

2022



YEARBOOK OF THE CONSTITUTIONAL COURT
OF THE CZECH REPUBLIC

YEARBOOK

2022

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Court of Justice of the European Union, Constitutional Court of the Republic
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“We Czechs like the legend of Prince Svatopluk, who had three sons. Three quarreling sons. When he handed over control of the country to them over a thousand years ago, he asked them for unity. Thus, he took three rods and bent them. Together they would not break, but one by one, they broke like splinters. If we want to protect the rule of law in Europe, we must do so together and we must do so in a coordinated way. The resilience of the rods in the bundle is valid proof of that fact.”

(Ending of a speech by Mr. Pavel Rychetský, President of the Constitutional Court of the Czech Republic, delivered at the international seminar *Rule of Law as the Fundamental Value of the European Union* organized by Supreme Administrative Court of the Czech Republic)



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INTRODUCTION



Dear Readers:

It is my great pleasure to greet you again through the introduction to our year-book. The purpose of the publication is to present the Constitutional Court, its history, seat, justices, scope of competence, and last but not least, its latest case law and a summary of its recent international activities.

After the difficult times of 2020 and 2021, deeply affected by the Covid-19 pandemic, we were able to more or less return to business as usual in 2022. This was also true for international cooperation, which had been previously severely hindered by the epidemiological measures adopted to

tackle the health crisis. The restrictions on mobility that made it impossible to meet face-to-face have necessitated the search for new communication tools. Although these could not completely replace the quality of human contact, a simple handshake or a full-fledged multilateral conversation, they proved relevant and potentially useful even for times of normalcy. Modern technology can save valuable time and offer surprising ways to quickly and efficiently connect with each other. Our newly gained ability to combine proven methods of collaboration with innovative online communication tools can be at least a small consolation for the otherwise bitter experience our society has recently gone through.

As pleased as I am that we have come out of the pandemic's shadow, I cannot escape the sadness caused by the war raging on the European continent. Human rights are at the heart of the work of any Constitutional Court Justice. Therefore, it is difficult to accept that these are guaranteed for one person and denied to another, although the two live so close on a map. I firmly believe that by insisting on respect for international law and on the inalienability of human rights and

freedoms, we can contribute at least a little bit to fixing the situation and stopping the suffering of innocent people.

In 2022, after four years of chairing the Conference of European Constitutional Courts, the Constitutional Court of the Czech Republic no longer held the presidency. However, we are still an active member of this most important European platform for international judicial cooperation, and as such, we were able to deepen our bilateral as well as multilateral contacts with partner courts, participate in international conferences and forums and organise several professional events. Among these, I would like to highlight a symposium called *Multilevel Justice: Judicial Protection in the Context of the Interaction of National, Supranational and International Systems*, which we organised on the occasion of the Czech Presidency of the Council of the European Union and which brought together judges from all levels of the Czech judiciary and Czech representatives to the European courts. We have also welcomed a number of guests to Brno, for example a delegation from the Constitutional Court of the Republic of Moldova. At our meeting, we have discussed, among other issues, the cooperation within the Conference of European Constitutional Courts, as it was our Moldovan counterpart that took over the presidency in 2021.

I am truly proud that the Constitutional Court of the Czech Republic is a full and committed member of the European and global judicial community. Nevertheless, the first and foremost role of our court must be its mission as the guardian of Czech constitutional justice. In 2022, the Constitutional Court received 3,644 petitions to initiate proceedings and other submissions, we issued 153 judgments and decided 3,413 cases by resolution. We also issued two opinions of the Plenum. Despite the fact that one vacancy remained unfilled throughout last year, the length of the proceedings was approximately three months in Panel cases and nine months in Plenum cases.

The following two years will be somewhat challenging for the Constitutional Court, as the terms of office are bound to expire for twelve justices. However, I think the Constitutional Court has proven its stability for the last thirty years

and I have no doubt that despite the changes in personnel it will continue to faithfully and carefully perform the functions entrusted to it.

Dear readers, it has been an honour to meet you both in person and through the pages of our yearbooks and I look forward to seeing you again. I wish you all the best and hope you have a pleasant read.

Jaroslav Fenyk
Vice-President of the Constitutional Court



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 became 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 TschR*) 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 fórum). 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.



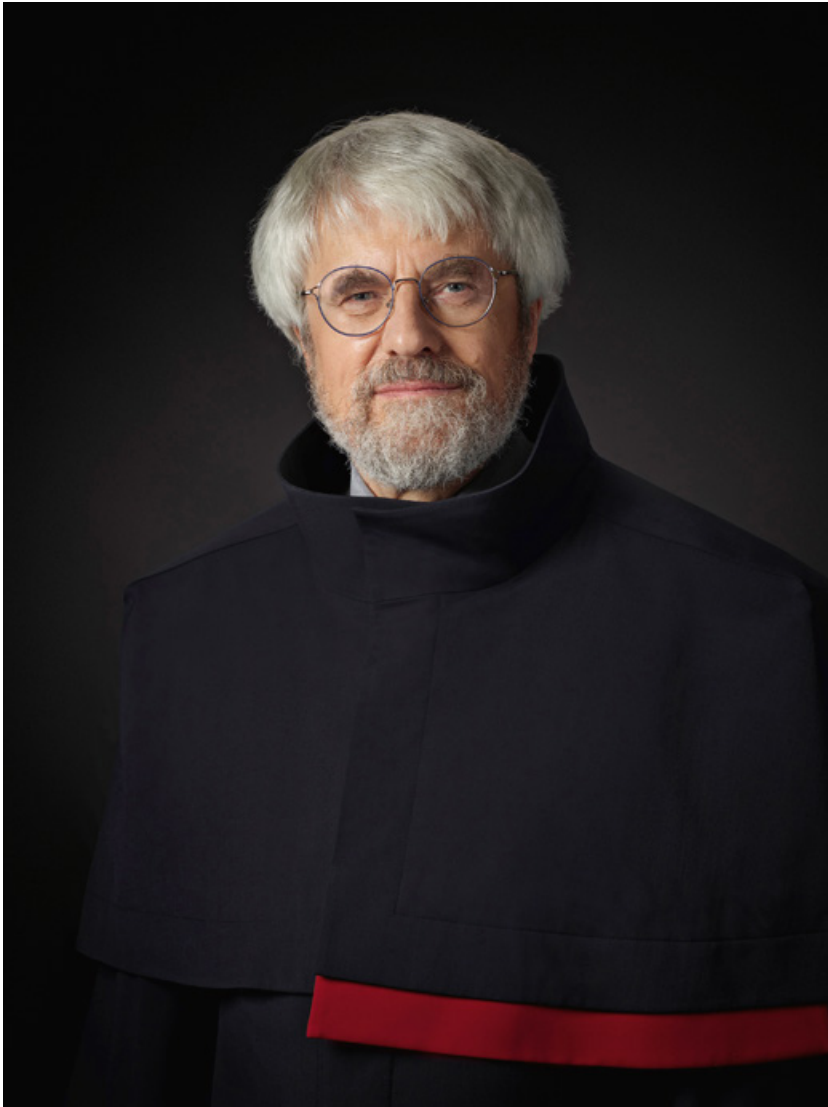
JOSEF FIALA

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.

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 Constitutional 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





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

Another important and prestigious room of the Constitutional Court is the hall known as the "Grand Council". Its full-scale renovation has been launched in the spring of 2022. It was based on a design created by the architectural office Architekti Hruša a spol., Ateliér Brno, s. r. o. In this design, Professor Hruša conceives the reconstructed space, i.e. the hall and its adjacent rooms, as a single unit whose individual parts naturally relate to each other. The hall was shaped after famous halls of the past, i.e. with an artistically rich ceiling with coffers. The new solution was inspired by the original square ceiling, where a strong role is played by the aesthetics of geometric shapes. The original ceiling had to be replaced because it was unstable and fragile. The lighting situation was not ideal either. The existing natural lighting provided by five windows was uneven and, even in combination with artificial lighting from the chandelier and fluorescent lamps, there was simply not enough light. The disparate lighting elements were thus replaced by a uniformly illuminated ceiling.

The basic conceptual design of the room places its visitors on an imaginary path of the search for constitutionality. The seating arrangement for table meetings forms an incomplete circle, with its missing section filled in by a newly created recess containing the text of the Constitution. This cornerstone of Czech Law will thus become a symbolic, permanent and important participant in future meetings. The Constitution is guarded on its sides by State emblems cast in leaded glass and the carpet on the floor symbolises the uncertain surface of social waves – the fluidity of past and present.

The reconstruction also affected the remaining prestigious and ceremonial spaces in the building, which lead from the meeting and private rooms of the President of the Constitutional Court through the reconstructed Grand Council to the facilities for constitutional officials. The hall itself has two entrances – a grand one for visitors and an internal one for staff.

The construction work started in the spring of 2022 and consisted mainly of removing the non-original floor layers and the ceiling. A new partition at the head of the room was used to hide the cooling system, new timber flooring was laid in all areas, the wooden door panels were either refurbished or replaced,

and the walls were resurfaced following a new electrical wiring installation. Finally, glass luminaires and State symbols from Czech manufacturers were installed.

The interior was furnished with restored table furniture from the 1920s and complemented by refurbished leather-covered armchairs. The windows are covered with elegant velvet drapes, and white muslin curtains are used to separate the space from the outside traffic and the opposite building. The Grand Council hall has also been fully equipped with an audiovisual system for international teleconferences, including interpretation capabilities, and it will be ready to welcome even the most important visitors from February 2023.



The renovated Grand Council hall as seen from the visitors' entrance



The walls were resurfaced and unfit ceiling parts were removed in the renovation.
The picture was taken after trial installation of a ceiling coffer with lighting.



Entrance area for visitors – picture taken during renovation.
Unsatisfactory plaster and the upper floor layer were completely removed.



The same space after renovation.
The interior is equipped with furniture and lighting from Czech manufacturers.



The Grand Council hall before the renovation



The Grand Council hall after the renovation

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





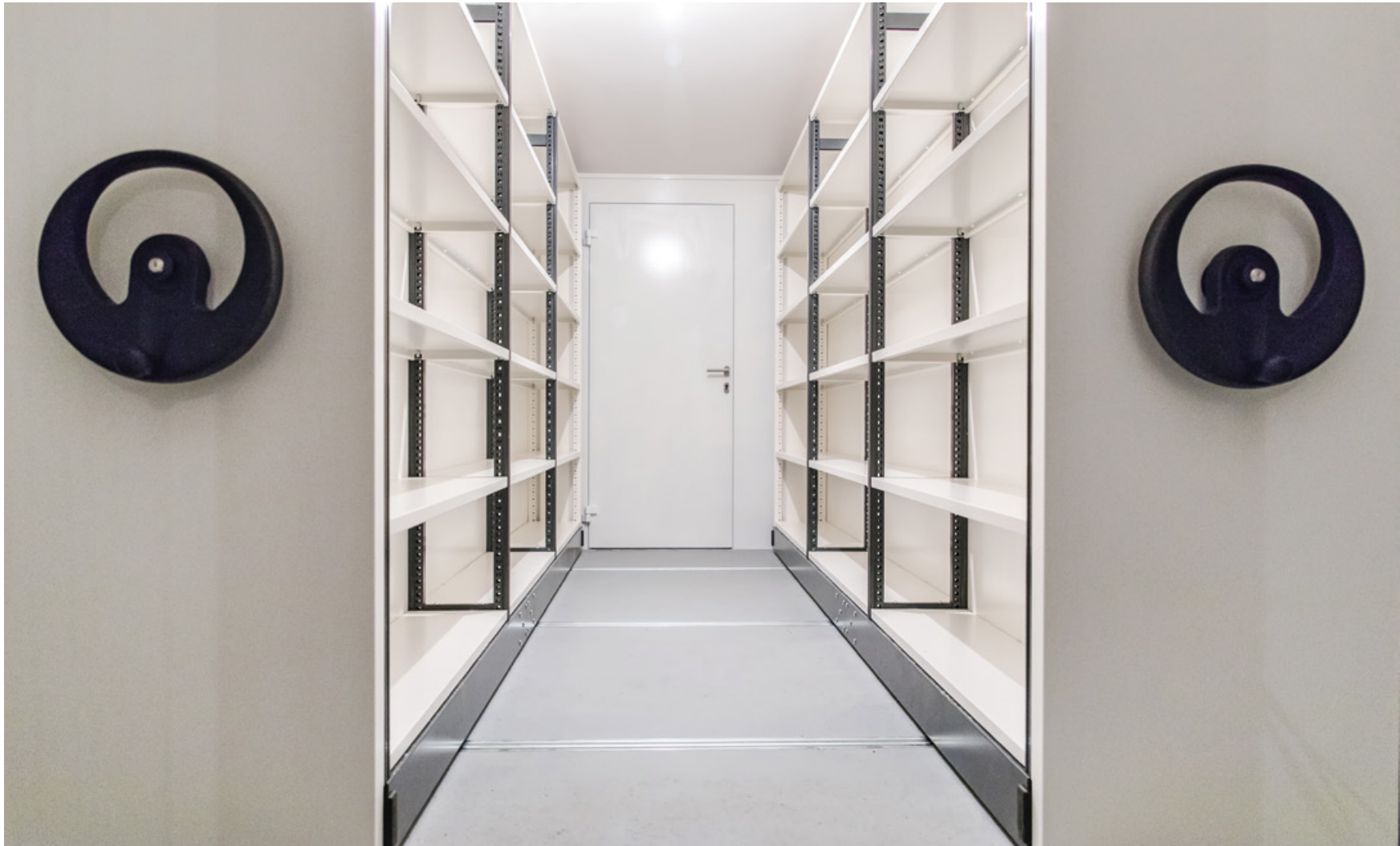
Renovation and restoration works in the staircase area



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.



DECISION-MAKING
IN 2022

The decision-making activity naturally differs every year according to matters the Constitutional Court is addressed with by the petitioners. The decisions described below may thus follow up on case-law from the previous years but also reflect current trends and bring new topics and perspectives. The present overview of case-law represents the most interesting matters the Constitutional Court dealt with in 2022. However, you can get a full picture only by looking up the decisions on the website of the Constitutional Court or in the Collection of Judgments and Resolutions.

Fundamental constitutional principles

Democratic state respecting the rule of law

The Czech Republic is defined as a democratic state respecting the rule of law in Art. 1(1) of the Constitution of the Czech Republic (“Constitution”). That article represents a certain general and introducing principle, connected to a number of sub-principles, of which some are regulated expressly at the constitutional level and some are inferred by the Constitutional Court’s case-law.

The provision in Art. 1(1) of the Constitution combines two principles – the democratic principle and the rule of law. In the conditions of the Czech Republic, democratic principles are subtly mixed with the requirements of constitutionalism, which has its main source in liberal political thinking of modern times. Therefore, it is true that no regime other than a democratic regime may be considered as legitimate (judgment file No Pl. ÚS 19/93 of 21 December 1993) and that it is necessary to take into consideration the priority of a citizen over the state, and hence also the priority of fundamental civil and human rights and freedoms (judgment file No Pl. ÚS 43/93 of 12 April 1994). Therefore, it is also necessary, as follows from judgment file No Pl. ÚS 29/11 of 21 February 2012, to interpret our democracy in a substantial way.

In an unusual case concerning the misuse of military intelligence (judgment file No IV. ÚS 2824/21 of 22 November 2022), the Constitutional Court expressed

its opinion on the **binding nature of the law on all state power** in a democratic state governed by the rule of law. It reminded the judge that it is not possible for the armed forces and the secret services of the state to carry out orders of any high-ranking political figures, let alone persons who are not such high-ranking political figures, without due process of law. According to the Constitutional Court, the question of whether the former Prime Minister knew about (or ordered) the surveillance of his former wife is not at all relevant to the assessment of the criminality of the complainants’ conduct. Intelligence officers who would merely follow the former Prime Minister’s wife at the behest of the former Prime Minister without due process of law to ensure that all legal and constitutional rules were followed would also be acting illegally. The complainants’ views that they cannot, as soldiers, question the personal orders of political representatives (let alone other persons not superior to them) do not correspond to the principles of the legal order of the Czech Republic as a democratic state governed by the rule of law. Therefore, the only legally acceptable conduct of the complainants could be their refusal to “execute” the instructions or tasks to monitor the victims, all the more so where such instructions are only oral.

In its judgment File No Pl. ÚS 7/22 of 13 September 2022, the Plenum of the Constitutional Court commented not only on the merits (see below), but also on the **course of the legislative process** during the adoption of amendments to several provisions of Act No 94/2021 Sb., on emergency measures during the epidemic of the COVID-19 disease and amending certain related act (hereinafter the “Pandemic Act”). The complainant found fault with the legislative process in the illegitimacy of the state of legislative emergency, the substantive conditions for which were not met. She also claims the rights of the minority to participate in the governance of public affairs were not respected. However, the Plenum concluded that the process of adopting the contested provisions would stand despite the shortcomings of the legislative process. The Constitutional Court cannot assess the legitimacy of the state of legislative emergency as at the adoption of the amendment to the Pandemic Act in the light of subsequent epidemiological developments (nor is it competent to assess the accuracy of the predictions on which the Government based its request for extending the state of legislative emergency), which subsequently showed a downward trend, which

the petitioner uses to demonstrate that it was not necessary to fast-track the Act in question via summary consideration. For the Constitutional Court, the decisive situation (related circumstances and scope of information) is the situation at the time of the decision to declare or extend the state of legislative emergency. In this respect, the Government's conclusions about the epidemic peak during the consideration of Act No 39/2022 Sb. and the fear of further deterioration do not appear arbitrary.

Furthermore, the Constitutional Court found that in the legislative process as a whole, the opponents of draft Act No 39/2022 Sb. were not denied the opportunity for parliamentary debate or the right of individual member of parliament (members of the parliamentary opposition) to present their opinions, competing views and positions. It is clear from their speeches that they were sufficiently familiar with the content of the draft Act, as substantive criticism was voiced against it, including the potential impact of its individual provisions. At the same time, the general public was sufficiently informed about the legislative intention in question and the ongoing parliamentary debate; therefore, even in this context, it cannot be concluded that the act under consideration was in any way surprising or unpredictable in relation to its recipients. Therefore, it cannot be in turn concluded that the rights of the parliamentary minority were restricted with such an intensity that the essence of its participation in the legislative process was undermined. Consequently, the Constitutional Court concluded that although the process leading to the adoption of the Act in question could not be considered – on the lower than constitutional level – flawless, when measured against the outlined constitutional boundaries, it did not conclude that the individual errors found, either individually or in their totality, justified its exceptional interference in the legislative process. A simple finding of a formal defect in the legislative process does not by default mean that the legal regulation resulting from such a defective legislative process must be repealed. It is necessary to assess whether, from the point of view of the principle of proportionality, the requirements of the principles of the substantive rule of law, legal certainty and effective protection of constitutionality can be given priority over the express repeal, or to assess the possible impact on private persons in terms of respect for the principle of legal certainty and good faith in the validity of the law.

Obligations arising from EU and international law

Of the cases considered by the Plenum, the one that probably relied most heavily on obligations under international law was judgment file No Pl. ÚS 7/18 of 22 March 2022, concerning the regulation of the collection and storage of DNA samples by the Police of the Czech Republic. The Plenum outlined the relevant case law of the European Court of Human Rights (“ECHR”), EU law and comparative considerations, but did not grant the petition of the Municipal Court in Prague. The judgment is further discussed in the subchapter on the protection of private and family life.

As in the previous year, the Constitutional Court dealt once again with a petition to **reopen proceedings after a decision of the ECHR**. However, it found that the ECHR's decision to remove a complaint from a list of cases on the basis of a unilateral declaration by the government (in *Urválek v. the Czech Republic*) was not a ground for reopening the proceedings before the Constitutional Court. Section 119(1) of the Constitutional Court Act makes the reopening of proceedings conditional on a decision of an international court finding that a human right or fundamental freedom has been violated by the intervention of a public authority. However, the removal of a complaint from a list of cases on the basis of a unilateral declaration by the Government does not constitute such decision. With this legal opinion, the Constitutional Court departed from the legal opinion expressed in resolutions file Nos Pl. ÚS 6/14 and Pl. ÚS 10/14.

In the past year, the Constitutional Court was 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 its judgment file No I. ÚS 2839/21 of 29 November 2022, discussing issues of EU law in proceedings on appeal on points of law. The appellant objected to the judgment of the Court of Appeal, including its failure to refer a preliminary question to the Court of Justice of the European Union (“CJEU”). The Supreme Court dismissed the appeal on points of law partly as defective and partly as inadmissible, and thus did not deal further with the motion for submitting a preliminary question. In this regard, the Constitutional Court noted that the right to judicial protection is not violated if the Supreme Court does not submit a preliminary question on the merits of the case if it finds that the appeal

on points of law is defective or inadmissible under the rules of the Code of Civil Procedure, regardless of the prospective answer of the Court of Justice. If the appellant argues in the application for an appeal on points of law that the Court of Appeal wrongly assessed an issue of EU law and at the same time specifies how he/she considers the admissibility prerequisite to be fulfilled in relation to the case law of the Supreme Court, the Supreme Court violates the appellant's right to judicial protection if it rejects the appeal as defective without further consideration.

EU law also played a role in judgment file No III. ÚS 213/21 of 8 February 2022, in which the Constitutional Court addressed the question of the validity of the European Arrest Warrant. It stressed that a **European Arrest Warrant** must be considered invalid unless it is based on a national arrest warrant or other enforceable judicial decision having the same effect. The executing judicial authorities are obliged to dispel any doubts about the national legal basis of the European Arrest Warrant through the mandatory consultation procedure provided for in Article 15(2) of the relevant Framework Decision, or correspondingly at the national level, Section 203(4) of Act No 104/2013 Sb., on international judicial cooperation in criminal matters. In the case at hand, although the general courts did not explicitly identify the Italian national equivalent of the European Arrest Warrant in the contested decisions, the Constitutional Court, after studying the case file and taking into account the statement of the Municipal Public Prosecutor's Office, concluded that the European Arrest Warrant satisfied this overriding requirement. Therefore, the constitutional complaint was dismissed.

In 2022, the Constitutional Court followed up on its case law on the **issue of recognising the enforcement of court decisions** in civil and commercial matters. In its judgment file No I. ÚS 1613/21 of 22 March 2022, the complainant sought execution to be ordered on the basis of a decision of a Slovak district court. The application was rejected by the contested resolution of the bailiff because it lacked a declaration of enforceability as a prerequisite for enforcement under Act No 120/2001 Sb, the Enforcement Code. The Regional Court upheld the decision of the bailiff in the contested resolution. According to the Constitutional Court, the general courts failed to reflect the relevant EU

legislation. 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. However, if the Regional Court's 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.

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

As it is becoming a tradition, the Constitutional Court dealt with the proposals concerning legal acts issued in connection with the Covid-19 pandemic. In its dismissing judgment file No Pl. ÚS 34/21 of 4 January 2022, the Plenum confirmed the opinion adopted by the administrative courts that the Government's crisis measures cannot be challenged by an intervention action in accordance with Section 82 of Act No 150/2002, the Code of Administrative Procedure, as it is a legal regulation that can be challenged before the Constitutional Court under the conditions set out in Section 64(1) to (3) of the Constitutional Court Act.

In its judgment file No Pl. ÚS 7/22 of 13 September 2022, the Constitutional Court examined the constitutionality of several provisions of the Pandemic Act, which were introduced to the Act by the amendment made by Act No 39/2022 Sb. It dismissed the petition as unfounded.

Despite the identified shortcomings of the legislative process, the Constitutional Court concluded that the process of adopting the contested statutory provisions as a whole would stand up to scrutiny (see above for more details). In substantive terms, the Constitutional Court focused on the review of Section 2(2)(b) and Section 8a of the Pandemic Act, which it subjected to a proportionality test.

With regard to the first mentioned provision, according to which an extraordinary measure included “restricting the performance of business or other activities in an establishment, shopping centre, marketplace, market hall or other premises used for business or similar activities or setting conditions for their performance, including limiting the operating hours”, it concluded that it could not be considered disproportionate. Given the impossibility to predict with certainty the emergence of the Covid-19 pandemic, it was of interest to have all available tools ready to set up effective and targeted measures. The Constitutional Court has also taken into account that the legal order provides sufficient safeguards when constitutionally guaranteed rights and freedoms are restricted – in particular with regard to the possibility of judicial review of extraordinary measures. The subsequently mentioned Section 8a of the Pandemic Act, which regulated the procedure by which the order for isolation or quarantine could be notified, i.e. orally or in writing, including by means of remote communication, also passed the proportionality test. Here, the Constitutional Court weighed the competing interests of the protection of health against the principle of legal certainty, which could be jeopardised by the contested provision if the order for isolation or quarantine was not served on its addressee. However, it again had to conclude that the legislation in question pursued the legitimate aim of ordering quarantine measures and isolation in a timely and non-formal manner in order to prevent or at least slow down the spread of the Covid-19 disease. It was hardly possible to imagine any other way – more respectful of constitutionally guaranteed rights and freedoms – in which anti-epidemic measures could be ordered immediately and informally to the extent necessary. As in the case for the first provision under consideration, there were sufficient guarantees of protection of the rights and freedoms at stake, consisting in the possibility of requesting the public health authority to investigate the justification for ordering quarantine or isolation, as well as in the possibility of judicial review or claiming damages against the state; therefore, the Constitutional Court did not find a nullity judgment necessary.

Fundamental rights and freedoms

Right to life

The Constitutional Court does not often provide its opinion on the protection of one of the most important human rights, the right to life guaranteed by Article 6 of the Charter. 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 this context, the Constitutional Court focused on the questioning of witnesses in its judgment file No IV ÚS 1993/21 of 26 April 2022. Section 100 of the Code of Criminal Procedure gives them the right to refuse to give evidence in certain circumstances. The burden of proof as to the reason for refusing to testify always rests with the witness, since the right to refuse to testify corresponds to his or her constitutional obligation to testify unless the circumstances are proven [Article 37(1) of the Charter]. If a general court does not follow these rules and, as a result, does not question such a witness and fails to give proper reasons for not doing so, it will burden its decision with errors consisting in a violation of the general procedural rules and the principles expressed in Title 5 of the Charter of Fundamental Rights and Freedoms.

In its resolution file No II. ÚS 1434/22 of 22 November 2022, the Constitutional Court dealt with the suicide of the complainants’ son in a healthcare facility. The complainants objected to the public prosecutor’s decision to vacate the resolution initiating prosecution of the healthcare facility and not to proceed with the case. In this context, the Constitutional Court reiterated that the defensible outcome of an effective investigation must be achieved through the cumulative fulfilment of the following requirements: the investigation must be (a) independent and impartial; (b) thorough and sufficient; (c) prompt; and (d) subject to public scrutiny and allowing for the active participation of the victim. The investigation carried out was in line with the above. The conclusions of the public prosecution were based on extensive supporting material, logical reasoning and an expert’s opinion. Therefore, the constitutional complaint was rejected.

Prohibition of torture, protection of physical integrity

In 2021, the Constitutional Court dealt mainly with issues of compensation for various types of hardship in the context of the inviolability of the person (Article 7 of the Charter); in 2022, its case law has focused on the context of the detention and extradition of foreign nationals.

In its judgment file No Pl. ÚS 12/19 of 19 July 2022, the Plenum of the Constitutional Court addressed the **constitutionality of the limitation of a foreign national's ability to submit an application for release from detention** in accordance with the Act on the Residence of Foreign Nationals. In accordance with Section 129a(3) of this Act, a foreign national may submit an application for release from a detention facility no earlier than 30 days after the decision on detention, on the extension of the period of detention or not to release the foreign national from a detention facility becomes final and enforceable. The Constitutional Court rejected this petition filed by the Supreme Administrative Court. The restriction in question does not preclude the requirement of periodic judicial review of the legality of the detention at reasonable intervals, which follows from Article 5(4) in conjunction with Article 5(1)(f) of the Convention, in a situation where periodic supervision of the legality of a foreign national's detention is also carried out by means of judicial review of the decision to detain, to extend the period of detention or not to release the foreign national from a detention facility.

The impact of the Russian aggression in Ukraine has been reflected in the case law of the Constitutional Court. In its judgment file No II. ÚS 1199/22 of 14 December 2022, it dealt with the consideration of the military invasion of Ukraine in **extradition proceedings**. In the case at hand, the general courts decided on the admissibility of the applicant's extradition to the Russian Federation for prosecution, accepting the guarantees from the Prosecutor General's Office of the Russian Federation. However, according to the Constitutional Court, it was the duty of the High Court to assess the existence of grounds for the inadmissibility of the complainant's extradition to the Russian Federation according to the current situation at the time of the decision. At the time of the High Court's decision, the Russian Federation had already been temporarily deprived of its right of representation on the Committee of Ministers

and the Parliamentary Assembly, and its expulsion from the Council of Europe if the invasion was not stopped was foreseeable. This occurred on 16 March 2022, shortly after the contested decision was issued. The Committee of Ministers decided to terminate the membership of the Russian Federation in the Council of Europe and at the same time the Russian Federation sent a communication on the denunciation of the Convention. In such a situation, a court decision declaring extradition admissible or rejecting a complaint against such a decision cannot be a sufficient guarantee that extradition to a foreign state will not result in a violation of the constitutionally guaranteed fundamental rights and freedoms of the person whose extradition is at issue, if it was already foreseeable at the time of the decision that the circumstances on which the court based its decision would be different at the time of the decision of the Minister of Justice to authorise the extradition and its subsequent implementation.

Protection of private and family life

In 2022, the Constitutional Court addressed the issue of the rights guaranteed in Article 10 of the Charter in several different judgments. Judgment of the Plenum file No Pl. ÚS 7/18 of 22 March 2022 concerned the **collection and storage of DNA** samples in the context of the assessment of the constitutionality of a summons to the collection of biological DNA samples in accordance with Section 65(1) of Act No 273/2008 Sb., on the Police of the Czech Republic. The Constitutional Court concluded that the taking of biological samples in a non-invasive manner generally passes the proportionality test, as it does not interfere with the physical integrity and does not jeopardise the health or dignity of the person concerned, and is justified by the legitimate interest in protecting society from criminal activity and does not contravene the principle of the prohibition of self-incrimination. At the same time, the Court did not find the incompleteness or insufficiency or excessive generality of the legal regulation to be unconstitutional.

In a judgment **concerning act of violence**, file No III. ÚS 3006/21 of 22 March 2022, the Constitutional Court disagreed with the opinion of the general courts, which in the present case did not provide the complainant with criminal

protection against the intervener, who sent a total of 114 e-mail messages of a harassing, pornographic and threatening nature to the complainant's electronic mailbox. According to the Constitutional Court, by referring the case to hearing of an administrative delict, the general courts downplayed the seriousness of the intervener's conduct, while not accepting the argument that the complainant, as a public figure (a lawyer and director of a publicly beneficial company), is obliged to tolerate a higher level of criticism. In the context of the facts examined and the right to effective investigation, the Constitutional Court stated that serious attacks on personal integrity require – in order to be able to speak of effective protection – protection through criminal law.

In its judgment file No II. ÚS 2460/19 of 7 June 2022, the Constitutional Court once again commented on the issue of the **personal identification number assigned at birth as a gender identifier**. In the present case, the complainant, who was born a man and considers himself neither male nor female, but a person of “neutral” gender, unsuccessfully sought a change of his personal identification number to a “neutral” or “female” form before the administrative authorities and the courts. The Constitutional Court stated that there was nothing in the complainant's birth number that explicitly expressed or perhaps emphasised that the complainant was male (as opposed to the special form of the personal identification number for women). If Czech society perceives gender in a binary way, it is not up to the Constitutional Court to change this perception. The Constitutional Court followed up on the conclusions adopted by the Plenum in its judgment file No Pl. ÚS 2/20 of 9 November 2021 and stated that the constitutional order does not guarantee the right to have one's personal identification number in a form reflecting the gender with which the bearer identifies internally.

The issue of protection of **personality rights in the context of freedom of expression** was addressed by the Constitutional Court in its judgment file No II. ÚS 2120/21 of 4 April 2022. The complainants claimed that their rights as citizens of the Czech Republic who are of the Roman Catholic faith had been infringed in two specific theatre productions by the depiction of representatives of their faith in an unacceptable manner that violated their human dignity, faith, and religion, and constituted unequal treatment of their church compared to other entities. The Constitutional Court stated that a private law action for the

protection of personality alleging individual or group discrimination without address must be assessed in the light of the statutory prerequisites in accordance with the applicable subconstitutional norms. In doing so, the general courts must base their decisions on the content of the artistic expression in its overall context and on algorithms for assessing its adequacy in relation to the means used and the legitimate aims. In the case at hand, the Constitutional Court concluded that both plays pursued a legitimate aim, seeking to kindle public debate about religious violence and sexual incidents within one of the churches. They did so by means that were partly blasphemous, but did not in their entirety suppress the underlying message. The substance of the plays' content, including the controversial scenes, was known to the public in advance and was the subject of a wide media discussion. Therefore, even in terms of the intensity of the effects of the contested facts, there was no substantial interference with the applicants' fundamental rights and freedoms.

Economic and social 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 a profession and preparation for it

At the beginning of this section, we must recall judgment file No Pl. ÚS 43/18 of 18 January 2022, by which the Constitutional Court rejected the motion of the Regional Court in Ostrava to repeal (inter alia) Section 60b of Act No 435/2004 Sb., on employment, which was introduced by the amendment made by Act No 206/2017 Sb.

Judgment file No Pl. ÚS 43/18: Deposit for employment agencies

The provisions under review introduced an obligation for legal and natural persons applying for a permit for employment intermediation in accordance with Section 14(1)(b) of the Employment Act to provide a deposit of CZK 50 000 to a special account of the Labour Office of the Czech Republic – Directorate General; the focus of the petitioner’s objections was not only the introduction of the obligation itself, but also the fact that, in accordance with the transitional provisions of Act No 206/2017 Sb., it obliged not only persons who were only now applying for a permit, but also those who are already undergoing such proceedings, as well as those who have already obtained such permits under the existing legislation.

The Constitutional Court, referring to its own restraint in assessing legislation regulating economic issues, carried out a test of rationality. It found that the legislation pursues several legitimate objectives, consisting of the need to demonstrate the financial ability of the employment agency, to eliminate the emergence of purpose-made employment agencies and, last

but not least, to ensure that only entities with a certain minimum facilities that are able to guarantee basic accounting and operational standards operate on the market. According to the Constitutional Court, the deposit is not punitive in nature, since if a person’s permit for employment intermediation is terminated, the paid amount is returned to such person. The deposit does not constitute an unreasonable obstacle to the entry of business entities into the market, since it has been shown that in the years following its introduction there has been an increase in the number of employment agencies. Finally, the Constitutional Court did not find any reason for intervention in the retroactive effect of Section 60b of the Employment Act, as this was a permissible application of “false” retroactivity, and its non-inclusion could lead to discrimination and unacceptable inequality in the business environment.

Right to health protection

One of the positive obligations of the state arising from the right to health protection guaranteed by Article 31 of the Charter is to ensure a functioning health protection system that is accessible to everyone. Since this right falls within the area of social rights, where the legislator has more room to limit them, the Constitutional Court has traditionally taken a restrained position in this area. This was no different last year, when the Plenum of the Constitutional Court rejected three petitions for review of acts relating to health care.

The dismissing judgment file No Pl. ÚS 7/22 of 13 September 2022 regarding the amendment to the Pandemic Act has already been discussed above. In another dismissing judgment file No Pl. ÚS 49/18 of 26 April 2022, the Plenum examined a petition by a group of senators to repeal several provisions of Act No 48/1997 Sb., on public health insurance and amending and supplementing certain related acts, Act No 372/2011 Sb., on health services, and several decrees of the Ministry of Health concerning the financing of health care provision. The Constitutional Court emphasised that it was not competent to assess the correctness or

appropriateness of the state's health care policy, or the method of payment for health care, unless constitutional rights were violated. After reviewing the petitioner's numerous objections, the Court concluded that the challenged legislation was not unconstitutional. It stressed that this did not mean that participants in legal relations would be deprived of legal remedies in the event that the interpretation and application of those provisions were unlawful. Therefore, despite rejecting the petition, the Constitutional Court has not ruled out that in other cases and with different legal arguments each of the contested provisions (as well as other related provisions) could be subject to its review.

At the end of the year, the Constitutional Court rejected, in its judgment file No Pl. ÚS 36/21 of 13 December 2022, a petition of the District Court in Mělník to annul the first sentence of Section 89e(1) of Act No 373/2011, on specific health services, which regulates the obligation to pay the costs of the detention service and the transport to the detention centre. The Constitutional Court concluded that this provision must be interpreted as meaning that the "costs of the detention service" paid by the recipient are only the costs associated with his stay in the detention centre (accommodation, food, hygiene, transport, etc.) and must be separated from the costs associated with the health care provided by the detention centre (initial medical examination, medical aids, etc.), which are covered by public health insurance. Thusly defined scope of the obligation of the detention service recipient to reimburse the provider for its costs does not contravene the second sentence of Article 31 of the Charter, as that does not cover the provision of a health service within the meaning of Section 13 of the Public Health Insurance Act.

Protection of parenthood, family and children

In 2022, the Constitutional Court once again contributed to the case law in matters of deciding on the adjustment of relations with minor children. In its judgment file No III. ÚS 882/22 of 22 August 2022, it recalled the criteria for assessing the suitability of **shared custody** previously expressed in its case law. It stressed that the decision not to grant an application for shared custody must be very convincingly formulated and the court must carefully address the criteria set out

in the case law of the Constitutional Court. The Third Panel held that shared custody is not a custody arrangement that can be ordered only in ideal cases. On the contrary, shared custody is usually a way to keep the child in contact with both parents when family ties have been broken. The parents' conflicting relationship does not constitute sufficient grounds to justify denial of a parent's motion for a shared custody order.

In its judgment file No I. ÚS 3065/21 of 3 May 2022, the Constitutional Court further emphasised that the courts have the obligation to prove and evaluate all the obstacles to shared custody that are being assessed. In the cited case, the courts found that the obstacle to entrusting a child to shared custody were the child's young age, the father's high workload, the parents' poor communication, the minor's poor adaptation to change, the father's lacking respect for the mother's parental role, the psychologists' negative opinion on the matter, the difficulty of shared custody, and the not insignificant distance between the father's and mother's homes. However, according to the Constitutional Court, shared custody cannot be excluded solely on the basis of the child's young age, unless the child is dependent on the mother for breastfeeding. Also, the stability of the child's environment cannot be the decisive criterion. While important, it cannot in itself be an argument for excluding shared custody, as it would effectively preserve the status quo established by the first decision in the case. Regarding the lack of communication between the parents, it is true that courts should realistically assess the communication between the parents in light of the extent and effectiveness of the exchange of information required for shared custody. It also found that the workload could constitute a barrier to shared custody only in exceptional cases, not in cases of a standard employment relationship, even if demanding in various respects; the opposite would essentially constitute discrimination on the basis of employment.

In its judgments file Nos III. ÚS 928/22 of 24 May 2022 and III. ÚS 2391/21 of 19 July 2022, the Constitutional Court addressed the question of whether the **entry of a child into primary school** constitutes an obstacle to entrusting the child to shared custody. In the former, it found that the mere fact that the child was entering first grade did not preclude the child from being placed into shared custody. In addition, if the child attends only a single primary school due to its

proximity to the parents' homes, the child's schooling or development through extracurricular activities is not disrupted. Unless the existence of (other) relevant reasons is proven which would preclude the application of shared custody and the court entrusts the child to the exclusive care of one of the parents in such a case, it violates the other parent's rights to family life and care for children. If, at the same time, a number of circumstances have been proven in the proceedings which clearly favour shared custody, the fact that the child is starting school cannot be an argument in favour of establishing exclusive custody of one parent. In the later judgment, the Constitutional Court then added that if the conditions for custody are met by both parents in roughly the same way, then the mere fact that the minor is about to enter the first grade of primary school does not constitute an automatic and irreversible obstacle to shared custody even if the residence of both parents is separated by a greater distance.

In its judgment file No II. ÚS 1626/22 of 15 August 2022, on the other hand, the Constitutional Court dealt with the adjustment of care for older children approaching adulthood. According to the Constitutional Court, in the case of **older children**, their duly ascertained wishes must be respected unless there are specific circumstances that would justify a deviation. The above-cited case concerned a 14-year-old boy who had expressed a wish to stay with his father and change primary school in connection with that. The Court of Appeal ruled against the minor's wishes, as it assessed that his opinion did not constitute a fundamental guideline for the adjustment of his circumstances by a preliminary ruling. The Constitutional Court has identified respect for the attitude of the minor complainant, who is approaching adulthood and is therefore already able to independently formulate his own opinion on the courts' decisions about his life and to perceive the consequences of his attitude, as a key aspect of the case at hand. According to the Constitutional Court, the opinion of a child who is approaching adulthood cannot be disregarded in any proceedings before the general courts concerning decisions about his life. This also applies to proceedings for a preliminary ruling.

The Constitutional Court also dealt with the **evidence** in the proceedings for the care of a minor child. In its judgment file No IV. ÚS 699/22 of 28 June 2022, it held that it is not a violation of the right to judicial protection if a court does not

order, at the request of a guardian ad litem, an expert opinion to prove the manipulation of the child by one of the parents, if it assesses that further, time-consuming psychological examination would unduly burden the minor. The minor in the cited case was heard directly by both the Court of First Instance and the Court of Appeal. They concluded that the minor had undoubtedly discussed with her mother the issue of contact with her father, but had reasonably explained her views and wishes to the court. The Court of Appeal found no reason to unduly burden her with further time-consuming psychological examinations. The Constitutional Court approved of this procedure and concluded that both courts had taken sufficient evidence in the case and had dealt with the essential criteria for deciding on the minor's custody.

In addition to disputes between parents over the type of custody of minors, the Constitutional Court once again dealt with decisions on a **minor child's contact with grandparents**. In its judgment file No II. ÚS 395/22 of 28 July 2022, the Constitutional Court considered it important that when assessing the fulfilment of the condition of the existence of an emotional relationship, which is not merely transitory, in accordance with Section 927 of the Civil Code, the courts take into account the child's age and the related actual possibilities of the child to have such an emotional relationship with the grandparents. In the cited case, the Constitutional Court considered that the minor had only one parent and the complainants were her only close family on her mother's side. It was also significant that the minor's mother maintained good relations with her parents and it could therefore be assumed that, had she not died, the minor would have continued to see her grandparents to some extent. The Constitutional Court also took into account that the minor's father had not made any effort to improve his relations with the complainants, even though it would have been in the minor's interest, as he himself stated in his opinion on the constitutional complaint.

Two judgment in 2022 concerned the **removal of children from their families**. In its judgment file No III. ÚS 3146/21 of 13 September 2022, the Constitutional Court addressed the conditions for removing a child from the care of its parents and placing the child in foster care. The right of a child not to be separated from its parents may be infringed as a necessary intervention in the child's interests if such an intervention is necessary to ensure the protection of one of the child's

absolute rights against its parents; it is clear that the threat to the child's absolute rights will have to reach a certain qualified intensity in view of the seriousness of the intervention. This extreme measure cannot be justified on the sole ground that the child will be "better cared for" in different environment than if he were in the care of the parents. The decision cannot be based on grounds which are not provided for by the law; in the case cited, those circumstances were the complainants' intellectual abilities, their social adaptability, the mental level of the minor and the difference between the quality of the environment offered by the complainants and the foster parents.

Judgment file No IV. ÚS 412/22 of 29 November 2022 concerned the placement of a minor child in a protective education facility. The Constitutional Court emphasised that when a court decides to place a minor child in a protective education facility, it is obliged to examine both the legal prerequisites and the best interests of the minor child. Placement in a juvenile detention centre irreversibly determines the child's future life and represents a significant interference by the court in its personal and family life. If the court attempts to determine the best interests of the child, it cannot properly assess these without interviewing the minor before the court and ascertaining its position, provided that the child is capable of forming its own opinion. The court also erred in failing to strive for improved communication between the minor's parents and family relations in general.

The right to judicial and other legal protection

The right to a fair trial

The right to a fair trial is one of the fundamental pillars of legal systems in all democratic states, which guarantee their citizens an independent and impartial judiciary. Every individual should be guaranteed by the state the right to a fair and impartial hearing and determination of his or her case before an independent and impartial state body, without undue delay in the proceedings. The violation or denial of this right has far-reaching consequences for the individual, as it leads to the impossibility of obtaining justice and the impossibility of redressing violations of other human rights in court. This topic is closely related to the history of our state, as gross violations of the right to a fair trial were historically rather common. That is why the Constitutional Court pays special attention to the review of such violations every year.

One important sub-category of the right to a fair trial is the **right of access to a court**. An alleged violation of this right was addressed by the Constitutional Court in judgment of the Plenum file No Pl. ÚS 104/20 of 28 June 2022, in which the justices dealt with a creditor's obligation to give security for costs of insolvency proceedings. In this judgment, the Plenum rejected the Supreme Court's motion to repeal Section 108(1) of the Insolvency Act, which requires creditors to pay a deposit for the costs of the proceedings together with the insolvency petition. The Constitutional Court carried out the equal treatment test with regard to the contested provision of the Insolvency Act, focusing primarily on its proportionality, legitimacy and rationality. In doing so, it concluded that the motion was unfounded. The obligation to pay a deposit for the costs of the insolvency proceedings under the contested provision is part of the established procedure for exercising the right in accordance with Article 36(1) of the Charter, which is a matter to be regulated by the legislator. Significant strengthening of the safeguards to deter creditors from filing vexatious insolvency petitions is a legitimate objective of the contested provision. The introduction of a deposit for the costs of insolvency proceedings as an institute pursuing possibly also a reparation function is constitutionally justified and does not constitute an obstacle to access to court in accordance with Article 36(1) of the Charter.

A large part of the Constitutional Court's decisions concern the issue of **evidence**, although the judges intervene in this area only with restraint and leave it to the general courts. Judgment file No I. ÚS 1785/21 of 28 June 2022 dealing with the court's obligation to consider **reversing the burden of proof** in a medico-legal dispute is an interesting finding in this context. These disputes have been quite frequent recently. The justices of the First Panel reasoned that if medical records lack the statutory requirements and, as a result, the plaintiff is at risk of failing to meet the burden of proof to allege personal injury, the general court is obliged to order a reversal of the burden of proof. In such a case, unless a health care provider as the defendant proves otherwise, it is presumed to have acted *non lege artis*.

Specifics of criminal proceedings

In its judgment file No I. ÚS 1365/21 of 22 February 2022, the Constitutional Court commented on how the constitutional guarantees of a fair trial are reflected in the procedure of the Court of First Instance in the event that the case is returned to it by the Court of Appeal in criminal proceedings.

Judgment file No I. ÚS 1365/21 of 22 February 2022 (The right to judicial protection when a case is remanded by the Court of Appeal in criminal proceedings)

In the present case, the District Court repeatedly decided to acquit the complainant, but on appeal by the public prosecutor, the Regional Court repeatedly overturned the District Court's decision in closed session and sent the case back to the District Court for further proceedings with instructions regarding the supplementation of evidence or the manner of evaluating evidence. The Constitutional Court concluded that the complainant's right to a fair trial and the presumption of innocence had been violated when it found that the Regional Court itself had evaluated the evidence, reassessed the findings of fact of the District Court, made its own

findings of fact, and formed its own opinion on the credibility of witnesses differently from the District Court, without taking evidence itself, not even partially.

The Constitutional Court stressed that the Court of Appeal cannot reassess the facts established by the Court of First Instance as a whole from any other point of view than whether these facts were found on the basis of evidence taken duly and to the necessary extent and whether the Court of First Instance provided convincing, internally consistent and exhaustive reasoning. The Court of Appeal may then assess the individual pieces of evidence taken before the Court of First Instance only as to the legality of the manner in which they were taken and the rationality and completeness of their assessment. The Constitutional Court further pointed out that the Court of Appeal may make its own findings of fact only if it takes further evidence or retakes a piece of evidence already taken by the Court of First Instance. If it chooses to do so, it must take the evidence in open court in accordance with the principles of directness, immediacy, and free evaluation of evidence and allow the accused the same standard of defence as if the evidence had been taken in the main trial (i.e. the accused must be allowed to be present, to ask questions if the evidence consists of the questioning of a witness, a co-accused or an expert witness, to comment on the content and manner of the evidence, to produce further evidence in response thereto, etc.), in accordance with the principles of safeguarding the rights of the defence and adversarial proceedings.

Furthermore, the Constitutional Court added that the Court of First Instance must respect the instruction of the Court of Appeal and comply with it. It may only deny such instruction in exceptional circumstances, where such an instruction is formulated explicitly unconstitutionally (e.g., where the Court of Appeal expressly orders the Court of First Instance to make certain findings of fact), or where its disguised unconstitutionality is obvious. According to the Constitutional Court, a Court of First Instance can only make such a conclusion in principle if its judgments are repeatedly

overturned by the Court of Appeal and the fact that it does so in order to force the Court of First Instance to adopt its own factual conclusions or assessment of the evidence is apparent from specific facts and, at the same time, there is no legitimate explanation for the Court of Appeal's action.

The Constitutional Court has expressed its opinion on the issue of constitutional guarantees regarding evidence in criminal proceedings in its judgment file No IV. ÚS 2773/20 of 15 February 2022, in which it dealt with the evidence in the form of **scent identification**. It stressed that such evidence cannot be the only evidence for a finding of guilt, but that there must be other corroborating facts which, together with the scent identification, form a closed chain of evidence, and that there must be no other realistic possibility that someone other than the accused person (or later the charged person) could have committed the crime. It based its finding on the conclusion that the results of the scent identification method constitute indirect or corroborative evidence, and therefore it is not possible to conclude unequivocally and without reasonable doubt from it alone that a certain person committed a crime that happened at the given place and for which that person is blamed, even though an otherwise properly and procedurally relevantly identified scent trail indicates with a certain probability that such a person was present at the scene of the crime at an unspecified time.

Due to the imminent consequences of a criminal conviction, there are other specific constitutional guarantees of a fair trial in criminal proceedings for persons suspected of, accused of or charged with a crime, and one of the guarantees of the fundamental rights of the accused may be the **right to a free defence**. This right was denied to the complainant in the case considered by the Constitutional Court in its judgment file No III. ÚS 3501/20 of 1 February 2022, in which the Court concluded that when deciding whether the accused is entitled to defence free-of-charge or for a reduced fee, it is necessary to assess the current financial possibilities of the accused and, if they are insufficient, to assess also his future potential. The sufficiency of this potential can generally be justified by the fact that the accused is able to work and earn an income, but this cannot be done without further relevant circumstances in a situation where he proves that he is

subject to highly demanding financial obligations in execution or insolvency proceedings. The courts' failure to recognise the right to a free defence without addressing the defendant's objections about his financial situation, which has been difficult for several years, constitutes a violation of his fundamental right to the free assistance of a defence counsel.



INTERNATIONAL
COOPERATION
AND EXTERNAL RELATIONS

The Constitutional Court is the judicial body responsible for the protection of constitutionality in the Czech Republic. Its right to make decisions follows from this principal task. While international relations cannot be at the core of its activities, they certainly compliment and enrich its work. 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 on various issues with its counterparts in other countries facing similar questions and thus broaden its perspective. Sharing experience with other constitutional courts may consequently help it deal more effectively with the particular issues that arise before it.

The international activities of the Constitutional Court are of both a multilateral and a bilateral character. Multilateral collaboration takes place most often through the Conference of European Constitutional Courts. In 2017 – 2021, when the Constitutional Court of the Czech Republic chaired the aforementioned organization, its international relations were naturally even more prominent. The Constitutional Court of the Czech Republic is also one of 120 members of the World Organization on Constitutional Justice, which is an even broader forum for international cooperation. Moreover, 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. Bilateral relations bring the most concrete results, especially in 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 this reason, bilateral collaboration continues to form one of the pillars of the international activities of the Constitutional Court.

The pandemic crisis deeply affected international cooperation and external relations in 2020 and 2021. The year 2022 saw no major restrictions in this respect, which was apparent in the area of international mobility and international relations. However, modern communication technologies, which as a result of the

pandemic the Constitutional Courts have been utilizing more frequently, have probably become a permanent and important complementary instrument of foreign cooperation.

Trips Abroad by Representatives of the Constitutional Court

On 10 May, Justice David Uhlíř attended an international conference organised by the Constitutional Court of Romania on the occasion of its 30th anniversary. The theme of the meeting was the role of the constitutional court as a guarantor of constitutionality, balance and stability of democracy and the rule of law. The conference was organised in a hybrid mode, i.e. with in-person as well as on-line participation of speakers. A number of personalities from the European judiciary, representing both supranational institutions and national constitutional courts, addressed the participants. Speakers included Robert Spano, President of the European Court of Human Rights, Claire Bazy Malaurie, President of the Venice Commission, Pedro José González-Trevijano Sánchez, President of the Constitutional Court of Spain, Laurent Fabius, President of the French Constitutional Council, Danutė Jočienė, President of the Constitutional Court of the Republic of Lithuania, Domnica Manole, President of the Constitutional Court of the Republic of Moldova, and José Figueiredo Dias, Justice of the Portuguese Constitutional Court. In his contribution, Justice David Uhlíř presented three decades of the Constitutional Court of the Czech Republic by discussing three sets of important legal issues that the Constitutional Court has dealt with in the past.

On Wednesday 26 May, the preparatory meeting of the Circle of Presidents of the Conference of European Constitutional Courts (CECC) took place. The Circle of Presidents is the executive and decision-making body of the CECC, which brings together forty European constitutional courts and equivalent institutions. The aim of the preparatory meeting was mainly to approve organizational matters related to the XIXth Congress of the CECC, which will be organized by the Constitutional Court of the Republic of Moldova, by virtue of its current

presidency. The meeting, chaired by the President of the Constitutional Court of the Republic of Moldova, Ms Domnica Manole, fulfilled its objectives. By agreement of the representatives of the member courts, the theme and the date of the upcoming Congress of the CECC were agreed upon. The participants of the meeting also agreed on the joint action of the CECC within the World Conference on Constitutional Justice (WCCJ), where the CECC is collectively represented by its presiding court. For the second time in a row, the meeting was held on-line.

In the middle of June, the President of the Constitutional Court Mr Pavel Rychetský visited Luxembourg. The purpose of the trip was a trio of meetings. The official programme opened with a meeting with the President and Vice-President of the Constitutional Court of Luxembourg, Mr Roger Linden and Mr Francis Delaporte. In addition to the parallels in competences and functions, the two constitutional courts are also members of international judicial organisations, namely the Conference of European Constitutional Courts (CECC) and the World Conference on Constitutional Justice (WCCJ). The first part of the meeting was dedicated to the exchange of information on the latest case law of both institutions, while the second part focused on the situation in the international judicial community and the international situation in a broader context. A day after, Mr Pavel Rychetský was welcomed at the seat of the EU Court of Justice by its President, Mr Koen Lenaerts. The conversation was devoted, among other things, to the relationship between the constitutional courts of the EU Member States and the Court of Justice. In particular, it focused on the interaction of national systems of protection of constitutionality (judicial review) with the system of protection and enforcement of EU law. The question of the preliminary reference, which is, however, much more frequently used by the general courts, was also discussed. The meeting with the President of the Court of Justice was followed by a meeting with Czech representatives of the EU judicial authorities. These are Mr Jan Passer (Judge of the Court of Justice), Ms Petra Škvařilová-Pelzl (Judge of the General Court) and Mr David Petrлік (Judge of the General Court).

On 15 and 16 September, Justice of the Constitutional Court of the Czech Republic Mr Jiří Zemánek participated in an international conference in Riga organised by the Constitutional Court of the Republic of Latvia to mark the twenty-fifth anniversary of its establishment and the centenary of the Latvian Constitution. The

main theme of the meeting was sustainability as a constitutional value and its future challenges. This general theme encompassed three other more specific topics that corresponded to the three conference sessions. The first session, which started after the opening speeches of the President of Latvia Mr Egils Levits and the President of the Constitutional Court of Latvia Mr Aldis Laviņš, focused on the sustainability of democracy and on the question of how to prevent threats to democracy in a democratic way. The second session was devoted to the sustainability of fundamental rights and the question of adapting fundamental rights to the age of modern technology. Finally, the third session dealt with environmental sustainability and the question of whether this is a political preference or a fundamental right. Justice Jiří Zemánek also took the floor during the first panel of the conference, delivering a speech on the case law of the Czech Constitutional Court on the protection of democratic values.

After a break caused by the covid pandemic, the annual international conference Constitutional Days co-organised by the Constitutional Court of the Slovak Republic and the Faculty of Law of Pavol Jozef Šafárik University was held. For the eleventh time, legal professionals from around the country as well as various foreign guests gathered in Košice. This time they discussed the Constitution of the Slovak Republic which was adopted 30 years ago. The Constitutional Court of the Czech Republic was represented by its Vice-President Prof. Jaroslav Fenyk at the event. He delivered a speech entitled *“The influence of the case law of the Constitutional Court of the Czech Republic on the decision-making of the general courts”*.

The 5th Congress of the World Conference on Constitutional Justice (WCCJ) was held in Bali, Indonesia, from 4 to 7 October. The origins of the WCCJ date back to 1996, when the European Commission for Democracy through Law (the Venice Commission) established cooperation with several regional organisations of constitutional courts or other equivalent bodies of constitutional review. In 2009, the Venice Commission organised the first congress of the WCCJ and, as a follow-up, guaranteed the establishment of its permanent body, the Bureau. The WCCJ Statute was approved in its final form in 2011. Today, this global platform consists of judicial institutions from 120 countries. The purpose of the WCCJ is to promote constructive judicial dialogue on a global scale. Membership in the WCCJ allows

for the widest possible exchange of perspectives, knowledge and experience across legal systems and cultures. It enables its members to establish ties and seek support when constitutional courts are threatened by unjustified pressure from within or even outside their own country. The Constitutional Court of the Czech Republic, represented by its General Secretary Vlastimil Göttinger, participated in the 5th Congress on the topic of “Constitutional Justice and Peace”. Our Court also attended the meeting of the Circle of Presidents of the CECC, which took place within the framework of the World Congress under the presidency of the Constitutional Court of the Republic of Moldova.

On Friday 7 October, European Commissioner for Justice Mr Didier Reynders hosted a high-level meeting, bringing together representatives of the constitutional jurisdictions of the Member States of the European Union (EU) and the Presidents of the two European courts – the Court of Justice of the EU and the European Court of Human Rights. The central theme of the conference was the protection of the rule of law and the role played by constitutional courts or equivalent bodies responsible for constitutionality review in the Member States. In contrast to traditional conference events, the Brussels meeting devoted much more time to multilateral discussion. This model allowed for a more open and direct exchange of perspectives. Justice David Uhlíř represented the Constitutional Court of the Czech Republic at the meeting.

The middle of October marked the 30th anniversary of the Academy of European Law/*Die Europäische Rechtsakademie*. The year of the Academy’s founding, 1992, was an important milestone in the history of European integration, as it was the year of the Maastricht Treaty, which established the European Union. The sovereignty of the Member States of the Union was already a sensitive topic back then, and this phenomenon remains as relevant and complex as ever. On the occasion of its anniversary, the Academy held a congress in Trier, Germany, on the legal dimension of EU sovereignty. Justice Jiří Zemánek of the Constitutional Court was also invited to the congress as a speaker and presented in a panel entitled “National and European sovereignty in the EU: an irresolvable conflict? – The position of the national constitutional courts”. Other speakers included Koen Lenaerts, President of the Court of Justice of the European Union; Jean-Claude Juncker, former President of the European Commission; Irēna

Kucina, Vice-President of the Constitutional Court of the Republic of Latvia; Elena-Simina Tănăsescu, Judge at the Constitutional Court of Romania; and a number of academics.

At the same time, an international scientific conference entitled “The Issue of Recidivism in the Criminal Policy of the State” was held at the Faculty of Law of Matej Bel University in Banská Bystrica, Slovakia. The conference was organised within the framework of the scientific research project of the Ministry of Education, Science, Research and Sport of the Slovak Republic – Recidivism as a Criterion for Evaluating the Effectiveness of Alternative Punishment. The conference was attended by many foreign guests, representatives of criminal law departments of several universities, and representatives of the judiciary and public prosecution. The Constitutional Court was represented by its Vice-President Jaroslav Fenyk.

At the end of October, the Constitutional Court of the Republic of Lithuania marked the centenary of the adoption of the first Lithuanian Constitution and the 30th anniversary of the current Constitution of the Republic of Lithuania with an international conference. The meeting, the main part of which took place on Tuesday 25 October, was co-organised by the Venice Commission. The conference, entitled “From the National Constitution to Transnational Constitutionalism”, focused on constitutional heritage, the development of official constitutional doctrine, and prospects for the sustainability of the Constitution. Using modern technologies, Vice-President of the Constitutional Court of the Czech Republic Mr Jaroslav Fenyk participated in the conference and delivered a speech summarizing thirty years of constitutional review in the Czech Republic. After an introductory presentation of the powers of the Constitutional Court of the Czech Republic, prof. Fenyk elaborated on the so-called decades of the Constitutional Court and analysed the legal challenges that the Court has dealt with during its existence. His presentation also captured the development of the jurisprudence of the Constitutional Court.

On 9 and 10 November, representatives of the Analytical Department of the Constitutional Court of the Czech Republic met in Budapest with their counterparts from the constitutional courts of Slovakia, Romania, Croatia, Serbia,

Slovenia and Hungary in a seminar aimed at exchanging information on methods of working with foreign case law and introducing the *European Constitutional Communication Network* (ECCN) project. The essence of the above project is to make available and share decisions of various European constitutional courts in English via a database that already contains hundreds of English abstracts (including those related to the case law of the Constitutional Court of the Czech Republic).

At the beginning of December, the Court of Justice of the EU marked its 70th anniversary with a Judicial Forum, this time entitled “Bringing Justice Closer to the Citizen”. A meeting of representatives of the EU judiciary (supranational and national) opened on Sunday 4 December with a screening of a documentary on the Court of Justice, specially made for its 70th anniversary. Monday 5 December was devoted entirely to a conference focusing on three topics: 1. the preliminary ruling procedure - recent developments, 2. the concept of judicial independence in EU law, and 3. The General Court and conflicts in Europe: recent developments in the field of restrictive measures against Belarus and Russia. In addition, three parallel seminars were held in the afternoon, focusing on the following questions: a) How can judicial decisions be made more ‘readable’?, b) In the era of the GDPR, by what name should one refer to judicial decisions?, and c) How should courts communicate what they do?. This year’s jubilee Judicial Forum concluded on Tuesday (6 December) with a formal session which was attended by HRH Prince Guillaume, Hereditary Grand Duke of Luxembourg. The Constitutional Court of the Czech Republic was represented in Luxembourg by its President, Mr Pavel Rychetský.

Visits and Other Events at the Constitutional Court in Brno

At the beginning of March, the Constitutional Court of the Czech Republic welcomed the representatives of the Congress of Local and Regional Authorities (hereinafter referred to as the Congress). The Congress is a pan-European assembly representing the local and regional authorities of all forty-six member states of the Council of Europe. In general, its mission is to promote dialogue and cooperation between national governments and local and regional authorities. Within the preview of its activities, the Congress monitors the application of the European Charter of Local Self-Government (hereinafter referred to as the Charter) in the member states of the Council of Europe. The Charter was adopted in Strasbourg on 15 October 1985. In the Czech Republic, the Charter has been in force since 1 September 1999. The Congress carries out its monitoring activities through the Committee on the Honouring of Obligations and Commitments. The so-called Monitoring Committee makes regular visits to signatory countries and then, based on the findings, drafts reports and recommendations. Country-by-country monitoring missions to each member state are undertaken approximately every five years. The most recent journey of the Monitoring Committee to the Czech Republic included a visit to the Constitutional Court. The discussion between the members of the Monitoring Committee and the representatives of the Constitutional Court focused, among other things, on the place and importance of the Charter in the national legal system, the constitutional protection of local and regional self-government in the Czech Republic, and the case law of the Constitutional Court concerning the protection of local and regional self-government.

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 Senate of the Parliament of the Czech Republic and Justices of the Constitutional Court took place on 8 September in Brno.

On 1 July 2022, the Czech Republic took over the Presidency of the Council of the European Union. For the second time in its history, it has become a decisive actor in setting the agenda and priorities of this key EU institution. Naturally, the Presidency is considered one of the most effective tools for enhancing the prestige of the presiding country and its ability to influence EU activities with its own perspectives and leadership. For six months, the country holding the Presidency becomes the centre of decision-making on EU policy. Although the Presidency is primarily associated with the executive branch, a number of domestic constitutional bodies are involved in the relevant agenda. As the supreme body of the judiciary, the Constitutional Court is aware of the importance of the Presidency. However, in view of its specific mission to protect constitutionalism, and taking into account the political and international connotations of its activities, it did not participate in the activities of the Presidency. On the other hand, given the significance of the occasion, it organised its own expert conference, which was complementary to the official events of the Czech Presidency and conceived as a unique contribution to the pan-European discourse on justice and law. Therefore, on 8 September 2022, the Constitutional Court hosted a symposium entitled: *Multilevel Justice: Judicial Protection in the Context of the Interaction of National, Supranational and International Systems*. Its purpose was to provide a more profound insight into the judicial redress system, especially from the perspective of a judge who works

not only with national legislation in court proceedings, but must also perceive and apply the rights guaranteed by the Convention and the EU legal system. More specifically, the aim of the event was to offer the professional judicial community the opportunity to discuss the intersections of three legal systems, which are linked because they all contain human rights regulations, but at the same time remain mutually autonomous. Therefore, a judge who decides a particular case is required to have an advanced knowledge of the context, as well as the ability to analyse and evaluate which of the relevant catalogues of rights is applicable in the given case, or how to resolve their possible conflict. Representatives of all levels of the judicial structure accepted the invitation to present their contributions, including representatives of the relevant supranational courts, i.e. the Court of Justice (including the General Court) and the European Court of Human Rights.

On 13 September, a delegation of the Supreme Court of Israel, led by its President, Ms Esther Hayut, and also consisting of Judge Yael Willner and Judge Noam Sohlberg, visited the Constitutional Court. The three top Israeli judges were in the city of Brno at the invitation of the Supreme Court of the Czech Republic. The judicial system of the State of Israel does not have a specialized body for the protection of constitutionality, which in the Czech Republic is the Constitutional Court. It is the Supreme Court of Israel that is entrusted with the task of constitutional review. In this respect, therefore, the competences of the Constitutional Court of the Czech Republic and the Supreme Court of Israel overlap. The bilateral visit was hosted by the President of the Constitutional Court Pavel Rychetský, who was accompanied by the Vice-President of the Court Jaroslav Fenyk and Justice Pavel Šámal. At the beginning of the meeting, President Rychetský spoke briefly about the history of the Czech or Czechoslovak constitutional judiciary and the role of the Constitutional Court in the legal and political system of the Czech Republic. President Esther Hayut then spoke on the same topic referring to Israel. Afterwards the discussion focused on two more specific topics, namely the constitutional and human rights challenges faced by the judiciary during the coronavirus pandemic and the issue of human dignity in the jurisprudence of the courts. At the end of the visit, the guests were offered a tour of the Constitutional Court seat, which is one of the most remarkable and important buildings in the city of Brno.

The Constitutional Court of the Czech Republic pays due attention to international judicial cooperation and is a stable part of supranational judicial structures. As mentioned above, from 2017 to 2021, our Court chaired the CECC, the most important platform for multilateral cooperation of the highest bodies of constitutional review. The presidency was handed over to the Constitutional Court of the Republic of Moldova. In light of the handover, a bilateral meeting between the two courts took place in Brno on 7-8 November. The programme of the visit opened with a dinner on Monday. The following day, a several-hour meeting took place with the participation of the Plenum of the Constitutional Court of the Czech Republic. In addition to topics associated with the current international situation and international judicial cooperation, the discussions focused on the redress of historical wrongs through the courts. Given the still relatively recent experience of both countries with totalitarian power, the topic has not lost its relevance. The protection of democratic values and the rule of law was also discussed. The delegation of the Constitutional Court of the Republic of Moldova was led by the President of the Court, Ms Domnica Manole. It was also composed of Justice Nicolae Roşca and Justice Liuba Şova.

In November, a working meeting of the President of the Constitutional Court of the Czech Republic Pavel Rychetský, the President of the Constitutional Court of the Slovak Republic Ivan Fiačan and the President of the Constitutional Court of the Republic of Austria Christoph Grabenwarter took place in Brno. The trilateral format facilitated discussion on topics that are relevant for these three neighbouring countries and their constitutional judiciaries. In particular, the Presidents discussed international and domestic law issues, for example, with regard to the legal challenges arising from the COVID-19 pandemic and the legal measures taken as a response.

It has become a tradition that heads of foreign missions, especially those representing close and partner countries in the Czech Republic, meet with representatives of the highest judicial bodies, including the Constitutional Court. Therefore, the President of the Constitutional Court welcomed several heads of diplomatic missions at the seat of the Constitutional Court this year. Among them were Mr Luís de Almeida Sampaio, Ambassador of Portugal; Mr Daan Feddo Huisinga, Ambassador of the Kingdom of the Netherlands; Ms Christy Agor,

Chargé d'affaires at U.S. Embassy Prague; and Mr Andreas Künne, Ambassador of the Federal Republic of Germany.

Although the Constitutional Court must first and foremost devote itself to protecting the Czech constitutional order, it has also long sought to develop its educational activities. In addition to a number of visits and discussions organised for students, the Constitutional Court hosted at its seat, for example, an international moot court (in cooperation with the Masaryk University Faculty of Law and with the participation of foreign professors and students), i.e. a simulated court hearing, which is a popular tool for improving the education of law students. The Constitutional Court also hosted a seminar of the Judicial Academy on proceedings before the Constitutional Court, which gave its participants the opportunity to learn about the latest case law of the Constitutional Court and how to conduct research in the NALUS system (a database of judgments and resolutions of the Constitutional Court). Last but not least, we can mention the programme aimed at children that was part of the conference organised by the Deputy Public Defender of Rights. Our youngest generation had the opportunity to visit the Constitutional Court and discuss the protection of constitutionality and the rule of law with its employees. Finally, after a hiatus caused by the coronavirus pandemic, the Constitutional Court re-joined the Brno Open House project, which allowed the general public to visit, among others, the Provincial Chamber building, which serves as the seat of the Constitutional Court since its very establishment.



Justice of the Constitutional Court David Uhlir at the international conference organized by the Constitutional Court of Romania on the occasion of its thirtieth anniversary (Bucharest, May 2022)



President of the Constitutional Court Pavel Rychetský during an online meeting of the Circle of Presidents of the Conference of European Constitutional Courts (Brno, May 2022)



President of the Court of Justice of the European Union Koen Lenaerts
and President of the Constitutional Court of the Czech Republic Pavel Rychetský (Luxembourg, June 2022)



Judges of the Court of Justice of the European Union Petra Škvařilová-Pelzl (General Court), Jan Passer (Court of Justice) and David Petrlík (General Court) with President of the Constitutional Court Pavel Rychetský (Luxembourg, June 2022)



President of the Constitutional Court Pavel Rychetský at the opening of the symposium organised by the Constitutional Court on the occasion of the Czech Presidency of the Council of the European Union (Brno, September 2022)



The symposium was dedicated to the topic *Multilevel Justice: Judicial Protection in the Context of the Interaction of National, Supranational and International Systems*



Delegation of the Supreme Court of the State of Israel visiting the Constitutional Court of the Czech Republic (Brno, September 2023)

From left to right: Vice-President of the Constitutional Court Jaroslav Fenyk, Judge Noam Sohlberg, Judge Yael Willner, President Esther Hayut (Supreme Court of the State of Israel), President of the Constitutional Court Pavel Rychetský, Justice of the Constitutional Court Pavel Šámal



On the occasion of the twenty-fifth anniversary of its establishment and the centenary of the Latvian Constitution, the Constitutional Court of the Republic of Latvia held an international conference on the topic of sustainability as a constitutional value (Riga, September 2022)



Among the speakers at the conference was Justice Jiří Zemánek, who spoke about the case law of the Czech Constitutional Court on the protection of democratic values





The Constitutional Court of the Czech Republic was represented in Košice by its Vice-President Jaroslav Fenyk, who delivered a speech entitled “Impact of Jurisprudence of the Constitutional Court of the Czech Republic on Decision-making of General Courts”.



The Constitutional Court of the Republic of Lithuania commemorated the one hundredth anniversary of the adoption of the first Lithuanian Constitution and the thirty-year anniversary of the current Constitution of the Republic of Lithuania with an international conference. Jaroslav Fenyk, Vice-President of the Constitutional Court, spoke at the conference via video recording (Vilnius, October 2022)



President of the Constitutional Court Pavel Rychetský welcomes the President of the Constitutional Court of the Republic of Moldova Domnica Manole to a bilateral meeting (Brno, November 2022)



The bilateral meeting, which took place in the presence of the full Constitutional Court, focused not only on international cooperation, but also on redressing historical wrongs through judicial means and protecting democratic values and the rule of law



The President of the Constitutional Court of the Republic of Moldova, Domnica Manole, was accompanied by Judges Nicolae Roșca and Liuba Șova



STATISTICS OF DECISION-
MAKING IN 2022

Statistics of decision-making of the Constitutional Court in 2022

Decisions in 2022 in total			Judgments in 2022 ⁱ⁾		
3,568			153		
judgments	resolutions	opinions of the Plenum	granted (at least partially)	dismissed (at least partially)	granted and dismissed
153	3,413	2	128	28	3

Average length of proceedings in cases completed in 2007–2022

		days	months and days	
Average length of proceedings:	in all matters	146	4 months	26 days
	in matters for the Plenum	316	10 months	16 days
	in matters for a panel	143	4 months	23 days
	in matters decided upon by a judgment	364	12 months	4 days
	in matters decided upon by a rejection for being manifestly unfounded	152	5 months	2 days
	other methods of termination of the proceedings	83	2 months	23 days

Average length of proceedings in cases completed in 2022

		days	months and days	
Average length of proceedings:	in all matters	81	2 months	21 days
	in matters for the Plenum	277	9 months	7 days
	in matters for a panel	79	2 months	19 days
	in matters decided upon by a judgment	268	8 months	28 days
	in matters decided upon by a rejection for being manifestly unfounded	78	2 months	18 days
	other methods of termination of the proceedings	70	2 months	10 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.

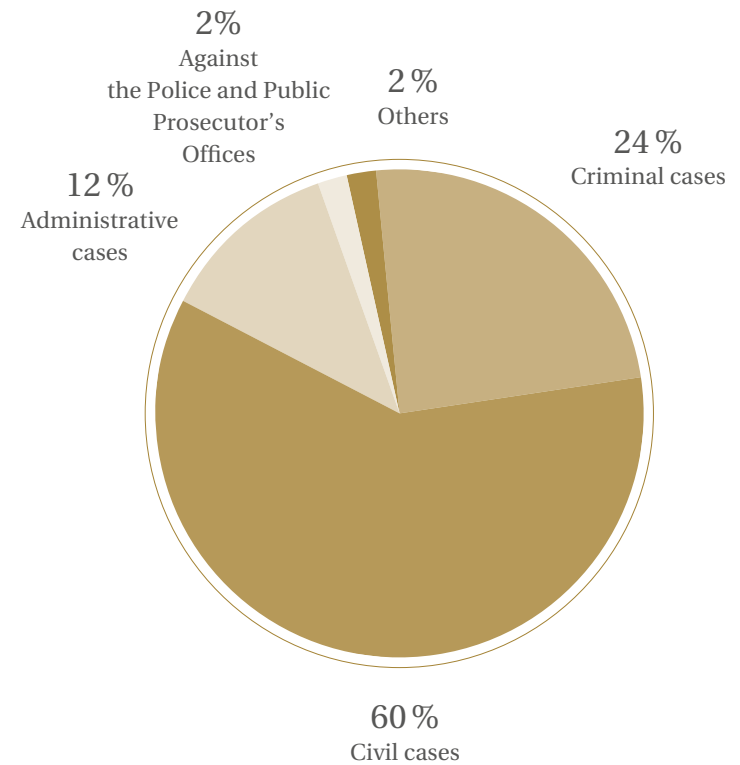
Public oral hearings

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
2022*	0	0

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

Substantial structure of petitions to initiate proceedings in 2022

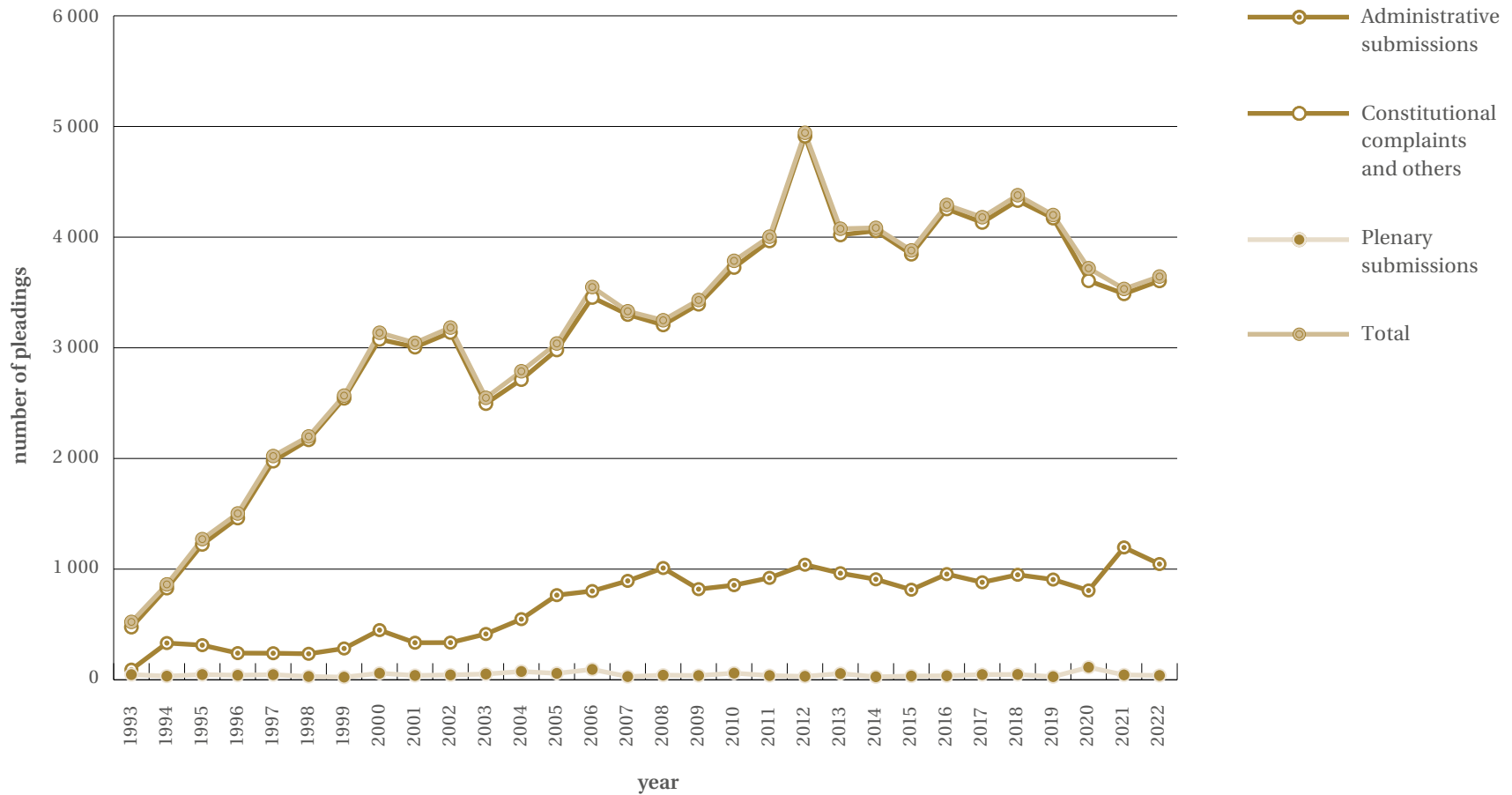


Statistics in terms of petitions to initiate proceedings and other submissions

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
2022	3 644	39	3 605	1 046
Total	94 965	1 360	89 961	19 303

Developments of the numbers of submissions 1993–2022





MEDIA PROFILE
OF THE CONSTITUTIONAL
COURT

The Constitutional Court and its decision-making activities are a frequent subject of media attention. This fact is manifested by the number of articles on the Constitutional Court published in 2022 in the press, on the internet and reports in television or radio broadcasts, amounting to approximately 21,000. Online media accounted for the largest share of publicity for the Constitutional Court with a full sixty-two per cent. Seventeen per cent share came from television and radio. Among the news outlets that reported on the Constitutional Court most frequently were news sites such as seznamzpravy.cz or novinky.cz. Among the national daily newspapers, the most attention was paid to the Constitutional Court by *Právo* which published 255 articles, 69 of which used the name of the Court or the name of its President in the headline. The media outlet with the highest overall number of reports on the Constitutional Court was the public broadcaster ČT24.

After a significantly higher level of publicity at the beginning of the year when the topics related to the COVID-19 pandemic were reverberating, the media coverage of the Constitutional Court slowly stabilized at the usual level. A significant increase then occurred from October onwards. In autumn, the media focused their attention on the local and Senate elections and reported on a number of other specific Court decisions. In terms of media coverage, December was the most prominent month. In the last month of the year, more than 3,600 articles on the Constitutional Court were recorded. At that time, the media mainly covered the issue of the early appointment of a new President of the Constitutional Court and the constitutional complaints of rejected candidates for the office of President of the Czech Republic.

In particular the public media pays systematic attention to the Constitutional Court, namely the Czech Press Office (hereinafter referred to as ČTK), Czech Television (hereinafter referred to as ČT) and Czech Radio (hereinafter referred to as ČRo). Many of the decisions are echoed in commercial media. The Court accompanies judgments that are interesting to the media or otherwise significant decisions with press releases to ensure that they are reported on as accurately as possible as the judgments themselves might not always be sufficiently clear to journalists without a legal background. However, the press releases published on the Court's website under the heading *Aktuálně* (available from <http://www.usoud.cz/aktualne/>) are also of importance to the professional public and laypersons for whom they provide an easy way to quickly familiarise themselves with

the main aspects of the judgments being published. In addition to its own decision-making activities, the Court also informs the media and the public about other interesting aspects of its activities, foreign trips of its officials and justices, and visits by prominent personalities. In 2022, a total of 78 press releases were published in Czech, 34 press releases in English, as well as 153 announcements of judgments. During the past year, the Constitutional Court website recorded a total of 326,333 visits from a total of 172,907 users. The highest interest was directed to the sections *Aktuálně/Current Affairs* (33,228 page views), *Současní funkcionáři a soudci/Current Justices and Court Officials* (31,210 page views) and *Vyhledávání rozhodnutí/Decisions Browser* (29,898 page views).

ČTK mentioned the Court in approximately 250 news releases in 2022. As in previous years, it mainly focused on the decision-making of the Plenum of the Court and also on some complaints in long-lasting criminal cases. The highest news priority was given to information devoted to the dispute regarding the Flower Garden (*Květná zahrada*) in Kroměříž or judgments on the Pandemic Act, birth number as a gender identifier or the claim for lump-sum compensation for the explosion at the Vlachovice-Vrbětice ammunition depot site. Considerable attention was also given to the coverage of the handling of the complaint of Cardinal Dominik Duka and the lawyer Ronald Němec in the so-called theatre case (*II. ÚS 2120/21, On the defamatory depiction of representatives of the Roman Catholic faith in the context of a theatrical performance linked to freedom of speech*). Throughout the year, ČTK followed discussions about the possible new members of the Constitutional Court and its future President. In late 2022, news attention turned to the judicial review of the registration process ahead of the presidential election.

ČT also frequently focuses its newsreels on the judiciary and consistently monitors case law and developments at the Constitutional Court. In 2022, the Brno editorial office of ČT prepared several specials for the news block of ČT24 the subject of which were certain important decisions of the Constitutional Court. For example, there was a broadcast on the Police Act, the Pandemic Act or the military intelligence case, as well as a piece on the 30th anniversary of the Constitutional Court. In addition, the Brno newsroom of ČT produced several reports that were broadcast within the regional *Události* programme, such as a report on the ownership of the Flower Garden or on the issue of gender reassignment. As mentioned above,

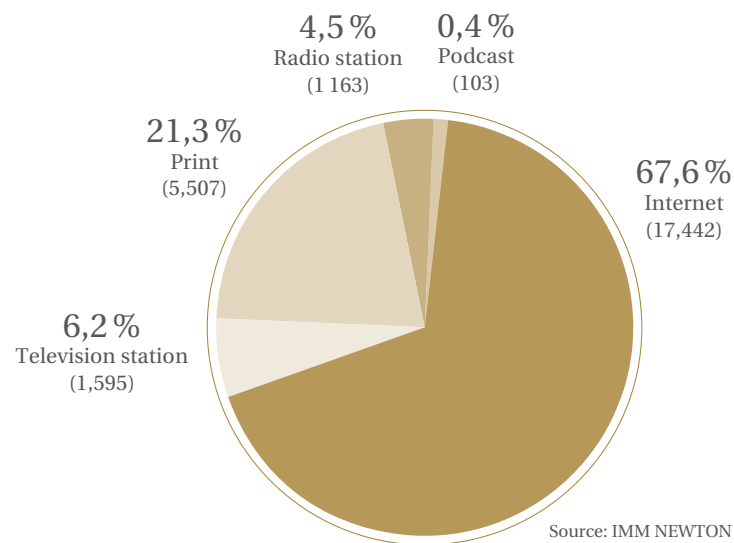
the TV channel ČT24 even became the media outlet running the highest number of contributions on the Constitutional Court overall in the past year. On average, it mentioned the Constitutional Court twice a day. Guests on the *Interview ČT24* programme included the President of the Constitutional Court Pavel Rychetský or the Head of the External Relations and Protocol Department Pavel Dvořák.

More than 1,100 different contributions (regardless of the number of broadcasts and stations) have been prepared on the issue of constitutional justice on Czech Radio stations (in the Czech Republic and abroad). Traditionally, the topic was most strongly reflected in the broadcasts of the news stations *Radiožurnál* and *Plus*, and also, for example, on the airwaves of *Dvojka* and *Český rozhlas Brno*. The President of the Constitutional Court Pavel Rychetský appeared on all public service channels in 85 different contributions (regardless of the number of their reruns), including thematic programmes (*Dvacet minut Radiožurnálu* and others). The topics naturally focused on the case law of the Constitutional Court and also on the issue of the Justices turnover at the Constitutional Court (already at the end of the year, a discussion started around the possible appointment of a new President of the Constitutional Court by the outgoing president of the country, but before that also about the unsuccessful proposal for Petr Poledník being appointed a Justice of the Constitutional Court), the anniversary of the dissolution of Czech and Slovak Federal Republic, and security issues in relation to the conflict in Ukraine. The radio also noted Pavel Rychetský's absence from the awarding of state honours, but also, on the contrary, the fact that he was awarded honorary citizenship of Brno. The topic of constitutional justice also appeared regularly on the news website *iRozhlas.cz*.

In 2014, the Constitutional Court was the first court in the Czech Republic to set up its official profiles on the social networking sites Facebook (available from <https://www.facebook.com/ustavnisoud>) and Twitter (available from https://twitter.com/usoud_official). In 2016, the Supreme Court also joined Twitter (@Nejvyšisoud) and was followed by the Supreme Administrative Court (@nssoudcz) in October 2017. In 2019, the Prosecutor General's Office set up its Twitter profile as well. The aim of this is to provide information (not only) on the decision-making activities of the Constitutional Court easily and immediately to users of social networks the number of whom is growing. The immediate feedback from the recipients of

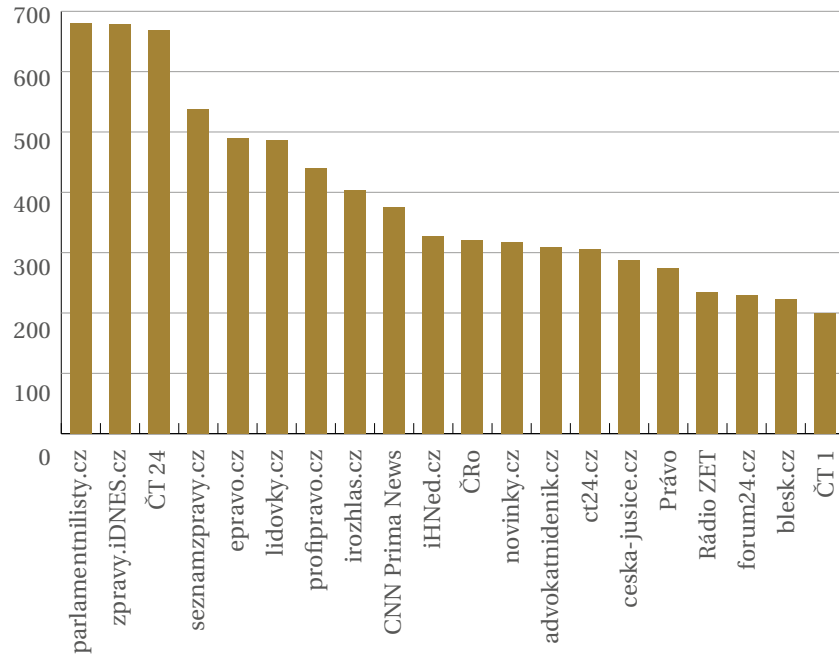
the information should also be considered to be a clear advantage of such an approach. The overwhelming majority of those interested in information published on profiles of the Constitutional Court are professionals, students of law faculties, high schools, news media, as well as ordinary citizens who do not want to rely only on information provided by mass media. Another benefit is the dissemination of published information among the users themselves who share individual posts or add their comments. The official profiles are regularly updated and followed by a large number of users. As of the last day of the year 2022, more than 9,500 people followed the events at the Constitutional Court via Facebook. The Constitutional Court's Twitter profile was followed by a total of 13,400 users at the end of 2022, including individuals, political groups, authorities or media outlets themselves. During the previous year, the Constitutional Court had published a total of 179 tweets, i.e. brief messages, on Twitter. The trend of these tweets being taken up as official quotes in printed periodicals continues.

Share of different types of media in reporting on the Constitutional Court in 2022



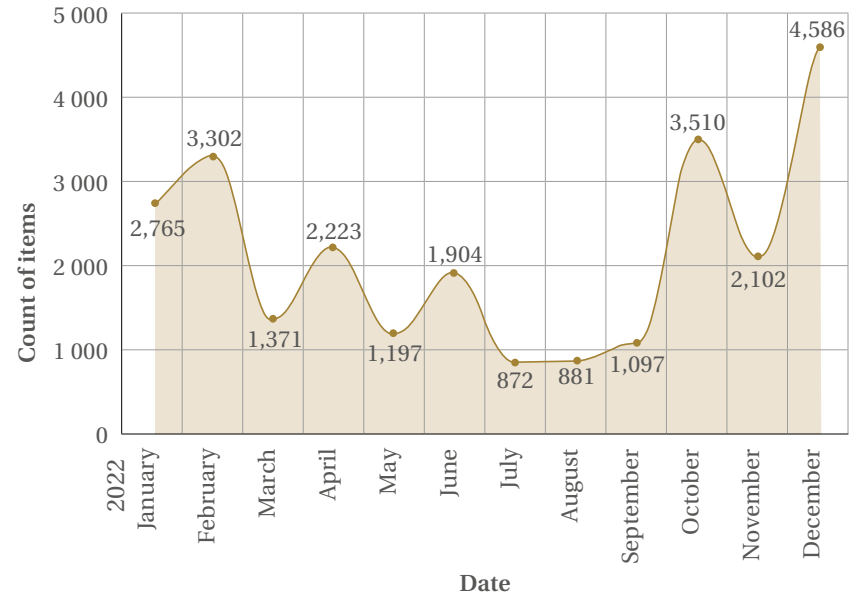
Source: IMM NEWTON Media, a. s.

Twenty media outlets that mentioned the Constitutional Court most frequently in 2022



Source: IMM NEWTON Media, a. s.

Distribution of the number of reports on the Constitutional Court during 2022



Source: IMM NEWTON Media, a. s.

YEARBOOK OF THE CONSTITUTIONAL COURT
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