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QUESTIONNAIRE FOR THE XVIIIth CONGRESS OF THE CONFERENCE OF EUROPEAN CONSTITUTIONAL COURTS

HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS: THE RELATIONSHIP OF INTERNATIONAL, SUPRANATIONAL AND NATIONAL CATALOGUES IN THE 21ST CENTURY

NATIONAL REPORT OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF SLOVENIA

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I. GENERAL PART: CATALOGUES OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

I.I International catalogues of human rights (ECHR, UDHR and ICCPR)

- **In your country, what is the constitutional position/characteristic/legal force of international treaties protecting human rights?**

The position and the legal functioning of international law in the Slovene legal order are regulated by numerous provisions of the Constitution of the Republic of Slovenia (hereinafter the Constitution). The general legal principle that regulates the relationship between the international law and internal law can be found in Article 8 of the Constitution, which determines:

> "Laws and other regulations must comply with generally accepted principles of international law and with treaties that are binding on Slovenia. Ratified and published treaties shall be applied directly."

A similar hierarchy or internal conformity of national legal acts of different levels and of international instruments is regulated by the second paragraph of Article 153 of the Constitution:

> "Laws must be in conformity with generally accepted principles of international law and with valid treaties ratified by the National Assembly, whereas regulations and other general acts must also be in conformity with other ratified treaties."

Hence, laws must be in conformity with treaties ratified by the Parliament, whereas hierarchically lower legal regulations must also be in conformity with treaties ratified by the Government in accordance with law. From the perspective of the hierarchy of regulations, it follows from these provisions of the Constitution that in the Slovene (constitutional) legal order treaties are, as a general rule, inferior to the Constitution, but superior to laws (and others regulations), because laws have to be in conformity therewith. Furthermore, it has to be stressed that Article 8 of the Constitution clearly states that ratified and published treaties shall be applied directly. Such entails that they produce – if and to the extent they contain legal provisions that they are, by their nature, self-executing – direct legal effects for individuals, who can refer directly thereto when invoking their rights.

The principle that, within the hierarchy of legal acts, the Constitution is placed above international instruments, is, as regards treaties that regulate human rights and fundamental freedoms, relativised already at the constitutional level. The fifth paragraph of Article 15 of the Constitution determines that

> "[n]o human right or fundamental freedom regulated by legal acts in force in Slovenia may be restricted on the grounds that this Constitution does not recognise that right or freedom or recognises it to a lesser extent."

By this provision, the Constitution established the principle of the highest protection of rights, the legal significance of which is that a treaty has priority even over the Constitution if it guarantees a higher level of protection of a certain human right.

Among the treaties, the European Convention on Human Rights (hereinafter the ECHR) should be specifically mentioned, as it plays an extremely important role in the work of the Constitutional Court. 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, which refers to the ECHR and to the case of the ECtHR as being a direct legal basis on which the Constitutional Court bases its decisions or − more commonly − as an interpretative rule when interpreting the appropriate or corresponding provisions of the Constitution. This applies when the Constitutional Court exercises both of its fundamental powers. The first one is the abstract review of constitutionality of laws (and other regulations) with the Constitution in which the question of standards of protection of human rights is raised, and the second one, in which this the aforementioned practice is even more notable, is decision-making on constitutional complaints, by which individuals claim violations of human rights and fundamental freedoms in concrete proceedings. In both instances, the ECHR and the case law of the ECtHR are consistently referred to and in virtually every case that refers to human rights and fundamental freedoms the Constitutional Court substantiates its decision or strengthens it by also referring to the ECHR or to the case law of the ECtHR, which in this manner have a direct influence on the formation of constitutional standards of the protection of human rights and fundamental freedoms.

The Constitutional Court has often referred to the International Covenant on Civil and Political Rights (hereinafter referred to as the ICCPR), and to numerous other international instruments that protect human rights and fundamental freedoms, for instance the United Nations Convention on the Rights of the Child. As a general rule, these universal treaties to which the Constitutional Court sometimes refers are treaties that do not contain provisions that are directly self-executing by their nature. Therefore, their only legal significance is that they represent an interpretative guideline for interpreting national law, in particular in the formation of constitutional standards of the protection of human rights.

Since in the questions attention is also drawn to the Universal Declaration of Human Rights (hereinafter referred to as the UDHR), let us add that the Constitutional Court has already adopted the position that the UDHR expresses customary international law and that the parties can directly rely thereon before the Constitutional Court (see Orders of the Constitutional Court No. Up-97/02, dated 12 March 2004, and No. Up-114/05, dated 13 June 2004). Hence, the UDHR is a source of international law to which the Constitutional Court can refer when interpreting and applying national (constitutional) law.

- **What mechanism is used to invoke the international treaties in national court decision-making?**

The duty to observe ratified treaties is not merely an obligation under international law, but also an obligation that follows from the already mentioned provisions of the Constitution (Articles 8 and 153) that determine the position and the effects of international law in the Slovene legal order.

In proceedings before the Constitutional Court, a legal mechanism is envisaged for reviewing whether laws (and other regulations) are in conformity with international instruments. On the basis of the first paragraph of Article 160, the Constitutional Court has *inter alia* the power to assess whether laws (and other regulations) are in conformity "with ratified treaties and with the general principles of international law". If a law is inconsistent with a treaty, such entails that it is also inconsistent with the Constitution (Articles 8 and 153) and that the Constitutional Court can abrogate it or establish its unconstitutionally and impose on the Parliament (more precisely the National Assembly, which is the lower house) the obligation to remedy the established unconstitutionality by a certain time limit.

In addition to reviewing the conformity of laws with the Constitution (which can also include the review of conformity with international instruments), the Constitutional Court also has the power to decide on constitutional complaints due to violations of human rights or fundamental freedoms. In those proceedings, the complainant can invoke the rights guaranteed by the Constitution, as well as rights and freedoms guaranteed by international instruments. Depending on their legal nature, the Constitutional Court can use international instruments as a direct legal basis for its decisions, or, which happens more often, as an interpretative guideline for interpreting national law, in particular in the formation of constitutional standards of the protection of human rights.

International instruments referring to human rights can also be referred to before regular courts in concrete judicial proceedings. Depending on the legal nature of individual provisions of treaties (i.e. whether they are self-executing or not), courts can directly refer to treaties. In conformity with Article 125 of the Constitution, judges are bound by the Constitution and laws when deciding, and Article 8 of the Constitution determines that international instruments apply directly. For instance, from the ECHR as a treaty it follows that, in addition to the Constitutional Court, also regular courts and other state authorities are bound to respect human rights guaranteed by the ECHR (Article 1 of the ECHR), which in accordance with the established case law of the Constitutional Court also entail a requirement to respect the case law of the ECtHR, as that Court is the last one in line that interprets the ECHR and gives substance to its provisions. If a question of conformity of a law with a treaty is raised before a regular court, considering the nature of the treaty in question, that court must, in conformity with Article 156 of the Constitution, stay the proceedings and initiate proceedings for the review of constitutionality of that law before the Constitutional Court, which under the Constitution is the only authority having the power to abrogate an unconstitutional law or an individual provision thereof.

- **Is it possible to invoke the direct effect of the international catalogues of human rights? If so, please describe the mechanism.**

As has already been mentioned, Article 8 of the Constitution 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.

Therefore, when the Constitutional Court decides whether a law is consistent with the Constitution or whether human rights or fundamental freedoms of individuals were violated in procedures before the authorities of the state, it also regularly considers the ECHR and the case law of 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. 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.

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.

There are various ways in which the Constitutional Court approaches the assessment of a violation of a human right from the viewpoint 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, yet the relevant case law of the ECtHR is thereby fully observed.

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 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.

I.II Supranational catalogues of human rights (the Charter)

- **Is the Charter a point of reference to review the constitutionality of legal rules and/or decisions of public authorities, be it directly (a formal point of reference in some EU member states) or indirectly by "radiating" through the national catalogues (a substantive point of reference in other states)?**

With the entry into force of the Treaty of Lisbon, the Charter of Fundamental Rights of the European Union (hereinafter the Charter) became part of the EU primary legislation and therefore became legally binding (the first paragraph of Article 6 of the Treaty on the European Union). The third paragraph of Article 3a

of the Constitution is relevant for the observance and the position of the Charter (and 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 legal regulation of the EU. This provision establishes an internal constitutional foundation on the basis of which all state authorities, 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 Constitutional Court has already explained in its Decision No. U-I-146/12, dated 14 November 2013 (Official Gazette RS, No. 107/13), that:

> "from this constitutional provision [...] follows only the requirement that, in the exercise of their competences, all state authorities, including the Constitutional Court, must apply EU law in accordance with the legal order of this [international] organisation. The effect of EU law in the internal legal order thus depends on the rules that regulate the functioning of the EU at a given moment. Such concerns the fundamental principles of EU law that are enshrined in the TEU and the TFEU or that the CJEU has developed through its case law. Due to the third paragraph of Article 3a of the Constitution, the fundamental principles that define the relationship between internal law and EU law are at the same time also internal constitutional principles that have the same binding effect as the Constitution."

In Decision No. U-I-295/13, dated 19 October 2016 (Official Gazette RS, No. 71/16), in which it also submitted the first question to the CJEU for a preliminary ruling in accordance with Article 267 of the TFEU, the Constitutional Court stressed that the following also applies to the Charter:

> "The most important fundamental principle is that of the primacy of EU law, which entails that in the event of an inconsistency between the law of a Member State and EU law the latter has primacy over the law of the Member State. [...] On the basis of the first paragraph of Article 51 of the Charter, also the provisions of the Charter are binding thereon when implementing EU law. In the procedure for the assessment of regulations in the interpretation of national law (the Constitution and other regulations), the Constitutional Court must observe EU law, namely in the manner that follows from EU acts or as it has been developed in the case law of the CJEU. It must interpret national law in the light of EU law in order to ensure its full effectiveness."

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 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.

It is worth stressing that, until the Treaty of Lisbon entered into force, 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.

In its subsequent case law, the Constitutional Court stressed the binding character of the Charter. 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. In the reasoning of the Decision, the Constitutional Court referred also to the legally binding Charter, more precisely to its preamble. 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.

By Decision No. U-I-155/11, dated 18 December 2013 (Official Gazette RS, No. 114/13), upon the request of the Ombudsman for Human Rights, the Constitutional Court reviewed certain provisions of the International Protection Act that determine the concept of a safe third country in relation to the principle of non-refoulement. In the Decision, the Constitutional Court initially stressed that on the basis of Article 3a of the Constitution it has to consider the primary and secondary legislation of the European Union and the case law of the CJEU when reviewing regulations that entail the implementation of EU law. It also relied on the Charter and stressed that in the event of removal, expulsion, or extradition of an individual, protection is ensured by the second paragraph of Article 19 of the Charter.

- **Does the human rights case law of the Court of Justice of the European Union serve as guidance for the interpretation and application of the national catalogue in your country by general courts, or as a source for judicial law-making?**

The duty of courts to also take into consideration the positions and case law of the CJEU when referring to EU law follows from Article 3a of the Constitution, regarding which it has already been mentioned that the third paragraph thereof requires that legal acts and decisions adopted within the EU be applied in Slovenia in accordance with the legal regulation of the EU. This is the national constitutional foundation on the basis of which all state authorities, including the Constitutional Court, must, when exercising their powers, take EU law into consideration, including the case law of the CJEU, namely in accordance with the principles and rules of EU law.

By Decision No. Up-1056/11, dated 21 November 2013 (Official Gazette RS, No. 108/13), the Constitutional Court decided on a constitutional complaint filed against a judgment of the Supreme Court. In a tax case involving the calculation of value added tax, during the entire proceedings the applicant referred to the case law of the CJEU. The Supreme Court dismissed the applicant's reference to the case law of the CJEU as unfounded, as allegedly the factual circumstances were different, and did not take a position on his motion to submit the case to the CJEU. The Constitutional Court stressed:

> "By joining the EU, on the basis of the first paragraph of Article 3a of the Constitution the Republic of Slovenia transferred the exercise of part of its sovereign rights to the institutions of the EU and exercises such, in the framework of the EU and for the length of time of its existence, jointly in cooperation with other Member States. The third paragraph of Article 3a of the Constitution determines that legal acts and decisions adopted within international organisations to which 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. This provision binds all authorities of the state, including national courts, to take

into consideration EU law when exercising their competences in accordance with the legal regulation of the EU. The CJEU has exclusive jurisdiction to give preliminary rulings on questions concerning the interpretation of the Treaties and the validity and interpretation of acts of the institutions, bodies, offices, or agencies of the EU (Article 267 of the TFEU). Its task is therefore to ensure uniform interpretation and application of (primary and secondary) EU law and its decisions are binding on all national courts and all other authorities and [legal] subjects in Member States. When in proceedings it is conducting a national court is faced with a question whose resolution falls within the exclusive jurisdiction of the CJEU, it must not decide thereon unless the CJEU has already answered it or other conditions that allow the national court to adopt a decision are fulfilled. If the national court adopts a position inconsistent with the above, such entails a violation of the right to judicial protection determined by the first paragraph of Article 23 of the Constitution."

In the case at issue, the Constitutional Court established that, regarding EU law, the Supreme Court adopted positions with regard to which it was not clear whether they were based on the case law of the CJEU due to deficient reasoning, whereas with regard to the question of whether there was an *acte clair* it did not adopt a position at all, nor did it adopt a position regarding the party's motion to submit the case to the CJEU for a preliminary ruling. With regard to the above, the Constitutional Court established a violation of the first paragraph of Article 23 of the Constitution, abrogated the challenged judgment, and remanded the case to the Supreme Court for new adjudication.

- **Is the national impact of the Charter conditioned, in constitutional terms, by its essentially equivalent degree of protection afforded, or as the case may be in the EU member states, is conditioned by making a request for preliminary ruling with the Court of Justice of the EU?**

As already mentioned, the Constitutional Court proceeds from the highest protection of rights, which is also enshrined in the Constitution of the Republic of Slovenia. In the fifth paragraph of Article 15 of the Constitution, the principle of the highest protection of rights is established, 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 view of the third paragraph of Article 3a of the Constitution, the same also applied to the Charter. There has not been a case in the case law of the Constitutional Court where the Constitutional Court would decide that the highest protection of a concrete right in a concrete situation is ensured by the Charter and would consider the Charter as the criterion for its constitutional review.

The Constitutional Court adopted several important positions regarding the duty of courts when parties make a motion that the court deciding on the case submit a question to the CJEU for a preliminary ruling. Relying on Decision No. Up-

1056/11, in Decision No. Up-561/15, dated 16 November 2017, the Constitutional Court stressed that

> "the first paragraph of Article 23 of the Constitution ensures that when a question of interpretation of EU law and/or the validity of secondary EU law arises in a dispute, it will be the court that in accordance with Article 267 of the TFEU has jurisdiction to answer it that will answer it. […] In order for the Constitutional Court to be able to assess whether an individual was ensured judicial protection before a court established by law and whether the separation of jurisdiction determined by Article 267 of the TFEU was taken into consideration, there is the necessary prerequisite that the court at issue has adopted a sufficiently clear position with regard to the questions related to EU law. This also includes reasoning explaining why, despite the party's motion to stay proceedings and to submit the case to the CJEU in conformity with Article 267 of the TFEU, the court at issue decided, by taking into consideration the criteria stemming from the case law of the CJEU, not to proceed in such manner. […] In proceedings in which a question of the application of EU law arises, sufficient reasoning is essential not only due to the constitutional procedural guarantees ensured by the right to the equal protection of rights determined by Article 22 of the Constitution, but also because by omitting the reasoning or if the reasoning is inadequate, the conditions determined in EU law under which a case must be submitted to the CJEU for a preliminary ruling are disregarded. [...] A court's reasoning that refers to aspects of EU law, including the dismissal of the party's motion to submit the case to the CJEU, must therefore be such as to enable an assessment of whether the conditions establishing the duty to submit the case determined by the third paragraph of Article 267 of the TFEU had been observed in a manner consistent with these conditions. These conditions are namely decisive for an assessment of which court is competent to interpret EU law. The conditions under which Member State courts must submit a case to the CJEU are determined by the third paragraph of Article 267 of the TFEU."

I.III National human rights catalogues

- **Is the catalogue of human rights part of the constitution of your country? If so, how is it incorporated (a separate constitutional charter, a part of the Constitution, a part of the constitutional order)? What is its structure?**

Human rights and fundamental freedoms are written in the Constitution of the Republic of Slovenia, which is hierarchically the highest legal act in the state. The Constitution is introduced by a preamble that is followed by the normative part which is divided into ten chapters. In Decision No. U-I-92/07, dated 15 April 2010 (Official Gazette RS, No. 108/13), the Constitutional Court stated that the "Preamble to the Constitution emphasises that human rights and fundamental freedoms are the fundamental premise that were relied on by the constitution framers in adopting the Constitution. This must be taken into account when interpreting the normative part of the Constitution." In Article 5 of the Constitution

determines: "In its own territory, the state shall protect human rights and fundamental freedoms." The entire Chapter II of the Constitution is dedicated to human rights and fundamental freedoms, whereas in Chapter III, which is entitled "Economic and Social relations," several additional human rights and fundamental freedoms are determined (e.g. security of employment, the manner in which property is enjoyed, free economic initiative, and freedom of trade unions). The other chapters of the Constitution include another few provisions that the Constitutional Court determined to be human rights, e.g. provisions relating to the legislative referendum (Article 90 of the Constitution), the right to request the calling of a referendum, and the right to vote in a referendum.

- **What is the historical background of the creation of the national catalogue of human rights in your country? Is the respective legislation in your country based on other legislation (previous or foreign), or is it original?**

On 25 June 1991, the Republic of Slovenia became a sovereign and independent state. With the adoption of the Basic Constitutional Charter on the Sovereignty and Independence and the legislation enabling independence based thereon, the institutional foundations of state power were laid. The new, modern, and democratic constitution, adopted on 23 December 1991, state powers also obtained legal basis in the highest legal act of the state. The adoption of new Slovene constitution also marked a definitive break with the former Socialist Federal Republic of Yugoslavia and completed the process of formation of a new sovereign and independent state. In order to implement the Constitution, a special constitutional act that regulated the harmonisation of the legal order with the Constitution and the transition to the new organisation of the state was adopted.

With the extensive catalogue of human rights and fundamental freedoms, the Constitution placed humans and their dignity in the forefront. The Constitution is introduced by a preamble, in which, as already stated, human rights and fundamental freedoms are mentioned; they were accepted as the starting point on which the legislative body relied when adopting the Constitution. The Constitution is not merely a collection of articles; to a significant degree, its content is the result of the functioning of the Constitutional Court. The constitutional case law significantly contributed to the successful transition from the former non-democratic regime to the new sociopolitical system, which is harmonised with European and international legal standards as well as based on the rule of law and on the protection of humans and their dignity. Decisions of the Constitutional Court give substance to the Constitution and give purpose thereto, making it a living and effective legal act that can directly affect the lives and well-being of people. The numerous decisions of the Constitutional Court extend to all legal fields and concern different dimensions of individuals' lives and society as a whole. Their influence on the personal, family, economic, cultural, religious, and political life in society has been and continues to be extremely important. Throughout its functioning in the sovereign and independent Republic of Slovenia, the Constitutional Court is bound to protect the Constitution and the

values defined therein. In this sense, the Constitutional Court is the guardian of the Constitution.

- **What has been the development of your national catalogue of human rights over time? Is it undergoing a change? Are new rights included? Is there a constitutional procedure for its modification or amendment?**

The Constitution regulates the procedure for amending the Constitution, which allows modifications or amendments to the Constitution to be adopted. The Constitution has been amended several times with constitutional acts (in 1997, 2000, 2003, 2004, 2006, 2013, and 2016). The Constitution does not regulate a specific technique for amending the Constitution. However, in practice, the technique of change through amendments has been used. The adopted changes thus directly affect the original text of the Constitution and supplement, amend, or abrogate its provisions.

The procedure for amending the Constitution is regulated in Chapter IX of the Constitution, more precisely by Articles 168 through 171. In this respect it should be stressed that the Constitution does not regulate a different procedure for amending those parts of the Constitution in which human rights and fundamental freedoms are listed. On the contrary, the amendment procedure is uniform.

The procedure for amending the Constitution is subject to more complex and stringent conditions than the procedure for adopting laws and other regulations. Therefore, legal theory classifies the Slovene Constitution as a so-called rigid constitution. The procedure for amending the Constitution is uniform regardless of the scope and nature of the constitutional amendments. The National Assembly is competent to adopt acts amending the Constitution. However, citizens can also participate in the process by means of popular initiative or referendum. An amendment of the Constitution comprises two mandatory and one optional phase: (1) the proposal to initiate a procedure for amending the Constitution and the decision regarding the proposal, (2) the adoption of the constitutional amendment, and (3) the confirmation of the constitutional amendment in a referendum. These phases are elaborated in the Rules of Procedure of the National Assembly.

A proposal to initiate the procedure for amending the Constitution may be submitted by 20 deputies of the National Assembly, the Government, or at least 30,000 voters. The National Assembly adopts (or does not adopt) the decision to initiate the procedure for amending the Constitution. If it decides to initiate the procedure, it then proceeds to decide on the constitutional amendment in the second phase. The draft constitutional act is prepared by the Constitutional Commission, which is a special working body of the National Assembly, on the basis of the decision and the positions of the National Assembly. The National Assembly debates and votes on the individual articles separately and on the draft constitutional act in its entirety. The constitutional amendment is adopted if at least 60 deputies of the National Assembly vote for its adoption. The third phase in which the constitutional amendment is submitted to the voters for approval at a

referendum is optional. Nevertheless, the National Assembly must submit the proposed amendment to the voters for approval at a referendum if such is required by at least 30 deputies. The Constitution determines that the constitutional amendment enters into force upon its promulgation in the National Assembly.

By the last amendment of the Constitution in 2016, a new human right was inserted in the Constitution, namely the right to drinking water (Article 70a). In 2004, also the right to a pension was expressly written in the Constitution (Article 50).

I.IV The mutual relationship between different catalogues of human rights

- **Can you give examples from the case law of your court related to the use of any of the international catalogues?**

The case law of the Constitutional Court in which international catalogues of human rights and fundamental freedoms are referred to is extensive. In particular, there are hundreds of decisions that include references to the ECHR, therefore as regards this subject, please see the answers in Part II of this questionnaire.

- **Has your court considered the relationship/hierarchy/competition of the catalogues of human rights in light of the protection afforded?**

No. As a general rule, all international instruments on human rights and fundamental freedoms have equal (constitutional) position within the national legal order. The only exception is EU law and in this framework also the Charter, regarding which the Constitution contains special provisions. The Constitutional Court proceeds from pluralism of international instruments, and when forming concrete standards of protection of human rights and fundamental freedoms, it proceeds from the principle of the highest protection, which is determined by the fifth paragraph of Article 15 of the Constitution.

- **Is there an established procedure for choosing a specific catalogue of human rights in cases where the right is protected under more catalogues?**

In its assessment, the Constitutional Court strives towards exercising the constitutional provision (i.e. the already mentioned fifth paragraph of Article 15 of the Constitution) that imposes the highest protection of human rights. In concrete proceedings, it proceeds from that principle, and in doing so it strives to harmonically interpret different catalogues of human rights and fundamental freedoms.

II. SPECIAL PART – SPECIFIC ISSUES RELATED TO SELECTED FUNDAMENTAL RIGHTS

II.I Right to life

What is the original wording of the provision protecting this right in your national catalogue?

Article 17 of the Constitution of the Republic of Slovenia reads as follows: "Human life is inviolable. There is no capital punishment in Slovenia."

Is it possible to restrict the right? If so, how and under what conditions?

The constitutional provision on the inviolability of human life protects one of the most important values, i.e. human life. The Constitution does not allow any temporary suspension or restriction of that right, not even during a war or state of emergency (the second paragraph of Article 16 of the Constitution). The constitution-framers enacted absolute prohibition of death penalty, which is prohibited by that provision of the Constitution. As regards the provision that human life is inviolable, it should be stressed that despite the fact that this is not an absolute right (e.g. self-defence, the lawful use of firearms), the admissibility of limitations requires a restrictive stance, and the provision is also subjected to the general limitation clause in the Constitution, in accordance with which human rights and fundamental freedoms are limited only by the rights of others and in such cases as are provided by the Constitution (the third paragraph of Article 15 of the Constitution), and the principle of proportionality, which the Constitutional Court defined as being one of the fundamental principles of a state governed by the rule of law (Article 2 of the Constitution).

Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

The Constitutional Court has already had the opportunity to interpret this right in more detail. From its case law it follows that the right to life encompasses both the material and the procedural aspects. In Decision No. Up-679/12, dated 16 October 2014 (Official Gazette RS, No. 81/14), the Constitutional Court drew attention to the procedural aspect of the protection of the right to life and the duty of the state to ensure that an independent investigation of the circumstances of an incident are carried out and that the relatives of the deceased have effective access to such investigation. In the case at issue, the Constitutional Court considered a constitutional complaint by which the complainants (i.e. parents, children, and a partner) demanded from the state the payment of compensation for non-pecuniary damage that occurred due to the death of their relative (son, father, and partner, respectively) during a police action. In view of Article 17 of the Constitution, which determines that human life is inviolable, the Constitutional Court stressed that one’s right to life is an essential and the underlying element of human dignity as hierarchically the highest constitutional value that represents the value starting point of all human rights. The right to life is first and foremost a defensive right of individuals that prohibits authoritative and intentional interferences by the state with human life. In the event of the death of a person due to the use of force by the repressive authorities of the state (e.g. the Police or the military), the state must ensure an effective and independent official

investigation of the circumstances of the death. Thereby, the procedural aspect of the right to life is protected. The state carries the burden of proof in demonstrating that in the circumstances of a concrete event it acted in conformity with the statutorily determined competences and authorisations, and in particular also in conformity with the positive obligation to protect the inviolability of life and the physical integrity of the persons involved. Within the framework of its positive duties, the state must, by its active conduct (which also entails diligent planning and supervision of the measures taken when force is used), prevent the occurrence of fatal consequences for individuals. Whenever the state fails to act in accordance with these constitutional starting points, the question of its liability for damages determined by Article 26 of the Constitution arises. In the reasoning of its Decision, the Constitutional Court also referred to Article 2 of the ECHR and the case law of the ECtHR.

Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

From the mentioned cases it follows that the Constitutional Court relied on the positions of the ECtHR with regard to the right to life.

II.II Freedom of expression

What is the original wording of the provision protecting this right in your national catalogue?

Article 39 of the Constitution determines the right to freedom of expression.
"Freedom of expression of thought, freedom of speech and public appearance, freedom of the press, and other forms of public communication and expression shall be guaranteed. Everyone may freely collect, receive, and disseminate information and opinions.
Except in such cases as are provided by law, everyone has the right to obtain information of a public nature in which he has a well founded legal interest under law."

Is it possible to restrict the right? If so, how and under what conditions?

The Constitution prescribes the admissible limitations to freedom of expression. As any other human right, also this right is limited by the rights of others (the third paragraph of Article 15 of the Constitution). When limiting the right to freedom of expression, the principle of proportionality must be taken into account and the constitutional values in collision must be balanced, as it is a right that is often opposed by some other constitutional right, e.g. the right to privacy and personality rights (honour and good reputation).

Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

The Constitutional Court has had the opportunity to interpret the right to freedom of expression a number of times and in different contexts. The extensive case law of the Constitutional Court exceeds the limitations of the available space herein, therefore only three recent cases will be presented below.

By Decision No. Up-407/14, dated 14 December 2016 (Official Gazette RS, No. 2/17), the Constitutional Court decided on two constitutional complaints that the complainant, the magazine MLADINA, filed against two judgments of the Higher Court and the Supreme Court that were issued in a lawsuit in which the plaintiff (a deputy of the National Assembly) alleged an interference with his personality rights. For the plaintiff, the matter of dispute was the simultaneous publication of the photograph of his family and the photograph of the family of Joseph Goebbels, and the consequent visual comparison of the two families in the satirical section of the magazine. In proceedings before regular courts, the obligation to pay damages to the deputy and to publish an apology was imposed on the magazine at all instances. The Constitutional Court assessed the conformity with the Constitution of the positions on which the challenged judgments of courts were based, namely from the viewpoint of freedom of expression, which is protected by Article 39 of the Constitution. In its assessment, it took into consideration both the criteria adopted in its hitherto constitutional case law and the criteria that the ECtHR applies in cases of such kind. Despite the starting point that a satirical style of expressing opinions and criticisms enjoys broader protection, the Constitutional Court assessed, by taking all the circumstances at issue into consideration, that the fact that the disputed comparison of photographs was positioned in a satirical section of the publication does not entail a factor that would tip the scales in favour of the complainant's freedom of expression. The Constitutional Court established that the two courts took into account both human rights in collision, that they did not disregard either of them in their assessments, that they carried out the balancing between the human rights in collision by taking into account the criteria adopted in the constitutional case law and the case law of the ECtHR, and that they also took into consideration all the constitutionally relevant circumstances. Furthermore, in the assessment of the Constitutional Court, they attributed each of the two rights in collision appropriate weight when assessing the mentioned criteria. The balancing by the courts led to the result that due to the publication of the family photographs – unlike the text articles, whose publication was never disputed – there was an inadmissible interference with the plaintiff 's right to the protection of one's honour and reputation. The courts also appropriately and sufficiently reasoned such result. Considering all of the above, the Constitutional Court had no grounds to interfere with the challenged judgments of the Higher Court and Supreme Court. Therefore, it dismissed both constitutional complaints.

In case No. Up-614/15 (Decision dated 21 May 2018, Official Gazette RS, No. 44/18), the Constitutional Court decided on the constitutional complaint of a complainant who was sentenced to pay damages to the plaintiff due to defamatory statements he made in interviews with different media sources. The regular courts in the civil procedure based their decision on the position that the complainant could have expressed criticism regarding the plaintiff 's prior conduct (i.e. censoring a satirical TV broadcast on national television) in a different, non-

defamatory, manner. In the assessment of the Constitutional Court, the interference of the courts with the complainant's right to freedom of expression was excessive, as it was not substantiated with relevant and sufficient reasons.In the general starting points of the constitutional assessment, the Constitutional Court stressed that the first paragraph of Article 39 of the Constitution guarantees the right to the freedom of expression of opinions. Everyone may freely collect, receive, and disseminate in-formation and opinions. An indispensable component of a free democratic society is public and open discussion of matters of general interest. Freedom of expression protects not only the spreading of opinions that are received favourably, but also extends to critical and harsh statements. In accordance with the established constitutional case law, the limits to acceptable criticism significantly depend on the social role of the person concerned. A person who decides to hold public office or to appear in public raises more public interest. For this reason, he or she has to take this into account and also be prepared for possibly critical and unpleasant statements, in particular as regards commentary on matters related to the performance of his or her office. The decisive element for the assessment of the Constitutional Court was the fact that the complainant's disputed allegations were elicited by the previous conduct of the plaintiff (i.e. the censoring of satire on national television). Therefore, the context in which they were said was decisive in assessing their admissibility. The Constitutional Court stressed that censorship at the national radio and television is certainly a topic that is important for a discussion in the public interest. However, it is not admissible to limit the right to the freedom of expression merely because the complainant could have responded to the conduct of the plaintiff in a different, non-defamatory, manner.In consequence thereof, the Constitutional Court held that the complainant's right to freedom of expression must be given priority over the plaintiff 's right to the protection of his honour and good reputation.

By Decision No. Up-530/14, dated 2 March 2017 (Official Gazette RS, No. 17/17), the Constitutional Court for the first time adopted the position that also legal entities, and, among them, also political parties in particular, enjoy constitutional protection of the personality right to honour and good reputation. The Constitutional Court decided on a constitutional complaint of a political party against a judgment by which a court dismissed its claim against the publisher of a newspaper. The Constitutional Court stressed that legal entities, i.e. also political parties, inherently cannot have the right to human dignity and, consequently, neither can they have the constitutional right to the protection of (subjective, internal) honour. However, also political parties enjoy the right to the protection of good reputation, which follows from Article 35 of the Constitution. If they were not protected against false (or unfounded) allegations or allegations that inadmissibly deteriorate their public reputation, their functioning could be significantly compromised. The case at issue concerned a collision between two constitutional rights, namely the right of a newspaper to freedom of expression determined by the first paragraph of Article 39 of the Constitution, on the one side, and the right of the complainant to good reputation, protected by Article 35 of the Constitution, on the other. Since the regular court conceived the starting point for the balancing of the rights in the collision in such a manner that it violated the right to

the protection of good reputation determined by Article 35 of the Constitution, the Constitutional Court abrogated the challenged judgment.

Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

As a general rule, the Constitutional Court follows the case law of the ECtHR in its case law. However, in case No. Up-1391/07 (Decision dated 10 September 2009, Official Gazette RS, No. 82/09), when assessing a journalist's freedom to be critical towards the statements and actions of a deputy in the Parliament, it decided the case differently than the ECtHR subsequently. Regular courts punished a journalist of magazine Mladina for the publication in an article in which he commented on the statements and gesticulations of a deputy in the Parliament during a debate on the rights of homosexuals and same-sex partners. The courts held that the journalist's harsh article entails inadmissible defamation of the deputy. The Constitutional Court concurred with the regular courts; however, in 20981/10 *Mladina d. d. Ljubljana v. Slovenia*, the ECtHR held that Mladina did not violate the human dignity of the deputy and hence gave priority to freedom of expression. It explained that the journalist's words must be understood as a strong expression of disagreement and not as defamation of the deputy's intellectual capacities. It concurred with the journalist that the deputy in the Parliament promoted negative stereotypes on homosexuals in an inappropriate manner. As a result, it recognised the journalist's freedom of expression with respect to the choice of style and manner of writing, which also includes cynicism and satire.

Another interesting decision is Decision No. Up-309/05, dated 15 May 2008 (Official Gazette RS, No. 59/08), in which the Constitutional Court assessed the limits to an attorney's freedom of expression before a court in criminal proceedings. During a hearing, the attorney at issue orally commented the work of court-appointed experts. The court imposed on him the obligation to pay a fine due to reputedly defamatory value judgments. The Constitutional Court assessed that an attorney in the role of a counsel in criminal proceedings also exercises his or her right to freedom of expression, despite the fact that exercising such right serves the purpose of ensuring the defendant's right to a defence. However, in the event contemptuous criticism that entails personal disqualification of court-appointed experts in general, the court may interfere with the right to freedom of expression of an attorney by punishing him or her in cases where such a measure pursues a constitutionally admissible aim, i.e. the protection of trust in the judiciary as well as the protection of the good reputation and authority of the judiciary. The ECtHR again decided differently. In *40975/08 Čeferin v. Slovenia* it stressed that also courts and judges are representatives of state power and thus subject to public criticism, and that an attorney's criticism regarding the work of a court must be assessed within the general context of the case. The ECtHR assessed that the attorney's critical remarks did not represent objectively unfounded personal attacks on the employees of the court; their purpose was not to defame court-appointed experts, the public prosecutor, or the court, but they entailed an attempt to achieve a correct assessment of all available evidence and a fair trial.

II.III. Right to privacy/right to respect for private life/right to private life

What is the original wording of the provision protecting this right in your national catalogue?

Article 35 of the Constitution guarantees inviolability of one's physical and mental integrity, as well as one's privacy and personality rights. In accordance with the established case law of the Constitutional Court, privacy within the meaning of the mentioned Article must be understood as a more or less whole complete in itself of one's behaviours and involvements, feelings, and relations, for which it is characteristic and essential that the person shapes and maintains it alone or alone with those near to him or her with whom he or she lives in intimate community, and that he or she lives in such community with a sense of being protected against intrusion by the public or any other undesired person. In addition to this general provision on the protection of privacy, the Constitution contains further three special provisions that protect special aspects of privacy, namely the inviolability of dwellings or the so-called spatial aspect of privacy (the first paragraph of Article 36 of the Constitution), the privacy of correspondence and other means of communication or the so-called communication aspect of privacy (the first paragraph of Article 37 of the Constitution), and the protection of personal data (the first paragraph of Article 38 of the Constitution).

Article 35 of the Constitution (protection of the rights to privacy and personality rights) reads as follows: "The inviolability of the physical and mental integrity of every person and his privacy and personality rights shall be guaranteed."

Article 36 of the Constitution reads as follows:
" Dwellings are inviolable.
No one may, without a court order, enter the dwelling or other premises of another person, nor may he search the same, against the will of the resident.
Any person whose dwelling or other premises are searched has the right to be present or to have a representative present.
Such a search may only be conducted in the presence of two witnesses.
Subject to conditions provided by law, an official may enter the dwelling or other premises of another person without a court order, and may in exceptional circumstances conduct a search in the absence of witnesses, where this is absolutely necessary for the direct apprehension of a person who has committed a criminal offence or to protect people or property."

Article 37 of the Constitution reads as follows:
"The privacy of correspondence and other means of communication shall be guaranteed.
Only a law may prescribe that on the basis of a court order the protection of the privacy of correspondence and other means of communication and the inviolability of personal privacy be suspended for a set time where such is necessary for the institution or course of criminal proceedings or for reasons of national security."

Article 38 of the Constitution guarantees protection of personal data and reads as follows:
"The protection of personal data shall be guaranteed. The use of personal data contrary to the purpose for which it was collected is prohibited.
The collection, processing, designated use, supervision, and protection of the confidentiality of personal data shall be provided by law.
Everyone has the right of access to the collected personal data that relates to him and the right to judicial protection in the event of any abuse of such data."

Is it possible to restrict the right? If so, how and under what conditions?

The right to privacy may be limited, provided that the limitation follows a constitutionally admissible objective (the third paragraph of Article 15 of the Constitution) and if it is in conformity with the general principle of proportionality, which requires that every interference with privacy be appropriate, necessary, and proportionate (i.e. proportionate in the narrower sense) in view of the benefits that will ensue therefrom.

Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

The Constitutional Court has already considered and interpreted this constitutional provision. A few selected cases from the extensive case law merit mentioning.

By Decision No. Up-1005/15, dated 31 May 2018 (Official Gazette RS, No. 48/18), the Constitutional Court decided on a constitutional complaint against judgments of two courts by which the request of the son of a former President of the Republic of Slovenia that a municipality remove a statue him and abrogate the decision to name the town's central park after him, was dismissed. The central question in the constitutional complaint was whether the position of the courts that erecting a statue of the former President and naming a park after him, despite the fact that this was carried out without the consent of the complainant, entailed an admissible interference with the complainant's right that respect for a deceased person be ensured as determined by Article 35 of the Constitution, was in conformity with the Constitution. In its assessment, the Constitutional Court confirmed the constitutionality of the position of the courts that where the use of the name and image of the most exposed public persons is at issue, in particular of those who played an important role in the formation of the state and thus had a profound impact on society, such persons only exceptionally enjoy protection as regards independent decision-making concerning the use of their name and image. The use of one's name and image for neutral, non-commercial purposes (such as naming parts of cities, erecting a statue, naming a school, etc.) does not fall within that protected scope. Erecting a statue and naming a public place serve to remind the populace of a person who at a certain time and place played an important role in the identity of the community. If such conduct does not violate fundamental constitutional values such as respect for one's dignity, it is

always in the public interest. Therefore, the Constitutional Court dismissed the petition.

In Decision No. U-I-64/14, dated 12 October 2017 (Official Gazette RS, No. 66/17), the Constitutional Court decided on the constitutionality of a provision of the Construction Act which regulated the issuance of an administrative decision by which a building inspector requires a person who is subject to an inspection to remove an illegally constructed building. The Constitutional Court reviewed the challenged statutory provisions as regards their consistency with the right to respect for one's home, and, in doing so, amply referred to Article 8 of the ECHR, in accordance with which individuals are also enured the right to respect for one's home, and to the case law of the ECtHR. However, such does not entail that in the Republic of Slovenia this right is not guaranteed directly on the basis of the Constitution. The Constitutional Court stresssed that the right to respect for one's home is protected by the first paragraph of Article 36 of the Constitution, which regulates the right to the inviolability of dwellings. The right to respect for one's home protects an individual's social and emotional bonds with a place that this individual considers his or her home. In inspection procedures regarding an illegal building, the right to respect for home ensures individuals that the building they live in will not be removed as long as there exist circumstances that render such an interference with the right to respect for their home disproportionate. The right to respect for one's home guarantees individuals a procedure in which they will be able to challenge the decision on the removal of a building due to a disproportionate interference with that right. When assessing the proportionality of a measure in individual proceedings, courts must also take into account whether the person who was subject to an inspection is a representative of a particularly vulnerable group, such as members of the Roma community.

By Decision No. U-I-115/14, Up-218/14, dated 21 January 2016 (Official Gazette RS, No. 8/16), the Constitutional Court reviewed the constitutionality of the Criminal Procedure Act and the Attorneys Act. The petitioner's main allegation was that the Acts do not regulate searches of attorneys' offices, apartments, and personal vehicles in a manner that ensures respect for their right to privacy and the confidentiality of the relationship between attorneys and their clients. In this case, the Constitutional Court for the first time defined the content of the privacy of attorneys. When practising their profession, attorneys provide legal assistance to their clients. Attorneys are even more indispensable in criminal proceedings, in which the counsel plays a crucial part in the exercise of the right to a defence and the implementation of other safeguards guaranteed to defendants by the Constitution. In order for attorneys to be able to play their part effectively, clients must entrust them with their personal data and numerous other items of information, including most intimate information, regarding their privacy. Attorneys must protect such data and information as a professional secret. The special protection of the privacy of attorneys is necessary because it is a reflection of the privacy of their clients. The privacy of attorneys is not protected only in attorneys' offices; the spatial aspect of privacy protects attorneys on all premises where they carry out their work (e.g. an apartment, car, holiday home). Limitations to the privacy of attorneys are admissible, subject to the general constitutional requirements that apply to interferences with human rights (i.e. the

interference must pursue a constitutionally admissible aim and be proportionate) and the special safeguards that the Constitution determines for all interferences with spatial and communication privacy (i.e. a prior court order, the presence of the proprietor, the presence of witnesses).

By Decision No. Up-979/15, dated 21 June 2018 (Official Gazette RS, No. 54/18), the Constitutional Court decided on a constitutional complaint against an order by which – in a police procedure due to a criminal offence involving multiple suspects, including the complainant, who is a deputy of the National Assembly and allegedly an accomplice in the criminal offence – a court ordered a search of business premises and additional areas at the address of the National Assembly that the complainant uses, as well as the seizure, safeguarding, inspection, and search of electronic data of the National Assembly that refer to the complainant or to which he had access. Within the framework of the assessment, the Constitutional Court first had to answer the question of whether the challenged order even interfereres with the complaiant's right to privacy. It concluded that the order allows an interference with the complaiant's right to communication privacy determined by the first paragraph of Article 37 of the Constitution, with regard to which that does not only apply to the authorisation to seize the possibly private means of communication that would be found in the complainant's office of a deputy, but also to the authorisation to seize evidence on the communication carried out via the means of communication of the National Assembly. According to the Constitutional Court, in the case at issue the regular court failed to sufficiently and reasonably substantiate why there existed the possibility that traces of a criminal offence would be discovered during the investigation or objects that are important for the criminal procedure, or that the investigation was an appropriate measure for achieving the pursued objective, and as a result dismissed the constitutional complaint.

By Decision No. U-I-65/13, dated 3 July 2014 (Official Gazette RS, No. 54/14), the Constitutional Court assessed the constitutionality of the obligatory retention of data in the Electronic Communications Act. By the challenged provisions, the Republic of Slovenia transposed into its legal order the so-called Data Retention Directive. In that case, the Constitutional Court stayed the proceedings until the CJEU declared the Data Retention Directive invalid by the Judgment in joined cases C-293/12 and C-594/12, dated 8 April 2014. As the CJEU stressed, on the basis of all these data very precise conclusions may be drawn concerning the private lives of the persons whose data have been retained, such as the habits of everyday life, permanent or temporary places of residence, daily or other movements, the activities carried out, the social relationships of those persons, and the social environments frequented by them. Consequently, the retention of these data entails an interference with the right to the protection of personal data guaranteed by Article 38 of the Constitution, Article 8 of the Charter, and also Article 8 of the ECHR. In conformity with the established constitutional case law, any collecting and processing of personal data entails an interference with the right to the protection of privacy, i.e. with the right of individuals to keep information regarding themselves private. However, the right to information privacy is not unlimited. In the law it must be precisely deter-mined which data may be collected and processed, and for what purpose they may be

used; supervision over the collection, processing, and use of personal data must be envisaged, as well as protection of the confidentiality of the collected personal data. The purpose of the collecting of personal data must be constitutionally admissible. The Constitutional Court assessed that the legislature could also have achieved the purpose for which personal data were being retained by a less intensive interference with the right determined by the first paragraph of Article 38 of the Constitution. As was the case in the Data Retention Directive, the Slovene legislature also did not limit such retention to those data that have a reasonable and objectively verifiable connection to the purpose that the legislature intended the measure to achieve. The Constitutional Court established that the challenged regulation disproportionally interfered with the right to the protection of personal data determined by the first paragraph of Article 38 of the Constitution and thus abrogated it.

Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

As a general rule, there no such differences follow from the constitutional case law. However, the Constitutional Court, which decides, as already mentioned, in accordance with the principle of the highest protection of human rights and fundamental freedoms, has already explained in its case law that the second paragraph of Article 37 of the Constitution guarantees a higher level of protection than Article 8 of the ECHR, as every interference with the right to communication privacy requires a court order. Hence, in such instances, the Constitutional Court carries out the review on the basis of the Constitution (see, e.g., Decision No. U-I-40/12, dated 11 April 2013, Official Gazette RS, No. 39/13).

II. IV. Freedom of religion

What is the original wording of the provision protecting this right in your national catalogue?

Article 41 of the Constitution (Freedom of Conscience) determines:
"Religious and other beliefs may be freely professed in private and public life.
No one shall be obliged to declare his religious or other beliefs.
Parents have the right to provide their children with a religious and moral upbringing in accordance with their beliefs. The religious and moral guidance given to children must be appropriate to their age and maturity, and be consistent with their free conscience and religious and other beliefs or convictions."
From Article 7 of the Constitution it follows that the state and religious communities are separate, that religious communities enjoy equal rights, and that they pursue their activities freely.

Is it possible to restrict the right? If so, how and under what conditions?

Freedom of religion may be limited only by the rights of others and in such cases as are provided by the Constitution (the third paragraph of Article 15 of the Constitution). The scope in which this right is guaranteed is equal to the scope guaranteed by the ECtHR. An interference with this right is subject to a strict test

of proportionality (the interference must be determined by law, appropriate, and necessary for the attainment of the pursued objective, and the weight of the consequences of the interference must be proportionate to the value of the pursued objective and the benefits that will result therefrom).

Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

By Decision No. U-I-92/07, dated 15 April 2010 (Official Gazette RS, No. 46/10), the Constitutional Court determined in more detail the substance of that constitutional right (its positive and negative aspects, as well as its individual and collective aspects) and, *inter alia*, drew attention to the duties of the state in ensuring freedom of religion in certain special circumstances (the army, the Police, hospitals).

In an important recent case (Decision No. U-I-140/14, dated 25 April 2018 (Official Gazette RS, No. 35/18), the Constitutional Court decided on the constitutionality of the second paragraph of Article 25 of the Animal Protection Act, which determines that animals must be stunned also during ritual slaughter. The central question in the case at issue was whether the challenged statutory provision is inconsistent with the freedom of religion determined by the first paragraph of Article 41 of the Constitution. Since the challenged provision renders access to the meat of ritually slaughtered animals difficult, and thus also the daily consumption thereof and full and unhindered celebration of Kurban Bayram, it hinders the performance of key religious duties. Therefore, according to the Constitutional Court, it interferes with the freedom of religion of the members of Islamic faith. However, the Constitutional Court stressed that when assessing the admissibility of limitations of the right to freedom of religion determined by the first paragraph of Article 41 of the Constitution it is necessary to take into consideration, in view of the fifth paragraph of Article 15 of the Constitution, the objectives determined by the second paragraph of Article 9 of the ECHR, due to which interference with freedom of religion may be admissible. The objective of the second paragraph of Article 25 of the APA is to ensure the well-being of animals. Within the context of the case at issue, this means the protection of animals from torture, which is expressly required by the fourth paragraph of Article 72 of the Constitution. The objective of the requirement that animals be stunned prior to slaughtering, i.e. to ensure the well-being of animals, is a part of morals, as an ensemble of rules that characterise and direct the conduct of people based on conceptions of good and bad. In view of the second paragraph of Article 9 of the ECHR, morals are an admissible reason for interfering with freedom of religion. When assessing the proportionality of this measure, the Constitutional Court established that the measure is appropriate and necessary, i.e. that the prior stunning of animals can effectively ease the pain and fear of animals, and that no milder means of achieving that objective exist that would interfere with freedom of religion to a lesser extent. The fact that the prohibition of the ritual slaughtering of unstunned animals entails a prohibition on inflicting pain that can be avoided was of decisive importance in the process of balancing of the proportionality in the narrower sense. An important moral

obligation in the Slovenian cultural environment is thereby protected. Consequently, the state is permitted to prohibit conduct that is incompatible with the fundamental rules and moral framework of the society, provided that concurrently it does not excessively interfere with the right to freedom of religion. The Constitutional Court thus decided that the challenged regulation is not unconstitutional.

Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

No difference has been noted in the constitutional case law.

II.V. Prohibition of discrimination

What is the original wording of the provision protecting this right in your national catalogue?

The prohibition of discrimination is determined by the first paragraph of Article 14 of the Constitution, which reads as follows: "In Slovenia everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political, or other conviction, material standing, birth, education, social status, or any other personal circumstance." It is worth mentioning that the second paragraph of Article 14 of the Constitution contains the general principle of equality before the law.

Is it possible to restrict the right? If so, how and under what conditions?

The first paragraph of Article 14 of the Constitution prohibits discrimination in ensuring, exercising, and protecting human rights and fundamental freedoms in view of the personal circumstances of individuals. In addition to the expressly mentioned personal circumstances, the Constitutional Court considered several other personal circumstances that are not expressly written in the Constitution (e.g. sexual orientation in Decision No. U-I-68/16, Up-213/15). This right may be limited; however, in doing so, the standard must be observed that the interference is admissible and in accordance with the general principle of proportionality, which encompasses the assessment of three aspects of an interference, i.e. the assessment of appropriateness, necessity, and proportionality of the interference in the narrower sense.

Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

The mentioned right is often a subject of review before the Constitutional Court. Below, only several decisions of the Constitutional Court are mentioned.

By Decision No. U-I-146/07, dated 13 November 2008 (Official Gazette RS, No. 111/08), the Constitutional Court decided on the constitutionality of the provisions of the Civil Procecure Act. The Constitutional Court reviewed the challenged

regulation from the viewpoint of discrimination (the first paragraph of Article 14 of the Constitution). The petitioner alleged that, as a blind person, he does not have equal opportunities in proceedings before a court as regards the possibility to review the content of court and other documents in proceedings in comparison with the opposing party, and that therefore he also does not have equal opportunities as regards effective communication with the court and with the opposing party. The Constitutional Court established that there is an unconstitutional discrimination of blind and partially sighted persons, as the Act does not regulate their right to access court documents and written applications of parties and other participants in proceedings in a form accessible to them. It specifically drew attention of the legislature to the fact that a question of a need for appropriate statutory regulation of equal rights of these persons also in other judicial proceedings and in procedures before other state authorities is raised. In the Decision, the Constitutional Court amply referred to international instruments regulating the protection of human rights and fundamental freedoms.

Upon the petition of three persons with disabilities, in Decision No. U-I-156/11, Up-861/11, dated 10 April 2014 (Official Gazette RS, No. 35/14), the Constitutional Court reviewed the constitutionality of the National Assembly Elections Act, insofar as it referred to the access of persons with disabilities to polling stations. The petitioners alleged that the regulation discriminated against persons with disabilities in the exercise of the right to vote. Persons with disabilities should have access to all polling stations and they should further be guaranteed the possibility to vote in person (and independently, i.e. without another person's assistance). The Constitutional Court conducted the review from the perspective of Article 14 of the Constitution. Taking into account the importance of the right to vote in democratic states, the Constitutional Court deemed it to be unacceptable that the great majority of polling stations are still in buildings that do not fulfil the requirement of physical accessibility. The measure according to which the district electoral commission selects one polling station in the district that is to be accessible for persons with disabilities does not ensure that the right to vote is exercised in accordance with the Constitution. In the assessment of the Constitutional Court, such a measure does not constitute an appropriate and sufficient accommodation to enable persons with disabilities to independently physically access polling stations in public buildings and thus exercise their right to vote in person. Consequently, the Constitutional Court established that the National Assembly Elections Act was inconsistent with the Constitution. In addition to the review from the perspective of the physical accessibility of polling stations for persons with disabilities, the Constitutional Court further reviewed this Act from the perspective of the availability of adapted ballots and voting machines at polling stations. Since the challenged regulation did not require the establishment of polling stations accessible for persons with disabilities or determine any criteria for the establishment of such polling stations, the Constitutional Court established that it was unconstitutional for this reason alone.

By Decision No. U-I-425/06, dated 2 July 2009 (Official Gazette RS, No. 55/09), the Constitutional Court reviewed the challenged regulation from the viewpoint of prohibition of discrimination on grounds of peronsal circumstances and

established that the Registration of a Same-Sex Civil Partnership Act was inconsistent with the Constitution. It drew attention to the fact that from the perspective of the right to inheritance following the death of one's partner, the position of partners in registered same-sex partnerships is in its essential factual and legal aspects comparable with the position of spouses. The differences in the regulation of inheritance between spouses and between partners in registered same-sex partnerships are therefore not based on any objective, non-personal circumstance, but on sexual orientation. Sexual orientation is one of the personal circumstances determined in the first paragraph of Article 14 of the Constitution. Due to the fact that no constitutionally admissible reason could be found for such differentiation, the challenged regulation was found to be inconsistent with the first paragraph of Article 14 of the Constitution.

Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

In the hitherto constitutional case law, no difference has been specifically noted.

II. VI. Right to liberty

What is the original wording of the provision protecting this right in your national catalogue?

Article 19 of the Constitution (Protection of Personal Liberty) reads as follows:
"Everyone has the right to personal liberty.
No one may be deprived of his liberty except in such cases and pursuant to such procedures as are provided by law.
Anyone deprived of his liberty must be immediately informed in his mother tongue, or in a language which he understands, of the reasons for being deprived of his liberty. Within the shortest possible time thereafter, he must also be informed in writing of why he has been deprived of his liberty. He must be instructed immediately that he is not obliged to make any statement, that he has the right to immediate legal representation of his own free choice and that the competent authority must, on his request, notify his relatives or those close to him of the deprivation of his liberty."

Is it possible to restrict the right? If so, how and under what conditions?

Yes. With respect to all instances of limitation of personal liberty, the second and third paragraphs of the Constitution determine special safeguards (see above). Only if an interference passes all three aspects of the test is the interference constitutionally admissible (see, e.g., Decision No. U-I-60/03).

Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

In Decision No. Up-45/16, dated 17 March 2016 (Official Gazette RS, No. 25/16), the Constitutional Court decided on the constitutional complaint of a complainant

against whom criminal proceedings for the criminal offence of abuse of position or trust in the performance of an economic activity had been initiated. According to established constitutional case law, from Article 22 of the Constitution there follows the obligation that a court hear the statements of the parties, consider such, and take a position regarding their essential statements in the reasoning of its decision. The requirement of a reasoned judicial decision is even more accentuated in instances concerning decisions on interferences with the right to personal liberty determined by the first paragraph of Article 19 of the Constitution. If the detained person states that he or she has been detained for an unreasonably long period of time, the court must respond to such statements and decide not only on whether the grounds for and the absolute necessity of the interference with personal liberty still exist, but also whether the duration of detention is still reasonable. Already in Decision No. Up-155/95, dated 5 December 1996, the Constitutional Court held that the criteria for determining whether a judgment has been issued in a reasonable period of time cannot be the same in instances when a defendant is in detention or when he or she is free during the trial. The criteria for what is reasonable must be stricter when the defendant is in detention. Detention may only be ordered for the shortest necessary time and, at any stage of the proceedings, the detained person has to be released as soon as the grounds on which the detention has been ordered cease to exist. As the court failed to review the duration of detention from such perspective and thus failed to take a position on all of the complainant's allegations, but only referred to the extreme complexity of the case at issue, it violated the complainant's right to a reasoned judicial decision determined by Article 22 of the Constitution.

In case No. Up-563/15 (Decision dated 19 October 2017, Official Gazette RS, No. 67/17), the Constitutional Court decided on a constitutional complaint that the Ombudsperson for Human Rights filed in the name of the affected person. The Ombudsperson filed the constitutional complaint against a judicial decision issued in non-litigious civil proceedings by which the court ordered that the affected person be committed for treatment in a psychiatric hospital under special supervision on the basis of the provisions of the Mental Health Act. There were two pending non-litigious civil proceedings regarding the same subject matter (i.e. one initiated upon a motion of the family members of the affected person, and another upon a motion of the director of the psychiatric hospital). In spite of the same subject matter of the two non-litigious civil cases and although the courts applied the same substantive legal basis, the courts adopted substantively different decisions: in the first proceedings, the commitment of the affected person to the psychiatric hospital for treatment under special supervision for a period of two months was ordered, while in the second proceedings the court decided that the person was to be released from treatment under special supervision in the psychiatric hospital. The Constitutional Court conducted a review of whether the procedural situation at issue was acceptable from the perspective of the right to personal liberty (the first paragraph of Article 19 of the Constitution) and the right to the protection of personality and dignity in proceedings (the first paragraph of Article 21 of the Constitution). In the assessment of the Constitutional Court, in such instances, in order to ensure protection of the right to personal liberty, it is necessary to prevent that two

proceedings regarding the same case run at the same time. If there exist two parallel non-litigious civil proceedings in which the commitment of the same person for treatment under special supervision in a psychiatric hospital is being decided on, a constitutionally consistent interpretation of the law requires that the courts join such proceedings. As in the case at issue the courts did not act in accordance with the mentioned requirement, they created a constitutionally untenable procedural situation and rendered judicial control of the legality of the commitment of persons for treatment in a psychiatric hospital ineffective.

In case No. U-I-477/18, Up-93/18 (Decision dated 23 May 2019, Official Gazette RS, No. 44/19), the Constitutional Court decided on a constitutional complaint against a judicial decision by which a person was committed to a secure ward of a social care institution without his consent. The committed person alleged, *inter alia*, a violation of the right determined by Article 19 of the Constitution because he was placed in an institution that was overcrowded. The Constitutional Court extended the review to the Mental Health Act. Within the framework of the review of the constitutionality of that Act, it first answered the question of whether the existing statutory regulation of commitment to a secure ward of a social care institution is consistent with the safeguards determined by the second paragraph of Article 19 of the Constitution under which personal liberty may be limited. It stressed that, when regulating by law a measure that entails an interference with personal liberty of persons suffering from a mental disorder it does not suffice to merely refer to its protective objective; by determining the conditions for implementing the measure, the legislature must also strive towards the realisation of the therapeutic objective of the measure. The conditions for the execution of the measure must already at the statutory level be determined in such a manner that a factual connection is established between the legal basis, i.e. the reason for authorising the deprivation of liberty, on the one hand, and the location (i.e. the institution) and the conditions of detention, on the other. The determination of the conditions for the execution of the measure directed towards attaining both the protective and therapeutic objectives concurrently entails a safeguard ensuring that the duration of the measure will be limited to the period strictly necessary for the committed person's health condition to improve and for preventing his or her condition from deteriorating. A statutory regulation that does not satisfy the aforementioned requirements as to the precision of the legal basis and the conditions for enforcing the measure is inconsistent with the second paragraph of Article 19 of the Constitution. When reviewing the conformity of the statutory regulation with the first paragraph of Article 19 of the Constitution, the Constitutional Court proceeded from the constitutional requirement that only the judicial branch of power have the right to order deprivation of liberty that is longer than only momentary. The reviewed statutory regulation enables courts to merely weigh the necessity of the measure from the viewpoint of ensuring the attainment of the protective objective, which is to be attained by excluding the person concerned from the environment. However, it excludes the possibility of the courts assessing, prior to determining the concrete institution charged with executing the measure, the appropriateness of that institution from the viewpoint of ensuring security within the secure ward and the attainment of the therapeutic objective of the measure. A regulation that excludes such assessment by the court when ordering a measure involving the deprivation of liberty is not an

appropriate measure for achieving a constitutionally admissible objective and is thus inconsistent with the right determined by the first paragraph of Article 19 of the Constitution.

Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

No difference has been noted in the constitutional case law.