3rd Congress of the World Conference on Constitutional Justice
'Constitutional Justice and Social Integration'
28 September – 1 October 2014
Seoul, Republic of Korea

Questionnaire
Reply by the Constitutional Court of the Republic of Slovenia

A. Court description

Unless your Court[1] has already provided a description for the CODICES database (www.CODICES.coe.int), we kindly invite you to prepare a short presentation of your Court. This will allow the member courts to get to know each other better. Please briefly set out your Court's composition and competences under the headings below:

Introduction

I. Basic texts
II. Composition, procedure and organisation
III. Jurisdiction / Powers
IV. Nature and effects of judgments

Conclusion

Social integration

As concerns the specific sub-topics for the 3rd Congress, please reply to the following questions in a succinct manner, in any of the languages of the conference - but if possible with a translation into English.

1. Challenges of social integration in a globalised world

1.1. What challenges has your Court encountered in the past, for example in the field of asylum law, taxation law or social security law?

Social integration is a very broad concept connected to a number of different fields of law. In the Slovene legal system, the commitment to promote social integration already emanates from **the constitutional principle of a social state**, enshrined in Article 2 of the Constitution of the Republic of Slovenia (hereinafter referred to as the Constitution).[2] It is a general principle that has to be applied when interpreting other constitutional provisions and all state authorities must take it into account when exercising their powers. In its first decision regarding the principle of a social state, the Constitutional Court established that the principle requires the legislature to protect the (economically) weaker party and ensure that legal regulation is just.[3] In subsequent

1 Hereinafter "your Court" will refer to your institution, be it a Constitutional Court, a Supreme Court, Constitutional Council or a Constitutional Chamber within a Supreme Court.
2 Article 2 of the Constitution reads as follows: "Slovenia is a state governed by the rule of law and a social state."
3 Decision No. U-I-51/90, dated 14 May 1992, Official Gazette RS, No. 29/92, OdlUS I, 33, and Codices SLO-1992-X-004.

decisions, the Court stressed different aspects of the principle of a social state, ranging from social justice to social peace, and connected the principle to other constitutional provisions.[4]

The Court further developed the principle in Decision No. U-I-11/07, dated 13 December 2007,[5] which concerned the question of maintenance of handicapped persons. Previously, parents were obliged to maintain their handicapped children who did not have sufficient funds for living also after they reached adulthood. However, such obligation was abrogated by an amendment of the relevant law. The Constitutional Court found that while this was in accordance with the Constitution, the legislature should have at the same time accordingly regulated the obligation of the state regarding the social protection of such disabled persons. The Court clarified that the principle of a social state requires the state to take into account the social interests of individuals or individual groups of its population and, in accordance with such interests, the state is under an obligation to adopt positive measures to ensure everyone the possibility of a decent life. The legislature's failure thus resulted in an unconstitutional legal gap.

In 2011, the Constitutional Court reviewed the constitutionality of the act on guarantees adopted for the purpose of maintaining financial stability in the euro area. The Court relied *inter alia* on the principle of a social state in interpreting the requirement of determinability of state borrowings. It argued that "[d]eterminability requires that it is possible to infer from the legal facts of the matter what the future liabilities of the state will be and what purpose is being realised by the borrowing; in any event, liabilities must be specified in terms of amount, either in explicit terms or as a percentage of a specific amount (for example, the total budget). The latter follows from the principle of a social state (Article 2 of the Constitution), which requires that at any moment, including for the future generations which will bear the burden of present borrowing, the state must ensure a social minimum that comprises not only minimum subsistence but a minimum which ensures opportunities for the fostering of human interactions and for participation in social, cultural, and political affairs. At the same time, this is an upper limit that, despite the absence of an explicit constitutional provision on a borrowing ceiling, […] the legislature may not disregard and may not encumber the state with so much debt that it would jeopardise the social state."[6]

In addition to decisions regarding the principle of a social state, four legal fields with special significance for social integration may be derived from the case law of the Constitutional Court. Firstly, a field that is of paramount importance for social integration is the field of **discrimination law**. The Constitutional Court referred to the principle of equality determined in Article 14 of the Constitution in numerous decisions. These did not only concern the question of equality before the law (the second paragraph of Article 14 of the Constitution), but also the prohibition of discrimination on grounds of personal circumstances. It should be noted that the first paragraph of Article 14 explicitly states that "[i]n 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, disability, or any other personal circumstance". In addition, it follows from constitutional case law that protection of vulnerable groups is not only ensured by the prohibition of discrimination, but also through so-called positive discrimination, which entails the acknowledgment of special rights or of a greater extent of rights to persons belonging to such groups. Constitutional Court decisions regarding Article 14 hence played an important role in advancing the rights to equal treatment of different vulnerable social groups.[7]

[4] For a more detailed account of the connection of the principle of a social state with other constitutional provisions please refer to the reply to question 3.1.
[5] Official Gazette RS, No. 122/07, and OdlUS XVI, 86.
[6] Decision No. U-I-178/10, dated 3 February 2011, Official Gazette RS, No. 12/11, OdlUS XIX, 17, and Codices SLO-2011-2-001, para. 25; See also in U-II-1/11, dated 10 March 2011, Official Gazette RS, No. 20/11, para. 30.
[7] See e.g. Decision No. U-I-36/06, dated 5 February 2009, Official Gazette RS, No. 14/09, and OdlUS XVIII, 5, para. 13, wherein the Court reviewed the special protection of persons with disabilities regarding employment, and Decision No. U-I-218/04, dated 13 October 2004, Official Gazette RS, No. 117/04, Official Gazette RS, No.

In Decision No. U-I-146/07, dated 13 November 2008,[8] the Constitutional Court considered the Civil Procedure Act from the viewpoint of the procedural position of persons with disabilities, in the case at issue partially sighted and blind persons. The Court stated that the provision of Article 14 of the Constitution also prohibits indirect discrimination and in certain instances requires the adoption of necessary and appropriate accommodations to compensate for the disadvantaged position of certain social groups or individuals.

It further follows from the Court's case law that the right to judicial protection determined in Article 23 of the Constitution also entails the requirement that the state must ensure the actual and effective exercise of this right. The latter *inter alia* entails that the amount of court fees may not present an insurmountable obstacle to access to court for persons who are financially disadvantaged. Such also follows from the right to equality before the law and the prohibition of discrimination in accordance with Article 14 of the Constitution. The Constitution may thus require the adoption of measures which are going to ensure an equal procedural position to parties to proceedings regardless their financial status, such as a system of *pro bono* legal assistance or the possibility to request an exemption from payment of procedural costs or taxes. [9]

Refugees are a particularly vulnerable social group and **asylum law** is another field closely linked to the concept of social integration. The case law regarding asylum law entails *inter alia* decisions regarding the admissibility of restrictions of the applicants' freedom of movement,[10] their procedural rights and the obligations of the authorities entrusted with deciding on their applications,[11] and the requirement of a thorough analysis of the circumstances that are important from the perspective of the principle of *non-refoulement*.[12]

By Decision Nos. U-I-292/09, Up-1427/09 the Constitutional Court abrogated a provision of the Act regulating international protection that, in cases in which the general credibility of the applicant had not been established, allowed the competent authority to reject an application for international protection without taking into account information regarding the applicant's country of origin. The Court clarified that an analysis of the all circumstances which are important from the perspective of the principle of *non-refoulement* is necessary when processing applications for international protection. The procedure for assessing applications for international protection must be organised in such a way so as to ensure that the applicants can benefit from the safeguards of Article 18 of the Constitution (the prohibition of torture).

Thirdly, the principle of a social state is further developed through the constitutional provisions on **social rights.** Article 50 of the Constitution, for example, determines the right to social security.[13] It entails the traditional fields of social security, i.e. the right to obtain contributions and services upon the realisation of certain social risks, connected with the loss of income and increased expenses (e.g. illness, handicap, pregnancy and birth, unemployment, old age etc.),

---

46/06, and OdlUS XV, 29, para. 10, with regard to the special protection of members of the autochthonous Italian and Hungarian national communities under the Consumer Protection Act.

[8] Official Gazette RS, No. 111/08, OdlUS XVII, 59, and Codices SLO-2009-2-002.

[9] See Orders No. Up-40/97, dated 7 March 1997, and No. Up-103/97, dated 26 February 1998. This standpoint was reaffirmed by Decision No. U-II-1/09, dated 5 May 2009, Official Gazette RS, No. 35/09, OdlUS XVIII, 20, and Codices SLO-2009-3-007.

[10] Decision No. Up-360/09, dated 3 December 2009, Official Gazette RS, No. 105/09.

[11] Decision No. Up-763/09, dated 17 September 2009, Official Gazette RS, No. 80/09.

[12] Decision Nos. U-I-292/09, Up-1427/09, dated 20 October 2011, Official Gazette RS, No. 98/11, and OdlUS XIX, 27.

[13] Article 50 of the Constitution, entitled "Right to Social Security", reads as follows:
"Citizens have the right to social security, including the right to a pension, under conditions provided by law.
The state shall regulate compulsory health, pension, disability and other social insurance, and shall ensure its proper functioning.
Special protection in accordance with the law shall be guaranteed to war veterans and victims of war."

as well as a general right to social assistance for persons who do not have sufficient means to fulfil their basic needs and ensure their survival and a decent life. The majority of Constitutional Court cases regarding the right to social security referred to the issue of rights under mandatory social insurance schemes. Among these, applications to the Constitutional Court regarding the right to a pension were most numerous and concerned *inter alia* the limitations of the legislature's competence to regulate the amount of pensions in accordance with the principle of prohibition of retroactivity (Article 155 of the Constitution) and the principles of a state governed by the rule of law (Article 2 of the Constitution), the legal nature of pensions and other social security benefits, the constitutional core of the right to social security etc. It should be noted that the Constitutional Court derived protection of the right to social security (in the meaning of a right to benefits on the basis of payments of social security contributions) not only from Article 50 of the Constitution, which only refers to Slovene citizens, but also established that it falls into the ambit of the right to property, determined in Article 33 of the Constitution, thus extending protection to non-citizens as well.[14]

Property law is also the last field that is going to be highlighted. From the view of social integration, the Constitutional Court for example considered the admissibility of restrictions of the right to property. It clarified *inter alia* that Article 33 of the Constitution which guarantees the right to (private) property must be read together with Article 67 of the Constitution. The latter determines that the manner in which property is acquired and enjoyed is established by law so as to ensure its economic, social and environmental function, and the manner and conditions of inheritance are also determined by law. With regard to the social function of property, in Decision No. U-I-287/96, dated 13 May 1999,[15] the Constitutional Court for example found that legal provisions restricting the power of an apartment owner to alter a tenancy agreement ensured the observance of the social function of his or her property. The Court stressed that an apartment is an essential element of a person's personal family life and social position and thus the tenancy agreement has an emphasised social meaning for the tenant, who is usually the weaker party of such a relationship. Therefore, the challenged regulation did not interfere with the owner's right to property to a greater extent than it is justified in order to insure the social function of housing property.

From the fact that Slovenia is a state governed by the rule of law and a social state follows that it must ensure the provision of certain public functions which are financed from revenue obtained through the collection of taxes. The duty to contribute to the fulfilment of public needs is thus inherent in the right to property. However, the legislature must determine taxes in such a manner that a tax obligation does not entail a disproportionate and excessive burden. The legislature must respect the prohibition of retroactivity and the protection of legitimate expectations.[16]

1.2. How were issues of social integration or conflict transformed into legal issues?

As a rule, the Constitutional Court may only consider issues after they have been translated into legal norms, as it is only competent to review legislation that has already been enacted. The adoption of legal norms that regulate social phenomena is namely the role of the legislature. This transformation usually takes place in the democratic legislative process. Thus the transformation of social issues into legal ones is usually completed before cases reach the Constitutional Court and the Court only enters the process if doubts regarding the constitutionality or legality of the enacted legal provisions arise or if such result in human rights violations.

[14] Decision No. Up-770/06, dated 27 May 2009, Official Gazette RS, No. 54/09.
[15] OdlUS VIII, 101.
[16] See e.g. Decision No. U-I-311/11, dated 25 April 2013, Official Gazette RS, No. 100/11, and 44/13, para 29.

The Constitutional Court may of course influence issues connected to social integration or social conflict through its decisions. Constitutional Court decisions are legally binding. Decisions adopted in proceedings to review the constitutionality or legality of regulations have *erga omnes* effect, while decisions adopted in proceedings with constitutional complaints take effect *inter partes*, but may nevertheless act as legal precedents in future cases. In instances of constitutional review of regulations, the operational part and the reasoning of a decision constitute a whole and therefore not only the operational part but also the reasons and standpoints contained in the decision are binding. In regard to declaratory decisions by which the Court merely establishes an unconstitutionality such also applies if the operational part does not refer to the reasoning of the decision. The binding effect of Constitutional Court decisions does not only apply to the legislature, but courts must also take into account the standpoints the Constitutional Court expressed regarding human rights and fundamental freedoms when hearing cases and deciding on them.[17]

The Constitutional Court may, however, play a more prominent role also in the shaping of legal rules governing issues of social integration in the event of the establishment of an unconstitutional legal gap, i.e. when the Court finds that the legislature failed to regulate a certain issue that it should have regulated and thus the resulting absence of legal norms represents an unconstitutional state of affairs which has to be remedied. Such was for example the situation in two cases regarding the right to legal inheritance of same-sex couples.

By Decision No. U-I-425/06, dated 2 July 2009,[18] reviewed the right to inheritance under the Registration of a Same-Sex Civil Partnership Act. The Court pointed out that there were essential, important differences in the regulation of inheritance between spouses and between same-sex partners who registered their partnership under the mentioned act. Registered partners were for example not entitled to inherit their partner's separate property, nor were they among the circle of forced heirs or enjoyed the right to have household items excluded from the estate of the deceased. The Court found that the position of partners in registered same-sex partnerships is in its essential factual and legal aspects comparable with the position of spouses. Therefore, the differences in the regulation of inheritance between spouses and between partners in registered same-sex partnerships were not based on any objective, non-personal circumstance, but on sexual orientation. As sexual orientation is one of the personal circumstances determined in the first paragraph of Article 14 of the Constitution and no constitutionally admissible reason for such differentiation could be found, the Court decided that the challenged regulation was inconsistent with the first paragraph of Article 14 of the Constitution.

By Decision No. U-I-212/10, dated 14 March 2013,[19] the Court similarly found that the Inheritance Act was inconsistent with the Constitution. The act, namely, did not determine the right to legal inheritance between partners in a *de facto* stable same-sex partnership who did not register their union in accordance with the Registration of a Same-Sex Civil Partnership Act. The Court initially recalled that the Slovene legal order determines the same right to legal inheritance for spouses as it does for registered same-sex partners. In addition, common-law spouses enjoy the same rights under the Inheritance Act as spouses. It then explained that the position of two persons of the same sex who have not registered their partnership, but who live together and whose relationship is characterised by mutual assistance and support on their shared life path, is essentially the same as the position of common-law spouses, i.e. two persons of different sexes who also live in a union characterised by mutual assistance and support but have not entered into marriage. The only difference between these two types of partnerships was thus the sexual orientation of the partners. As in Decision No. U-I-425/06, the

[17] Decisions No. Up-2597/07, dated 4 October 2007, Official Gazette RS, No. 94/07, and OdlUS XVI, 108, para. 6, and Nos. Up-545/11, Up-544/11, dated 7 July 2012, Official Gazette RS, No. 50/12, para. 11.
[18] Official Gazette RS, No. 55/09, OdlUS XVIII, 29, and Codices SLO-2009-2-005.
[19] Official Gazette RS, No. 31/13.

Court could not establish a constitutionally admissible reason for differentiation of partners on such grounds. It held that the legislature's failure to determine the legal consequences in the field of legal inheritance also for partners in an unregistered same-sex partnership (equally as for common-law partners) entails inadmissible discrimination.

A legal gap may, however, also result from a Constitutional Court decision by which the Court abrogates unconstitutional legal provisions. In both types of cases the Court frequently applies its power to determine the manner of implementation of its decision, determined in the second paragraph of Article 40 of the Constitutional Court Act (hereinafter referred to as the CCA),[20] thereby providing provisional rules that govern the situation at issue until the legislature adopts a regulation to remedy the established unconstitutionality. By Decision No. U-I-425/06, the Constitutional Court determined that until the established inconsistency is remedied, the same rules apply for inheritance between partners in registered same-sex partnerships as apply for inheritance between spouses in accordance with the Inheritance Act. It also determined the manner of implementation of Decision No. U-I-212/10. As a result, until the established unconstitutionality is remedied, the same rules apply for inheritance between homosexual partners who live in a long-term partnership but have not registered a same-sex partnership as apply for inheritance between common-law spouses in accordance with the statutory regulation of inheritance in force. At the time of writing, the provisional regulations determined by the Constitutional Court in these two cases still remain in force, as the legislature has not yet implemented the Decisions.

1.3. Is there a trend towards an increase in cases on legal issues relating to social integration? If so, what were the dominant questions before your Court in the past and what are they at present?

With regard to this question it should be pointed out that the Constitutional Court of the Republic of Slovenia is a relatively young court. Nevertheless, some trends in the case law regarding social integration may be observed.

Following its independence, Slovenia faced certain issues related to social integration that were a consequence of the falling apart of the former Socialist Federal Republic of Yugoslavia (hereinafter referred to as the SFRY). In the early years of its functioning, the Constitutional Court thus considered a number of cases emanating from the legislative efforts to regulate the position of nationals of other former Yugoslav republics who resided in Slovenia as well as numerous cases regarding denationalisation.

In a series of decisions, the Constitutional Court reviewed the legislative attempts to regulate the position of citizens of other Republics of the former SFRY who lost their permanent residence in the Republic of Slovenia through the revocation of their permanent resident status and their transfer to the register of foreigners on 26 February 1992 (the so called “Erased”). The Constitutional Court already reviewed the position of these persons in Decision No. U-I-284/94, dated 4 February 1999.[21] Then it established that the Foreign Citizens Act was not in accordance with the Constitution as it did not regulate the position of these persons which was contrary to the principle of trust in the law as one of the principles of a state governed by the rule of law (Article 2 of the Constitution). This group of persons had been treated less favourably compared to persons who had been considered foreigners before Slovenia gained independence and permanently resided in Slovenia at the relevant moment and were also able to retain their permanent residence. As there had been no constitutionally admissible objective reason for such differentiation this was also contrary to the second paragraph of Article 14 of the Constitution.

[20] Official Gazette RS, No. 64/07, and 109/12.
[21] Official Gazette RS, No. 14/99, and OdlUS VIII, 22.

The legislature responded through the adoption of an act regulating the status of citizens of other Republics of the former SFRY in Slovenia. The Constitutional Court first reviewed the act in Decision No. U-I-295/99, dated 18 May 2000.[22] It found that the challenged provisions had been contrary to the Constitution because they violated the principle of trust in the law determined in Article 2 of the Constitution and the principle of equality determined in the second paragraph of Article 14 of the Constitution, since they determined more strict conditions for the citizens of other Republics of the former SFRY for acquiring a permit for permanent residence than were determined for cancelling the permanent residence of a foreigner on the basis of the Foreigners Act. Already in this Decision the Court pointed out that the legislature should have regulated the position of the affected persons retroactively, as it had already stated in Decision No. Up-60/97, dated 15 July 1999,[23] regarding a constitutional complaint, which was adopted before the challenged act. In spite of such the legislature did not remedy the unconstitutionality with the amendment of the act in 2001 and in Decision No. U-I-246/02, dated 3 April 2003,[24] the Court found that the act was inconsistent with the Constitution. It applied its power to determine the manner of implementation of its decision (the second paragraph of Article 40 of the CCA) and retroactively established the permanent residence status of the affected persons and required the competent ministry to issue them supplementary decisions on the establishment of their permanent residence in the Republic of Slovenia from 26 February 1992 onwards.

The issue of rights from mandatory social insurance schemes, most notably pensions, was constantly present in the Court's case law. However, following demographic changes in society, and particularly as a result of the increasingly unfavourable ratio between the number of persons contributing to social security systems and those entitled to social benefits, the focus shifted to the review of the scope of rights available, as the legislature begun limiting social security rights. The question of the limits of the legislature's discretion in determining the amount of social security benefits became even more pressing in light of the on-going financial crisis when Slovenia is facing a growing public debt and has to adopt measures to ensure stability of its public finances.

In 2013, the Constitutional Court thus reviewed a number of legislative measures adopted to cope with the on-going financial crisis.[25] In Decision No. U-I-186/12, the Constitutional Court reviewed the admissibility of a decrease of the amount of old-age pensions determined only for certain groups of persons who had been insured under the mandatory pension insurance scheme. The Court noted that a pension in a determined amount is an acquired right determined by statute, which is protected in the framework of the principle of trust in the law under Article 2 of the Constitution. It clarified, however, that the economic inability of the state to provide for social expenses can represent a constitutionally admissible reason for the legislature to decrease legally determined acquired rights in the future (the amount of a pension determined by a final decision) without such being inconsistent with the principle of trust in the law. As the classification of groups of beneficiaries whose pensions were to be decreased in the Fiscal Balance Act was arbitrary, the Court found that it was thus inconsistent with the principle of equality before the law determined in the second paragraph of Article 14 of the Constitution.

2. International standards for social integration

2.1. What are the international influences on the Constitution regarding issues of social integration/social issues?

[22] Official Gazette RS, No. 54/2000, and OdlUS IX, 113.
[23] OdlUS VIII, 292.
[24] Official Gazette RS, No. 36/03, OdlUS XII, 24, and Codices SLO-2003-M-001.
[25] See e.g. Decisions No. U-I-186/12, dated 14 March 2013, Official Gazette RS, No. 25/13, No. U-I-13/13, dated 14 November 2013, Official Gazette RS, No. 98/13, and No. U-I-146/12, dated 14 November 2013, Official Gazette RS, No. 107/13, regarding the Fiscal Balance Act.

The Constitution of the Republic of Slovenia was adopted and entered into force on 23 December 1991. It is a modern constitution founded on the basic principles that are characteristic of all modern European constitutional legal orders, i.e. the principle of democracy, the principles of a state governed by the rule of law, the principle of a social state, and the principle of separation of powers. The Constitution guarantees an extensive catalogue of human rights and fundamental freedoms that was influenced by the most important international human rights instruments that continue to affect its interpretation.

The effect and applicability of international legal instruments in the Slovene legal order are regulated by several constitutional provisions. Article 8 of the Constitution determines that laws and other regulations must comply with generally accepted principles of international law and with treaties that are binding on Slovenia. Similarly, also Article 153 of the Constitution determines that laws must be in conformity with generally accepted principles of international law and with treaties ratified by the National Assembly of the Republic of Slovenia, whereas regulations and other general legal acts must also be in conformity with other ratified treaties, i.e. those that were ratified, in conformity with the law, by the Government of the Republic of Slovenia. Thus, in the Slovene legal system, the Constitution is placed in a position above international treaties in the hierarchy of legal norms. Nevertheless, the Constitutional Court frequently applies provisions of international instruments to interpret provisions of the Constitution.

In addition, Article 8 of the Constitution further determines that ratified and published treaties shall be applied directly. With regard to international human rights instruments this provisions must be read together with the fifth paragraph of Article 15 of the Constitution which stipulates that no 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. Such entails that provisions of international instruments binding on Slovenia that determine human rights and fundamental freedoms have – provided they are self-executing by nature – direct legal effects for individuals who can refer directly to them when invoking their rights. By this provision, the Constitution established the principle of the highest protection of rights, which means that a treaty can have priority even over the Constitution if it guarantees a higher level of protection of a human right.

As regards international influences on the Constitution pertaining to social inclusion, first and foremost the Universal Declaration of Human Rights, adopted by the General assembly of the United Nations in 1948 (in particular Articles 22 and 25) and the International Covenant on Economic, Social and Cultural Rights (in particular Article 9; hereinafter referred to as the ICESCR)[26] should be highlighted. While the latter is legally binding upon Slovenia, the Constitutional Court adopted the position that the Universal Declaration is an emanation of customary international law and that parties can directly rely on it before the Constitutional Court.[27]

In the interpretation of constitutional provisions regarding social inclusion the Constitutional Court also applied conventions adopted in the framework of the United Nations. Several conventions of the International Labour Organisation (hereinafter referred to as the ILO) represented an important reference in this regard as well.[28]

Slovenia joined the Council of Europe in 1993 and ratified the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the ECHR)[29] in 1994. The ECHR occupies a central position among the international human rights instruments cited

[26] Official Gazette SFRY, MP No. 7/71, and Official Gazette RS, No. 35/92, MP No. 9/92.
[27] See the Orders of the Constitutional Court No. Up-97/02, dated 12 March 2004, and No. Up-114/05, dated 13 June 2004.
[28] Please refer to the reply to question No. 2.4.
[29] Official Gazette RS, No. 33/94, MP, No. 7/94.

in the case law of the Constitutional Court. Even though the Constitution does not explicitly determine that the Constitutional Court (or any other authority of the state) must respect the decisions of the European Court of Human Rights (hereinafter referred to as the ECtHR), it stems from the ECHR as a treaty that the Constitutional Court (as well as any other authority of the state) is obliged to respect human rights guaranteed by the ECHR (Article 1 of the ECHR). An established position of the Constitutional Court is that such also entails the requirement to respect the case law of the ECtHR, as the latter is the only court that interprets the provisions of the ECHR and the scope and content of the rights guaranteed by the ECHR are namely often evident precisely from ECtHR judgements. By ratifying the ECHR, the Republic of Slovenia assumed an obligation to guarantee, on its territory, the respect of human rights and fundamental freedoms determined by the ECHR, and to execute the decisions of the ECtHR. It thereby also assumed the obligation that its courts will consider the case law of the ECtHR when interpreting the content of particular rights. The duty to respect ECtHR case law is not only an obligation under international law that stems from the ECHR as a treaty, but also an obligation under national constitutional law that stems from Articles 8 and 153 of the Constitution that determine the position and the effects of international law in the internal legal order.[30]

Since Slovenia joined the European Union (hereinafter referred to as the EU) in 2004, provisions of EU law, have also played an increasingly important role in the interpretation of constitutional provisions. Since the entry into force of the Treaty of Lisbon, in particular the Charter of Fundamental Rights of the European Union (hereinafter referred to as the EU Charter) is becoming a relevant reference for the Constitutional Court.

2.2. Does your Court apply specific provisions on social integration that have an international source or background?

As mentioned in the reply to the preceding question, Slovene national law is importantly influenced by international instruments with reference to social integration. Therefore, the specific provisions on social integration generally also have an international source or background. The Constitutional Court frequently refers to international instruments and the case law of the bodies entrusted to monitor their implementation when interpreting national constitutional provisions.

2.3. Does your Court directly apply international instruments in the field of social integration?

The Constitutional Court frequently directly refers to international instruments in its decisions. However, in a majority of cases these are applied as interpretative arguments used to interpret national constitutional provisions, while only in a small number of cases the Constitutional Court based its decision directly on provisions of an international treaty.

By Decision No. Up-518/03, dated 19 January 2006,[31] the Constitutional Court established 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. The Court thus decided that the complainant's right under point d) of the third paragraph of Article 6 of the ECHR had been violated. In subsequent case law, the Constitutional Court applied a different approach and held

[30] Regarding the application of other Council of Europe instruments please refer to the reply to question No. 2.4.
[31] Official Gazette RS, No. 11/06.

that the right determined in Article 29 of the Constitution also entails the right to cross-examine undercover police agents acting as witnesses for the prosecution.[32]

In Decision Nos. Up-555/03, Up-827/04, dated 6 July 2006, the Constitutional Court, for example, explicitly stated in the operative part that the complainants' right to the effective protection of rights determined in the fourth paragraph of Article 15 of the Constitution relating to Article 13 of the ECHR was violated.[33]

2.4. Does your Court implicitly take account of international instruments or expressly refer to them in the application of constitutional law?

Even though the Constitutional Court may apply international instruments directly, these are as a rule applied only as interpretative arguments used to interpret national legal provisions. In general, the Constitutional Court most frequently refers to the ECHR to determine the content of constitutional rights. The Convention plays an important role especially in proceedings with constitutional complaints, in which individuals invoke violations of human rights and fundamental freedoms in concrete proceedings. Often already the applicants refer to the ECHR, but the Court also invokes it of its own motion.

References to the ECHR are also frequent in Constitutional Court case law regarding social integration. In Decisions No. U-I-425/06 and No. U-I-212/10,[34] the Constitutional Court thus referred to the ECHR in the interpretation of sexual orientation as one of the prohibited grounds of discrimination under the second paragraph of Article 14 of the Constitution. The Constitutional Court also referred to the ECtHR case law to reinforce the position that in order to establish a violation of the constitutional prohibition of discriminatory treatment, the determination of the existence of inadmissible discrimination in the enjoyment of any human right suffices, whereby it is not necessary to demonstrate an interference with this human right in and of itself.

The Constitutional Court frequently refers to other international instruments relevant from the viewpoint of social integration as well. In Decision No. U-I-92/07, dated 15 April 2010,[35] the Constitutional Court thus held that when interpreting the right to religious freedom a number of international instruments have to be considered which define the content and the scope of this human right in more detail than the first paragraph of Article 41 of the Constitution. The Court recalled that Article 18 of the EU Charter guarantees everyone the right to freedom of thought, conscience, and religion. This right includes the freedom to change one's religion or beliefs, and the freedom, either alone or in community with others and in public or private, to manifest one's religion or beliefs in teaching, practice, worship, and observance. The content of freedom of religion is defined similarly also in Article 18 of the International Covenant on Civil and Political Rights (hereinafter referred to as ICCPR),[36] which determines that everyone has the right to freedom of thought, conscience, and religion. This right includes the freedom to have or to adopt a religion or beliefs of one's choice, and the freedom, either individually or in community with others and in public or private, to manifest one's religion or beliefs in worship, observance, practice, and teaching. The ICCPR also determines that no person shall be subject to coercion which would impair their freedom to have or to adopt a religion or beliefs of their choice. A similar definition is contained in the first paragraph of Article 9 the ECHR, which provides that everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change one's religion or belief and freedom, either alone or in community with

[32] Decisions No. Up-754/04, dated 14 September 2006, Official Gazette RS, No. 101/06, and No. Up-483/05, dated 3 July 2008, Official Gazette RS, No. 76/08.
[33] Official Gazette RS, No. 78/2006, OdlUS XV, 92, and Codices SLO-2006-2-002.
[34] Decisions No. U-I-425/06, and No. U-I-121/10, *op. cit*.
[35] Official Gazette RS, No. 46/10, and OdlUS XIX, 4.
[36] Official Gazette SFRY, No. 7/71, and Official Gazette Republic of Slovenia, No. 35/92, MP, No. 9/92.

others and in public or private, to manifest one's religion or belief in worship, teaching, practice, and observance.

In Decision No. Up-794/11, dated 21 February 2013,[37] the Court stated that in establishing the essence (core) of the right to mandatory health insurance international instruments binding upon Slovenia that establish minimum standards of social security must be taken into account. Among these the Court listed the Universal Declaration of Human Rights, the ICESCR, ILO Convention No. 102,[38] the European Social Charter – revised (hereinafter referred to as the ESC),[39] and the European Code of Social Security.[40]

In Decision No. U-I-146/07 regarding the obligation to adopt reasonable accommodations for blind and partially sighted persons in civil proceedings, the Constitutional Court *inter alia* stressed that in 2008 the UN Convention on the Rights of Persons with Disabilities (hereinafter referred to as the CRPD)[41] became effective and requires the States Parties to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. It stressed that also the CRPD entails the obligation to adopt reasonable accommodations, including measures for ensuring persons with disabilities equal access to justice.[42]

In Decision U-I-249/10, dated 15 March 2012,[43] the Constitutional Court confirmed the position that the freedom of the activities of trade unions represents an essential part of the freedom of trade unions under Article 76 of the Constitution. In addition to interpreting Article 76 of the Constitution, the Constitutional Court underlined that the value of collective bargaining is also protected, as a fundamental right, by international instruments binding on Slovenia. It thereby referred to multiple Conventions of the ILO that protect the value of collective bargaining[44] and held that by signing these Conventions, the state assumed the obligation to recognise the right to collective bargaining in both the private and public sector, even though it may adopt special legislation for the employees in "public services".

Among European international instruments the Constitutional Court specifically mentioned the ESC, which under the second paragraph of Article 6 obliges the contracting states to efficiently exercise the right to collective bargaining. It also obliges them, if necessary, to stimulate the mechanisms enabling voluntary negotiations between the employers, their organisations, and the organisations of workers with a view to regulate the rules for employment on the basis of provisions of collective agreements. The Constitutional Court also referred to the position of the European Committee of Social Rights, under which the content of Article 6 of the ESC refers not only to employees in the private sector, but also to public officials, thereby taking into consideration the necessary modifications for the persons who are not bound by contractual provisions, but by public law regulations.

It should be noted that in this Decision the Constitutional Court also referred to the EU Charter, which in Article 28 (the right of collective bargaining and action) determines that the workers and employees or their organisations have the right, in conformity with EU law and national legislations and customs, to negotiate and to conclude collective agreements on the appropriate levels.

[37] Official Gazette RS, No. 24/13.
[38] Official Gazette FLRJ-MP, No. 1/55, and Official Gazette RS, No. 54/92, MP, No. 15/92.
[39] Official Gazette RS, No. 24/99, MP, No. 7/99.
[40] Official Gazette RS, No. 126/03, MP, No. 29/03.
[41] Official Gazette RS, No. 37/08, MP, No. 10/08.
[42] See Decision No. U-I-146/07, *op. cit.*, para. 22.
[43] Official Gazette RS, No. 27/12.
[44] ILO Convention No. 98, Official Gazette FLRJ, MP, No. 11/58, ILO Convention No. 154, Official Gazette RS, No. 46/08, MP, No. 12/08, Official Gazette RS, No. 121/05, MP, No. 22/05, and ILO Convention No. 151, Official Gazette RS, No. 55/10, MP, No. 10/10.

2.5. Has your Court ever encountered conflicts between the standards applicable on the national and on the international level? If so, how were these conflicts solved?

As already mentioned, from the fifth paragraph of Article 15 of the Constitution follows the principle of the highest protection of rights, which means that a treaty can have priority even over the Constitution if it guarantees a higher level of protection of a human right. The approach of the Constitutional Court in resolving a conflict of standards applied at the international and the national level therefore depends on the standard of protection afforded to the right at issue, on the one hand, by the Constitution and, on the other hand, by the relevant international instrument.

With regard to the ECHR such entails that 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 is at least equal to that of the right under the ECHR, then, as a general rule, formally only the Constitution serves as the criterion for the assessment of the Constitutional Court. By Decision No. U-I-98/04, dated 9 November 2006,[45] for instance, the Constitutional Court, when assessing the constitutionality of the regulation of the right to hunt, stated that Article 1 of Protocol No. 1 to the ECHR does not guarantee rights to a greater extent than they are guaranteed by the provisions of the Constitution. Therefore, it only assessed the petitioners' claims with regard to the violation of Article 1 of Protocol No. 1 to the ECHR from the viewpoint of consistency with Article 33 of the Constitution, which guarantees the right to private property.[46]

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 its viewpoint or, in constitutional complaint proceedings, it directly established the violations of rights determined by the Convention.[47]

3. Constitutional instruments enhancing/dealing with/for social integration

3.1. What kind of constitutional law does your Court apply in cases of social integration – e.g. fundamental rights, principles of the Constitution ("social state"), "objective law", Staatszielbestimmungen, ...?

What type of provisions the Constitutional Court is going to apply, depends on the field from which an individual case originated. The Court often refers to the principle of a social state determined by Article 2 of the Constitution. However, this is a general principle that requires concretisation. In contrast to the principle of a state governed by the rule of law which the constitutional case law concretised with specific (sub)principles, such as the principles of proportionality, trust in the law, clarity and precision of regulations, foreseeability of legal positions etc., the principle of a social state was not subject of such a dynamic interpretation in constitutional case law. The Constitutional Court derived from this principle, for example, the principle of solidarity, without, however, elaborating it in more detail.[48] Such may, on the one

[45] Official Gazette RS, No. 120/06.
[46] Similarly, see Decision No. U-I-135/00, dated 9 October 2002, Official Gazette RS, No. 93/02, para. 38.
[47] See Decisions No. Up-518/03, No. Up-754/04, No. Up-483/05, and Nos. Up-555/03, Up-827/04, *op. cit.*
[48] See Decision No. U-I-127/01, dated 12 February 2004, Official Gazette RS, No. 25/04, and OdlUS XIII, 10, para. 27, where the Constitutional Court clarified that "[t]he principle of solidarity which is *inter alia* a basis for determining the measure of compulsory vaccination namely requires that the state which ordered such measure

hand, be attributed to the fact that the principle of a social state is part of our legal tradition and thus no special problems arise from its application. On the other hand, the Constitution contains an extensive catalogue of social rights, and other aspects of the principle of a social state are also concretised in other provisions of the Constitution. Therefore the Constitutional Court frequently refers to the principle of a social state only to indicate that it is relevant for the case at issue in general, but then proceeds to examine the case under other constitutional provisions that further concretise the principle, such as the provisions determining social rights.

The body of case law where the Constitutional Court applied constitutional provisions on social rights is extensive. Depending on the specific case at issue, the Constitutional Court applies constitutional provisions pertaining to the corresponding constitutional right. These include different rights connected to work and employment (Articles 49, 66, 75, 76, and 77 of the Constitution), and the right to social security, including the right to a pension (Articles 50, 51, and 52). In some cases, the Court also applies the constitutional provisions regarding family, parenthood and children (Articles 53 through 56), education (Article 57), and housing (Article 78). Another expression of the principle of a social state may be found in the constitutional provisions by which certain rights and freedoms are limited by their social aspect, which, for example, applies to the right to property (Article 33 in conjunction with Article 67 of the Constitution) and the freedom of economic initiative (the first and second paragraphs of Article 74 of the Constitution).

As a number of social rights determined at constitutional level entail a statutory reservation, the choice of concrete measures for their implementation is left to the legislature who has a broad field of discretion in the area of social rights. Its normative actions, however, must respect certain limits. Every human right namely has a constitutionally guaranteed core, i.e. the sheer essence of the human right, which the legislature may not infringe. The same limit applies to courts when they decide on human rights.[49]

The principle of equality, determined in Article 14 of the Constitution, is also frequently the basis of constitutional review in cases connected to issues of social integration. In the mentioned Decisions No. U-I-425/06 and No. U-I-212/10, for example, the Court stated that in order to assess whether the allegations of unequal, discriminatory treatment were substantiated, the following questions must be answered. Firstly, does the alleged different treatment refer to ensuring or exercising a human right or fundamental freedom? Secondly if so, is there a difference in the treatment of the persons whom the applicant is comparing? Thirdly, are the de facto positions that the applicant is comparing essentially the same and thus the differentiation is based on a circumstance determined in the first paragraph of Article 14 of the Constitution? And, fourthly, if the differentiation is indeed based on a circumstance determined in the first paragraph of Article 14 of the Constitution and thus there is an interference with the right to non-discriminatory treatment, is such interference constitutionally admissible? If the answers to the first three questions are affirmative and the interference does not pass the test of admissibility and the strict test of proportionality, then such entails unconstitutional discrimination.[50] In both cases, the interference with the right to inheritance was not constitutionally admissible, as no legitimate and objective reason for the differentiation of partners on grounds of their sexual orientation had been demonstrated.

3.2. In cases where there is access of individuals to the Constitutional Court: to what extent can the various types of constitutional law provisions be invoked by individuals?

---

to the benefit of everyone, compensates injured individuals for damage that was incurred due to such measure, irrespective of the existence of the presumptions of the liability for damage pursuant to the general rules."

[49] Held by the Constitutional Court regarding the right to health insurance in Decision No. Up-794/11, *op. cit.*, para. 8; regarding the right to a pension see Decisions No. U-II-1/11, *op. cit.*, para. 30, and No. Up-360/05, dated 2 February 2008, Official Gazette RS, No. 113/08, and OdlUS XVII, 85.

[50] See Decisions No. U-I-425/06, *op. cit.*, para. 7, and No. 212/10, *op. cit.*, para. 7.

Individuals may lodge a petition for the review of constitutionality and legality of regulations as well as a constitutional complaint in instances of violations of human rights and fundamental freedoms. According to established case law, in order to demonstrate legal interest for a review of constitutionality or legality of a regulation which is directly effective, the petition can only be lodged together with a constitutional complaint after all legal remedies against the individual act issued on the basis of the regulation have been exhausted.[51]

While individuals may invoke violations of all of the types of provisions mentioned in the reply to the preceding question to support their petitions, it should be noted that a constitutional complaint is intended to remedy violations of human rights and fundamental freedoms and therefore it cannot be used to challenge violations of general constitutional principles. Constitutional complaints alleging only infringements of the principle of a social state determined in Article 2 of the Constitution are thus rejected.[52]

As already mentioned, according to Articles 8 and 15 of the Constitution, individuals may also directly invoke provisions of ratified treaties (provided they are self-executing) in proceedings before the Constitutional Court. Applicants in fact frequently refer to international instruments to support their cases.

3.3. Does your Court have direct competence to deal with social groups in conflict (possibly mediated by individuals as claimants/applicants)?

The Constitutional Court has no such competence.

3.4. How does your Court settle social conflicts, when such cases are brought before it (e.g. by annulling legal provisions or by not applying them when they contradict the principle of equality and non-discrimination)?

If in proceedings to review the constitutionality or legality of legal provisions the Constitutional Court finds that they are consistent with the Constitution and the laws, it regularly abrogates or annuls such. The constitutionality or legality of these provisions may not be challenged for the same reasons again. If the Court finds an unconstitutionality that concerns provisions of statutory law, it may abrogate such provisions (with *ex nunc* effect), whereas unconstitutional or illegal provisions of regulations inferior to law, may also be annulled (with *ex tunc* effect). Legal provisions that were abrogated or annulled are no longer part of the legal system and may no longer be applied. All individuals as well as state authorities are under an obligation to respect the abrogation or annulment. The Constitutional Court may delay the effect of its decision, for example to prevent the creation of a legal gap that would result from the abrogation of unconstitutional legal provisions, for a maximum of one year.

By Decision No. U-I-251/00, dated 23 May 2002,[53] for example, the Constitutional Court found that a provision of the act regulating the taxation of profit was inconsistent with the Constitution. Its immediate abrogation, however, would have enabled the tax subjects to declare any type of their costs as deductible expenses. Such would not have been in accordance with the Constitution, as it would have enabled the tax subjects to increase the amount of deductible expenses without any restrictions and thereby unduly decrease their obligation to contribute to the fulfilment of common needs which would be contrary to the principle that Slovenia is a social state (Article 2 of the Constitution). The Court therefore delayed the effect of its Decision to give the legislature sufficient time to remedy the established unconstitutionality.

[51] Order No. U-I-275/07, dated 22 November 2007, Official Gazette RS, No. 110/07, and OdlUS XVI, 82.
[52] See Decision No. Up-210/00, dated 3 July 2001, para. 4.
[53] Official Gazette RS, No. 50/02, and OdlUS XI, 86.

According to Article 48 of the CCA the Constitutional Court may also adopt a merely declaratory decision establishing that the legal provisions at issue are inconsistent with the Constitution (or a law) without abrogating or annulling them. Such is regularly the case if the Constitutional Court establishes that there exists an unconstitutional legal gap, as the regulation in force does not govern an issue that should have been regulated (and therefore there is no provision that could be abrogated or annulled), or if an abrogation would produce even worse negative consequences or result in a worse unconstitutionality than the one established by the Court. In such cases, the Constitutional Court requires the legislature or other competent body to remedy the established unconstitutionality and determines a time limit for such. However, the unconstitutional provisions remain part of the legal system and may continue to be applied in judicial and administrative proceedings, but only if their application is not contrary to the reasons which led the Constitutional Court to establish their inconsistency with the Constitution.[54]

The Court also frequently uses its power to determine the manner of implementation of its decision in accordance with the second paragraph of Article 40 of the CCA, thereby providing a provisional regulation that is in accordance with the Constitution and secures the protection of the rights of the persons affected by the established unconstitutionality until the legislature remedies such.[55]

Through its case law, the Constitutional Court also developed the so-called interpretative decision. From the viewpoint of its legal effects, it may be understood as an abrogation, whereby the Constitutional Court does not abrogate legal provisions, but only their unconstitutional interpretations. This technique is applied when a legal provision may be interpreted in several ways, at least one of which is not consistent with the Constitution.

The Constitutional Court adopted an interpretative decision in Case Nos. U-I-128/08, Up-933/08.[56] The case concerned the obligation of owners of denationalised apartments to conclude a tenancy agreement for non-profit rent with close family members of a deceased tenant who was the holder of the housing right in such an apartment before its denationalisation. In general, this obligation was disregarded by the courts. Regarding such the Constitutional Court assessed that the position of a spouse or common-law spouse, who lived with the deceased in the relevant apartment, is comparable to the position of the holder of the housing right, therefore they must have the possibility to enter into the tenancy agreement under the same conditions as applied to the deceased housing right holder. Other close family members, however, are not in a comparable position to the deceased. Determining non-profit rent also for tenancy agreements entered into by other close family members entails a permanent statutory limitation of an important ownership entitlement, i.e. the free contractual transference of the right to use and enjoy a thing and thereby the free contractual determination of the amount of the rent. Ensuring the appropriate housing conditions of tenants is possible by measures which are, from the viewpoint of the interference with the ownership right, more lenient; therefore, recognising the right of other close family members to continue a tenancy in denationalised apartments for non-profit rent would entail an inadmissible interference with the ownership right of persons entitled to denationalisation. In light of this, the Court decided that the challenged regulation was inconsistent with the Constitution if it was interpreted in a manner such that the owner of an apartment after the death of its tenant – the former holder of a housing right – does not need to conclude a tenancy for an indefinite period of time for non-profit rent with the spouse or common-law partner of the deceased with whom the deceased had been living in the apartment upon the implementation of the Housing Act.

[54] Decision No. Up-758/06, dated 6 December 2007, Official Gazette RS, No. 119/07, and OdlUS XVI, 118.
[55] See e.g. Decisions No. U-I-246/02, No. U-I-425/06, and No. U-I-212/10, *op. cit*.
[56] Decision Nos. U-I-128/08, Up-933/08, dated 7 October 2009, Official Gazette RS, No. 90/09, and OdlUS XVIII, 44.

3.5. Can your Court act preventively to avoid social conflict, e.g. by providing a specific interpretation, which has to be applied by all state bodies?

The Constitutional Court is only competent to review legislation that is already in force and decide on violations of human rights and fundamental principles by state authorities and other bodies exercising state powers. Its power to act preventively is further limited by the fact that it may not institute proceedings on its own behalf, but may only initiate proceedings upon receiving an appropriate application.

As already explained, Constitutional Court decisions are legally binding. Decisions adopted in proceedings to review the constitutionality or legality of regulations have *erga omnes* effect, while decisions adopted in proceedings with constitutional complaints take effect *inter partes*, but act as legal precedents in future cases. In instances of constitutional review of regulations both, the operational part and the reasoning of a decision, are binding. The binding effect of Constitutional Court decisions does not only apply to the legislature, but courts must also take into account the standpoints the Constitutional Court expressed regarding human rights and fundamental freedoms when hearing cases and deciding on them. Therefore, Constitutional Court decisions may also produce indirect preventive effects as individuals as well as state authorities have to act in accordance with the decisions of the Constitutional Court.

The effects of Constitutional Court decisions are most far-reaching in cases where the Court determines the manner of implementation of its decision, in accordance with the second paragraph of Article 40 of the CCA. Such namely entails that the Court itself provides a provisional regulation of the situation at issue instead of the legislature or other competent body. The provisional rules remain in force and have to be applied by all their addressees until the legislature remedies the established unconstitutionality through the adoption of a new regulation.

3.6. Has your Court ever encountered difficulties in applying these tools?

The manner of implementation of Constitutional Court decisions may be problematic from the viewpoint of the principle of the separation of state powers. In such instances the Court may namely itself determine abstract legal rules that have the same power as a law. Some have criticised this approach, since it entails an interference with the legislature's competences.[57]

3.7. Are there limitations in the access to your Court (for example only by State powers), which prevent it from settling social conflicts?

The Constitutional Court may be accessed by both state authorities and individuals. However, the state authorities determined by the Constitution and the CCA are in a privileged position, as upon their request the Constitutional Court is required to consider the case on the merits, whereas petitions of individuals as well as constitutional complaints have to pass an initial examination of whether the procedural prerequisites for their consideration are satisfied. In particular, individual applicants have to demonstrate legal interest for the Court to consider their applications on the merits.

Therefore, a petition for a review of constitutionality or legality of a regulation without direct effects must be lodged together with a constitutional complaint against an individual act issued on the basis of the challenged regulation after all legal remedies against such act are exhausted. It should also be recalled that constitutional complainants must allege infringements of human rights or fundamental freedoms, not only general constitutional principles, such as the principle of a social state determined in Article 2 of the Constitution.

[57] See also the reply to question No. C.1.

In regard to social integration, it should be noted that the Ombudsman for Human Rights may submit a request for the review of the constitutionality or legality of regulations if he or she deems that a regulation inadmissibly interferes with human rights or fundamental freedoms. The ombudsman may also lodge a constitutional complaint in connection with an individual case that he or she is considering.[58] The possibility of national representative trade unions for an individual activity or profession may submit a request for the review of the constitutionality or legality of regulations, provided that the rights of workers are threatened, also deserves mention.[59]

4. The role of constitutional justice in social integration

4.1. Does your Constitution enable your Court to act effectively in settling or avoiding social conflict?

The Constitution does not determine the competence of the Constitutional Court to settle social disputes. Such is the role of the specialised Social Court and the Supreme Court. However, as already mentioned, Constitutional Court decisions are legally binding and produce *erga omnes* effects. Therefore, as some of the cases before the Constitutional Court arise from social disputes or are related to social conflicts, the Court may, through its decisions in these cases, contribute to the resolution of the disputes and conflicts from which they originated, even though such is not its main function.

4.2. Does your Court de facto act as ‘social mediator’, or/and has such a role been attributed to it?

Similarly as has been explained in the reply to the previous question, the Constitutional Court is not competent to expressly act as a 'social mediator', however its decisions may indirectly contribute to an alleviation of social peace.

4.3. Have there been cases, when social actors, political parties could not find any agreement, they would ‘send’ the issue to your Court which had to find a ‘legal’ solution, which normally should have been found in the political arena?

Under the regulation in force it is difficult to imagine such a scenario, as the Constitutional Court does not issue preliminary opinions regarding the constitutionality and legality of draft legislation, but is only competent to review the constitutionality and legality of valid legal provisions. As a rule the Court may thus only consider issues that have already been regulated.

As already mentioned, the Constitutional Court may play a more visible role in cases where it establishes an unconstitutional legal gap and instances where it applies its power to determine the manner of implementation of its decision.

[58] See e.g. Decisions, No. U-I-186/12, and No. U-I-146/12, *op. cit*.
[59] See e.g. Decision No. U-I-249/10, *op. cit*.