

# **Reform of Democracy and the Rule of Law in Slovenia**

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## 1 Introduction

The rule of law is the fundamental basis for the functioning of any constitutional democracy in a free and democratic state. It is a precondition for a person's self-fulfilment and a functioning economy. A strategic constitutional and actual priority for Slovenia is to lay the foundations for the functioning of a real rule of law, which need to be internalised by the people, both in the public and the private sector. The rule of law is a precondition for the functioning of all state systems, as well as its social subsystems, particularly the economy. Slovenia started its path towards the rule of law only after declaring independence in 1991. In adopting a new Constitution—despite legal continuity from the previous state—Slovenia accepted explicitly and with high political consensus the values of the rule of law and the protection of human rights, setting them at the top of its normative, constitutional and legal framework. Slovenia thereby also met the criteria for joining the Council of Europe, which confirmed in 1994 the adequacy of its normative rule-of-law framework, both formally and in terms of content. Precisely a modern normative framework, modelled on Western European states with an established tradition of the rule of law, is the greatest strength and best guarantee of lawfulness in Slovenia. However, problems arise when it comes to putting it into practice. A fundamental issue of the rule of law in Slovenia is the huge gap between the normative framework and its realisation by those entrusted with this task.

The state of constitutional democracy and the rule of law in Slovenia is alarming. Confirming this proposition requires no in-depth comparative law analysis. It suffices to take a brief look at the jurisprudence of the European Court of Human Rights, which demonstrates the degree of Slovenia's compliance with the minimum standards of the rule of law as set down in the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Court's jurisprudence shows that in Slovenia the rule of law is not actually working in all the areas essential for individuals. This is demonstrated by high-profile rulings against Slovenia in areas such as the prohibition of torture and police brutality, medical malpractice and its investigation, as well as ensuring the right to family life, in particular through appropriate engagement of social work centres. Moreover, according to the Court, anyone seeking legal protection in Slovenian courts risks a violation of his or her right to a trial within a reasonable time. As the Court has pointed out, this right is systemically violated due to inadequate legislation and inefficiency in the administration of justice. Moreover, most judicial proceedings in Slovenia are carried out selectively, meaning that people with ties to formal or informal centres of power often get a free pass. This undermines the very foundation of the formal rule of law, which builds on equality before the law. A state that fails to meet even the formal conditions of the rule of law—and equality before the law certainly is one of them—of course cannot be said to be governed by the rule of law.

This scientific publication was prepared as part of the research project entitled *The Reform of Democracy and the Rule of Law in Slovenia* (Slovenian Research Agency, project no. J5-7359). The general aim of this research project was to examine the state of democracy and the rule of law in Slovenia, and attempt to design reform proposals. The research analysed the influence of the Council of Europe (CoE) through the European Court of Human Rights and the European Union (EU) through the Court of Justice of the EU on the conditions for the functioning of

democracy and the rule of law in Slovenia. The analysis focused on how effectively the judicial, the legislative and the executive branch of power in Slovenia protect democracy and the rule of law. Moreover, the project examined how effectively the Slovenian law protects human rights and fundamental freedoms. Here, the question was why flaws in the functioning of democracy and the rule of law in Slovenia persist despite the influence of the Council of Europe and the EU. This way, we tried to determine the inconsistencies and shortcomings in the Slovenian public sphere, and prepare proposals for correcting these flaws. The overarching aim of the research was therefore to find ways to reform the democracy and the rule of law in Slovenia.

In terms of content, the project was divided into four separate parts. In the first part, we studied the historical reasons, especially the socialist legacy, and analysed their role in the current state of democracy and the rule of law in Slovenia. The second part focused on the endogenous factors that have been affecting—positively or negatively—democracy and the rule of law in Slovenia since 1991. This part also included an important comparative dimension, as we analysed Slovenia's experience with the functioning of democracy and rule of law with other transition countries, as well as states that can be regarded as well-functioning societies. The last two parts were dedicated to exogenous factors. The third looked into Slovenia's democratisation and progress in the rule of law under the influence of the European Convention on Human Rights (ECHR), while the fourth and final part analysed in the same manner the influence of the EU's *acquis communautaire*.

These recommendations are the latest addition to the numerous scientific publications prepared and published as part of the project over the last three years.<sup>1</sup> Since this project falls into the realm of legal theory research, which results in written academic discussion that rarely brings immediate effects in practice, the project at first had a more indirect positive influence on the society than a direct impact. Academic writing creates positive effects in the society in the long term by expanding and spreading knowledge. Initially this knowledge is limited to specialised and closed epistemic groups, but gradually it spreads to students, and through them to the wider public space. This is why the research team has decided to expand the scientific articles and monographs, which help inform experts and the public on the possibilities of reforming democracy and the rule of law, with this specialised publication, offering concrete recommendations for stakeholders in this reform area, as well as NGOs advocating the victims of alleged violations of all kinds of human rights that are assumed to have resulted from the state's shortcomings in this respect. Apart from this Introduction, the publication has seven further parts: *Slovenia as a democracy governed by the rule of law*; *Reform of the Slovenian legislative branch*; *Reform of the Slovenian executive branch*; *Reform of the Slovenian judiciary*; *Media plurality and investigative journalism as the fourth branch of power*; *Summary of the concrete recommendations for reforming democracy and the rule of law in Slovenia* and a *Conclusion*.

Members of the research team wish to thank the Slovenian Research Agency (ARRS) for co-financing this research project, the Graduate School of Government and European Studies at

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<sup>1</sup> See Esohap, *The Rule of Law in Slovenia*, <https://esohap.org/the-rule-of-law-in-slovenia/>.

the New University, and each other for the work done on this project. We also wish to thank Alesia Koletič for her work on the notes and bibliography.

The Introduction and Chapters 7 and 8 were prepared in collaboration of all four authors, Chapters 2 and 6 were written by Jernej Letnar Čerňič, Chapter 3 by Marko Novak, Chapter 4 by Dejan Valentinčič and Chapter 5 by Matej Avbelj. The contents of this publication reflect the plurality of the authors' views on the necessary steps in reforming democracy and the rule of law in Slovenia. In some points, the recommendations differ, which illustrates our commitment to a pluralistic debate, and serves as a good basis for discussion on reforming democracy and the rule of law in Slovenia in the coming years.

## **2 Slovenia as a democracy governed by the rule of law**

### **2.1 Nothing new in 30 years<sup>2</sup>**

We are approaching the 30<sup>th</sup> anniversary of the fall of the Berlin Wall, which symbolically marked the beginning of democratic change in Central and Eastern Europe. After the wall in totalitarian East Germany fell, other totalitarian regimes in Eastern Europe followed like dominoes. Expectations in that turbulent time were immeasurable and utopian. And this makes the disappointment 29 years after these events all the greater. There will be little joy this time around, and if at all, it will have a bitter tone to it. The fall of the Berlin Wall formally brought Central European countries democracy, the rule of law and formal legal protection of human rights. But what was left out is the content of democracy, which draws from the ethical and philosophical values of human dignity. Formally and theoretically these countries experienced a tectonic shift, but behind the masks were the same interests and people as in the preceding totalitarian times. New skyscrapers were erected, along with new shopping malls, sports and culture centres, infrastructure has been improved, and important buildings now bear the names of former dissidents. Today, we can fly from an airport named after Jože Pučnik to one bearing the name of Václav Havel, but this makes neither Ljubljana nor Prague any more democratic, as the dark shadows of the past still haunt the everyday lives of their inhabitants.

If 29 years ago everything seemed possible, it is now hard to still find hope in Central and Eastern European states that the omnipresent remnants of their recent history can be fully done away with. The past has been sidelined by the everyday struggle for survival. With few exceptions, post-communist elites have succeeded in keeping their spot at the heart of the social, economic, cultural and political life in these countries. They only put on new masks. The new democratic forces failed to capitalise on the fall of the totalitarian regimes to make a clean break. What is more, their lack of skill, or just necessity and pragmatism led them to sometimes even use the same methods as the forces they were fighting against. The experiences of several Central European states clearly show that this is far from merely an abstract issue.

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<sup>2</sup> This chapter is a revised version of a Slovenian-language article by the same author from 2014: Jernej Letnar Čerňič, *Nič novega po petindvajsetih letih*, Slovenski čas, September 2014, p. 9.

On the outside, the Slovenian society appears to be doing great. Visitors to our beautiful country are amazed by the high standard of living, and this is also what some international surveys would have us believe. The UN Human Development Index Report ranks Slovenia as high as 25<sup>th</sup> among all the countries of the world, just below Austria and just ahead of Italy and Spain.<sup>3</sup> Another research ranks Slovenia among the safest and most stable countries. Most countries of the world would love to trade places with Slovenia in the Human Development Index rankings. It all seems the country is moving in the desired direction, as confirmed by international researches. However, the latter often fail to capture the state of economic, personal and political freedom in countries—areas where Slovenia does not perform as well, as we have found in a number of research projects in recent years. Furthermore, such rankings cannot track attempts at state capture by post-totalitarian elites, which are only reflected in statistical indicators when it is already too late. They fail to capture systematic and widespread violations of human rights that are not found in reports by state-appointed ombudsman offices.

While there is widespread agreement in the Slovenian society that abuse of public institutions and public finances needs to be prevented, we must nevertheless point out that this refers to a somewhat higher level of discussion than in other similar states. Certain issues are in fact being resolved in the public interest, and all who have grown up in Slovenia have reaped the benefits. Which makes this issue all the more complex. How do we explain to an outside observer that despite the high level of social development the state is still caught in the clutches of different elites from the previous era? This may not be as evident now, in the short-term image of Slovenia, but it will surely transpire in the long term.

In Slovenia, there is much talk about pluralism, which is supposedly ensured in realised in practice. Similarly, we often hear about equality, tolerance, openness and broadmindedness. But recent years have clearly shown that this is merely window dressing that serves a bigger purpose—to get the Slovenian society back into a limited framework of thinking. We do need to admit that we have never had real pluralism with a truly free exchange of different ideas and views. And now they wish to undo even the little that has been achieved in these years of democracy. At least formally, since most of those who do think differently have long withdrawn to the safe comfort of their private spheres and everyday lives. The rare dissenting individuals who continue to live a public life are often dragged through courts for their criticism of how the powers that be operate. It hardly needs pointing out how reminiscent of some other era this is. Trouble starts already with the fact that we are supposed to be living in a different time, in a democracy governed by the rule of law, which is supposed to protect the freedom of its society. That is why I ask myself where can we still find such free society today. Probably only in isolated corners and the intimate confines of each individual's private world. Elsewhere it is suppressed by the very people who hide behind the window dressing of democracy governed by the rule of law, which is really just a flexible cliché for realising private interests, sold to the previously persuaded public in the packaging of supposed public interest.

Young generations in Slovenia know little about the fall of the Berlin Wall and the regime that established itself in Central and Eastern Europe. There are several reasons for this, spanning from deficient history books in primary and secondary schools to the remaining impact of old

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<sup>3</sup> UNDP, *Human Development Index Report 2016: Human Development for Everyone*, p. 202.

frameworks of educating people into uniformity of thinking, and to a lack of interest in recent history. Therefore, we actually should not be surprised by the rise of radical leftist parties (throughout Europe), based on rhetoric that is strongly reminiscent of former totalitarian Socialist and Communist Parties. These build their recent success on the far-reaching effects of the last economic and financial crisis, which has brought about dire social straits for great many people. In this light, the atrocities of totalitarian regimes no longer seem as important. Certain social groups find it hard to admit and accept that maybe most of the people in fact do not want old practices to continue. After all, this modus operandi in the Slovenian society is all that most people know, so why should we change anything if this is how we have always lived. However, this is only an oversimplified explanation building on years of indoctrination of most of the Slovenian population through mass media.

The upcoming 30<sup>th</sup> anniversary of the fall of the Berlin Wall should, above all, serve as an important moment of clarity that the real transition from a totalitarian to a democratic system is actually only beginning. The roots of the past still dig deep into our everyday lives. Fighting them is almost impossible, as former post-communist interests are now masked and mixed with different specific interests. Such power groups thus form pragmatic interest coalitions that care little for the common good of the society and give priority to private interests, particularly financial ones, and maintaining the status quo in terms of public funding. Former totalitarian rulers, their families and circles of friends replaced autocratic clothes with democratic and business attire, but in their essence they continue their practices from previous times through abuse of power for the subjection of the ordinary working people. The same situation prevails in the area of the rule of law and protection of human rights, and it serves as a tool for mainly private financial interests and dealing with political opponents. The latter is evident from the situation in Slovenian courts and several rulings of the European Court of Human Rights that the state has violated the European Convention on Human Rights and Fundamental Freedoms.

If most people really want the old practices to continue, so be it. But the rule of law, protection of human rights and responsibility in managing public finances are just as inherent in Slovenians as they are of, say, the inhabitants of the British Isles, who have centuries of tradition in the rule of law and democratic institutions. Maybe today the aphorism by esteemed author Žarko Petan describes the Slovenian society more precisely than ever: “A Slovenian invention: democracy with uniformity of thought.”<sup>4</sup> What lacks in Slovenia is real pluralistic democracy in a free society. This begs the question how to achieve it. The answer to this question will determine the survival of Slovenians as a nation and a society. Although it may seem that dark times are ahead, which post-totalitarian elites will use to crush once and for all those who think differently, the months to come also offer many different opportunities. Once the clock strikes midnight, nothing will be as it used to be. More walls need to be torn down, and they are much higher than the one in Berlin was. Working for the well-being of the entire community and for the rule of law is a civic and ethical duty of the young and middle generation of Slovenian citizens.

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<sup>4</sup> Žarko Petan, *Kdor išče, ga najdejo*, Celje, Celjska Mohorjeva družba, 2006, p. 23.



## 2.2 Why Slovenia is lagging behind Germany?<sup>5</sup>

Understandably, most of the Slovenian population wants to live in a modern European state with a standard of living comparable to the most developed European countries if not higher in all aspects ranging from the level of personal income to the availability and quality of welfare state services. Unfortunately, data show that Slovenia is still lagging behind the most developed European states, such as Germany. So why is Slovenia unable to catch up with Germany in terms of standard of living?

Let us take a look at some data first. Germany's gross domestic product per capita was €36,000 in 2016 while Slovenia's was €24,100.<sup>6</sup> On 1 December 2017, Slovenia stood at 83% of the EU average and Germany was at 123%, which is 40 percentage points more.<sup>7</sup> Taking a look at the United Nations Human Development Index, which also accounts for human development alongside economic development, Germany sits in a high fourth place with an index of 0.926,<sup>8</sup> while Slovenia ranks 25<sup>th</sup> with an index of 0.890.<sup>9</sup> Of course, quality of life is always partly subjective, but the above objective data do lead to a justified question why Slovenia is lagging behind the German Federal Republic with regard to the standard of living. How can we explain why some countries are more developed and richer than others? Why do people in Germany live better than in Slovenia? To answer these questions, we normally turn to four factors that in most cases suffice to explain why some countries are richer and more developed than others: geography, culture, economic factors and quality of institutions.

The first factor is the geographical position of a state. A more favourable location that allows cooperation in the international economy makes it more likely for the state to also be more developed. Already two decades ago, John Luke Gallop, Jeffrey D. Sachs and Andrew D. Mellinger proved with their original research that, for instance, tropical countries (with certain exceptions) are usually very poorly developed and have lower standards of living.<sup>10</sup> When we compare Germany and Slovenia in terms of their geographical position, there are no major differences, also because they are both part of the European common market. But when we look at data for Slovenia's neighbours in central Europe and former Yugoslavia, we can see that the countries in this area are not known for a high standard of living. Maybe the geographical position of Slovenia and other, say, Balkan countries does hamper their development.

The second factor refers to the impact of culture, customs, traditions and work habits on states' economic and social development. Can we say that German workers work harder than Slovenian workers? In his iconic 1905 book *The Protestant Ethic and the Spirit of Capitalism*, Max Weber used the protestant work ethic to explain the economic and social rise of the regions

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<sup>5</sup> Originally published in Slovenian as Jernej Letnar Čerňič, *Zakaj Slovenija zaostaja za Nemčijo?*, 2018, <http://www.iusinfo.si/DnevneVsebine/Kolumna.aspx?id=221967>.

<sup>6</sup> DWStatis, EU comparison 2018: *Germany and the other Member States*, 2018, [https://www.destatis.de/Europa/EN/Country/Comparison/GER\\_EU\\_Compared.html](https://www.destatis.de/Europa/EN/Country/Comparison/GER_EU_Compared.html).

<sup>7</sup> Eurostat, GDP per capita in PPS, 2018, <https://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tec00114&plugin=1>.

<sup>8</sup> UNDP, *Human Development Reports: Germany*, <http://hdr.undp.org/en/countries/profiles/DEU>.

<sup>9</sup> UNDP, *Human Development Reports: Slovenia*, <http://hdr.undp.org/en/countries/profiles/SVN>.

<sup>10</sup> John Luke Gallop, Jeffrey D. Sachs, Andrew D. Mellinger, *Geography and Economic Development*, *International Regional Science Review*, vol. 22, no. 2, 1999, pp. 179–232.

of present-day northern Germany.<sup>11</sup> Today, his arguments should be taken with a grain of salt, since it is hard to stand behind a claim that German workers are more industrious or diligent than Slovenian ones; we can only draw parallels. This is why culture-related factors are often very subjective, which means they have limited weight in theory and practice.

Third come the economic factors affecting a state's level of development, such as availability of a hard-working and well-educated labour force and natural resources. A state that has natural riches and a skilled and high-quality labour force at its disposal is more likely to be more developed. Stanley L. Engerman and Kenneth L. Sokoloff highlight the example of Haiti as one of the richest states in the world in the late 18<sup>th</sup> century due to sugar cane production in inhumane conditions on slave plantations controlled by the European colonial elite.<sup>12</sup> Germany has been one of the world's powerhouses for decades, but today's conditions of economic competition between Germany and Slovenia do not seem to justify the gap in the standard of living indicated by the data presented above.

The fourth set of factors accounting for different levels of development among states refers to the quality of democratic institutions and the rule of law. Do the institutions of a given state operate fairly and transparently, based on the rule of law, and is the judiciary effective in protecting human dignity? Are public institutions close to the people and business entities, or do they create unnecessary obstacles for them? Daron Acemoglu, Simon Johnson and James Robinson underline in their paper *Institutions as the Fundamental Cause of Long-Run Growth* the pivotal role of strong, quality institutions for the economic and social development of a given society.<sup>13</sup>

While it was hard to identify notable differences between Germany and Slovenia in the first three sets of factors, they become evident when we compare the quality of the two countries' democratic institutions and the rule of law. At least that is what international organisations and research data show. Let us look at some recent data. The Corruption Perception Index of Transparency International ranks Germany 20<sup>th</sup> among the countries with the lowest levels of perceived corruption, with a score of 81 out of 100. Slovenia, on the other hand, ranks 34<sup>th</sup>, together with Botswana, with a score of 61.<sup>14</sup> The European Commission's report on the state of the judiciary in EU Member States shows that around three quarters of the German population perceive judicial independence in Germany as at least fairly good, while barely over 30% of the Slovenian population would say the same of the Slovenian courts and judges.<sup>15</sup> The figures are even worse when it comes to how companies perceive judicial independence in Slovenia, as less than a quarter see it as fairly good.<sup>16</sup> Similar conclusions can be drawn if we look at the number of rulings by the European Court of Human Rights that found at least one violation of the European Convention on Human Rights—by the end of 2017, there were 329

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<sup>11</sup> Max Weber, *The Protestant Ethic and the Spirit of Capitalism*, London; New York : Routledge Classics, 2001.

<sup>12</sup> Stanley L. Engerman, Kenneth L. Sokoloff, *Factor Endowments, Inequality, and Paths of Development Among New World Economies*, NBER Working Paper No. 9259, 2002.

<sup>13</sup> Daron Acemoglu, Simon Johnson, James Robinson, *Institutions as the Fundamental Cause of Long-Run Growth*, NBER Working Paper No. 10481, 2004.

<sup>14</sup> Transparency International, *Corruption Perception Index*, 2018, [https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2017#table](https://www.transparency.org/news/feature/corruption_perceptions_index_2017#table).

<sup>15</sup> European Commission, *The 2018 EU Justice Scoreboard*, p. 41, Figure 55.

<sup>16</sup> European Commission, *The 2018 EU Justice Scoreboard*, p. 42, Figure 57.

such rulings against Slovenia and 193 against Germany—bearing in mind that the latter has been party to the Convention since 1952 and the former only since 1993.<sup>17</sup> These data and many more sources show that the democratic institutions and the rule of law in Slovenia are of considerably lower quality than those in Germany. This is why institutions are where the primary reasons should be sought as to why Slovenia is lagging behind Germany, and why people in an otherwise wonderful country, full of natural riches, are worse off than those who live only a four-hour drive to the north.

The factors described above are commonly used in comparing the level of development between countries, whereby geography and institutional quality are particularly important. Applying these factors in assessing the development of Germany and Slovenia has shown that the poor quality of democratic institutions and the rule of law is what accounts for the slower pace of the latter. The people who make up Slovenia's democratic institutions should be aware that the improvement of their functioning and trust in them are the conditions that may allow the country to maybe someday, in a hundred years, catch up with Germany. This must also be on the minds of every new government. Their responsibility, as of those already running individual other institutions, is to subordinate all their other efforts to raising the quality of how the state functions so that our successors may live almost as well as their peers in Germany. Therefore, if we wish for Slovenia to gap at least somewhat close the, we must reform its institutions and internalise the values of the rule of law.

### **3 Reform of the Slovenian legislative branch**

#### **3.1 Beyond the legacy of the “assembly” system**

In June 2019, Slovenia will celebrate the 28<sup>th</sup> anniversary of its establishment as an independent state, and the same anniversary of its Constitution in the following winter. In just under three decades, the Constitution was amended less than ten times. Some of these changes were necessary and some may have been only cosmetic, but a number of almost necessary changes have failed due to lack of political consensus in parliament. This is why certain reforms that are needed and are outlined in this chapter appear like a reasonable task for the new term of the National Assembly that started last year—be it constitutional changes, or adapting laws or other legal acts.

The common thread of most of the reforms recommended below for the legislative branch of power appear to limit at least in part the power of the National Assembly in relation to the other two branches. This is because Slovenia's National Assembly, the lower chamber of parliament, has retained a lot of jurisdiction compared to some other, Western parliaments, which is at least to some degree a remnant of the former socialist system, which was based on the principle of unified power and not separation of powers<sup>18</sup>, which was only introduced in Slovenia with the 1991 Constitution. It is known that the principle of unified power is derived from Rousseau's

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<sup>17</sup> European Court of Human Rights, [https://www.echr.coe.int/Documents/Stats\\_violation\\_1959\\_2017\\_ENG.pdf](https://www.echr.coe.int/Documents/Stats_violation_1959_2017_ENG.pdf).

<sup>18</sup> For a history of separation of powers and its dynamics in terms of a system of checks and balances, see Christoph Moellers, *The Three Branches : A Comparative Model of Separation of Powers*, Oxford University Press, 2013.

social contract idea<sup>19</sup>, where the people can only be represented by the people themselves. If the conditions of the modern state do not allow direct democracy in this sense, then a parliamentary assembly should be the main representative and legislative body. In this respect, it should take the most important decisions on state matters, while the merely operative tasks should be performed by some sort of executive council. Of course, this theory did not work in practice in Socialism, as the executive council started to increasingly resemble a bourgeois government, and also the most important decisions were being made elsewhere (e.g. in meetings of the heads of the Communist Party) and would not even reach the tables of the delegates of the time.

The view that the National Assembly should be the most important body under the Constitution can still be found even among theoreticians of today, although the Constitution enshrines the principle of separation of powers.<sup>20</sup> In the context of democracy, parliament is of course the most democratic body under the Constitution. But when we also take into account the equally valid principle of separation of powers, such a statement seems somewhat bold. The Constitution states in Article 1 that Slovenia is a democratic republic, and in Article 3 that in Slovenia the sovereignty lies with the people. However, it later also stipulates that citizens exercise it through state bodies, whose powers are divided among the legislative, executive and judicial branches. Apart from the symbolic meaning of the legislative branch being listed first in the chapter on the organisation of the state (Chapter IV, Articles 80–95), this branch cannot be attributed any superior role in the constitutional system. Especially not in the conditions of the so-called constitutional democracy, where majority democracy, under which the legislature operates, is particularly notably limited by constitutional rights.

The abovementioned view of Miro Cerar, granting superiority to the National Assembly, therefore appears to underestimate the separation of powers and the system of checks and balances. In this sense, this chapter summarises some reform proposals that have been discussed by Slovenian legal experts for a while, and would actually somewhat “trim” the quite broad powers of the National Assembly.

### **3.2 Appointing ministers (forming the Government)**

In search of greater government efficiency in the already complex and hardly operative political system with proportional representation, it has been proposed several times to, for instance, change<sup>21</sup> the provision of Article 112 of the Constitution, which stipulates that ministers are appointed and dismissed by the National Assembly on the proposal of the Prime Minister, and

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<sup>19</sup> Jean-Jacques Rousseau, *The Social Contract*, New York, Prometheus Books, 1988.

<sup>20</sup> See Cerar's writing in his introduction to legal studies: Marijan Pavčnik, Miro Cerar, Aleš Novak, *Uvod v pravoznanstvo*, Ljubljana, Uradni list RS, 2006.

<sup>21</sup> See for example the 2001 motion to change the Constitution: Predlog za začetek postopka za spremembe Ustave RS z osnutkom ustavnega zakona. Poročevalec Državnega zbora RS, no. 69/2001 from 6 August 2001, p. 18. Rudi Kocjančič, *Temeljne dileme o ustavni ureditvi oblikovanja vlade v Republiki Sloveniji* in Igor Kaučič (Ed.), *Pomen ustavnosti in ustavna demokracija*, Ljubljana, Pravna fakulteta Univerze v Ljubljani, Ustavno sodišče RS, 2013, p. 325.

that prior to their appointment ministerial candidates must appear before the competent commission of the National Assembly and answer its questions.

On top of the complicated negotiations on forming coalitions and consequently the government that the proportional representation system entails, the appointing of ministers in the National Assembly after it has already appointed the Prime Minister appears to be nothing more than an additional obstacle in the process of forming a government. Consequently, ministers are also harder to dismiss, since even in the case of disagreements with the Prime Minister, they need to be dismissed by parliament. It has been proposed several times that ministers, or at least most of them, be appointed by the Prime Minister directly, which does not seem like a bad suggestion in the sense of looking for ways to make the government more operative and faster to form.

### **3.3 Election of judges**

Political and legal scholars in Slovenia are well aware of the problems caused by Article 130 of the Slovenian Constitution, which says that judges are elected by the National Assembly on the proposal of the Judicial Council—in practice these are appointments not elections, as the Judicial Council nominates one candidate per vacant post. This system of appointing judges was not problematic as long as the National Assembly was reserved in performing this task, and it served as sort of a backup for really special cases if the Judicial Council clearly overstepped its jurisdiction, or acted completely unprofessionally or arbitrarily. However, the two terms of the Judicial Council between 2012 and 2018 saw at least two cases where the National Assembly rejected the Council's nominees (in appointments to a higher court and the Supreme Court), using only its political discretion and without providing any official reasons for the decision.

This article in the Constitution makes Slovenia the only state in Europe where judges are appointed by parliament, which may pose a risk for the principle of judges' independence from Article 125 of the Constitution, by allowing—even if it is rarely used—political influence on the final decision on judicial appointments.

Things get even more complicated on the level of laws. According to the third paragraph of Article 21 of the Judicial Service Act, Supreme Court judges are appointed by the National Assembly, but so is the president of the Supreme Court in line with Article 62(a) of the Courts Act. This means that a candidate for leading the highest general court seek the approval of parliament three times. In its recent reports for Slovenia, the Group of States against Corruption (GRECO) has criticised several times the process of appointing Supreme Court judges in parliament, arguing that it poses a serious threat to their independence.

Similarly disputable is the introduction of a trial term for new judges, which was proposed by some political parties ahead of the last general election, including the outgoing Speaker of the National Assembly, as a sort of treat for deputies to give up the power of appointing judges. Under the proposal, new judges would need to serve a fixed-period trial term to test their suitability as judges before a full appointment with life tenure. Particularly if the trial-term judges were to be appointed by the National Assembly as well, this would jeopardise their

independence, since they would be inclined—even if only unknowingly—to rule favourably for the people on whose decision their permanent appointment will rely.

With regard to the appointment procedure for judges, it is interesting to look at the first official draft of the Constitution (prepared by a group of experts in 1990 at the Podvin estate, which is why it is also known as the Podvin Constitution), which envisaged in Article 127 that judges would be appointed by the President of the Republic on the proposal of the Judicial Council. Under this draft, the President would be able to send the proposal back to the Judicial Council for reassessment. If the Council then reconfirmed the nomination with a qualified majority defined by law, the President would be obliged to accept the nomination and make the appointment.<sup>22</sup> This would on the one hand remove political criteria from judicial appointments, and on the other hand prevent the Polish scenario of the President refusing to appoint certain judge nominees. In line with the draft Constitution presented above, the President could not reject a nominee with sufficient support in the Judicial Council—the Judicial Council Act already requires a two-third majority for any nomination anyway. By doing so, the President would have been in breach of the Constitution and could face impeachment—similarly to when former President Janez Drnovšek refused to sign the parliament-approved changes to the Asylum Act until he was confronted with the possibility of impeachment.

However, working documents from the process of adopting the Slovenian Constitution reveal, that the proposal to have judges nominated by the Judicial Council and appointed by the President led to doubts by a majority of deputies in the National Assembly as to the competence of the Judicial Council for such final appointments, so the task was transferred to the parliament.<sup>23</sup> However, this version soon became subject to criticism and proposals to change the Constitution.<sup>24</sup>

### **3.4 The National Council and the introduction of regions**

The National Council, Slovenia's so-called imperfect upper chamber of parliament, is another part of the state system that no one seems really pleased with. There have been several proposals to abolish it altogether (one of the more serious instances was a few years ago by the then Minister of Public Administration Gregor Virant), with the argument that it is an unnecessary expenditure that brings little to no added value to the state's constitutional and political system. Nevertheless, already the first attempt at drafting a constitution for a future independent and democratic Slovenia from 1988—called the Writers' Constitution because it was penned by a group of prominent writers—included a sort of senate partly resembling today's upper chamber. In the next proposal for a constitution, the DEMOS Constitution (prepared ahead of the first multi-party election by the DEMOS coalition, which eventually won the election and led

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<sup>22</sup> Peter Jambrek, (in cooperation with Jernej Letnar Čeranič), *Ustavna ureditev Slovenije: izvori, temelji in razvoj*, Nova Gorica, Brdo, Evropska pravna fakulteta and Fakulteta za državne in evropske študije, 2014, p. 393.

<sup>23</sup> Miro Cerar, Gorazd Perenič, *Nastajanje slovenske ustave*, Ljubljana, Državni zbor Republike Slovenije, Izbor gradiv Komisije za ustavna vprašanja 1990–1991. Vol. I and III, 2001, pp. 132, 1019–1027.

<sup>24</sup> Miro Cerar, Aleš Novak, Boris Vrišer (Eds), *Ustavne razprave*, Ljubljana, Državni zbor Republike Slovenije, Izbor gradiv DZ 2001–2003, Book III, Vol. I and II, 2004.

Slovenia to independence), it was already given its current name, the National Council, but it was later excluded from the officially proposed text in the Podvin Constitution.<sup>25</sup>

Aside from the motions to abolish it altogether, there have also been proposals to reform it. One of the most interesting ones came from Constitutional Court judge Ciril Ribičič<sup>26</sup>, who proposed to turn it into a house of regions, which would serve as an imperfect upper chamber with equal authority to the National Assembly, particularly in passing legislation concerning local government. This does not seem like a bad idea, since a majority of its members (22 out of 40) already represent local communities. Moreover, a house of regions of this sort could mean a realisation of the stalled project of regionalisation—regions have been envisaged in the Constitution from the start, but have never been introduced because the country cannot come to an agreement on their number and demarcation.<sup>27</sup> In the context of strong centralisation of Slovenia, this would be a welcome reform that would boost the role of local communities and bridge the gap between them and the centre/state level.<sup>28</sup>

One of the proposals for changing how the National Council works has also been to introduce a fourth phase in the legislative procedure, where returning a bill to the National Assembly upon a National Council veto would offer another chance to amend the bill before a revote.<sup>29</sup>

### 3.5 Parliamentary immunity

A while ago, Slovenia had a debate on whether the provisions on the immunity of deputies need changes.<sup>30</sup> Historically, parliamentary immunity was introduced because monarchs with absolutist tendencies tried to hinder the work of the increasingly limiting parliaments by having deputies locked up on a plethora of different charges. The conditions have changed completely

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<sup>25</sup> Peter Jambreč, (in cooperation with Jernej Letnar Čerňič), *Ustavna ureditev Slovenije: izvori, temelji in razvoj*, Nova Gorica, Brdo, Evropska pravna fakulteta and Fakulteta za državne in evropske študije, 2014, pp. 345, 360–361.

<sup>26</sup> See for example Ciril Ribičič, *Državni svet in zbor pokrajin*, Ljubljana, Visoka upravna šola, Dnevi slovenske uprave (zbornik referatov), no. 9, 2002, pp. 377–397. Ciril Ribičič, *Dvodomnost* in Ivan Hvala (Ed.), *Sodobna država, kaj mora in kaj zmore*, Ljubljana, Fakulteta za družbene vede, 2003, pp. 159–176. Ciril Ribičič *Regionalizacija Slovenije – zgodba o številnih zamujenih priložnostih* in Ivan Hvala (Ed.), *Demokratske vrednote in aktivno državljanstvo: pokrajine, participacija, meje in odnosi s sosedi: trije posveti*, Ljubljana, Društvo Občanski forum, 2010, pp. 83–87.

<sup>27</sup> Of course, regionalisation cannot go past historical provincial lines, which still have deep roots in the minds of the people. See Sergij Vilfan, *Uvod v pravno zgodovino*, Ljubljana, Uradni list RS, 1991, especially pp. 72–73, who talks about the creation of provinces in the territory of present-day Slovenia in the Late Middle Ages.

<sup>28</sup> Marko Novak, *Državni svet na prelomnici*, Ljubljana, Nova revija, Ampak: mesečnik za kulturo, politiko in gospodarstvo, vol. 6, no. 11, 2005, pp. 12–13. However, there has also been opposition to regionalisation. E.g. France Bučar, the Speaker of the first democratically elected parliament and co-author of the Constitution, maintained that Slovenia had fought for a unified state, not a divided one, as he feared this could lead to some sort of federalism. France Bučar, *Demokracija in kriza naših institucij*, Ljubljana, Nova revija, 1998.

<sup>29</sup> Blaž Kavčič, *Vloga Državnega sveta v slovenskem parlamentarnem sistemu* in Tatjana Krašovec (Ed.), *Prihodnost parlamentarne demokracije: zbornik strokovnega srečanja ob 20. obletnici prvih večstrankarskih volitev*, Ljubljana, Državni zbor, 2010, pp. 59–68. See also Jasna Sraka, *Vloga in pomen Državnega sveta Republike Slovenije v parlamentarni demokraciji*, Kranj, Fakulteta za državne in evropske študije, 2016.

<sup>30</sup> Marko Novak, *O ustavnih razsežnostih poslanske imunitete*, Ljubljana, Pravna praksa, vol. 24, no. 2, 2005, pp. 10–11.

since then, which raises the question whether such immunity still makes sense, especially when it comes to full immunity that also stretches beyond parliament-related activity.

Furthermore, practice has shown that, in order to maintain the appearance of innocence, deputies do not even invoke immunity, even when facing criminal prosecution. And even if a deputy were to invoke their immunity in an issue unrelated to their activity as deputy, parliament would not approve it. That is why it no longer makes sense to have a provision including extra-parliamentary immunity in the Constitution. If such a case were to occur, it would probably only be an individual, so the National Assembly would still have a quorum, and all 90 deputies are rarely present anyway. But if it were a larger group of deputies, the issue would border a parliamentary crisis anyway.

A more sensible question is whether parliamentary immunity (from criminal liability) for activities in the course of legislative duties should be expanded to civil liability—with the exception of insults. Freedom of political speech must absolutely be protected, and all deputies, but particularly those in the opposition, must be able to speak freely about any topic without fear of being dragged through courts for what they say. The limits should only be set where decency in speech ends (i.e. low-value speech)—taking Germany as a role model, this limitation should refer to insulting, obscene and vulgar speech.

### **3.6 Parliamentary elections and possible changes**

It appears no one in Slovenia is really satisfied with the country's electoral system. The proportional representation system is paralysing government efficiency by making a relatively large number of coalition partners inevitable. Moreover, post-election haggling, where the rules allow the head of a party that won just over 10% of the ballot to be given a chance to form a government, while a party that won almost a quarter of all votes remains in the opposition, hardly seems to please voters. But on the other side, there is fear that a switch to a first-past-the-post system, where the winner takes all, would lead to the winner abusing this power since political culture in Slovenia is supposedly not yet developed enough for such changes.

Therefore, most proposals relate to some combination of voting systems, taking the positive characteristics of one system and trying to neutralise the negative side with the other. One option would be to give each voter two votes—one for an individual candidate in a first-past-the-post system and the other for a political party in a proportional system. Another proposal was tabled in 2014 that would introduce a two-round majority vote, with the top two candidates from the first round in each constituency facing off in the second round. A further option would be to raise the parliamentary entry threshold from the current 4%, which would result in a parliament with fewer parties.

Furthermore, an idea has been present for years now to supplement the existing proportional system with an optional preference vote on the ballot for a particular candidate on the selected party list. In short, options are being sought that would at least to some degree neutralise the unpopular phenomenon of partyocracy by putting more stress on individual deputies over party lists, in which the order of candidates is set by the small closed groups running the parties.



In this area, the Constitution was already changed in 1998 (fifth paragraph of Article 80) as the parliament's reaction to the Constitutional Court ruling<sup>31</sup> that in fact upheld the victory of the first-past-the-post system in a referendum in 1996. Contrary to the referendum result, the change enshrined the use of proportional representation with a 4% threshold for lists to enter parliament. However, the added paragraph does end with a provision that this comes “with due consideration that voters have a decisive influence on the allocation of seats to the candidates”.

But what does this mean? Maybe the option of the so-called preference vote, which is already available in local and European elections, should also be introduced for parliamentary elections.<sup>32</sup> All attempts at this in parliament have failed so far, as party leaders clearly wish to retain their power over the order of candidates on their lists to ensure they get elected. However, it seems this option would be very welcome with voters, as it would grant them some direct influence on who from a particular list gets elected. This would also be in line with the abovementioned final provision of the fifth paragraph of Article 80 of the Constitution, although it can be interpreted in different ways<sup>33</sup> and the Constitutional Court so far has not provided a specific interpretation.

With respect to the electoral system, some change will therefore need to be made, and the proportional system should be at least partly upgraded.

### **3.7 Unelectability of deputies and their recall**

Another legitimate question has surfaced in the past as to whether every Slovenian citizen who is at least 18 years old should have the passive voting right to be elected into parliament. The question became most prominent in light of the Patria corruption case, when the leader of the Slovenian Democratic Party (SDS) was elected while incarcerated. At that point, the rules of course could not be changed retroactively when Janez Janša had already been elected. Nevertheless, the situation did raise a legitimate question of how the issue should be addressed for possible future instances. It would probably make sense to set certain limitations, similar to those in place for public servants or officials in other state bodies, for instance, who need to present a police clearance certificate already when applying. I believe this should *a fortiori* be required also for members of the National Assembly of the Republic of Slovenia.<sup>34</sup>

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<sup>31</sup> Constitutional Court of the Republic of Slovenia, No. U-I-12/97, *Odločbe in sklepi Ustavnega sodišča RS*, VII, Book 2, 1998, pp. 374–411.

<sup>32</sup> For more on preference voting, see Jurij Toplak, *Preferenčni glas in njegova uporaba v Sloveniji*, Maribor, Lex localis, vol. 1, no. 2, 2003, p. 41.

<sup>33</sup> One of the possible interpretations is also that the provision “requires voting on individual candidates and not lists as a whole, and consideration of the number of votes for a particular candidate in determining election results. This undoubtedly excludes nation-wide lists from the electoral system”. Jadranka Sovdat, *Komentar 80. člena Ustave* in Lovro Šturm (Ed.), *Komentar Ustave Republike Slovenije*, Kranj, Fakulteta za podiplomske državne in evropske študije, 2002, p. 774.

<sup>34</sup> See in particular Saša Zagorc, *Neizvoljivost za poslanca: ustavni desuetudo?* in Igor Kaučič (Ed.), *Pomen ustavnosti in ustavna demokracija*, Ljubljana, Pravna fakulteta Univerze v Ljubljani, Ustavno sodišče RS, 2013, pp. 331–339.

As regards the possibility of deputy recall, I do not find the issue to be sufficiently thought through, as I cannot imagine how such an institute should be implemented in the framework of representative democracy. After all, this is not the same thing as the institute of mayoral recall.

### **3.8 Some other unresolved issues related to the legislative branch**

#### **Low voter turnout and possible solutions**

Slovenia has been recording very low voter turnout for some time. The 2018 parliamentary election was no exception, with a turnout of just above 50%. For reference, the last parliamentary election in Austria had a turnout as high as 80% and the one in Italy around 75%.

There are different possibilities for increasing voter participation in elections.

(i) In the long term, it is certainly beneficial to put efforts into fostering political culture in a given state, or active citizenship. This includes teaching about parliamentary democracy and responsible citizenship from almost as early on as kindergarten, since Slovenian primary schools already have a subject called citizenship education. It may be sensible to introduce a similar subject in secondary school, or organise visits to parliament for pupils and secondary school students, as well as parliamentary session simulations and similar activities. For this purpose, there is no need to change any legislation, but only include such programmes in soft law (different educational programmes and resolutions).

(ii) The next option is introducing electronic voting, which would certainly draw more voters to cast their ballot. Estonia is a role model for this. Of course, the possibility of classical voting at polling stations would still need to be ensured alongside, particularly for voters with lower levels of electronic literacy. The key problem here is making sure the system is secure and there is no abuse. However, if banks can guarantee such security in electronic banking, where temptations for hacking are very strong—perhaps the strongest—I see no reason why this could not be ensured for elections. Implementing this would certainly require changing electoral legislation.

(iii) Another option for attracting very high numbers of voters to the polling stations is to make it voting mandatory, as is the case in some developed countries (e.g. Belgium and Australia). However, turning the right to vote into an obligation would require changing Article 43 of the Constitution, which regulates the right to vote. Given the current situation, the probability of such changes in Slovenia is very low; however, this should not be impossible in the long run.

#### **Code of ethics for deputies**

One of the open issues with regard to the work of parliament and deputies is the adoption of a code of conduct, or code of ethics for deputies, which the National Assembly still has not

introduced<sup>35</sup> despite being called to do so by GRECO several times. This would commit deputies to ethical conduct, and would also present them to the public as a special profession bound not only by the Rules of Procedure of the National Assembly but also by ethical rules. This would certainly help raise the level of culture in deputies' work and contribute to greater political culture in the country.

### **Hypertrophic Rules of Procedure**

Another opportunity for improving the quality of deputies' work can be found in adopting a shorter, more condensed and concise procedure manual, as the current version of the Rules of Procedure is too extensive and detailed, causing issues in deputies' work. Here too, Slovenia could follow the example of democracies with long traditions, which mostly have shorter and more condensed rules of parliamentary procedure (e.g. the UK and the Netherlands).

### **Changing legislation too hastily and recklessly**

This is another area where there seems to be a lot of room for improvement. Legislative changes should be better thought through and more elaborate<sup>36</sup>. Their preparation phase should include the broadest possible public of interested experts, and should not be the result of personal projects at different ministries without the proposed solutions having a broad consensus among experts in the given field. Moreover, changes should not be pursued at any cost only because they are in the coalition agreement among the ruling parties, and without a sound basis in some sort of public interest. Also, fast-track/emergency procedure should not be abused, as has often been the case in the past<sup>37</sup>, arguing that only a few words are being changed, while this in fact results in a great change for the society.<sup>38</sup> Here, I call on the relevant actors to assume more prudence and social responsibility.<sup>39</sup>

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<sup>35</sup> A draft code of ethics was proposed in 2014. See [https://www.dz-rs.si/wps/portal/Home/deloDZ/zakonodaja/izbranZakonAkt?uid=884B5661E6EEEB23C1257D8C004DC67D&db=pre\\_akt&mandat=VII&tip=doc](https://www.dz-rs.si/wps/portal/Home/deloDZ/zakonodaja/izbranZakonAkt?uid=884B5661E6EEEB23C1257D8C004DC67D&db=pre_akt&mandat=VII&tip=doc) (7 June 2018).

<sup>36</sup> On this note, see also Albin Igličar, *Ustavne usmeritve zakonodajne dejavnosti*, in Igor Kaučič (Ed.), *Pomen ustavnosti in ustavna demokracija*, Ljubljana, Pravna fakulteta Univerze v Ljubljani, Ustavno sodišče RS, 2013, pp. 197–232.

<sup>37</sup> See also Matej Rupnik, *Spremembe zakonodaje z vidika pravne varnosti državljanov*, Nova Gorica, Evropska pravna fakulteta, 2009.

<sup>38</sup> This refers particularly to the example of an attempt to redefine family in the Marriage and Family Relations Act that was subsequently rejected in a referendum.

<sup>39</sup> See also Marko Novak, *Stabilitas legis and the rule of law: the problem of Slovene corporate legislation*, *Osijek, Pravni vjesnik: tromjesečni glasnik za pravne i društveno-humanističke znanosti Pravnog fakulteta Sveučilišta J.J. Strossmayer u Osijeku*, vol. 31, no. 3/4, 2005, pp. 51–64.

## **4 Reform of the Slovenian executive branch**

### **4.1 Introduction**

The state is a complex social macrosystem. In Slovenia, governance is organised in accordance with the principle of division of power into three branches. However, the way this is implemented still has notable traces of the assembly system, which was the normative arrangement before Slovenia declared independence and introduced democracy. Montesquieu's thesis that only one branch of power can effectively keep another in check is blurred, in particular when it comes to the cross-links between the executive and the legislative branch.

For the state to function effectively, it needs stable institutions that ensure uninterrupted operation. At the same time, relations within modern societies are becoming increasingly complex over longer periods of time, which also requires the organisational structure of states to be adapted and rearranged. Slovenia's transition from a one-party socialist and assembly-based system into a market-oriented parliamentary democracy was gradual, soft and superficial, reflecting the extent of power the democratic forces after the first multi-party election in 1990 had for realising their objectives with only a reserved and inconsistent cooperation from the opposition. After the DEMOS coalition fell apart in late 1991, the process slowed down and never really concluded. We could say that the transition and the transformation of Slovenian institutions related to the division of power into three branches from non-democratic into democratic bodies is still in progress.

This chapter analyses the state of the executive branch in the Republic of Slovenia after just over a quarter-century of independence and democracy. According to the identified state, we then provide recommendations for improving the functioning of institutions that are part of the executive, in line with the values of democracy, rule of law, plurality, efficiency and equality of all citizens and inhabitants as embodied in the Constitution of the Republic of Slovenia.

When analysing how well the Slovenian executive functions, we must distinguish the following three levels: institutions, staff and content (programme). In line with the content of the rest of the project of which this research was part, the aim of this chapter is to present the situation and reform recommendations within the first aspect—the institutional level. This is because the aspects of human resources and content are conditioned by election results of political parties, their deals, programmes and staffing. Although we will focus on the institutional aspect, we cannot but also touch on the other two in some points, since all three aspects are so intertwined that neglecting one level also makes it impossible to understand the others.

The same goes for the three branches of power. Although the Constitution enshrines the principle of their separation, they are too strongly interrelated to allow us to understand the organisation and anomalies of the executive without taking at least a brief look at the legislative and the judiciary. Furthermore, quasi-governmental actors, or actors related to the different branches are also a notable aspect for understanding the whole picture.

This publication is focused on the legal aspect of the organisation of the Republic of Slovenia. But to get a more comprehensive picture, it is necessary to also include the sociological, socio-psychological and other related approaches.

Certainly, every person would assess the current state of the Slovenian executive a bit differently. And the differences would probably be even greater when it comes to proposing changes. This text presents a few selected aspects that the author sees as critical and therefore deserving attention. Due to constraints to the extent of the text, several other aspects that may also need consideration have been omitted here.

## 4.2 The current state and the reasons behind it

### a) Historical context

According to Kaučič and Grad, the executive is in fact the strongest branch of power, as it is the framework where the most important functions of the modern state are most directly performed.<sup>40</sup> The organisation of the executive differs according to the specific arrangement of individual states. In a presidential system, there is no government as a collective body, and the ministers make up the president's cabinet (or administration) and carry out the president's instructions. In a semi-presidential system, there is a prime minister who answers to the president, who has higher authority, while in a parliamentary system the prime minister is the strongest political office in the state.<sup>41</sup>

In former Yugoslavia, the executive was always part of the assembly system, which was based on unified governance. In the early post-WWII period, we can still see traces of the parliamentary system, but after 1953 the state had a pure assembly system, with both executive and administrative parts of power completely subjected to the ruling Communist Party.<sup>42</sup>

Although the shift to democracy in independent Slovenia formally brought a completely different political system and state organisation—with separation of powers and a totally different organisation of the executive, represented nominally by the President of the Republic and the government as the actual bearer of executive power<sup>43</sup>—traces of the assembly system are still visible and have in some cases only transpired over time.

### b) Present-day context

The Constitution of the Republic of Slovenia<sup>44</sup> determines the constitutional position of the government in Articles 110–119. The authors modelled the text mainly on the constitutional document (Basic Law) of the German Federal Republic, although there are notable differences between the two systems (e.g. as to whether ministers are appointed by the prime minister directly or by parliament). According to Article 114 of the Constitution, the details of the

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<sup>40</sup> Igor Kaučič, Franc Grad, *Ustavna ureditev Slovenije*, Ljubljana, GV Založba, 2003, p. 265.

<sup>41</sup> For a more detailed comparison of different state systems, see e.g. Michael Rosenfeld, András Sajó, *The Oxford Handbook of Comparative Constitutional Law*, Oxford, Oxford University Press, 2012; Tom Ginsburg, Rosalind Dixon, *Comparative Constitutional Law: Introduction*, Chicago, University of Chicago Law School, 2011; as well as Franc Grad et al., *Primerjalno ustavno pravo*, Ljubljana, Pravna fakulteta Univerze v Ljubljani, 2004.

<sup>42</sup> See e.g. Franc Grad et al., *Državna ureditev Slovenije*, Ljubljana, Pravna fakulteta Univerze v Ljubljani, 1999, p. 155.

<sup>43</sup> *Ibid.*

<sup>44</sup> Official Gazette of the Republic of Slovenia, no. 33/91-I, and changes.

composition and functioning are defined in a separate law.<sup>45</sup> On the nominal level, the provisions regarding the government in the Constitution, legislation and implementing regulations have not been problematic so far. However, more issues have arisen when breathing life into these legal provisions. The history of Slovenian governments in terms of how well they functioned can be divided into two periods: 1992–2008 and 2008–2018. In the first period, Slovenia seemed like a stable country, in which different coalitions—although mostly within a hegemony of parties of post-Communist provenance—would rule, pursue objectives of state interest (Euro-Atlantic integration, the euro, EU Council Presidency) and maintain the appearance of a stable democracy. But since 2008, the conditions have changed considerably. We have seen frequent change of government, with not one of them finishing its regular term in office, leading to early elections time and again. Moreover, the governments are plagued by inefficiency, as well as a lack of clear objectives and vision. Only a view from a distance of a quarter-century reveals that the entire political space throughout these years has always been characterised by two features that show how distorted Slovenian democracy really is: (1) The most power in Slovenia lies in the hands of those who do not really want change. This refers both to most governments, as well as non-elected interest groups that exert influence on governments from behind the scenes. (2) When governments change, only the top ruling structure is replaced, while the rest of the hierarchy below the level of ministers (state secretaries, heads of directorates, office staff, heads of different sectors and offices, heads of public or state-owned institutions and institutes, etc.) mostly remains the same, and they only change positions, returning to positions of power from time to time. This leads to a troublesome realisation that power structures in Slovenia do not change, and that the country is instead ruled most of the time by the same interest groups and cartels.

In the last years of his life, France Bučar, one of the founding fathers of Slovenia, often spoke of *particracy*,<sup>46</sup> in which the ruling political parties degrade the National Assembly into a voting machine and the government into an executor of their interests. However, Slovenia's political development in the last few years has shown that the problem are not parties that are too strong, but rather the opposite: parties that are too weak and have no real internal structure, hierarchy, content in their programmes, long-term development of human resources, etc. Instead of focusing on these aspects, parties are only temporary interest-based associations where the top members realise their desires for fame and sense of importance, and often solve their financial issues, while the state is (co-)managed from behind the scenes by informal groups (or they at least have excessive influence with no legitimacy). These groups are unknown to the public, and did not receive a mandate for their political engagement in an election, but in practice they wield crucial influence over political officials. This is also how they accrue their wealth.

All this indicates a need for substantial political change in Slovenia. A selection of the most relevant aspects is presented below.

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<sup>45</sup> Currently this is the Government of the Republic of Slovenia Act, Official Gazette of the Republic of Slovenia, no. 24/05, and changes.

<sup>46</sup> See e.g. France Bučar, *Temelji naše državnosti*, Ljubljana, Mladinska knjiga, 2012.

### 4.3 Recommendations for a more effective and fair executive branch

#### a) Government organisation: number of ministries and distribution of authorities

The way the government is organised in terms of the number of ministries and government offices run by ministers is not optimal. The problem lies already in the logic how the number of ministers and government bodies is set and changed. It has been typical of Slovenian governments that the number of departments changes with virtually every new government<sup>47</sup>, which causes delays in their work and uncertainties regarding jurisdiction. Drastically reducing the number of ministries, as has been tried in the past<sup>48</sup>, is merely a populist move<sup>49</sup>, since it does not mean spending less money, although it is claimed to do so, but it does make work harder. But paradoxically, doing the opposite has also led to problems. In the few cases where governments did not change the number of departments, this was the result of limited operational capacity already in the process of their appointment.

Slovenia needs to make a quantum leap in the direction of stable and established democracies, where also the organisation chart of governments is stable across different terms to allow the workflow to go uninterrupted. The number of government departments should not be too high, but not too low either, so as not to make them too large to manage. Each minister should run a department that is only as big as they can manage in its entirety and where policy-shaping decisions will not be made without them. Broader political consensus would need to be reached to determine the government structure for the medium-term. At the same time, this would mean that it is no longer subject to the staffing desires of coalition partners in the process of forming governments, or attempts at pleasing the public by cutting the number of departments (and achieving inexistent savings).

#### b) Government organisation: ministers without portfolio

The role and importance of ministers without portfolio have been completely neglected.<sup>50</sup> They are there to coordinate the government's work in individual areas of particular relevance to the state that relate to the work of different departments<sup>51</sup>. There is a widespread impression that these ministerial posts are less important within the government ranks, which makes it harder for ministers without portfolio to make a breakthrough in their coordinating role, although the exact opposite should be the case. Instead of other ministries following the instructions of the cross-sectoral bodies in the area where work of different departments is coordinated by a minister without portfolio, individual ministries assume a stance of superiority. That is why it

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<sup>47</sup> See *Governments of the Republic of Slovenia*, [http://www.vlada.si/en/about\\_the\\_government/governments\\_of\\_the\\_republic\\_of\\_slovenia/](http://www.vlada.si/en/about_the_government/governments_of_the_republic_of_slovenia/).

<sup>48</sup> See e.g. *Fotogodba: Ministri in ministrica Janševe vlade*, 2012, <https://www.rtv slo.si/slovenija/fotogodba-ministri-in-ministrica-janseve-vlade/276092>.

<sup>49</sup> See e.g. *Če bi dobili vlado brez SDS in SD, bi bilo to optimalno*, 2018, <https://www.vecer.com/ce-bi-dobili-vlado-brez-sds-in-sd-bi-bilo-to-optimalno-6500711>.

<sup>50</sup> We often see unjust reporting and sneering at the work of these ministers. See e.g. *Medtem ko državljani varčuje, ministrica Ljudmila Novak potuje*, 2012, <https://www.dnevnik.si/1042521108>.

<sup>51</sup> The Slovenian government currently has two ministers without portfolio, each in charge of their government office, one for Slovenians abroad and the other for development, strategic projects and cohesion.

would be most reasonable for the law regulating government organisation to automatically give the two ministers without portfolio the position of deputy prime minister. This would give them the necessary authority within government ranks, so that the policies of the Republic of Slovenia would from now on, on the one hand, incorporate the half-a-million Slovenians living outside the country, who could be a great resource that the state fails to tap into, and on the other hand set a more comprehensive approach to drawing the available EU funding, developing cross-border regional projects and applying for European cohesion funding more effectively. Having the minister for Slovenians abroad as deputy prime minister would also have positive effects in foreign policy. When traveling abroad on ministerial duties, the minister would not be limited to visits to the Slovenian communities abroad, but would also have access to the more important political institutions of the host country. At the same time, being both deputy prime minister, which is not a strictly formalised position (unlike the vice president in a presidential system), and minister without portfolio allows the flexibility to also meet officials down the hierarchy (e.g. mayors or regional politicians), which is not becoming of a minister of foreign affairs.<sup>52</sup> In particular, this minister should be given greater authority in cross-border cooperation, in the same sense as the Socialist Republic of Slovenia as part of Yugoslavia had a state secretary for border area cooperation—this should be a role for the minister without portfolio, since foreign ministers have performed poorly in this area so far.

### **c) Appointment and competences of members of the executive branch**

The way the government is appointed in Slovenia maintains the characteristics of the socialist assembly system. First the Prime Minister must be approved by the National Assembly, then the ministerial candidates by the relevant parliamentary bodies, and finally the government team as a whole in the National Assembly plenary. But it is even more problematic that ministers can only be dismissed by the National Assembly, while the Prime Minister formally has no jurisdiction in this. It has therefore often been proposed to give the Prime Minister the authority to appoint and dismiss ministers directly, in light of the separation of powers and in order to increase the efficiency of governance.<sup>53</sup>

Given that Slovenia is still an unstable democracy where attempts at abuse of power, decisions being taken outside democratic channels and appointments of people who lack the necessary competences are common practice, the author of this chapter would recommend a different arrangement: The Prime Minister designate should still first be confirmed by the National Assembly, and ministers should still first appear before the relevant working bodies. This would

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<sup>52</sup> Slovenian foreign ministers have done this in the past, undermining not only the status of their position but also the sovereignty of Slovenia. See e.g. Aleš Gaube, *Erjavec in Kaiser za iskanje rešitev na deželni ravni*, 2017, <https://www.dnevnik.si/1042763560>; *Minister Erjavec bo gostil predsednico AD FJK Deboro Serracchiani*, 2013, [http://www.vlada.si/medijsko\\_sredisce/napovednik/arhiv\\_dogodkov/arhiv\\_dogodkov/article/minister\\_erjavec\\_bo\\_gostil\\_predsednico\\_ad\\_fjk\\_deboro\\_serracchiani\\_40257/](http://www.vlada.si/medijsko_sredisce/napovednik/arhiv_dogodkov/arhiv_dogodkov/article/minister_erjavec_bo_gostil_predsednico_ad_fjk_deboro_serracchiani_40257/); *Rupel in Illy o petem koridorju*, 2007, <https://www.delo.si/novice/slovenija/rupel-in-illy-o-petem-koridorju.html>. For such meetings, a minister without portfolio also serving as deputy prime minister would be a much more appropriate solution.

<sup>53</sup> See e.g. *Stranke za hitrejši postopek imenovanja vlade*, 2014, <https://www.delo.si/novice/politika/stranke-za-hitrejsi-postopek-imenovanje-vlade.html>; *SDS predlaga skrajšanje postopka imenovanja nove vlade*, 2011, <https://siol.net/novice/slovenija/sds-predlaga-skrasjanje-postopka-imenovanja-nove-vlade-122938>.



enable the public and the legislature to get some picture of the candidates, which would in turn allow the public to exert pressure in case of incompetence, reducing at least to some degree the chances of candidates who are unfit getting appointed<sup>54</sup>. Finally, the appointment of the government as a whole should continue to require the approval of the National Assembly. However, changes are needed with regard to the dismissal of ministers. The institute of dismissal of ministers by the National Assembly should be kept for the possibility of a minister failing at their duties and the Prime Minister lacking the political power to dismiss such a minister. But at the same time, the Prime Minister should be given the authority to dismiss ministers at any time without a vote in the National Assembly.<sup>55</sup> The Prime Minister must have a team of people he or she can trust and who pursue the same objectives, so the authorities of the Prime Minister need to be increased in this area. Although the appointment process described above would still take more time than the Prime Minister simply appointing cabinet members directly, this is justified by the resulting transparency and the possibility of checks on the ministers' work.

Another step towards a more operational government could be achieved by changing the electoral system. While the first-past-the-post system may ensure greater government stability and make it easier for the government to work effectively in less developed democracies, its downside is that it can lead to excessive concentration of power and limiting of democracy. This is why a combined system appears as a more appropriate solution, allowing the winner a more stable majority, while leaving the opposition enough political power to keep the executive in check.<sup>56</sup> An alternative (although less optimal) would be to keep the proportional representation system and raise the bar for entering parliament (to 5 or 6%), while also abolishing electoral districts and introducing an optional preference vote within the selected party list for the given constituency. The resulting lower number of parties in parliament would make it easier to form a stable government, and the preference vote option would allow voters to elect candidates that they find most appropriate over party favourites. Under the current system, the latter are most certain to get elected because the more established parties can usually foresee in which districts they will win a seat in parliament.

Different solutions have also been proposed as to the role and the system of electing the President of the Republic (although the President performs some tasks of all three branches of power, executive tasks are the most prominent). Given the very limited authority of the Presidency, the President could also be elected in the National Assembly, or by both chambers of parliament. But taking into consideration the strong divisions in the Slovenian society and the immaturity of Slovenian democracy—danger persists that a President would be elected based on political affiliation and track-record instead of their reputation and ability to represent the largest possible share of citizens—it is reasonable to keep the direct election system and

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<sup>54</sup> E.g. *Darinka Mravljak ne bo ministrica*, 2004, <https://www.finance.si/105701>; *Tugomir Kodelja ne bo minister za javno upravo*, 2018, <http://topnews.si/2018/09/05/tugomir-kodelja-ne-bo-minister-za-javno-upravo/>.

<sup>55</sup> There has been a case when the National Assembly refused to dismiss a minister even though the Prime Minister claimed he could no longer trust him, so they had to continue to work together. See e.g. Ali H. Žerdin, *dr. Andrej Bajuk: Od neznanega bančnika do predsednika vlade*, 2000, <https://www.mladina.si/92320/dr-andrej-bajuk/>.

<sup>56</sup> See e.g. Anže Logar, *Volilni sistemi in njihov vpliv na kvaliteto demokracije*, Nova Gorica, FUDŠ, 2016; as well as Ciril Ribičič, *Primerjava prednosti in slabosti volilnih sistemov*, Ljubljana, Pravna fakulteta, Zbornik znanstvenih razprav, vol. 73, 2013, pp. 57–81.

give the President additional competences.<sup>57</sup> Apart from at least a suspensive veto right for legislation, the expansion of competences should extend at least to foreign policy, where government instability in recent years means the President is an important element of continuity that the country needs. At the same time, the checks on the constitutionality and legality of the President's actions should also be strengthened.<sup>58</sup> Although we recommend an expansion of competences, some healthy reservation in doing so is still advised. Powers like appointing and dismissing the government, dissolving parliament at any given time and calling an early election could quickly lead to autocratic tendencies in a President, so they should be avoided (at least at the time being). In some countries, presidents do have these competences—even in countries where the president is not elected directly (e.g. Italy)—but these are all more established democracies.

Even on the local level, the functioning of bodies of the executive branch is suboptimal. The current position of mayors—which on the local level is similar to that of a president or at least vice president on the state level in a presidential system—loses its functionality if a mayor has no majority in the local/city council. An entire term can be spent on tug of war, without either of the sides being able to actually run the municipality because they block each other due to division of powers. Some serious thought should be given to the possibility of appointing mayors in a fashion similar to the Prime Minister on the state level—having the winning list(s) in the local/city council form a coalition to achieve the necessary majority. However, the current arrangement of course has its advantages, particularly the sense of being represented that voters get with direct elections.

#### **d) The government should manage issues in its jurisdiction**

The Slovenian Constitution defines clearly who in the Republic of Slovenia is the executive branch and what its competences are. However, these are rather limited in practice due to (often intentionally) wrong interpretations of other constitutional provisions, which obstructs the functioning of governments.

The government is authorised by the directly elected National Assembly to manage the state. It cannot share this competence with interest groups, as this would be unconstitutional. For instance, the Economic and Social Council, a negotiating platform for social partners, is granted

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<sup>57</sup> Apart from the expansion, the competences of the President also need to be better regulated. For example, Article 35 of the Bank of Slovenia Act (ZBS-1, Official Gazette of the Republic of Slovenia, no. 72/2006, consolidated version) is unconstitutional, since it stipulates that the central bank governor is appointed by the National Assembly based on a proposal by the President, although Article 107 of the Constitution (Official Gazette of the Republic of Slovenia, no. 33/91-I, and changes) says the President appoints state officials where provided by law while nominating candidates is limited to an exhaustive list (Constitutional Court judges).

<sup>58</sup> The current condition of an absolute-majority vote in the National Assembly for launching an impeachment process has proven to be flawed, since it is based on the President's political support. In the proposed presidential impeachment in 2010, the National Assembly rejected the motion, so the Constitutional Court did not get to review the alleged wrongdoing. Since a Constitutional Court judge from that period later told the author of this chapter that the President's chances of surviving a constitutional review were very slim, it is clear just how inappropriate the impeachment process currently in force is.

authority in Slovenia to an extent that it should not have.<sup>59</sup> Employers' associations and trade unions may present their positions on economic and social issues—this is in line with participatory democracy and is desirable—but the final decision must lie solely with the government, which is the only one to also bear the consequences of decisions. The government must establish such authority, and other members of the Council must accept it.

Another concept that is often abused is autonomy of universities, which stakeholders like to stretch to infinity. The government must set a clear boundary that autonomy means all scientific and expert staff have the right to publish, lecture and publicly pass on their views<sup>60</sup> without the state interfering as to what content should be included in scientific publications and lectures, and with the state providing a supporting environment that they need for their work. This is where university autonomy ends. However, when we talk about the system of funding, priorities with regard to content, the organisation of the higher education system and relations to private higher education institutions, any limiting of the powers of the executive and legislative branches is unacceptable (apart from peaceful presentation of one's position on these issues). It is self-evidently the state's prerogative, not that of universities, to determine how many students can enrol in a particular study programme in a given year, and adapt this number according to societal needs. The same goes for discontinuation of programmes for which the society turns out to have no need, or are unviable. At the same time, scientific autonomy needs to be clearly limited to research results, also with respect to the content of scientific work. The state—and in its name the executive branch of power—has the authority and duty to support through public funding the research that is beneficial for the society and provides its bodies with the grounds for taking decisions based on expertise. This does not mean, however, that scientific institutions' staff are free to use public money to research whatever they find interesting and whatever they wish to research if it does not manifest in some kind of benefit for the society. This should be limited to their free time and own funding.<sup>61</sup>

A similarly broad interpretation is common with respect to the independence of the judiciary. Its independence from the other two branches is necessary when it comes to concrete rulings (e.g. conviction/acquittal in criminal cases, winners/losers in civil cases). But the independence certainly does not extend to areas like the organisation of courts, staff numbers, norms for judges, justices' pay, conditions for promotion, (organisational/administrative) supervision, etc. This is an integral and necessary part of the competences of the executive branch (and in part the legislature). Limiting this authority by invoking judicial independence is like preventing any trial against members of parliament or government for criminal acts (e.g. murder) by arguing that this would be an intervention of the judiciary into these two branches' independence.<sup>62</sup>

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<sup>59</sup> See e.g. *ESS opozarja Pahorja na svojo vlogo pri oblikovanju dokumentov*, 2010, <https://siol.net/ess-opozarja-pahorja-na-svojo-vlogo-pri-oblikovanju-dokumentov-64637>.

<sup>60</sup> As part of this particular right, this refers to scientific findings, while the right to publicly declare personal views is derived from a different constitutional provision. And the distinction between the two must be clear.

<sup>61</sup> See e.g. Lovro Šturm (Ed.), *Komentar Ustave Republike Slovenije*, Brdo pri Kranju, Fakulteta za podiplomske državne in evropske študije, 2002 and 2011; Lucija Čok, *Avtonomija univerz: kako daleč seže 58. člen ustave*, 2014, <https://www.delo.si/mnenja/gostujoce-pero/avtonomija-univerz-kako-dalec-seze-58-clen-ustave.html>.

<sup>62</sup> See e.g. Matej Avbelj, *Sodstvo: obupani klici na pomoč!*, 2017, <https://www.finance.si/8860825>; Matej Avbelj, *Išče se Francka*, 2016, <http://www.iusinfo.si/DnevneVsebine/Kolumna.aspx?id=179597>.

The opposite, meaning too narrow but no less wrong and harmful is the common interpretation of the separation of church and state from Article 7 of the Constitution. In Western democracies, this principle has two meanings: (1) separation of power (state officials are not appointed by representatives of religious communities, and church dignitaries are not appointed by the state), and (2) separation of legal systems (e.g. the jurisdiction of state regulation and courts in general issues, and church tribunals in internal matters). Contrary to this, the principle is interpreted in Slovenia more broadly as exclusion of religious communities from public life. Not only does this interpretation violate the rights of religious communities granted by all three provisions in Article 7 of the Constitution (freedom to pursue their activities, separation not exclusion, and equal rights—in line with the principle of equity and their role in the society, not all religious groups are treated equally), as well as individual freedom of religion guaranteed by Article 41 of the Constitution, but it also hinders the functioning and development of the state and the society. In view of every individual's right to manifest their religion publicly and live according to their religious beliefs, obstructing religious communities from playing an active role in areas like charitable activities, social services, education, work with disadvantaged groups, management of cultural heritage, as well as a principled and critical attitude towards the state, does not benefit an open, free-thinking and free society.<sup>63</sup>

Another special issue is freedom of the press. The media have the right and freedom to research and publish stories that may be undesirable to any or all of the three branches of power. They also have the right to moral judgement. But this does not give them the liberty to publish false information, manipulate or falsify them and tamper with equal treatment. People working in the media should avoid passing on their own views, or letting them influence their work, but whenever this does happen, personal views should be clearly marked as such. With regard to this, all three branches of power have the right to set clear, legally sustainable and universal limitations. The executive is responsible for financially supporting the media, which must serve to foster plurality and diversity on the media landscape. This means providing special support to views that are less present in the society, and not to the media that align with the conceptual framework of the ruling parties and offer them political support.<sup>64</sup>

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<sup>63</sup> See e.g. Lovro Šturm (Ed.), *Komentar Ustave Republike Slovenije*, Brdo pri Kranju, Fakulteta za podiplomske državne in evropske študije, 2002 and 2011; *Pravniki zaskrbljeni zaradi prirojenih razlag ločive države in Cerkve ob blagoslovu OŠ Polica*, 2017, <https://www.domovina.je/pravniki-zaskrbljeni-zaradi-prirojenih-razlag-locitve-drzave-in-cerkve-ob-blagoslovu-os-polica/>; Danilo Türk, *Ločenost države in cerkve nikakor ni izločenost*, 2010, <https://www.delo.si/novice/slovenija/t-rk-locenost-drzave-in-cerkve-nikakor-ni-izločenost.html>; *Ločitev med državo in Katoliško Cerkvijo ter njeno financiranje*, 2012, <https://katoliska-cerkev.si/locitev-med-drzavo-in-verskimi-skupnostmi-ter-njihovo-financiranje>.

<sup>64</sup> See e.g. *Svoboda medijev ena od najbolj ogroženih vrednot sodobne demokracije*, 2018, <http://www.rtv slo.si/slovenija/svoboda-medijev-ena-od-najbolj-ogroženih-vrednot-sodobne-demokracije/453709>; Nenad Glücks, *Ob dnevu svobode medijev o najhujšem posegu v svobodo slovenskih medijev v zadnjem letu*, 2018, <https://reporter.si/clanek/slovenija/ob-dnevu-svobode-medijev-o-najhujšem-posegu-v-svobodo-slovenskih-medijev-v-zadnjem-letu-636497>; Tino Mamič, *Svoboda medijev v Sloveniji je močno okrnjena*, 2014, <https://tinomamic.blogspot.com/2014/03/svoboda-medijev-v-sloveniji-je-mocno.html>; Boris Vežjak, *Reporter in cenzura napovednika na TV Slovenija*, 2017, <https://vezjak.com/2017/03/20/reporter-in-cenzura-napovednika-na-tv-slovenija/>.

### e) Decentralisation and deconcentration

Strong centralisation is a major problem in Slovenia—although the country is far from an isolated case of this phenomenon, which is widespread in particular across post-communist countries. We are witnessing a constant process of more and more (public) offices, public services and decision-making processes concentrating only in Ljubljana. Consequently, the private sector is also increasingly moving to the capital. This leads to more and more young people settling down in Ljubljana after finishing their education, more and more people having to move to Ljubljana at later stages in life, as well as a growing number of daily commuters from all parts of the country to Ljubljana and its vicinity. The results of this include enormous growth in real estate prices in the capital, both for purchase and lease<sup>65</sup>, an increasing strain on road infrastructure, jams and chaos in traffic, but above all a growing development gap between Ljubljana and the rest of Slovenia, with anything outside the capital becoming peripheral.

Along with the great and increasing differences in conceptual frameworks and lifestyles between the capital and other parts of the country that are a general feature in many countries, the situation in Slovenia is marked by at least two other specific historical conditions: (1) As part of the Austro-Hungarian province of Carniola, Ljubljana developed without a distinctively intercultural and multi-ethnic experience that was self-evident for the inhabitants of other mostly Slovenian provinces, and the city still has not managed to overcome its provincialism. (2) During and after WWII, Slovenia lost almost all of its bourgeois population, so today's population of Ljubljana (and other Slovenian cities) is predominantly post-proletarian, and is not up to the role of a culturally elevated class. Consequently, as is typical of all capitals, the attitude of Ljubljana towards the rest of Slovenia is expressly belittling, and the capital very rarely floats initiatives and positive policies aimed at the entire territory and population of Slovenia.

Slovenia urgently needs decentralisation and a reform of local government.<sup>66</sup> This of course falls in the domain of the legislative branch. Introducing an appropriate number of regions (on historical and economic grounds), where part of the competences from the national and local levels should be transferred, would make it easier to adjust the number of municipalities more appropriately—either reducing their number, or lowering (halving) the criteria for their establishment and giving them fewer competences, less staff and much more limited budgets. In terms of development, it would be optimal to set the centres of the regions in smaller towns instead of the already established centres (e.g. the main centre of the Primorska Region in southwestern Slovenia should not be Koper or Nova Gorica, but Štanjel, Vipava or a town of similar size), which would provide them with an additional boost. To make this easiest and offer the best possibilities for well-prepared proposals, draft changes to the relevant regulations should be prepared by the government and sent to parliament for debate and approval.

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<sup>65</sup> See e.g. David Kos, *Ne samo cene nepremičnin, v Ljubljani rastejo tudi najemnine*, 2018, <https://siol.net/posel-danes/osebne-finance/ne-samo-cene-nepremicnin-v-ljubljani-rastejo-tudi-najemnine-463062>.

<sup>66</sup> See e.g. Stane Vlaj, *Regionalizacija Slovenije – izzivi in dileme*, Maribor, Lex localis: revija za lokalno samoupravo, vol. 5, no. 4, 2007, pp. 19–39; Gorazd Kosmač, *Je 212 občin za Slovenijo preveč ali premalo?*, 2018, <http://www.rtvsllo.si/slovenija/je-212-obcin-za-slovenijo-prevec-ali-premalo/467478>.

Moreover, it would be good to also disperse other state bodies around the country in cooperation with the legislature where this falls under its jurisdiction (decentralisation), or by own decisions when it comes to areas in the power of the executive branch (deconcentration). There is no reason why the Constitutional Court, the Supreme Court and the Office of the State Prosecutor General should all be based in Ljubljana. To enable equal opportunities around the country, it would be preferable not to move these (and other) institutions to cities like Maribor, Celje or Koper, but rather to towns such as Mežica, Postojna, Murska Sobota (similar to Germany, where the Constitutional Court is based in Karlsruhe, not Berlin). This way, the distance from the centres of power would also increase the impression of impartiality. The same principle should be applied to all state bodies, state-owned agencies and institutes. In line with the subsidiarity principle, the capital should only host what cannot be placed anywhere else.

#### **f) Reputation of members of the executive branch**

Although there is general support in Slovenia for the populist view that the salaries of politicians (members of the legislative and the executive branch) are too high and should be reduced to bring them closer to the “ordinary” citizens (even calls to put politicians on a minimum wage get a lot of traction<sup>67</sup>), the opposite is true. The salaries of both deputies and ministers are so low that someone moving into politics from a well-paid (but honest) job could see their income or family budget substantially affected. As a result, the most creative part of the society is not easily persuaded to enter politics. This should not be understood as a pursuit of material interests, but rather as pragmatism in creating the best possible conditions for one’s personal life and the life of one’s family. Aside from salaries, we also should not forget the public exposure and the general negative attitude towards politicians. Typical examples of this are the frequent generalisations in the media that “no politician is an expert in anything”, that “all politicians only think of themselves”, that “all politicians do is quarrel, regardless of what is best for the people”, etc. Such labels are *a priori* unjust, since they exclude the possibility of any politician falling outside these stereotypes. Without overcoming these, we can hardly expect a shift in the quality of the composition of Slovenian political bodies.

The government and the legislature should have enough political courage to notably raise the salaries of deputies, ministers and state secretaries, and achieve a clear understanding in the society that this is a matter of implementing sovereignty and statehood. At the same time, state institutions should stop allowing the media and the public to spread populist manipulations on economising (where and how often ministers and state secretaries can travel, which ministers may have their own driver, etc.), and should spread awareness in the public that such expenditure is in the general interest and necessary for normal and optimal functioning of the state.

The reason for this situation is also the common human inability to distinguish the scales of different amounts. For an ordinary citizen, it is therefore equally emotionally disturbing to hear

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<sup>67</sup> See e.g. *Minimalne plače politikom – včeraj v novicah*, 2013, <https://med.over.net/forum5/viewtopic.php?f=151&t=9037551>.

of a monthly salary of €3000 as it is of €3bn being spent on a misguided investment or going missing. However, political decision makers should not fall for such notions.

Another practice from the past that makes no sense is pompously reducing and silently increasing the number of people ministers can hire directly for their office. A few of a minister's closest co-workers more or less makes no major impact on the budget, but they can contribute greatly to the minister performing their duties effectively, since these are the people the minister can rely on the most. However, some safety mechanisms do need to be put in place to prevent such jobs being awarded to incompetent people from the minister's party, or people with personal ties to the minister. The first step would be to at least make it mandatory to publish on the website of the ministry the name, photo and CV of every staff member hired to the office of the minister. Another important step towards greater quality of staff would be to prohibit turning such appointments to ministers' offices into permanent jobs mid-term.

Initially, all these moves would surely be subject to great resistance, but this should be understood in the context of jealousy, which is a widespread human trait and is proverbially particularly common among Slovenians. Nevertheless, such appointments could offer important leverage for building and fortifying a better reputation of politicians. The vicious circle could thus be turned around by making it easier to get individuals who are better situated, competent and respectable into active politics. And this would in turn start rebuilding trust in politics and politicians.

#### **g) What is more and what is less sovereignty?**

Although the frequent cries of nostalgia for the former larger and undemocratic federal republic in the Slovenian public would have us believe people take little pride in being Slovenian, resistance to foreign influence is also an indicator of identification with one's own country. In this sense, the public's emotional reaction of having to retain property "in Slovenian hands" takes precedence over rational thinking that if property is used better, it can serve the society even more regardless who actually owns it. Apart from the constant reluctance and limiting of privatisation, this transpired quite clearly in the dismissal of highly competent foreign managers of the so-called bad bank.<sup>68</sup> However, precisely the inclusion of foreign experts would be the easiest way of at least limiting if not ending bad practices. Engaging groups of experts that would not be subject to political influences in assessing appropriateness, determining public funding and priorities in areas like healthcare, culture projects and infrastructure, science and higher education, fostering media plurality and an inclusive media landscape, supervising the work of the judiciary, privatisation, or optimising and streamlining the public sector would actually increase the sovereignty of the Slovenian nation in its country, since arguments for a better life of the most people would prevail over the influence of interest groups.

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<sup>68</sup> *Revoltirana anketa: Vodstvo slabe banke je ogrozilo interese elite*, 2015, <https://www.delo.si/revolt/revoltirana-anketa-vodstvo-slabe-banke-je-ogrozilo-interese-elite.html>.

A greatly underutilised opportunity in this area is the Slovenian diaspora. Economist and writer Dr Marko Kremžar, a leading thinker of the Slovenian diaspora in Argentina, has said<sup>69</sup> the life energy of the Slovenian community in Argentina started to wane after Slovenia became democratic and independent, when other countries that also broke free from the yoke of communism at that time (e.g. Croatia, Hungary, Poland, Slovakia and the Baltic states) invited its diasporas to help rebuild their newly democratic homelands. In Slovenia, this never happened, which was a bitter disappointment for Slovenian emigrants, according to Kremžar. This historic opportunity is now gone, but it is not too late to use the resources that are still available today. The half a million members of ethnic Slovenian communities outside its borders offer important qualities and advantages of knowing the social systems of other countries, since they are highly integrated into the societies where they live, but they still feel a tangible bond with Slovenia and often speak Slovenian (even in the second generation). Their knowledge of both the country where they live and the Slovenian system could be the easiest way to introduce modern practices in Slovenia by including them in relevant expert commissions and panels.

#### **4.4 Conclusion**

This chapter and the entire publication focus mainly on the legal aspects of the branches of power in Slovenia. The chapter does not deal explicitly with policy issues that will be facing the government in the near future, although they too are paramount. Issues such as developing a long-term demographic strategy, sustainability of public finances, withdrawal of politics from economic processes through privatisation, etc., are first and foremost the responsibility of the legislature. But given the imperfect separation of powers in Slovenia, the executive branch will also play a key role in these areas. A major challenge for both branches will certainly be to get the public sector in order, where the number of employees is too high (particularly in the general government sector), efficiency is low, and the pay ratio between the public and private sector is too high compared to other countries.

We have stressed several times that reforms can only be implemented by a strong government. This is in no way meant as an authoritarian type of rule and concentration of political power in the hands of an individual or a small group of people, but rather the contrary. Slovenian society needs to gain in plurality, making it something completely natural that political actors at the top change. The government must be strong in that it is made up of individuals who have the courage to perform the tasks the executive is entrusted with, and to implement (even the unpopular) policies that will make the state more vital and flexible. In other words: we need people who care more about a place in history books than their result in the next election or a guaranteed job after their stint in office.

It appears that today Slovenia is stuck in a vicious circle, in which the anomalies presented in this publication feed, maintain and support each other, and prevent any change from taking place. But we should not be too pessimistic. In today's information society, it is getting harder and harder to filter information and keep it from reaching voters. Progress may be slow, but

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<sup>69</sup> Personal interview of the author with Kremžar conducted in May 2017 in Buenos Aires, Argentina.



there is no other way than hoping that despite all the distractions the electorate may pursue the necessary changes.

## 5 Reform of the Slovenian judiciary

### 5.1 Overview of the current state

Assessing the functioning of the judiciary in Slovenia is not a clear-cut matter, and views on this issue differ substantially. Those at the helm of the judiciary, including the ministry, claim that the state of this branch is at least exemplary, and the trend is explicitly positive.<sup>70</sup> They substantiate this with their own reports<sup>71</sup> and the findings of certain international organisations, including the Council of Europe, which has established that court backlogs are no longer a systemic problem in Slovenia.<sup>72</sup> Political parties and commentators, on the other hand, are quite split on this issue. The ruling parties and those usually categorised on the left of the political spectrum mostly assess the work of the judiciary as positive. On the other hand, opposition parties are much more critical. Some have even started denying the justice system all professional legitimacy, calling it an “injustice system”. There is also a split among stakeholders in the judicial branch themselves.<sup>73</sup> Legal academia is traditionally very reserved when it comes to assessing the performance of the three branches of power, including the judiciary.<sup>74</sup> But similarly to political debate, legal academia is divided into those who see the state of the Slovenian judiciary as mostly positive, blaming its shortcomings mainly on politicians and the media<sup>75</sup>, and those who are much more critical of its work.<sup>76</sup> Here, we need to stress that—unlike sometimes perceived by the public—this division within the academia does not primarily follow political lines or worldview, but is rather more generational, with the older generations of lawyers seeing the work of the judiciary more positively and the younger generations more critically.

Just as beauty lies in the eye of the beholder and each of us finds it somewhere else, so do different interest groups (the judiciary, politicians and academia) have different interests. It is often hard, if not impossible, to find a common denominator among them. And seeking one in a pluralistic society makes no sense, as it is by definition characterised by differences. However, the existence of differences does not make everything in a pluralistic society relative. There is

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<sup>70</sup> Vrhovno sodišče, *Odločbe ESČP zoper Slovenijo predvsem zaradi postopkov pred letom 2006*, 2015, <http://www.sodisce.si/vsrs/objave/2015081910080003/>; Vrhovno sodišče, *Na slovenskih sodiščih se nadaljujejo pozitivni trendi*, 2017, <http://www.sodisce.si/vsrs/objave/2017121511402859/>.

<sup>71</sup> Vrhovno sodišče, *Sodstvo potrebuje stabilno in predvidljivo pravno okolje*, 2018, <http://www.sodisce.si/vsrs/objave/2018021414255300/>.

<sup>72</sup> Aleš Malerič, *Klemenčič: Sodni zaostanki niso več sistemska težava*, 2016, <https://www.rtvlo.si/slovenija/klemencic-sodni-zaostanki-niso-vec-sistemska-tezava/409368>.

<sup>73</sup> Branko Masleša, *Mehki trehuh slovenskega sodstva*, 2012, <http://www.delo.si/mnenja/gostujoce-pero/mehki-trehuh-slovenskega-sodstva.html>; Branko Masleša, *Sodniško togo je treba znati nositi*, 2012 <http://www.delo.si/mnenja/gostujoce-pero/sodnisko-togo-je-treba-znati-nositi.html>.

<sup>74</sup> Matej Avbelj, *(Vodo)tesnost slovenske pravniške stroke*, 2014, <https://www.insolvinfo.si/DnevneVsebine/Kolumna.aspx?Id=117892>.

<sup>75</sup> Urška Makovec, *Kaj je narobe s slovenskim sodstvom*, 2015, <https://siol.net/novice/slovenija/kaj-je-narobe-s-slovenskim-sodstvom-227149>.

<sup>76</sup> See e.g. Matej Avbelj, *(Ne)pravna država: zapisi o zadevi Patria*, Ljubljana, GV Založba, 2015.

always some intersubjectively recognised or at least internalised view that defines and characterises a given society in an objective sense. With respect to the work of the judiciary in Slovenia, this intersubjective perception manifests itself in a very high level of mistrust of the justice system. According to the most critical research data, particularly the special Eurobarometer survey from April 2017, as many as 84% of respondents do not trust the Slovenian judiciary.<sup>77</sup> Doubts in its independence and unbiased work are widespread both among the general population and particularly among businesses. Although representatives of the judicial branch stress that those with direct experience with the judiciary trust it more than the general population<sup>78</sup>, this does not change the fact that trust in the judiciary in Slovenia is below critical level.

Trust is a constituent element of institutions' legitimacy in a given society, and only institutions with legitimacy can create positive societal effects.<sup>79</sup> In the absence of legitimacy, institutions must resort to force and coercion, but this is not compatible with the nature of constitutional democracy, and is bound to spur resistance among people. Trust as a source of legitimacy is all the more important for the work of the judiciary, which as we know possesses neither the purse nor the sword. Therefore, all of its authority is based on the trust people have in it. Trust means the readiness of the subject of a court decision and citizens in general to voluntarily accept court decisions and adopt the judgement as their own.<sup>80</sup> This is a definition of courts' legal authority, which cannot exist in critical absence of trust in the judiciary. Trust in the judiciary—not to be confused with its popularity, for which neither the judiciary nor the state in general should compete—is thus the source of the judiciary's institutional legitimacy, the precondition of its authority and therefore a key building block of its actual success or failure in a given society. When trust in an institution of power, particularly the judiciary, declines to a level as low as in Slovenia, this critical state demands a serious analysis of the causes, and accordingly deep and thorough reform measures to improve the situation.

## 5.2 Reasons for the current state

### a) Introduction

The critically low trust in the Slovenian judiciary is the result of its limited input, procedural and output legitimacy, stemming from the normative and sociological level of both the historical and present context of the judiciary's work in Slovenia.

The judiciary's input legitimacy depends on the people it consists of—the judges, and reflects the meritocratic quality of judicial staff. The higher the expertise and professional integrity of the staff, the higher the input legitimacy of the judiciary. And the other way around. Input legitimacy is ensured by the way judges are selected, as well as through supervision of their

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<sup>77</sup> European Commission, *Special Eurobarometer 467*, 2017, <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/ResultDoc/download/DocumentKy/80645>.

<sup>78</sup> Vrhovno sodišče, *Raziskava o zaupanju javnosti*, 2016, <http://www.sodisce.si/vsrs/objave/2016071414213080/>.

<sup>79</sup> Francis Fukuyama, *Trust: The Social Virtues and The Creation of Prosperity*, New York, Free Press Paperbacks, 1996.

<sup>80</sup> Joseph Raz, *Authority of Law: Essays on Law and Morality*, Oxford, Oxford University Press, 1979.

work and expertise by means of both internal and external quality assurance mechanisms. Procedural legitimacy of the judiciary has the role of removing arbitrariness in judicial proceedings, both the actual and the perceived. Proceedings must be conducted in a manner that is fair towards all the parties involved, and courts must also strive at all times to maintain the perception of a fair trial. This must be observed from the moment a court receives a case, through the assigning of a natural judge and all the way to the judge's independent and unbiased ruling in the case. Finally, output legitimacy is reflected in the quality of services of Slovenian courts.

## **b) Historical context**

Prior to 1991, Slovenia was under a communist regime, which the Constitutional Court has labelled several times as totalitarian and one that must be denounced.<sup>81</sup> The judiciary was a constituent part of this system, both on the normative and the sociological level. In the normative sense, the absence of the principle of separation of powers meant the judiciary was not set up as an independent branch. Independence and impartiality of the judiciary and individual judges were not guaranteed. Furthermore, judges did not have life tenure. As part of its political monopoly of power, the Communist Party also controlled the judiciary, both politically and in terms of staffing, as well as leadership within the judiciary. In the sociological sense, the totalitarian regime created a special judicial, or in fact comprehensive legal mentality that grew into a new socialist, or so-called third legal tradition.<sup>82</sup> It is characterised by: the conception of law as an instrument of the ruling class and political elites, collectivism, bureaucratisation and massification, division of work (within a family) and a resulting feminisation, systematic avoidance of decision making and related responsibility, sticking to the letter of the law and strict legal formalism resulting in low esteem for the judicial post among lawyers and even more so among the general public.<sup>83</sup>

In line with the will of the people, the creation of an independent Slovenia brought a symbolic break with the previous totalitarian regime and a break with its values. However, the break in the judicial area was extremely flawed in terms of staff, organisation and mentality. In this sense, the Supreme Court was chaired until 1993 by a prominent member of the League of Communists of Slovenia.<sup>84</sup> Furthermore, a large majority of the previous temporary judges from the communist system were uncritically appointed for life tenure in a model of some kind of staff factory<sup>85</sup>. Moreover, many experienced judges turned to the more lucrative career as advocates after the country became independent, which only made matters worse in terms of meritocratic understaffing of the Slovenian judiciary.

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<sup>81</sup> See Constitutional Court decisions: U-I-69/92, Official Gazette of the Republic of Slovenia, no. 61/92; U-I-158/94, Official Gazette of the Republic of Slovenia, no. 18/95; Up-301/96, Official Gazette of the Republic of Slovenia, no. 13/98; U-I-248/96, Official Gazette of the Republic of Slovenia, no. 76/98.

<sup>82</sup> Alan Uzelac, *Survival of the Third Legal Tradition*, Supreme Court Law Review (2010), 49 S.C.L.R. (2d), 377-396.

<sup>83</sup> Ibid.

<sup>84</sup> Matej Avbelj, *Išče se Francka*, 2016, <http://www.iusinfo.si/DnevneVsebine/Kolumna.aspx?id=179597>.

<sup>85</sup> Alenka Leskovic, *Deset let pozneje*, Ljubljana, Pravna praksa, no. 18, 1999, p. 33.

The weak break with the previous system can also be attributed to an obvious lack of readiness of governments to build strong and robust rule of law institutions. The newly established state did not invest in setting up strong public institutions, but rather allowed the establishment of a reverse trend of institutional decay. This trend was a result of inappropriate staffing, based on equality as a denial of meritocratic differences. The latter was pushed by a relativist agenda, fuelled by systematic avoidance of responsibility, which it also further encouraged. The result, and maybe even the desired goal, was and remains systemic ineffectiveness.<sup>86</sup> Here, it is worth noting that the biggest efforts of institutional undermining on the level of management and the symbolic level were directed against the Supreme Court. In Slovenia's history as a democratic country, the top institution of the judicial branch was left without a president for a longer period three times. The first time for as long as three years, the second time for nine months and the third time for three months.<sup>87</sup>

The already weak system of Slovenian judicial institutions was set in a specific Slovenian sociological and psychological legal context that is also historically conditioned and could be called the Slovenian crony justice.<sup>88</sup> The term refers to a system of informal ties among different actors in the judicial system, which can significantly and sometimes decisively affect the outcomes of even the least important disputes in courts, where proceedings maintain the impression of following the letter of the law, with complete independence and impartiality. This cronyism in the justice system includes several dimensions of ties: family, friends, business and power. The conditions for the spread of this crony justice in practice are: a relatively small community of legal experts, low internalisation of professional ethics, solidarity within the profession instead of sanctions, relative ideological homogeneity of stakeholders, and a feeling and practice of (involuntary, at least in the beginning) being part of a "dirty togetherness".<sup>89</sup> Thanks to the country's long illiberal tradition, which peaked in the time of the communist regime, these conditions are strongly established in Slovenia.<sup>90</sup>

### c) Present context

Despite the permanent mark that the communist system left on the Slovenian society, which also means lawyers, law and the judiciary, we can hardly still blame the former system for the problems of the Slovenian judiciary almost three decades after its downfall. So neither can the solution to these problems be sought, let alone found, in lustration.

The fundamental problem of the Slovenian judiciary today is that it has largely retained its *forma mentis* and *modus operandi* from the time of the previous regime. With respect to mentality, this is the psychological attitude of dependence on and servitude to superiors, while

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<sup>86</sup> Matej Avbelj, *Pravni mit 9: Institucionalno gnitje Slovenije*, 2016, <https://www.finance.si/8846319>.

<sup>87</sup> Matej Avbelj, *Išče se Francka*, 2016, <http://www.iusinfo.si/DnevneVsebine/Kolumna.aspx?id=179597>.

<sup>88</sup> Matej Avbelj, *Pravni mit 6: Zakaj slovensko sodstvo ne more biti nepristransko?*, 2016, <https://www.finance.si/8844560>.

<sup>89</sup> Janine R. Wedel, *Dirty Togetherness: Institutional Nomads, Networks, and the State-Private Interface in Central and Eastern Europe and the Former Soviet Union*, *Polish Sociological Review*, no. 142, 2013, pp. 139–159.

<sup>90</sup> Matej Avbelj, *Pravni mit 6: Zakaj slovensko sodstvo ne more biti nepristransko?*, 2016, <https://www.finance.si/8844560>.

the mode of operation refers to the judiciary being a massive, work-intensive judicial apparatus that is shaped and works in a highly bureaucratic manner.<sup>91</sup> In other words, this means that the normative constitutional framework of an independent judiciary is in practice filled with a mentality and organisational content that are not compatible with today's constitutional concept of an independent judiciary, and even less with the idea of constitutional democracy itself. On the collective level, the judiciary, led by its top officials, started strengthening its role as an independent branch of power after the switch to democracy<sup>92</sup>, but the level of individual judges kept the system of dependence.

Today, the Slovenian judiciary is independent on the collective level in the systemic relation to the other two branches of power, while the independence of individual judges is ensured in law and practice to a much lesser degree. In practice, this means that judges as individuals are caught in an externally "independent" judicial team, but individually each judge is but a small wheel in the system run by its top officials. Already in the formal, but even more so in an informal sense, such a system only increases the dependence of individual judges and negatively affects their readiness to take responsibility for the judgements they pass, which in the end leads to court inefficiency. Such a system, by the nature of things, attracts individuals who are used to personal dependence, and drives away those who reject this position. Of course, a good judiciary needs the latter rather than the former, although in practice the nature of the system makes them the predominant group.<sup>93</sup>

Moreover, a judicial system like that of Slovenia does not encourage professional independence. On the contrary, judges are expected to serve the judicial system, to be loyal, and to have a refined understanding of how the system really works. In a massified judicial system, where individual judges serve the whole and not the other way around, it is therefore crucial who is at the helm of this whole.<sup>94</sup> Who is at the top of the judicial branch of power. Who is Chief Justice. Who chairs the higher, district and local courts. Who is in the Judicial Council and who chairs it. Who is responsible for education in the realm of justice. In a bureaucratic judiciary, these people wield much more power and influence than in a system of an independent judiciary and independent judges as individuals.

This system of a bureaucratic judiciary that Slovenia kept from Yugoslavia poses another great risk. It is the exact reason why the judiciary was intentionally bureaucratised in totalitarian systems. Any bureaucratised system is existentially dependent on formal and informal instructions from superiors, and this is also true of a bureaucratically shaped model of a collectively independent judiciary. On the other side, what counts in an independent judiciary comprised of intelligent, highly educated legal experts of great integrity are only the arguments

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<sup>91</sup> Matej Avbelj, *Pravni mit 5: Zakaj slovensko sodstvo ne more biti neodvisno?*, 2016, <https://www.finance.si/8844169>.

<sup>92</sup> On a similar note, see Alan Uzelac, *Survival of the Third Legal Tradition*, *Supreme Court Law Review* (2010), 49 S.C.L.R. (2d), 377-396.

<sup>93</sup> Matej Avbelj, *Pravni mit 5: Zakaj slovensko sodstvo ne more biti neodvisno?*, 2016, <https://www.finance.si/8844169>.

<sup>94</sup> *Ibid.*

that are really convincing in the legal sense. The independence of each individual judge is therefore the fundamental bulwark against interests outside law making their way into courts.<sup>95</sup>

As indicated, Slovenia has great difficulties in the area of procedural legitimacy, both in terms of its formal preconditions, but even more so with regard to informal factors, which in reality often completely distort even the proceedings that could have at least formally been conducted in line with procedural justice. This is another area where the Slovenian judiciary needs radical change in organisation, content and professional ethics. Something similar goes for output legitimacy, where it remains fact that Slovenian courts are inefficient, and the quality of too many judgements is at a very low level. Such conditions should call all three branches of power to responsibility, but above all the judiciary itself.<sup>96</sup>

### **5.3 Recommended solutions**

The rule of law is not a legal, but an ethical and moral social concept. Therefore, the rule of law cannot be established by law. No matter how many laws parliament passes or changes, this will not make the rule of law in Slovenia any stronger. It all depends on the people, their professional and personal integrity, as well as how the legislation that comes out of parliament is implemented in practice. The fundamental problem of the Slovenian judiciary is the deficit of meritocracy and integrity in the people who make up the third branch of power and the justice system in general, complemented by the fact that they work in a system that is distinctly institutionally understaffed. The key reform measure therefore refers to human resources and should be implemented both on the level of staff and the level of organisation of the Slovenian judiciary.

#### **a) Reform of the judiciary's organisation and staff**

On the level of staff, a system of appointing judges should be put in place that will ensure that the new and vacant positions are filled with the best legal experts. The constitutional requirement of judicial independence dictates that every judge should primarily be a person of high integrity, but should also be an autonomous and highly skilled legal expert, dedicated to lifelong education in law. This in combination with their outstanding personal and professional skills makes them capable of developing the institutional courage that is the groundwork for responsible and convincing authoritative decision making in disputes in court. A personally and professionally independent judge will also be independent in the legal sense. And a judiciary comprised of such judges will meet the conditions for independence in relation to the other branches of power, politics, and other formal and informal centres of power in the society.<sup>97</sup>

This can only be achieved if other reform measures are also taken at the same time, particularly those on the organisational and institutional level. In the organisational sense, Slovenia needs a

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<sup>95</sup> Ibid.

<sup>96</sup> Matej Avbelj, *Šibka (pravna) država, močna mafija*, 2017, <https://www.finance.si/8861196>.

<sup>97</sup> Matej Avbelj, *Pravni mit 5: Zakaj slovensko sodstvo ne more biti neodvisno?*, 2016, <https://www.finance.si/8844169>.

break with the tradition of a bureaucratic order and functioning of the judiciary. This calls for reducing the number of both judges and courts. Modelled on the best and most efficient European jurisdictions—with only three or four judges per 100,000 inhabitants, while the figure stands at 45 in Slovenia—the number of judges should be halved.<sup>98</sup> A similar reduction should be made in the number of courts, where we recommend an abolition of local courts. This would provide a more optimised judicial network, not only financially but most of all in terms of quality.

In order for the reduced number of judges not to lead to a lower efficiency of the judiciary and increased court backlogs, this measure should be accompanied by changes in how the judiciary operates. Following the examples of top courts in other countries and almost every international tribunal, Slovenia should switch from the model of trials where a judge needs to cover all tasks to a model involving court staff. In line with this model, every judge would be assigned permanent and temporary office staff for legal research. They would prepare all the necessary materials and would draft the legal documents based on which the judge would reach the final decision. Such an optimisation of justices' work is necessary in the digital post-industrial society where complexity is constantly increasing and division of work is inevitable. Hence, the proposed court office model would strengthen the professional position of individual judges, while the position of courts as institutions should be strengthened by setting up a special department in every court to provide comprehensive expertise, as well as comparative legal and technical support.

But most importantly, courts, and the Supreme Court in particular as the state's top court, should start dealing only with proceedings. All activities pertaining to court administration should be transferred fully to the Ministry of Justice. The mission of courts should be to introduce a reliable case law system in a few years, a decade or two. In such a system, court rulings would also constitute a formal legal source. And the Supreme Court would need to ensure that the case law is as unconflicting, clear and predictable as possible. This would result in greater legal security for individuals, greater predictability of legal relations, which would mean fewer disputes ending up in court and thus fewer backlogs. Consequently, the external impacts of the judiciary on all other social systems and subsystems would be much more positive than they are today.

## **b) Comprehensive reform of legal education**

The good judicial staff needed for this of course has to be created in a system of legal education. This is why we also need a reform of legal education, a reform of the bar exam and a reform of

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<sup>98</sup> According to CEPEJ data from 2014, there are as many as 924 judges in Slovenia, which means 45 per 100,000 inhabitants. In 2017, there were still 890 judges. Countries where the legal system is based on case law and where rulings are passed by judges who are top professionals with exceptional legal careers and whose reputation and knowledge are undeniable have as few as three or four judges per 100,000 people. The judicial systems of the UK and Ireland are two such examples, while Denmark and Norway are also not far from such figures. For the most recent data, see: Council of Europe, European judicial systems Efficiency and quality of justice, CEPEJ STUDIES No. 26, Strasbourg, Council of Europe, 2018, <https://www.coe.int/en/web/cepej/special-file-publication-2018-edition-of-the-cepej-report-european-judicial-systems-efficiency-and-quality-of-justice->.

lawyers' lifelong education, following the examples from comparative law and best international practice.<sup>99</sup>

The existing system of university law education is outdated, rigid, static and does not follow the needs of modern society. Professors continue to lecture *ex cathedra*, the time in university is focused on memorising legal provisions, and the tasks of students in class are limited to taking notes and acting as recipients of information. All this defines law courses in Slovenia, which are based on a monolith approach to law as a positive science, where all the answers are supposedly already provided and a good lawyer should simply learn them by heart.<sup>100</sup> Contrary to the current practice, law studies should be reformed so that professors engage students as active participants in class, teaching them in a horizontal relationship how to creatively solve legal problems. Law study programmes should teach students legal thinking, legal interpretation, legal writing and legal public speaking. Their mission should be to educate lawyers who think, are critical and creative, and whose ethical mission should be dedication to law and legal order, with the common good of Slovenia and Europe in mind. Such lawyers would no longer avoid taking on difficult cases that require legal value judgements and using complex ways of interpreting laws, since this would be an intellectual challenge for them and the very thing that makes the legal profession interesting.<sup>101</sup> This could shift the current strongly negative trend that is reflected in form of great pressures on the legislature to regulate as many potential legal situations as possible. The result of this trend is legal hypertrophy, which contributes to frequent changing of regulations, which not only leads to their poorer quality but also makes the work of courts and administrative bodies more difficult and more time-consuming. All this has a negative impact on the legal security of individuals and consequently their trust in law.<sup>102</sup>

To achieve a quality shift in the system of legal education, the state should immediately create the conditions for setting up an elite higher education programme in the field of law. This elite law studies programme should take only up to 30 Slovenian or EU citizens and ten citizens of other countries. The conditions for admission should be very high, and the programme should include a tuition, but all the admitted candidates should be awarded a scholarship in the amount that will at least cover the tuition fee. In the event of failing to finish the programme within the prescribed time period, however, they would need to repay this scholarship. The classes related to national law should be taught in Slovenian, while all other courses should be in English. Teachers should be the best Slovenian and foreign law professors, whose engagement would range from regular employment to contractual teaching of select modules. Such a legal studies programme, with students obliged to live on campus, would be carried out by the best Slovenian law school, chosen in a public tender. It would need to be accredited with a renowned American or European university, in cooperation with which it would also offer postgraduate programmes. The curriculum should be distinctly transnational (students should also be

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<sup>99</sup> The text originally appeared in a Slovenian article by the same author from 2012: Matej Avbelj, *Vzpostavitev predpostavk za nastanek in rast slovenske pravne države*, Ljubljana, Pravna praksa, no. 39–40, 2012, pp. 9–11.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

<sup>102</sup> Žiga Turk et al., *Vizija 20 + 20 – Prispevek k razmišljanju o prihodnosti Slovenije*, Ljubljana, Inštitut dr. Jožeta Pučnika, 2010, <http://www.planbzasslovenijo.si/upload/SRS/vizija-turk.pdf>.



required to take at least one semester abroad) and should combine both theoretical and practical knowledge. The latter should come in the form of so-called legal clinics of all kinds.<sup>103</sup> Here, it is crucial that all the dimensions of legal education include transnational elements: students, teachers and content, which must be provided in different languages—Slovenian and English, and if possible also in German and French.

In today's society, legal education can no longer be limited to a few years in university. It must include the necessary lifelong professional legal training as a condition to continue serving in the regulated legal professions. The state should therefore make lifelong education mandatory for key actors in the justice system: judges, prosecutors and advocates. The existing system of education within the Judicial Training Centre (JTC) is not systematic and not adapted to the specific needs of the target groups, which means it is neither efficient nor useful for its users. It is often merely an extension of influential stakeholders' teaching interests, and serves to use European funding more effectively, and even that mostly just on paper. Instead of a general JTC, the state should set up a judicial academy under a reformed Judicial Council. This judicial academy should be organised as a highly specialised educational institution for the judicial field, with the best Slovenian and especially foreign experts, both from practice and from universities.<sup>104</sup>

Education at this judicial academy should be obligatory, set as a condition for keeping a judicial post. It would be evaluated with credits, with every judge having to obtain a certain number of credits over a particular period of time (e.g. 1, 3 and 5 years) in order to keep their position and paygrade, or climb the career ladder. This education would be payable, and would either be financed entirely by the attendants themselves, or partly co-financed by their employers. With this measure, the state could ensure within five years of its introduction that judges are constantly in touch with top expertise, current affairs and global issues, and that this lifelong education is actually of high quality.<sup>105</sup>

Following the same model, academies for other legal professions for the state (prosecutors and state attorneys) should be formed under the Judicial Council, while a legal academy for other attorneys should be organised as part of lifelong education within the Bar Association. The academies would also serve for evaluating and certifying qualifications for working in the regulated legal professions. This would mean scrapping the current general bar exam. In its current very outdated form, the bar exam is only an artificial extension of legal studies, with candidates having to memorise the entire undergraduate curriculum once again and no added theoretical or practical value. For unregulated legal professions, a master's degree in law should suffice. To become a judge, prosecutor or state attorney, candidates would need to undergo a two-year active internship and a year of theoretical training within the relevant academy, followed by a profession-specific exam before the Judicial Council, tailored specifically for judges, prosecutors and state attorneys. This would provide legal experts that would, modelled on the French system, be trained specifically for each particular state legal profession. Their

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<sup>103</sup> Matej Avbelj, *Vzpostavitev predpostavk za nastanek in rast slovenske pravne države*, Ljubljana, Pravna praksa, no. 39–40, 2012, pp. 9–11.

<sup>104</sup> Ibid.

<sup>105</sup> Ibid.

state exams would also automatically count for the provision of attorney services, while those with only an attorney qualification would need to additionally pass the relevant state exam for working in a legal profession for the state. This would allow deregulating the profession of attorney, since the Bar Association would determine on its own the conditions and mode of entering the profession, as well as the envisaged system of lifelong legal education for attorneys.

### **c) Improving the constitutional reputation and professional appeal of the judiciary**

To increase trust in the judiciary among citizens, its reputation as a constitutional institution needs to be improved. But the judiciary must also be an encouraging environment for those who have found it to be their calling, and for the best future generation lawyers who would like to dedicate their careers to the judiciary. For this reason, courts need to be built as institutions also on the outside, in a symbolical sense. Most Slovenian courts, including the highest judicial institution in the country, work in inappropriate and unbecoming facilities. What is even more unacceptable, some courts, including the biggest one in Ljubljana, operate in leased buildings. This sends a symbolic message that the state and its institutions are not ready to focus their work on the long term. In practice, this demonstrates the weakness of the state and courts, as well as providing an even more problematic risk of conflicts of interest and even corruption.

The state should provide all courts with suitable premises that are worthy of the judiciary and are owned by the Republic of Slovenia. In Ljubljana, it would therefore be necessary to build a new courthouse as soon as possible that would be home to all the courts currently dispersed in different locations. The courthouse should be technologically advanced to provide the best conditions for the work of judges' offices as well as for the main hearings. Each judge should also have access to the newest information and digital technology. Contrary to the current state, these working conditions would make the judicial profession more appealing to the best lawyers. The latter should also be economically stimulated to pursue a judicial career. Reducing the number of justices and courts, cutting the millions spent on leases for court buildings, and excluding judges from the public sector pay system would set the conditions for a more stimulating awarding of judges. The elite judicial positions in the country should be filled by the best lawyers, and this should also be reflected in their salaries. Economic stimulation of judges, following the principle of good pay for good work, would make it easier for the judiciary to attract the best lawyers. This would help establish a reputation the judiciary deserves, and turn around the destructive trend of avoiding courts, even the Constitutional Court.<sup>106</sup>

### **d) Systemic supervision of deviations**

For a quality and well-functioning judiciary that will enjoy the trust of citizens, systemic supervision of any potential deviations needs to be in place. This supervision must be set up on both the internal and external level of the judicial system. Within the system, it is necessary to do away with the current practice of solidarity within the profession. This can be achieved with a shift in mentality from dependent independence to responsibility for independence. In

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<sup>106</sup> Ibid.

practice, this means that people with a real intention of changing this paradigm need to be appointed to the abovementioned top positions in the judiciary. The shift will be realised when there is a critical mass of justices and other actors who will autonomously ensure the actual standard of trials required under the normative order, while any deviation from them is strictly punished.<sup>107</sup>

But because all systems, and particularly the judicial system, have a natural tendency of closing ranks that is led by an internal survival instinct, the internal or endogenous supervision must be complemented by an external or exogenous one. The latter must take place on the expert, administrative and political levels. External expert supervision of the work of the judiciary must be entrusted to the Judicial Council. For this purpose, it needs to be developed into an independent, professional and long-term-oriented constitutional institution. The existing Judicial Council, whose compositional, organisational and institutional structure does not fit the requirements of the Constitution, needs to be completely reformed in terms of membership, organisation and institutional structure.

In terms of composition, we recommend a Judicial Council comprising nine members with nine-year terms. They should be the most esteemed legal experts, of whom three should be law professors, two former Constitutional Court justices, two former judges from international tribunals, one from the ranks of judges in service, and one representative of other judicial professions. The post on the Judicial Council should become professional. Decisions should be made with a two-thirds' majority. A two-thirds' majority should also be required for their appointment in the National Assembly upon nomination by the President. A Judicial Council formed this way would formally and actually (especially when it comes to appointments) lead the proposed reform of the judiciary with one single goal: achieving a long-term sustainable, self-invigorating and highly professional regular judiciary.<sup>108</sup> In the organisational sense, the Judicial Council should get its own expert, research and technical staff, working in premises becoming the role of the institution performing the constitutional task of supervising the judiciary.

Along with the Judicial Council, a special seven-member consultative body consisting of top-class Slovenian and foreign law experts should be formed for the purpose of appointing Constitutional Court judges and Slovenian candidates for members of international tribunals. This body would perform hearings with each candidate to determine their merit and expertise, as well as test their versatile competencies, and provide an exhaustive and detailed opinion to the President. Naturally, this opinion would not be binding, but both the President and the National Assembly would need to assume political responsibility if they went against it in their selection of a particular candidate.<sup>109</sup>

The supervision of the administrative work of the judiciary would be carried out by the Ministry of Justice, to which the entire court administration and technical management should be transferred. The government should be responsible for this both administratively and politically,

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<sup>107</sup> Matej Avbelj, *Največja laž?*, 2012, <http://www.iusinfo.si/DnevneVsebine/Kolumna.aspx?id=88261>.

<sup>108</sup> Matej Avbelj, *Zmanjšajmo slovensko sodstvo za pol*, 2017, <https://www.finance.si/8861953>.

<sup>109</sup> Matej Avbelj, *Kako postaneš ustavni sodnik – v Sloveniji?*, 2016, <http://www.iusinfo.si/DnevneVsebine/Kolumna.aspx?id=174047>.

since it is the government that bears the political responsibility for the entire state of the country, including that of the judiciary. If the judiciary is in bad shape, it is the duty of the government and the National Assembly to take the appropriate political measures to improve its functioning. This means that—within constitutional limitations, of course—political supervision of the work of the judiciary is admissible. Although an independent branch of power, it is still responsible for its work to the citizens, in the name of which it also passes its judgements.

For the purpose of expert and broader democratic supervision of the judiciary, which is a condition for re-establishing trust in the judiciary, it is necessary to ensure transparency of its work. Both the expert and the lay public must have the broadest possible access to the judiciary. All rulings of all Slovenian courts should be made public. At least the Supreme Court should allow the practice of separate opinions. As many public hearings as possible should be taped. Legal experts, particularly in the academia, should continuously provide commentaries to case law, which would contribute to its higher quality and uniformity. In this respect, all stakeholders, both in the practical and the theoretical sphere, should strive to overcome or at least reduce the naïve legalist belief that societal issues can be solved and eliminated only or mainly through law by passing ever new regulations.<sup>110</sup>

## 5.4 Implementation

In democracy, comprehensive reform of the judiciary is a matter of democratic political process, and therefore lies in the hands of elected political parties in parliament. This is why one of the greatest risks for a comprehensive reform is that the process gets politicised. As developments in Hungary and more recently in Poland have shown, politicians are sorely tempted when it comes to the judiciary to use the guise of reform to appoint their own loyal people. Such a “reform” outcome needs to be prevented, so Slovenia should avoid the examples of the two Visegrad countries.

How should it be done then? The first guarantee is the high qualified majority required to pass a proposed constitutional reform of the Slovenian judiciary. A two thirds’ majority (or 60 votes) would be needed in parliament, which means a very broad consensus across the aisle. However, such broad consensus is far from a perfect safeguard to prevent the Slovenian judiciary from being kidnapped again by a future party majority. On the other hand, it could just as well mean a threshold that is too high to actually get the reform through, which means staying with status quo.<sup>111</sup> Be as it may, every political party that really values the rule of law, regardless of its size, is obliged to contribute to a constructive political atmosphere that would on the one hand force current actors within the judiciary in the direction of the described reforms, and on the other, systemic level at least gradually contribute to setting the conditions for a more comprehensive reform.

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<sup>110</sup> Matej Avbelj, *Legalistična naivnost*, 2017, <http://www.iusinfo.si/DnevneVsebine/Kolumna.aspx?id=200423>.

<sup>111</sup> Matej Avbelj, *Zmanjšajmo slovensko sodstvo za pol*, 2017, <https://www.finance.si/8861953>.

Last but not least, another guarantee against politicisation of a reformed Slovenian judiciary would be to include an international element. Slovenia is highly integrated in the European constitutional space, and could invite the Venice Commission, the Council of Europe and the European Commission to monitor the entire reform of its judiciary. A poorly functioning judiciary in Slovenia also threatens the EU *acquis communautaire* and its underlying values, so these institutions could and maybe should be included in the proposed reform of the Slovenian judiciary.<sup>112</sup>

## 6 Media plurality and investigative journalism as the fourth branch of power

### 6.1 Pluralistic media, free press and investigative journalism

Pluralistic media and investigative journalism as the unofficial fourth branch of power are like water to the life of a democratic society. It is vital for the existence of democracy and the rule of law to not only allow but encourage the work of pluralistic media, which represent different views and opinions in the public sphere. A given constitutional democracy can function effectively in a mature and effective way if it creates and fosters critical and investigative reporting.<sup>113</sup> Or as former US Supreme Court judge Frankfurter pointed out, a “free press is indispensable to the workings of our democratic society”.<sup>114</sup> Free and pluralistic press allows the media to perform their public role through close scrutiny of every step of state authorities and the public administration. Only the presence of different opinions in the public arena enables a democratic society to mature through a longer period of time, particularly if its origins are undemocratic.<sup>115</sup> A balanced or at least sufficient presence of differing views must be found in both public and private media, since only a confrontation of different positions can show which argumentation is the most important and most convincing in a given issue of importance for the general public. In the case of *Mladina v. Slovenia*, the European Court of Human Rights clearly stated that “[a]lthough journalists are required to respect certain boundaries, in particular with regard to the reputation and rights of others, their duty is nevertheless to impart—in a manner consistent with their obligations and responsibilities—information and ideas on all matters of public interest”.<sup>116</sup> Moreover, it added that “journalistic freedom also covers possible recourse to a degree of exaggeration or even provocation, or in other words, somewhat immoderate statements”.<sup>117</sup> Freedom of the press is therefore very broad in order to allow the press to perform its checking role in a democratic and free society.

Pluralism and freedom are thus fundamental values for the work of the media in a modern and democratic country. It is well known that pluralism must be clearly present in the programmes of public broadcasters, which are financed by all tax-payers, and must therefore present a variety of different views and positions. Editors, journalists and other staff must leave their

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<sup>112</sup> Ibid.

<sup>113</sup> C. Edwin Baker, *Media, Markets and Democracy*, Cambridge, Cambridge University Press, 2002.

<sup>114</sup> *Associated Press v. United States*, 326 U.S.1, 28 (Frankfurter, J.; concurring).

<sup>115</sup> See Jan Oster, *Media Freedom as a Fundamental Right*, Cambridge, Cambridge University Press, 2015.

<sup>116</sup> *Mladina d. d. Ljubljana v. Slovenia*, application no. 20981/10, 17 April 2014, paragraph 39.

<sup>117</sup> Ibid, paragraph 40.

ideological hats at the door when entering their job, because their role is to work in the interest of all the people, and in a really, not only seemingly independent, unbiased and objective manner. But it is just as important, or maybe even more so, to have pluralism in the entire public arena, meaning also all kinds of private media outlets, from radio and television to print and online media. Pluralism enables constitutional democracy and the rule of law to work by keeping an eye on all three official branches of power, as well as looking out for any irregularities or anomalies in the private sector.

In Slovenia, there is no media pluralism, neither in the public nor in the private sector. It is alarming that the programmes of the public radio and TV broadcaster do not offer a balanced presentation of different views in the society, nor do they attempt to do so. On a daily basis, public radio and TV stations mostly project only one ideological perspective, which is presented as neutral and meritorious. Day-to-day politics and different informal networks constantly affect the shaping of editorial policies and programmes of the public broadcaster RTV Slovenija. What is more, problems arise already when it comes to normative regulation of the public broadcaster, since the Radiotelevizija Slovenija Act allows<sup>118</sup> political control of both its supervisory bodies—the Programming Council and the Supervisory Board. Along with the political and other pressures from the outside, internal pressures at the broadcaster are just as problematic. Therefore, it comes as no surprise that different journalist associations and civil society organisations have been complaining for years if not decades about the one-sided ideological orientation of RTV Slovenija.<sup>119</sup> Some are even calling for a boycott of the mandatory license fee for the state broadcaster.<sup>120</sup>

On the other hand, most larger private media are in some way or another owned by tycoons who arose from the hijacked privatisation of the 1990s (e.g. Delo, Dnevnik, Slovenske novice and Večer), or their ownership structure is unclear (e.g. Pro Plus and Mladina), with some exceptions (business daily Finance), which casts doubt as to their programming and editorial policies. More recently, the media landscape in Slovenia has become even more complex, with the arrival of businesses directly related to ruling parties in neighbouring countries (e.g. investments from Hungary in TV outlet Nova24 and weekly Demokracija). In addition, there are a few online news sites that are related to the media houses mentioned above, or are in state ownership (Siol.net). But there are no media in Slovenia that would foster investigative journalism, aside from a few marginal online media outlets. This is understandable, since investigative journalism requires above all financial independence, which is a privilege hardly anyone on the Slovenian media landscape has. It therefore comes as no surprise that it has long been known that in the Slovenian media a relatively small amount can buy or prevent a publication of articles on a certain topic or person. This is why the Slovenian mainstream media

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<sup>118</sup> Radiotelevizija Slovenija Act, Official Gazette of the Republic of Slovenia, no. 96/05, 109/05 – ZDavP-1B, 105/06 – Constitutional Court decisions US 26/09 – ZIPRS0809-B and 9/14, Articles 1.7 and 26.

<sup>119</sup> ZNP – Združenje novinarjev in publicistov, *V ZNP ostro obsojamo zlorabo RTVS v politične namene!*, 2018, <http://www.znp.si/arhiv/484-v-znp-ostro-obsojamo-zlorabo-rtvs-v-politice-namene>; Stane Granda, *Združenje za slovensko besedo, Je odziv enak pri Dumančičevi in Možini?*, 2018, <https://spletnicasopis.eu/2018/08/18/pisma-direktorju-kdo-je-to-strasno-oko-ki-gleda/>.

<sup>120</sup> Gibanje Osveščeni Prebivalci Slovenije, *Množično vlaganje reklamacije za zavračilo plačila RTV prispevka*, 2014, <https://www.gibanje-ops.com/dejavnosti-gibanja-ops/drugacna-politika/604-mnoino-vlaganje-reklamacije-za-zavrailo-plaila-rtv-prispevka>.

do not run in-depth critical and investigative articles on certain business moguls, politicians or celebrities, because their social power allows them to prevent the publication of any negative article, and their network only generates positive reports.

All of this gives an outside observer the impression that Slovenia is just another one of those post-socialist or transition media spaces, where the social power of an individual or group plays the main part, while journalists fail to perform with care and diligence their role of keeping state authorities and the private sector in check. With only a few exceptions, journalists and the media mostly create a parallel social reality every day, reflecting the interests of their political, economic or other network, and presenting it as neutral and objective, even if it has little to do with the actual reality. The media thus constantly contribute to the preservation of the current state of affairs, and protect the acquired privileges of the ruling elites, which makes them accessories to the erosion of constitutional democracy and the rule of law in Slovenia.

In the context of the Slovenian society, the media are therefore failing at their task of being a watchdog, or the fourth branch of power, since they are one of the reasons why Slovenia's constitutional democracy has been functioning so poorly for decades. That is why they are incapable of performing their theoretically guaranteed supervisory role in the constitutional system of division of powers. Most people active in the Slovenian media do not perform this supervisory role, nor do they understand it particularly well. Their work is apologetic of the actions and behaviour of local and state authorities, they tend to favour unity of power and protect the interests of those in power, which means they are failing at their role in the separation of powers and in guaranteeing at least a shaky system of checks and balances in Slovenia's democracy and the rule of law.

Therefore, the fourth branch of Slovenia's democratic power needs thorough reform just as much as the other three, so it can perform its supervisory role. People working for the press should be aware of the essential watchdog role of the media in democracy governed by the rule of law. Editors, journalists and other staff of the public broadcaster in particular should avoid both internal and external political pressures on their reporting. And at the same time, journalists must take off their ideological hats when reporting, and strive to really be effective watchdogs. That is why also the fourth branch must internalise the underlying values of constitutional democracy, such as pluralism, freedom, responsibility and fairness.

## **6.2 Banal intolerance<sup>121</sup>**

Over the last few decades, a belief has been created in different layers of the Slovenian public space that you are not allowed to have your own position, particularly one that differs from the views of those in positions of power, be it in school, a hospital, a social work centre, public administration or politics. There, the prevailing view is that only one position can be right and there is no room for dissenting opinions. God forbid you should dare to express your own opinion, should it differ from the dominant one (i.e. the "right one"), let alone encourage debate

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<sup>121</sup> This is a revised version of an article that originally appeared as Jernej Letnar Čerňič, *Banalna nestrpnost*, Slovenski čas, April 2016, pp. 2–3.

and a confrontation of different views. It makes no sense if only one view is correct. People who dared or still dare oppose this dogma are rare. And when an individual or group does decide to stand up against the dominant view, this is quickly called hate speech, even when there is no trace of the constituent elements that define it, such as inciting hate or violence. The dominant centres of power label a particular view as hate speech simply because it conflicts with theirs, which is of course the only right one. Recent years have brought numerous such examples. But one that really stands out is the bizarre saga of a pro-life group of women that started gathering in front of the Ljubljana maternity hospital in early 2016 to pray for the aborted babies who will never get to be born. In a free and democratic society, only a few passers-by might have taken issue with this, dismissing it with a wave. But not in Slovenia, of course.

Much uproar arose, with many arguing that their gathering and prayers were unacceptable and spread hate speech against women's rights. On International Women's Day, the hysteria and wailing about the group were even joined by the Human Rights Ombudsman. Over the next month, calls against the group intensified and escalated to the point of people urging authorities to ban such gatherings. In a democratic society, such views and positions may well be legitimate as part of public discussion on important societal issues. Nevertheless, they show a complete misunderstanding of the concept of human rights and fundamental freedoms, particularly the rights to freedom of expression and freedom of assembly. A free democratic society requires confronting different views through argumentation, all the while staying tolerant and open-minded towards them, since only in public discussion can more convincing arguments crystallise. In a pluralistic society, where arguments must be exchanged in a tolerant manner, a group of ladies that chooses to assemble peacefully in front of a maternity hospital has a legitimate right to do so, a right that is protected by a series of fundamental constitutional and international documents. Instead of ensuring that human rights in Slovenia are protected in practice, the divide between the two main ideological sides is only being deepened. Slovenian media today—also through abuse of human rights rhetoric—remain a weapon for discrediting individuals and social groups. It is known that in Slovenia human rights are protected unequally, selectively and ineffectively. What constitutes a human rights violation for one ideological side, does not count for the other side. Which is exactly what makes a free and tolerant public discussion on important issues so necessary.

But if one ideological side is trying to prevent different views from being expressed and to exclude them from public discussion by pinning on them the label of hate speech, this is a sign that something is seriously wrong with this public space. Instead of having people with differing opinions confront each other in dialogue, this shows deep and subconscious misunderstanding and lack of knowledge about the protection of human rights. This way the human rights rhetoric is only used for the purpose of one's own specific goals. Where does the view calling for a ban on such gatherings and expression lead? Only to forced uniformity of thought, where only one view is acceptable also in real life, and even the rare individuals who dare say anything are silenced in the end. Not merely silenced, but persecuted for the words they say. Unfortunately, an indication of this can already be seen in certain cases of criminal prosecution of individuals in Slovenian courts in recent years. What the Slovenian society needs instead of different prohibitions and calls to ban free speech is to foster pluralism, openness and free thinking in expression, assembly and religion. "We really can't see what's bothering certain people and



groups so much in some ladies praying peacefully for life in front of the Ljubljana maternity hospital. The ladies were just praying anyway,” as one of my students said in class. Regardless of what each of us thinks as to when human life starts, we must maintain some kind of minimum level of civilised behaviour, so that our blood will not boil any time we pass a peaceful gathering we do not agree with, or our neighbour’s blue bike that we dislike, for that matter. So that we just shrug and go on if we disagree with the views that are expressed, and that we say it privately and publicly in a civilised way, and thereby participate in public discussion. Only through free confrontation of ideas, tolerance and actually dealing with important societal issues will the society become more mature and broadminded. Until then, the ladies should not let anyone scare them from continuing to gather in front of the hospital, since they are not only defending their beliefs but also contributing to more freedom in the Slovenian society.

### **6.3 Freedom of expression as a basis for public discussion in a free and democratic society<sup>122</sup>**

Most ordinary people in Slovenia are unhappy with the work of the executive and legislative branches, as well as the judiciary. They believe the decisions made by the executive and the laws passed by the legislative branch do not pursue the common good, but rather a realisation of narrow private interests, reflected primarily in different financial benefits. Similarly, a large majority of ordinary people do not trust courts to judge in a fairly, independently and impartially. It seems that the rule of law with regard to all the branches of power is not realised too well in practice. This is what data from different international researches suggest. It may all seem surprising, given that the institutions of democracy and the rule of law were transferred into the Slovenian constitutional order and society almost three decades ago, which should be ample time for all the inhabitants and elites in Slovenia to internalise and start using them. Nevertheless, this has not happened, as the elites in the society and state revolted against internalising the rule of law because it interferes with their acquired privileges and the current unfair state in the Slovenian society, where some groups and individuals are more equal than others. Slovenia has been stumbling in recent years between rejection of liberal values of constitutional democracy and autocratic approaches. Instead of striving for a higher standard of living and prosperity for all citizens and other inhabitants, the country’s ruling class is constantly fighting for more control over selected resources from the public purse, while its most competent individuals are leaving the country to work abroad. Working for the prosperity of all is only possible in a state that is governed by law and where the ruling elites and their networks do not abuse their power for their own financial advantage.

The institutions, tools and rules of law-based democracy have formally been transferred into the Slovenian legal order, but they have not been internalised, which is evident in the day-to-day functioning of the Slovenian state. The rule of law and quality of democratic institutions are key factors in different researches, indicating why some countries are more developed than others. A majority of the most developed countries of the world are the ones that guarantee the

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<sup>122</sup> Originally published as Jernej Letnar Čerňič, *Nismo dežela za drugače misleče*, Slovenski čas, July 2018, pp. 2–3.

rule of law both theoretically and in practice, and where institutions are independent and impartial with regard to the interests of different power groups. The lacking performance of democratic institutions is precisely where we should look for the main reasons why Slovenia is lagging behind countries like Austria and Germany. In these two countries, democratic institutions are in the service of the common good, with change of power taking place without conflict on how to divide the spoils between the old and the new ruling forces.

If the Slovenian Constitution states among its fundamental principles that Slovenia is a democratic state governed by the rule of law, this does not yet mean this is upheld in practice. The road from declarative commitments in the Constitution to their implementation in real life is a bumpy one and can take decades or more. Actual justice and rule of law in practice separate mature constitutional democracies from autocratic ones, which are constitutional democracies only on paper. The above irregularities are only pointed out by a handful of people who feel dedicated to the common good and wish for the rule of law to finally become a reality in Slovenia. These people have in recent years become the targets of all those structures in power and the formal and informal networks related to them that wish to maintain the status quo and protect their financial interests.

In autocratic and totalitarian societies, those in power try to subjugate the disobedient individuals and exclude them from public life in different ways. They stage show trials against them, put them in prison, ban them from practicing their activities, deport them, make up fake stories about them to tarnish their reputation, or organise different hate speech campaigns against them, all with the purpose of getting rid of such unwanted individuals. Reports from all over the world show that human rights activists are killed on a daily basis by state authorities and criminal organisations linked to them. In Europe, this is particularly evident in Central and Eastern European states, which instead of internalising the values of mature liberal democracies—such as human dignity, freedom, equality and pluralism—are fighting against them. This is logical, since these values go against maintaining the current power of the old and new elites running the states with arbitrariness, cronyism and nepotism.

In Slovenia, it appears that the formal and informal structures linked to the authorities are trying particularly hard to silence those upright individuals who are constantly and selflessly fighting and working for the common, unlike most of the population and their colleagues who are willing to turn a blind eye for a bit of change from the public purse. It seems dissidents need to be defamed, pilloried, and their reputation tarnished by spreading hate speech against them, all the while explaining shamelessly and with righteous zeal how such individuals should act obediently in public. Instead of criticism and efforts for the common good, one should probably glorify the arbitrary actions and behaviour of the authorities. Similarly, of course, to the former undemocratic regime, where only the chosen ones with state permission could speak publicly.

It is clear that the public and other persecution of dissenters pushes Slovenia further away from the normality that is characteristic of more developed countries. Why are dissenters, who disagree with a given government, necessary for a constitutionally based society? Ideal constitutional democracy requires a free democratic society that allows free exchange of views and does not exclude those who think differently. But pluralistic debate has not found its place in the Slovenian society. People representing a view that differs from the dominant one are still

treated as people who need to be silenced and excluded from public debate. Because in Slovenia, much like in Orwell's *1984*, there is little room for differences in opinion, and only one truth is allowed—the one sanctioned by the structures in power with the help of the mainstream media. A society that maintains such practices will continue to suffer due to the poor quality of its institutions and a flawed implementation of fundamental values. As a matter of fact, the entire society should become dissenting if it is to overcome illiberal practices. This is why dissidents who fight with dedication for the common good need to be valued and protected, since they are the first heralds who struggle for the values of the rule of law to become reality also in the Slovenian society. As many before them, they do not focus their energy solely on narrow personal interests, which of course are justified and understandable in the life of any individual, but rather dedicate part of their time to improving the way our community functions and our life in it.

There are countless examples from Slovenia's communist period how state authorities in cooperation with criminal organisations would destroy the lives of people, throwing them down pits or driving them out of the country. A brief look at the hard lives of Jože Pučnik, Angela Vode, Ljuba Prenner and Boris Furlan, to name but a few, reveals how any dissent would be nipped in the bud. However, the Slovenian society still does not like dissenters who dare oppose the autocratic moves of the ruling elites. It prefers yes-men who will give up criticism of those in power for immediate benefits, and who would rather be quiet than warn about what is wrong. They only raise their voice when they wish to silence a dissenter. Their aim in doing so is to intimidate the people who still speak up when it comes to important issues, and get them to limit themselves to the confines of their private lives or leave the country. Therefore, we should ask ourselves how long we will continue to allow people who think differently to get terrorised in Slovenia.

## **7 Summary of the concrete recommendations for reforming democracy and the rule of law in Slovenia**

This chapter summarises the concrete recommendations for reforming democracy and the rule of law in Slovenia presented in the previous chapters.

### **Reforming the principle of the rule of law in practice**

- Internalising the values, principles and rules underlying the rule of law in democratic institutions and the private sector.
- Effective normative and actual prevention of apparent and actual conflict of interest, corruption and kleptocracy in all branches of power, and an introduction of effective control mechanisms, which should also involve foreign experts.
- Improved monitoring of the reporting of lobbying contacts with state officials and public servants.
- Establishment of a specialised court for corruption cases.

- Teaching the importance and role of the rule of law on all levels and in all areas of education.

### **The legislative branch**

- Replacing the appointment of judges by the National Assembly with the Judicial Council nominating the candidates, who are then to be confirmed and appointed by the President.
- Reform of the National Council along with an introduction of regions, which the National Council should represent as an equally important chamber in the legislature.
- Reform of the proportional electoral system into a mixed system with first-past-the-post voting, or introduction of an optional preferential vote for a particular candidate on the chosen list.
- Measures to increase voter turnout (e.g. electronic voting, compulsory voting).
- Adoption of a Code of Ethics for Deputies.

### **The executive branch**

- The number of government departments and their competences should be arranged more reasonably. The powers and authority of ministers without portfolio should be increased by making them deputy prime ministers.
- The executive should assume more effective power and authority in areas assigned to it and required from it by the Constitution (in relation to the judiciary, the Economic and Social Council, universities, etc.).
- The executive should perform a deconcentration, and draft legal and constitutional changes for decentralisation, sending the bills to the National Assembly in order to end the ravaging of the entire country on the account of the capital.
- In order to increase sovereignty, relevant expert commissions and panels should be staffed with a lot more foreign experts, including members of the Slovenian diaspora, because they will be able to make decisions more independently and impartially.
- Members of the executive branch should not be poor; their material foundations must be taken care of appropriately in order not to avert highly competent people from politics.

### **The judiciary**

- Breaking with the tradition of bureaucratic organisation and functioning of the judiciary in Slovenia. For this purpose, the number of judges and courts should be reduced.
- Introduction of a model of judges' offices, following the example of leading courts in other countries.
- Comprehensive reform of legal education.
- Ensuring greater institutional reputation and professional allure of the judiciary.

- Introduction of systemic supervision of deviations in rulings, and overhaul of the procedure for appointing judges with a comprehensive reform of the Judicial Council.
- Introduction of damage and criminal liability of judges.

### **Freedom of expression and investigative journalism**

- Fostering media independence and unbiased reporting, and reforming the normative arrangement so that journalists can perform the role of the fourth branch effectively.
- Social and financial support for independent investigative media.
- Internalisation of values within the media and effective protection of human dignity of investigative journalists.
- Strengthening and pluralising the public arena in the Slovenian society and increasing the efficiency of control by the civil society.
- Protecting freedom of expression as a fundamental value in democracy, and prosecuting hate speech in line with the jurisprudence of the European Court of Human Rights.

## **8 Conclusion**

So how can Slovenia achieve real rule of law? The question calls for a complex answer, because the preconditions for the rule of law need to be set up first. The conditions come on two levels: formal—correctness of procedures; and substantive—internalisation of fundamental constitutional standards of protecting human rights and freedoms. The actual functioning of the rule of law also depends on two factors: the underlying institutions and the level of internalisation of the values of the rule of law in everyday life. These two factors are intimately interrelated, since the internalisation of these values, or should we say the general legal culture in the society affects the quality of staff in democratic institutions, while this quality in turn affects the general legal culture. If the factors work in a negative direction, the state of the rule of law will deteriorate, while in the opposite case we can hope for a positive feedback loop of strengthening the rule of law.

The rule of law and democracy have a substantive impact on economic success and the health of a given society. It is paramount that the Slovenian legal order ensure and realise the protection of human rights. Without the rule of law, and if the justice system fails to prevent human rights violations, the core of input legitimacy is undermined: the principle of equality and respect for human dignity. If the justice system does not punish violations of contractual obligations, then the freedom of economic initiative is not working, so there will be no foreign investments, no economic growth, and therefore no output legitimacy. If the judiciary fails to ensure effective and fair collection of taxes, the state cannot offer its social services, which again means it has no output legitimacy. When people are not even formally treated equally, and the political process is kidnapped by interest groups, there is no democracy, no rule of law and no welfare state. But the stage is set for social unrest, in which the ones offering simple answers to complex questions benefit. Slovenian and European recent history is full of such examples. Since today's situation offers too many analogies with these examples, as described,

we must do everything to prevent such events from reoccurring. This research project was the first attempt to start comprehensively addressing these problems on the theoretical and practical level, and thus contribute to their gradual resolution.

Moreover, numerous legal and economic analyses and studies are being conducted in developed countries that prove how the extent of capital investments depends on the quality of the rule of law already over short timespans. The positive correlation between investment and the functioning of the rule of law has been scientifically proven, as indicated. Improving the functioning of democracy and the rule of law will therefore have direct economic effects for Slovenia and its economy, and consequently for the society in general, at least through an increase in social transfers. But first, a thorough analysis needs to be made with regard to their suboptimal functioning, and then solutions need to be proposed.

The key to the functioning of the rule of law is therefore the people, especially those who make up the democratic institutions. This is also in line with legal theory (H.L.A. Hart), which points out that the rule of law is a matter of the sociological attitude of commitment by those in power—particularly judges as the judicial branch—to the normative framework. This means that those in power are the cornerstone of the rule of law. If they do not follow the rules that they set themselves and are obliged to follow, it is all the more unrealistic to expect or demand ordinary citizens to do so. An insufficient or even negative attitude of those in power towards respecting the normative framework of the rule of law thus sets off a vicious circle that eventually leads to deterioration of the values underlying the rule of law and finally to its complete degradation.

Establishing the rule of law is a constitutional obligation of the state *par excellence*. In fact, it is the absolute minimum for any modern state to ensure the formal and substantive legality of the work of its institutions, to make sure that people respect the law and human rights, and that any deviation from the law is punished appropriately. If a state fails to provide at least these minimum conditions, it loses all constitutional legitimacy of its existence. The conditions for establishing and upholding the rule of law must therefore be guaranteed by anyone who comes to power, and this is done by adopting measures of all kinds: short-term, medium-term and long-term ones.

Democracy and the rule of law in Slovenia stand at a breaking point: either people will internalise the values underlying the rule of law and constitutional democracy so that the country's institutions will start working in an independent, impartial and fair manner for the common good, or old practices and mentality will continue to reign supreme and undermine the rule of law and democracy in the country. The answer to this question will determine the existence and survival of present and future generations of Slovenians and their institutional structures.

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## 10 References

### Standalone documents

- Avbelj, Matej, *(Ne)pravna država: zapisi o zadevi Patria*, Ljubljana, GV Založba, 2015.
- Baker, C. Edwin, *Media, Markets and Democracy*, Cambridge, Cambridge University Press, 2002.
- Bučar, France, *Demokracija in kriza naših institucij*, Ljubljana, Nova revija, 1998.
- Bučar, France, *Temelji naše državnosti*, Ljubljana, Mladinska knjiga, 2012.
- Cerar, Miro, Perenič, Gorazd, *Nastajanje slovenske ustave*, Ljubljana, Državni zbor Republike Slovenije, Izbor gradiv Komisije za ustavna vprašanja 1990–1991. Vol. I and III, 2001.
- Cerar, Miro, Novak, Aleš, Vrišer, Boris (Eds), *Ustavne razprave*, Ljubljana, Državni zbor Republike Slovenije, Izbor gradiv DZ 2001–2003, Book III, Vol. I and II, 2004.
- European Commission, *The 2018 EU Justice Scoreboard*.
- Fukuyama, Francis, *Trust: The Social Virtues and The Creation of Prosperity*, New York, Free Press Paperbacks, 1996.
- Ginsburg, Tom, Dixon, Rosalind, *Comparative Constitutional Law: Introduction*, Chicago, University of Chicago Law School, 2011.
- Grad, Franc et al., *Državna ureditev Slovenije*, Ljubljana, Pravna fakulteta Univerze v Ljubljani, 1999.
- Grad, Franc et al., *Primerjalno ustavno pravo*, Ljubljana, Pravna fakulteta Univerze v Ljubljani, 2004.
- Hvala, Ivan (Ed.), *Sodobna država, kaj mora in kaj zmore*, Ljubljana, Fakulteta za družbene vede, 2003.
- Hvala, Ivan (Ed.), *Demokratske vrednote in aktivno državljanstvo: pokrajine, participacija, meje in odnosi s sosedi: trije posveti*, Ljubljana, Društvo Občanski forum, 2010.
- Jambrek, Peter (in cooperation with Jernej Letnar Černič), *Ustavna ureditev Slovenije: izvori, temelji in razvoj*, Nova Gorica, Brdo, Evropska pravna fakulteta and Fakulteta za državne in evropske študije, 2014.
- Kaučič, Igor, Grad, Franc, *Ustavna ureditev Slovenije*, Ljubljana, GV Založba, 2003.
- Kaučič, Igor (Ed.), *Pomen ustavnosti in ustavna demokracija*, Ljubljana, Pravna fakulteta Univerze v Ljubljani, Ustavno sodišče RS, 2013.
- Moellers, Christoph, *The Three Branches : A Comparative Model of Separation of Powers*, Oxford University Press, 2013.
- Oster, Jan, *Media Freedom as a Fundamental Right*, Cambridge, Cambridge University Press, 2015.
- Pavčnik, Marijan, Cerar, Miro, Novak, Aleš, *Uvod v pravoznanstvo*, Ljubljana, Uradni list RS, 2006.
- Petan, Žarko, *Kdor išče, ga najdejo*, Celje, Celjska Mohorjeva družba, 2006.
- Raz, Joseph, *Authority of Law: Essays on Law and Morality*, Oxford, Oxford University Press, 1979.



Rosenfeld, Michael, Sajó, András, *The Oxford Handbook of Comparative Constitutional Law*, Oxford, Oxford University Press, 2012.

Rousseau, Jean-Jacques, *The Social Contract*, New York, Prometheus Books, 1988.

Šturm, Lovro (Ed.), *Komentar Ustave Republike Slovenije*, Kranj, Fakulteta za podiplomske državne in evropske študije, 2002 and 2011.

UNDP, *Human Development Index Report 2016: Human Development for Everyone*.

Vilfan, Sergij, *Uvod v pravno zgodovino*, Ljubljana, Uradni list RS, 1991.

Weber, Max, *The Protestant Ethic and the Spirit of Capitalism*, London; New York : Routledge Classics, 2001.

### Original articles

Acemoglu, Daron, Johnson, Simon, Robinson, James, *Institutions as the Fundamental Cause of Long-Run Growth*, NBER Working Paper No. 10481, 2004.

Avbelj, Matej, *Vzpostavitev predpostavk za nastanek in rast slovenske pravne države*, Ljubljana, Pravna praksa, no. 39–40, 2012.

Engerman, Stanley L., Sokoloff, Kenneth L., *Factor Endowments, Inequality, and Paths of Development Among New World Economies*, NBER Working Paper No. 9259, 2002.

Gallop, John Luke, Sachs, Jeffrey D., Mellinger, Andrew D., *Geography and Economic Development*, International Regional Science Review, vol. 22, no. 2, 1999.

Krašovec, Tatjana (Ed.), *Prihodnost parlamentarne demokracije: zbornik strokovnega srečanja ob 20. obletnici prvih večstrankarskih volitev*, Ljubljana, Državni zbor, 2010.

Letnar Černič, Jernej, *Nič novega po petindvajsetih letih*, Slovenski čas, September 2014, p. 9.

Letnar Černič, Jernej, *Banalna nestrpnost*, Slovenski čas, April 2016, pp. 2–3.

Letnar Černič, Jernej, *Nismo dežela za drugače misleče*, Slovenski čas, July 2018, pp. 2–3.

Leskovic, Alenka, *Deset let pozneje*, Ljubljana, Pravna praksa, no. 18, 1999, p. 33.

Novak, Marko, *O ustavnih razsežnostih poslanske imunitete*, Ljubljana, Pravna praksa, vol. 24, no. 2, 2005.

Novak, Marko, *Državni svet na prelomnici*, Ljubljana, Nova revija, Ampak: mesečnik za kulturo, politiko in gospodarstvo, vol. 6, no. 11, 2005.

Novak, Marko, *Stabilitas legis and the rule of law: The problem of Slovene corporate legislation*, Osijek, Pravni vjesnik: tromjesečni glasnik za pravne i društveno-humanističke znanosti Pravnog fakulteta Sveučilišta J.J. Strossmayer u Osijeku, vol. 31, no. 3/4, 2005, pp. 51–64.

Ribičič, Ciril, *Državni svet in zbor pokrajin*, Ljubljana, Visoka upravna šola, Dnevi slovenske uprave (zbornik referatov), no. 9, 2002.

Ribičič, Ciril, *Primerjava prednosti in slabosti volilnih sistemov*, Ljubljana, Pravna fakulteta, Zbornik znanstvenih razprav, vol. 73, 2013, pp. 57–81.

Toplak, Jurij, *Preferenčni glas in njegova uporaba v Sloveniji*, Maribor, Lex localis, vol. 1., no. 2, 2003.

Uzelac, Alan, *Survival of the Third Legal Tradition*, Supreme Court Law Review (2010), 49 S.C.L.R. (2d), 377-396.

Vlaj, Stane, *Regionalizacija Slovenije – izzivi in dileme*, Maribor, Lex localis: revija za lokalno samoupravo, vol. 5, no. 4, 2007.

Wedel, Janine R., *Dirty Togetherness: Institutional Nomads, Networks, and the State-Private Interface in Central and Eastern Europe and the Former Soviet Union*, Polish Sociological Review, no. 142, 2013.

### **Postgraduate theses**

Logar, Anže, *Volilni sistemi in njihov vpliv na kvaliteto demokracije*, Nova Gorica, FUDŠ, 2016.

Rupnik, Matej, *Spremembe zakonodaje z vidika pravne varnosti državljanov*, Nova Gorica, Evropska pravna fakulteta, 2009.

Sraka, Jasna, *Vloga in pomen Državnega sveta Republike Slovenije v parlamentarni demokraciji*, Kranj, Fakulteta za državne in evropske študije, 2016.

### **Legal sources**

#### **Court cases**

Mladina d. d. Ljubljana v. Slovenia, application no. 20981/10, 17 April 2014.

U-I-12/97, Odločbe in sklepi Ustavnega sodišča RS, VII, Book 2, 1998.

U-I-69/92, Official Gazette of the Republic of Slovenia, no. 61/92.

U-I-158/94, Official Gazette of the Republic of Slovenia, no. 18/95

Up-301/96, Official Gazette of the Republic of Slovenia, no. 13/98.

U-I-248/96, Official Gazette of the Republic of Slovenia, no. 76/98.

Associated Press v. United States, 326 U.S.1, 28 (Frankfurter, J.; concurring).

#### **Legal acts**

Predlog za začetek postopka za spremembe Ustave RS z osnutkom ustavnega zakona. Poročevalec Državnega zbora RS, no. 69/2001 from 6 August 2001.

Constitution of the Republic of Slovenia, Official Gazette of the Republic of Slovenia, no. 33/91-I, and changes.

Bank of Slovenia Act, ZBS-1, Official Gazette of the Republic of Slovenia, no. 72/2006, consolidated version.

Radiotelevizija Slovenija Act, Official Gazette of the Republic of Slovenia, no. 96/05, 109/05 – ZDavP-1B, 105/06 – Constitutional Court decisions US 26/09 – ZIPRS0809-B and 9/14.

Government of the Republic of Slovenia Act, Official Gazette of the Republic of Slovenia, no. 24/05, and changes.

## Online sources

All online sources were retrieved on 30 January 2019.

### Articles

- Avbelj, Matej, *Išče se Francka*, 2016, <http://www.iusinfo.si/DnevneVsebine/Kolumna.aspx?id=179597>
- Avbelj, Matej, *Kako postaneš ustavni sodnik – v Sloveniji?*, 2016, <http://www.iusinfo.si/DnevneVsebine/Kolumna.aspx?id=174047>
- Avbelj, Matej, *Legalistična naivnost*, 2017, <http://www.iusinfo.si/DnevneVsebine/Kolumna.aspx?id=200423>
- Avbelj, Matej, *Največja laž?*, 2012, <http://www.iusinfo.si/DnevneVsebine/Kolumna.aspx?id=88261>
- Avbelj, Matej, *Pravni mit 5: Zakaj slovensko sodstvo ne more biti neodvisno?*, 2016, <https://www.finance.si/8844169>
- Avbelj, Matej, *Pravni mit 6: Zakaj slovensko sodstvo ne more biti nepristransko?*, 2016, <https://www.finance.si/8844560>
- Avbelj, Matej, *Pravni mit 9: Institucionalno gnitje Slovenije*, 2016, <https://www.finance.si/8846319>
- Avbelj, Matej, *Sodstvo: obupani klici na pomoč!*, 2017, <https://www.finance.si/8860825>
- Avbelj, Matej, *Šibka (pravna) država, močna mafija*, 2017, <https://www.finance.si/8861196>
- Avbelj, Matej, *(Vodo)tesnost slovenske pravniške stroke*, 2014, <https://www.insolvinfo.si/DnevneVsebine/Kolumna.aspx?Id=117892>.
- Avbelj, Matej, *Zmanjšajmo slovensko sodstvo za pol*, 2017, <https://www.finance.si/8861953>
- Če bi dobili vlado brez SDS in SD, bi bilo to optimalno*, 2018, <https://www.vecer.com/ce-bi-dobili-vlado-brez-sds-in-sd-bi-bilo-to-optimalno-6500711>
- Čok, Lucija, *Avtonomija univerz: kako daleč seže 58. člen ustave*, 2014, <https://www.delo.si/mnenja/gostujoce-pero/avtonomija-univerz-kako-dalec-seze-58-clen-ustave.html>
- Darinka Mravljak ne bo ministrica*, 2004, <https://www.finance.si/105701>
- ESS opozarja Pahorja na svojo vlogo pri oblikovanju dokumentov*, 2010, <https://siol.net/ess-opozarja-pahorja-na-svojo-vlogo-pri-oblikovanju-dokumentov-64637>
- Fotogodba: Ministri in ministrica Janševe vlade*, 2012, <https://www.rtv slo.si/slovenija/fotogodba-ministri-in-ministrice-janseve-vlade/276092>
- Gaube, Aleš, *Erjavec in Kaiser za iskanje rešitev na deželni ravni*, 2017, <https://www.dnevnik.si/1042763560>
- Glücks, Nenad, *Ob dnevu svobode medijev o najhujšem posegu v svobodo slovenskih medijev v zadnjem letu*, 2018, <https://reporter.si/clanek/slovenija/ob-dnevu-svobode-medijev-o-najhujsem-posegu-v-svobodo-slovenskih-medijev-v-zadnjem-letu-636497>

Kos, David, *Ne samo cene nepremičnin, v Ljubljani rastejo tudi najemnine*, 2018, <https://siol.net/posel-danes/osebne-finance/ne-samo-cene-nepremicnin-v-ljubljani-rastejo-tudi-najemnine-463062>

Kosmač, Gorazd, *Je 212 občin za Slovenijo preveč ali premalo?*, 2018, <http://www.rtvsllo.si/slovenija/je-212-obcin-za-slovenijo-prevec-ali-premalo/467478>

Letnar Černič, Jernej, *Zakaj Slovenija zaostaja za Nemčijo?*, 2018, <http://www.iusinfo.si/DnevneVsebine/Kolumna.aspx?id=221967>

*Ločitev med državo in Katoliško Cerkvijo ter njeno financiranje*, 2012, <https://katoliska-cerkev.si/locitev-med-drzavo-in-verskimi-skupnostmi-ter-njihovo-financiranje>

Makovec, Urška, *Kaj je narobe s slovenskim sodstvom*, 2015, <https://siol.net/novice/slovenija/kaj-je-narobe-s-slovenskim-sodstvom-227149>

Malerič, Aleš, *Klemenčič: Sodni zaostanki niso več sistemska težava*, 2016, <https://www.rtvsllo.si/slovenija/klemencic-sodni-zaostanki-niso-vec-sistemska-tezava/409368>

Mamić, Tino, *Svoboda medijev v Sloveniji je močno okrnjena*, 2014, <https://tinomamic.blogspot.com/2014/03/svoboda-medijev-v-sloveniji-je-mocno.html>

Masleša, Branko, *Mehki trebuh slovenskega sodstva*, 2012, <http://www.delo.si/mnenja/gostujoce-pero/mehki-trebuh-slovenskega-sodstva.html>

Masleša, Branko, *Sodniško togo je treba znati nositi*, 2012, <http://www.delo.si/mnenja/gostujoce-pero/sodnisko-togo-je-treba-znati-nositi.html>

*Medtem ko državljani varčuje, ministrica Ljudmila Novak potuje*, 2012, <https://www.dnevnik.si/1042521108>

*Pravniki zaskrbljeni zaradi prikrojenih razlag ločitve države in Cerkve ob blagoslovu OŠ Polica*, 2017, <https://www.domovina.je/pravniki-zaskrbljeni-zaradi-prikrojenih-razlag-locitve-drzave-in-cerkve-ob-blagoslovu-os-polica/>

*Revoltirana anketa: Vodstvo slabe banke je ogrozilo interese elite*, 2015, <https://www.delo.si/revolt/revoltirana-anketa-vodstvo-slabe-banke-je-ogrozilo-interese-elite.html>

*Rupel in Illy o petem koridorju*, 2007, <https://www.delo.si/novice/slovenija/rupel-in-illy-o-petem-koridorju.html>

*SDS predlaga skrajšanje postopka imenovanja nove vlade*, 2011, <https://siol.net/novice/slovenija/sds-predlaga-skrajsanje-postopka-imenovanja-nove-vlade-122938>

*Stranke za hitrejši postopek imenovanja vlade*, 2014, <https://www.delo.si/novice/politika/stranke-za-hitrejsi-postopek-imenovanje-vlade.html>

*Svoboda medijev ena od najbolj ogroženih vrednot sodobne demokracije*, 2018, <http://www.rtvsllo.si/slovenija/svoboda-medijev-ena-od-najbolj-ogrozenih-vrednot-sodobne-demokracije/453709>

*Tugomir Kodolja ne bo minister za javno upravo*, 2018, <http://topnews.si/2018/09/05/tugomir-kodolja-ne-bo-minister-za-javno-upravo>

Turk, Žiga et al., *Vizija 20 + 20 – Prispevek k razmišljanju o prihodnosti Slovenije*, Ljubljana, Inštitut dr. Jožeta Pučnika, 2010, <http://www.planbzaslovenijo.si/upload/SRS/vizija-turk.pdf>

Türk, Danilo, *Ločenost države in cerkve nikakor ni izločenost*, 2010,  
<https://www.delo.si/novice/slovenija/t-rk-locenost-drzave-in-cerkve-nikakor-ni-izlocenost.html>

Vezjak, Boris, *Reporter in cenzura napovednika na TV Slovenija*, 2017,  
<https://vezjak.com/2017/03/20/reporter-in-cenzura-napovednika-na-tv-slovenija/>

Žerdin, Ali H., *dr. Andrej Bajuk: Od neznanega bančnika do predsednika vlade*, 2000,  
<https://www.mladina.si/92320/dr-andrej-bajuk/>

### Other online sources

A draft code of ethics was proposed in 2014. See [https://www.dz-rs.si/wps/portal/Home/deloDZ/zakonodaja/izbranZakonAkt?uid=884B5661E6EEEB23C1257D8C004DC67D&db=pre\\_akt&mandat=VII&tip=doc](https://www.dz-rs.si/wps/portal/Home/deloDZ/zakonodaja/izbranZakonAkt?uid=884B5661E6EEEB23C1257D8C004DC67D&db=pre_akt&mandat=VII&tip=doc) (7 June 2018).

Council of Europe, European judicial systems Efficiency and quality of justice, CEPEJ STUDIES No. 26, Strasbourg, Council of Europe, 2018,  
<https://www.coe.int/en/web/cepej/special-file-publication-2018-edition-of-the-cepej-report-european-judicial-systems-efficiency-and-quality-of-justice->

Esohap, *The Rule of Law in Slovenia*, <https://esohap.org/the-rule-of-law-in-slovenia/>

European Court of Human Rights, *Violations by Article and by State*,  
[https://www.echr.coe.int/Documents/Stats\\_violation\\_1959\\_2017\\_ENG.pdf](https://www.echr.coe.int/Documents/Stats_violation_1959_2017_ENG.pdf)

Eurostat, *GDP per capita in PPS*, 2018,  
<https://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tec00114&plugin=1>

European Commission, *Special Eurobarometer 467*, 2017,  
<http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/ResultDoc/download/DocumentKy/80645>

DWStatis, *EU comparison 2018: Germany and the other Member States*, 2018,  
[https://www.destatis.de/Europa/EN/Country/Comparison/GER\\_EU\\_Compared.html](https://www.destatis.de/Europa/EN/Country/Comparison/GER_EU_Compared.html)

Gibanje Osveščeni Prebivalci Slovenije, *Množično vlaganje reklamacije za zavrailo plačila RTV prispevka*, 2014, <https://www.gibanje-ops.com/dejavnosti-gibanja-ops/drugacna-politika/604-mnoino-vlaganje-reklamacije-za-zavrailo-plaila-rtv-prispevka>

*Governments of the Republic of Slovenia*,  
[http://www.vlada.si/en/about\\_the\\_government/governments\\_of\\_the\\_republic\\_of\\_slovenia/](http://www.vlada.si/en/about_the_government/governments_of_the_republic_of_slovenia/)

Granda, Stane, Združenje za slovensko besedo, *Je odziv enak pri Dumančičevi in Možini?*, 2018, <https://spletnicasopis.eu/2018/08/18/pisma-direktorju-kdo-je-to-strasno-oko-ki-gleda/>

*Minimalne plače politikom – včeraj v novicah*, 2013,  
<https://med.over.net/forum5/viewtopic.php?f=151&t=9037551>

*Minister Erjavec bo gostil predsednico AD FJK Deboro Serracchiani*, 2013,  
[http://www.vlada.si/medijsko\\_sredisce/napovednik/arhiv\\_dogodkov/arhiv\\_dogodkov/article/minister\\_erjavec\\_bo\\_gostil\\_predsednico\\_ad\\_fjk\\_deboro\\_serracchiani\\_40257/](http://www.vlada.si/medijsko_sredisce/napovednik/arhiv_dogodkov/arhiv_dogodkov/article/minister_erjavec_bo_gostil_predsednico_ad_fjk_deboro_serracchiani_40257/)

Transparency International, *Corruption Perception Index*, 2018,  
[https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2017#table](https://www.transparency.org/news/feature/corruption_perceptions_index_2017#table)

UNDP, *Human Development Reports: Germany*,  
<http://hdr.undp.org/en/countries/profiles/DEU>.

UNDP, *Human Development Reports: Slovenia*,  
<http://hdr.undp.org/en/countries/profiles/SVN>.

Vrhovno sodišče, *Odločbe ESČP zoper Slovenijo predvsem zaradi postopkov pred letom 2006*, 2015, <http://www.sodisce.si/vsrs/objave/2015081910080003/>

Vrhovno sodišče, *Raziskava o zaupanju javnosti*, 2016,  
<http://www.sodisce.si/vsrs/objave/2016071414213080/>

Vrhovno sodišče, *Na slovenskih sodiščih se nadaljujejo pozitivni trendi*, 2017,  
<http://www.sodisce.si/vsrs/objave/2017121511402859/>

Vrhovno sodišče, *Sodstvo potrebuje stabilno in predvidljivo pravno okolje*, 2018,  
<http://www.sodisce.si/vsrs/objave/2018021414255300/>

ZNP – Združenje novinarjev in publicistov, *V ZNP ostro obsojamo zlorabo RTVS v politične namene!*, 2018, <http://www.znp.si/arhiv/484-v-znp-ostro-obsojamo-zlorabo-rtvs-v-politice-namene>