referred to the case law of the Constitutional Court. The Hungarian constitutional court referred in its Decision No. 63/2008 (*Magyar Közlöny*, No. 2008/69), by which it assessed the constitutionality of the Hungarian legislation in the field of financial management and functioning of political parties, to Constitutional Court Decision No. U-I-367/96, dated 11 March 1999 (Official Gazette RS, No. 24/99). In Decision No. 20/2006, dated 11 July 2006, the Constitutional Court of Albania mentioned Constitutional Court Decision No. U-I-57/92, dated 3 November 1994 (Official Gazette RS, No. 76/94), and referred to an emphasis with regard to the principle of equality before the law (Article 14 of the Constitution), namely that »extreme understanding of equality, without taking into consideration the specific nature of a particular actual or legal status, may lead to inequality.«

5. Are there any forms of cooperation going beyond the mutual acknowledgment of court decisions?

Formal and informal meetings that are organised bilaterally or in the framework of cooperation on a multilateral level (for instance in the framework of the so-called Venice Commission and the Conference of European Constitutional Courts) represent, for the Constitutional Court, an important form of cooperation with other constitutional courts. International cooperation and the exchange of information and experiences on the supranational level are gaining importance in the light of the internationalisation of the protection of human rights and fundamental freedoms and the growing role of the EU law. The Constitutional Court strives to permanently exchange information and experience with courts of other states and with international courts and participates at key international events from its field of work.

On the bilateral level, official contacts of the Constitutional Court with the constitutional courts of neighbouring states (i.e. with the constitutional courts of the Republic of Croatia, the Republic of Austria, the Republic of Italy, and Hungary) are in the foreground, while a continuous cooperation is also established, for instance,

with the German Federal Constitutional Court and with the Constitutional Court of the Russian Federation. In the framework of bilateral contacts, judges exchange experiences from the fields of constitutional case law and the organisation of constitutional courts, and address issues with regard to their functioning. Various subjects important for the constitutional judiciary are discussed. For instance, the official discussions of judges of the Constitutional Court with the delegation of the Constitutional Court of the Republic of Macedonia included, *inter alia*, the issue of constitutional complaints and the role of constitutional courts with regard to application of international acts and agreements. At the last meeting with the colleagues from the Constitutional Court of the Republic of Croatia they discussed namely the procedure regarding the pilot judgment before the European Court of Human Rights and the role of constitutional courts with regard to assessments of constitutional admissibility of referendums and referendum questions. At the official visit to the Constitutional Court of the Federal Republic of Germany, judges touched upon the decision-making processes when solving constitutional complaints, the protection of an individual in the case of direct effectiveness of statutory provisions, and the relationship between the CJEU, the ECtHR, and national constitutional courts. Working meetings with Slovene judges at the ECtHR and the CJEU organised by the Constitutional Court are also frequent.

III. Interactions between European courts in the jurisprudence of constitutional courts

1. Do references to European Union law or to decisions by the Court of Justice of the European Union in the jurisprudence of the European Court of Human Rights have an impact on the jurisprudence of the constitutional court?

The hitherto constitutional case law does not contain any decision on the basis of which it would be possible to answer the above question. It should be noted, as it was already mentioned in answers to other questions, that the Constitutional Court favours the relationship of cooperation and dialogue with other courts, including the

ECtHR and the CJEU; that it respects, in its decisions, the minimal standards of protection of human rights and fundamental freedoms as they are guaranteed by the ECHR and the case law of the ECtHR; and that it applies EU law as interpreted by the CJEU, regardless of the fact whether the ECtHR referred to EU law and the case law of the CJEU.

2. How does the jurisprudence of constitutional courts influence the relationship between the European Court of Human Rights and the Court of Justice of the European Union?

There are no indications in the hitherto case law of the Constitutional Court that would allow answering the above question.

3. Do differences between the jurisprudence of the European Court of Human Rights, on the one hand, and the Court of Justice of the European Union, on the other hand, have an impact on the jurisprudence of the constitutional court?

The hitherto constitutional case law does not observe or mention possible differences between the case law of the ECtHR and the CJEU.