

# The Constitutional Development of Slovenia (1918 – 2021)

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## ABSTRACT

The chapter deals with the constitutional development in Slovenia from the end of World War I to the present day, covering roughly a century. This is the period of time during which Slovenia went from belonging to the Habsburg monarchy to being a part of the inter-war monarchy of the South Slavs, experienced the trauma and devastation of World War II and then became a part of the Yugoslav federation. Thirty years ago, in 1991, it gained statehood and adopted a liberal constitution still in force today. The chapter discusses these periods and sees the different changes and upheavals as milestones that helped shaped Slovenian constitutional identity. It also presents an overview of the constitutional order under the 1991 Constitution and finally, discusses what the authors suggests are some of the elements of the constitutional identity of Slovenia.

## KEYWORDS

Slovenia, Kingdom of Yugoslavia, socialist Yugoslavia, federalism, statehood, democracy, human rights and fundamental freedoms, constitutional identity, gender equality, right to language, distrust towards the military, European constitutionalism.

## 1. A historical overview

### ***1.1. The disintegration of the Austro-Hungarian monarchy and the processes of formation of Slovenian statehood***

The end of World War I, with the defeat and collapse of the Austro-Hungarian monarchy demanded that the Slovenian people reflect upon their future in the new, considerably different reality of post-war Europe. Ethnic Slovenians lived within the borders of the dual monarchy, but Slovenia was not an administrative or political unit of the monarchy. Instead, Slovenians were spread through several of the historical lands of the monarchy. It was the political ambition of the Slovenians, formulated during the 1848 Spring of Nations, to live in one political unit ('United Slovenia') within the Habsburg monarchy.<sup>2</sup> Another political programme in the second half of the XIXth

1 The author expresses his gratitude to Anže Medičevc for the research assistance.

2 Prunk, 2008, pp. 73–75.

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and the beginning of XXth century was the unification of all South Slavs living in the monarchy (Slovenians, Croatians and the Serbs that lived in the monarchy rather than in the Kingdom of Serbia) in one political unit which would become the third entity of the monarchy (trialism).<sup>3</sup>

The idea of unification of all the South Slavs living in the collapsed monarchy realised itself in the creation of the short-lived State of Slovenes, Croatians and Serbs (*Država Slovencev, Hrvatov in Srbov*) on 29 October 1918.<sup>4</sup> The State was independent and ruled by the National Council in Zagreb, while the Slovenians, as part of the same project, also established a National Government in Ljubljana.<sup>5</sup> The National Government adopted the Decree on transitional administration (*Naredba o prehodni upravi*), considered an act of constitutional nature as it established authorities that ruled the territory inhabited by ethnic Slovenians. The decree was drafted by Ivan Žolger (Žolger's Constitution).<sup>6</sup> Slovenian armed volunteers secured the border in Styria towards the north; however, by way of the Carinthian plebiscite and the Treaty of Rapallo with Italy, a lot of the territory inhabited by ethnic Slovenians became a part of Austria and Italy, respectively.<sup>7</sup> Following from the 1917 joint political declaration, made on the island of Corfu by exiled representatives of the Austro-Hungarian South Slavs and Serbia's Prime Minister Nikola Pašić,<sup>8</sup> the State of Slovenes, Croatians and Serbs soon unified with the Kingdom of Serbia to create a new state: the Kingdom of Serbs, Croatians and Slovenes (*Kraljevina Srbov, Hrvatov in Slovencev*). It is noteworthy that despite the fact that the Kingdom of Serbs, Croatians and Slovenes was ruled by the Serbian Karađorđević dynasty, the new Kingdom was not an 'enlarged' Kingdom of Serbia, but a new state with new subjectivity under international law.<sup>9</sup>

### **1.2. Slovenia in the monarchy of the South Slavs (1919 – 1941)**

A constituent assembly was called after the creation of the new Kingdom of Serbs, Croatians and Slovenes, and on 28 June 1921 it adopted a new Constitution (St. Vitus' Day Constitution, *Vidovdanska ustava*, hereinafter: SVDC). Instead of recognising the cultural, linguistic, religious and societal diversity of the new country with some form of federalism, the new constitution chose to establish a unitary (and relatively centralised<sup>10</sup>) state. The parliament was unicameral and the territory was divided in 33 administrative districts (art. 95 SVDC), making sure that no ethnic group would have its "own" district.<sup>11</sup> In addition, the SVDC in art. 3 reformulated reality by declaring that there was one official language in the Kingdom, the inexistent "Serbian

3 Prunk, 2008, pp. 92–94.

4 Prunk, 2008, p. 96.

5 Grad, Kaučič, Zagorc, 2020, p. 77.

6 Ribnikar, 2003, p. 120.

7 Prunk, 2008, pp. 100–101.

8 Encyclopaedia Britannica, Corfu Declaration, available at: <https://www.britannica.com/event/Corfu-Declaration>. See also Prunk, 2008, p. 95.

9 Žolger, 1923.

10 Grad, Kaučič, Zagorc, 2020, p. 78.

11 Šiftar, 1975, p. 181.

– Croatian – Slovenian”, and by creating a “Serbian – Croatian – Slovenian” ethnicity (art. 19). This was not only unnatural from the perspective of the Slovenians and the other two constituent peoples, each with their own history and identity, who were now considered “tribes” of a united nation.<sup>12</sup> Even more so, it was outright repressive to the other peoples or ethnic groups living in the new state (Montenegrins, Macedonians, Bosnians...). The Constitution declared a “constitutional, parliamentary and hereditary” monarchy, but the powers of the King (ch. 5 and art. 91 SVDC) were much too great to earn the new monarch the label ‘parliamentary’. The Constitution was relatively modern, however, when it came to listing fundamental rights in its ch. 3, among them even economic and social rights. Scholarship sees that as the influence of the Weimar constitution.<sup>13</sup> The Constitution in art. 70/III envisaged that a statute would be adopted extending voting rights to women, but that never came to fruition.

The Kingdom was poor and troubled by political instability, especially due to the conflicts between nationalists of the different ‘tribes’ and because of the conflicts between the authorities and the communists. King Alexander instituted a dictatorship on 6 January 1929 (*šestojanuarska diktatura*) and soon after changed the name of the country to ‘Kingdom of Yugoslavia’ (*Kraljevina Jugoslavija*). Almost all of the Slovenian territory within Yugoslavia belonged to the Drava Banate (*Dravska banovina*),<sup>14</sup> one of the nine newly formed administrative units. In 1931, the King declared a new Constitution. This constitution was thus not adopted by a democratically legitimate body and is considered forced (*octroyée*).<sup>15</sup>

### **1.3. World War II and the Creation of socialist Yugoslavia**

The territory of Slovenia suffered military aggression by forces of Nazi Germany and Fascist Italy in April 1941. The eastern part of Slovenia, Prekmurje, was ceded by Nazi Germany to Horthy’s Hungary, and a small portion of the territory in the Southeast was occupied by the illegal Independent State of Croatia.<sup>16</sup> The occupying Axis powers sliced up the territory among themselves and ruled it brutally: violence against the population was “clear in all walks in life and culminated in physical terror.”<sup>17</sup> Forced use of the languages of the occupiers instead of the Slovenian language, detention and deportation of Slovenian intellectuals and patriots, imprisonment in concentration death camps, executions not only of resistance fighters but also of civilians taken as ‘hostages’, removal of underage children from their parents and forcible conscription of Slovenians into the armies of the occupiers were widespread.<sup>18</sup> Occupiers also implemented antisemitic legislation and committed acts of

12 Perovšek, 2016, p. 48.

13 Grad, Kaučič, Zagorc, 2020, p. 78.

14 Prunk, 2008, p. 115.

15 Prunk, 2008, p. 116.

16 Šorn, 2016, p. 158.

17 Šorn, 2016, p. 158.

18 Pirjevec, 2008, pp. 24–35.

holocaust on the Slovenian territory.<sup>19</sup> The atrocities left deep scars on the nation. After the quick demise of the royal Yugoslav army, armed resistance was organised practically throughout the Slovenian territory with the creation of the Liberation Front of the Slovenian Nation (*Osvobodilna fronta slovenskega naroda*), which slowly but surely came under the control of the Communist Party.<sup>20</sup> The Liberation Front started establishing, on the one hand, structures of quasi-state authority, especially in the liberated territories.<sup>21</sup> On the other hand, the Liberation Front co-operated with the wider resistance efforts in Yugoslavia. The 1943 (Slovenian) Kočevje Assembly sent delegates to the second session of the Anti-Fascist Council for the National Liberation of Yugoslavia (usually know by the acronym AVNOJ) at Jajce, where the delegations from all over Yugoslavia lay the foundations for the post-war federal Yugoslavia.<sup>22</sup> The resolutions of the 2nd AVNOJ were confirmed at the Črnomelj session of the Slovenian National Liberation Council (SNOS).<sup>23</sup> SNOS also founded, in May 1945, a Slovenian national government.

Historians see the period of WWII in Slovenia as a combination of resistance struggle, revolution, domestic collaboration with the occupiers and even civil war.<sup>24</sup> The persecution during and after the war included mass extra-judicial killings of the collaborators and opponents of the new regime.<sup>25</sup> All of this added to the scars on the nation caused by the occupiers and their collaborators and Slovenia is still searching for a way to come to terms with its past.

#### **1.4. Slovenia as a constituent unit of Second Yugoslavia (1945 – 1988)**

Despite the relative independence of the resistance struggle in Slovenia and the existence of the constituent republics, the constitutional order of post-war socialist Yugoslavia was centralist, based on the principles of unity of power, both vertical and horizontal. The 1946 Constitution of the Federal People's Republic of Yugoslavia<sup>26</sup> and the 1947 Constitution of People's Republic of Slovenia were under Soviet influence.<sup>27</sup> However, Yugoslavia broke off from the Soviet bloc after the Informbiro conflict in 1948<sup>28</sup> and began seeking its own constitutional solutions. Those were all, however, still essentially defined by the dominating role of the Communist Party. Socialist Federal Republic of Yugoslavia (SFRY) and Socialist Republic of Slovenia

19 Pančur, 2016, p. 171–182.

20 Repe, 2008, p. 45.

21 Ibid, p. 43.

22 Radan, 2002, p. 187.

23 Grad et al. understand the *ex post* confirmation of the Yugoslav joint resolutions by a Slovenian body as an affirmation of Slovenian sovereignty.

24 Godeša et al, 2002, p. 121.

25 Rihtar Tomišek, 2006.

26 Available in Serbian (cyrillic script) at: [http://www.arhivyu.gov.rs/active/sr-latin/home/glavna\\_navigacija/leksikon\\_jugoslavije/konstitutivni\\_akti\\_jugoslavije/ustav\\_fnrj.html](http://www.arhivyu.gov.rs/active/sr-latin/home/glavna_navigacija/leksikon_jugoslavije/konstitutivni_akti_jugoslavije/ustav_fnrj.html).

27 Grad et al., 1999, p. 54. The proclaimed federalism was merely as a 'rhetorical tool', see Kovačević, 2017, p. 46.

28 Prunk, 2008, p. 176. See also Niebuhr, 2011, p. 146.

(SRS) adopted new constitutions in 1963 and then again in 1974.<sup>29</sup> The decisions of the League of Communists of Yugoslavia (ex-Communist Party) in the 1950s, and then the constitutional reforms in the 1960s and 1970s also developed ‘self-management’ (*samoupravljanje*).<sup>30</sup> This was an original socio-economic system, a path between market capitalism and (Soviet-style) socialism/communism, which at least on paper looked to an outside observer as an “anarcho-syndicalist’s opium dream”.<sup>31</sup>

The 1974 constitutional reform was an important step towards the affirmation of Slovenian statehood and sovereignty within federal Yugoslavia.<sup>32</sup> The constitutions of SFRY and SRS proclaimed that the peoples of Yugoslavia have joined to create a common state “based on the right of every nation to self-determination, which includes the right to secession,” while the “sovereign rights of the working people and of the nations and nationalities” were exercised within constituent republics, and within the federal state only when the federal constitution so declares (General Principle I of the 1974 SFRY Constitution, General Principle I of the 1974 SRS Constitution).<sup>33</sup>

### ***1.5. Path to Statehood, Independence and Democracy (1988 – 1991)***

Essential for the transformation of Slovenia from a socialist constituent republic into a democratic independent state was the 1989 adoption of the amendments VIII-LXXXI to the Constitution of SRS. These provided a legal basis for multi-party elections to the Assembly and to the Presidency. In Amendments XLVI and LXII The SRS Assembly got the power of nullification – to adopt appropriate measures should federal authorities violate the rights of the republic.<sup>34</sup> The constitutional amendments (e.g. XLIX, L, LI) included a list of classic liberal human rights, replacing more relativised formulations in the original 1974 constitutional text. Slovenia also abolished death penalty on a constitutional level (amendment XLVII), which has otherwise not been executed since 1959. Further amendments to the Constitution were adopted throughout 1990, gradually severing ties with the federation.<sup>35</sup>

On 23 December 1990, Slovenia held a referendum (*plebiscit*) where 88,5% of all registered voters voted in favour of an independent state. After unsuccessful attempts at negotiations with the federal authorities and the representatives of other constituent republics, the Assembly on 25 June 1991 adopted the Basic Constitutional Charter on the Independence of the Republic of Slovenia (*Temeljna ustavna listina o samostojnosti*

29 The 1963 Constitution of SFRY available in Serbian (latin script) at: <http://mojustav.rs/wp-content/uploads/2013/04/Ustav-SFRJ-iz-1963.pdf>; the 1974 Constitution of SFRY available in Slovenian at: [https://sl.wikisource.org/wiki/Ustava\\_Socialistične\\_federativne\\_republike\\_Jugoslavije\\_\(1974\)](https://sl.wikisource.org/wiki/Ustava_Socialistične_federativne_republike_Jugoslavije_(1974)); the 1974 Constitution of SRS available in Slovenian at: [https://sl.wikisource.org/wiki/Ustava\\_Socialistične\\_republike\\_Slovenije\\_\(1974\)](https://sl.wikisource.org/wiki/Ustava_Socialistične_republike_Slovenije_(1974)).

30 Wilson, 1978, p. 256.

31 Wilson, 1978, p. 253.

32 Grad et al., 1999, p. 63.

33 Similar formulations were in the previous constitutions, see also Grad et al., 1999, p. 70. See also Kovačević, 2017, p. 46.

34 See also Grad et al., 1999, p. 73.

35 See Grad et al., 1999, pp. 74–75.

*in neodvisnosti Republike Slovenije*), which was the legal act declaring Slovenia as an independent state.<sup>36</sup> An armed conflict (War of Independence) began some 36 hours later and lasted for ten days, with the Yugoslav Army attempting to take control of external border crossings and critical infrastructure, and the Slovenian Police and units of Territorial Defence Forces preventing it from doing so.<sup>37</sup> A moratorium on the independence efforts was negotiated with the help of the European Community.<sup>38</sup> In October 1991, the Yugoslav Army retreated fully from Slovenia.<sup>39</sup> On 15 January 1992, the Member States of the European Community recognised Slovenia and in May 1992, Slovenia joined the United Nations, successfully ending its path to independence and statehood.<sup>40</sup>

## 2. Constitution of the Republic of Slovenia (1991)

### 2.1. *The 1991 Constitution and foundational constitutional principles of the Republic*

The Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*)<sup>41</sup> was adopted by the Assembly of the Republic of Slovenia, in a joint session of its three chambers, on 23 December 1991, six months after the declaration of independent statehood. The Constitution was adopted pursuant to the procedure of constitutional revision prescribed in the 1974 Constitution, which was the constitution of a federal unit within the Yugoslav federal state, thus maintaining a degree of continuity with the previous constitutional system while at the same time providing the new Constitution with requisite democratic legitimacy.<sup>42</sup> The discussions in the Assembly began in December 1990, when Slovenia was still a part of Yugoslavia and approximately around the time when the people of Slovenia voted in favour of independence in the referendum, thus lasting a year. Even before the beginning of the process of drafting the 1991 Constitution within the Assembly, two draft constitutional documents were created (but not adopted): the first one in April 1988, written by a group of Slovenian intellectuals and artists (Writers' Constitution), and the second one in March 1990 by the coalition of newly founded democratic parties ('Demos Constitution').<sup>43</sup>

#### 2.1.1. *A democratic and social state, governed by the rule of law*

The first chapter sketches the constitutional nature of the Slovenian state. It defines Slovenia as a democratic republic (art. 1), a clause that was later interpreted by the Slovenian Constitutional Court (hereinafter: CC) to embed a system of constitutional

36 Official Gazette RS, No. 19/91, 25.6.1991.

37 Niebuhr, 2006. See also Prunk, 2008, pp. 233 et seq.

38 Prunk, 2008, pp. 240–242.

39 Prunk, 2008, p. 242.

40 Prunk, 2008, p. 243.

41 Official Gazette RS, 33/1991.

42 Grad, Kaučič, Zagorc, 2020, p. 94.

43 See Jambreč, 1993, pp. 345 et seq.

democracy, intrinsically linked with respect for human dignity.<sup>44</sup> Slovenia is a ‘state governed by the rule of law’ (*pravna država*), a concept connected to the German *Rechtsstaat* and a ‘social state’ (*socialna država*) (art. 2). The former concept has seen its development in rich case law of the CC, where a number of subprinciples of *pravna država* were developed, such as the principle of legal security and predictability and the principle of clarity and ascertainability of legal norms. Legal force of retroactive norms is expressly prohibited in the Constitution (art. 155),<sup>45</sup> combined with the strict rule in art. 154/I that no general act can have effect before it was published in the Official Gazette.<sup>46</sup> Cornerstones of *pravna država* are also the principles of constitutionality (*ustavnost*), with the requirement that all state power is exercised within the bounds of the constitution and legality (*zakonitost*), which requires a basis in statute (or regulation that is itself based on a statute) for all actions of state organs.<sup>47</sup> Last but not least, the general principle of proportionality (*sorazmernost*) is not itself mentioned in the Constitution, but is a foundational principle of constitutional law.<sup>48</sup>

In contrast, the principle of social state has not seen such a substantial development in case law, as case law tends to be built upon connected substantive social rights or Chapter 3 rules.<sup>49</sup>

### 2.1.2. People, nation, citizens

The introductory part of the Constitution also defines Slovenia as a state of all of its *citizens*, and at the same time reaffirming what was at the time, in the context of the debates in the decaying federal state, a controversial but ultimately prevailing stance – that the basis for Slovenian statehood is the “permanent and inalienable right of the Slovenian *nation* to self-determination” (art. 3/I). While the reaffirmation in art. 3/I is seen to establish the idea of *national* sovereignty, art. 3/II introduces *popular* sovereignty<sup>50</sup> by proclaiming that in Slovenia, all power is vested in the *people*,<sup>51</sup> combining it with the principle of separation of powers.

### 2.1.3. Separation of powers

The power, vested in the people, is exercised by the citizens “directly and through elections, consistent with the principle of the separation of legislative, executive, and

44 Constitutional Court RS, case U-I-109/10, 26.9.2011.

45 This clause protects from real retroactivity, whereas de facto or pseudo-retroactivity (*nepravna retroaktivnost*) is prohibited if it violates the principle of guarantee of trust in the law, a subprinciple of *pravna država*. See also Constitutional Court RS, case U-I-39/95, 23.9.1995.

46 Constitution of the Republic of Slovenia.

47 Grad, Kaučič, Zagorc, 2020, pp. 593 et seq.

48 Šturm, 2019, in Avbelj et al., 2019.

49 Some of these are listed in Pernuš, 2011, p. 707.

50 Grad, Kaučič, Zagorc, 2020, p. 145.

51 ‘Nation’ (*narod*), ‘citizens’ (*državljeni in državljanke*, the only passage in the Constitution that uses both the masculine as well as the feminine form in Slovenian language) and ‘people’ (*ljudstvo*) are thus three linked but at the same time distinct subjects of sovereign constitutional power in Slovenian constitutional doctrine.

judicial powers.” (art. 3/II Constitution). While the formulation in the constitutional text relies on a classical trialist separation into three branches, the CC has already in 1995 concluded that the principle of separation of powers guarantees independence also to institutions, established to control the other organs of state, even if they are *sui generis* and not classifiable as part of the legislative, executive or judicial branch.<sup>52</sup> In some way, the Court upgraded the classical concept focused on the separation of *branches*. In today’s institutional landscape, we can without a doubt consider as such institutions that can rely on independence, *inter alia*, the Court of Audit (*Računsko sodišče*), the Human Rights Ombudsperson (*Varuh človekovih pravic*), the Information Commissioner (*Informacijska pooblaščenka*) and the Anti-Corruption Commission (*Komisija za preprečevanje korupcije*), Bank of Slovenia (*Banka Slovenije*), regardless of whether they were created by the Constitution or by statute. Other such institutions that require constitutional guarantees of independence, albeit perhaps in a different manner or to a different degree, could be the State Prosecution, the Police and the different independent agencies such as the competition authority.<sup>53</sup> This list may be open-ended, and the guarantees of independence may also vary depending on the mission and jurisdiction of the individual organ, but there is a strong constitutional logic behind this approach. In Slovenian constitutional doctrine, the principle of separation of powers is not intended to protect the organisations within the state apparatus, but in its final end to protect the citizen from unlawful and arbitrary encroachments by state power.<sup>54</sup>

#### 2.1.4. State as guardian of human rights and fundamental freedoms

While the entire Chapter 2 of the Constitution is designed as a list of human rights and fundamental freedoms, these are mentioned already among the fundamental principles in Ch 1. The formulation in art. 5 Constitution is that “in its own territory, the state shall protect human rights and fundamental freedoms” alongside some other constitutional values. This clause of the Constitution is seen as a basis for the state to uphold its positive obligations with regard to human rights and fundamental freedoms, i.e. not only violate them itself, but also ensure respect for them in horizontal relationships.<sup>55</sup> This, more generally formulated clause, is inseparably linked with arts. 14, 15 and 16 that present structural rules on the application, realisation and limitation of human rights and fundamental freedoms.<sup>56</sup>

One of the constitutional values that the state is charged with protecting are also the rights of the autochthonous Italian and Hungarian national communities (art. 5/I Constitution) An extensive list of the rights of these two communities is laid down in art. 64, and the two communities are also represented by two deputies of the National

52 Constitutional Court RS, case U-I-158/94, 9.3.1995, paras. 21, 22, 24, 27.

53 We draw here upon Levitsky and Ziblat’s account on »capturing the referees« (Levitsky, Ziblat, 2018, p. 78).

54 Constitutional Court RS, case U-I-158/94, 9.3.1995, para. 20.

55 Zupančič, 2002, on art. 5, para. 1, Constitution, in Šturm et al., 2002.

56 See Bardutzky, 2020, pp. 11–30.



Assembly, in essence giving the members of the communities a double vote in the parliamentary elections.<sup>57</sup> The Constitution is much more laconic with regard to the Romany community,<sup>58</sup> which also enjoys fewer collective rights.<sup>59</sup> Also, the constitutional text is completely silent about the other ethnic groups living in Slovenia, most notably the members and descendants of the peoples of Yugoslavia that had migrated to Slovenia, despite the fact that they greatly outnumber the Italian and Hungarian communities.<sup>60</sup> In 2011, the National Assembly adopted a non-binding, political declaration on the position of Albanians, Bosniaks, Montegrins, Croatians, Macedonians and Serbs living in Slovenia,<sup>61</sup> but their legal status as ethnic communities still lacks recognition.<sup>62</sup>

### 2.1.5. A unitary state with local self-government

The Constitution declares Slovenia to be a “territorially unified and indivisible state” (art. 4), effectively proscribing a federal order to be set up within Slovenia *in lieu* of a unitary state,<sup>63</sup> while at the same time guaranteeing local self-government (art. 5). The basic unit of local self-government in Slovenia is a municipality (*občina*). Despite the 2006 constitutional reform that envisaged an obligatory creation of regions (*pokrajina*), this has not yet happened.<sup>64</sup> The Constitutional Court linked the creation of *občine* to the realisation of what it referred to as a ‘constitutional right to self-government’.<sup>65</sup>

### 2.1.6. A secular state

Slovenia is a secular state, as art. 7 prescribes separation between state and religious communities. The Constitution also demands that the state treat religious communities equally, an important principle in light of the historical and societal dominance of the Roman Catholic church in Slovenia and its influence on politics.<sup>66</sup> The secular

57 Similar applies to the representation of these two communities in bodies of local government. As per Art. 64, para. 5, Constitution of the Republic of Slovenia, these representatives hold the power of absolute veto on laws governing *exclusively* the rights of the communities.

58 Art. 65, Constitution of the Republic of Slovenia.

59 Zakon o romski skupnosti (ZRoms-1, Eng. ‘Roma Community in the Republic of Slovenia Act’), Official Gazette RS, No. 33/07, 30.3.2007.

60 See more in [http://www.inv.si/DocDir/Publikacije-PDF/Razprave%20in%20gradivo/RIG%2056\\_57/VKB%2056\\_57.pdf](http://www.inv.si/DocDir/Publikacije-PDF/Razprave%20in%20gradivo/RIG%2056_57/VKB%2056_57.pdf).

61 Deklaracija Republike Slovenije o položaju narodnih skupnosti pripadnikov narodov nekdanje SFRJ v Republiki Sloveniji (DePNNS), Official Gazette RS, No. 7/11, 1.2.2011.

62 As relatively strong *individual* guarantees of linguistic and cultural identity, the members of these ethnic communities can rely on arts. 61 and 62, see below.

63 See Šturm, 2002, on art. 4 Constitution, in Šturm et al., 2002.

64 Grad, Kaučič, Zagorc, 2020, p. 730. For more on the constitutional basis and the possible frameworks for the creation of regions, see Senčur, 2019, on art. 143 Constitution, in Avbelj et al., 2019. Ustavni zakon o spremembah 121., 140. in 143. člena Ustave Republike Slovenije (UZ121, 140, 143), Official Gazette RS, No. 68/06, 20.6.2006. Grad et al., 1999, p. 430.

65 Constitutional Court RS, case U-I-114/11, 9.6.2011, para. 10.

66 The Constitutional Court (under certain conditions) confirmed the constitutionality of Slovenia’s Agreement on Legal Issues with the Holy See, see case Rm-1/02, 19.11.2003.

principle in art. 7 is closely linked with the Constitution art. 41 right to freedom of conscience and religion.<sup>67</sup>

## 2.2. *The legislative and the executive branches of government*

The constitutional text itself is ambiguous as to the composition of the Slovenian parliament. Without any doubt, the National Assembly (*Državni zbor*, hereinafter: NA) is the directly elected representative body with legislative and other typical parliamentary powers, including the power to revise the constitution. It is therefore a typical lower chamber of parliament. The National Council (*Državni svet*), however, is a more peculiar creature and could also be classified as a *sui generis* consultative organ as its powers are quite weak compared to upper chambers of modern parliaments and as it has no direct relationship with the Government.<sup>68</sup>

Nevertheless, all the powers of the National Council are linked to the work of the NA (e.g. the power of legislative initiative and suspensive legislative veto and legislative, art. 97 Constitution) and it is thus considered an organ within the legislative branch<sup>69</sup> or an upper parliamentary chamber *lato sensu*.<sup>70</sup> We can therefore conclude that Slovenia has a bicameral parliament in a situation of asymmetrical bicameralism.<sup>71</sup>

In addition to the classical functions of the parliament – legislative, budgetary, control – the NA also possesses comparatively strong powers of appointment and election. The strong powers of the appointment and election of the NA are frequently considered to be a remnant of the pre-1991 system of unity of powers.<sup>72</sup> The National Council is elected indirectly<sup>73</sup> and it is not composed of representatives of the people in general, but rather of representatives of ‘special (particular) societal interests’ (art. 96 Constitution) and should as such be a reflection of the complexity of the society.<sup>74</sup>

Slovenian constitutional doctrine usually considers that there are two of the highest organs of the state that belong to the executive branch of government. The President of the Republic (*predsednik republike*) is the head of state (Constitution Ch IV/c).<sup>75</sup> The Government (*vlada*) sits on top of the executive-administrative apparatus and is thus the *de facto* head of the executive branch of power (Constitution Ch

67 See, e.g., Constitutional Court RS, case U-I-68/98, 22.11.2001. See also Constitutional Court RS, case U-I-92/07, 15.4.2010.

68 Bele et al., 1992, pp. 146, 149. See also Pernuš, 2011, p. 723.

69 Mozetič, 2002, on art. 96 Constitution, in Šturm et al., 2002.

70 Bele et al., 1992, p. 148.

71 Štrus, 2019, on art. 97 Constitution, in Avbelj et al., 2019.

72 Grad, Kaučič, Zagorc, 2020, p. 405.

73 Grad, Kaučič, Zagorc, 2020, pp. 338 et seq.

74 Mozetič, KURS 2002, art. 96 (<https://e-kurs.si/komentar/komentar-23/>).

75 It was confirmed by the Constitutional Court that the President of the Republic is to be considered a part of the executive branch, however with a constitutionally independent position with regard to her relationship with the NA. Constitutional Court RS, case U-I-57/06, 13.4.2006, para. 29.

IV/č).<sup>76</sup> The Government produces the majority of proposals for a statute; it also adopts substatutory legislation, thus exercising two powers unavailable to the President of the Republic. At least nominally, the control of the NA over the Government is very strong; unusually for parliamentary democracies, the appointment and removal of ministers is not in the hands of the President of the Government (*predsednik vlade*), but rather subject to a vote in the NA.<sup>77</sup>

The drafters of the 1991 Constitution rejected a powerful President which would turn Slovenia into a semi-presidential republic. Also, in art. 103, they opted for direct elections of the President, which the Slovenian constitutional doctrine considers somewhat unusual for parliamentary systems.<sup>78</sup> A direct election provides the President with strong democratic legitimacy which goes somewhat in vain,<sup>79</sup> as the list of powers of the President in art. 102 Constitution is relatively limited.<sup>80</sup> This office, however, does come with extensive powers of proposal of candidates for high state functions; perhaps the most important one is to nominate candidates for judge of the CC for appointment by the NA (Constitution Art 163/I).

### 2.3. *The Judiciary and the Constitutional Court*

The Constitution addresses the judiciary (*sodstvo*) in Ch IV(f)), declaring the Supreme Court (*Vrhovno sodišče*) to be the highest court of the land (Art 127). Ch VIII of the Constitution is devoted to the Constitutional Court (*Ustavno sodišče*), which the legislation, taking into account the somewhat confusing phrasing of art. 127, defined as the »highest organ of the judicial branch for the protection of constitutionality and human rights and fundamental freedoms.« (Constitutional Court Act Art 1). The judges, members of the judiciary, and the judges of the CC obtain their mandate in different ways;<sup>81</sup> also, while the judiciary is protected by permanent term of the judges, while the judges of the CC serve for a nine year non-renewable term.

The right to have one's case heard without undue delay by an independent and impartial court, established by statute, is enshrined in art. 23 Constitution, as is the right to be tried by a judge assigned according to *a priori* rules.<sup>82</sup> The subjective right to be tried by an independent judge is linked to the (institutional) constitutional clause affirming the independence of judges and their loyalty only to the Constitution and statutes (art. 125 Constitution) The CC has developed standards for the impartiality

76 Grad et al., 1999, p. 155.

77 Grad, KURS 2019 'Državna ureditev', art. 116, side no. 15.

78 Kaučič, KURS 2019 'Državna ureditev', art. 103, side no. 4. See Ribičič, 2016, pp. 39–62, for a discussion of the choices in the constitutional drafting process in 1990–1991.

79 For a discussion on the relationship between the legitimacy of the President of the Republic and the system of elections see Kaučič, 2016, pp. 139 et seq.

80 For a discussion of the status as Commander-in-Chief, see Pavlin, 2016, pp. 333–346.

81 The former obtain their mandate upon proposal of the Judicial Council (*Sodni svet*), see arts. 130 and 131, Constitution.

82 Art. 23, Constitution of the Republic of Slovenia.

of judges<sup>83</sup> and has considered the independence of judges an essential building block of the principle of separation of powers.<sup>84</sup> A central role in the protection of independence of judges is played by the permanent term of the judges enshrined in art. 129 Constitution.<sup>85</sup>

After the 1995 major reform of the Slovenian judiciary,<sup>86</sup> it encountered a large-scale, systemic problem, when the growing workload resulted in lengthy proceedings and in turn, a violation of the right to trial without undue delay (within reasonable time, in the language of the ECHR).<sup>87</sup>

The 1963 Constitution of Yugoslavia created the Constitutional Court of Yugoslavia, and the constitutions of the constituent republics followed suit. Hence, one could say that there is a long tradition of constitutional judiciary in Slovenia, but not without a caveat. Obviously, these institutions existed and functioned in a context radically different to today's constitutional democracy in Slovenia, in a political system and society dominated by the Communist Party, with very little room for dissent.<sup>88</sup> Upon the adoption of the 1991 Constitution, the Constitutional Court was instructed to continue functioning, but in accordance with the new constitutional order.

As a central function of the CC, the 1991 Constitution envisaged the control of conformity of hierarchically lower with hierarchically higher abstract norms, first and foremost the conformity of statutes with the Constitution. But the CC also reviews substatutory and local norms, and the legislature has been loath to distribute this workload to other courts.<sup>89</sup>

The CC is vested with a number of other powers,<sup>90</sup> *inter alia* the adjudication of impeachment procedures (arts. 109, 119, Constitution).<sup>91</sup> But the 1991 Constitution also introduced a novelty to the design of the CC that was destined to become the single most important procedure before the Court: the constitutional complaint (*ustavna pritožba*) for the protection of human rights and fundamental remedies (art. 160/I/1 Constitution). The constitutional complaint is filed against an *individual* legal act issued by an organ of public power. Constitutional complaints have represented the vast majority of the Court's workload for some time now, contributing importantly to the overburdening and backlogs at the Court. In 2007, the amendments to

83 Constitutional Court RS, case U-I-60/06-200, 7.12.2006, paras. 63–65.

84 Constitutional Court RS, case U-I-60/06-200, 7.12.2006, paras. 57–62.

85 Constitutional Court RS, case U-I-60/06-200, 7.12.2006, paras. 62–63; Bardutzky, KURS 2019 'Državna ureditev', art. 129.

86 See Skubic, 2011 for an overview of the pre-1995 structure of the judicial system and the 1995 reform.

87 Lukenda v. Slovenia – 23032/02, Judgment, 6.10.2005 [Section III]. See also Pavlin, 2009.

88 For a salient evaluation of these institutions, see Sadurski, 2008, p. 1.

89 The only exception is the jurisdiction of administrative courts to review the legality of spatial plans pursuant to Zakon o urejanju prostora (ZUreP-2, Eng. 'Spacial Management Act), Official Gazette RS, No. 61/17, 2.11.2017.

90 Pernuš, 2011, pp. 728 et seq.

91 Grad, Kaučič, Pogačnik, Tičar, 2002, p. 180.

the Constitutional Court Act (arts. 26, 55.a and 55.b)<sup>92</sup> have significantly narrowed the access to the CC via constitutional complaint, but excessive workload remains a serious issue.

The CC has played and continues to play a pivotal role in the construction of Slovenian constitutional democracy. It has in the past thirty years issued a number of important decisions, developed constitutional procedural guarantees, but also the protection of substantive human rights and fundamental freedoms, such as, e.g., freedom of expression and free economic initiative.

### 3. Slovenian constitutional identity

In discussing Slovenian constitutional identity, I rely, to some extent, on the starting point of the account of Gary Jacobsohn in his seminal book *Constitutional Identity*.<sup>93</sup> According to Jacobsohn, a constitution acquires an identity through experience. Identity of a constitution is something that emerges dialogically, as “a mix of political aspirations and commitments that are expressive of a nation’s past, as well as the determination of those within the society who seek in some ways to transcend the past.”<sup>94</sup> The temporal frame in which the inquiry in this volume is set, namely the past hundred years (approximately), is appropriate for the examination of Slovenian constitutional identity. As it has been outlined above<sup>95</sup>, this is the period of time during which Slovenians, after living for a millennium as a part of the Holy Roman Empire and later the Austro-Hungarian monarchy, have transformed itself into a nation with a state, and this state has in the past three decades developed a functioning constitutional democracy. The past hundred years have been turbulent, Slovenia was a part of different constitutional systems, not to mention diametrically opposite political, societal and economic systems. The three milestones – the creation of the monarchy of the South Slavs, the WWII and the creation of Socialist Yugoslavia, and finally the establishment of an independent and democratic Slovenia – were moments where Jacobsohn’s “political aspirations and commitments” culminated and found expression (or disappointingly failed to find expression) in constitutional documents and settlements. In between the milestones, the nation lived through traumas, fears, but also positive and encouraging developments. All of these can then be translated into decisions on constitutional design – with a view to the future, attempting to, as Jacobsohn would put it, transcend the past.<sup>96</sup>

92 Zakon o spremembah in dopolnitvah Zakona o Ustavnem sodišču (ZUstS-A, Eng. ‘Act Amending the Constitutional Court Act’), Official Gazette RS, No. 51/2007, 8.6.2007.

93 Jacobsohn, 2010.

94 Jacobsohn, 2010, p. 7.

95 See sections 1.1.–1.5. of this Article.

96 Jacobsohn, 2010, p. 7.

Attempts to define what constitutes the core of the Slovenian constitution, linked to constitutional identity, have been made in Slovenian scholarship.<sup>97</sup> Without a doubt the views of the scholars that what lies at the core are such fundamental values as human dignity, democracy, rule of law, protection of human rights, equality and so on, can be upheld. History of the making of the Slovenian Constitution, reference to the constitutional amendments in 1988, rich case law of the CC offer limitless corroboration for these claims. Similar statements could be made, with minor variations, with regard to most contemporary democratic constitutional systems in Europe and beyond.

The purpose of the present account is slightly different. It purports to articulate the elements of the Slovenian constitution that might be considered characteristic and to stand out in the Slovenian constitutional system when observed in the company of comparable constitutions. It can be acknowledged that the present inquiry into the characteristic Slovenian elements of constitutional identity is an initial contribution to this debate; we consider the list below an open-ended one to which elements could be added in the future.

### **3.1. European constitutionalism at the heart of Slovenian constitutionalism**

The notion of ‘European constitutionalism’ we apply here is broad and historical. We draw on the formulation of Slovenian constitutional scholar Peter Jambrek, according to whom the constitutional traditions common to the Member States are legal expressions of the ‘never again’ cries that have followed periods of suffering and injustice in Europe.<sup>98</sup> These legal expressions, in our view, were not only the post-WWII constitutions such as the German *Grundgesetz* or the Constitution of Italy, but also the creation of the Council of Europe and the European Economic Community, with their objectives of, respectively, furthering democracy, rule of law and human rights, and preventing nationalist excesses leading to wars. Obviously, in the case of Slovenia, before the project of post-WWII European constitutionalism and its values could be embraced, the nation had to endure a long period of rule of the Communist Party and widespread violations of human rights. But the situation is more nuanced in the case of Yugoslavia and Slovenia than in the case of most of the other socialist CEE countries. Yugoslavia, in line with its departure from the strict Soviet-style socio-economic system, also began establishing links with the projects of European integration. It had concluded three Trade and Co-operation Agreements with the European Community, aimed at increasing trade in goods but also protecting workers from Yugoslavia employed in the Community Member States.<sup>99</sup> As of 1983, Yugoslavia was an observer in EFTA, and as of 1989, the Federal Assembly of SFRY had the status of a ‘special guest’ in the Parliamentary Assembly of the Council of Europe. Between 1975 and 1990, nine sessions of the SFRY-EEC Co-operation Council (at the ministerial

97 Summarized by Kos, 2021, pp. 109–110.

98 See Bardutzky, 2019, fn. 167.

99 Artisien, 1981, pp. 31–32.

level) took place, as well as sporadic meetings of delegations of the European Parliament and the SFRY Assembly.<sup>100</sup> Also, the President of the Slovenian Executive Council Stane Kavčič (1967–1972) was seen as an advocate of closer links with the EEC, which was considered one of the reasons for his removal from office and public life.<sup>101</sup> In the 1980s, the growing doubt in Slovenia that Yugoslavia will indeed be able to join European integration processes became a source of disappointment with the Yugoslav project and an important contributing factor to the ambition of Slovenia to radically redefine the Yugoslav federation or even achieve full statehood.<sup>102</sup> In the beginning of the 1990s, when Slovenian path to statehood reached its final stages, the ambition of Slovenia to participate in European integration became a part of the discourse of the highest Slovenian representatives in exposing their demands for independence and justifying the decision for it.<sup>103</sup> The Declaration of Independence, adopted on 25 June 1991 alongside with the Basic Constitutional Charter, stresses the intention of Slovenia to join the United Nations, Council of Europe and the European Community.<sup>104</sup> And finally, the historical speech (“Tonight, we are allowed to dream”) of the President of the Presidency of Slovenia delivered at the ceremony for the declaration of independence on the 26 June 1991 declares the desire of Slovenians to join, under equal terms and with full responsibility, a Europe without borders.<sup>105</sup>

Slovenia acceded to the Council of Europe in 1993,<sup>106</sup> when it also ratified the European Convention on Human Rights.<sup>107</sup> It joined the European Union in 2004, after amending its Constitution, first, to remove obstacles to accession, and second, with the insertion of art 3.a in the Constitution, to provide a legal basis for accession.<sup>108</sup> On the basis of Art 3.a, a referendum was held, with 89,61% of those who voted declaring themselves in favour of accession to the EU.<sup>109</sup> Art 3.a Constitution does not mention the European Union by name; it speaks of transferring the exercise of a part of sovereign rights to “international organisations which are based on respect for human rights and fundamental freedoms, democracy, and the principles of the

100 Djukanović, 2021.

101 Artisien, 1981, p. 31.

102 Repe, (Part 2) 2003, p. 16.

103 Along with adopting the statute that guaranteed legal basis for the 1990 independence referendum (Zakon o plebiscitu o samostojnosti in neodvisnosti Republike Slovenije (ZPSN, Eng. ‘Plebiscite on the Sovereignty and Independence of the Republic of Slovenia Act’) Official Gazette No. 44/90, 6.12.1990), the Slovenian Assembly also adopted a “Declaration of good intentions”, specifying that should the people vote in favour of independence, independent Slovenia will seek to join the Council of Europe as well as sign ‘appropriate agreements’ with the EC and EFTA. (Repe, Part 2 (2003), p. 242).

104 Repe, (Part 3) 2004, p. 34. See fn. 36.

105 Repe, (Part 3) 2004, p. 36.

106 Grad, Kaučič, Pogačnik, Tičar, 2002, pp. 312–313.

107 Grad, Kaučič, Zagorc, 2020, p. 756.

108 Ustavni zakon o spremembah I. poglavja ter 47. in 68. člena ustave Republike Slovenije (Eng. Constitutional Act amending Chapter 1 and Articles 47 and 68 of the Constitution of the Republic of Slovenia, Official Gazette 24/03, 7.3.2003).

109 Bardutzky, 2019, fn. 44.

rule of law”.<sup>110</sup> It thus reiterates the essential reason why Slovenia decided to become a part of the Union, and linked the project of attaining full statehood to it: to continue the project of European constitutionalism, under its cry of ‘never again’ directed at totalitarianism and authoritarianism that have violated human dignity throughout contemporary European history.

### 3.2. *Right to language*

The role of language in constituting the nation is of particular importance when it comes to Slovenians. Having been a part of the Holy Roman Empire and then Austro-Hungarian monarchy from early middle ages to the XXth century, with the members of the ethnic community inhabiting different political units of the Empire, Slovenians were not in a position, as many other nations were, to develop its own state, to engage in military actions on its behalf, and to shape itself into a nation by creating a narrative of noble and wise monarchs, slaughter on the warfield and sacrifice for the homeland. Instead, it was culture, and most importantly, the Slovenian language, that served as an anchoring point. So much so that the Slovenian intellectuals have sometimes used the description ‘nation of the language’ (*jezikovni narod*).<sup>111</sup> The treatment of the Slovenian language in the two Yugoslav states went counter the importance thereof for Slovenians. In the monarchy, it was merged into a new, inexistent linguistic concept.<sup>112</sup> In the post-WWII Yugoslavia, while on a declaratory level, the languages of the Yugoslav peoples were much more equal, in practice, Slovenian language struggled for recognition against the stronger ‘Serbo-Croat’ language, used primarily by federal authorities.<sup>113</sup> Of particular political importance was the 1988 trial, before a military court of the Yugoslav army, in Ljubljana, against Ivan Borštner, Janez Janša, David Tasič and Franci Zavrl, which was held in Serbo-Croat despite the fact that the four accused were Slovenians and that it took place on Slovenian territory.<sup>114</sup> The trial was highly controversial and led to mass protests, the largest public gathering in Slovenia since WWII.<sup>115</sup> The decision of the Slovenian assembly to include a clause on language equality in the 1988 constitutional amendment XLVI should therefore not be a surprise. Art. 11 of the 1991 Constitution declared Slovenian to be the official language, with Italian and Hungarian given the same status alongside Slovenian in areas populated with members of the two national minorities. But the constitution-maker did not stop at providing a ‘privileged status’<sup>116</sup> for these three languages. Art. 61 also entrenched the right of everyone to “freely express affiliation with his nation

110 Ibid., pp. 693–694, 730.

111 Paternu, 2005, p. 65.

112 See *supra* Section 1.2.; Škrubej, 2016, p. 312, points out, however, that this was not forced upon the Slovenian politicians at the time of the making of the Vidovdan constitution.

113 Gabrič, 2015, pp. 213 et seq. The 1963 Constitution of Slovenia declared Slovenian as the official language.

114 Zupančič et al., 1989, pp. 75 et seq.

115 Ramet, 1993, p. 870.

116 Constitutional Court RS, case Up-43/96, 30.5.2000, para. 18.



or national community, to foster and give expression to his culture, and to *use his language and script*.<sup>117</sup> It is undoubtedly not a coincidence that the Slovenian constitution as a constitution of the ‘nation of the language’ guarantees one’s ethnic and cultural identity in the same clause as it entrenches linguistic rights. What is more important is that in this clause, the Constitution extrapolates the fruits of the struggle of the speakers of Slovenian for the use of their language to a more general notion of a right to language that can coexist with the privileged status of the Slovenian language (and the two minority languages). The CC linked the art. 61 right to the art. 35 right to privacy and protected the individual and free decision of anyone to use their own language publicly.<sup>118</sup> It seems that the historical struggle for free and uninhibited use of Slovenian in the context of politically stronger languages (German, Serbo-Croat, Italian and Hungarian<sup>119</sup>) with strong relevance for cultural and ethnic identity has transcended into a wider constitutionally guaranteed linguistic freedom that constitutes a part of Slovenian constitutional identity.

### **3.3. Constitutional mistrust towards the use of military**

The development of a pluralist civil society in Slovenia in the 1980s, an important prelude to the processes of democratisation and establishing statehood, also saw the rise of a strong pacifist movement in Slovenia.<sup>120</sup> This movement produced an initiative for a demilitarised Slovenia that at the time enjoyed wide support.<sup>121</sup> This came against the backdrop of the Yugoslav society and political system with a strong role for the military. The Yugoslav People’s Army was even defined as guardian, among other things, of the constitutional order in art. 255 of the 1963 SFRY Constitution. The army, or rather its leadership, had its own political agenda, based on strong support for centralism, that often clashed with the views of the Slovenian communist leadership.<sup>122</sup> The previously mentioned protests against the trial of civilians in a military court<sup>123</sup> were also fueled by the disapproval of the military meddling with the civilian sphere, considered constitutionally problematic by some Slovenian lawyers.<sup>124</sup>

The pacifist tendencies in the Slovenian society on the one hand and the demand for protection of the civilian sphere echoed in two clauses of the 1991 Slovenian constitution. First, while participation in national defence is an obligation of all citizens (art. 123/I),<sup>125</sup> the Constitution (art. 124/III) is also clear: “In the provision of security the state proceeds principally from a policy of peace, and an ethic of peace and

117 Emphasis by author. Art. 62 guarantees the right to use one’s language in procedures before authorities.

118 Constitutional Court RS, case U-I-299/94 („Žalski nagrobniki“), 13.4.1995.

119 See *supra* Section 1.3.

120 Repe, 2000, p. 259.

121 *Ibid.*

122 Repe, 2000, pp. 247–248.

123 See fn. 114–115.

124 Zupančič et al., 1989, pp. 32–35.

125 At the same time, the 1991 Constitution entrenches conscientious objection as a human right (art. 123/II).

non-aggression.”<sup>126</sup> Second, military courts cannot be established in peacetime (art. 126/II).<sup>127</sup> The division between civilian and military spheres was put to test soon after the adoption of the new Constitution. The arrest of an undercover police agent by members of the military in 1994 led to the first ever dismissal of a minister, by the NA, in post-1991 Slovenian history.<sup>128</sup> The strong reaction confirmed the commitment to the separation of the civilian and military sphere. The commitment, however, eroded seriously with the 2015–2016 arrival of a large number of refugees, when the members of the Slovenian Armed Forces were temporarily vested with limited police powers for the protection of the state border.<sup>129</sup> Also, with Slovenia’s accession to NATO (with constitutional basis in art. 3.a), the country has conceded to potentially using its military for other than defence purposes. Nevertheless, peace (in external affairs) and strong restrictions on the use of military in civilian affairs (internally) remain historically rooted values of the Slovenian constitution.

### 3.4. Gender equality

History of gradual establishment of Slovenian statehood reveals attempts to recognize women as equal political subjects. The interwar monarchy period never saw equality of votes for women despite promising beginnings.<sup>130</sup> However, already in the elections for the organs leading the national resistance in Slovenia, women had the right to vote.<sup>131</sup> This was also enshrined in art. 23 1946 Yugoslav Constitution. Of course, it needs to be recognised that the wartime elections were not according to established standards, and that voting rights in post-1946 Yugoslavia should be considered in context of a one-party system, far from democracies at that time established in most of Western Europe. But on an abstract level, gender voting equality was there. The equal right to vote, enshrined in the 1991 Constitution, was built upon by the constitutional revision of art. 43, adding a constitutional basis for statutory measures to encourage gender equality in running for office.<sup>132</sup>

Another important issue is reproductive rights. The 1974 Slovenian Constitution, in art. 233, guaranteed the right of everyone to make free decisions regarding the birth of their children, with the possibility to limit this right solely for health reasons.

126 The brief discussion in the Assembly Committee for Constitutional Affairs that prepared the final text of the Constitution included proposals for a referendum on whether Slovenia should have an army at all or not. Cerar, Perenič, (Vol. III.) 2001, pp. 997–999.

127 To cite a discussant at the Assembly Committee for Constitutional Affairs when drafting the final text of the Constitution, whose name was not recorded: “The construction of this constitution is founded on a completely different attitude towards military judiciary, so this can be eliminated.” Cerar, Perenič, (Vol. III.) 2001, p. 1008.

128 STA, *IUS-INFO*, ‘Míneva 25 let od afere Depala vas’, 20.3.2019.

129 AFP, Reuters, *DW*, ‘Slovenia gives army expanded powers to tackle refugee crisis’, 21.10.2015.

130 See *supra* Section 1.2.

131 Grad et al., 1999, p. 53.

132 Ustavni zakon o spremembi 43. člena Ustave Republike Slovenije (UZ43, Eng. ‘Constitutional Act amending Article 43 of the Constitution of the Republic of Slovenia’), Official Gazette RS, No. 69/04, 15.6.2004.

This right was, ostensibly paradoxically, somewhat diluted with the phrasing of art. 55 1991 Constitution.<sup>133</sup> Despite this fact, the Slovenian constitution remains one of the few constitutional documents expressly protecting this right, which includes the right to abortion. This achievement, however, was diminished with the result of the 2001 referendum. The electorate refused the entry into force of a statute that would once again restore the right to biomedically assisted procreation to single women.<sup>134</sup>

Both the gradual assertion of gender equal voting rights, first implemented by a guerilla resistance movement, in my interpretation thereby symbolically recognising the equal role of women in the struggle for the survival of the nation, as well as the recognition of a strong right of women to privacy against the backdrop of supposed societal morals etc., demonstrate that as the Slovenian nation gradually developed its statehood alongside with recognition for an equal position of all of its members, regardless of gender. We believe this element of Slovenian constitutional identity to harbour the potential to transcend the issue of voting and reproductive rights and serve as a force for developing gender equality and identity in all walks of life.

#### 4. Concluding Remarks

As can indeed be said of many of the countries in Central and Eastern Europe, the timeframe that the editors of this volume expressed interest in was a period of dramatic and radical changes in Slovenia. The country experienced monarchies, republics, dictatorships, wars, capitalism, socialism – the list could go on. In the year that this chapter was written, it celebrates the thirtieth anniversary of adopting, for the first time, a democratic and liberal constitution of an independent state. In these three decades, the 1991 Constitution has witnessed the accession to the European Union and all the constitutional challenges that accompany it. We have also been able to observe that Slovenia was not immune to rule of law issues that have appeared in Europe. All of this promises the next thirty years as well as the next century to be captivating and intriguing for students of constitutional development and identity. It should be reiterated that my list of proposals for elements of Slovenian constitutional

133 The 50 pages of the transcript of the session of the Assembly Committee on Constitutional Affairs reveals this as one of the most controversial decisions of the 1991 constitution-making process. Cerar, Perenič, (Vol. II.) 2001, pp. 589–641. See also Horvat Vuković, A. and Samobor, A. (2022) ‘The Constitutional Construction of Reproductive Rights and the Family in Croatia and Slovenia’, paper prepared as part of the symposium on Women, Gender and Constitutionalism in Central and Eastern Europe, on file with author.

134 See art. 5, Zakon o zdravljenju neplodnosti in postopkih oploditve z biomedicinsko pomočjo (ZZNPOB, Eng. ‘Infertility treatment and procedures of biomedically-assisted procreation act’), Official Gazette RS, No. 70/00, 8.8.2000. See also Horvat Vuković, A., Samobor, A. (2022) ‘The Constitutional Construction of Reproductive Rights and the Family in Croatia and Slovenia’, paper prepared as part of the symposium on Women, Gender and Constitutionalism in Central and Eastern Europe, on file with author.

identity is an open one; already based on Slovenia's constitutional path so far, more could be added; the future promises the appearance of even further candidates.

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