2021

YEARBOOK OF THE CONSTITUTIONAL COURT
OF THE CZECH REPUBLIC

YEARBOOK
2021

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“Protect your independence and reputation, because it takes years to build and only moments to lose. Be loyal only to your constitutional mission and nothing else. Support those who are at risk today. If you don’t do that today, there will be no one to help you tomorrow.”

(Excerpt from a speech by Mr. Pavel Rychetský, President of the Constitutional Court of the Czech Republic, delivered to the XVIII Congress of the Conference of European Constitutional Courts on 25 February 2021)

CONTENTS

1

INTRODUCTION

Dear Readers:

As in the past, I would like to extend cordial greetings to all of you at the beginning of our yearbook, in which we are trying to offer a more comprehensive look at the Constitutional Court of the Czech Republic and its most recent activities. As we regularly prepare this publication, it makes me reflect, both consciously and subconsciously, on the previous year. This time, the reflection left a smile on my face and a certain sadness in my soul. The smile reflects the joy of a job well done. I am truly proud that despite all the complications associated with the ongoing pandemic, the Constitutional Court has carried out its important mission diligently and without compromise. For that, I would like to thank my colleagues and all the employees of the Constitutional Court, as they have once again demonstrated that they approach their work with great responsibility, humility and conscientiousness. The sadness, then, is a reflection of the fact that even in 2021 we did not escape the shadow of the pandemic and that, as a consequence, the society continued to face a challenge that had a strong impact on public as well as private life. However, I remain optimistic and I firmly believe that we will soon return to a world where personal contact, handshakes and the real sound of the human voice are as commonplace and as safe as they were in the past.

In my capacity as Vice-President of the Constitutional Court, I have long been responsible for managing the agenda of international relations. Therefore, I would like to point out that the Constitutional Court of the Czech Republic presided over the Conference of European Constitutional Courts for the past four years. In 2022, this most important European platform for multilateral co-operation of judicial bodies exercising constitutional review will celebrate fifty years of existence, during which eighteen congresses have already been held. The last one took place in 2021 and was organised by the Constitutional Court of the Czech Republic. In the organisation of the congress, which concluded our Presidency, it was necessary to respond to the extremely difficult situation caused by the pandemic, so the event was held on-line, i.e. with the remote participation of foreign speakers and guests. Unprecedented as the conditions were, the XVIII Congress achieved its objectives and allowed the international judicial dialogue to continue.

The theme of the XVIII Congress were “Human Rights and Fundamental Freedoms: the Relationship of International, Supranational and National Catalogues in the 21st century”. The General Report on this issue was drafted on the basis of input provided by the member courts. As the Rapporteur General of the XVIII Congress, I led the team that prepared the General Report, and it was also my responsibility to present the Report to the participants of the XVIII Congress. It has been an honour to fulfil this role and I truly appreciate the co-operation and collaboration of all forty-one members of the Conference of European Constitutional Courts. I would like to thank our foreign colleagues once again and I wish all of you who hold this publication in your hands a pleasant reading experience.

Jaroslav Fenyk
Vice-President of the Constitutional Court
and the Rapporteur General of the XVIII Congress
of the Conference of European Constitutional Courts

2

ABOUT THE CONSTITUTIONAL COURT

History of the Constitutional Judiciary

The First Czechoslovak Republic

The history of the constitutional judiciary in our country began shortly after the birth of the Czechoslovak Republic when, pursuant to the Constitutional Charter of 1920, a separate Constitutional Court of Czechoslovakia was established in 1921. (The Czechoslovak Constitution of 1920 was for the first one in the world to set up a specialised judicial body – the Constitutional Court – authorized to review the constitutionality of laws.) The Court consisted of seven members. Three of them were appointed by the President of the Republic (including the Court's President), two Justices were delegated by and from the Supreme Court and two Justices by and from the Supreme Administrative Court. The Justices had a ten-year tenure. The first group of Justices of the Constitutional Court of the Czechoslovak Republic was appointed on 7 November 1921. Among them were Karel Baxa (who became the Court's first President), Antonín Bílý (Vice-President), Konstantin Petrovič Mačík, Josef Bohuslav, Václav Vlasák, František Vážný and Bedřich Bobek. After the term of office of the Court's first members had expired, new Justices were appointed only in 1938 with Jaroslav Krejčí as the President of the Court. During the Second World War, the Court did not meet, and after the war its work was not resumed. The work and functioning of the First Republic's Constitutional Court was for a long time afterwards a subject of little interest, and it was not considered a topic of great significance.

The Constitutional Judiciary in the Communist Era (1948–1989)

The Constitutions of 1948 and 1960, which reflected the legal situation of the totalitarian state of that time, no longer called for a constitutional court. An odd situation came about after the state was federalised in 1968, as the Act on the Czechoslovak Federation not only envisaged the creation of a Constitutional Court for the Federation, but also particular Constitutional Court for each of the two Republics. None of these courts was ever established, however, even though the unimplemented constitutional provision stayed in effect for more than two decades.

The Constitutional Court of the Czech and Slovak Federal Republic (1991–1992)

It was only after the collapse of the Communist regime that a genuinely operating Constitutional Court of the Czech and Slovak Federal Republic (ČSFR) was established pursuant to the Federal Constitutional Act of February 1991. That Court was a twelve-member body in which the Federation's constituent Republics were represented by six Justices, whose term of office was meant to be seven years. The Court's seat was located to the City of Brno. Ernest Valko was appointed President of the Constitutional Court of the ČSFR, and Vlastimil Ševčík became its Vice-President. The Court was made up of two Panels. Justices Marián Posluch, Jiří Malenovský, Ivan Trimaj, Antonín Procházka and Ján Vošček (a substitute member) were members of Panel I. Panel II consisted of Justices Pavel Mates, Peter Kresák, Viera Strážnická, Vojen Güttler and Zdeněk Kessler (a substitute member). Despite its short existence, the Federal Constitutional Court adjudicated more than one thousand matters, and the Constitutional Court of the Czech Republic has, in its decision-making, followed the Federal Court's legal views in a number of cases.

The First Period of the Constitutional Court of the Czech Republic (1993–2003)

After the dissolution of the Czechoslovak Federation, the existence of a constitutional court was also provided for in the Constitution of the independent Czech Republic of 16 December 1992. The newly established Constitutional Court of the Czech Republic began its work on 15 July 1993. On that day, Václav Havel, the then President of the Republic, appointed twelve of the fifteen Justices of this Court to a ten-year term, consent to their appointment being given at that time by the House of Deputies of the Parliament due to the fact that the Senate did not yet exist. This occurred a mere month after the House of Deputies had approved Act No. 182/1993 Sb. on the Constitutional Court, which, with reference to Art. 88 of the Constitution, governed in particular the organisation of the Court and proceedings before it, and designated the City of Brno as the Court's seat.

Thus, with the appointment of the first twelve Justices of the Constitutional Court, a new era for the constitutional judiciary commenced. These were important times, since the new state was still being formed. Therefore, we find it suitable to recall the initial composition of the Constitutional Court of the Czech Republic.

Zdeněk Kessler became the first President of the Constitutional Court of the Czech Republic and carried out his duties until February 2003, when, for health reasons, he resigned from the position. Miloš Holeček served as the first Vice-President, and following Zdeněk Kessler's resignation he assumed the role of President of the Court for remainder of his tenure. The other Constitutional Court Justices appointed on 15 July 1993 were Iva Brožová, Vojtěch Cepl, Vladimír Čermák, Pavel Holländer, Vojen Güttler, Vladimír Jurka, Vladimír Klokočka, Vladimír Paul, Antonín Procházka and Vlastimil Ševčík. The Court's bench was further supplemented in November 1993 by the appointment of Ivana Janů, who became the second Vice-President, and of Eva Zarembová. The fifteenth Justice, Pavel Varvařovský, was named at the end of March 1994.

The Constitutional Court continued to sit in this composition until 8 December 1999, when Iva Brožová resigned from her position. Jiří Malenovský (whose nomination was the first to be approved by the Senate of the Parliament) replaced her on 4 April 2000. In connection with her election to be a judge ad litem of the International Criminal Tribunal for the former Yugoslavia (ICTY), Ivana Janů resigned on 9 February 2002 from the position of Justice and Vice-President of the Constitutional Court. On 20 March of the same year, Eliška Wagnerová was appointed to her seat of Justice and Vice-President. Vladimír Paul, who died on 3 April 2002, was replaced by František Duchoň (appointed on 6 July 2002), and the seat of Vlastimil Ševčík, who died on 15 December 2002, was filled by Jiří Mucha (who was appointed on 28 January 2003). After Zdeněk Kessler's resignation (on 12 February 2003), Miloslav Výborný was named a Constitutional Court Justice on 3 June 2003.

The situation of a full bench did not last long, as on 15 July 2003 the tenures of Justices Vojtěch Cepl, Vladimír Čermák, Vojen Güttler, Pavel Holländer, Vladimír Jurka, Vladimír Klokočka, Vladimír Paul, and Antonín Procházka ended, as did that of Miloš Holeček, who had been presiding over the Court after the resignation of Zdeněk Kessler.

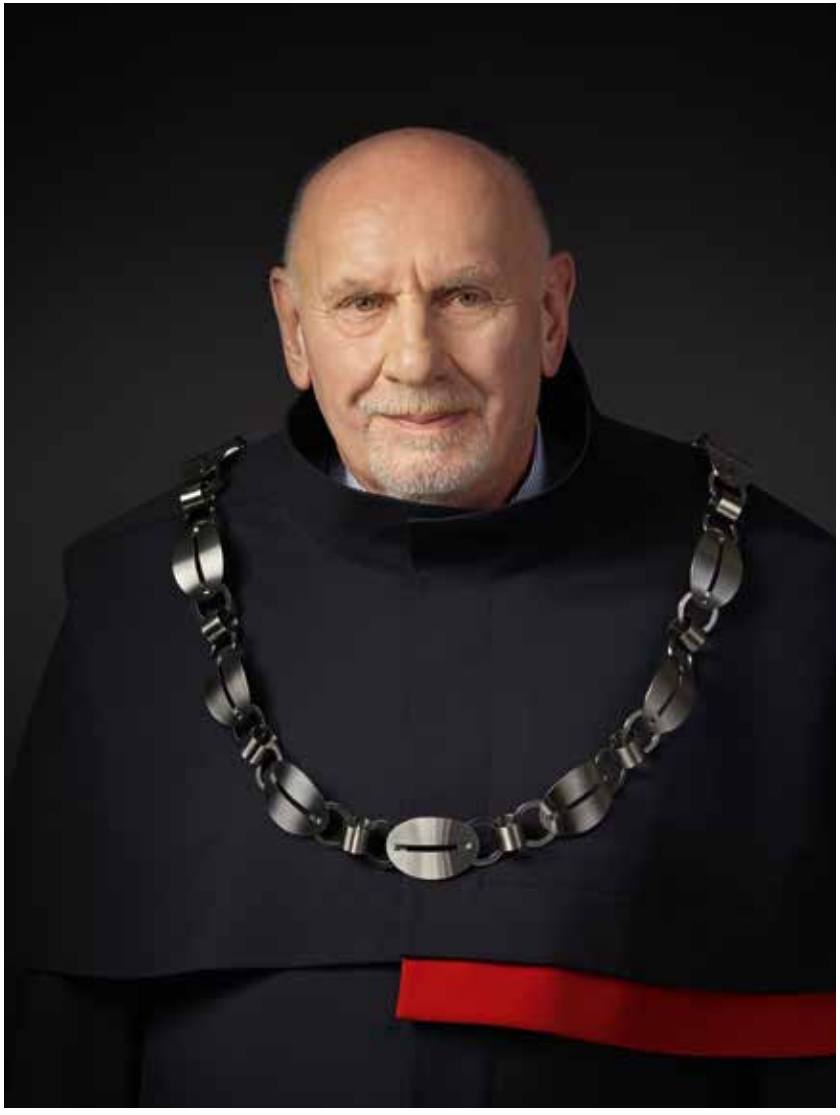
The Second Period of the Constitutional Court of the Czech Republic (2003 – 2013)

On 6 August 2003, the President of the Republic appointed Pavel Rychetský to the position of Justice and President of the Constitutional Court. On the same day, Justices Vojen Güttler and Pavel Holländer were reappointed for another 10-year term (Pavel Holländer simultaneously being given the position of Vice-President of the Court). Other departing Justices were replaced in the second half of 2003, namely by Dagmar Lastovecká (on 29 August 2003), Jan Musil (on 27 November 2003) and Jiří Nykodým (on 17 December 2003). The following year brought the appointments of Stanislav Balík (on 26 May 2004) and Michaela Židlická (on 16 June 2004), and the reappointment of Ivana Janů (on 16 September 2004). However, the Court's bench was still not at full strength, and that situation was aggravated by the departures of further Justices: on 9 November 2003 Eva Zarembová's term of office expired, as did Pavel Varvařovský's on 29 March of the following year. Two months later (on 8 May 2004) Jiří Malenovský resigned to become a Judge of the Court of Justice of the European Union in Luxembourg. The Constitutional Court attained a full composition only in December 2005, after Vlasta Formánková and Vladimír Kůrka were appointed the fourteenth and fifteenth Justices of the Constitutional Court (on 5 August and 15 December 2005 respectively).

Vladimír Kůrka's appointment ended a turbulent period associated with the periodical rotation of Constitutional Court Justices. The Constitutional Court was fully staffed and worked under the presidency of Pavel Rychetský up until 20 March 2012, when the mandate of the Vice-President of the Constitutional Court, Eliška Wagnerová, expired. Her departure marked the beginning of a new cycle of rotation of Constitutional Court Justices, which culminated by the end of 2013 when the terms of office of further nine Constitutional Court Justices had expired: František Duchoň's on 6 June 2012, Jiří Mucha's on 28 January 2013, Miloslav Výborný's on 3 June 2013, Pavel Holländer's on 6 August 2013, Vojen Güttler's on 6 August 2013, Pavel Rychetský's on 6 August 2013, Dagmar Lastovecká's on 29 August 2013, Jan Musil's on 27 November 2013 and Jiří Nykodým's on 17 December 2013.

The Third Period of the Constitutional Court of the Czech Republic (since 2013)

By appointment of the President of the Republic made on 3 May 2013, Milada Tomková, Jaroslav Fenyk and Jan Filip became the first three Justices of the current so-called "Third Decade" of the Constitutional Court. (Milada Tomková was simultaneously appointed Vice-President of the Constitutional Court and Jaroslav Fenyk became Vice-President on 7 August 2013.) They were followed by Vladimír Sládeček (named on 4 June 2013), Ludvík David and Kateřina Šimáčková (both named on 7 August 2013). Pavel Rychetský became Justice and President of the Constitutional Court for the second time on 7 August 2013. Radovan Suchánek was appointed a Justice on 26 November 2013, and Jiří Zemánek and Jan Musil (the latter for his second term) on 20 January 2014. In 2014, three Justices completed their ten-year mandate, namely Stanislav Balík (on 26 May 2014), Michaela Židlická (on 16 June 2014) and Ivana Janů (on 16 September 2014). They were gradually replaced by Vojtěch Šimíček (named on 12 June 2014), Tomáš Lichovník (named on 19 June 2014) and David Uhlíř (named on 10 December 2014). Jaromír Jirsa was appointed on 7 October 2015, assuming the position vacant since 5 August 2015, when the term of office of Justice Vlasta Formánková ended. The last Justice named by President Václav Klaus was Vladimír Kůrka, who completed his mandate on 15 December 2015. Two days later, Josef Fiala became the fifteenth sitting Justice. With his appointment the complete rotation of Constitutional Court Justices was concluded. On 31 January 2019 Justice Jan Musil, serving his second term in office, decided to retire. On 20 February 2020 Pavel Šámal became a Justice of the Constitutional Court. On 10 December 2021, Kateřina Šimáčková resigned from her position as a Justice of the Constitutional Court of the Czech Republic to become a judge of the European Court of Human Rights.



Current Justices of the Constitutional Court

PAVEL RYCHETSKÝ

President and Justice (6 August 2003 – 6 August 2013)
President and Justice (second term since 7 August 2013)

JUDr. Pavel Rychetský, dr. h. c. (born in 1943) graduated from the Faculty of Law, Charles University, Prague ("Charles University Law Faculty") in 1966 and passed both his doctoral and judicial examinations in 1967. In 1966, he became a trainee judge at the Municipal Court in Prague; however, due to criminal prosecution for his protests against political trials, he was forced to leave the court. He became an assistant professor of civil law at Charles University Law Faculty, but was forced to leave after the 1968 Soviet occupation. He worked as an in-house lawyer until the end of 1989. In the "Normalisation" era, Pavel Rychetský engaged in civic resistance against the totalitarian regime, was a co-founder and one of the first signatories of Charter 77, and published articles in foreign journals and the Czech samizdat.

He was a member of the Civic Forum and its Council of the Republic. On 8 January 1990, he was appointed Czech Prosecutor General. From June 1990 to July 1992, he served as Deputy Prime Minister of the Government of the Czech and Slovak Federal Republic (ČSFR) and Chair of the Government Legislative Council, ensuring both the coordination of the ČSFR's legislative work and the ČSFR Government's co-operation with the Federal Assembly and the Republics' governments. In his capacity as Deputy Prime Minister of the Federal Government, he submitted numerous bills to the Federal Assembly (e.g., on the Constitutional Court, Referenda, Return of Communist Party Property to the People, the restitution acts, etc.). From 1992, he worked as an attorney-at-law and lecturer in political science at the Faculty of International Relations of University of Economics, Prague. He published many scholarly and popular articles, both nationally and internationally. In 1996–2003, he was a senator in the Senate of the Parliament of the Czech Republic, where, until he become Deputy Prime Minister, he served as Chair of its Constitutional Law Committee and a member of its Mandate and Immunity and Organisational Committees. In

1998–2002, he was Deputy Prime Minister of the Czech Government and Chair of the Government Legislative Council, Council for National Minorities, Council for Romany Community Affairs, and Council for Research and Development. From 15 July 2002 to 5 August 2003, he once again served as Deputy Prime Minister, as well as Minister of Justice and Chair of the Government Legislative Council. In 1990–92, he was President of the Union of Czech Lawyers, and in 1992–98, President of the Board of Trustees of the Foundation for Bohemia. In 1996, he founded the Fund for Citizens of Prácheňsko, focusing on social issues in the region. On 6 August 2003, after the Senate had granted its consent, he was appointed Justice and President of the Constitutional Court by President Václav Klaus. President Miloš Zeman reappointed him to both positions for a second ten-year term on 7 August 2013.

On 12 July 2005, the President of the French Republic, M. Jacques Chirac, awarded Pavel Rychetský the Légion d'honneur, Officer Class. He is currently Chair of the Czech Lawyers Union and a member of the Science Boards of the Charles University Law Faculty in Prague, Faculty of Law of Masaryk University in Brno ("Masaryk University Law Faculty"), and Faculty of Law of Palacký University in Olomouc. In 2003, the Union of Czech Lawyers awarded him the Silver Antonín Randa Medal, and ten years later, he received the highest award – the Gold Antonín Randa Medal for extraordinary credit in the development of democracy, jurisprudence and the rule of law. In 2015, he was introduced as a new member of the Legal Hall of Fame for his exceptional life-long contribution to law. In 2016, he received the František Palacký Award from Palacký University in Olomouc, which primarily appreciated his participation in lecturing for Master's and Ph. D. students at the Faculty of Law of Palacký University, regular participation in conferences and overall contribution to the prestige of the university and the Czech Republic. In the same year, Pavol Jozef Šafárik University in Košice, Slovakia, bestowed the honorary degree doctor honoris causa in the area of law on him for his influence and for his being an outstanding personality who has contributed to the development of democracy and humanity. On the occasion of its 100th anniversary, the Comenius University in Bratislava, the oldest and largest institution of higher learning in Slovakia, bestowed upon Pavel Rychetský the Grand Gold Medal, the university's highest award, acknowledging his contribution to democracy and rule of law. In 2021, he was awarded the Order of the White Double Cross, the highest decoration of the Slovak Republic. The President of the Slovak Republic Zuzana Čaputová acknowledged the contribution Pavel Rychetský made to the strengthening and fostering of mutual relations between Czech and Slovak Republic, especially in the field of law and constitutional judiciary.

MILADA TOMKOVÁ
Vice-President and Justice (since 3 May 2013)

JUDr. Milada Tomková graduated from the Charles University Law Faculty, obtaining the title Doctor of Law summis auspiciis. In 1987–2003, she worked at the Ministry of Labour and Social Affairs, from 1992, as Director of the Legislative Department, where she was responsible for drafting legal regulations covering social care under the new social conditions after 1990. She was also concerned with issues in international co-operation in the area of social security and took part in a number of international conferences and seminars related to social security law. She went to the European Commission on a research fellowship of several months focusing on EU law in the area of social care. In 1998–2003, she was a member of the Government Legislative Council. She drafted amendments to implementing guidelines in the area of social care in connection with the preparation of reforms to the administrative justice system.

She was appointed as a judge in 2003 when she joined the Supreme Administrative Court, where she held the positions of Presiding Judge in the Social Security Law Division and Presiding Judge at the Disciplinary Division for matters concerning public prosecutors. She was also a member of the Board of the Judicial Academy. She cooperates externally with the Charles University Law Faculty in Prague.

On 3 May 2013, she was appointed as Justice and Vice-president of the Constitutional Court by the President of the Republic.

JAROSLAV FENYK
Vice-President (since 7 August 2013); Justice (since 3 May 2013)

Prof. JUDr. Jaroslav Fenyk, Ph.D., DSc., Univ. Priv. Prof. graduated in law from the Charles University Law Faculty in Prague in 1986, where he obtained the title Doctor of Law in the field of criminal law – theory of the state and law – in 1987. In 2001, he obtained the title Ph.D. in the field of substantive and procedural criminal law at the Masaryk University Law Faculty in Brno, and in 2002, he became an associate professor in the field of security services at the Police Academy in Bratislava. In 2004, he was awarded the title Private University Professor (Univ. Priv. Prof.) in social sciences – European criminal law – by the University of Miskolc in Hungary. In 2008, he received the title Doctor of Social and Humanitarian Sciences (DSc.) from the Academy of Sciences of the Czech Republic. He was appointed professor of criminal law by President Václav Klaus in 2009.

He is a professor at the Department of Criminal Law of the Masaryk University Law Faculty in Brno, and has also held the same position at the Charles University Law Faculty in Prague. He further lectures at other universities and institutions in the Czech Republic and abroad. He was Vice-Dean for Foreign Relations at the University of Law in Bratislava. He held a number of research fellowships abroad, for example at the Supreme Administrative Court and the Ministry of Justice in France, and took part in a government anti-corruption study programme in the USA, a programme at the Ford Foundation for the protection of human rights (RSA), etc. He served on expert committees at the Council of Europe and working groups at the European Commission, and participated in many international conferences and seminars related to criminal law, combating economic and financial crime and corruption, and international judicial co-operation. He worked with professional bodies and research institutions abroad (including the Institute for Post-graduate Legal Education in Atlanta, the Max Planck Institute for Foreign and International Criminal Law in Freiburg im Breisgau, the Institute of Advanced Legal Studies at the University of London, the Academy of European Law in Trier, universities in Vienna, Rotterdam, Nijmegen, Ghent, Stockholm, Örebro, Miskolc and Luxemburg, the John Marshall Law School in Chicago, etc.), where he lectured and worked on international research projects focusing on

criminal law, the position of public prosecution and international judicial co-operation in criminal matters, and the harmonisation of criminal law and associated legislation in connection with the accession of the Czech Republic to the EU. He published a number of monographs and academic articles focusing primarily on substantive and procedural criminal law in the domestic and international context.

He served on working committees at the Ministry of Justice for the amendment and re-codification of criminal law and on the Government Legislative Council of the Czech Republic. He is currently a member of the Commission for the Defence of Doctoral Theses of the Academy of Sciences of the Czech Republic, and a member of the editorial boards of professional and academic periodicals. He is a member of the Science Boards of the Masaryk University Law Faculty in Brno and the Pan-European University of Law, and a member of the Science Board of the Faculty of Law of Palacký University in Olomouc. He received the "Lawyer of the Year" award for 2010 in the field of criminal law. In 1988–2006, he worked as a counsel for the prosecution, and later (1993) as public prosecutor, serving as Deputy to the Supreme Public Prosecutor in 1999–2006. He worked as a barrister in 2006–2013.

On 3 May 2013, he was appointed as a Justice of the Constitutional Court, and on 7 August 2013, Vice-President of the Constitutional Court by President Miloš Zeman.

JAN FILIP
Justice (since 3 May 2013)

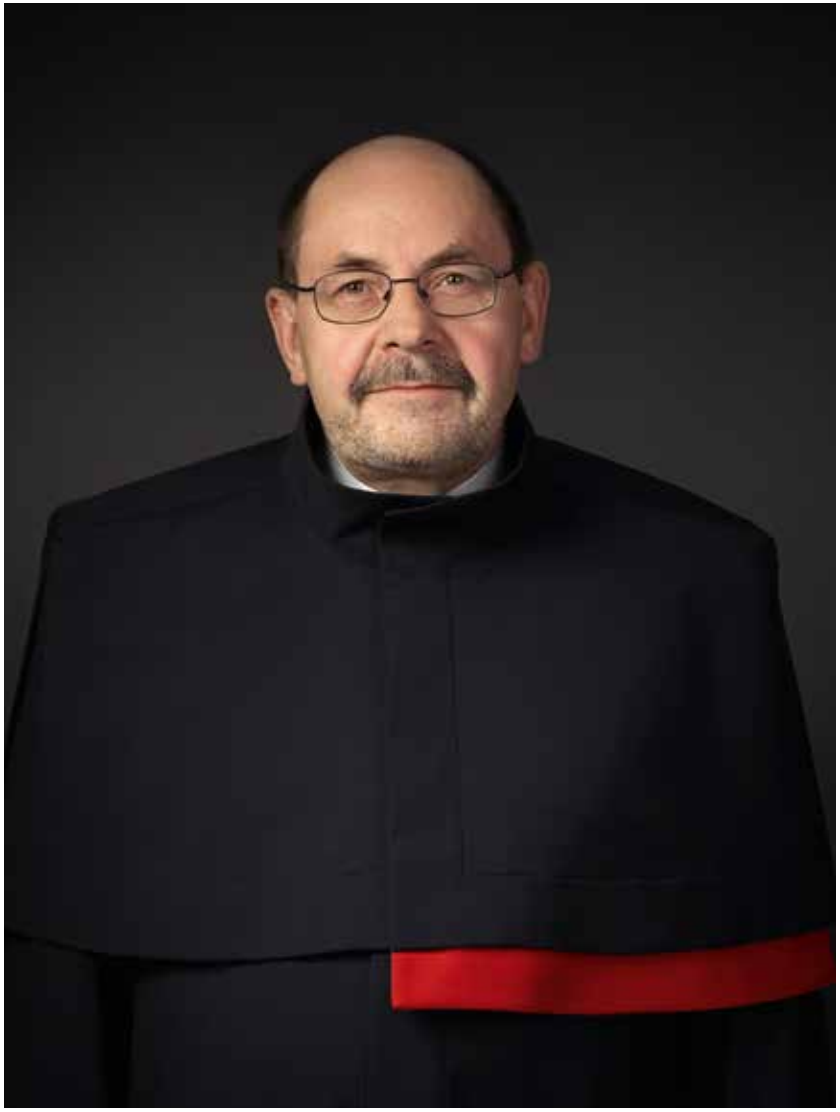
Prof. JUDr. Jan Filip, CSc. graduated from the Faculty of Law, Jan Evangelista Purkyně University (UJEP), today Masaryk University, in Brno. During his studies, he worked part-time, and after graduation, full-time, as assistant lecturer in the Department of Theory of Law and Constitutional Law, Faculty of Law, UJEP (1974–1993). In 1975, he earned his JUDr. degree. His thesis was entitled "Constitution in the Legal System of the CSSR". He became a lecturer in 1977. The degree Candidate of Sciences in Constitutional Law was conferred on him in 1984 (dissertation: "The Concept, Substance, Content and Forms of a Socialist-Type Constitution"). In 1992, he received his associate professor's degree. His habilitation thesis was on "Basic Voting Rights Issues in the Czechoslovak Federal Republic" and summarised his experience of the preparation of electoral laws in 1990. The Professor of Constitutional Law degree was conferred on him in 1998. In 1995–2013, Professor Filip headed the Department of Constitutional Law and Political Science at the Masaryk University Law Faculty in Brno, which soon gained prominence as a thriving centre of legal studies and the education of young professionals. He lectured mostly on subjects such as constitutional law, constitutional developments in the territory of the Czech Republic, law-making, the constitutional basis of public authority, litigation before the Constitutional Court and voting rights there. He also provided instruction to foreign students (Constitutional Law, Verfassungsrecht der TchR) and students studying for LL.M and MPA degrees. In 2002–2006, Professor Filip taught Constitutional Law, Comparative Constitutional Law and Methodology of Creative Work at the University of T. Bata in Zlín. In the late 1980s, he held a secondary position as an independent researcher at the Institute for State and Law of the Czechoslovak Academy of Sciences and, in 1990, as a specialist at the State Administration Institute. He served on the science boards of Masaryk University and Palacký University. He is currently a member of the science boards at the Masaryk University Law Faculty and the Charles University Law Faculty.

Apart from his pedagogical activities, Professor Filip often helps solve practical problems arising in the process of drafting legal regulations, or writes expert opinions for government agencies. From 1992 onwards, he worked at the

Constitutional Court of the ČSFR as assistant to Justice Vojen Güttler, and at the Constitutional Court of the Czech Republic as assistant to Justices Vojtěch Cepl and Jiří Mucha. He also worked in the Legislative Department of the Federal Assembly Chancellery (1973, 1987–1989), and subsequently in the Legislative Department of the Senate Chancellery (1997–2007). For a number of years, he was a member of the Government Legislative Council (1998–2006), following his membership of a government commission for public law in 1990–1992. In the same period, he served on the Czech National Council's commission for the drafting of the Constitution.

Professor Filip has taken part in a variety of foreign internships and conferences. He published hundreds of scholarly papers in the Czech Republic and abroad, focusing on the theory of constitution, voting rights, theory of legislation, parliamentarianism, and especially constitutional jurisprudence. Updated editions of his textbook on constitutional law have been in print since 1993. He co-authored a textbook of political science and a commentary on the Constitution of the Czech Republic and its Constitutional Court. Professor Filip also serves on the editorial boards of domestic and foreign professional journals. He gained practical experience in constitutional judicature during his fellowship stays at the constitutional courts of Yugoslavia (1978), Austria (1992, 1995, 1996), Poland (1993) and Germany (2006).

On 3 May 2013, the President of the Republic appointed Professor Filip as a Justice of the Constitutional Court.



VLADIMÍR SLÁDEČEK

Justice (since 4 June 2013)

Prof. JUDr. Vladimír Sládeček, DrSc. (born in 1954) studied law in 1975–1979. He joined the Institute for Inventions and Discoveries in the year of his graduation and worked there until March 1983, mainly in the Legislative and Legal Department. He produced a doctoral thesis during the course of 1980 (on the review and complaints procedure in the area of inventions and discoveries), and defended it on 2 December 1980 (study field: administrative and state law).

In 1983, he took part in the selection proceedings for residencies offered by the then Institute of State Administration, where he was accepted as a residency participant (for two years). In April 1985, he was taken on as a full-time member of staff as a specialist focusing, first and foremost, on the reformation of bodies of local administration and legislation in general.

Following a short period of external co-operation with the Office of the President of the Republic (January to June 1990), he worked at the Office of the Federal Assembly from August 1990 to August 1992, initially as a legal consultant, later as a secretary to the committee of deputies and experts for the preparation of the new Constitution of the Czech and Slovak Federal Republic.

In 1991, he was taken on as a part-time member of staff at the Charles University Law Faculty on the basis of an open competition (Department of Administrative Law), where he has worked full-time from August 1992 to the present day. He worked first as a lecturer, and successfully defended his higher doctorate in September 1995 (Ombudsman, Protector of the Law in the Public Administration) and was appointed an associate professor in administrative law and administrative science on 27 November 1995. The Research Board of Charles University ruled on 29 November 2001, on the basis of the defence of his doctoral dissertation, on the conferral upon him of the academic title Doctor of Legal Sciences in the field of administrative law, the state administration and constitutional law. Following professorial proceedings, he was appointed a professor in administrative law and administrative science by the President of the Republic on 2 May 2006.

Almost from the beginning of the existence of the Constitutional Court (from November 1993), he worked part-time as an assistant to a Justice of the Constitutional Court (until the death of the Justice in 2002). In 2001, he worked with JUDr. Otakar Motejl on the establishment of the Office of the Public Defender of Rights – Ombudsman, and later provided expert consultations to the Office, in particular in connection with the Annual Report on the Activities of the Public Defender of Rights. From 2003, he taught part-time at the Faculty of Law at Palacký University in Olomouc (from 2009, as Head of the Department of Administrative Law and Administrative Science).

He was appointed as a Justice of the Constitutional Court by the President of the Republic on 4 June 2013.

LUDVÍK DAVID
Justice (since 7 August 2013)

JUDr. Ludvík David, CSc. (born in 1951) studied at the Faculty of Law at Jan Evangelista Purkyně University (today Masaryk University) in Brno. After completing his studies in 1974, until 1982, he worked in academia (as a lecturer at the same faculty until 1979, and then as a research assistant in the Institute of State and Law at the Czechoslovak Academy of Sciences in Prague). From 1982, he worked as a corporate lawyer. In mid-1985, he became a barrister and worked in this position until 1993. In June of the same year, he was appointed as a judge. He was as a judge and Presiding Judge at the Municipal Court in Brno until 2000, and then at the Regional Court in Brno until 2002. In the same year, he was assigned to the Supreme Court in Brno where, after a one-year research fellowship, he became a judge in 2003 and Presiding Judge at the Civil Law and Commercial Division. He was also a member of the Records and Grand Panel of the same court. He lectures externally at the faculties of law at Masaryk University in Brno and Palacký University in Olomouc and abroad (the USA). He is the author or co-author of a number of books (commentaries on legal codes, overviews of jurisdiction) and almost a hundred papers in specialist periodicals on topics concerning substantive and procedural civil law, labour law, restitution and legal philosophy. As a member of the Union of Czech Lawyers, he received the Antonín Randa Bronze Medal. He has never been a member of any political party.

He was appointed as a Justice of the Constitutional Court by President Miloš Zeman on 7 August 2013.

RADOVAN SUCHÁNEK

Justice (since 26 November 2013)

JUDr. Radovan Suchánek, Ph.D. (born in 1972) graduated in 1996 from the Charles University Law Faculty in Prague, where he has been teaching since 1998 (as a lecturer since 2000). He was a doctoral student at the same faculty, focusing on constitutional law, criminal law, criminology and criminal science. During the course of his post-graduate studies, he also devoted attention to the issue of constitutional law during study residencies at universities in Bern, Tübingen and Linz. In 2001, he defended his dissertation on "The Senate in the Constitutional System of the Czech Republic". In 2001 to 2013, he was a member of the Academic Senate of the Charles University Law Faculty, and from 2003 to 2005, Deputy Chair of the Legislative Commission of the Council of Higher Education Institutions.

In addition to his teaching activities, he also contributed for many years to the drafting of legal regulations and expert reports for state bodies and local government bodies. In 1998 to 2004, he worked as assistant to Members of the Chamber of Deputies of the Czech Parliament (in particular Prof. Zdeněk Jičínský) and as consultant to the Deputy Chair of the Chamber of Deputies. From 2002 to 2004, he was consultant to the Minister of Labour and Social Affairs and to the Minister of Health. In 2004 to 2006, he held the post of Deputy Minister for Legislation, Inspection and International Affairs and Chair of the Committee of Analysis at the Ministry of Health. He also held other public posts at this time: he was a member of the Government Committee for the European Union, the State Electoral Committee, the Government Council for Human Rights and the Government Council for Equal Opportunities and the administrative board of the General Health Insurance Company of the Czech Republic and Chair of the administrative board of the Security Fund. In 2010 to 2013, he was advisor to the Deputy Chair of the Senate. From 1999 to 2004 and again from 2006 to 2013, he was also active as a specialist associate of the group of parliamentary deputies from the Czech Social Democratic Party in the area of the law and legislation. During the period of his expert work for Members of Parliament, he contributed to the drafting of many draft amendments for the repealing of laws or individual provisions of laws submitted to the Constitutional Court by groups of deputies or senators.

He has written several dozen specialist articles published in legal periodicals in the Czech Republic and abroad, co-written university textbooks and co-edited anthologies in the fields of constitutional law and governmental studies. In this field he has devoted attention primarily to issues of parliamentarianism, the formation of the law, the constitutional judiciary, the protection of basic rights and freedoms, direct democracy, state security and selected issues in Czechoslovak constitutional development (e.g. presidential decrees). He has contributed to a number of research projects, e.g. The Constitutional Contexts of the Accession of the Czech Republic to the European Union (1998–1999), Transformation of the Constitutional Systems of the Countries of Central and Eastern Europe (1999–2001), The Constitutional Resolution of Extraordinary Situations and State Security during the Period of European Integration (2002–2004) and Qualitative and Quantitative Transformations to the Legal System at the Beginning of the Third Millennium – Roots, Starting-points and Perspectives (2009–2010). He is also co-author of commentaries on the Constitution of the Czech Republic and the Charter of Basic Rights and Freedoms and he publishes in the press (Právo).

He has been a member of the Union of Czech Lawyers since 2000. He was a member of the Green Party from 1992 to 1998 and a member of the Czech Social Democratic Party from 1998 to 2013.

He was appointed as a Justice of the Constitutional Court by President Miloš Zeman on 11 November 2013. He took up the post by swearing his oath on 26 November 2013.

JIŘÍ ZEMÁNEK

Justice (since 20 January 2014)

Jiří Zemánek (born in 1950) worked from 1974 onwards as a research worker in the field of international law and economic integration, in which he also defended his post-doctoral dissertation (1978), in the Institute of State and Law at the Czechoslovak Academy of Sciences, after studying the economics of foreign trade at University of Economics and law at Charles University. In addition to the Comecon and the EEC, he also studied the unification agenda of the UN International Law Commission, GATT, UNCITRAL, etc. He also went to the Supreme Court of the Czechoslovak Republic and the Department of International Economic Relations at the Office of the Government of the Czechoslovak Republic on research fellowships. He augmented his professional qualifications in the Summer Programme at the Hague Academy of International Law and, at the end of the 1980s, the International Faculty of Comparative Law in Strasbourg. His publication output at this time strived for the broader engagement of Czechoslovakia in contractual and institutional structures of international legal co-operation. A long-term research residency at the Max Planck Institute for Comparative and International Private Law in Hamburg on the basis of a scholarship from the Alexander von Humboldt Foundation, a three-month research fellowship at the Swiss Institute of Comparative Law in Lausanne with the support of the Swiss government, and courses at the Free University of Brussels and the University Institute in Florence at the beginning of the 1990s were significantly reflected in his professional focus on European law.

He was part of the team responsible for the introduction of European legal studies at Charles University and co-authored the first large-scale textbook on the law of the European Union (now in its fifth edition). As Vice-Dean of the Charles University Law Faculty, developed its engagement in the mobility of students and lecturers within the framework of the European Union programmes Tempus and Erasmus (“The Czech Legal System in the European Context”), introduced special courses in English, German and French law in the European context run by professors from foreign universities, co-founded the Europeum for public administration workers interdisciplinary training programme, acts as national co-ordinator of research projects (Deutsche Forschungsgesellschaft, the Faculty

of Law at Dresden University of Technology), lectures at the Czech Judicial Academy, became President of the Czech Association for European Studies, the Czech branch of the International Law Association, and a member of the editorial boards of specialist periodicals, etc. In 1998, he was awarded the Jean Monnet Chair of European Law by the European University Council. In the same year, he received an honorary plaque on the occasion of the 650th anniversary of the foundation of Charles University. In 2001 to 2012, he also lectured in European law at the Metropolitan University Prague.

As a member of the Government Legislative Council in 1998–2006 he contributed, first and foremost, to the process of integrating the Czech legal code with the law of the European Union and to the work of the committee for the preparation of Euro amendments to the Constitution of the Czech Republic. During the course of the negotiations on the Treaty establishing a Constitution for Europe (2002–2003) he was member of the advisory team of the governmental representative to the Convention, Jan Kohout. He was also often invited as an expert to the Permanent Committee of the Senate for the Constitution and Parliamentary Procedure. His extra-academic professional work includes work in the legal profession (1992–2009) and expert consultancy for the European Union (the selection of lawyers and linguists for the Court of Justice of the EU, the panel of the Education, Audiovisual and Culture Executive Agency).

His extensive work in the international academic field has included lecturing at universities in, for example, Hamburg, Berlin, Regensburg, Warsaw, Madrid and the USA. He makes regular appearances at conferences of the European Constitutional Law Network, Societas Iuris Publici Europaei, the T.M.C. Asser Institute in The Hague and other conferences throughout Europe. He has published numerous essays and acted as joint editor of collective works for the publishers Nomos, Duncker & Humblot, Berliner Wissenschaftsverlag and Eleven International Publishing. He is a founding member of the committee of advisors to the European Constitutional Law Review, and a member of the editorial boards of the journals Jurisprudence and Mezinárodní vztahy (International Relations) in the Czech Republic. His publication and teaching work focuses primarily on the topic of European constitutional law – issues of democratic legitimacy and responsibility in the EU, European judicial dialogue, comparative study of the interaction between European and national law, and methods of harmonising the law of the member states of the EU.

He was appointed as a Justice of the Constitutional Court by the President of the Republic on 20 January 2014.

VOJTĚCH ŠIMÍČEK

Justice (since 12 June 2014)

Born in a distinctive cultural and industrial Moravian-Silesian metropolis of Ostrava in 1969, doc. JUDr. Vojtěch Šimíček, Ph.D. spent a happy childhood there, which resulted in his calm and balanced personality. In 1992, he graduated from the Masaryk University Law Faculty in Brno, where he later obtained his Ph.D. in 1995 and became an associate professor in 2001. He studied in Regensburg, Bochum and Vienna. In addition, he spent five months as an intern in the German Bundestag. He loved it everywhere, however, he never really thought about working abroad. In 1996 to 2003, he worked as assistant to the Constitutional Court Justice. In 2003, he was appointed as a judge of the Supreme Administrative Court. Apart from serving as a Presiding Judge at the financial administration collegium, he also served as President of the seven-member chamber for electoral matters, matters of local and regional referendum and matters concerning political parties and political movements, and President of the six-member disciplinary chamber for judges. Since 1992, he has been teaching constitutional law and related courses at the Masaryk University Law Faculty in Brno. He is the author or a co-author of dozens of specialised texts and publications published in the Czech Republic and abroad, has edited several collections of papers, and is a member of several editorial boards. He is happily married to a beautiful, tolerant, funny and witty wife, and a father to three mostly well-behaved and kind children. In addition to the customary upbringing of his kids, he spends his free time passionately indulged in (mainly) collective sports. This joy is in no way spoiled by the fact that he is regrettably not good at any of them.

The President of the Czech Republic appointed him as Justice of the Constitutional Court on 12 June 2014.

TOMÁŠ LICHOVNÍK
Justice (since 19 June 2014)

JUDr. Tomáš Lichovník was born in 1964 in Olomouc. He studied at the Faculty of Law at the University of Jan Evangelista Purkyně (today Masaryk University) between 1982 and 1986. In 1988, he successfully completed his rigorosum studies. Subsequently, he worked as an in-house counsel for the Czechoslovak Railways – Administration of Central Track in Olomouc, and later at the Construction Company in Žďár nad Sázavou. In 1991 to 1992, he served as a trainee judge at the Brno Regional Court, preparing for his future profession of judge. In 1992, he was appointed as judge at Žďár nad Sázavou District Court, and spent twenty years in total there. He served as President of the Court between 1994 and 2011. His last place of work was the Brno Regional Court, where he served as a Vice-President and led its Jihlava branch. Since the beginning, he has specialised mainly in civil law, including family matters.

In 2005 to 2008, he was Vice-president of the Judicial Union of the Czech Republic, and served as its President from the autumn of 2008 until his appointment as a Constitutional Court Justice. He lectured to students of secondary and higher specialised schools for many years. He also acts as a lecturer for the Judicial Academy and employees of the bodies of social and legal protection of children and children's homes. In his publication activity for various legal journals and the daily press, he addresses systems issues of the judiciary and the practical impact of law on individuals and society. He is also co-author of the commentary to the Rules of Civil Procedure. He is married and has a son and a daughter. He loves to travel and likes to relax especially by doing sports.

The President of the Czech Republic appointed him as a Justice of the Constitutional Court on 19 June 2014.

DAVID UHLÍŘ

Justice (since 10 December 2014)

JUDr. David Uhlíř was born in 1954 in Boskovice, Blansko. He attended grammar school in Prague 6 from 1969 to 1973 and was enrolled in the Charles University Law Faculty in 1975. Following his graduation in 1979, he practised as a trainee attorney in Prague. In 1980, David Uhlíř completed his military service and passed his rigorosum examination a year later. After 1983, he worked as an attorney-at-law, focusing on criminal matters. Despite having been a member of the Czechoslovak Communist Party until 1989, David Uhlíř represented clients persecuted on political grounds. In 1990 and 1991, he served as a councillor of the City of Prague for the Civic Forum (Občanské forum). In 1994, he became the founding partner of Uhlíř, Homola and Partners and stayed there until 2014. As a senior lawyer, David Uhlíř specialised in civil and business law, and also worked as an interim receiver.

Since 1998 David Uhlíř has been lecturing externally at the Department of Civil Law at the Charles University Law Faculty. He regularly provides training to trainee attorneys and attorneys-at-law, focusing mainly on the re-enactment of civil law. Furthermore, he is a member of the civil law examination panel of the Czech Bar Association. He is also a member of l'Union International des Avocats and gives speeches at their annual meetings. He writes for scholarly journals and newspapers on issues around the re-enactment of civil law. He is a co-author of the commentary to the Civil Code published by Wolters Kluwer. He made a critical contribution to the drafting of the new Civil Code, and among other things, was a member of the Ministry of Justice Commission for the Application of New Civil Legislation.

In 2009, he was elected a member of the Board of the Czech Bar Association, and in 2013, Vice-President of the Bar. Apart from his other charitable activities, he has chaired the Sue Ryder Association, founder of the Domov Sue Ryder in Prague – Michle, for many years. David Uhlíř is married and has three children.

On 10 December 2014, David Uhlíř was appointed as a Justice of the Constitutional Court by the President of the Czech Republic.

JAROMÍR JIRSA
Justice (since 7 October 2015)

JUDr. Jaromír Jirsa (born in 1966) finished law studies at Charles University in 1989. He started working in the judiciary as a law clerk at the Prague 8 District Court in 1990. After passing the judicial exam in 1992, he was appointed as a judge at this court. As a civil law judge, he dealt with, inter alia, restitutions, family, housing and health law cases. In May 1999, he became a civil law judge and the Vice-President of the Prague 1 District Court. From August 2007, Judge Jirsa served as the Vice-President of Prague Municipal Court, where he worked on insolvency and securities cases, as well as appellate cases.

Justice Jirsa has been focusing on civil procedural law for a long time. For that reason, he has been a permanent member of expert committees with the Ministry of Justice for civil procedure; in 2010, he was appointed President of one of these committees. In the area of substantive law, he specialised himself in classic civil cases, e.g. ownership, rental and labour law cases. He also decided in family cases or on the custody of minors. While working for Prague 1 District Court, which is characterised by one of the hardest civil cases agenda in the country, he aimed his attention to the recovery of damages caused by the state (for unlawful decisions or incorrect procedures) and health injuries. In addition, he has experience with intellectual property disputes, unfair competition disputes and the protection of the good reputation of corporations.

In 2002 to 2008, he served as the President of the Union of Judges. He participated in many projects, for example the adoption of the code of ethics for judges, adoption of principles of career structure for judges, so-called “mini-teams”, educational projects for judges and support of mediation in non-criminal cases finalised by adoption of the Mediation Act. He is the Honorary President of the Union of Judges, which is the only professional organisation of judges in the Czech Republic.

Jaromír Jirsa has lectured and published specialised texts. He has lectured for the Judicial Academy, Czech Bar Association, Chamber of Law Enforcement Officials, Union of Judges etc. In 2010, he was awarded the Bronze Antonín Randa Medal

by the Union of Czech Lawyers for his lecturing and publication activities in the area of civil procedural law. In 2007 to 2012, he was a member of the accreditation working group for the areas of law and security with the School of Law at the Charles University.

He is a member of the editorial board of the magazine The Judge and the legal web portal Právní prostor, where he often publishes his texts, as well as in other specialised periodicals. He also presided over the team of authors, and is the main author, of the five-volume judicial commentary on the Civil Procedure Code (Havlíček Brain Team, Prague, 2014).

Justice Jirsa is married and has two children.

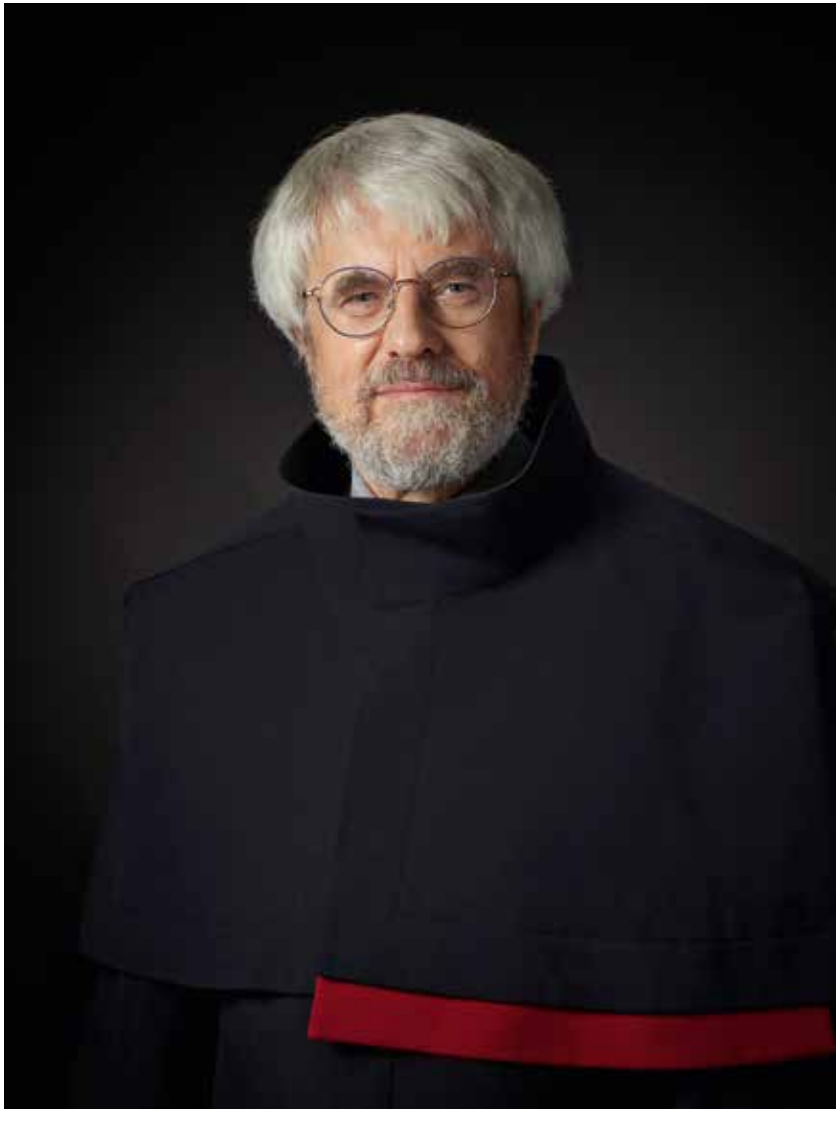
On 7 October 2015, the President of the Czech Republic appointed him as a Justice of the Constitutional Court.

JOSEF FIALA
Justice (since 17 December 2015)

Prof. JUDr. Josef Fiala, CSc. (born in 1953) studied law at J. E. Purkyně University in Brno (today Masaryk University) in 1971 to 1976. During the course of his studies, he started to work as a lecturer on the basis of a part-time contract. After finishing his law school studies, he joined the Department of Civil Law as a full-time lecturer (1976–1996). In 1978, he obtained the JUDr. degree (thesis entitled "Position of Civil Law in the System of Law"). He became a senior lecturer in the same year. In 1984, he obtained the academic degree Candidate of Sciences in the field of civil law. In 1996, he was awarded the degree of associate professor after defending his thesis entitled "Ownership of Apartments in the Czech Republic", in which he took into account previous outcomes of scientific approaches to the nature of apartment ownership. He was awarded full professorship in 2006. In 1995 to 2001, he served as Vice-Dean of the Masaryk University Law Faculty, and in 2004 to 2015, he led its Department of Civil Law. He took part in various forms of pedagogical work in all study programmes at the Masaryk University Law Faculty. In addition, he was a member of several research projects (e.g. in 2004 to 2011, he was deputy co-ordinator of the European Context of the Evolution of Czech Law after 2004 project). He used the outcomes of this research in his publications.

Apart from his academic activities, he was a commercial lawyer, an attorney, a member of the Government Legislative Council and its committees, a member of appellate boards of the President of the Office for the Protection of Competition, and an arbitrator of the Arbitration Court attached to the Czech Chamber of Commerce and the Agricultural Chamber of the Czech Republic. He frequently lectures professionals, for example at the Czech Bar Association. In 1991, he worked at the Constitutional Court of the Czech and Slovak Federal Republic as assistant to Justice Pavel Mates. Since 1993, he has been assistant to three Justices of the Constitutional Court of the Czech Republic – Ivana Janů, Eva Zarembová and Miloš Holeček.

On 17 December 2015, the President of the Czech Republic appointed him as a Justice of the Constitutional Court.



PAVEL ŠÁMAL
Justice (since 20 February 2020)

After completing his studies at the Charles University Law Faculty in 1977, he earned a doctor of law (JUDr.) degree in 1980, followed by a Ph.D. in 1999. In 2001, he was appointed associate professor of criminal law, and in 2006, the Czech president appointed him professor of criminal law, criminology and criminalistics. He is a professor of criminal law at the Faculty of Law of the Comenius University in Bratislava and at the Charles University Law Faculty; he also works as external lecturer at the Department of Criminal Law at the Police Academy of the Czech Republic in Prague, as a lecturer at the Judicial Academy in Kroměříž and the Judicial Academy of the Slovak Republic in Pezinok.

He began his career as a judge at the District Court in Most where he worked as a presiding judge of a panel from 1979. In 1982, he left for the Regional Court in Ústí nad Labem, and in 1991, for the Supreme Court of the Czech Republic (transformed into the High Court in Prague in 1993). He was a judge and presiding judge of a panel of the Criminal Division of the Supreme Court in Brno from 1993. He was appointed president of the Supreme Court on January 22, 2015. While serving as a judge of the Supreme Court, he held internships at the legislative department of the Ministry of Justice between 1999 and 2004, and was involved in the drafting of fundamental laws in the area of criminal justice. He has been sitting on the Examination Board for the examination of judicial candidates (since 1992) and for bar examination of trainee lawyers in criminal law (since 1996). Furthermore, he has been a member of the working committee of the Legislative Council of the Czech Government for criminal law (since 1998) a member of editorial boards of legal journals, such as Právní rozhledy, Bulletin advokacie, Soudní rozhledy, Trestněprávní revue and Collection of Decisions and Opinions – Selected Judgments of the European Court of Human Rights, considered to be of importance for the Czech judicial practice by the Supreme Court. He became member of the International Association of Penal Law (Association Internationale de Droit Pénal) in 2002. Before the Czech Republic joined the European Union, he was a member of the coordination group of the Ministry of Justice set up for the purpose of institutional integration of the Czech Republic into the European Union. He further serves on the Science Council of the Masaryk University Law Faculty,

Science Council of the Charles University Law Faculty and is a long-standing member of the commission for the re-codification of substantive and procedural criminal law of the Ministry of Justice.

Pavel Šámal is married, his wife JUDr. Milada Šámalová has been a judge of the Supreme Court since 2003.

On 20 February 2020, the President of the Czech Republic appointed him as a Justice of the Constitutional Court.

KATEŘINA ŠIMÁČKOVÁ

Justice (from 7 August 2013 to 10 December 2021)

JUDr. Kateřina Šimáčková, Ph.D. comes from Brno, where she graduated from the Faculty of Law in 1988. She rounded off her education after 1989 with research fellowships at universities in France and Germany, at the European Court for Human Rights in Strasbourg, and at the Collège Universitaire d'Études Fédéralistes in Aosta in Italy.

In 1988 to 1990, she worked as a lawyer at a regional hygiene station, and then as assistant to Justice JUDr. Antonín Procházka at the Constitutional Court of the Czechoslovak Federal Republic, and as an articled clerk. She was a barrister for fifteen years (1994–2009) and became acquainted with a number of branches of the law during her practical experience; she frequently appeared as a solicitor at the Constitutional Court of the Czech Republic, both in proceedings on constitutional complaints, and in proceedings on proposals for the abolition of laws, during which she represented senators from various political parties. In 2009, she switched from advocacy to justice as a judge at the Supreme Administrative Court, where she acted as Presiding Judge at the Social Administration Division and as a member of the Competence and General Panel.

In 2007 to 2009, she was a member of the Government Legislative Council. She was appointed a member of the Committee for the Selection of Judges to the EU Civil Service Tribunal by the Council of the European Union for the period 2008 to 2012. Since 2010, she has been a substitute member of the European Commission for Democracy through Law (the "Venice Commission") for the Czech Republic and a member of the examination committee for juridical examinations.

Since 1990, in addition to her work as a barrister and judge, she has also been lecturing at the Department of Constitutional Law of the Masaryk University Law Faculty in Brno, where she also defended her dissertation on the topic Taxation and the Legal State. Her teaching and publication activity focuses, first and foremost, on the issue of fundamental rights and freedoms. She teaches courses in constitutional law, human rights and the judiciary, political science,

governmental studies, media law and ecclesiastical law, and also runs a clinic in media law and medical law, a course in human rights as applied in practice, a school of human rights and a human rights moot court.

She has published a number of specialised journal and anthology papers and is co-author of several law textbooks and other books (e.g. Communist Law in Czechoslovakia, In dubio pro libertate, and Commentaries on the Charter of Fundamental Rights and Basic Freedoms).

She is a member of the Scientific Board of the Charles University Law Faculty in Prague, Ad hoc Judge at the European Court of Human Rights, chair of the Brno group of the Church Law Society and a member of the Society for European and Comparative Law.

She has never been a member of any political party or political movement. She was appointed as a Justice of the Constitutional Court by President Miloš Zeman on 7 August 2013.

On 10 December 2021, Kateřina Šimáčková resigned from her position as a Justice of the Constitutional Court of the Czech Republic to become a judge of the European Court of Human Rights. She assumed her new role on 13 December 2021.

Appointment of Justices

According to the Constitution, the Justices of the Constitutional Court are appointed by the President of the Republic with the consent of the Senate of the Parliament of the Czech Republic (hereinafter "Senate"). The President of the Republic selects a candidate whose name is then sent to the Senate with a request to express its consent to his/her appointment as a Justice of the Constitutional Court. Consent to the appointment is given if a simple majority of senators present vote in favour.

If the Senate grants consent, the President appoints the candidate as a Justice of the Constitutional Court, and the candidate thereby becomes a Justice of the Constitutional Court. The Justice's appointment becomes effective upon taking the oath of office prescribed by the Constitution and administered by the President of the Republic.It is an indispensable condition to assuming the office that an appointed Justice of the Constitutional Court take the oath of office prescribed by the Constitution and administered by the President. If they do not take the oath, or do so with reservations, the candidate does not become a Justice of the Constitutional Court.

The President and two Vice-Presidents of the Constitutional Court are also named by the President of the Republic, who chooses them from among the Justices of the Constitutional Court and does not need approval from any other body for their appointment.

The term of office of Justice of the Constitutional Court is ten years; however, the Constitution allows for repeated appointment and does not specify any upper age limit.

A citizen of the Czech Republic is eligible for appointment as a Justice of the Constitutional Court provided that (s)he has reached at least 40 years of age, has an university degree in law and has been active in a legal profession for at least ten years. The office of Justice of the Constitutional Court is incompatible with the office of President of the Republic, member of Parliament or other office in public administration or any other paid office or profitable activity (other than scientific, teaching or artistic one). Moreover, a Justice of the Constitutional Court may not be member of any political party or political movement.

The Constitutional Court and its Justices have immunity ensuring their independence. A Justice of the Constitutional Court cannot be criminally prosecuted without the approval of the Senate and may be arrested only if caught committing a crime or immediately afterwards. If the Senate denies approval, criminal prosecution is impossible for the duration of office of the given Justice of the Constitutional Court.

A Justice of the Constitutional Court cannot be removed from the office; only in the case of a serious disciplinary offence or in a situation where a Justice performs duties or activities incompatible with the office of Justice of the Constitutional Court, or if a Justice breaches the prohibition of membership in a political party or political movement, or fails to participate in dealings of the Constitutional Court for a period exceeding one year, the Plenum of the Constitutional Court may decide on termination of his/her office in a special disciplinary proceedings. The tenure of Justice of the Constitutional Court terminates automatically in the event that a Justice is convicted of an intentional criminal offence or if she/he decides to resign.

Gowns and Insignia of Justices of the Constitutional Court

The Justices of the Czech Constitutional Court wear gowns during public sessions. As in most countries which have an institution for the legal protection of the constitution, these gowns are different from those worn by other types of judges or other legal professionals. In the year of the 25th anniversary of the founding of the Czech Constitutional Court and in connection with the 100th anniversary of Czechoslovak statehood, the gowns of Justices of the Constitutional Court were newly designed and made to express dignity, solemnness, and the special place of the Constitutional Court in the political system of the country. This message is expressed both through the make of the gowns and the colour accents, which honour the national colours of the Czech Republic. As a whole, the gowns are designed in the spirit of minimalism. The designer of the gowns is Professor Liběna Rochová, a clothing designer who is the head of Fashion and Footwear Design at the Academy of Arts, Architecture and Design in Prague. The designer and maker of the hats is the designer Sofya Samareva, graduate in Fashion and Footwear design under Liběna Rochová at the Academy of Arts, Architecture and Design.

The gown and the headwear

The Plenum of the Constitutional Court wearing new gowns

The concept as well as the fabrication of President's Chain has been executed by doc. Eva Eisler, Head of K.O.V. Atelier, Academy of Arts, Architecture and Design in Prague

Structure of the Constitutional Court

The Constitutional Court consists of the President, two Vice-Presidents, and twelve other Justices. The President of the Constitutional Court represents the Court vis-à-vis third parties, performs the Court's administrative work, convenes meetings of the Constitutional Court's Plenum, fixes the agenda for meetings and directs the business of meetings, appoints Chairs of the Constitutional Court's panels, and performs other duties placed upon him by statute.

The Constitutional Court's internal structure is such that it has a Plenum, which comprises all Justices, and four three-member panels. The Act on the Constitutional Court lays down which matters are to be decided by the Plenum and which by the panels. The Justice Rapporteur, assigned to each matter of the Court's agenda, can also be considered as one of the Court's organisational components, as her/his task is to prepare the matter for deliberation, unless she/he finds that there are preliminary grounds for rejecting the petition.

Each Justice is assigned three assistants. Justices' chambers were created to facilitate the business of the individual judicial offices.

Apart from the President and Vice-Presidents, the Constitutional Court's other official is the **Secretary General**, under whose direct purview comes the entire Court's administration, the Judicial Department, the Analytic Department including the Library, and the External Relations and Protocol Department. The Court's administration itself is managed by the Director of Court's Administration.

Powers and Competences of the Constitutional Court

While the first constitutional court in Europe had a mere two powers (both related to the review of legal norms), modern constitutional courts possess a much broader array of powers. The Constitutional Court of the Czech Republic has a total of 15 different powers, although most of them are used rather infrequently, and are de facto "sleeping competences".

An overwhelming majority of all proceedings before the Constitutional Court are proceedings on constitutional complaints (over 95%), and the other significant group is proceedings examining the constitutionality of legal norms.

The activities of the Constitutional Court are governed by a number of legal regulations. In addition to constitutional laws and law regulating, to a greater or lesser extent, the actual proceeding before the Constitutional Court, there are a host of laws and decrees providing for the operations of the Constitutional Court, as is the case with any other public authority. The Constitutional Court is a judicial body for the protection of constitutionality. However, in addition to the Constitution of the Czech Republic proper, the constitution includes, in a broader sense, other constitutional laws, in particular the Charter of Fundamental Rights and Freedoms.

The Czech constitution further includes:

- Constitutional Act No. 1/1993 Sb., on the Creation of Higher Territorial Self-Governing Units,
- Constitutional Act on the Security of the Czech Republic,
- Constitutional Act on the Referendum on the Czech Republic's Accession to the European Union,
- other constitutional acts adopted pursuant to the Constitution of the Czech Republic,
- constitutional acts relating to the break-up of Czechoslovakia and the establishment of the Czech Republic as a new successor state,
- constitutional acts delineating the Czech Republic's borders with neighbouring states.

The sum of constitutional acts, i.e., the constitution in a broader sense, is thus collectively referred to as the Constitutional Order of the Czech Republic. Apart from the constitutional order, the Constitutional Court also applies ratified and promulgated international treaties on human rights and fundamental freedoms as a reference criterion.

The actual proceeding before the Constitutional Court is governed by Act No. 182/1993 Sb., on the Constitutional Court. This particular act stipulates who and on what terms is entitled to file a motion for the initiation of proceedings, and sets forth other rules of proceedings before the Constitutional Court. The provisions of the Rules of Civil Procedure, and in special cases, also the provisions of the Criminal Justice Code relating to court proceedings, apply in proceedings before the Constitutional Court mutatis mutandis.

The Constitutional Court has jurisdiction (pursuant to Article 87 (1) and (2) of the Constitution):

- to abrogate statutes or individual provisions thereof if they are in conflict with the constitutional order;
- to abrogate other legal norms or individual provisions thereof if they are in conflict with the constitutional order or a statute;
- over constitutional complaints made by the representative body of a self-governing region against unlawful encroachment by the state;
- to decide jurisdictional disputes between state bodies, state bodies and bodies of self-governing regions, and between bodies of self-governing regions, unless that power is vested by statute in another body;
- over constitutional complaints of natural or legal persons against final decisions or other encroachments by public authorities infringing constitutionally guaranteed fundamental rights and basic freedoms;
- over remedial actions against decisions concerning the certification of the election of a Deputy or Senator;
- to resolve doubts concerning a Deputy or Senator's loss of eligibility for office or incompatibility under Article 25 of some other position or activity with holding the office of Deputy or Senator;
- over a constitutional charge brought by the Senate against the President of the Republic pursuant to Article 65 (2);
- to decide on a petition by the President of the Republic seeking the revocation of a joint resolution of the Assembly of Deputies and the Senate pursuant to Article 66;
- to decide on the measures necessary to implement a decision of an international tribunal which is binding on the Czech Republic, in the event that it cannot be otherwise implemented;
- to determine whether a decision to dissolve a political party or other decisions relating to the activities of a political party is in conformity with constitutional acts or other laws; and
- to decide on the conformity with the constitutional order of a treaty under Article 10a or Article 49, prior to the ratification of such treaty.

The Constitutional Act on the Referendum on the Czech Republic's Accession to the European Union (No. 515/2002 Sb.) entrusted two further powers to the Constitutional Court, which, in view of the results of the actual referendum held in 2002, are no longer applicable [the jurisdiction stipulated in Article 87 (1) (l) and m) has been formally repealed by Constitutional Amendment No. 71/2012 Sb.], namely:

- to make decisions on remedial actions against a decision of the President of the Republic declining to call a referendum on the Czech Republic's accession to the European Union; and
- to determine whether the manner in which the referendum on the Czech Republic's accession to the European Union was held is in harmony with Constitutional Act No. 515/2002 Sb., and with the statute issued in implementation thereof.

ON THE SEAT OF THE CONSTITUTIONAL COURT

The Constitutional Court of the Czechoslovak Republic, established in 1921, had its formal seat in Prague. However, it was never given its own building. Its Justices met ad hoc and their offices were in the seat of the then Unification Ministry. After the Second World War, the constitutional judiciary was not reinstated; hence, the debates concerning the new seat were only initiated after 1990. As the modern constitutional judiciary respects a consistent separation of the judicial power from the executive and legislative branches of government, the City of Brno was chosen to be the seat of the Constitutional Court (and subsequently as the seat of other supreme judicial institutions), as a logical counterweight to Prague, where government and parliamentary institutions are located. Thus, since its establishment in 1993, the Constituional Court has been housed in the Moravian Diet Building in Joštova Street in Brno. (The Constitutional Court of Czech and Slovak Federal Republic sat in the same building.)

The Moravian Diet building just opened (1878)

The Constitutional Court building (2020)

The Constitutional Court building by night

History of the Seat of the Constitutional Court

Between 1875 and 1878, the monumental edifice of the Moravian Diet was built in Brno. The extensive transformation of the whole Joštova Street area was preceded by a competition for redevelopment of space formerly occupied by the city walls, which, in the second half of the 19th century, no longer served their military purpose. The architect of the famed Viennese Ringstrasse – Ludwig von Förster – won the competition; his projects executed in Brno include Klein Palace in the Liberty Square and the Restaurant Pavilion in Lužánky. He inserted a ring-shaped avenue between the historical city centre and its suburbs, supplemented with added open spaces, a fancy promenade and park vegetation, and lined with monumental public and residential buildings.

The preparations for the construction site on Joštova Street involved demolition of the baroque city walls and the north-western bastion of the municipal fortress, the headquarters of the military engineering unit, former artillery unit headquarters, the main customs authority and other buildings. Based on Förster's winning design, municipal engineer Johann Lorenz drew up a zoning plan two years later, and its main principles were implemented over time. This made it possible to connect the previously independent suburban settlements to the historical city in terms of urban space, architecture and road systems, and brought a solution of exceptional and permanent value.

The seat of the Moravian Diet became an important part of the Brno ring road and one of the dominant features of Joštova Street. It was built for the purposes of the Moravian Provincial Assembly. The building was constructed according to the winning design of an architectural competition held in 1872 and 1873. Two Viennese architects, Anton Hefft and Robert Raschka, won the competition. The huge palatial building was constructed in 1875 to 1878 by Josef Arnold under the supervision of the provincial building council Johann Ullrich.

In terms of style, the design of the Moravian Diet Building designed by the Viennese architects draws on their experience and knowledge of the North Italian Renaissance. The ground plan reflects the purpose of the palace – to tailor the building to the needs of a parliamentary institution as much as possible – and consists of a rectangle with four inner courtyards. The four wings of the palace intersect to create the large Assembly Hall, accessible by a staircase from the portico. Today, the Assembly Hall is used for public oral hearings held before the Plenum of the Constitutional Court comprising all fifteen Justices of the Constitutional Court. The Hall is the most valuable room in the entire building. It is flanked by a Vestibule and smaller lounges, which were originally used as a restaurant and a clubroom, while today, they serve as conference rooms for the three-member senates of the Constitutional Court.

Interior decoration is concentrated in particular in the Assembly Hall and the adjoining rooms. The walls are faced with reddish artificial marble and end in a painted frieze with a bracket cornice which supports a flat barrel vault adorned with a mural boasting the province's emblem. Galleries with a balustrade surround the Hall at the first-floor level.

Renovation of the Seat of the Constitutional Court

The last remodelling of the building took place in the 1980s and 1990s. In 2010, the library of the Constitutional Court was modernised; other than that, only necessary repairs and maintenance have been performed. As the building needs to be maintained in a condition fit for its operation, yet offering a modern working environment, a medium-term plan for reconstruction and capital expenditure for 2014–2017 was drawn up in 2014. The plan envisaged the gradual revitalisation of the Constitutional Court building. The building is listed as a cultural monument, and enjoys general protection thanks to its architectural design. For that reason, a structural and historical survey of the building was commissioned in order to ensure the preservation, and restoration, if necessary, of the original architectural elements.

The survey revealed a time capsule placed under the coping stone on the occasion of the ceremonial unveiling of the building on 22 December 1878 by provincial hetman Adalbert Widmann. The capsule and its contents are currently deposited at the Moravian Provincial Archives. When work on the building was

initiated in 2014, the first step was the renovation of sculptural décor on the parapet of the south and northern bays of the Constitutional Court's building: the sculptural allegories of the six virtues placed in groups of six.

The sculptures were created by Josef Schönfeld and Josef Tomola. Although the sculptures have been repaired several times over the last few decades, they were in very poor, in some cases even critical, condition. The condition of the original stone did not make it possible to return the sculptures to their original places on the exterior even after repair. Therefore, copies of all the sculptures were made and placed on the parapets in November 2014. Following the necessary treatment, the original sculptures are kept on the premises of the Constitutional Court. Two of the original sculptures underwent complete restoration (the allegories of Legislature and Happiness) and were then put on display inside the building. The main entrance and foyer area were also restored in 2015.

In 2017, the technically unsuitable state of the Assembly Hall of the Constitutional Court and the adjacent areas brought the Constitutional Court to the decision to renovate and restore it. A comprehensive architectural project followed, which did not only deal with this particular space. The Assembly Hall and the surrounding areas are, from an artistic and historical perspective, one of the most important parts of the interior of the building. From a social point of view, this is the space where representative activities of the Constitutional Court take place, for example, plenary sessions, international conferences, thematic lectures by renowned international experts in the field of law, and similar important events. The main idea of the project was to return this space to its original state and renew the original layout, which is most apparent in the Vestibule of the Assembly Hall, and, at the same time, ensure modern functioning pertaining to the current needs of the Constitutional Court.

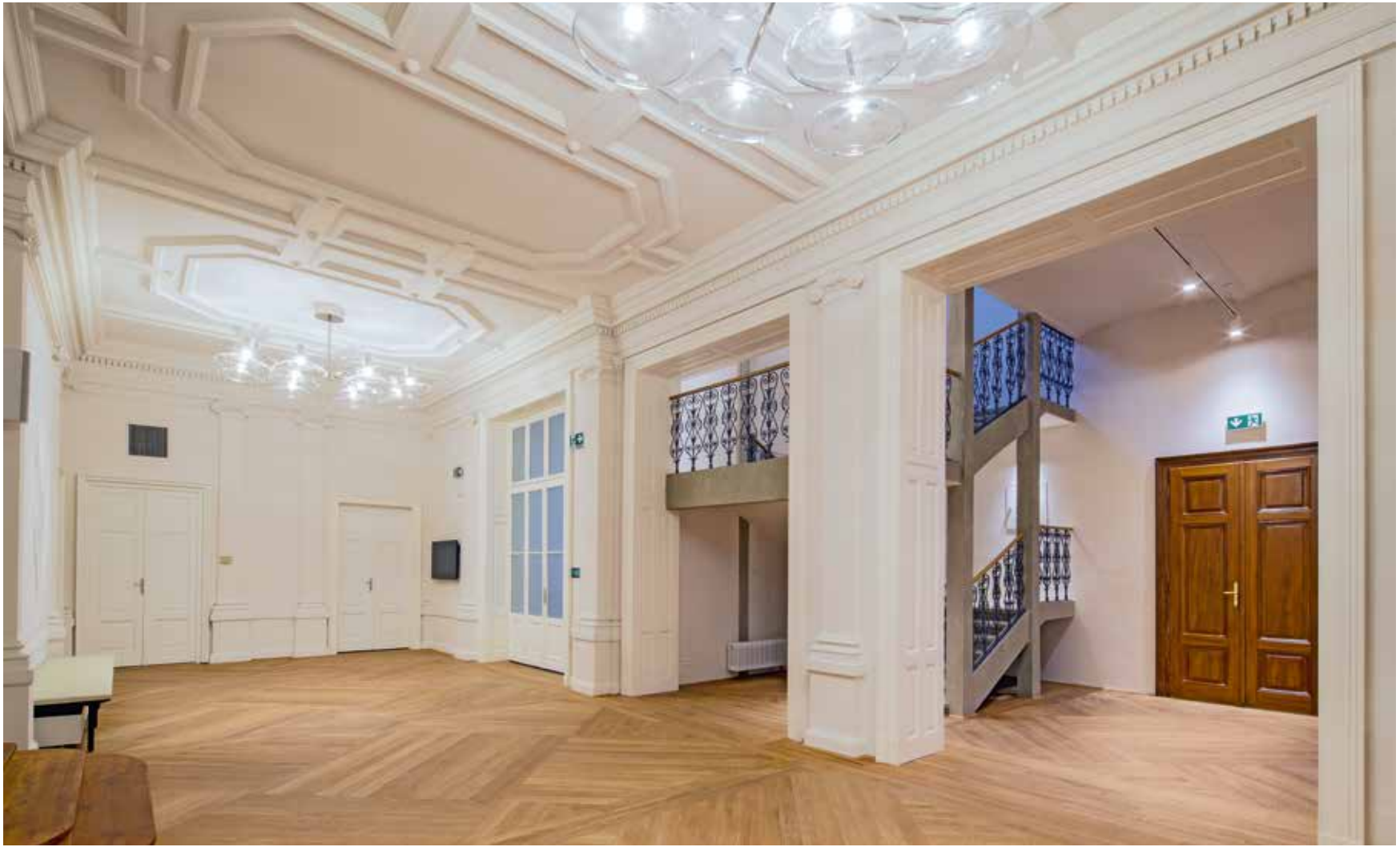
In recognition of the historic and architectural significance of this space, the Constitutional Court launched an open architectural competition with the goal of finding the best architectural and renovation plan, inviting leading Czech architects Ladislav Kuba, Radko Květ and Jan Šesták as jurors. A plan by architects Ondřej Kafka and Darja Kafka was the winner of the competition.

The Assembly Hall of the former Moravian Parliament is a monumental two-storey space. The parterre is accessible from the Vestibule and the adjacent hallways. The balconies are on all sides of the upper level. The light is ensured by a large skylight in the Hall itself as well as above the Western Balcony.

A historical and technical analysis revealed that unsuitably executed adjustments and partial repairs had damaged the original appearance of the space. The progressive degradation of the plastering and stucco had caused webs of hairline fractures in the reliefs, stucco and marble surfaces. The woodwork elements and especially the carved lining of the doors to the Hall had also suffered damage. The original clarity of the decorative paintings was distorted by layers of dust and grease deposits. Part of the space (the Western Balcony) was closed due to its state of disrepair or remained unused because of the poorly planned adjustments when adding air-conditioning (North and South Balconies).

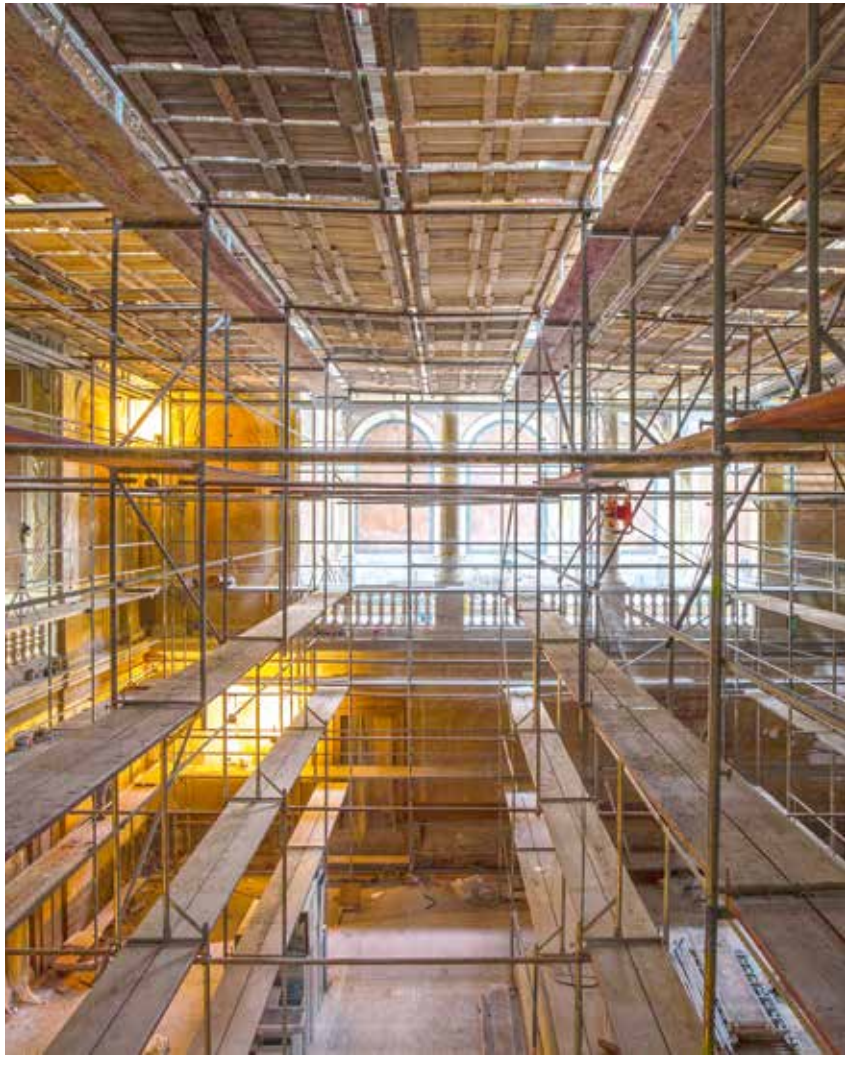
Repairs of the Assembly Hall and its surroundings included the renovation of the wall and ceiling paintings, stone elements, stucco decorations, surfaces of fake marble and woodwork and steelwork. The renovation incorporated the balconies and also the Vestibule and courtrooms, which are both functionally and spatially connected to the Hall. Further renovations concerned the iron structure of both skylights (Assembly Hall and Western Balcony), including replacing the glass and installing horizontal sun blinds and a new system of artificial lighting of the Hall and Western Balcony from above the skylights. The doors on the Western Balcony were put back into use. The floors were also renovated and returned to their original state; that is, the double floor on the balcony was reversed back to its original form and the sloped floor of the Assembly Hall was reverted to steps. At the same time, the floor was equipped with air-conditioning vents and a new, modern ventilation system was installed. Part of the renovation included the renewal of the furnishing of the court rooms with new furniture, audiovisual equipment and other indispensable devices. In line with the architectural design, adjustments were made to the roof terraces of the southern-facing atriums of the building. The renovations began in October 2017 and were finished in October 2018. The first significant event in the newly renovated space was the celebration of the 100th anniversary of the founding of Czechoslovakia and 25th anniversary of the renewal of the constitutional judiciary in the Czech Republic.

The Vestibul of the Assembly Hall in the course of reconstruction works

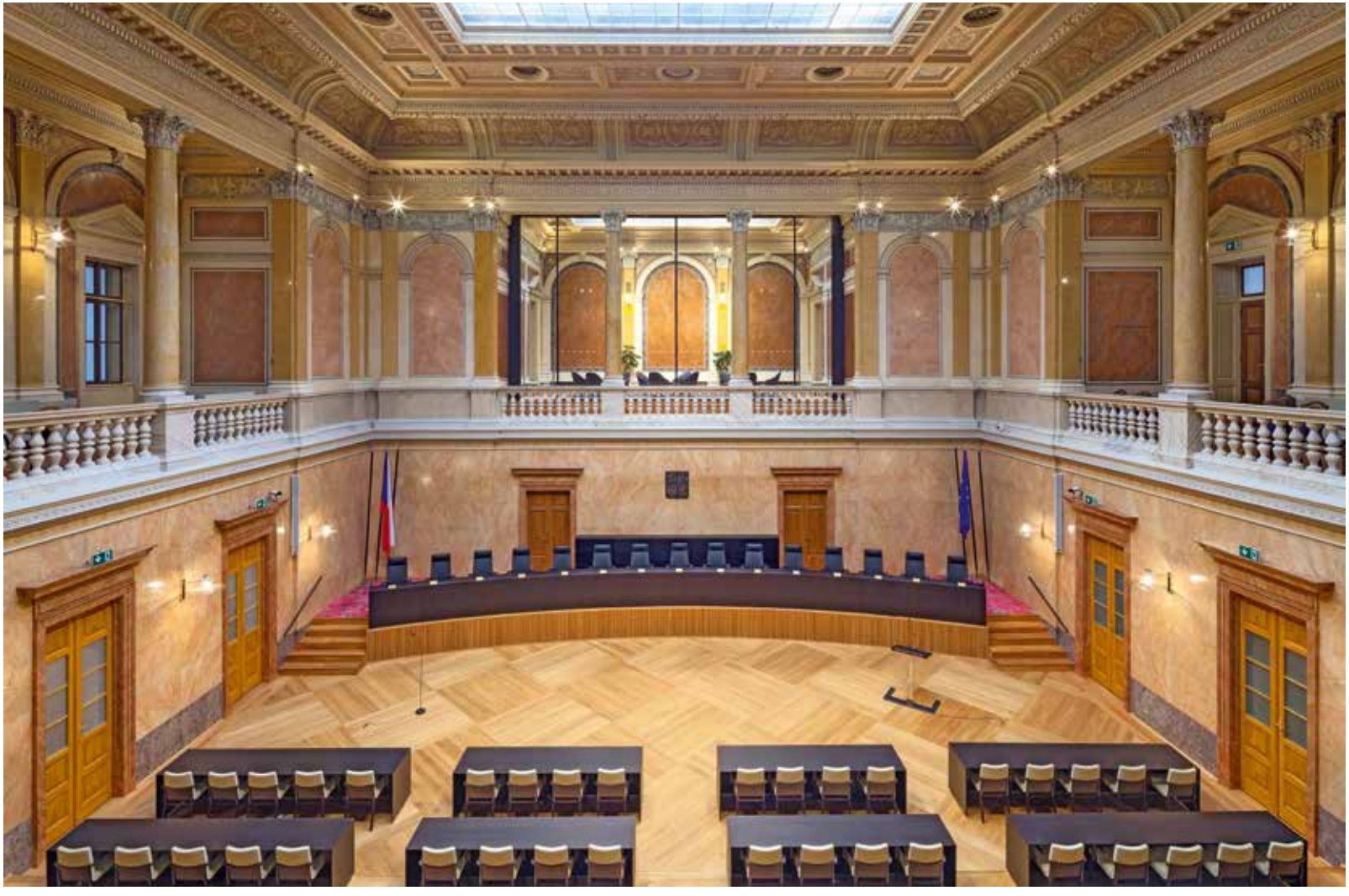


The Vestibule of the Assembly Hall after restoration

The Assembly Hall before restoration

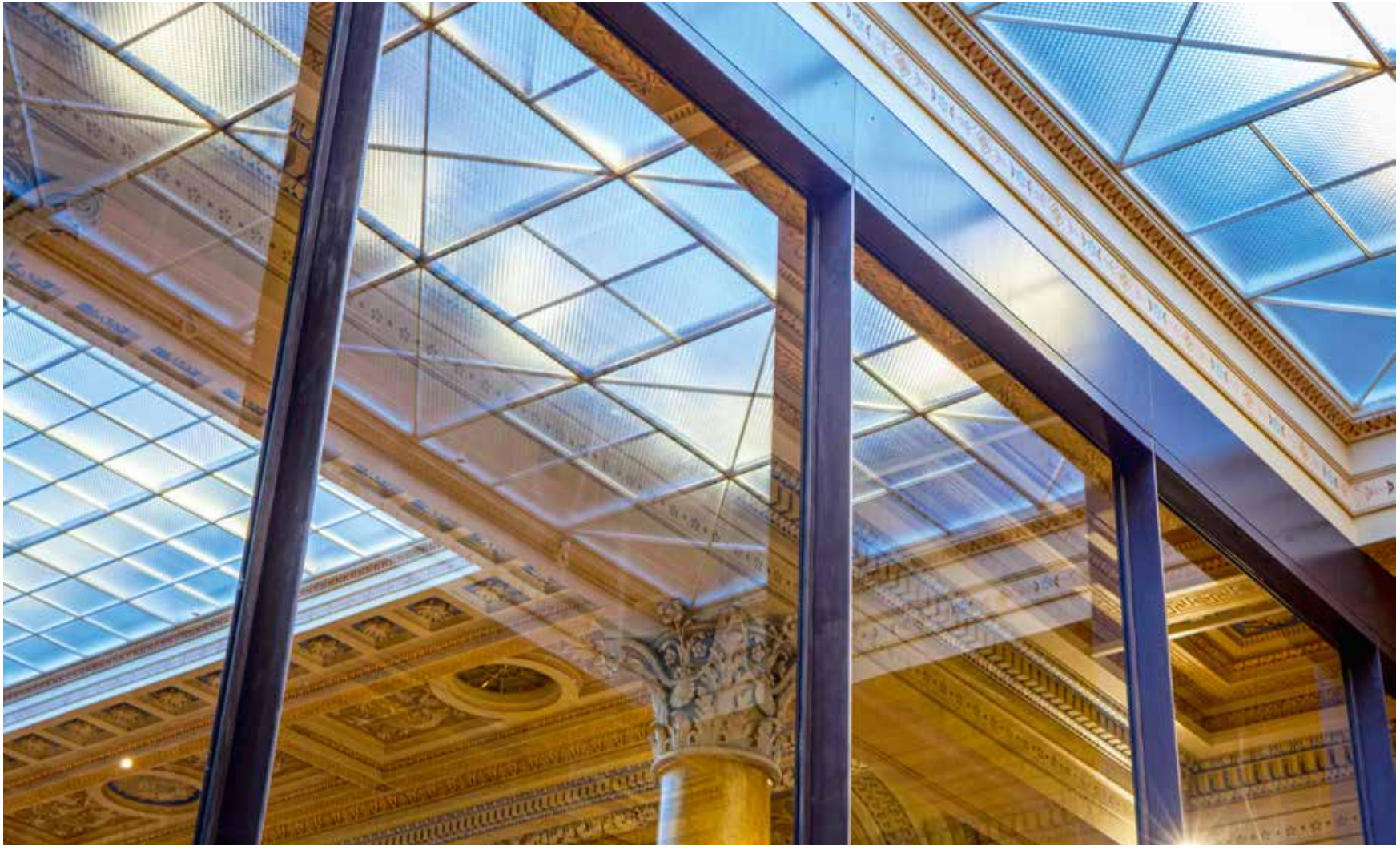


The Assembly Hall in the course of reconstruction works



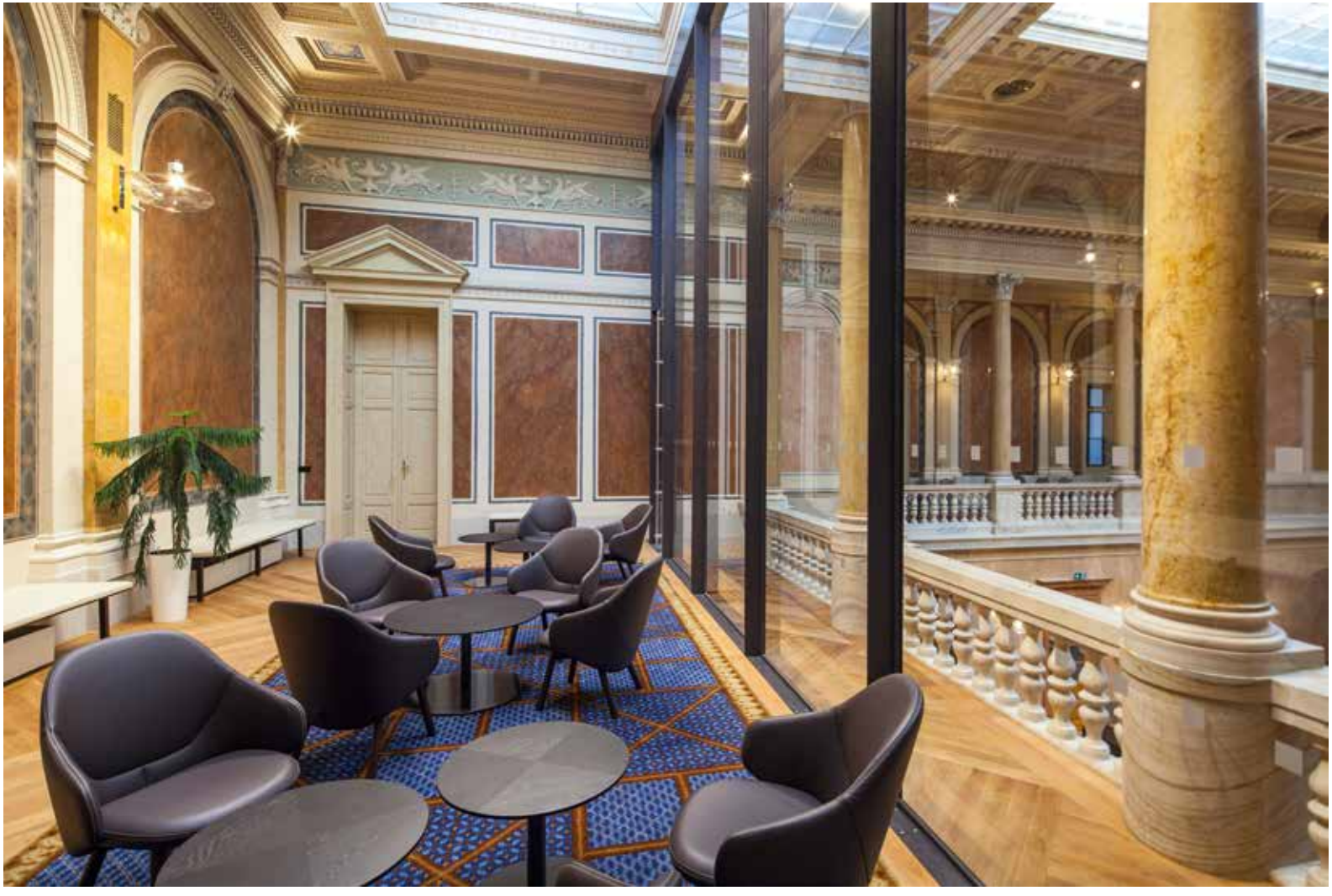
The Assembly Hall after restoration

Renovation of the roof light's metal structure



The restored roof light of the Assembly Hall

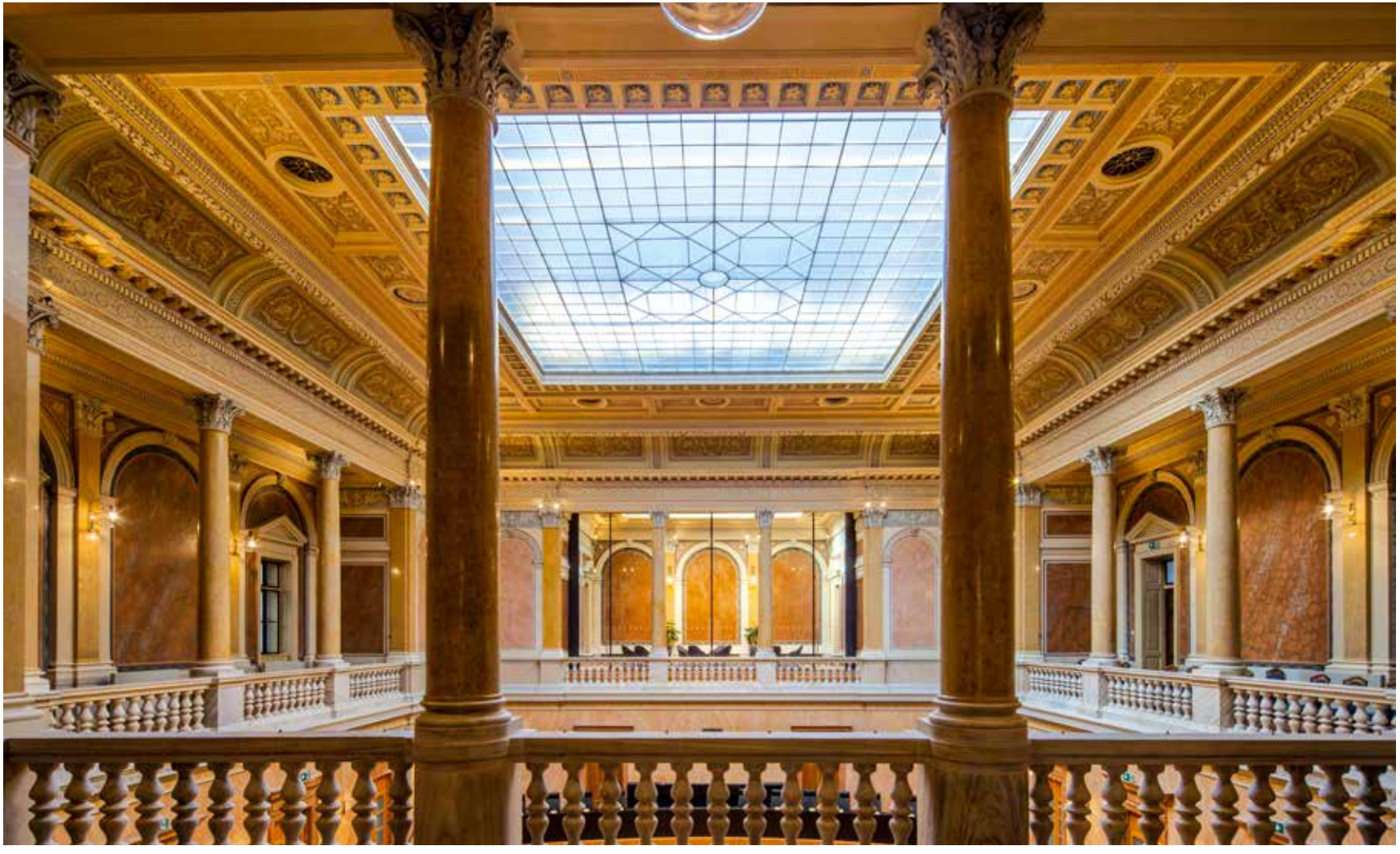
The Western Gallery was not in use due its state of disrepair



The restoration gave birth to a representative meeting lounge in the Western Gallery

The Assembly Hall

The Constitutional Court grand bench



The upper level of the Assembly Hall

One of the two identical-looking courtrooms

Terrace on the third floor of the Constitutional Court building

The Constitutional Court building in the very heart of the City of Brno

Constitutional Court's seat without barriers

As part of the ongoing renovation of the Constitutional Court's seat, the issue of removing physical obstacles preventing persons with disability from accessing and moving around the building could not be overlooked. This issue, while easy to solve elsewhere, is a complicated matter in the environment of a historic building.

In 2021, after a series of specific renovations and special adaptations, some of which had naturally taken place in previous years, the last obstacles disappeared from the building and it became a barrier-free public building. All the areas that are important for the Court's deliberations, the delivery of judgments and the handling of documents (the courtrooms, the Assembly Hall and the library) are now without obstacles – access to and movement within them is possible without the need to be accompanied by another person. As the main entrance to the court is elevated above the surrounding terrain and is only accessible via stairs (there are also a number of levelling stairs between the entrance to the building and the first floor itself), this made access to the building difficult for persons with reduced mobility. Therefore, a new barrier-free and wheelchair accessible entrance was built from Žerotín Square. This entrance allows you to enter the building and use the lifting platform on the levelling staircase to move directly to the newly created lift in the north staircase, which was constructed during its renovation in 2021. The new lift connects all the floors in the building, which is something we lacked until now. Thanks to this lift, it is also possible to access the newly built registry archives in the basement without restrictions. The construction of a completely new lift was also challenging with regard to the requirement that the new equipment and technology should not disturb the existing architectural appearance, which was achieved thanks to the co-operation of the Constitutional Court, the architect, the Department for the Protection of Monuments of the City of Brno and the contractor. It should be noted that it is an aesthetical and functional unit that serves to the satisfaction of all concerned.

The doors, which are located on the route between the new entrance to the building, the courtrooms and the Assembly Hall, are now equipped with automatic door openers so that they do not require the assistance of a second person.

Another measure to remove obstacles concerned the Assembly Hall. It was originally designed in a tiered manner, i.e. the individual benches were mounted on steps. During the reconstruction, this characteristic was partially removed, and seating for persons with reduced mobility was created in the first row of benches.

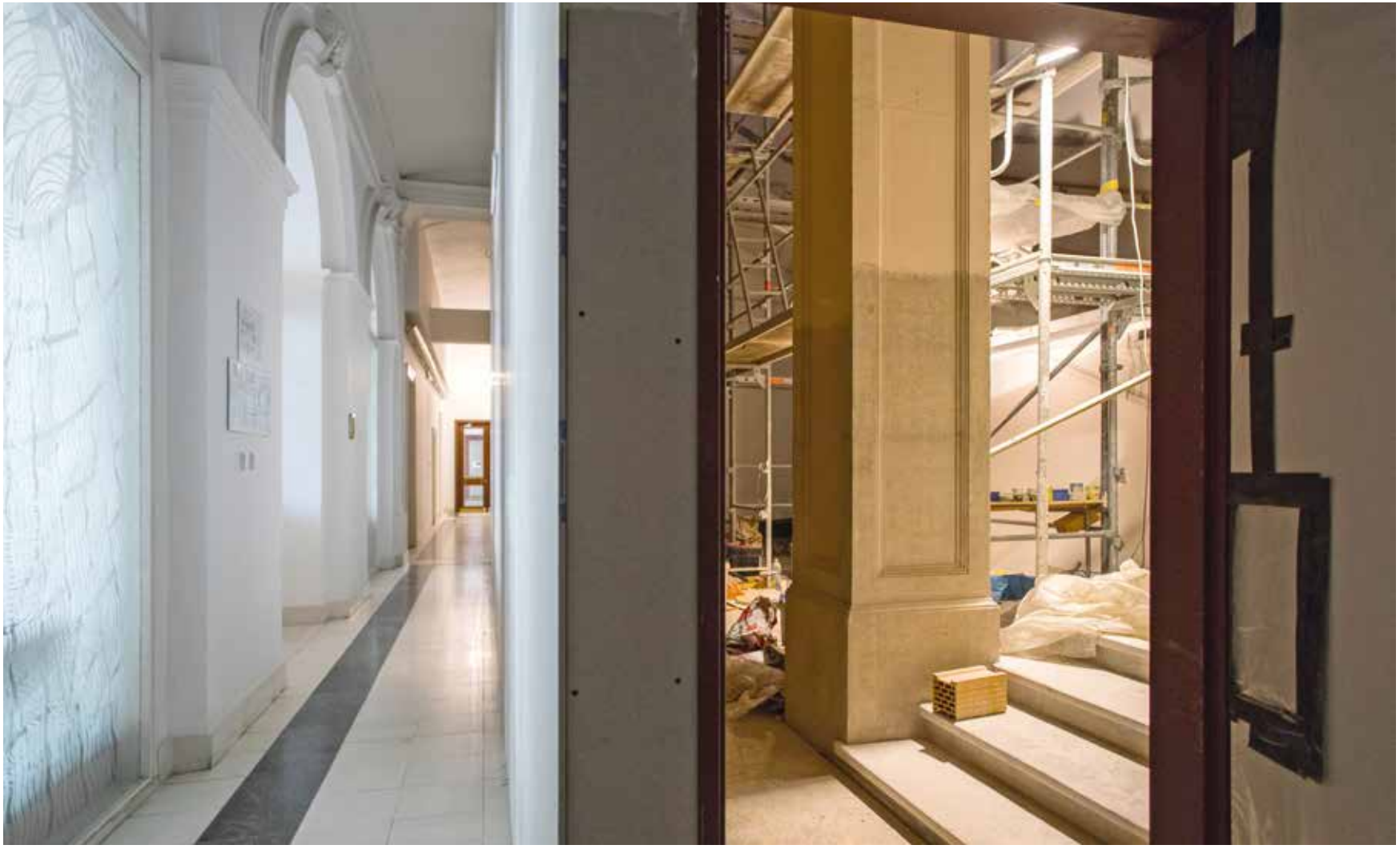
However, there were not only obstacles to movement, but also to sound, for example. Therefore, an induction loop was installed in the Assembly Hall, a device that effectively eliminates the communication barrier for the hearing impaired.

Prior to the start of the reconstruction of the Constitutional Court, there were a number of issues in the building in terms of accessibility (for example the aforementioned entrance to the building, movement between floors, access to bathrooms (toilets), etc.). In recent years, separate sanitary facilities for people with reduced mobility have been built on each floor, and the existing ramps and staircases have been supplemented with the previously missing handrails. The reconstructions, modifications and adjustments presented above have enabled not only barrier-free access to the building but also free movement on (and between) all its floors.

As already mentioned, such measures are commonplace in newly designed buildings. In older buildings they are difficult to implement yet they are still common. In listed buildings, however, such solutions are feasible only exceptionally and great effort must be made in their preparation and realization. The fact that the Constitutional Court is now barrier-free is a sign of care for its beautiful seat but at the same time and above all an expression of respect for all those who need to move around in the building.

All meeting and study areas are newly barrier-free and wheelchair accessible (i.e. without the help of another person)

Handrails have been added to some of the existing staircases



Renovation of the staircase area in the part of the building adjacent to Žerotín Square

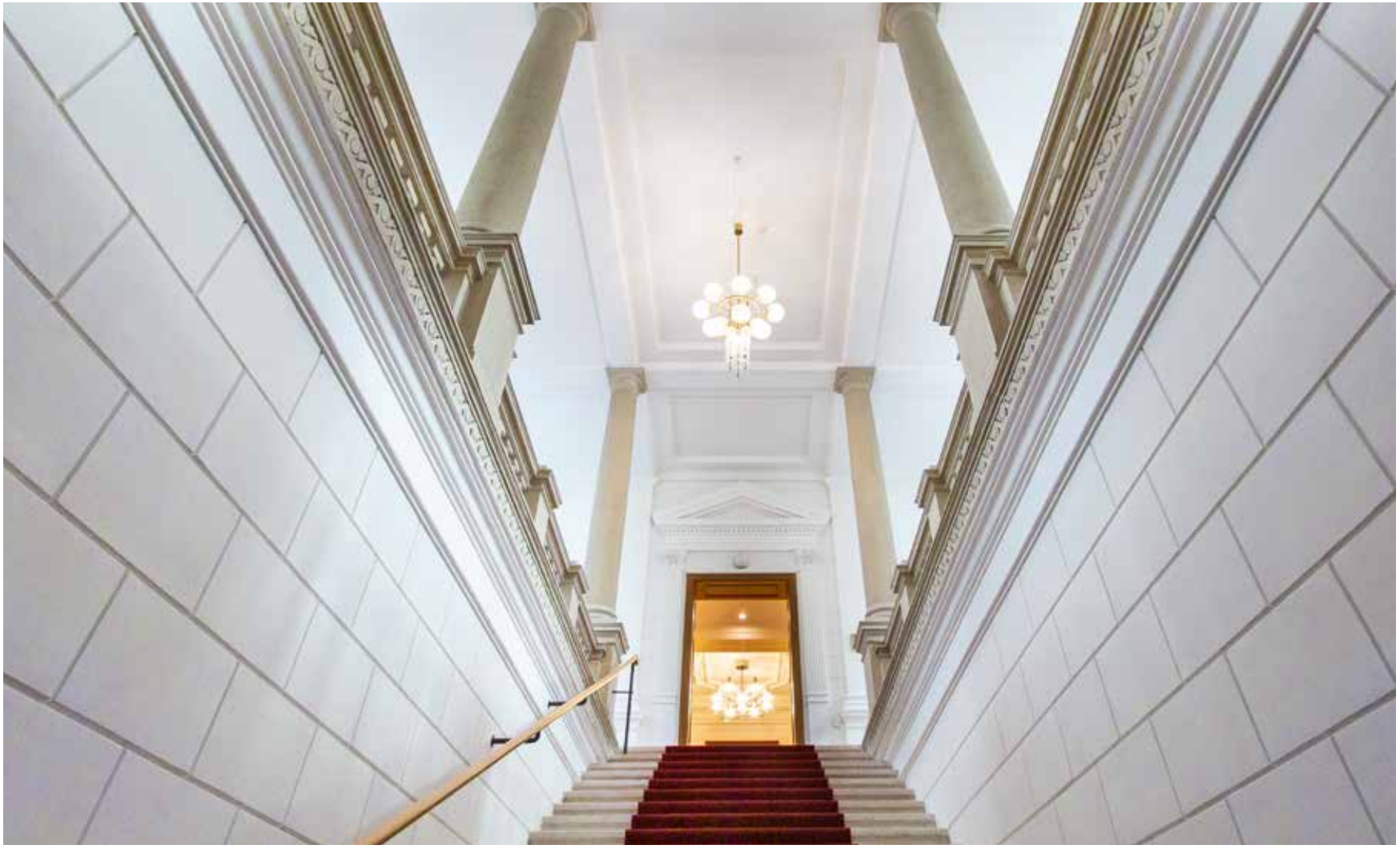
Renovation and restoration works in the staircase area

New lift in the north staircase, which was built during the renovation of the staircase in 2021

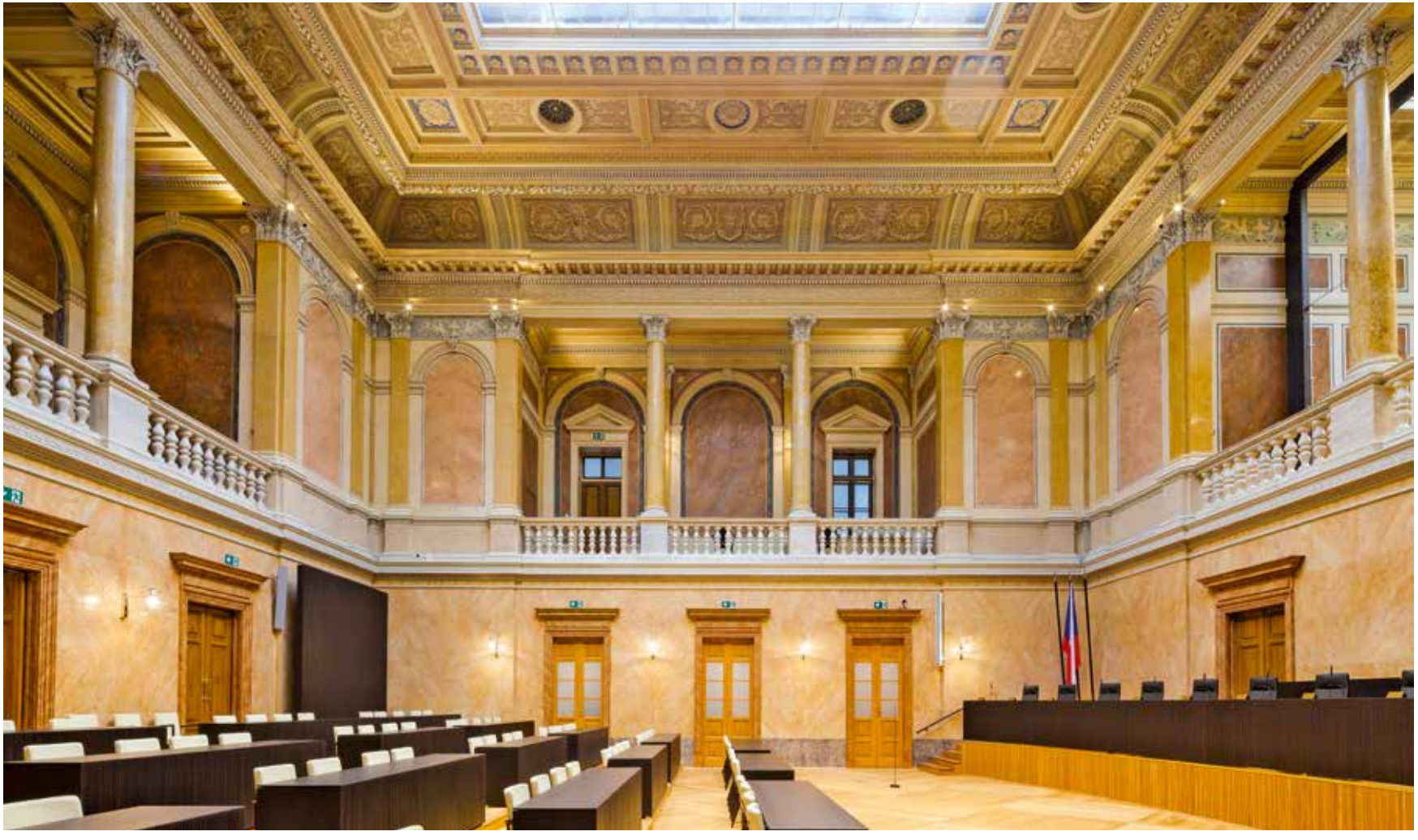
The construction of the new lift was a sensitive matter; the equipment and technology did not disrupt the existing architectural appearance

The lift connects all floors in the building, which was not possible before; thanks to this, the newly built registry archives have been made wheelchair accessible

New registry archives located in the underground premises



Missing handrails were added to the existing staircases



Removal of barriers in the Assembly (Plenary) Hall, which was originally designed in a tiered manner.
The staircase was partially removed during the renovation and places for persons with physical disabilities were created in the first row.

4

DECISION-MAKING IN 2021

It is quite logical that the decision making is different every year as it depends on the type of cases submitted to the Constitutional Court for consideration. Some decisions described below follow up on the case law from the previous years; others reflect current trends, and foreground new topics and perspectives. The case-law overview presents the most interesting judgments adopted by the Constitutional Court in 2021.

Fundamental constitutional principles

Democratic rule of law

Article 1 of the Constitution of the Czech Republic (hereinafter the "Constitution") defines the Czech Republic as a democratic state governed by the rule of law. This Article introduces a general and overarching principle, which involves a number of sub-principles; some of them are expressly defined by constitutional law, while some are inferred within the case law of the Constitutional Court.

Article 1(1) of the Constitution merges two principles: the principles of rule of law and the principle of a democratic state. Therefore, the Czech Constitution makes a nuanced combination of democratic principles and the principles of constitutionalism derived from the political ideas of modern liberalism. That is why no regime other than a democratic one can be legitimate (Judgment File No. Pl. ÚS 19/93 of 21 December 1993) and that a citizen takes precedence over the government, and thus fundamental civil and human rights are given priority (Judgment File No. Pl. ÚS 43/93 of 12 April 1994). Judgment File No. II. ÚS 29/11 of 21 February 2012 implies that democracy must be interpreted through the material lens.

The Constitutional Court has expressed its views on many issues of the democratic state governed by the rule of law in the widely discussed **"electoral" judgment** [File No Pl. ÚS 44/17 of 2 February 2021 (see also the specific subchapter below)]. It partially granted the motion of a group of senators to repeal certain provisions of Act No 247/1995, on elections to the Parliament of the Czech Republic and amending and supplementing certain other acts. In the judgment, the Court discussed in detail the general principles and foundations of electoral law, the limits of reviewing the constitutionality of electoral legislation, the constitutional requirement of proportional representation in elections to the Chamber of Deputies, and the relationship between the various elements of the electoral system. According to the Plenum, the protection of political competition is manifested on three levels. The Constitutional Court must respect the requirements of equality [Article 18(1) of the Constitution, Article 21(4) of the Czech Charter of Fundamental Rights and Freedoms] and the protection of minorities (Article 6 of the Constitution) in access to the legislature, as required by the principle of proportional representation not only in terms of "small political parties". However, it is simultaneously important to see that political parties that are otherwise opposed to each other in the legislature may also have a common interest in limiting the chances of extra-parliamentary parties to get into the legislature. The mere experience that large parties can become small parties [term-limited government, especially in accordance with Article 21(2) of the Charter] is not a legally acceptable guarantee that this will not happen, i.e. that such manipulation will not occur. Finally, the third aspect (the point of friction) is the establishment of rules that limit the freedom of choice on the voters' part (strictly bound lists of candidates, limited number of preferential votes, indirect electoral thresholds, different sizes of electoral regions and thus differing chances of voters). All these aspects must be assessed in the context of a complex review of the constitutionality of the contested Act in conjunction with the other requirements for fair regulation of elections and the right to vote.

In the present case, the challenge was to the legislation implementing the requirements of the principles of proportional representation and the principles of the right to vote. According to the Constitutional Court, the review must take into account the preservation of all constitutional standards required in the regulation of political competition in general and electoral competition in particular, as guaranteed by Articles 5 and 6 of the Constitution and Articles 3(1), 21 and 22 of the Charter in the case of the exercise of political rights, so that smaller political parties are not disadvantaged in this competition and no political competitors are excluded, as the petitioner argued in the present case. This is all the more important because, in the context of political competition, elections are

a key means of exercising the sovereignty of the people and the right to participate in the administration of public affairs [Article 2(1) of the Constitution and Article 21(1) of the Charter]. It is the association in political parties and political movements that serves citizens to participate in the political life of society and in particular in the formation of legislatures. Such associations are, by their very nature, the holders of the right to proportional representation in the Chamber of Deputies in accordance with Article 18(1) of the Constitution (the principle of the right to vote is made subjective here). The principle of equality of the right to vote must be applied here not only to the exercise of citizens' right to vote, but also to the participation of political parties in electoral competition in a broader sense, i.e. also in the rules for participation and for determining the electoral result.

Given that the rule of term-limited government in accordance with Article 21(2) of the Charter can only be realistically applied if these requirements are maintained, protecting the constitutionality of the statutory regulation of electoral rules is a fundamental problem of the democratic rule of law in accordance with Article 1(1) of the Constitution, since an electoral contest and the determination of its outcome according to rules set by the majority in its favour in contravention of the requirements of the constitutional order is only fictitious, especially if the electoral legislation is also relatively unstable. Therefore, the Constitutional Court, in its function as a judicial body for the protection of constitutionality in accordance with Article 83 of the Constitution, is called upon to protect the establishment and maintenance of these principles and rules (together with other parts of the judiciary) in any situation where it appears, as in the present case, that the majority refuses to address the issue of legislation that would eliminate the alleged constitutional defects in electoral legislation.

The **principle of legal certainty** is one of the fundamental principles of constitutional law. The Constitutional Court dealt with it on the basis of an examination of defects in the legislative process, which, according to a group of senators, should have constituted the grounds to repeal Act No 609/2020, also referred to as the "tax package". In particular, the package abolished the "super-gross wage" and instead introduced income taxation of natural persons at rates of 15% and 23%. The petitioner found fault with the legislative process in the fact that the contested Act was promulgated in the Collection of Laws despite the fact that it was not signed by the President of the Republic but was returned to the Chamber of Deputies for a new vote. In this context, it referred to the President's official note sent to the Speaker of the Chamber of Deputies, which, based on its content, is a suspensive veto, i.e. an act containing an expression of the President's will to return an adopted act within the meaning of Article 50(1) of the Constitution. The Constitutional Court stated that it respects the principle of restraint and abolishes legislation only in exceptional cases where the essential rules of the legislative process have not been observed and the error reaches the importance of constitutional law. However, the Constitutional Court did not reach such a conclusion in this case.

In accordance with Article 50(1) of the Constitution, the President has the right to return an adopted act, with the exception of a constitutional act, with a statement of reasons within fifteen days of the date on which it was submitted to him. In accordance with Article 50(2) of the Constitution, the Chamber of Deputies shall vote again on the returned act. Given that this is an expression of the will of the representative of the executive branch – a constitutional body, which is exercising its power by which it significantly interferes in the activities of the legislature, the expression of the President's will to exercise this power must be unambiguous to the extent that it leaves virtually no room for any other interpretation than that it expresses the will to exercise the suspensive veto. It is up to the President himself, when he wishes to exercise his power to return an act for a new vote, to do so in a clear, unambiguous and therefore unmistakable manner. To consider only actions exercised in this way as a veto means to ensure legal certainty in the legislation.

The Constitutional Court assessed the President's official note in these terms and concluded that it was not an exercise of a suspensive veto, since it was an expression of the President's will that realistically allows for an interpretation other than that of returning the contested act to a new vote, an interpretation invoked by the President himself. According to the statements of the Chamber of Deputies, the Government, but also, and above all, the President, the official note of 28 December 2020 expressed the will of the President not to sign the contested act and simultaneously not to return it for a new vote in the Chamber of Deputies,

but to forward it to the Speaker of the Chamber of Deputies for promulgation in the Collection of Laws. It follows from constitutional practice and the case law of the Constitutional Court that the President's signature is not a condition for the promulgation of an act, although the President is constitutionally obliged to sign an accepted draft act. Therefore, the Constitutional Court rejected the motion by a group of senators to repeal the "tax package".

Other important fundamental constitutional principles include the **requirement of equality**. This requirement played a key role in assessing the constitutionality of the Pandemic Act in the judgment File No Pl. ÚS 20/21 of 7 December 2021 (see also the subchapter on the acts of the State concerning the Covid-19 pandemic). The Constitutional Court proceeded on the assumption that it is fundamentally up to the legislator in what manner and, in particular, how generously the right to compensation is regulated in the Pandemic Act. However, the legislator does not have unlimited discretion in this respect, as it is still bound by the constitutional obligation to investigate the essence and significance of fundamental rights under Article 4(4) of the Charter, the principle of equality in limitations thereof under Article 4(3) of the Charter, the prohibition of abuse of limitations of fundamental rights under Article 4(4) of the Charter, as well as the principles of the democratic rule of law and equality before the law under Article 1(1) of the Constitution, Article 3(1) of the Charter, and Article 9(2) and (3) of the Constitution. These factors limiting the legislator's discretion simultaneously serve as the reference criteria for the compliance of a particular legal solution with the constitutional order. The legislator must not, for example, completely give up on the compensation for a "special sacrifice" that a particular individual had to endure on the principle of chance in favour of the public interest, which in this case outweighs the protection of that individual's right to property.

Not only is there no public subjective right to a certain method of compensation for damage caused by emergency measures in accordance with Section 2 of the Pandemic Act, but there is also no public subjective right to the introduction of a specific public aid scheme to mitigate the economic impact of a pandemic. The only unconstitutional legislation would be that which does not allow for the taking into account of the harm through special sacrifice, or which would be an expression of arbitrariness or even wantonness of the legislator, or which would create inequality between individual victims or groups of victims without legitimate reason. The challenged regulation of the reduction of damages in accordance with the second sentence of Section 9(4) of the Pandemic Act does not, in general, violate the constitutional requirement of equality. The conditions for compensation under this provision are the same for all entities and it is therefore up to them to determine what strategy they choose to mitigate the negative economic impact of the pandemic and the emergency measures to cope with it in terms of the possible combination of compensation and public aid and the limitation thereof represented by this provision. If the State has thus undertaken to compensate for damage arising in causal connection with the emergency measures in accordance with Section 9(1) of the Pandemic Act, it is fundamentally irrelevant, in view of the constitutional requirement of equality, whether the satisfaction of this right is effected by compensation for specific damage, the amount of which and other conditions for the exercise of the claim are demonstrated by the injured party, or by lump-sum compensation by means of one of the public aids supplemented by the possibility of compensation for the harm through special sacrifice going beyond the lump-sum compensation in the first-mentioned manner.

However, the Constitutional Court reached an opposite conclusion in terms of fulfilling the constitutional requirement of equality with regard to the reduction of compensation in accordance with the second sentence of Section 9(4) of the Pandemic Act, concerning repayable financial assistance. By its nature, this type of public aid increases the assets of its recipient only temporarily, as the recipient is obliged to repay it after a certain period of time. However, damage caused in accordance with Section 9(1)(a) or (b) of the Pandemic Act constitutes a permanent diminution of the victim's property. Therefore, in terms of its purpose, the repayable financial assistance does not have a reparation or compensatory function and it only serves to bridge. The purpose of compensation for damage cannot be fulfilled even in abstracto, let alone in concreto. Thus, damage caused in accordance with Section 9(1)(a) or (b) of the Pandemic Act remains uncompensated to the extent that its compensation is reduced by the repayable financial assistance provided. However, such a conclusion is contrary to the protection of the right to property under Article 11(1) of the Charter.

Obligations arising from EU and international law

As in the previous year, the Constitutional Court dealt in 2021 with a motion to reopen proceedings after the European Court of Human Rights ("ECtHR") found that a human right had been violated. It did so on the basis of the judgment in *Tempel v. the Czech Republic* of 25 June 2020, application No 44151/12. First, by resolution File No Pl. ÚS 110/20 of 9 February 2021, the Court granted the reopening of the proceedings and revoked its previous declinatory resolutions. Subsequently, by judgment File No Pl. ÚS 110/20 of 27 July 2021, the Court upheld the complaint and annulled the contested decisions of the general courts. This case is discussed in more detail in the subsection on safeguards in criminal proceedings.

The proceedings before the ECtHR were also dealt with by the Constitutional Court in an unconventional dispute in its judgment File No I. ÚS 1154/20 of 23 February 2021. The applicants, previously successful before the ECtHR, sought compensation for other than proprietary harm caused by the excessive length of the proceedings, including the proceedings before the ECtHR. In this context, the Constitutional Court recalled that the **establishment of liability under international law** requires the cumulative fulfilment of two conditions, namely (1) the existence of internationally wrongful conduct of a subject of international law that is (2) attributable to the responsible subject of international law. In the present case, neither of them was met. First of all, there was no legal title on the basis of which an individual could claim compensation from the Czech Republic for the length of the proceedings before the ECtHR – there was no legal basis for such a claim. Moreover, the membership of a State in an international organisation does not in itself establish its responsibility for the infringements of the international organisation. The State is only responsible for the actions of the bodies whose activities it controls. The Czech Republic cannot be held responsible for the length of the proceedings before the ECtHR; therefore, this period cannot be included in the assessment of the overall length of the original proceedings.

In the past year, the Constitutional Court was also given the opportunity to comment on **EU law**. It referred to the case law of the Court of Justice of the European Union, for example, in a dispute over fair remuneration for work in the context of an employer's requirement for availability during breaks. It reiterated on that occasion that, if the Court of Justice has already had an opportunity to interpret in its case law concepts contained in the directive which are also present in national law, it is necessary to adopt a eurofrienly interpretation of those concepts in the national interpretation and application of those concepts. The provisions of Article 4 of the Constitution must be interpreted in the light of Article 1(2) of the Constitution and Article 10a of the Constitution as meaning that the judiciary (including the Constitutional Court) is obliged to ensure compliance with the obligations arising for the Czech Republic from EU law when providing protection of fundamental rights and freedoms. This is particularly important in the case of obligations arising from the Charter of Fundamental Rights of the European Union, which is a human rights catalogue and the Constitutional Court considers it to be part of its reference frame for review in constitutional complaint proceedings. Therefore, the judiciary is obliged to interpret and apply national law in a eurofriendly manner. Failure to do so violates the right to a fair trial.

In two judgments, the Constitutional Court also addressed the issue of competence and recognition of **enforcement of judgments** in civil and commercial matters. In its judgments File Nos IV. ÚS 2042/19 of 8 April 2021 and I. ÚS 1964/19 of 1 June 2021, the complainant sought to enforce a pecuniary obligation in the Czech Republic by means of an enforcement order issued by an Austrian court. The application was dismissed in part by resolution of a court enforcement officer, on the basis of an instruction of a District Court, as the latter found the execution title to be materially unenforceable and indefinite. The Regional Court upheld the officer's resolution as correct, as it concluded that a foreign judgment cannot be enforced unless a Czech court has decided to declare it enforceable or to recognise it. According to the Constitutional Court, it did not follow from the reasoning of the decision that the Regional Court reflected the EU regulation in any way. The former Brussels I Regulation, which required a declaration of enforceability to enforce a foreign judgment, has been replaced by the Brussels I bis Regulation, which provides for direct enforcement of a judgment, i.e. its enforceability in another Member State without requiring a declaration of enforceability. The Brussels I bis Regulation does not leave any discretion to Member States in the enforcement of judgments to the detriment

of the judgments of other EU Member States. The relevant provisions of this regulation are so clear that there is no reasonable doubt in their interpretation in this respect. However, it is not within the competence of the Constitutional Court to give a binding interpretation of EU law; therefore, it cannot anticipate the further actions of the Regional Court after annulling a resolution issued by such court. However, if its view on the interpretation and application of the Brussels I bis Regulation differs from that of the Constitutional Court, the case could not be considered acte clair and it would therefore be its duty to refer to the CJEU for a preliminary ruling. Otherwise, there is a risk that the decision will conflict with EU law and violate the Czech Republic's obligations arising from its EU membership.

Case law on State acts relating to the Covid-19 pandemic

As in 2020, the Constitutional Court considered a number of submissions relating to legal acts issued in connection with the Covid-19 pandemic. Most of these submissions were not examined on their merits, as they were rejected by the Plenum on one of the procedural grounds listed in Section 43(1) of Act No 182/1993.

For example, in its resolution File No Pl. ÚS 1/21 of 26 January 2021, the Constitutional Court declared, among other things, that protection may be sought against the interference in fundamental rights consisting in specific consequences caused during the state of emergency by emergency measures in accordance with Sections 5 and 6 of the **Crisis Act**, as amended, by means of an interference action provided for in the Code of Administrative Justice. This procedural means of protection must be exhausted before a constitutional complaint is lodged. According to the Constitutional Court, this interpretation was also consistent with the case law of the administrative courts at the time, according to which it was possible, in certain exceptional circumstances, to defend oneself against specific consequences caused by a crisis measure by means of an interference action. However, the conclusions of the above resolution were later relativised, for example in the resolution File No Pl. ÚS 38/21 of 30 November 2021, the Constitutional Court accepted the procedure of administrative courts based on the opinion adopted in the meantime by the extended panel of the Supreme Administrative Court (judgment File No 9 As 264/2020 of 30 June 2021), according to which it is not possible to defend against the consequences of governmental crisis measures by means of an interference action, since the effects directly resulting from a legal regulation cannot constitute a direct deprivation of individual rights within the meaning of Section 82 of the Code of Administrative Justice.

In a number of other decisions in which it considered motions against government resolutions declaring a state of emergency, the Constitutional Court followed up on its decisions from the previous year in which it interpreted that a direct and "isolated" review of a decision declaring a state of emergency is fundamentally precluded because it is primarily an act of governance of a political nature. The Constitutional Court could choose to annul such decision only if it was contrary to the fundamental principles of the democratic state governed by the rule of law and if it meant a change in the essential requirements for a democratic state governed by the rule of law. However, this was not the case in any of the cases under review. Therefore, it rejected these motions on the grounds that they were filed by the applicant with no standing (e.g. resolution File No Pl. ÚS 5/21 of 2 March 2021 or resolution File No Pl. ÚS 10/21 of 2 March 2021), or because the Constitutional Court has no jurisdiction over the petitions (cf. resolution File No Pl. ÚS 12/21 of 16 March 2021 or resolution File No Pl. ÚS 8/21 of 18 May 2021).

In contrast to the above, a proposal by a group of senators of the Senate of the Parliament of the Czech Republic to repeal measures **restricting retail sales** and the provision of services was examined on its merits. In its judgment File No Pl. ÚS 106/20 of 9 February 2021, the Constitutional Court partially granted the motion and, as from the date of its promulgation in the Collection of Laws, annulled the provisions of point I./1. of Government Resolution No 78 of 28 January 2021, on the adoption of a crisis measure, promulgated under No 31/2021, as it found it to be contrary to Article 1(1) of the Constitution and Articles 1, 2(3) and 4(4) in conjunction with Article 26(1) of the Charter.

Judgment File No Pl. ÚS 106/20: State of emergency during a coronavirus pandemic (restrictions on retail and services)

The Constitutional Court began its reasoning by emphasising the legitimate aim pursued by the contested measure, which (with some exceptions) banned retail sales and the provision of services, and which, according to the government's statement, was to prevent or at least mitigate the spread of the Covid-19 disease and to prevent the collapse of the healthcare system and widespread damage to health and lives of the population. However, it was a different question whether the different treatment of the individual groups of entrepreneurs introduced by the contested measure was justified and proportionate, or whether there were sufficiently strong reasons for such different treatment, including whether the objective pursued could not have been achieved by less invasive means. However, the government did not comment on the fundamental issue outlined above, and it was not clear whether it had even considered the use of lesser means.

In the context of the pandemic crisis, the government faced problems that were extremely difficult to solve and on which there was no consensus even among experts. However, even in such a situation, the regulation of the rights and duties of individuals could not be allowed to be a mere expression of political will. Although any crisis measure is a political decision that must be based on expert evidence, the responsibility for such decision lies with the government. Therefore, the government must be able to rationally justify each decision, and the individual reasons must also be externally discernible. In the present case, the government has chosen the solution of a blanket ban on all retail sales and services at the premises with a large number of exceptions. According to the Constitutional Court, the fundamental deficiency of this procedure was the fact that no relevant source made it clear on what basis the government had arrived at this solution and not another. The manner in which the Government banned and permitted the sale of products and the provision of services in the contested measure was also significant, since a legal regulation cannot ban "everything" in a general and in completely unjustified manner and then "re-allow" certain affected areas by way of exceptions, again without any justification.

It was also impossible to ignore that the government had already had sufficient time to think through and justify the measures much better than it had done when the restrictive measures were laid down in March 2020. In terms of time, the justification for interference with fundamental rights is more demanding than an immediate response at the beginning of a pandemic. According to the Constitutional Court, the reason for this stricter requirement was, firstly, the fact that the government had much more information, practical experience and time to think through and systematically justify the contested regulation, and secondly, the fact that a long-term and repeated interference with the fundamental right to do business is much more invasive and "painful" than a short-term and temporary restriction. Obviously, legislation issued during a state of emergency cannot be held to the same standard as legislation issued when everything is "as usual"; at the same time, however, the opposite extreme, as in the present case, cannot be permitted, where the government has been unable or unwilling to provide any relevant and specific reasons why the ban was necessary, why less invasive restrictions could not be adopted, and what the rationality of the exceptions to the ban were supposed to have been. This justification was necessary not only for the Constitutional Court's review, but also for the social acceptance and thus the legitimacy of the crisis measures.

This thematic area also includes the judgment File No II. ÚS 2385/21 of 16 November 2021, in which the Constitutional Court found that the Supreme Administrative Court had erred in **reviewing a measure of a general nature** issued on the basis of Act No 94/2021, on emergency measures during the epidemic of the COVID-19 disease and amending certain related acts (hereinafter the "Pandemic Act").

During the pandemic alert, the Ministry of Health issued an emergency measure on 6 April 2021 based on the Pandemic Act, restricting the personal presence of

pupils in schools. The complainants considered that the measure was unlawful, inter alia, because it did not provide for an exemption from testing for the presence of the antigen of the virus causing the Covid-19 disease for persons who had suffered from the disease and had antibodies against it. The Supreme Administrative Court rejected their motions, citing its lack of competence to add any provisions to the contested measure. The Constitutional Court has stated that although the general courts lack the competence to supplement or amend a measure of a general nature, its unlawfulness or unconstitutionality may affect the measure as a whole or the part thereof in which the deficiency was found. Therefore, the Supreme Administrative Court should have examined the merits of the objection of insufficient regulation of the exceptions in the extraordinary measure in question, and if it established the alleged deficiencies, it would have been competent to annul the contested measure of a general nature or declare it unlawful. However, by failing to do so, it acted in breach of the complainants' right to judicial protection.

At the end of the year, the Constitutional Court issued its judgment File No Pl. ÚS 20/21 of 7 December 2021, in which, on the basis of a motion by a group of senators, it **reviewed the Pandemic Act**. The Plenum found the motion to be only partially justified, granting it only to the extent of the second sentence of Section 9(4) of the Act in the words ", repayable financial assistance"; it rejected the remainder of the motion.

After concluding that the legislative process was not burdened by any defect rendering the Act unconstitutional as a whole, despite the movant's objections, the Plenum focused on three areas of alleged unconstitutionality. While the Court did not find any constitutional violation in the first two areas - limiting the compensation to the actual damage and transferring the burden of proof of the possibility to prevent the damage to the victim – it found a constitutional defect in the third area – reduction of the compensation by the State by the performance already provided. The Constitutional Court has stated that although there is no public subjective right to a particular method of compensation for damage caused by emergency measures, nor a public subjective right to the introduction of a particular public aid scheme to mitigate the economic impact, it is necessary to respect the requirement to maintain equality. According to the majority of the Plenum, a reduction of the compensation for damage by the public aid granted can be accepted, but only if it is applied on equal terms to all victims and pursues a rational objective. However, the reduction of damages by the repayable financial assistance under review did not meet these requirements. By its very nature, the assistance in question increased the recipient's assets only temporarily, since it had to be repaid, and therefore did not have a compensatory function, only a bridging function. The Constitutional Court found this to be contrary to the protection of property rights under Article 11(4) of the Charter and therefore repealed the second sentence of Section 9(4) of the Pandemic Act to the extent mentioned above.

Fundamental rights and freedoms

Right to life

The Constitutional Court does not often give its opinion on the protection of one of the most important fundamental rights, the right to life. In recent years, this has been particularly the case in relation to the obligation to conduct an effective investigation in the event of a possible threat to the right to life. In its judgment File No II. ÚS 1886/21 of 3 December 2021, the Second Panel added to this case law the aspect of the impartiality of the expert who is supposed to draw up opinions in the case. An investigation can be considered thorough and sufficient if its conclusions are based on an objective and impartial analysis of the relevant facts. Therefore, it must not rely on the findings of an expert whose impartiality may reasonably be doubted. Therefore, it is not enough that the expert subjectively does not feel biased, but legitimate doubts about his impartiality must be excluded objectively as well.

Inviolability of the person

In the field of the protection of bodily integrity (Article 7 of the Charter), last year's case law of the Constitutional Court dealt in particular with the issue of compensation.

In its judgement File No II. ÚS 1564/20 of 9 February 2021, the Constitutional Court dealt with a complaint by a man who sought **compensation for other than proprietary harm for mental anguish following an injury in a car accident**. The general courts concluded that the harm to the complainant's mental health had already been compensated for in the context of the partial claims for compensation for pain and suffering and for deteriorated social position. However, the Constitutional Court reached the opposite conclusion. It stated that three partial claims are regulated under Section 2958 of the Civil Code, namely the claim for compensation for pain, the claim for deteriorated social position and, finally, the claim for compensation for other non-pecuniary harm caused by injury to health. The general courts did not sufficiently distinguish between the various injuries to the complainant. It is under the latter claim that mental anguish can be subsumed. Although the complainant described his mental anguish on several occasions in the proceedings, the general courts refused to address the harm caused by mental suffering. It is unacceptable that the mental suffering caused by psychological harm should be marginalised simply because the courts, in quantifying the harm to health, follow a table which, on the one hand, contains dozens of items detailing the physical harm and associated suffering, but does not take psychological harm into account at all. Therefore, the decisions of the general courts were contrary to the complainant's right to judicial protection in conjunction with the right to protection of his bodily integrity [Article 7(1) of the Charter and Article 8 of the Convention].

Compensation for mental anguish was also the subject of judgment File No II. ÚS 3003/20 of 3 August 2021, which dealt with a claim by a complainant with autism spectrum disorder for **compensation for a rape** that occurred during her court-ordered hospitalisation in a psychiatric hospital. The Constitutional Court recalled that it is not possible for children to be awarded less compensation for other than proprietary harm in cases where, due to their age, they are not yet able to fully understand the interference with their rights. The vulnerability of an individual, consisting in the inability to fully understand the interference with his or her rights, cannot be a reason for these rights to be less protected.

Judgment File No II. ÚS 3003/20: Compensation for other than proprietary harm to a particularly vulnerable rape victim

The complainant has an autistic spectrum disorder and has also not identified as male since childhood and presents herself as a girl. In 2018, when she was 12 years old, she was hospitalised by court order after her mother refused to consent to the hospitalisation. She was admitted to the male unit of the child psychiatry ward in the psychiatric hospital where she was repeatedly raped by at least one of the admitted boys over a period of two months. In the criminal proceedings in which the juvenile defendant was convicted of the offence of rape, the complainant sought compensation for

other than proprietary harm, but was only awarded compensation of CZK 75 000 (out of the CZK 500 000 claimed) and was referred to civil proceedings for the remainder.

The Constitutional Court has found that the fact that compensation for the harm caused by rape constitutes a continuation of the right to the inviolability of the person and her privacy is also relevant to the consideration of the extent of the harm suffered and the amount of compensation for persons who, due to their disadvantage, may not be fully aware of or understand the nature of rape and the nature of the interference with their rights. It also recalled that the vulnerability of an individual, consisting in the inability to fully understand the interference with his or her rights, cannot be a reason for these rights to be less protected. Reducing the compensation for harm in such a case would ultimately reflect that the rights of these persons are of lesser value and that their protection is of lesser importance. The case under review was specific in that the complainant was a particularly vulnerable victim and the harm occurred following a decision of a public authority. In view of the above, it was necessary to make all the more efforts to ensure that the complainant was not forced to seek her rights again in civil proceedings.

The Constitutional Court dealt with the calculation of the amount of compensation in the context of an occupational injury in its judgment File No II. ÚS 2925/20 of 15 November 2021. It concluded that the complainant, who had suffered a deterioration of his social position as a result of an occupational injury, should receive compensation at least at the level of the general civil law, if higher than the calculation made under the labour law.

Protection and guarantees of personal liberty

In the past year, a number of constitutional complaints were submitted to the Constitutional Court in the field of Article 8 of the Charter. Therefore, the Constitutional Court had the opportunity to comment on a wide range of issues concerning restriction of personal liberty that arose not only in the context of criminal proceedings, but also in the context of other types of proceedings.

As indicated above, questions concerning permissibility of deprivation or restriction of personal liberty often arise outside the context of criminal proceedings. In its judgment File No III. ÚS 2667/21 of 16 November 2021, the Constitutional Court dealt with the issue of **involuntary hospitalisation** of a complainant as a person suffering from a mental disorder (schizophrenia). In the judgment, the Constitutional Court concluded that courts must carefully ascertain all relevant facts of the case and consent to involuntary hospitalisation only if the necessary medical or psychiatric care cannot be provided in form of less restrictive measures, e. g. outpatient commitment. The mere presence of mental illness and the necessity for treatment are not sufficient by themselves to justify involuntary commitment; they must be accompanied by additional reasons and facts, especially if a person concerned presents an immediate and serious danger of harm to themselves or others, and this dangerous behaviour cannot be prevented by other means than the involuntary commitment.

The right to personal liberty also played a key role in judgment File No II. ÚS 482/21 of 7 July 2021, in which the Constitutional Court dealt with conditions under which a young migrant might be detained if there are persistent doubts as to whether he has reached the age of majority. The Constitutional Court dealt extensively with the procedural and substantive **requirements for age assessment of young migrants**. It recalled that such persons are usually in a vulnerable position due to their young age, previous traumas and language barriers, which force them to rely on the assistance of an interpreter who – as it has been demonstrated in the present case – might not provide them with sufficient and meaningful assistance. It also stressed that the age assessment of young migrants on the verge of the age of majority, who are unable to demonstrate their age e.g. through official documents, has a direct impact on the scope and nature of their fundamental rights, since minors usually cannot be held in immigration detention. Therefore, it is essential that immigration authorities base their decisions solely on reliable and accurate scientific tools and methods of age assessment, and, in case of persistent doubts, consider the young migrant to be a minor.

Judgment File No II. ÚS 482/21: The right to participate and be heard in proceedings in relation to the right to an interpreter

Age assessment of a young, unaccompanied third-country national of an age near the age of majority is of utmost importance for determination, whether he or she might be lawfully held in immigration detention (i.e. whether he or she might be deprived of personal liberty) and whether the State fulfilled its obligation to provide special support and care to minors, as required by their vulnerable position. The age assessment process must take into account the best interests of the child and the child's right to be heard in all matters affecting him or her [Articles 3(1) and 12 of the Convention on the Rights of the Child], which is reflected *inter alia* in the right of the child to have an interpreter and a representative present throughout the whole process of age assessment and a genuine opportunity to comment on the results of this assessment. In view of the fundamental impact of the age assessment on the young migrant's right to personal liberty, it is necessary to make a thorough and scientifically sound determination of his or her age in order to dispel any doubts relating to the question whether he or she has already reached the age of majority. Furthermore, it is imperative to apply the principle of benefit of the doubt where doubts persist and to use other than medical methods of age assessment, at least until a medical method providing sufficiently accurate results is available. Failure to comply with these requirements and the resulting unlawful deprivation of liberty of a minor constitutes a violation of his or her right to personal liberty under Article 8(1) and (2) of the Charter.

However, most of the Constitutional Court's case law in the field of the right to personal liberty has been adopted in criminal cases. In the past year, the Constitutional Court repeatedly addressed the issue of **provisional release from imprisonment (parole)** and its case law in this area developed considerably. In its judgment File No III. ÚS 688/21 of 9 June 2021, the Constitutional Court reiterated its stance that there is no constitutionally guaranteed right to parole, and the assessment of whether the statutory conditions for granting it are met is a matter of judicial discretion. However, the judicial discretion cannot be arbitrary and free from any constitutional constraints. On the contrary, the court is obliged to decide in a predictable, persuasive and rational manner and to obtain sufficient actual evidence as to whether the imprisonment has already served its purpose. However, in the present case these constitutional requirements were not met. The criminal court on the one hand acknowledged that the inmate behaved properly during his imprisonment, fulfilled his duties, repeatedly received disciplinary praise for good conduct, and ensured a job and an accommodation after release; on the other hand, the court bluntly stated that he did not meet conditions for early release and was not eligible for parole. Thus, the Constitutional Court concluded that the criminal court misconceived a limited judicial discretion as a free, constitutionally unconstrained judicial discretion when it reached a conclusion that parole might be granted only to the best inmates, which, however, contradicts the case law of the Constitutional Court and the meaning of the relevant statutory provisions.

The Constitutional Court followed up on these considerations in its judgment File No IV. ÚS 1804/21 of 26 October 2021. It ruled that it is unconstitutional for a criminal court to reject inmate's application for parole solely on the ground that he or she cannot be expected to lead an orderly life in view of his or her distant criminal past. Although the criminal courts may take into account recidivism of the inmate and his or her lack of willingness to address any existing behavioural issues when considering an application for provisional release, the criminal past of the inmate cannot be the sole reason for rejecting the application and an insurmountable obstacle to granting parole. The Constitutional court stressed that it can never be ruled out that the convicted person will eventually change, reform, improve and lead a proper life after release.

The Constitutional Court also addressed the issue of deprivation of personal liberty in a number of other decisions. Examples include judgment File No IV. ÚS 1507/21 of 24 August 2021, in which it concluded that an **arrest warrant** cannot be issued in a case where none of the statutory grounds for detention are present and the only "reason" for issuing it is the fact that all attempts to serve the summons upon the defendant failed.

In its judgment File No IV. ÚS 2821/20 of 13 July 2021, the Constitutional Court again commented on the issue of **measures that can be used to replace detention** (e.g., a travel ban, a financial guarantee, supervision by a probation officer, a written promise). More precisely, it considered whether and, if so, to what extent the statutory and case-law rules applicable to detention could be relied upon in assessing the reasonableness and maximum possible duration of measures replacing detention. In doing so, it concluded that measures replacing detention constitute a considerably milder interference with an individual's right to personal liberty. Therefore, the rules and case law concerning detention cannot be mechanically applied to lesser measures replacing detention.

Protection of private and family life

A number of important findings of the past year in the area of protection of private and family life are linked to the issues of health and medical law. In its judgment File No III. ÚS 2480/20 of 16 March 2021, the Constitutional Court dealt with the **right of a mother to have her placenta released**. In view of the circumstances of the case, the Court did not grant the complainant's motion. It recalled that respect for freedom is a fundamental value of the constitutional order, and that it also includes the ability of individuals to make their own decisions about the way they live their lives and thus to be active creators of their own life path. This is why the institution of free and informed consent to any medical procedure is based on the recognition of the legal subjectivity of each individual and his or her freedom to make decisions about his or her own body. The Constitutional Court agreed with the complainant that the request for the placenta to be handed over, addressed to the healthcare facility, is an expression of the personal autonomy of the mother and as such enjoys constitutional protection. On the contrary, it expressed its disagreement with the absolute refusal to release the placenta on grounds of public health protection, as formulated by lower courts. However, in the present case, there were compelling reasons why the release of the placenta by the medical establishment was inacceptable. Therefore, in the light of the findings of the evidence in the case, it was not possible to exclude the conclusion on the pathological condition of the placenta and its non-release did not constitute an interference with the complainant's fundamental rights.

Obstetrics was also the subject of judgment File No II. ÚS 1238/21 of 24 November 2021, which discussed the interpretation of Section 34(1) of the Code of Administrative Justice. The midwife, of whom the complainants are clients, requested that the authorisation to provide midwifery services also be extended to the physiological childbirth in the patients' own social environment. Her request was not granted, so she turned to the administrative courts. The complainants sought to be granted the status of a party to the proceedings with the midwife. However, the Regional Court denied them such status because, in its view, they did not meet the condition of direct, unmediated interference with rights and obligations set out in Section 34(1) of the Code of Administrative Justice. The procedural decision resulted in a violation of the complainants' right to be heard in court proceedings [Article 38(2) of the Charter], the right to protection of bodily integrity (Article 7 of the Charter), the right to protection of privacy (Article 8 of the Convention) and the right to protection of health (Article 31 of the Charter). The Constitutional Court found that the administrative courts were obliged to admit those women– clients of the midwife – as parties to the proceedings, since the refusal to grant permission to midwives to conduct physiological home births in effect interfered with fundamental rights of both the women who, although entitled to give birth at home, could not have their midwife present, as well as those of their children

Compensation for non-pecuniary damage was at issue in judgment File No I. ÚS 668/21 of 2 November 2021. The Constitutional Court opposed the practice of the general courts in deciding on the amount of **satisfaction for the harm caused by the publication of false or defamatory information**. The fact that the case law has settled on specific amounts of compensation for interference with personality rights caused by the death or severe disability of a close person cannot lead to a mechanical or purely arithmetical comparison of the effects of such interferences with the interferences with personality rights caused by false information, regardless of the specific circumstances of the cases, or to the conclusion that the amount of compensation for interference with personality rights caused by false information should by default be lower than that for other interference with personality rights.

Protection of property rights

In the past year, the Constitutional Court has also dealt with a number of cases that focused in its entirety on property and ownership in all its forms. Therefore, its case law on the protection of property rights once again covered a wide range of cases from everyday life.

In its dismissing judgment File No I. ÚS 1181/21 of 30 August 2021, the First Panel of the Constitutional Court dealt with the issue of the adequacy of the **duration of the seizure** of real estate in criminal proceedings, an issue that appears quite frequently in the case law of the Constitutional Court. In the present case, the Court concluded that although the seizure of the property in the criminal proceedings lasted for a relatively long period of time (exceeding the six-year limit), which is, according to the case law of the Constitutional Court, in principle no longer acceptable in terms of further restriction of the right of ownership, there were exceptional circumstances in the case under consideration which, in combination, justified the continued seizure of the property. These circumstances included the high gravity of the criminal offence prosecuted, the extraordinary complexity of the case (resulting primarily from the unprecedentedly extensive evidence), the objective circumstances complicating the conclusion of the investigation (pandemic situation) and, last but not least, the fact that the investigation was, with a high degree of probability, approaching its conclusion. For all these reasons, the Constitutional Court concluded that it did not establish the alleged violation of the complainant's property rights, as the seizure of the complainant's real estate could still be considered a measure proportionate to the purpose pursued.

Political rights

Right to vote

In February last year, the Constitutional Court announced a widely discussed judgment File No Pl. ÚS 44/17 of 2 February 2021, which annulled part of the Electoral Act for violating the equality of the right to vote and the chances of the parties as candidates. The judgment addresses the core of the political system of the Czech Republic itself, the free competition of political parties, and the fact that the results of elections must be determined by the will of the voters ascertained in a constitutionally compliant manner, with the voters in each region having an equal opportunity to influence the overall outcome of the election.

Judgment File No Pl. ÚS 44/17 of 2 February 2021: The constitutionality of the Electoral Act (equality of votes, equality of the right to vote and equality of chances for the parties and coalitions as candidates in an election)

A group of senators has submitted a motion to the Constitutional Court to repeal several provisions of Act No 247/1995, on elections to the Parliament of the Czech Republic. The reason for the alleged unconstitutionality of these provisions was the method of calculating the shares and assigning seats (using the D'Hondt method) in the current division of the Czech Republic into 14 differently sized electoral regions; the constitutionality of the electoral thresholds for political parties and movements running in coalition was also questioned by the motion.

The Constitutional Court referred to the constitutional order, which presupposes the mediation of the voters' opinion not only through the free election of their representatives [Article 21(1) of the Charter], but also through the choice between the programmes and candidates of political parties. Therefore, voters in an electoral unit are not supposed to decide on a common representative of the entire electoral region, but on the

representatives of a certain opinion group (political party) on a national scale. Through them, the voters can both "split into parties" and unite in their opinion on the need for representation and the promotion of a certain electoral programme in the activities of the Chamber of Deputies in the upcoming election period [Article 21(2) of the Charter - elections as a periodic control]. In this judgment, the Constitutional Court dealt in detail with the general principles of the electoral law, emphasising the equality of votes, the equality of the right to vote, and the equality of chances of the parties and coalitions as candidates in election. It recalled that relative equality of votes must be achieved throughout the country, both in terms of equal access to elected office and in terms of voters in each region having an equal opportunity to influence the overall outcome of the election. Even though the existing division of the electoral territory into differently sized electoral regions was not unconstitutional in itself, according to the Constitutional Court, together with other elements of the electoral system, it violated the principles of equality of votes and equality of chances of the political parties running for office, which was unconstitutional.

At the same time, the Court did not find that keeping the 5% electoral thresholds for the entry of a political party into the Chamber of Deputies would be contrary to the constitutional order. Here, the Court followed up on its previous case law (judgment File No Pl. ÚS 25/96), and confirmed that the Constitution establishes the principle of proportional representation for the purpose of holding elections "to the Chamber of Deputies". The purpose of elections is not only to determine the views of the electorate, but also to establish a chamber of Parliament capable of performing all the functions of a legislature in a parliamentary democracy. The fragmentation of many political parties, unable to secure a parliamentary majority, could render the performance of these functions impossible. On the contrary, the Constitutional Court found the establishment of electoral thresholds for coalitions of political parties to be in violation of the Constitution.

Right to information

A substantial part of Judgment File No III. ÚS 3339/20 of 29 June 2021 is devoted to the fundamental right to information. The case concerned a request for information in accordance with Act No 106/1999, on free access to information, and reimbursement for an exceptionally extensive search for information. The complainant was a man who had request from the Police Presidium of the Czech Republic a list of details of all criminal offences recorded in the last five years. The obliged entity conditioned the provision of information on the payment of costs of CZK 25 million. The complainant subsequently unsuccessfully defended battled the reimbursement by filing a complaint with the Ministry of the Interior, and he was also unsuccessful in his administrative action and subsequent cassation complaint to the Supreme Administrative Court.

Judgment File No III. ÚS 3339/20 of 29 June 2021: Reimbursement for exceptionally broad information searches as an artificial barrier to access to information

In the case under review, the Constitutional Court did not agree with the opinion of the administrative courts. It stressed that the obliged entity should look for ways to as much as possible comply with the submitted request and not for reasons to decline the request. According to the Constitutional Court, in the procedure for providing information under Article 17(5) of the Charter, the obliged entity is supposed to be a professional entity knowledgeable in the law who is supposed to guide the applicant through the process of providing information so that they are satisfied to the maximum extent possible. It added that it was unacceptable for the responsibility for the successful processing of the request to be shifted to the applicant by the obliged entities and to reproach the applicants for a lack of activity where, in accordance with the basic principles of the activity of administrative authorities, it is the administrative authority that should be active.

According to the Constitutional Court, the qualified estimate of the time required by the obliged entity had no realistic basis and was apparently determined only "for illustration" by the entity processing the internal material. However, the biggest issue was the extent of the information charged for. Although the administrative authorities and courts repeatedly stated that the selection of data cannot be done by a machine and that all the requested information must be individually examined, the Constitutional Court found that these conclusions had no basis in the files. The Court also stated that it was not possible to make the provision of the requested information conditional on the payment of the preparatory works in this case . The administrative authorities unjustifiably chose the most complicated possible way to deal with the request and their procedure in determining the reimbursement was thus found by the Constitutional Court not only unreviewable but also highly irrational. From the statement of the obliged entity itself, it was clear that it has an information system which can be easily used to obtain 7 of the 8 required pieces of information. Therefore, the procedure of the obliged entity constituted a denial of the right to information, since, in conjunction with the amount of the reimbursement, it effectively constituted an artificial barrier which prevented the complainant from accessing even information the provision of which was, in fact, not prevented by any barriers. Therefore, the Constitutional Court upheld the constitutional complaint and annulled the contested decisions.

Freedom of expression

Freedom of expression, in the context of a preliminary ruling, was the subject of judgment File No II. ÚS 1440/21 of 23 August 2021. The Constitutional Court recalled that even **an expression of commercial nature** is subject to the guarantees arising from the right to freedom of expression under Article 17(1) of the Charter. The complainant, a flight booking company, was the defendant in the proceedings before the general courts. The petitioner was a competitor who alleged that the complainant incorrectly informed its customers-passengers that if they did not provide the complainant with their online check-in information within 24 hours of departure, they would have to check in at the airport for a substantial fee. In the present case, the Constitutional Court emphasised that if a commercial expression is to be restricted by a preliminary ruling on the grounds of alleged falsity, the general courts must deal (to the extent appropriate to the nature of the preliminary ruling proceedings) with whether the factual basis of the commercial expression in question can actually be assessed as false. Despite the fact that the requirements for the justification of the preliminary ruling are reduced in view of the nature of such decisions, the requirement of proper justification arising from the right to judicial protection also applies to this decision-making process. However, in the case under review, the Constitutional Court considers that the general courts failed to do so and interfered with the complainant's right to do business without clearly stating what specific legal provisions the complainant was supposed to have violated and how. In this case, the Constitutional Court stressed that even when deciding on a motion for a preliminary ruling, it is necessary to consider whether the interference with the fundamental rights of a party caused by the preliminary ruling is proportionate.

In its resolution File No III ÚS 2696/21 of 7 December 2021, the Constitutional Court reiterated that freedom of expression had its limits. In deciding on the constitutional complaint of a man who had been given a suspended sentence for **promoting Nazism and inciting hatred against a group of people** (of a different ethnicity) by making hateful comments on the Internet, the Constitutional Court explained why hate speech is not covered by constitutional protection and cannot be protected even by passing it off as a joke. It added that it was not even relevant in the present case whether the comment in question was intended as a joke, as there are matters about which the Charter and other acts did not allow joking with respect to human dignity. The horrific historical experience of people being mass murdered in the gas chambers in concentration camps, to which the complainant referred as a "solution" which "directly presents itself", has led to the conclusion that freedom of expression is not absolute in nature but subject to the exceptions specified in Article 10(2) of the Convention.

Right to assembly

In a judgment File No II. ÚS 1022/21 of 11 October 2021 the Constitutional Court presented its conclusions in relation to the exercise of other political rights, especially the right to assemble peacefully.

Judgment File No II. ÚS 1022/21 of 11 October 2021: Regarding the elements of the request for proof of identity in accordance with Section 63(2)(l) of the Police Act

The complainant in the case under consideration was a man who was travelling to the Klimakemp 2018 event and who was immediately asked to prove his identity by a Police patrol upon his arrival at the train station. The complainant complied with the request and at the same time asked the officers about the reasons for the identity check. The police justified their action by generally referring to a provision that authorises a Police officer to ask a person to prove his or her identity "in the performance of another task if it is necessary to protect the safety of persons and property, public order or to prevent crime". One of the officers conducting the check, in addition to referring to the aforementioned provision, further stated that "this is to ensure the security of public order, safety of persons and property" and that he was not obliged to tell the complainant what task the Police were performing at that moment. The complainant unsuccessfully brought an action for a declaration that the above-described request of the Police were unlawful before the administrative courts.

The Constitutional Court annulled the contested decisions. The general courts found the request of the Police towards the complainant to prove his identity lawful, although it was not made or justified in accordance with the relevant legal provisions interpreted in a constitutionally compliant manner. In doing so, the general courts violated in particular the complainant's fundamental right to peaceful assembly and his right to privacy and informational self-determination. As regards the violation of the complainant's right to peaceful assembly, the Constitutional Court examined whether the complainant's participation in the Klimakemp 2018 event could be considered an exercise of that right. The Court noted that in this respect it is irrelevant whether unlawful activities were supposed to have occurred during the event, since even unlawful practices of the participants in an assembly can be protected under the right to assembly, even if they are manifestations of civil disobedience. According to the Constitutional Court, it was relevant whether the event was intended to be (and in fact was) a peaceful assembly. It added that the fact that the event was to include trespassing on private land and blocking of mining facilities for several hours by the mere presence of people in order to stimulate a fundamental debate on the impacts of climate change was not indicative of a non-peaceful nature of the assembly. It stressed that the right to assemble peacefully can be unconstitutionally interfered with by means of measures with a "deterrent" effect. In the complainant's case, such a measure was the identity check of the complainant by the Police. According to the Constitutional Court, it can be considered that if an opinion consisting in criticism of the State is expressed collectively (i.e., essentially anonymously), then such a procedure by a State body or the Police, which potentially leads to the registration of individual persons holding such an "anti-State" opinion, may also act as a deterrent.

Economic, social and cultural rights

Last year, the Constitutional Court issued several important decisions dealing with the protection of rights that fall within the area of economic, social and cultural rights enshrined in Articles 26 to 35 of the Charter.

The right to free choice of profession and its preparation and the right to earn their living

Article 26 of the Charter enshrines several interrelated fundamental rights, namely the right to freely choose a profession and prepare for it, the right to do business and engage in other economic activity, and the right to acquire the means for one's subsistence through work. These fundamental rights are systematically classified as economic, social and cultural rights, and the possibility of seeking their protection is thus subject to the limitation arising from Article 41(1) of the Charter (i.e. they may be invoked only within the limits of the acts implementing these fundamental rights). The methodology for reviewing interference with these rights is consistent with the above. To perform such review, the Constitutional Court uses the "rationality test", which consists of four steps – 1. defining the meaning and essence of the fundamental right, i.e. its essential content; 2. assessing whether the act affects the very existence of the fundamental right or the actual implementation of its essential content (if it does, the Constitutional Court proceeds to perform a stricter proportionality test; if not, the Constitutional Court carries out the remaining two steps of the rationality test); 3. assessing whether the act pursues a legitimate aim, i.e. whether it is an arbitrary and fundamental lowering of the overall standard of protection of fundamental rights; 4. considering whether the statutory instrument of achieving the stated aim is rational, albeit not necessarily the best, most effective or wisest.

In its resolution File No II. ÚS 63/21 of 29 March 2021, the Constitutional Court addressed the specific issue of the **requirement of good character for admission to employment** or to the exercise of another profession from the perspective of the right to freely choose a profession. The Constitutional Court found that this right is granted to all persons, including those who do not have a clean criminal record. Such persons may be denied access to certain professions, but only if the requirement of good character for the exercise of the profession in question arises from an act and the act in question as well respects the limits arising from Article 4(4) of the Charter or from Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). Only in such a case is it a constitutionally compatible restriction of the right to freely choose a profession under Article 26(2) of the Charter. Therefore, the record of a previous criminal conviction in the extract from the Criminal Register should not by default disqualify the complainant from access to those professions for which good character is required, including access to the practice of an attorney, since the requirement of Article 4(4) of the Charter implies an obligation for all entities to consider the substance and meaning of fundamental rights and freedoms, i.e. to assess, inter alia, the requirement of good character with regard to the relevance of any previous conviction in relation to the profession for which the person concerned is applying. The interference with the right to freely choose a profession cannot occur as a result of the inclusion of information about a previous criminal conviction in the extract from the Criminal Register, but only as a result of the actions of other actors, i.e. potential employers, public entities or other persons who associate legal consequences with information about a previous conviction.

Another area that the Constitutional Court addressed is the issue of **fair remuneration for work**. In its judgment File No II. ÚS 1854/20 of 18 October 2021 (see above Obligations arising from EU and international law), the Constitutional Court explained that this right, enshrined in Article 28 of the Charter, includes the right of every employee to be adequately remunerated for the time during which he or she performs work for the employer or is continuously at the employer's disposal.

Judgment File No II. ÚS 1854/20: Fair remuneration for work in connection with the employer's requirement to be available during breaks

The Constitutional Court stated that in labour-law relationships, it is always necessary to determine whether the time under consideration is working time or rest time; legislation does not permit a third option. If the complainant, as a firefighter-technician, had a duty to be ready to intervene within 3 minutes at the latest, even at the most remote point of his workplace (the airport), and even during a scheduled break for meal and rest, then he was performing work which by its nature (being alert, being prepared) could not be interrupted. Whether or not there was a need for intervention during breaks, i.e. whether or not the complainant was ever "called away" to perform firefighting during a break, is completely irrelevant to the assessment of the complainant's claim. Unpaid rest time can only be such time which the employee is free to use as he or she wishes, i.e. to take rest and not be at the employer's disposal during this time.

The Constitutional Court further stated that it is clear from the case law of the Court of Justice of the European Union that working time includes all periods of on-call time during which restrictions are imposed on the employee which significantly affect his or her ability to freely dispose of his or her time and pursue his or her own interests. Therefore, if the general courts interpreted the Labour Code in the contested decisions as meaning that the scheduled breaks were both a rest period for which the complainant was not entitled to remuneration for work, but also a period during which the complainant was obliged to be available to the employer if necessary, then this interpretation is contrary to both the meaning and purpose of the legal regulation of breaks at work and the settled case law of the Court of Justice.

In its resolution File No I. ÚS 2820/20 of 31 August 2021, the Constitutional Court addressed the issue of **equal pay for work of equal value**, specifically the inequality in the remuneration of drivers of the same employer (a postal company) in Prague compared to Olomouc, or other regions. Although the constitutional complaint was filed with the Constitutional Court by an employer whose right to fair remuneration for work is conceptually excluded, the Constitutional Court adopted more general conclusions with regard to the content of this right. In particular, it stated that the different socio-economic conditions of the individual regions or the different levels of the necessary cost of living are not included in accordance with the statutory regulation under the criteria used to compare the "same work" of two employees or the "same wage" of two employees, since not only are they not explicitly mentioned among the criteria, but they cannot be included under the criterion of working conditions, because, according to the list contained in Section 110(4) of the Labour Code, these relate to the internal conditions under which the work is performed (i.e. the difficulty of the working regimes resulting from the scheduling of working hours, the harmfulness or difficulty caused by other negative effects of the working environment and the level of risk of the working environment). Since the complainant in the present case did not prove that the work in Prague was more demanding (i.e. not the same) compared to the work in Olomouc at the same position, and simultaneously, given the legal regulation, it was not possible to accept its argumentation that the difference in the nominal amount of the wage of a particular employee was justified by the difference in the actual amount of wages, the Constitutional Court rejected the constitutional complaint as manifestly unfounded.

The right to a favourable environment

The protection of the environment is an important part of the constitutional order of the Czech Republic and as such it is mentioned in the preamble of the Constitution and the Charter, as well as in Article 7 of the Constitution. Article 35 of the Charter states that everyone has the right to a favourable environment. Last year, the Constitutional Court dealt with this right from a procedural point of view, in connection with restrictions on the participation of "environmental associations" in administrative proceedings.

In its judgment File No Pl. ÚS 22/17 of 26 January 2021, the Plenum of the Constitutional Court considered a motion by a group of senators to repeal a part of the provisions of Act No 114/1992, on Nature and Landscape Protection; this group disagreed with the fact that after the amendment by Act No 225/2017, associations have lost the possibility to participate in administrative proceedings other than those "in accordance with this Act". The Constitutional Court subjected the contested legal regulation to the rationality test and concluded that the essence of the right to a favourable environment was not affected. According to the Constitutional Court, the procedural possibility of asserting the right to a favourable environment in administrative (not also judicial) proceedings has only been narrowed, not eliminated. Ecological associations may continue to participate in administrative proceedings in which the possibility of actual and serious interference with nature and landscape protection can be identified – in addition to proceedings under the Act on Nature and Landscape Protection, these include proceedings and procedures under the Integrated Prevention Act, the Environmental Impact Assessment Act and the Water Act. The Constitutional Court also found the contested legal regulation legitimate, as it is driven by the desire to speed up the zoning and building permit proceedings. This is despite the fact that one can imagine a number of possibly more appropriate and effective ways to prevent delays in certain administrative proceedings.

Protection of parenthood, family and children

In the past year, the Constitutional Court once again had to deal with the issue of children's contact with their parents and extended family. In its judgment File No III. ÚS 1279/21 of 16 August 2021, the Constitutional Court commented on the issue of balancing the obstacles associated with ensuring the child's contact with the parent at a greater distance. The complainant was obliged, by decisions of the general courts, to pick up and hand over his daughter at the place of residence of the mother, and thus had to bear all the costs of contact with his daughter. The Constitutional Court requires that both parents not only should spend approximately the same amount of money on obligations related to the splitting of the contact with their child but should also spend an equal amount of energy and time on surmounting the distance. In the present case, the Court did not accept that the quality of the car of one of the parents, by which the general courts had justified the unequal burden imposed on the parents, should be the decisive criterion for determining the scope of the rights and obligations of each of the parents related to carrying out their contact rights. Similarly, the way in which a parent spends his or her free time cannot be to their detriment.

In its judgment File No I. ÚS 1081/20 of 30 August 2021, the Constitutional Court dealt with the specifics of deciding on the extent of a minor's contact with his or her grandparents. The general courts have given grandparents broad contact rights with their minor grandchild. The complainants argued that it was primarily them, as parents, who had the right to raise and care for the child and considered the established extent of contact to be completely disproportionate. In this case, the Constitutional Court agreed with the parents. When determining the extent of the child's contact with other relatives in accordance with Section 927 of the Civil Code, the best interest of the child must be carefully considered and the interest in the contact with the relatives may be weakened by the existence of tensions or strained relations between the child's parents and the relatives at issue. The extent of contact rights of other relatives with the child cannot be more extensive or equal to that of the parents and the child, especially if the parents do not wish so. It is the parents who exercise full parental responsibility, are responsible for the upbringing and development of the child, and it is their constitutionally protected right to care for and raise the child. The decisions determining weekend contact in equal proportions for the mother, the father and the grandparents violated the constitutionally guaranteed right.

The other two significant judgments concerned cases with a cross-border element. In its judgment File No II. ÚS 3345/20 of 8 April 2021, the Constitutional Court dealt with the case of the complainant who had travelled with her minor children from Italy to the Czech Republic with the permission of their father. However, she failed to return with the children on the agreed date. The Regional Court made the order to return the children to Italy conditional on the fulfilment of the safeguards for their safe return (deposit of EUR 15 000 in the complainant's

account for the purpose of securing independent accommodation, non-continuation of the criminal proceedings against the complainant and refraining from removing the minors from the complainant's effective care, except for the established contact). The Constitutional Court dealt with the relationship between the Brussels II bis Regulation and the Hague Convention. It found that the EU Member States are being subjected to stricter requirements regarding the possibility of deciding not to return a child to the place of their habitual residence. A refusal to return a child to his or her habitual residence under the Brussels II bis Regulation and the Hague Convention can only be decided upon in cases supported by objective reasons and in accordance with the best interest of the child. The burden of proof in showing the existence of an exception to the obligation to return the child to the place of their habitual residence lies with the party who does not agree with the return. As regards the possibility to refuse an application for return to the State of habitual residence on the basis of the exception set in Article 13(b) of the Hague Convention (a serious risk that the return would expose the child to physical or mental harm or otherwise place him or her in an intolerable situation), the exception cannot be invoked in accordance with the Community law if the court makes the return of the child conditional on appropriate safeguards. Nor can this exception be interpreted, in the light of Article 8 of the Convention, as covering any inconveniences inherently connected to the return. The exception in question relates to a serious threat of harm to the child, not the parent, and concerns only those situations in which the child cannot be fairly and reasonably required to endure the inconvenience related to the return to the place of habitual residence. The Constitutional Court considered the safeguards for the safe return of the minors set by the general courts to be reasonable, balanced and taking into account the complainant's concerns and the best interest of the minors. Therefore, the general courts did not violate the rights of the complainant.

The interpretation of the Brussels II bis Regulation was also at issue in the judgment File No I. ÚS 2449/20 of 9 February 2021. The Constitutional Court dealt with a situation where proceedings are initiated in two courts in two EU countries in relation to the custody of a minor child and it has commented on the issue of *lis pendens* in such cases.

Judgment File No I. ÚS 2449/20: The lis pendens bar in proceedings on parental responsibility under the Brussels II bis Regulation

Proceedings were initiated before the Italian family court in respect of parental responsibility for the complainant's son. The Italian court ordered the immediate return of the minor to the complainant's place of residence, suspended the intervener's parental responsibility and entrusted the minor to the sole care of the father. The complainant filed a petition for enforcement of the Italian court's decision with a Czech court; however, the court informed him that it would not deal with the petition because the Italian court had no jurisdiction over the minor who had their habitual residence in the Czech Republic. After a number of preliminary rulings, a judgment was finally delivered by which the minor was placed in the custody of the intervener, the complainant was ordered to pay maintenance allowance and his contact with the minor was set.

The Constitutional Court emphasised the EU regulation contained in the Brussels II bis Regulation and pointed out, among other things, the regulation of the *lis pendens* bar. Where, in accordance with Article 19(2) of that Regulation, proceedings in respect of parental responsibility for the same child are initiated before the courts of different Member States in the same matter, the court seised later shall stay the proceedings *ex officio* until it is determined whether the court has the competence to decide the matter. If, in accordance with Article 19(3), the competence of that court is established, the court which instituted the proceedings at a later date shall be declared to have no competence in favour of the first court. In the present case, an adverse situation has arisen where parallel proceedings have been initiated before the courts in Italy and the Czech Republic. The family court in Italy had indisputably established its competence to the proceedings within the meaning of Article 8 of the Brussels II bis Regulation; however, the Czech court of the first instance, although it had been notified of that fact by the Office for International Legal Protection of Children and although the complainant had raised a plea of lis pendens

in the proceedings, did not declare its lack of competence and continued the proceedings until a decision on the merits had been issued.

Since the general courts did not deal in any way with the complainant's objection concerning lis pendens and also disregarded the binding rule of Article 19(3) of the Brussels II bis Regulation, they acted arbitrarily, and their decisions were unreviewable. Therefore, they violated the complainant's right to judicial protection under Article 36(1) of the Charter and Article 6(1) of the Convention.

Right to judicial and other legal protection

The right to a fair trial

The right to a fair trial is the right to have one's rights enforced by an independent and impartial tribunal or another body in accordance with a prescribed procedure. The essence of the right to a fair trial is not the right to seek a favourable outcome, but to ensure that the proceedings are conducted in accordance with the principles of fairness. Therefore, fair procedure is linked to a set of principles which, in a State where the rule of law applies, must be respected by all institutions that make authoritative decisions about a person's rights and obligations. This right plays an irreplaceable role in the case law of the Constitutional Court and its justices have dealt with it in many judgments over the past year.

As far as **judgments of the Plenum** dealing with violations of the right to a fair trial are concerned, we can mention a dismissing judgment File No Pl. ÚS 22/17 of 26 January 2021, in which the Constitutional Court commented on the **limitation of the participation of environmental associations in administrative proceedings**. The Plenum rejected a motion by a group of senators to repeal the first sentence of Section 70(3) of Act No 114/1992, on the protection of nature and the landscape. The senators disagreed with the fact that after the amendment the associations lost the possibility to participate in certain proceedings in accordance with the Building Act, which do not assess environmental impacts under the special EIA Act; they were particularly concerned about the exclusion of associations from decision-making processes for medium-sized projects, which account for more than 90% of all construction projects in the Czech Republic. The Constitutional Court concluded that, as regards participation in administrative proceedings as proceedings before another authority, this cannot always be claimed under Article 36(1) of the Charter, but only in specified cases. In other cases, it is an independent and impartial court before which one may assert one's constitutionally guaranteed right in accordance with the procedure established by the procedural rules. Neither the constitutional order nor international treaties imply an obligation for the State to ensure that associations whose purpose is the protection of nature and the landscape participate in all administrative proceedings.

The right to judicial protection and the right to a lawful judge in the context of criminal proceedings was dealt with by the Constitutional Court in its judgment File No Pl. ÚS 110/20 of 17 July 2021. This decision was issued following the decision of the European Court of Human Rights in the case Tempel v. Czech Republic of 25 June 2020, No 44151/12, in which the European Court of Human Rights established a violation of the complainant's right to a fair trial. The Constitutional Court concluded that the procedure of the court of appeal, which kept applying Section 262 of the Code of Criminal Procedure – i.e. the provision which enshrines the possibility of the court of appeal to return the case to the court of first instance for a new hearing and, if necessary, **to order that the case be heard and decided by another panel** or court - until the complainant has been found guilty of murder, contradicts the fundamental principles of criminal procedure regarding the evaluation of evidence and breaks the statutory limitations on how a court of appeal may proceed if it disagrees with the evaluation of evidence reached by the court of first instance [Section 263(7) of the Code of Criminal Procedure]. If the court of appeal wishes to reach a different evaluation of the evidence than the court of first instance, it must, according to the statutory provisions, re-produce the evidence itself in an open session; otherwise, it is bound by the evaluation of the evidence carried out by the court of first instance. However, in the case at hand, the court of appeal proceeded to re-evaluate the evidence in violation of the law, without re-producing the evidence itself, and subsequently even referred the case to another court of first instance for hearing and decision after the original court of first instance refused to follow this re-evaluation of the evidence hidden under the guise of a binding legal opinion of the court of appeal. The Constitutional Court concluded that the court of appeal was not entitled to overturn the judgment of the court of first instance, much less to decide to withdraw the case and transfer it to another regional court as a court of first instance. Therefore, the Constitutional Court annulled the contested decisions on the ground that they manifestly infringed the complainant's right to a fair trial and the right to a lawful judge.

The Constitutional Court followed upon the above-mentioned judgment of the Plenum in its judgment File No IV. ÚS 541/21 of 26 October 2021. It concluded that when deciding in accordance with Section 262 of the Code of Criminal Procedure, account must be taken of the fact that the institution of a lawful judge is an important element of legal certainty, the breach of which must be regarded as a non-standard and exceptional procedure, albeit one that is permitted in justified cases. If the court of appeal applies the cited provision of the Code of Criminal Procedure because of repeated failure to comply with its binding instructions for a different evaluation of the facts by the court of first instance, this procedure can be considered constitutionally compatible only if the instructions of the court of appeal were sufficiently specific, reviewable and showed the reasons why the court of first instance failed to comply with the requirement to evaluate the evidence correctly, logically and in accordance with its content. However, it is contrary to the right to a fair trial under Article 36(1) of the Charter for the Court of Appeal to speculatively alter the findings of fact of the court of first instance beyond its statutory authority without having produced all relevant evidence. Such changes in factual conclusions cannot be made even implicitly in the context of drawing new legal conclusions. Moreover, the Constitutional Court emphasised that if the court of appeal proceeds to perform a similar re-evaluation of the findings of facts against the defendant, it also violates the principle of the presumption of innocence under Article 40(2) of the Charter.

In its judgments File Nos II. ÚS 498/21 of 10 May 2021 and IV. ÚS 622/21 of 23 November 2021, the Constitutional Court also addressed the issue of the **rights of persons who do not speak the Czech language** in criminal proceedings. In the above-mentioned judgments, the Constitutional Court emphasised that foreigners who do not speak the Czech language – moreover, in situations where they their personal freedom is restricted – are in a vulnerable position, which must be reflected in the procedure of the bodies in charge of criminal proceedings. According to the case law of the Constitutional Court, such a person is subject to the grounds of necessary defence in accordance with Section 36(2) of the Criminal Procedure Code. Therefore, if such a person is invited to make a procedural statement which may be of fundamental importance to him or her (e.g. to state whether he or she waives his or her right to file a protest against a criminal order), he or she must be duly informed of the consequences of such a statement, of his or her right to consult his or her defence counsel first and of the fact that if he or she does not choose his or her own defence counsel, such counsel must be appointed ex officio. Moreover, if it is not

absolutely certain that the criminal order and the instruction on the possibility of filing an appeal against it (protest) was interpreted to the foreigner in the proceedings before the court, it is presumed that this did not happen, and therefore that the foreigner did not properly waive his or her right to file a protest against the criminal order.

Finally, it is also necessary to mention the judgment File No IV. ÚS 767/21 of 20 July 2021, in which the Constitutional Court expressed its opinion on the extremely topical issue of the criminality and punishment of even minor thefts **committed during the state of emergency** declared in connection with the pandemic of the Covid-19 disease. The Constitutional Court specifically addressed the conditions under which Section 205(4)(b) of the Criminal Code can be applied, according to which a sentence of imprisonment for two years to eight years will be imposed on anyone who commits theft during a state of national emergency or a state of war, natural disasters or another event seriously endangering human life or health, public order or property. The Court concluded that such an interpretation of the cited provision, which leads to the imposition of sentences of imprisonment for petty theft (moreover, for theft of such a small scale that, in the absence of the complainant's recidivism, it would not even be a criminal offence), does not respect the principle of subsidiarity of criminal repression and ultimately violates the complainant's fundamental rights under Article 36(1) in conjunction with Article 39 of the Charter.

Compensation for unlawful decision and incorrect official procedure

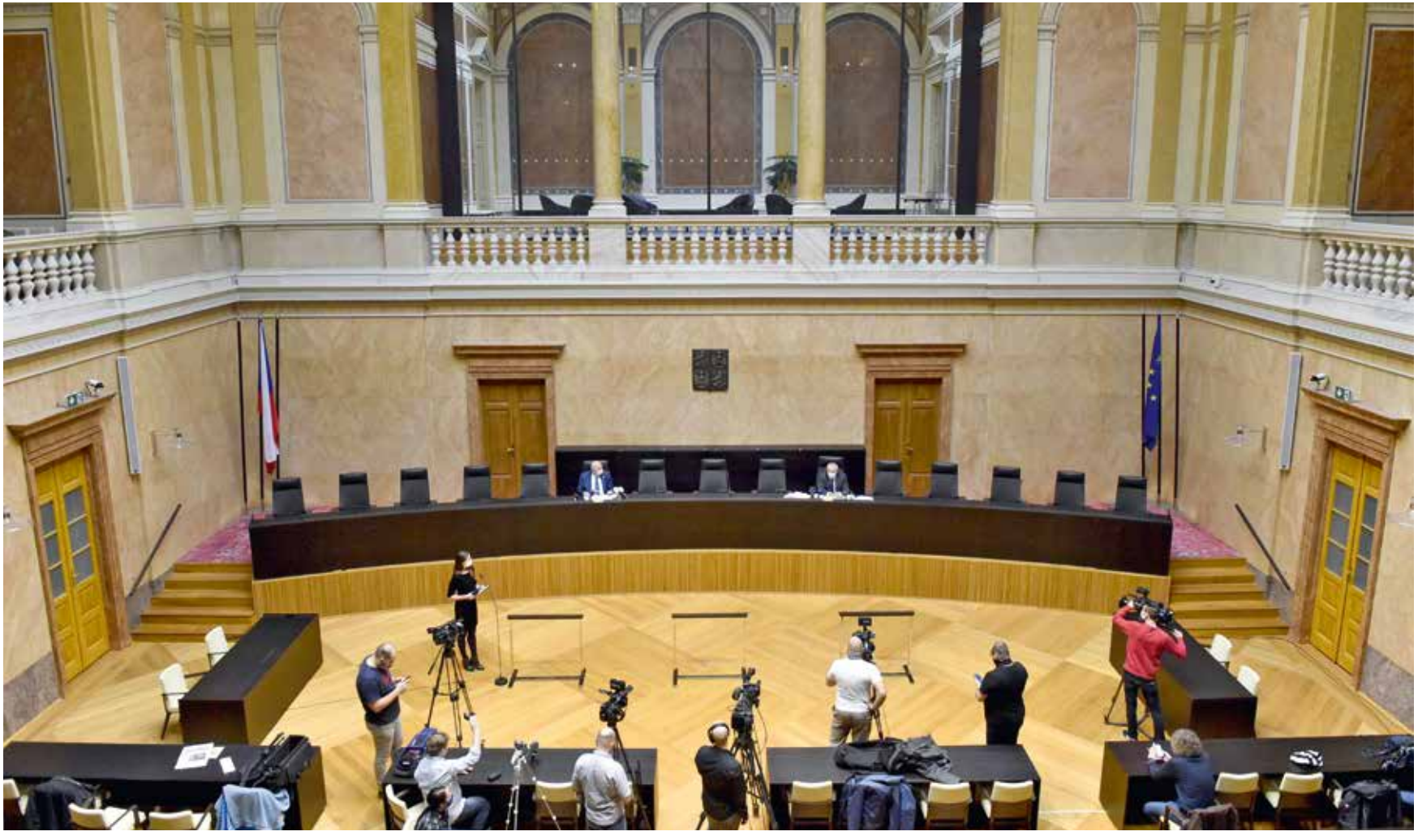
The past year has brought a number of decisions in which the Constitutional Court found that the general courts had erred in the application and interpretation of the Act on liability for damage caused within the exercise of public authority by a decision or incorrect administrative procedure (Act No 82/1998), which resulted in a violation of the complainants' right to compensation for damage caused by an unlawful decision of a court, other State or public authority or an improper official procedure, guaranteed by Article 36(3) of the Charter.

Due attention must be paid to judgment File No IV. ÚS 3076/20 of 2 February 2021, in which the Constitutional Court dealt with the question of the liability of the State (the complainant) in accordance with Act No 82/1998, for a **statement made by the President of the Czech Republic in the television programme** "Týden s prezidentem" (Week with the President) on 16 November 2017. In its reasoning, the Fourth Panel concluded that if the statement is related to the activities of the President, it falls within the exercise of the office of President of the Republic under Article 54(3) of the Constitution and constitutes an official procedure within the meaning of Article 36(3) of the Charter. If the President violates the rights of another by his or her statement, which is an official procedure, the State shall be liable for the harm caused by that statement under Article 36(3) of the Charter. In assessing whether a statement has such connection, the criteria of time (whether it was made during the President's term of office), forum (under what circumstances and where it was made) and content must be considered. In the opinion of the Constitutional Court, the statement in question did not have the necessary connection with the exercise of the office of the President of the Republic, and the lack of a substantive connection was so clear that it outweighed the fact that the statement was made in a television programme to which Miloš Zeman had been invited to address the public as the President. The courts failed to take this fact into account and therefore violated the complainant's fundamental right to judicial protection guaranteed by Article 36(1) of the Charter in conjunction with Article 2(3) of the Charter, since the complainant was forced to make amends (apologise) for actions for which it was not responsible; the author of the statement was responsible for those actions.

The Constitutional Court has again been confronted with cases of compensation for damage for unlawfully conducted criminal prosecutions that ended in acquittal. The specifics of **compensation for other than proprietary harm caused by unlawful criminal prosecution to a public official** were pointed out in judgment File No II. ÚS 417/21 of 21 June 2021. The Court stated that although a politician or a public official must tolerate a greater degree of interference with his or her privacy and any suspicion of criminal activity must be properly investigated, on the other hand, this must be matched by an obligation to adequately compensate that person for the State's unjustified interference. The

amount of compensation for other than proprietary harm in a certain way also speaks about the State's respect for the private and public life of individuals. In the case dealt with in its judgment File No I. ÚS 4293/18 of 14 January 2021, the Constitutional Court found the alleged proprietary harm of the complainant, which was supposedly caused by his resignation as mayor, to be justified. It disagreed with the general courts' conclusion that there was no causal link between the initiation of the criminal proceedings and the resignation from political office. If a public official decides that it is consistent with the political culture to resign from public office when a criminal prosecution is initiated against him, he should not subsequently be in a worse position when assessing the State's liability for damage caused by an unlawful prosecution than if he had not followed those rules. The opposite approach would provide politicians with a strong argument for why they should (must) remain in office despite the fact that a criminal prosecution has been initiated against them, which is an undesirable approach from the point of view of preserving trust in the fundamental values of democracy.

Press conference of the President of the Constitutional Court Pavel Rychetský and the Justice Rapporteur Jan Filip on judgment File No PI. ÚS 44/ l 7, repealing part of the Electoral Act (February 2021)



Due to the high media interest, the press conference was held in the Assembly Hall, which allowed for safe distances to be kept (February 2021)

Press conference of the Justice Rapporteur Vojtěch Šimíček on judgment File No PI. ÚS 106/20, by which the Constitutional Court annulled part of the government resolution banning retail sales and provision of services (February 2021)

Press conference of the Justice Rapporteur Vladimír Sládeček on resolution File No PI. ÚS 12/21, by which the Constitutional Court rejected a petition by a group of senators to annul a government resolution declaring a state of emergency (March 2021)

5

INTERNATIONAL COOPERATION AND EXTERNAL RELATIONS

The President of the Constitutional Court (with the consent of the Plenum) has entrusted the agenda of international relations to Jaroslav Fenyk, Vice-President of the Constitutional Court. Professor Fenyk also held the position of General Rapporteur of the XVIII Congress of the Conference of European Constitutional Court. During the period 2017–2021 the Constitutional Court of the Czech Republic presided over the Conference.

The Constitutional Court is the judicial body responsible for the protection of constitutionality. Its right to make decisions follows from this principal task. While international relations cannot constitute the core of its activities, they certainly compliment them and enrich the work of the Constitutional Court. The position of the Constitutional Court in the national legal and political system is unique. On the national level, it lacks a partner that would have equivalent competencies. Furthermore, there is no authority above it. On this account, international cooperation is an important tool for the Constitutional Court to be able to consult various issues and broaden its perspective, as its counterparts in other countries often face similar questions. Sharing experience with other constitutional courts may consequently help in dealing with particular issues more effectively.

The international activities of the Constitutional Court are of both a multilateral and a bilateral character. Formalized or, rather, systemic multilateral collaboration takes place most often through the Conference of European Constitutional Courts. In the last four years, when the Constitutional Court of the Czech Republic chaired the aforementioned organization, its international relations were naturally even more prominent. International conferences, be they academic, that is, focused on theoretical legal questions, or focused on practical issues in the application of the law, are a time-tested and undoubtedly useful format for multilateral cooperation as well. Bilateral relations bring the most concrete results, especially for the practical sphere. Direct discussions among justices, or expert personnel, about factual issues connected with the execution of the functions of constitutional courts provide unique inspiration for making the protection of human rights and constitutionality, in the broadest sense, more effective, for which reason bilateral collaboration continues to form one of the pillars of the international activities of the Constitutional Court.

The year 2021, like the previous year, was significantly affected by the coronavirus pandemic. The measures taken to mitigate the impact of this crisis also affected the external activities of the Constitutional Court. However, this does not mean that international cooperation has received less attention or care. Quite the contrary. The Constitutional Court of the Czech Republic continued to develop its foreign bilateral and multilateral agenda and was fully involved in the international judicial dialogue. Besides the traditional co-operation channels, the Court has made increased use of modern communication tools, which place greater demands on flexibility but also bring considerable advantages. The Constitutional Court of the Czech Republic also faithfully fulfilled the tasks arising from its presidency of the Conference of European Constitutional Courts.

The Conference of European Constitutional Courts and its XVIII Congress

In 2020 and in the beginning of 2021, a great deal of energy was dedicated to preparations of the XVIII Congress of the Conference of European Constitutional Courts. The Conference of European Constitutional Courts (hereinafter referred to as the CECC) was founded in 1972. Today it brings together forty-one European constitutional courts or analogous supreme judiciary bodies responsible for constitutional review. Its role is to serve as a platform for the exchange of information, views and perspectives among its members, in particular regarding methods and procedures of constitutional review and institutional, structural and practical challenges in the area of public law and constitutional powers. Furthermore, the CECC also seeks to strengthen the independence of constitutional courts as bodies guaranteeing democracy and the rule of law with a particular view to the protection of human rights. The Constitutional Court of the Czech Republic became a member of the CECC in 1997 at the Congress in Warsaw. In June 2017 at the Congress in Batumi, Georgia, it was unanimously elected to hold the presidency.

The central decision-making body of the CECC is the Circle of Presidents convened by the sitting head of the CECC at least once between the Congress dates and, in principle, on the day preceding the opening of the Congress. The second

organ of the CECC is the Congress which is usually held once every three years and which is the culmination of the standard three-year long presidency.

The first meeting of the Circle of Presidents under the presidency of the Constitutional Court of the Czech Republic took place on 13 June 2018. Representatives of more than thirty European constitutional courts travelled to Prague to discuss – among other things – the thematic focus of the XVIII Congress of the CECC. They agreed on the "Human Rights and Fundamental Freedoms: the Relationship of International, Supranational and National Catalogues in the 21st Century".

The selected topic was intentionally broad enough in order to accommodate a number of specific issues to be addressed on the basis of a questionnaire distributed and to and filled by every member court. With the exception of countries outside the system of continental law, European countries have, at various points in the development of their legal systems, adopted a list of certain rights and freedoms which they consider so important as to place them above other rights, obligations and values. The primacy of these rights over other values and interests of the state is reflected in their formal expression, i.e. such rights and liberties are listed in a document of the highest legal force. This document is usually the constitution of the given country. In states with a poly-legal constitution – such as the Czech Republic – this list has taken the form of a special catalogue of an autonomous normative nature, though comparable with the constitution in terms of its legal force and place in the system hierarchy. Similarly to how national constitutional documents emphasize the position of fundamental rights and liberties, international treaties also contain provisions on human rights, their protection, application or application priority. National catalogues of human rights are similar to international catalogues in that they contain a similar list of rights, or at least a similar number of fundamental rights, and in that the rights and liberties protected by them are the ones most strongly emphasized.

International human-rights documents, mostly in the form of international treaties, have been influencing, conditioning and determining constitutional courts' decisions in the field of human rights for decades. However, their approach to international human-rights documents is not uniform, as it is subject to domestic forms of reception of international sources of law.

The main objective of the questionnaire was therefore to find out how constitutional courts and other courts of the similar standing proceed when a certain value (a right or a liberty) is protected by more than one source (usually the national constitution, the European Convention on Human Rights of the Council of Europe, the Charter of the Fundamental Rights of the European Union or other international, multilateral human-rights treaties). The application of various catalogues of human rights in proceedings before constitutional courts was therefore a question that the XVIII Congress of the CECC analysed more closely.

The first part of the questionnaire, more general in nature, focused on the reasoning behind the application of individual catalogues of human rights, namely the manner of their normative anchoring in national laws, their plurality, interconnections and use in case law, and the significance attached to this or that catalogue of human rights by a particular constitutional court. The second part of the questionnaire covered several fundamental rights that are present in most catalogues of human rights. Using the example of six fundamental human rights, it was possible to carry out a deep comparative analysis of approaches taken by European constitutional courts and the extent of use of individual catalogues in the protection of these particular rights.

The XVIII Congress of the CECC was supposed to be held in May 2020. However, due to the COVID-19 pandemic, it had to be rescheduled. The Circle of Presidents approved by way of a circular resolution (correspondence voting) to postpone the event and to extend accordingly the presidency of the Constitutional Court of the Czech Republic over the organization. Eventually, the XVIII Congress of the CECC took place on 24–25 February 2021.

Unfortunately, the unrelenting pandemic had not lost its strength by that time. Taking into account measures introduced by state authorities in order to stop the ongoing spread of the disease the Constitutional Court of the Czech Republic decided to organize the XVIII Congress of the CECC and the associated meeting of the Circle of Presidents entirely in an on-line mode with remote participation

of all the invitees. Despite many challenges posed by this unprecedented solution, the event was a great success. Almost 90% of the CECC members took part in the Congress proceedings. The meeting of the Circle of Presidents was held on 24 February. The participants were able to discuss many topical issues, as well as decide and vote on various particular questions concerning the CECC and its workings. Subsequently, on 25 February, the XVIII Congress of the CECC itself took place. The whole event was broadcasted live to almost two hundred guests. A dozen of personalities representing national constitutional courts, international courts, regional organizations of constitutional justice and other international judicial organizations addressed the Congress. Namely, Mr. Gianni Buquicchio (President of the Venice Commission), Mr. Kairat Mami (Chairman of the Constitutional Council of the Republic of Kazakhstan and current President of the Association of Asian Constitutional Courts and Equivalent Institutions), Mr. Manuel Aragão (President of the Constitutional Tribunal of Angola and current President of the Conference of Constitutional Jurisdictions of Africa), Mr. Ivan Fiačan (President of the Constitutional Court of the Slovak Republic), Mr. Frank Clarke (Chief Justice of the Supreme Court of Ireland), Mr. Stephan Harbarth (President of the Federal Constitutional Court of Germany), Mr. Robert Spano (President of the European Court of Human Rights), Mr. Koen Lenaerts (President of the Court of Justice of the European Union), Mrs. Snježana Bagić (Deputy President of the Constitutional Court of the Republic of Croatia), Mr. Boris Velchev (Chairman of the Constitutional Court of the Republic of Bulgaria), Mr. Christoph Grabenwarter (President of the Constitutional Court of Austria) and Mrs. Domnica Manole (President of the Constitutional Court of the Republic of Moldova). With the exception of the representatives of the host, all the speakers delivered their speeches via pre-recordings. The Constitutional Court of the Czech Republic was represented by its President Mr. Pavel Rychetský who gave the opening as well as the closing speech. His words underlined the importance of common values of the European constitutional judiciary. Vice-President of the Constitutional Court of the Czech Republic Mr. Jaroslav Fenyk, fulfilling his role of the General Rapporteur of the XVIII Congress of the CECC, presented the audience with the General Report that had been prepared under his guidance and supervision and based on the questionnaire described above. Justice Mr. Jiří Zemánek and Justice Mr. David Uhlíř assumed chairmanship of the thematic sessions.

The ability of the host and the entire organizational team to cope with unparalleled challenges and its efforts to ensure the continuation of European judicial cooperation and legal dialogue have received appreciation and many positive reactions from the CECC member courts. The XVIII Congress of the CECC clearly proved that the cooperation of the European constitutional courts is truly important and that the values on which the CECC is founded are worthy of protection at any time.

At the very end of the XVIII Congress of the CECC the unusually long presidency of the Constitutional Court of the Czech Republic came to its conclusion and the chairmanship was handed over to the Constitutional Court of the Republic of Moldova.

Participation of representatives of the Constitutional Court in international conferences and forums

Although international mobility was also significantly affected by the coronavirus crisis in 2021, representatives of the Court made several trips abroad. For example, at the turn of June and July, Justice Kateřina Šimáčková attended the 127th session of the European Commission for Democracy through Law, better known as the Venice Commission, named after the famous Italian city where its members traditionally meet. At that meeting, the Venice Commission adopted eight urgent opinions and five standard opinions. These included an amendment to the Electoral Law in Armenia, an amendment to the Law on Public Prosecution in Montenegro, an amendment to the Electoral Law and an amendment to the Constitutional Law on Courts in Georgia, the establishment of fair trial rules in cases concerning administrative fines in Malta, an amendment to the Infraction and Criminal Law and an amendment to the laws concerning the Supreme Judicial Council in Ukraine, the draft law on the prevention of conflict of interest in institutions in Bosnia and Herzegovina, the Hungarian constitutional amendment made in 2020, the draft law on the abolition of the section dealing with the investigation of crimes committed within the judiciary in Romania, the amendment of the laws on foreign agents in the Russian Federation and the law on the prevention of proliferation financing in Turkey.

On 2 and 3 September, a conference organised by the Constitutional Court of Latvia and the Court of Justice of the EU entitled "EUnited in Diversity: Between Common Constitutional Traditions and National Identities" took place in Riga. This international meeting can undoubtedly be described as exceptional. Representatives of the constitutional courts (or similar judicial institutions carrying out constitutional review) representing almost all EU Member States, as well as representatives of the Court of Justice of the EU, sat at the same table at this meeting. The conference was not limited to expert contributions in which individual speakers presented their observations and findings, as it also provided plenty of space for dynamic and open discussion. A conference of this magnitude has been unprecedented and the hosts are to be commended for their efforts to strengthen and promote the "intra-union" legal dialogue as well as for their excellent preparation and organisation of the event. Specifically, the conference focused on four objectives. 1) To search for a common approach in discovering and developing constitutional traditions common to the Member States through a more structured and inclusive dialogue between the CJEU and the Constitutional Courts of the Member States. 2) To examine the role that the CJEU and Constitutional Courts play in ensuring "unity in diversity". 3) To discuss means for giving greater impetus to the dialogue between the CJEU and the Constitutional Courts of the Member States, by exploring both formal and informal channels of communication. 4) To explore the procedural and methodological options for a more transparent relationship between the CJEU and the Constitutional Courts of the Member States.

The Constitutional Court of the Czech Republic was represented at the conference by its Justice Tomáš Lichovník. His perspective as a professional judge, shared by a number of conference participants, was complementary to the academic or legal background of other participants.

Justices of the Constitutional Court, Vojtěch Šimíček and Jaromír Jirsa, accepted an invitation to participate in a project focused on the development of specialised training and education for judges and judicial staff organized by the Judicial Academy of the Slovak Republic. Therefore, on 13 and 14 September, at its detached workplace in Omšenie, they held lectures entitled "Constitutional Law Perspective on the Protection of Fundamental Human Rights and Related Case Law of the Constitutional Court of the Czech Republic". Such events are an example of the importance of knowledge exchange and the perspectives that international cooperation can offer.

The President of the Constitutional Court of the Czech Republic, Pavel Rychetský, accepted the invitation of the Minister of Foreign and European Affairs of the Slovak Republic, Ivan Korčok, to attend a ceremony in Bratislava on 11 November to mark the 100th anniversary of the birth of Alexander Dubček. On this occasion, Pavel Rychetský gave a speech that was very positively evaluated by the participants. Other speeches honouring Dubček's memory were delivered by former Austrian President Heinz Fischer or Minister Ivan Korčok. The event was attended by a number of leading Slovak politicians and representatives from diplomatic circles, including the Czech Ambassador to Slovakia Tomáš Tuhý.

International forums or other events of foreign judicial institutions are nowadays often held remotely, i.e. online. Such a format was chosen, for example, for the international conference 10th Constitutional Days, which was jointly organised at the end of September by the Constitutional Court of the Slovak Republic and the Faculty of Law of the Pavol Jozef Šafárik University in Košice. This year's theme of this meeting of experts was extremely topical: fundamental rights and freedoms and their protection in states of emergency and other specific legal regimes. The conference was attended by the President of the Constitutional Court, Pavel Rychetský, who addressed the participants via a video recording. His contribution was entitled: "A few remarks on the decisions of the Czech Constitutional Court during the state of emergency: on the voyage between Scylla and Charybdis".

The Constitutional Court of the Czech Republic accepted an invitation to commemorate the anniversary of the Constitutional Court of the Republic of Indonesia, which fell on 13 August. The Indonesian Constitutional Court is quite active internationally, as evidenced by the International Symposium on the Constitutional Protection of Social and Economic Rights, held in conjunction with the Congress of the Association of Asian Constitutional Courts in Bali in November 2019. The Constitutional Court of the Czech Republic, represented by its Vice-President and General Rapporteur of the XVIII Congress of the CECC Jaroslav Fenyk, attended the event as the presiding court of the CECC. The international presence of the Indonesian Constitutional Court is also reflected in the

fact that it will be Indonesia that will host the next Congress of the World Conference on Constitutional Justice. The Constitutional Court of Indonesia is also active in establishing bilateral relations, including with the Constitutional Court of the Czech Republic, whose representatives welcomed a delegation of their Indonesian colleagues in Brno in October 2019. With regard to his personal participation in the international symposium in Bali, it was Vice-President Jaroslav Fenyk who congratulated the Constitutional Court on its anniversary this August. His salutation speech was made as a video recording.

On 27 June 2021, the President of the Constitutional Court of the Czech Republic Pavel Rychetský visited Bratislava to receive the Order of the White Double Cross from the President of the Slovak Republic Zuzana Čaputová. Pavel Rychetský was awarded the Slovakia's highest state decoration for his outstanding contribution to the development of mutual relations between the Czech Republic and Slovakia, especially in the field of law and constitutional justice. The ceremony took place in the building of the Slovak Philharmonic.

Visits to the seat of the Constitutional Court in Brno

The Constitutional Courts of the Czech and Slovak Republics are linked by a number of specific ties. Their common history, geographical proximity and a similar system of constitutional protection are just some of these ties. Both institutions can trace their origins to the work and functioning of the Federal Constitutional Court, which was active in 1991 and 1992 and whose case law remains linked to the legal order of both countries. It is not surprising that the relations between the Czech and Slovak constitutional protection bodies are extremely solid; this also determines the intensity of their relations. This year, a personal meeting of the representatives of the constitutional courts took place as is tradition, although this time it was exclusively at the highest level, i.e. at the level of the Presidents. The working meeting between the President of the Constitutional Court of the Slovak Republic, Ivan Fiačan, and the President of the Constitutional Court of the Czech Republic, Pavel Rychetský, was held at the beginning of June at the Constitutional Court's seat in Brno and included a meeting and lunch.

In mid-August, the President of the Constitutional Court Pavel Rychetský held a working meeting with Igor Stříž, who had been sworn in a month earlier as Prosecutor General of the Czech Republic. The participants in the meeting discussed, for example, the points of contact between the Constitutional Court's decision-making and the scope of public prosecution, the control mechanisms of the public prosecutor's office and the decision-making practice of the Supreme Court.

In accordance with its mission to protect constitutionalism, the Constitutional Court maintains a certain degree of restraint and reserve in its relations with other constitutional institutions of the Czech Republic. According to the Constitution, the Constitutional Court is entitled to annul a decision of any public authority in the Czech Republic if it concludes that the decision is contrary to the constitutional order. Since there is a possibility that public authorities will appear before the Constitutional Court as a party to the proceedings, it would not be appropriate for the Constitutional Court to deal with them beyond the scope of judicial or scientific cooperation in order to preserve the absolute independence of the constitutional judiciary. However, it is not realistic for the highest judicial authority to completely isolate itself from the outside world and resign itself to any communication outside the boundaries of the judicial proceedings. As a part of the system of constitutional bodies of the Czech Republic, the Constitutional Court must keep formal and protocolar relations, including in order to be able to discuss general issues of constitutional, European and international law with other parts of this system, if this is necessary to find further ways of protecting constitutionality and human rights. It was in this context that a meeting between members of the Committee on Constitutional and Legal Affairs of the Chamber of Deputies of the Parliament of the Czech Republic and Justices of the Constitutional Court took place on 8 September in Brno.

At the end of August, a group of Austrian legal professionals visited Brno to lecture as part of the Summer School of European Private Law. The lecturers also came to visit the Constitutional Court. They were welcomed by the Justice Vojtěch Šimíček, who debated with the guests on the intersection of Austrian and Czech law. Given their common historical heritage, which is still very evident in the sphere of legal systems, the discussion was very fruitful and lively.

On 9 September, the Constitutional Court received foreign judges from Austria, Bulgaria and Romania, who came to the Czech Republic at the invitation of the Judicial Academy, which, as a member of the European Judicial Training Network, regularly conducts traineeships for foreign judges. Judges from Spain, Portugal and Italy also visited the Constitutional Court on 3 November on a similar occasion. During both visits, the guests were told about the constitutional judiciary in the broader context of the Czech legal-political system, as well as about some important case law, the practical functioning of the Constitutional Court and its international activities. Last but not least, the foreign judges toured the seat of the Constitutional Court, which is one of Brno's most valuable buildings.

At the beginning of November, a delegation from the German Federal Administrative Court, which is based in Leipzig, visited the Constitutional Court. It consisted of both its judges and the staff of its analytical department. The delegation came to Brno at the invitation of the Supreme Administrative Court, which, in an effort to provide its guests with as complete a view of the Czech judicial system as possible, asked the Constitutional Court for co-operation.

As in previous years, the President of the Constitutional Court Pavel Rychetský met with the heads of diplomatic missions operating in the Czech Republic who requested a meeting. Two of these meetings were held on-line, namely with the chargé d'affaires of the Embassy of the Republic of Serbia in the Czech Republic, Mrs. Lepša Štulić, and with the Ambassador of the Russian Federation in the Czech Republic, H.E. Mr. Alexander Vladimirovich Zmeyevskiy. The President of the Constitutional Court Pavel Rychetský was able to personally meet with the Ambassador of the Republic of Armenia to the Czech Republic, H.E. Mr. Ashot Hovakimian.

Although the Constitutional Court must primarily and with foremost importance devote itself to its function as a defender of constitutionality, it has long sought to develop its educational activities, always having regard to its capacities. Although the coronavirus pandemic has also affected this sphere of its activities, the Constitutional Court has nevertheless tried to adapt to these complex conditions. In addition to several tours for students, which could take place at the Constitutional Court's seat in person, a number of on-line lectures were held as well, during which the audience learned about the activities of the Constitutional Court, the basic institutes of constitutional law and, through photographic documentation, about the building that is the seat of the Constitutional Court.

However, the Constitutional Court's educational and awareness-raising activities are not intended exclusively for schools. This is evidenced, for example, by the Court accepting an invitation to participate in the "Listen to Brno" project, which is implemented by the Brno Tourist Information Centre and which introduces remarkable places or institutions in Brno to the general public through easily accessible audio recordings. In 2021, the Constitutional Court also introduced itself to the foreign public through a podcast in English.

Preparation of the meeting of the Circle of Presidents of the CECC

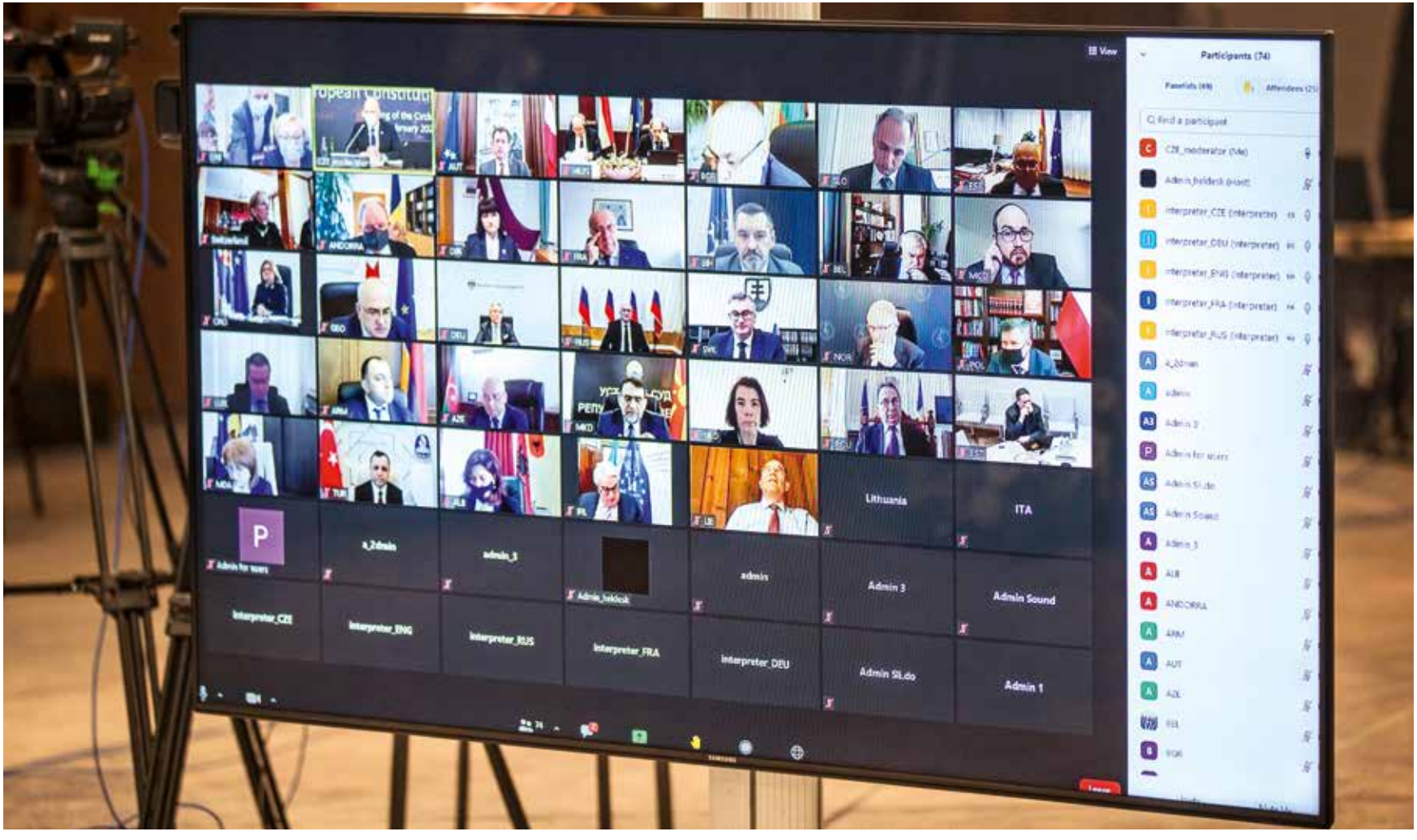
Preparation of the meeting of the Circle of Presidents of the CECC and its technical facilities

Pavel Rychetský chaired the meeting of the Circle of Presidents

The Constitutional Court was also represented
at the meeting by its Vice-President Jaroslav Fenyk

President of the Constitutional Court Pavel Rychetský and Vice-President of the Constitutional Court Jaroslav Fenyk at the meeting of the Circle of Presidents of the CECC

Secretary General of the Constitutional Court Vlastimil Göttinger moderated the meeting of the Circle of Presidents of the CECC



Thanks to modern technology the meeting of the Circle of President could be held in full, with voting and interpretation from/into Czech and all four official languages of the CECC

Despite the adversity, the meeting was not lacking in cordiality and friendliness, even though it could only take place through computer screens

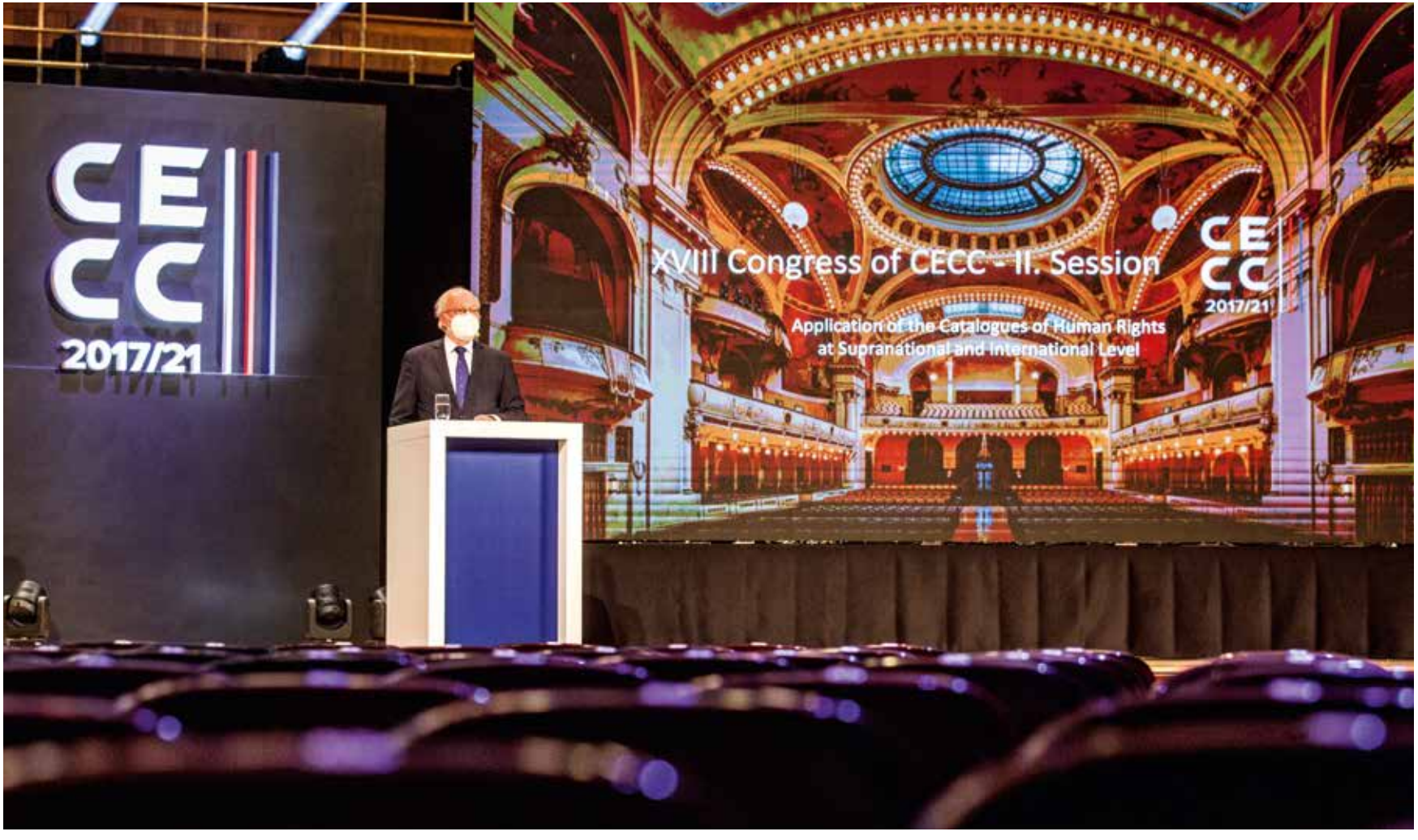
President of the Constitutional Court Pavel Rychetský opened the XVIII Congress of the CECC with a welcome speech

During the opening ceremony, the President of the Venice Commission, Gianni Buquicchio, addressed the Congress participants

The session devoted to catalogues of human rights at the national level was moderated by the Vice-President of the Constitutional Court Jaroslav Fenyk

Robert Spano, President of the European Court of Human Rights, spoke during the session on the application of human rights catalogues at the supranational and international level

Koen Lenaerts, President of the Court of Justice of the European Union, also addressed the application of human rights catalogues at the supranational and international level



The conference session on the application of human rights catalogues at the supranational and international level was moderated by Justice of the Constitutional Court Jiří Zemánek

Christoph Grabenwarter, President of the Constitutional Court of Austria, spoke during a session on the issue of particular rights contained in the catalogues of human rights in the case law of the constitutional courts

The conference session focused on the issue of particular rights contained in the catalogues of human rights was moderated by Justice of the Constitutional Court David Uhlíř

Jaroslav Fenyk, Vice-President of the Constitutional Court and General Rapporteur of the XVIII Congress of the CECC, presented the General Report at the end of the Congress

The President of the Constitutional Court closed the XVIII Congress of the CECC, handing over the presidency to the Constitutional Court of the Republic of Moldova

At the end of the XVIII Congress of the CECC, Domnica Manole, President of the Constitutional Court of the Republic of Moldova, also addressed its participants

The whole event was moderated by the Secretary General of the Constitutional Court Vlastimil Göttinger

Justices of the Constitutional Court and the Secretary General at the closing ceremony of the XVIII Congress of the CECC

Organisational team of the XVIII Congress of the CECC

Preparations and backstage of the XVIII Congress of the CECC

Preparations and backstage of the XVIII Congress of the CECC

Preparations and backstage of the XVIII Congress of the CECC

Visit of the President of the Constitutional Court of the Slovak Republic Ivan Fiačan to the Constitutional Court of the Czech Republic (June 2021, Brno)

President of the Constitutional Court Pavel Rychetský received the Order of the White Double Cross, the highest state decoration of the Slovak Republic, from President Zuzana Čaputová (June 2021, Bratislava)

Meeting of the Prosecutor General Igor Stříž with the President of the Constitutional Court Pavel Rychetský (August 2021, Brno)

International conference organised by the Constitutional Court of the Republic of Latvia and the Court of Justice of the European Union entitled "EUnited in Diversity: Between Common Constitutional Traditions and National Identities" (September 2021, Riga)

Photograph of the participants of the international conference in Riga,
where the Constitutional Court of the Czech Republic was represented by its Justice Tomáš Lichovník

Marek Benda and Pavel Rychetský chaired a meeting between members of the Committee on Constitutional and Legal Affairs of the Chamber of Deputies of the Parliament of the Czech Republic and Justices of the Constitutional Court (September 2021, Brno)

Pavel Rychetský, President of the Constitutional Court, addressing the participants of the international conference 10th Constitutional Days, which took place on-line (September 2021)

Former President of the Republic of Austria Heinz Fischer, Minister of Foreign and European Affairs of the Slovak Republic Ivan Korčok and President of the Constitutional Court of the Czech Republic Pavel Rychetský at a commemorative meeting held on the occasion of 100th anniversary of Alexander Dubček's birth (November 2021, Bratislava)

Kateřina Šimáčková resigned as a Justice of the Constitutional Court on 10 December to become a judge of the European Court of Human Rights three days later (December 2021)

Farewell of Justice Kateřina Šimáčková to Brno journalists (December 2021)

STATISTICS OF DECISION-MAKING IN 2021

Statistics of decision-making of the Constitutional Court in 2021

Decisions in 2021 in total		
3,560		
judgments	resolutions	opinions of the Plenum
219	3,339	2

Judgments in 2021[i)]		
219		
granted (at least partially)	dismissed (at least partially)	granted and dismissed
183	39	3

Average length of proceedings in cases completed in 2006–2021

		days	months and days	
Average length of proceedings:	**in all matters**	150	5 months	0 days
	in matters for the Plenum	318	10 months	18 days
	in matters for a panel	148	4 months	28 days
	in matters decided upon by a judgment	368	12 months	8 days
	in matters decided upon by a rejection for being manifestly unfounded	157	5 months	7 days
	other methods of termination of the proceedings	84	2 months	24 days

Average length of proceedings in cases completed in 2021

		days	months and days	
Average length of proceedings:	**in all matters**	85	2 months	25 days
	in matters for the Plenum	269	8 months	29 days
	in matters for a panel	83	2 months	23 days
	in matters decided upon by a judgment	291	9 months	21 days
	in matters decided upon by a rejection for being manifestly unfounded	75	2 months	15 days
	other methods of termination of the proceedings	59	1 months	29 days

Explanatory notes:

i) Some of the judgments comprise several operative parts and, therefore, the aggregate number of judgments where the complaint or application was at least partially granted and of judgments where the application was dismissed is not equal to the total number of judgments. There were a total of 3 "combined" judgments (both granting and dismissing the complaint/application), which fact is recorded in the table.

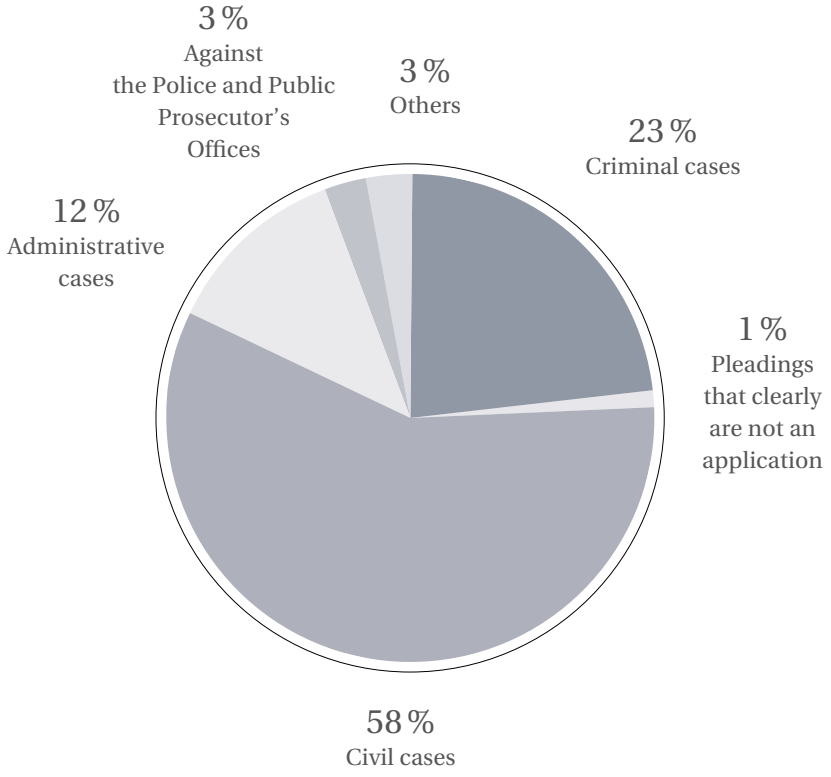
Public oral hearings

Numbers of public oral hearings

year	matters for the Plenum	matters for a senate
2010	7	18
2011	8	20
2012	2	17
2013*	1	1
2014*	0	0
2015*	0	0
2016*	0	1
2017*	1	0
2018*	0	0
2019*	1	0
2020*	0	0
2021*	0	0

*) reduced numbers of oral hearings due to an amendment to the law

Substantial structure of petitions to initiate proceedings in 2021

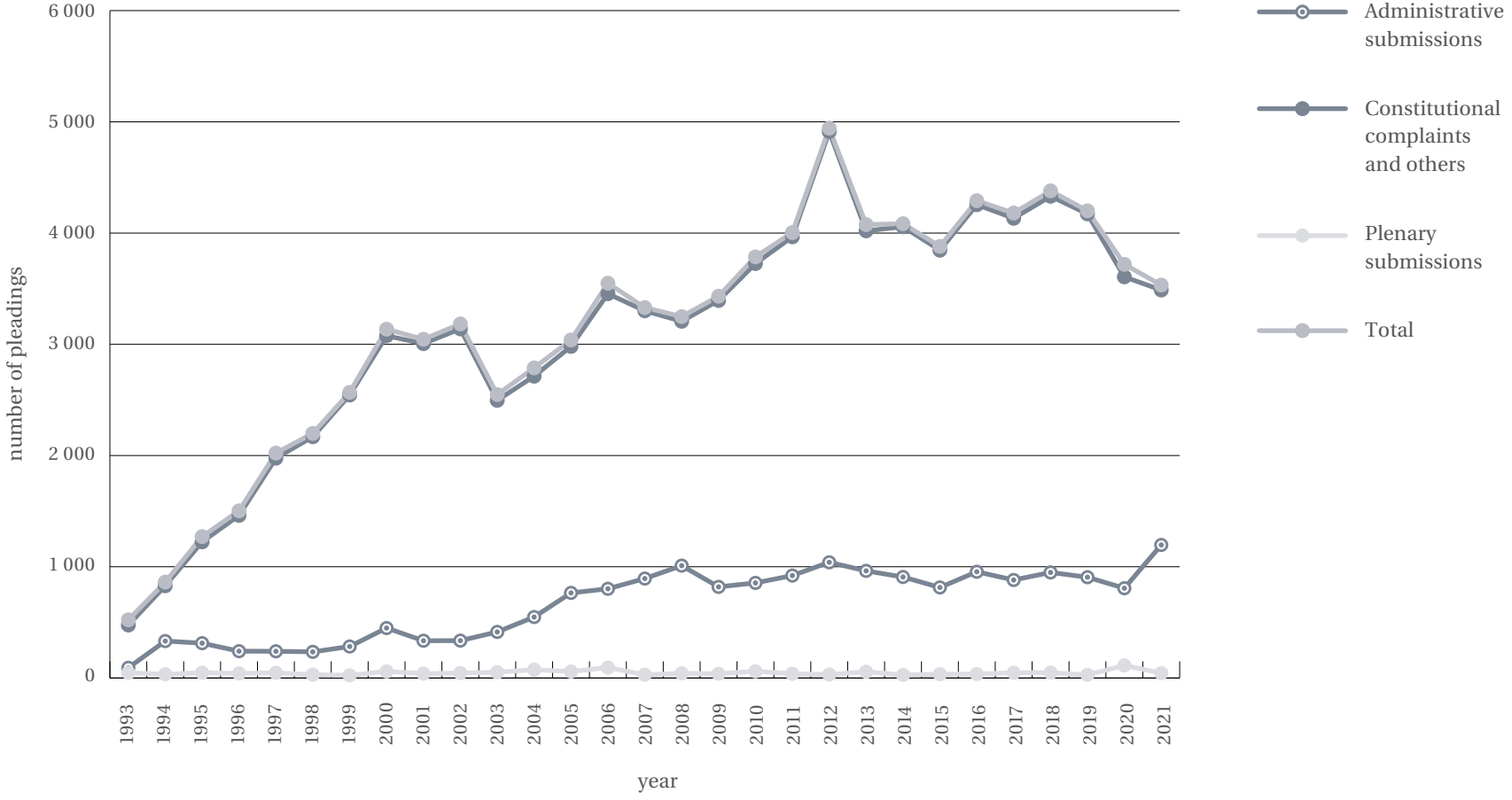


Statistics in terms of petitions to initiate proceedings and other submissions

Number of submissions				
YEAR	Total	Pl. CC	Constitutional complaints and other	SPR (admin.)
1993	**523**	47	476	92
1994	**862**	33	829	332
1995	**1 271**	47	1 224	313
1996	**1 503**	41	1 462	241
1997	**2 023**	47	1 976	240
1998	**2 198**	29	2 169	235
1999	**2 568**	24	2 544	283
2000	**3 137**	60	3 077	449
2001	**3 044**	38	3 006	335
2002	**3 183**	44	3 139	336
2003	**2 548**	52	2 496	414
2004	**2 788**	75	2 713	548
2005	**3 039**	58	2 981	765
2006	**3 549**	94	3 455	802
2007	**3 330**	29	3 301	894

Number of submissions				
YEAR	Total	Pl. CC	Constitutional complaints and other	SPR (admin.)
2008	**3 249**	42	3 207	1 010
2009	**3 432**	38	3 394	819
2010	**3 786**	60	3 726	855
2011	**4 004**	38	3 966	921
2012	**4 943**	31	4 912	1 040
2013	**4 076**	56	4 020	963
2014	**4 084**	27	4 057	908
2015	**3 880**	34	3 846	814
2016	**4 291**	36	4 255	955
2017	**4 180**	47	4 133	881
2018	**4 379**	48	4 331	949
2019	**4 200**	28	4 172	906
2020	**3 719**	113	3 606	807
2021	**3 532**	44	3 488	1 196
Total	**91 321**	**1 360**	**89 961**	**19 303**

Developments of the numbers of submissions 1993–2021



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