2018

Yearbook of the Constitutional Court of the Czech Republic

YEARBOOK
2018

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“Everyone has the right to demand that her human dignity, personal honour, and good reputation be respected, and that her name be protected.”

(Art. 10 Sec. 1 of Charter of Fundamental Rights and Freedoms)

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Introduction

Dear readers,

what you hold in your hands is a book which maps the events of the year 2018 from the perspective of the Constitutional Court of the Czech Republic. The year brought with it a number of challenges and I'm very glad to say our Constitutional Court has successfully faced them.

Years ending with the number "8" have special significance to the Czech Republic. It was in 1918 that World War I ended and Czechoslovakia was born. Twenty years later, this same Czechoslovakia became the first victim of Hitler's aggression and, in the year 1948, on the other hand, it fell to socialism. In the year 1968, we were able to take a breath of freedom but the occupation cut Czechoslovakia back down. Twenty years later, in 1988, Prague saw the first mass protests against the socialist regime, a regime which fell in Czechoslovakia within the year.

The year 2018 resonated with all these anniversaries but also with the fact that the Constitutional Court celebrated 25 years since its establishment – along with the rest of the Czech Republic. As the most powerful institution of judicial power, the Constitutional Court wished to make sure that Czech courts commemorated this anniversary. The Czechoslovak Republic, after all, was the first in the world to anchor constitutional law in its Constitution. On October 24th, 2018, the Constitutional Court hosted a gathering in celebration of its anniversary and the founding of the Czechoslovak Republic itself. The gathering took place at the Constitutional Court´s building, which had gone through painstaking renovations and is now one of the most beautiful palaces of justice in Europe. From this celebration on, the justices donned new gowns, which you may see on the photographs in the supplement of this publication.

The anniversary of the year 2018 found its reflection on the international scale as well. The Circle of Presidents of the Conference of European Constitutional Courts held its meeting in Prague. The Czech Republic or, rather, its Constitutional Court, was voted to head this prestigious organization, which it will do until 2020. At the June meeting in Prague in 2018, over thirty European constitutional courts discussed what the XVIIIth Congress of this organization should look like and even decided on its focus. In 2020, the theme will be "Human Rights and Fundamental Freedoms – the Relationship of International, Supranational and National Catalogues in the 21st Century." The meeting of the Circle of Presidents was accompanied by an international conference titled "Our Beginnings: Hans Kelsen´s Heirs" which the organizer – that is, the Constitutional Court – dedicated to its 25th anniversary of its existence.

Besides all these reasons for celebration, however, the duties of the Constitutional Court did not diminish. The Constitutional Court received nearly 4.400 petitions to initiate proceedings and a similar number of cases was decided that same year. For a clearer idea – in the year 2018, every justice handled on average 293 cases, while the average length of the proceedings was reduced to 141 days. You can find a detailed analysis of our key judgments and statistics in chapters 4 and 5 of this yearbook.

Despite the best efforts of us, the justices, it seems that neither small human suffering nor great social issues have diminished. Constitutional courts must not loosen their grip, however, even though the end of their efforts is out of sight. John Locke wrote as early as in the 17th century: "The end of law is not to abolish or restrain, but to preserve and enlarge freedom. For in all the states of created beings capable of law, where there is no law, there is no freedom." I would like to assure all readers that even in 2019, the Constitutional Court of the Czech Republic will protect the law, so that we may continue to live in freedom.

I wish you an interesting reading –

Jaroslav Fenyk
Vice-President of the Constitutional
Court of Czech Republic and
General Rapporteur of the CECC

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About the Constitutional Court

History of Constitutional Judiciary

The Czechoslovak First Republic

The history of the constitutional judiciary in our territory began shortly after the birth of the Czechoslovak Republic when, pursuant to the Constitutional Charter of 1920, a separate Constitutional Court was established in 1921. The seven-member body was formed in such a way that the President of the Republic appointed three Justices, including the Chairman, and a further four were delegated to their offices, two from the Supreme Court and two from the Supreme Administrative Court. Justices had a ten-year term of office. The first group of Justices of the Constitutional Court of the Czechoslovak Republic was appointed on 7 November 1921: Karel Baxa became the President, and Antonín Bílý, Petrovič Mačik, Josef Bohuslav, Václav Vlasák, František Vážný and Bedřich Bobek the other Justices. After the term of office of the Court's first composition had expired, a new contingent of Justices was only appointed in 1938; naturally, it did not hold court during the war period, and its work was not resumed at the end of the war. The work of the First Republic's Constitutional Court is viewed as a subject of little interest and not of great significance.

The Constitutional Judiciary during the Communist Regime (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 federalized in 1968, as the Act on the Czechoslovak Federation not only envisaged the creation of a Constitutional Court for the federation, but also of a Constitutional Court for each national republic. None of those courts was ever established, however, even though the unimplemented constitutional directive 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 operational Constitutional Court of the Czech and Slovak Federal Republic (ČSFR) was established pursuant to a federal constitutional act from February 1991. That federal court was a twelve-member body in which each of the Federation's constituent republics was represented by six Justices, whose term of office was meant to be seven years. The Court's seat was also in Brno. Ernest Valko was appointed the President of the Constitutional Court of the ČSFR, and Vlastimil Ševčík became its Vice-president. The members of Panel I were Justices Marián Posluch, Jiří Malenovský, Ivan Trimaj, Antonín Procházka, with Ján Vošček as a substitute member. Panel II comprised Justices Pavel Mates, Peter Kresák, Viera Strážnická, Vojen Güttler, and Zdeněk Kessler as 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 work, followed the federal court's legal views in a number of its decisions.

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

Following 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 first Constitutional Court of the Czech Republic began working on 15 July 1993. On that day, Václav Havel, the then President of the Republic, appointed twelve of the fifteen Justices of this Court for a ten-year term of office, consent to their appointment having been given at that time by the Assembly of Deputies of the Parliament due to the fact that the Senate did not yet exist. This occurred a mere month after the Assembly of Deputies had approved Act No. 182/1993 Sb., on the Constitutional Court, which, with reference to Article 88 of the Constitution, governed in particular the organization of this 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, moreover, in a newly formed state. It is therefore appropriate to recall the initial composition of the Constitutional Court of the Czech Republic.

Zdeněk Kessler was the President of the Constitutional Court until his resignation for health reasons in February, 2003, and Miloš Holeček was the Vice-president (following Zdeněk Kessler's resignation, the President of the Republic, Václav Klaus, appointed him President for the remainder of his term of office). 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 filled further in November 1993 with the addition of Ivana Janů who also became the second Vice-president, and Eva Zarembová, and then completed at the end of March 1994, when the President of the Republic appointed the fifteenth and final Justice, Pavel Varvařovský.

The Constitutional Court continued to sit in this composition until 8 December 1999, when Iva Brožová resigned from office. Jiří Malenovský (who was the first Justice to be approved by the Senate of the Parliament) replaced her on 4 April 2000. In connection with her election as judge *ad litem* of the International Criminal Tribunal for the former Yugoslavia, Ivana Janů resigned from office on 9 February 2002, both as Justice and Vice-president of the Constitutional Court, and on 20 March of that year, Eliška Wagnerová was appointed. 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, for health reasons) from the office of President of the Constitutional Court, the Court's bench was filled out by the appointment on 3 June 2003 of Miloslav Výborný.

The bench did not remain full for very long, as on 15 July 2003, the terms of office of Justices Vojtěch Cepl, Vladimír Čermák, Vojen Güttler, Pavel Holländer, Vladimír Jurka, Vladimír Klokočka, Vladimír Paul, and Antonín Procházka expired, as did that of the President of the Constitutional Court, Miloš Holeček. A month later (6 August 2003) Vojen Güttler a Pavel Holländer were appointed for a further term of office, with Pavel Holländer also promoted to the position of Vice-president.

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

In 6 August 2003, on the same day he reappointed Vojen Güttler and Pavel Holländer, the President of the Republic appointed the current President of the Constitutional Court, Pavel Rychetský. Other departing Justices were gradually replaced in the second half of 2003 by Dagmar Lastovecká (29 August 2003), Jan Musil (27 November 2003) and Jiří Nykodým (17 December 2003); the following year brought the appointments of Stanislav Balík (26 May 2004) and Michaela Židlická (16 June 2004), and the reappointment of Ivana Janů (16 September 2004). However, the Court's bench was still not at full strength, a situation that 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, and two months later (8 May 2004), Jiří Malenovský resigned as a Justice to become a judge of the Court of Justice of the European Communities in Luxembourg. The Constitutional Court attained a full composition only in December 2005, after Vlasta Formánková was appointed on 5 August 2005 and Vladimír Kůrka was appointed the fifteenth constitutional Justice (15 December 2005).

Vladimír Kůrka's appointment brought to an end 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 to 20 March 2012 when the mandate of 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 in particular in the second half of 2013: the terms of office of a further nine

Constitutional Court justices expired, as follows: those of František Duchoň (6 June 2012), Jiří Mucha (28 January 2013), Miloslav Výborný (3 June 2013), Pavel Holländer (6 August 2013), Vojen Güttler (6 August 2013), Pavel Rychetský (6 August 2013), Dagmar Lastovecká (29 August 2013), Jan Musil (27 November 2013), and Jiří Nykodým (17 December 2013). The departing Justices were gradually replaced by Milada Tomková (appointed Vice-president of the Constitutional Court on 3 May 2013), Jaroslav Fenyk (3 May 2013, appointed Vice-president of the Constitutional Court on 7 August 2013), Jan Filip (3 May 2013) and Vladimír Sládeček (4 June 2013).

Constitutional Court under the presidency of Pavel Rychetský (current third period)

On 7 August 2013, Pavel Rychetský was appointed President of the Constitutional Court by the President of the Republic for the second time, and together with him, Ludvík David and Kateřina Šimáčková were appointed as Justices. The rotation continued by the appointment of further Justices of the Constitutional Court, namely, Radovan Suchánek (as of 26 November 2013), Jiří Zemánek (20 January 2014), and Jan Musil for the second term of office (20 January 2014). In 2014, the terms of office of three Justices of the Constitutional Court expired: Stanislav Balík (26 May 2014), Michaela Židlická (16 June 2014), and Ivana Janů (16 September 2014). Vojtěch Šimíček (12 June 2014), Tomáš Lichovník (19 June 2014) and David Uhlíř (10 December 2014) were gradually appointed to fill the vacancies. The periodical rotation was completed in 2015 when the mandates of Justices Vlasta Formánková (August 2015) and Vladimír Kůrka (December 2015) expired. The vacant positions were taken by Jaromír Jirsa (October 7, 2015) and Josef Fiala (December 17, 2015). The Constitutional Court´s restoration has been concluded in 2015.

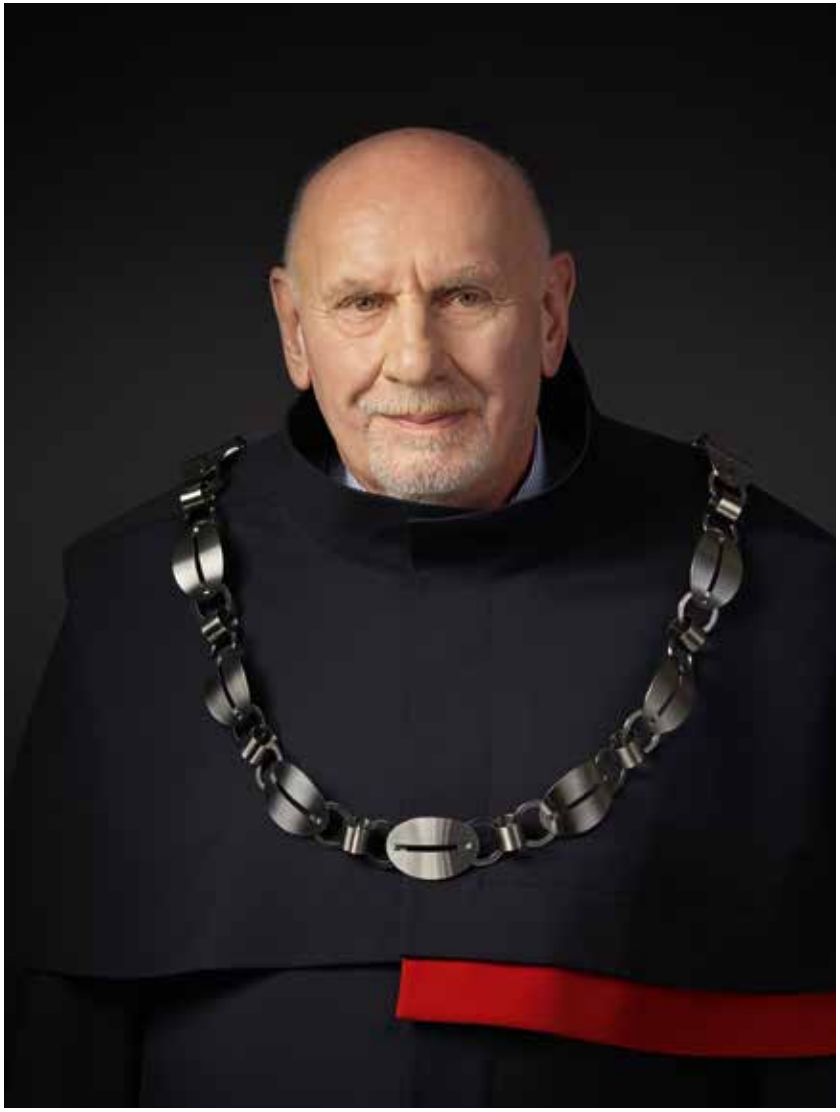
Justices and Structure of the Court

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, through the Office of the President of the Republic, 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 of the candidate as a Justice of the Constitutional Court is given if a simple majority of Senators present vote in favor.

If the Senate grants consent, the President appoints the candidate as Justice of the Constitutional Court, and the candidate thereby becomes a Justice of the Constitutional Court. The Justice enters into office by taking the oath of office prescribed by the Constitution and administered by the President.

It is an indispensable condition to holding office that an appointed Justice of the Constitutional Court take the oath of office prescribed by the Constitution and administered by the President. If he/she does not take the oath of office, or does so with reservations, the candidate does not become a Justice of the Constitutional Court.



CURRENT JUSTICES

PAVEL RYCHETSKÝ
President (6 August 2003 – 6 August 2013)
President (reappointed since 7 August 2013);

JUDr. Pavel Rychetský (*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, 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 "Normalization" 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 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 (CSFR) and Chairman of the Government Legislative Council, ensuring both the coordination of the CSFR legislative work and the CSFR Government's cooperation 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 International Relations Faculty, Prague School of Economics. He published many scholarly and popular articles, both nationally and internationally. In 1996–2003, he was a Senator in the Senate, Parliament of the Czech Republic ("Senate"), where, until he become Deputy Prime Minister, he served as the Chairman of its Constitutional Law Committee and a member of its Mandate and Immunity and Organizational Committees. In 1998–2002,

he was Deputy Prime Minister of the Czech Government and Chairman 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 Chairman of the 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 Czech Senate had granted consent to his appointment, he was appointed a Justice and the President of the Constitutional Court of the Czech Republic ("Constitutional Court") by President Václav Klaus. 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 Chairman of the Czech Lawyers Union and a member of Science Boards of the Faculty of Law of Charles University in Prague, Faculty of Law of Masaryk University in Brno, and Faculty of Law of Palacký University in Olomouc.

In 2015, he was introduced as a new member of the Legal Hall of Fame for exceptional life-long contribution to law. In 2016, he received the František Palacký Award by Palacký University in Olomouc which primarily appreciated his participation in lecturing for Master's and Ph. D. students at Law School of PU, 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 his being an outstanding personality which contributed to the development of democracy and humanity.

MILADA TOMKOVÁ
Vice-President (since 3 May 2013)

Graduated from the Charles University Law Faculty, obtaining the title Doctor of Law summis auspiciis. In 1987–2003, she worked at the Ministry of Labor and Social Affairs, from 1992, as Director of the Legislative Department, where she was responsible for the drafting of 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 of the Czech Republic. 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 judge in 2003 when she joined the Supreme Administrative Court, where she held the positions of Presiding Judge at 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 works externally with the Charles University Law Faculty in Prague.

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

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

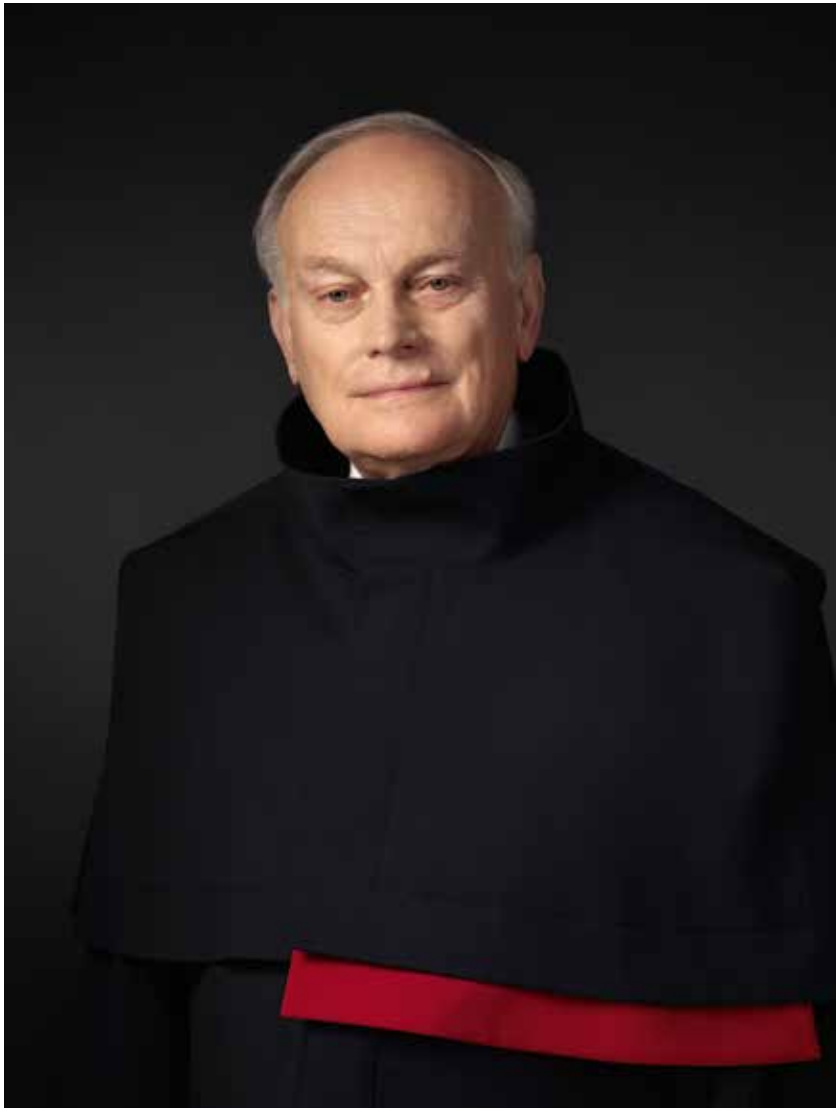
Graduated in law from the Charles University Law Faculty in Prague in 1986, where he obtained the title Doctor of Law in the field of criminal law – theory of the state and law – in 1987. In 2001, he obtained the title Ph.D. in the field of substantive and procedural criminal law at the Faculty of Law at Masaryk University in Brno, and in 2002, he obtained a higher doctorate (Doc.) 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 at the Faculty of Law at Masaryk University 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, 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 Defense of Doctoral Theses of the Academy of Sciences of the Czech Republic, and a member of editorial boards of professional and academic periodicals. He is a member of the Science Board of the Faculty of Law at Masaryk University in Brno and the Pan-European University of Law, and a member of the Science Board of the Faculty of Law at Palacký University in Olomouc. He received the award “Lawyer of the Year” for 2010 in the field of criminal law. In 1988–2006, he worked as a counsel for the prosecution, 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 Justice of the Constitutional Court by President Miloš Zeman, and on 7 August 2013, Vice-president of the Constitutional Court.



JAN MUSIL
Justice since 20 January 2014
(also from 27 November 2003 to 27 November 2013)

Prof. JUDr. Jan Musil, CSc. (*1941) graduated from the Charles University Law Faculty in 1963. He then worked as an articled clerk and prosecutor at the Prosecutor's Office in Šumperk, focusing on juvenile crime. From 1967, he taught at the Charles University Law Faculty, where he was appointed associate professor in 1985 and full professor in 1993, at which time he became the Chair of the Department of Criminal Law. In 1992–98 he was the Rector of the Czech Police Academy, and Deputy Rector until 2003. He also taught at the Western Bohemian Law Faculty. He has been on many fellowships and lecture visits abroad. He is a regular guest of the Max Planck Institute for Foreign and International Criminal Law in Freiburg im Breisgau. He is a member of the Scientific Council of the Charles University Law Faculty, the Masaryk Law Faculty, and the Police Academy. He sits on the Advisory Board, Institute for Criminology and Social Prevention. He is also a member of the Society for Criminology and of the National Group of the International Criminal Law Society. He is an honorary member of the White Circle of Safety, a civic association that helps victims of crime.

On 27 November 2003, President Václav Klaus appointed him as Justice of the Constitutional Court. On 20 January 2014, President Miloš Zeman appointed him for the second term of office as Justice of the Constitutional Court.

JAN FILIP
Justice (since 3 May 2013)

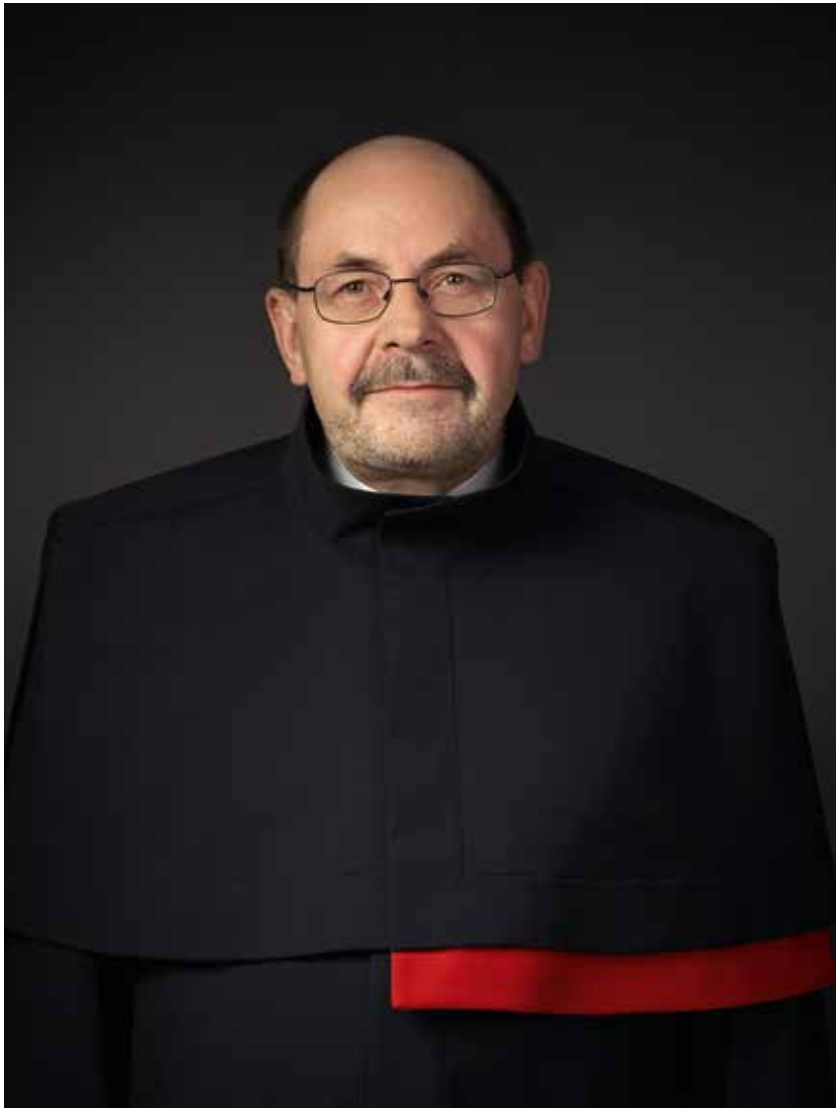
Professor Filip graduated from the Faculty of Law, University of Jan Evangelista Purkyne (UJEP), today the Masaryk University in Brno. During his studies, he worked part-time, and after graduation, full-time, as assistant lecturer at the Department of Theory of Law and Constitutional Law, Faculty of Law, UJEP (1974–1993). In 1975, he earned his JUDr. degree. His thesis was entitled "Constitution in the Legal System of the CSSR". He become 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 summarized his experience from 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 Faculty of Law, Masaryk University 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, lawmaking, constitutional basis of public authority, litigation before the Constitutional Court and voting rights there. He also provided instruction to foreign students (Constitutional Law, Verfassungsrecht der TchR) and students studying for LL.M and MPA degrees. In 2002–2006, Professor Filip taught Constitutional Law, Comparative Constitutional Law, and Methodology of Creative Work at the University of T. Bata in Zlín. In the late 1980s, he held a secondary employment 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 Palacky University. He is currently a member of the science boards at the Faculty of Law, Masaryk University, and the Charles University Law Faculty.

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

Constitutional Court of the CFSR as assistant to Justice Vojen Güttler, and at the Constitutional Court of the CR 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 in 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 took 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 editorial boards of domestic and foreign professional journals. His 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 May 3, 2013, the President of the Republic appointed Professor Filip as Justice to the Constitutional Court.



VLADIMÍR SLÁDEČEK
Justice (since 4 June 2013)

Born in 1954. Studied law in 1975–1979. Joined the Institute for Inventions and Discoveries in the year of his graduation and worked there until March 1983, mainly at the Legislative and Legal Department. Produced a thesis for his doctoral examination 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 been working 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 senior lecturer for 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 defense of his doctoral dissertation, on the conferral on 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 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 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 – Ombudsman. 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 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. was born in 1951. He studied at the Faculty of Law at J. E. Purkyně University in Brno. After completing his studies in 1974, up until 1982, he worked in the academia (as lecturer at the same faculty until 1979, and then as research assistant at 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 as such until 1993. In June of the same year, he was appointed as judge, and worked 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 and 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, labor 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 Justice of the Constitutional Court by President Miloš Zeman on 7 August 2013.

KATEŘINA ŠIMÁČKOVÁ
Justice (since 7 August 2013)

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

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

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

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

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

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

She is the chair of the Brno group of the Church Law Society and a member of the Society for European and Comparative Law.

She has never been a member of any political party or political movement. She was appointed as Justice to 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 the year 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 the years 2001 to 2013, he was a member of the Academic Senate of the Charles University Law Faculty, and from 2003 to 2005, Deputy-chairman 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 the years 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 Labor and Social Affairs and the Minister of Health. In the years 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, a member of the State Electoral Committee, a member of the Government Council for Human Rights and the Government Council for Equal Opportunities, a member of the administrative board of the General Health Insurance Company of the Czech Republic and chair of the administrative board of the Security Fund. In the years 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, formation of the law, 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 the co-author of commentaries on the Constitution of the Czech Republic and the Charter of Basic Rights and Freedoms. He also 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 in the years 1998 to 2013.

He was appointed as 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 20.1. 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), at the Institute of State and Law at the Czechoslovak Academy of Sciences, after studying the economics of foreign trade at the School 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 nineteen nineties were significantly reflected in his professional focus on European law.

He was a 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), and as Vice-dean of the Faculty of Law, 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 interdisciplinary training programme Europeum for public administration workers, acts as national coordinator 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 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 2001–2012, he also lectured in European law at the Metropolitan University Prague.

As a member of the Government Legislative Council in the years 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 governmental representative to the Convention, Jan Kohout. He was also often invited as an expert of 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–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 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 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, he spent a happy childhood there, which resulted in his calm and balanced personality. In 1992, he graduated from the Masaryk University in Brno, Faculty of Law, 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 German Bundestag. He loved it everywhere, however, he never really thought about working abroad. In 1996–2003, he worked as a law clerk of a Constitutional Court justice. In 2003, he was appointed as judge of the Supreme Administrative Court. Apart from serving as president of 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 in Brno, Faculty of Law. He is an author or a co-author of dozens of specialized texts and publications published in the Czech Republic and abroad, edited several collections of papers, and is a member of certain 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 (*1964 in Olomouc) studied at University of Jan Evangelista Purkyně, Faculty of Law, 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 on at the Construction Company in Žďár nad Sázavou. In 1991–1992, 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 specializes mainly in civil law, including family matters.

In 2005–2008, he was a vice-president of the Judicial Union of the Czech Republic, and served as its president from the autumn of 2008 until his appointment as Constitutional Court Justice. He lectured to students of secondary and higher specialized schools for many years. He also acts as lecturer for the Judicial Academy and employees of the bodies of social and legal protection of children or children's homes. In his publication activity for various legal journals and daily press, he addresses systems issues of the judiciary and the practical impact of law on individuals and the society. He is also a 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 Justice of the Constitutional Court on 19 June 2014.

DAVID UHLÍŘ
Justice (since 10 December 2014)

JUDr. David Uhlíř was born on 18 July 1954 in Boskovice, Blansko. He attended grammar school in Prague 6 from 1969 to 1973, 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 councilor of the City of Prague for the Civic Forum (Občanské forum). In 1992, 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 of 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. David Uhlíř writes for scholarly journals and newspapers on issues revolving 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, he 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 been chairing 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 Constitutional Court Justice by the President of the Czech Republic.

JAROMÍR JIRSA
Justice (since 7 October 2015)

JUDr. Jaromír Jirsa (*5. 5. 1966) finished law school 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 of 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 Prague 1 District Court. Since 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.

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

In 2002–2008, judge Jirsa served as the president of Union of Judges. He participated in many projects, e. g. adoption of the code of ethics for judges, adoption of principles of career structure for judges, so-called "mini-teams", educational projects for judges or support of mediation in non-criminal cases finalized by adoption of the Mediation Act. He is the Honorary President of Union of Judges which is the only professional organization of judges in the Czech Republic.

Judge Jirsa has been lecturing and publishing specialized texts. He has lectured for Judicial Academy, Czech Bar Association, Chamber of Law Enforcement Officials, Union of Judges etc. In 2010, he was awarded the bronze medal of Antonin Randa by the Union of Czech Lawyers for his lecturing and publication

activities in the area of civil procedural law. In 2007–2012, he was a member of accreditation working group for the areas of law and security with the Charles University, School of Law.

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

Judge Jirsa is married and he 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)

Josef Fiala (*1953) studied law at J. E. Purkyně University (today's Masaryk University) in 1971–1976. In the course of his studies, he started to work as an assistant 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 assistant (1976–1996). In 1978, he obtained the "JUDr." degree (thesis entitled "Position of civil law in the system of law"). He became senior assistant 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 assistant professor after defending his thesis entitled "Ownership of apartments in the Czech Republic" where he took into account previous outcomes of scientific approaches to the nature of apartment ownership. He was awarded the full professorship in 2006. In 1995–2001, he served as a vice-dean of the law school, and in 2004–2015, he led the department of civil law. He took part in various forms of pedagogical work in all study programs at the Masaryk University, School of Law. In addition, he was a member of several research projects (e. g. in 2004–2011, he was the deputy coordinator in the project entitled "European context of the evolution of Czech law after 2004"). He used the outcomes of this research in his publications.

Apart from his academic activities, he used to be a commercial lawyer, an attorney, member of Government's Legislative Board and its committees, 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, e. g. Czech Bar Association etc. In 1991, he worked at the Constitutional Court of the Czech and Slovak Federal Republic as a law clerk of judge Pavel Mates. Since 1993, he has been a law clerk of three judges 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.

NEW GOWNS AND INSIGNIA FOR THE 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 our political system. This message is expressed both through the make of the gowns and the color accents which honor the national colors of our 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 author of the design and execution 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 COURT

The Constitutional Court consists of a President, two Vice-presidents, and 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, and directs the business of, meetings, appoints Chairpersons 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 by the Court's agenda, can also be considered as one of the Court's organizational components, as her/his task is to prepare the matter for deliberation, unless she or he finds that there are preliminary grounds for rejecting the petition.

Each Justice is assigned three assistants. Justice's 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 purview comes the entire Court´s Administration, Judicial Department, the Analytic Department including the Library, and the Department of External Relations. The Court's administration is managed by the Director of Court Administration.

Powers and Competences

While the first Constitutional Court in Europe had a mere two powers (both related to the review of legal regulations), 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 are proceedings examining the constitutionality of legal regulations.

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 is a host of laws and decrees providing for the operations of the Constitutional Court, as is the case of 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 comprises, 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,
- and constitutional acts delineating the Czech Republic's borders with neighboring 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 enactments 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 [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 as an institution only moved to its current seat, i.e. a Neo-renaissance palace in Joštova Street in Brno, in 1991. 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 building of the then unification ministry.

After WW2, constitutional judiciary was not reinstated, and 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 powers, 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 have their seats.

And what building was chosen for the Constitutional Court?

Between 1875 and 1878, the monumental building of the House of Moravian Diet was built in Brno. The extensive transformation of the entire Joštova

The Moravian Diet Building just opened (1877)

Street area was preceded by a competition for the development of former city walls no longer serving their military purpose in the second half of the 19th century. The author of the Viennese Ringstrasse – Ludwig von Förster – won the competition; his executed projects in Brno included Klein Palace in Liberty Square, and a restaurant in Lužánky. He inserted a ring-shaped avenue between the historical city center and its suburb, supplemented with added open spaces, a fancy promenade and park vegetation, and lined with public edifices and residential buildings.

Preparations of the building site for Joštova Avenue involved the demolition of the Baroque city walls and the north-western bastion of the municipal fortress, 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. It made it possible to connect the until then independent suburban settlements to the historical city in terms of space, architecture and road systems, and brought a solution of an exceptional and permanent value.

The Seat of the Moravian Diet became an important part of the Brno ring road and one of the key dominant features of Joštova Avenue. The building was constructed according to a winning design from an architectural competition held in 1872 and 1873. Two Viennese architects, Anton Hefft and Robert Raschka, won the competition. The huge palatial building was built between 1875 and 1878 by builder Josef Arnold under the supervision of the provincial building council Johann Ullrich.

In terms of style, the design of the Moravian Diet Building by Viennese architects draws on the experience and knowledge of 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 on the sides: originally, they were used as a restaurant and a club room, 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 freeze with a bracket cornice which supports a flat barrel vault adorned with a mural boasting the provincial emblem. A box with a balustrade faces the hall on the first floor.

The last remodeling of the building took place in the 1980s and 1990s. In 2010, the library of the Constitutional Court was modernized; other than that, only necessary repairs and maintenance is performed. As the building needs to be maintained in a condition fit for its operation, yet a modern working environment needs to be procured, a medium-term plan of reconstructions and capital expenditure for 2014–2017 was drawn up in 2014. The plan envisages a gradual revitalization 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.

Recent Renovation of the Seat of the Constitutional Court

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 dealt not only 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 a space where representative activities of the Constitutional Court take place, e.g. 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 anteroom of the Assembly Hall, and, at the same time, ensure modern functions 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. The winner of the competition was a plan by architects Ondřej Kafka and Darja Kafka.

The Assembly Hall of the former Moravian Parliament is a monumental, two-story space. The parterre is accessible from the foyer 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 damaged the original appearance of the space. The progressive degradation of the plastering and stucco has caused webs of hair fractures in the reliefs, stucco, and surfaces of the marble. The woodwork elements and especially the carved lining of the doors to the hall 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 gallery) was closed due to a 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 anteroom 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 gallery), including replacing the glass and installing horizontal sun blinds (drapes) and a new system of artificial lighting of the hall and Western gallery from above the skylights. In the Western gallery, the doors 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 aforementioned 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 25 years since the renewal of constitutional judiciary in the Czech Republic.

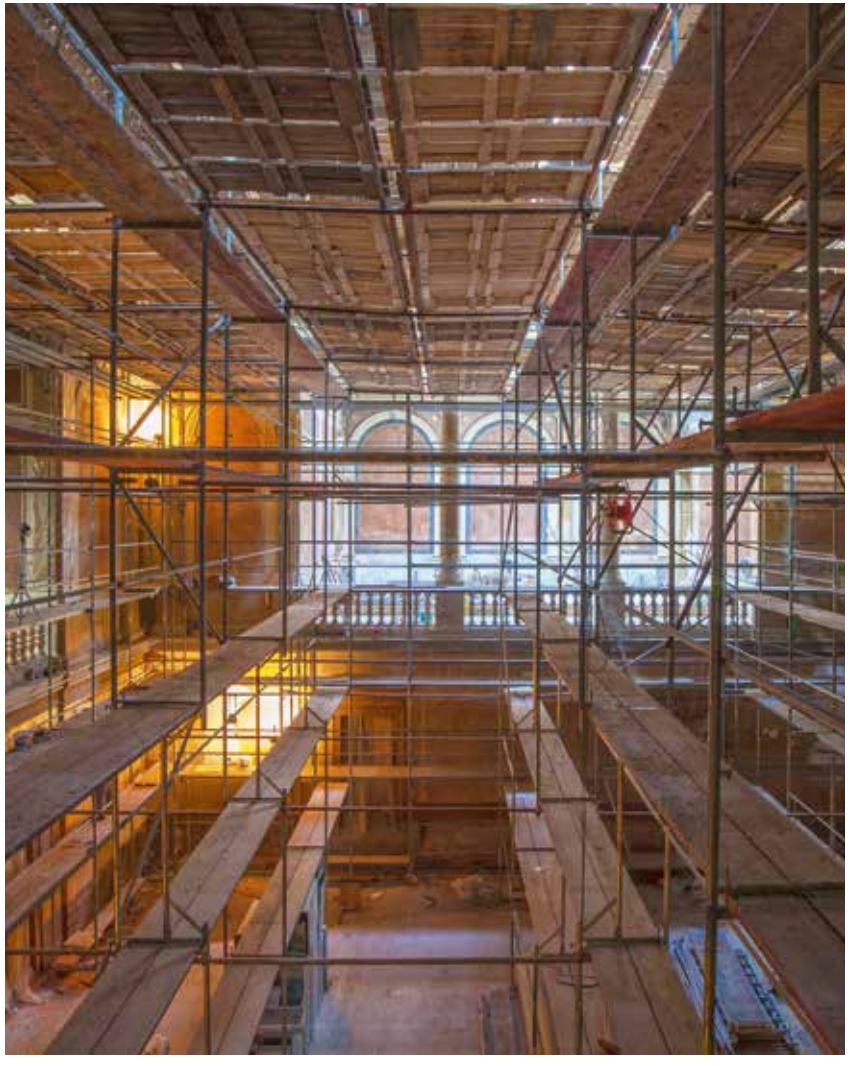
An entrance to the Vestibule of the Assembly Hall before restoration

An entrance to the Vestibule of the Assembly Hall after restoration

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

The Vestibule of the Assembly Hall after restoration

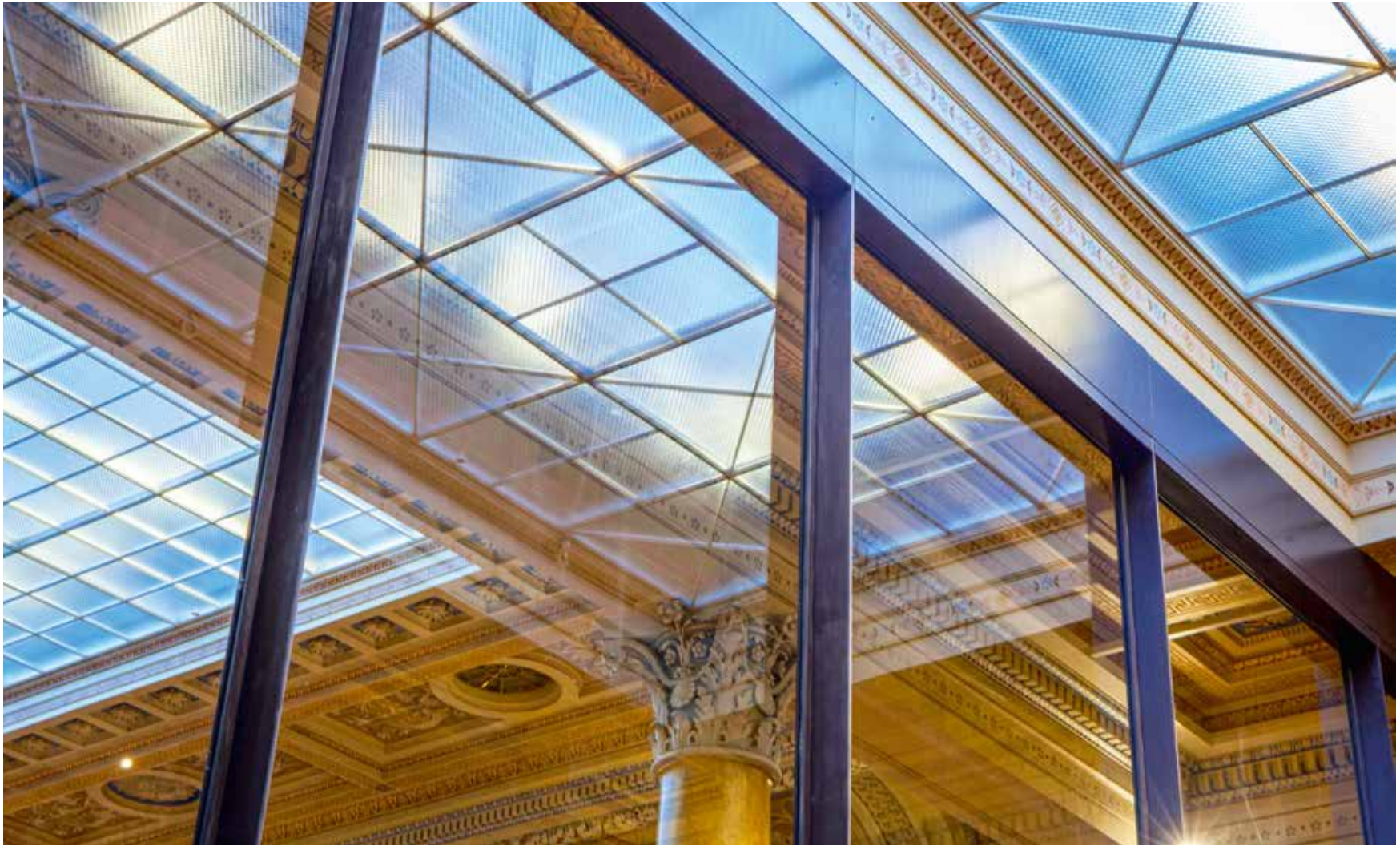
The Assembly Hall before restoration



The Assembly Hall in the course of reconstruction works

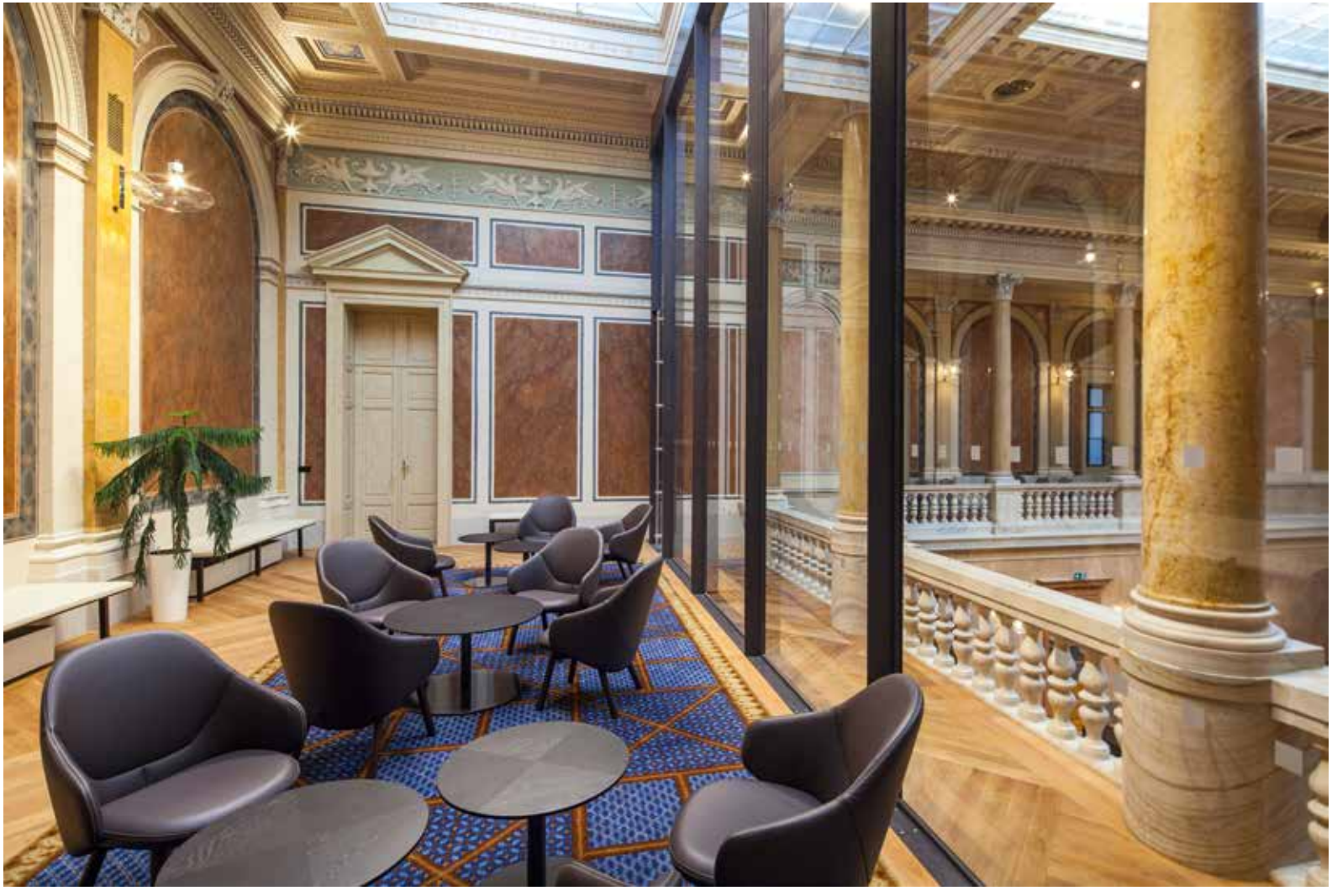
The Assembly Hall after restoration

Renovation of the roof light´s metal structure



The restored roof light of the Assembly Hall

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



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

Restoration of embossed parts

The Court Room restored

4

Decision-Making in 2018

It is logical that the decision making is different every year depending on the type of cases submitted to the Constitutional Court for consideration. Therefore, the decisions described below may follow up on the case law from previous years, but may also reflect current tendencies and foreground new topics and perspectives. This case-law overview presents the most interesting judgments adopted by the Constitutional Court in 2018. To get a detailed picture, however, it is necessary to look up the respective decision at the website of the Constitutional Court or in the Collection of Judgments and Resolutions.

Fundamental Constitutional Principles

Obligations arising from EU and international law

The duty of the Czech Republic to observe its obligations resulting from international law and from its membership in international organizations is laid down in Article 1(2) of the Constitution. Article 10 of the Constitution stipulates that international treaties prevail. Article 10a of the Constitution makes it possible to transfer certain powers of the authorities of the Czech Republic to international organizations or institutions, referring mainly to the European Union (hereinafter the "EU") and its bodies. In its judgment File No. Pl. ÚS 50/04 of 8 March 2006, the Constitutional Court noted that the Article applies in both directions: it makes the transfer of powers possible and at the same time opens the Czech legal order to the EU law, including the rules for its effects within the Czech legal order.

In relation to EU law, judgment File No. II. ÚS 3432/17 of 11 September 2018 dealt with the application of the acte claire doctrine.

Judgment File No. II. ÚS 3432/17: Application of the acte claire doctrine to the conflicting interpretation of EU law by courts of different instances

The petitioner made insurance payments for the deposits with its Slovak branch to the Slovak deposit insurance fund. The Financial Market Guarantee System brought an action to recover the amount in question plus interest against the petitioner on grounds that the petitioner was supposed to make the insurance payments in the Czech Republic. Under the single license, banks are to make the insurance payments in the country of their registered officer, not in the countries where they operate a branch; this is also in line with the applicable EU laws. The petitioner did not admit the claim and argued that it had made the insurance payments corresponding to its Slovak branch in Slovakia and that it had no obligation to pay the contribution to the Czech fund under Czech law. The courts dealing with the case dismissed the action on grounds that only branches under the single license are subject to the obligation to make the insurance payments in the country of the registered office and that the transfer to the single license was not automatic and the Slovak branch of the petitioner did not make use of this option. Even the Deposit Guarantee Scheme Directive stipulates that it is sufficient if deposits are insured in one member state only. The Supreme Court, however, reversed the decisions arguing that the applicable provisions of the Banking Act applied to all Czech banks, including their branches abroad, and the voluntary payments made by the petitioner to the Slovak system were irrelevant with respect to the duty to contribute to the Czech Deposit Insurance Fund. Subsequently, the first-instance court granted the action and the first-instance judgment was upheld by the appellate court that also explained why it dismissed the motion made by the petitioner that a reference for a preliminary ruling be made to the Court of Justice of the European Union. The Supreme Court also dismissed the motion as it had no reason to derogate from its legal opinion that was fully compliant with EU law. It was not under a duty to make a reference for a preliminary ruling as it considered the interpretation of the relevant provisions of EU law to be acte clair.

The Constitutional Court had to decide whether the conflicting interpretations of EU law by courts of different instances prevent the application of the acte clair doctrine, meaning that the court was automatically required to make a reference for a preliminary ruling to the Court of Justice of the European Union. The Constitutional Court concluded that if a general court whose decision cannot be appealed has no reasonable doubts about its interpretation of the EU law, it is not required to make a reference for a preliminary ruling even if the interpretation of EU law arrived at by lower-instance courts was different. In addition, the need of a general court to make a reference for a preliminary ruling on an interpretation of EU law is less urgent if the respective case is unique and the interpretative issue cannot impact the unity, coherence and development of EU law. If this is the case, the court must provide detailed reasoning; otherwise, it would act frivolously and could face having a part of its decision reversed due to a violation of the right to fair trial or the right to a lawful judge.

The Constitutional Court admitted that Section 41c of the Banking Act could have a different interpretation than that of the Supreme Court that interpreted the provision to the effect that all foreign branches of Czech banks are required to make insurance payments for the deposits kept abroad to the Czech Deposit Insurance Fund. This is not to imply, however, that the interpretation of the Supreme Court was in conflict with the Deposit Guarantee Scheme Directive. Neither is the interpretation of the Supreme Court in conflict with Article 49 of the Treaty on the Functioning of the European Union, which lays down the right of establishment.

Therefore, the Supreme Court did not violate the petitioner's right to fair trial under Article 36(1) of the Charter or the petitioner's right to the jurisdiction of the lawful judge under Article 38(1), and the Constitutional Court dismissed the complaint.

Judgment File No. Pl. ÚS 6/17 of 20 February 2018 dealt with the debt limits applicable to local government and the economic management of territorial self-governing units. In addition to the national constitutional framework of local government's right to self-governance, the case is also subject to standards under international obligations of the Czech Republic, namely the European Charter of Local Self-Government. This Charter is not a standard human-rights international treaty applicable to individuals as it applies to communities of citizens and rather establishes group rights. The standards it lays down establish a European standard of local self-government but they are hardly directly applicable. The definition of the European local self-government standard includes characteristics that local self-governance of the Contracting Party must have and the rights that it must enjoy. The Contracting Parties shall guarantee a certain number of rights defined by the Charter to their local self-government. The Charter only creates a framework for such rights. Many provisions of the Charter foresee domestic legislation that will set the boundaries for the local self-government. The right to manage own property according to its own budget is an inherent part of as well as a prerequisite for the right of local government to self-governance. Local government cannot perform its obligations without having sufficient property to do so and without being able to make autonomous decisions on the use of its property.

The Constitutional Court also made a reference to the supranational basis of fiscal responsibility in relation to budget management of local governments. The Constitutional Court expressly noted that there was an obligation under EU law for the member states to ensure that the set criteria be met at all levels of their internal organization; the criteria are designed to prevent excessive public deficits and public debt increase. It is, however, up to the individual member states, to opt for suitable means to achieve this goal. If the challenged provisions were repealed, this could be in conflict with the obligations arising for the Czech Republic from its membership in the EU. Still, the Constitutional Court did not uphold any of the objections raised by the petitioner and dismissed the motion seeking that the challenged statutory provisions be repealed.

Another judgment that needs to be mentioned addresses the relation between the Constitutional Court and the European Court for Human Rights (hereinafter the "ECHR"). Judgment File No. IV. ÚS 2326/16 of 4 January 2018 dealt with the compensation for interference with ownership by regulating the rent

before 31 December 2006, and reviewed the existing case law. In the case of R & L, s.r.o et al v. the Czech Republic, the ECHR concluded that the rent control at the relevant time constituted interference with the landlords' right to use their property. Thanks to the repeal of the relevant provisions by the Constitutional Court and the lack of activity on part of the legislature, there was no statutory ground for such an interference; therefore, it was not necessary to deal with other criteria such as the public interest or the reasonableness of the interference. Therefore, it was pertinent to note that the rights of owners under Article 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter the "Convention") were violated. As a follow-up to the judgment in cases of Čapský and Jeschkeová v. the Czech Republic and Heldenburg v. the Czech Republic, the ECHR commented on the reasonableness of the compensation for such an unlawful interference. The ECHR noted that in light of the legitimate expectations of the property owners whose rights had been interfered with and the vague statements by the government as to the public interest in rent control the compensation should be based on the difference between the free-market rent and the rent that the applicants could claim under domestic legislation, which was declared to be unlawful by the ECHR. This overruled the decisions made by the general courts as well as the Constitutional Court. Therefore, the Constitutional Court could not uphold the conclusions of the general courts that had awarded no compensation to the applicants.

The judgment File No. I. ÚS 2637/17 is interesting as regards the protection of the rights of the disabled. The judgment makes note of the Convention on the Rights of Persons with Disabilities ratified by the Czech Republic in 2009, as well as of other preceding documents related to the disabled. As it is an inherent and binding part of Czech legislation, not merely a soft law, the rights it defines have been referred to by the Constitutional Court in its case law. If a national sub-constitutional law was in conflict with the Convention preventing an interpretation compliant with the Convention, it would be appropriate to apply the Convention provided that the respective provision would be self-executing, in other words, directly applicable. It only becomes relevant to decide whether a provision of the Convention is self-executing when it is in conflict with national legislation; in the absence of such a conflict, the national legislation will apply and will be interpreted in light of the respective international treaty.

The Convention on the Rights of Persons with Disabilities regulates both general fundamental rights defined by other human-right conventions (e.g. the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights) such as the right to adequate standard of living (Article 28(1) of the Convention) as well as rights reflecting the specific situation of the people with disabilities (the right to live independently and be included in the community under Article 19 of the Convention, which tries to make it possible for people with disabilities to live as independently as possible and to make decision about their life and control it). From the perspective of this provision, situations where people with disabilities are dependent solely on the help of their families, without having access to the required social needs, are an issue, among other things.

The Constitutional Court believes that the people with disabilities who find themselves in an unfavourable social situation have a right to access to adequate social care. This right is defined by Section 38 of the Social Services Act, which implements a number of fundamental rights of the people with disabilities: the right to the protection of one's health (Article 31 of the Charter), the right to the adequate standard of living (Article 11 of the International Covenant on Economic, Social and Cultural Rights) and the right to live independently and be included in the community (Article 19 of the Convention on the Rights of Persons with Disabilities). It is a more general social right that mirrors a duty of the public administration to secure adequate social services for the people with disabilities who find themselves in an unfavourable social situation. Under Section 95(g) of the Social Services Act, the regional self-government is under the duty to ensure that people in an unfavourable social situation have access to the required social services, including social care, at their territory.

Judgment File No. Pl. ÚS 7/17 of 27 March 2018 notes that the objectives pursued by the Act on the Protection of Public against Hazardous Effects of Addictive Substances implement international commitments of the Czech Republic (Article 12 of the International Covenant on Economic, Social and Cultural

Rights, Article 24 of the Convention on the Rights of the Child, Article 11 of the European Social Charter). The Czech Republic is also bound by the World Health Organization Framework Convention on Tobacco Control, which was used by the Constitutional Court as a basis for accepting the relation between tobacco control and exposure to smoke and health protection. The Constitutional Court did not omit the EU legislation either (including without limitation Directive 2014/40/EU concerning the manufacture, presentation and sale of tobacco and related products, Council Recommendation of 30 November 2009 on smoke-free environments No. 2009/C 296/02 and the subsequent report of the European Commission on the protection from passive smoking).

Judgment File No. IV. ÚS 827/18 of 10 April 2018 dealt with hearing the child's opinion when the parents cannot agree on the primary school to be attended by the child when starting school; this was discussed in relation to the constitutional duty to comply with international obligations of the Czech Republic. In light of the fact that the appellate court failed to hear the minor child's opinion about the change of the primary school, the Constitutional Court referred to the international obligation of the Czech Republic under Article 3 and 12 of the Convention on the Rights of the Child implemented in Section 867 of the Civil Code. The law says that the public authorities shall make it possible for the child to freely express its views in all matters affecting the child, depending on the age and maturity of the child. The child's opinion is considered to be the best guideline when establishing the child's best interest. According to the opinion of the UN Committee on the Rights of the Child, the child's opinion should be obtained directly, whenever possible. Without an individual assessment of the case and without using the most suitable method for the interview of the respective child, obtaining the opinion through the Social and Legal Protection of Children Office cannot be considered a violation of the child's right to be heard. In the absence of circumstances preventing direct interview of the child, this should be the preferred form.

Fundamental rights and freedoms

Protection and guarantees of liberty

Last year, the issues dealt with by the Constitutional Court in relation to the restriction of liberty under Article 8 of the Charter included not only custody issues and compensation for unlawful remand in custody, but also the lawfulness of a person's admission into institutional care or the necessity for protective custody.

In custody issues, judgment File No. IV. ÚS 168/18 of 20 February 2018 stressed the duty of the courts to deal with the accused's challenge of the custody decision even after being **released from custody**. The accused may be interested in judicial review of the lawfulness of the remand in custody even after being released from custody, or transferred from pre-trial custody to serve the custodial sentence, with such a transfer not being sufficient to remedy the unlawfulness of the remand in custody. In the respective case, the court only decided that the appeal was inadmissible as the accused was no longer in custody at that time, and did not review further the grounds for the unlawfulness of the remand in custody; the Constitutional Court believes that this constitutes a denial of the right of the accused to judicial protection against interference with the right to liberty.

Last year's judgment File No. III. ÚS 2062/18 of 22 October 2018 dealt with the compensation for lawful detention. The petitioner was suspected of having committed a crime, and was therefore detained for a period of 47 hours only to be subsequently released without being prosecuted. The petitioner sought compensation for non-pecuniary damage for official malpractice, which was partially awarded by the first instance court, but denied by the appellate court. The Constitutional Court ruled that the petitioner was not entitled to the compensation as her detention complied with the statutory limits (she was informed of the grounds for her detention, the grounds for remand in custody were present and the decision of the law enforcement bodies was not a frivolous one). The Constitutional Court believes that the right under Article 36(3) of the Charter to compensation for unlawful decision or maladministration cannot be interpreted

to mean that compensation may also be awarded for a lawful decision or good administration.

Another judgment related to custodial sentences dealt with the protection of privacy and dignity of a person serving a custodial sentence that refused to have a urine sample taken to detect the presence of intoxicating substances under the supervision of a nurse of the opposite sex. The judgment will be discussed in more detail in the section dealing with the right to private life.

Another interesting judgment (File No. I. ÚS 497/18 of 18 July 2018) issued last year dealt with periodical review of the duration of protective custody. **Protective custody** is intended for individuals who pose a danger to the society and its arrangements constitute a serious interference with personal liberty. The law requires courts to review not less than once a year whether the grounds for the protective custody continue to exist, which was also the case here. The issue was, however, that the courts were satisfied in their reasoning with a report issued by the respective facility and expert reports discussing the personality of the petitioner drawn up many years ago. The current mental condition of the petitioner was not examined. Therefore, the Constitutional Court argued that the general courts violated the right to fair trial under Article 36(1) of the Charter as well as the right to personal liberty under Article 8(1) of the Charter by failing to review sufficiently the grounds for the duration of the protective custody and relying on up-to-date independent information.

An **involuntary admission of a person into institutional healthcare facility** also constitutes a major interference with personal liberty. The Constitutional Court addressed this issue in two of its judgments, with both of them dealing with the participation of an expert. The first judgment deals with the lack of rigour in the evidence procedure before general courts in a case of an involuntary admission into a healthcare institutional facility of a petitioner who was suspected of driving a vehicle under the influence of marijuana. The petitioner maintained that the admission was unlawful and required that an expert report be drawn up. The courts, however, did not entertain the request and failed to address the reasons for doing so in their reasoning. They based the decision only on the professional judgment of the doctors employed by the respective institutional facility.

Judgment File No. II. ÚS 2545/17 of 27 February 2018: Duty of court to appoint an expert witness to evaluate the lawfulness of a person's involuntary admission into a healthcare institutional facility

If the court continues the proceedings to determine whether the involuntary admission of a person into an institutional healthcare facility was lawful even though the proceedings had been discontinued as the person was discharged from the facility, but still insists that the case be heard under Section 72 of the Non-contentious Proceedings Act, then the 7-day time limit under Article 8(6) of the Charter and Section 77(1) of the Non-contentious Proceedings Act does not apply and the court is required to appoint an expert witness to assess the medical condition of the person as well as whether the admission was necessary; such an expert cannot be an employee of the respective institutional facility. Failure to appoint the expert witness constitutes a violation of the right of such a person to judicial protection under Article 36(1) of the Charter, and possibly of the right to liberty under Article 8(1) of the Charter.

The lack of an expert opinion constituted the most serious defect in another case dealing with the involuntary admission into a healthcare institutional facility (Judgment File No. ÚS 2647/16 pf 20 November 2018). The petitioner was admitted to a mental health hospital involuntarily. He signed the consent later, and thus the proceedings to assess whether the admission was lawful were discontinued. Later, however, the petitioner wished to leave the institutional facility and new proceedings were instigated. The court, repeatedly, examined both the attending physician and the petitioner, and concluded that the admission was in compliance with the statutory grounds, which continued to exist. Similarly to the previous case, the Constitutional Court reproached the courts for failing to have an expert opinion drawn up, which constituted a violation of the right to liberty under Article 8(1) and (6) and the right to fair trial under Article 36(1) of the Charter.

Protection of personal and family life

The last year was no exception in that the Constitutional Court dealt with a number of cases involving the protection of private and family life under Article 7(1) of the Charter and Article 10 of the Charter (the protection of parents' rights is dealt with in the section on economic and social rights). The following three judgments show the variety of issues related to these rights.

In judgment File No. II. ÚS 2299/17 of 27 February 2018 the Constitutional Court reversed a district-court judgment dismissing the action brought by the petitioner to seek payment and reasoning that the execution of the contract with the defendant had not been established. There was only one piece of evidence – **a recorded phone call** – that was deemed by the district court to be unlawful. The Constitutional Court was of a different opinion as the defendant consented to the phone call, which was dealing with a business issue between two businesses. Such evidence does not interfere with the right to the protection of privacy beyond an acceptable level. Arguments relying on the confidentiality of letters under Article 13 of the Charter failed as well because the right to judicial protection under Article 36(1) of the Charter was given precedence.

Judgment File No. III. ÚS 309/16 of 9 October 2018 dealt with preserving the dignity and privacy of person serving custodial sentences. Any deprivation of liberty involves, by necessity, the restriction of certain rights, and therefore it is crucial to weigh the interests of the society and of the individual under the specific circumstances of the case.

Judgment File No. III. ÚS 309/16: Protection of privacy and dignity when taking a urine sample in the presence of a nurse of the opposite sex

The petitioner refused to undergo a urine analysis to detect the presence of intoxicants in his body, and as a result was found guilty of obstructing the administration of justice. As the petitioner has repeatedly knowingly used intoxicants during his prison service, the district court hearing the case concluded that the defense he had raised to the effect that he was shy before a nurse of an opposite sex was willful.

The Constitutional Court concluded that it was constitutional to require that a urine sample be taken when there was a suspicion of the use of an intoxicant by a person serving a custodial sentence. The issue was whether it was legitimate to take the sample under the direct supervision of a nurse of the opposite sex, and whether it was constitutional to punish the petitioner for refusing to have the sample taken in the presence of such a person. To assess the issue, the Constitutional Court used the test of proportionality.

The requirement for restricting a right guaranteed by the Constitution was met; testing a urine sample is in compliance with the Constitution as part of drug prevention. In light of the purpose of testing, it is necessary that it takes place in the presence of another person that can check the origin of the sample and make sure that the sample has not been tampered with. The supervision of the nurse was, undoubtedly, in line with this purpose. With regard to the second step involved in the test (the necessity), it was not necessary that specifically a female nurse be present.

The petitioner stated that the prison officers used to supervise such situations in the past; one officer searched the petitioner before the sample was taken, and most likely was also the person present when the sample was actually taken, and is recorded as a witness. The fact that the prison officers were of the same sex was a more convenient situation for the protection of privacy and dignity of the petitioner in a situation where professional qualification was not necessary. The ordinary courts failed to address this argument sufficiently, thus violating the rights of the petitioner under Article 7(1) and Article 10(1) of the Charter.

Last year's case law, namely judgment File No. I. ÚS 1099/18 of 8 November 2018, dealt, for the first time, with the **in vitro fertilization**. In the course of infertility treatment by IVF, the husband of the petitioner died even though

he had given his consent with the preservation of his sperm to be used for the treatment. The assisted reproduction center refused to finish the IVF treatment on grounds of lack of a valid consent of the husband. In the proceedings before general courts, the petitioner sought that the assisted reproduction center perform its obligation and carry out the IVF using her reproductive cell and the preserved sperm of her deceased husband. The Constitutional Court did not grant the complaint as it considered the conclusions of lower courts to be constitutional. The Constitutional Court agreed that it was not possible to rule out doubts as to whether the deceased husband of the petitioner was willing to become a father even after his death. Furthermore, the right to the protection of family life protects not only a wish to start a family, but presupposes that a family exists. However, the petitioner's family ceased to exist upon the death of her husband. The issue of in vitro fertilization does not have uniform treatment across European jurisdictions as it is based on moral, cultural, religious as well as ethical values of the respective societies. The Constitutional Court, therefore, believes that it is the task of the legislature to define the conditions and rules for a life to come into existence in an artificial way.

Political rights

Freedom of expression

Three decisions from the 2018 case law addressing the freedom of expression guaranteed by the Constitution are worth mentioning. At the beginning of the year, one of the panels of the Constitutional Court dealt with the importance of respecting such freedom in mass media. In its judgment File No. I. ÚS 4035/14 of 30 January 2018, the Constitutional Court granted the complaint filed by TV NOVA, s. r. o. that had failed in the proceedings before administrative courts to defend itself against the imposition of a fine by the Council for Radio and Television Broadcasting for having broadcasted a news story called "Příručka radí, co do kostela" ("A handbook advises what to bring to church"). The Council believed the news story lacked objectivity and balance. The Constitutional Court argued that the freedom of expression as one of the fundamental political rights protects not only dissemination of serious messages, but also incorporates a right to express one's opinion in a humorous, hyperbolic or sarcastic way. As the report concerned was not intended to report on an important event, but rather provide some content during a silly season, the television did not act in its public service capacity, but rather tried to get the interest of the viewers in a way that was attractive for them. However controversial may the value of infotainment be from the journalistic and aesthetical point of view, it is mainly up to the operator of a private broadcasting company to look for a way to operate on the market, while adhering to certain minimum content requirements, and to be criticized, as the case may be, by the viewers, and not by the government.

Not even a month later, the Constitutional Court, by virtue of judgment File No. I. ÚS 3819/14 of 20 February 2018, dismissed a complaint dealing with the right to the protection of a reputation of a legal entity and the right to freedom of expression and dissemination of information in relation to consumer testing.

Judgment File No. I. ÚS 3819/14: Consumer testing and the right to the protection of a reputation of a legal entity and the right to freedom of expression and dissemination of information

D'Test, a consumer testing magazine, published an article entitled „Opravdu víte, co pijete?" ("Do you really know what you are drinking?") comparing 18 brands of bottled still water. The petitioner (Karlovarské minerální vody, a. s.) sued the publisher, invoking the protection of the reputation of a legal entity. The Municipal Court granted the action and ordered the publisher to publish an apology because the article had used a black triangle for the sodium content in bottled water produced by the petitioner where a black triangle means a high content of the element, even though the actual value did not exceed maximum legal limits. The remainder of the action was dismissed. The High Court reversed the judgment and dismissed the whole action. The Supreme Court dismissed the petitioner's complaint on points of law.

The Constitutional Court stressed that the critical expression given made by an entity established to protect the consumers cannot be compared, in many aspects, to other types of public critical expressions, which may be defamatory. Even though this type of expression shows some element of commercial expression, it is not competition-driven nor does it constitute advertising with the aim of getting the consumer to buy a product, but rather the opposite. The aim of the report in question is to protect consumers by warning them against undesirable characteristics of a product; in this particular case differently targeted criteria, than those in cases of consumer protection in relation to advertisements, are needed. The first criterion is an admissible debate on the relation of the product quality and the protection of public health, which constitutes a public good. The second criterion is a due degree of professionalism exercised in the evaluation of the tested product. The criticism must be relevant, true and reasonable as regards the content, form and place. The Constitutional Court believed that the report in question met such criteria, and was therefore protected under Article 17(1) and (2) of the Charter. The means were reasonable to achieve the purpose, i.e. the protection of consumers, and it would not be reasonable to expect that the used form of criticism (publishing a test comparing a number of products with a commentary) could be replaced by another convenient information tool for the public.

Judgment File No. I. ÚS 4022/17 of 11 June 2018 is also of interest as it dismissed the constitutional complaint filed by Milan Knížák concerning his statements made in a debate about the activities of Jiří Fajt, an intervening party, in the National Gallery in the 1990s. While balancing the freedom of expression with the right to protection of personality the justices proceeded from the fact that the petitioner held (at that time) a post of the General Director of the National Gallery. The criticism against the intervening party could thus be considered as information provided by a person that knew the situation in detail. Anyone who heard or read the statement could assume that it was based on facts, rather than being a mere exaggeration or criticism, as would be the case if made in a different context. Therefore, the context made it impossible for the petitioner's freedom of expression to take precedence over the protection of personality of the intervening party.

Right to information

Providing information about the salaries of employees paid from public funds is a recurring issue. As a follow up to the 2017 case, the Constitutional Court reiterated in its judgment File No. IV. ÚS 1200/16 of 3 April 2018 that the respective institutions must carry out the test of proportionality on a case-by-case basis; in doing the test, the institutions try to achieve a fair balance between the freedom of expression and the right to seek and disseminate information (Article 17 of the Charter), and the right to the protection of privacy (Article 10 of the Charter). The issues that need to be considered include, without limitation, whether the information is sought to raise debate about issues of public interest, whether the information is related to a public interest, whether the applicant serves as a watchdog of the society and whether the information exists and is available. In this case, the Constitutional Court granted a complaint filed by a teacher of an arts school and concluded that making his salary public constituted an unlawful interference with his right to privacy. The respective file lacked any reference to the purpose for which the personal data were to be used, not even whether they were to be used in public interest, and, if so, in what public interest. Therefore, the courts could not evaluate whether a fair balance was achieved between two conflicting fundamental rights.

The Constitutional Court did not depart from its case law even as regards the entities that are subject to the Free Access to Information Act. It found, in judgment File No. I. ÚS 1262/17 of 27 March 2018, that Pražská plynárenská Servis distribuce, a. s., a company, was subject to the Act. The company fulfils the criterion that it is effectively controlled by a municipality (even though the control is indirect through other companies, and the exclusive control of the municipality is thus mediated) as well as shows other signs of a public institution under Act No. 106/1999 Sb., on Free Access to Information, and thus is subject to the Act.

Economic and social rights

Last year was no exception in that the Constitutional Court issued a number of important decisions related to the economic, social and cultural rights under Articles 26–35 of the Charter.

Right to the protection of health

Even though the right to the protection of health is one of the social rights, which are referred to as second generation human rights, it is increasingly addressed by courts. This is witnessed by the fact that last year's case law of the Constitutional Court included a number of interesting decisions dealing with a possible violation of the right to the protection of health. The implementation of the right involves an active duty of the government to "act" instead of a duty "to refrain from acting" as is the case with the first generation human rights. The right to the protection of health may be in conflict with other rights and freedoms, and the health of an individual may even be protected against his or her will. Judgment File No. Pl. 7/17 of 27 March 2018 dealing with the review of the anti-smoking act was important in this respect. Among other things, the Act, which came into effect on 31 May 2017, bans smoking in restaurants, bars, cultural facilities or at public transport stops. In light of the fact that the anti-smoking act concerns many of us and sparked a heated debate about the harmful effects of smoking and the limits of individual liberty, the judgment itself also attracted attention of the general public. The full court reviewed the constitutionality of a number of contested provisions of the anti-smoking act; the court granted the complaint filed by a group of senators in part, and dismissed its remainder.

Judgment File No. Pl. ÚS 7/17: Anti-smoking Act or the Complete Smoking Prohibition in Restaurants

The judgment, inter alia, dismissed an application to repeal a provision of the Act that prohibits smoking inside the premises of catering services. The Constitutional Court stressed that the state was under a duty to adopt appropriate measures in order to guarantee and fulfil the right to the protection of health. The ban under consideration has an important cultural and social dimension; the full court, however, stated it was up to the legislature to strike a balance between the rights of those who wish to smoke and those who must bear the consequences by being exposed to tobacco smoke. The Constitutional Court only reviews whether the legislative regulation does not constitute an unacceptable interference with one of the constitutional rights and freedoms of the persons concerned, which was not the case here. The Plenum considers the negative effects of smoking, be it active or passive smoking, on human health as a given that need not be proved, and thus the anti-smoking act pursues a legitimate objective. Designating smoking areas cannot prevent negative effects of smoking of the persons using such areas. In addition, a complete ban is a common solution used by other countries as well. It does not restrict the freedom of smokers totally as they may still smoke in the outdoor premises of the catering facilities and at all other places where the ban does not apply. The full court noted, however, that the solution used by the legislature is not the only possible solution and need not be the best one. The fact that the solution satisfied the test of proportionality does not imply that there may not be another solution that would afford the same degree of protection, while not interfering so heavily with the rights of smokers. This leaves the legislature some leeway to opt for a different way of regulating smoking in the premises of catering facilities should the legislature wish to do so.

The conflict between the right to the protection of health and other rights is also central to the case law on compulsory vaccination. International treaties oblige the Czech Republic to adopt measures to achieve full implementation of the right to the protection of health, which includes, but is not limited to, the prevention of epidemic and endemic diseases (cf. International Covenant on Economic, Social and Cultural Rights) and to remove as far as possible the causes of ill health (cf. European Social Charter). In this context, judgment File No. II. ÚS 725/18 of 8 October 2018 dealing with compulsory vaccination of a minor child against the will of her mother must be mentioned.

Judgment File No. II. ÚS 725/18: Compulsory vaccination and child participation in the dispute of the parents as regards her vaccination

Following up on its previous case law on compulsory vaccination, the Constitutional Court considered whether the petitioner rightfully raised the conscientious objection to avoid compulsory vaccination of her daughter, and decided to dismiss the complaint in the end. The Constitutional Court stressed that even in situations where the parents cannot reach an agreement as regards the vaccination of their child, it cannot be ruled out that one of the parents raises a conscientious objection; in such a case, however, the freedom of conscience of the parent opposing vaccination must be weighed against a public interest in the protection of health, as well as the freedom of conscience of the other parent, given that the right to care and education is enjoyed by both parents. A conscientious objection against any statutory duty can only be rightfully raised in extraordinary cases, and on sufficiently urgent grounds. The petitioner failed to invoke such grounds in this case; for the reasons to be sufficiently imminent, bad previous experience with vaccination when the child developed minor side effects or a case of a serious adverse reaction in the extended family to a completely different optional vaccination or doubts regarding the benefit of the vaccination for the child cannot hold. Therefore, the Constitutional Court did not deem the constitutional rights of the petitioner to be violated, and dismissed her complaint.

Judgment File No. IIII. ÚS 2332/16 of 17 April 2018 is yet another interesting judgment. A panel of justices granted a complaint filed by a petitioner who has been issued with a registration certificate for a drug against prostate cancer. The Institute for Drug Control decided that the drug would be only partially funded from the public health insurance system. The Ministry of Healthcare dismissed an appeal lodged by the petitioner as well as other parties arguing that flutamide, which is the active substance in the drug, falls in a category where there is another drug used for breast cancer therapy, which is fully funded from the public health insurance. Even though an administrative court granted the action filed by the petitioner arguing that male patients with prostate cancer were being denied free health care, the Supreme Administrative Court quashed the original decision. The Supreme Administrative Court argued that it does not follow from the Public Health Insurance Act that a minimum of one therapeutically irreplaceable drug in each drug category be fully funded from the public health insurance.

Judgment File No. III. ÚS 2332/16: The right to have at least one fully funded drug from the public health insurance

This case was of procedural noteworthiness because the Constitutional Court had to determine whether the petitioner had capacity to file the constitutional complaint. The settled opinion is that a constitutional complaint cannot be filed by a person who is affected by the challenged decision only indirectly and whose legal situation is not directly interfered with. In the end, the justices concluded that in order to determine whether the petitioner's fundamental right to do business had not been interfered with, the objections invoking the right to health and the right to equal treatment of men and women must also be entertained. The panel dealing with the case noted that the drugs that are only partially covered from the public health insurance are permissible only when the basic premise is satisfied, i.e. there is at least one option of free healthcare. In this case, a drug was not fully covered on grounds that another drug from the same category was fully covered; however, this drug is used to treat another type of carcinoma and is intended for a different group of patients. None of the public authorities dealing with the case challenged the petitioner's statement that the drug which was fully covered cannot be used for the treatment of prostate cancer, which, on the other hand, can be treated with the drug concerned. The administrative courts admitted that there may be a numerous group of patients that has no access to at least one free option. The Constitutional Court considered that such a situation was unacceptable as such a conclusion interfered with the essence of the right to health protection under Article 31 of the Charter. The rule saying that only one drug from a certain group of drugs be fully covered from the public health insurance must be

interpreted to mean that only drugs that are therapeutically interchangeable may be involved and there may not be unjust discrimination between different groups of patients (male and female patients in this case).

Another judgment that must be mentioned is judgment File No. I. ÚS 2637/17 of 23 January 2018 dealing with the duty of regions to provide people with disabilities with adequate social care. It is described in more detail in the introductory section.

Another case related to the right to the protection of health is a judgment made by the Plenum (File No. Pl. 4/18 of 18 December 2018) dismissing a motion by a group of senators to repeal certain provisions of Government Regulation No. 272/2011 Sb., on the protection of health against harmful effects of noise and vibrations. The full court rejected, on grounds of lack of jurisdiction, the motion to repeal the Guidelines issued by the National Public Health Officer of the Ministry of Healthcare to regulate measuring and evaluating noise in environments other than the occupational ones. The basic legal framework for the protection against harmful noise is laid down by Act No. 258/2000 Sb., on the protection of public health, with further details being provided for in the implementing regulation. Most of the contested provisions defined permissible noise limits for different situations and conditions; the limits for the noise on roads were lowered in some situations.

Judgment File No. Pl. ÚS 4/18: Government Regulation defining traffic noise levels

The Constitutional Court does not dispute that noise has negative effect on human health and only considers whether the regulation violates the right to the protection of health, inter alia. It must also be borne, though, that a modern society cannot exist without making noise; with the noise made by passenger or freight traffic being a prime example. The public authorities should strive for a balance between these two legitimate interests. The motion centered around the statement that a substantial part of Czech legislation fails to strike such a balance, and thus favours the interests of noise producers over the protection of health of the population. The full court considered the issue also from an international perspective and noted that individual countries afford a certain degree of discretion not only as regards the noise levels but also the structure thereof. The Czech system of protection against noise is based on setting binding noise limits applicable in the entire country. Other European countries either lack such limits, or the limits are a recommendation only. This makes the Czech situation rather unique. The Constitutional Court did not agree with the arguments put forward by the petitioner that the application of the contested exemptions and adjustment of noise levels would mean that the Czech government has given up on the protection of people against noise. On the contrary, statutory block exemptions constitute a legitimate response of the government to a unique system of enforceable fixed limits for external noise. Thus, the justices concluded that the contested provisions pursued a legitimate objective and the tools to achieve the objective could be considered reasonable. The limits are in compliance with the Public Health Protection Act and take into account the assessment of health risks from the environment and people's lifestyle, existing scientific findings as well as the WHO recommendations.

Protection of parenthood, family and children

Last year a number of important decisions were added to the case law on the protection of parenthood and children. Just as in the previous year, the Constitutional Court reviewed decision making of ordinary courts on post-divorce custody of children, taking the perspective of Article 32(4) of the Charter which guarantees the child's right to parental upbringing and care and the corresponding parent's right to care for and bring up their child. The issue of **joint custody** was dealt with once again.

The Constitutional Court reviewed the conditions for granting joint custody in judgment File No. IV. ÚS 773/18 and judgment File No. IV. ÚS 1286/18 of 31 August 2018. The judgment stressed that the joint custody is by no means the only way to regulate the child custody, and not even the most favoured one; therefore, the decisions must be made on a case-by-case basis. The fulfilment of the criteria for joint custody is not a general rule, but rather a guideline for the decision-making of ordinary courts; therefore, the fulfilment need not automatically result in ordering joint custody provided that the competent courts consider all relevant criteria in a constitutional way and arrive at a different conclusion. The primary consideration for opting for an joint custody is the best interest of the child, and not the wish of the parents or other criteria; at the same time, the courts must try to find a solution that does not interfere with parent's rights under Article 32(4) of the Charter in line with the principle of proportionality. Joint child custody may only be used when it is the most convenient solution reflecting the best interest of the child, taking into account all aspects of the case, both for and against.

Judgment File No. II. ÚS 1191/17 of 15 May 2018 criticised the steps of the appellate court that decided on such contact arrangements for the child and her father that were clearly not in the best interest of the child; despite opinions of specialized doctors, expert witnesses and the guardian *ad litem* to the effect that overnight stays with the father were not appropriate, the appellate court extended the contact to include overnight stays too.

Judgment File No. II. ÚS 1191/17: Specific medical condition of a child as an objective criterion to decide on contact arrangements

The Constitutional Court reiterated that parents are equally entitled to care for and bring up the child, and the child has a corresponding right to be cared for by both parents. If sole custody is awarded to one parent, it should be possible for the child to see the absent parent in such an extent that the requirement of equal parental care is met. This requirement may, however, be waived if this is justified by protection of another, sufficiently strong legitimate interest, such as the specific medical condition of the child, which may be used as an objective criterion to assess the reasons for the change in the custody arrangement, provided that these are important in all aspects relevant for parental care.

The change in the extent of contact arrangements must be justified not only by a material change in circumstances, but must, at the same time, be in the best interest of the child, which must be established on a case-by-case basis taking into account the specific situation of the child. Despite the availability of the opinion of a guardian *ad litem* and the conclusion of medical reports and an expert opinion to the effect that the child suffers from developmental dysphasia and separation anxiety disorder preventing the child from staying overnight not only at the father's place, but anywhere outside the home, the regional court decided on standard contact arrangements with the father. The decision was not based on any other objective findings, but solely on the belief of the court that the existing situation needed to be changed. This was in violation of the petitioners' right to judicial protection under Article 36(1) of the Charter and interfered with the child's right under Article 3(1) of the Convention on the Rights of the Child. In addition, the failure to take into account the wish of the child was in violation of Article 12 of the Convention on the Rights of the Child.

Judgment File No. I. ÚS 2996/17 of 29 May 2018 described one of the pitfalls of the Czech applicable legislation and especially the court decision-making, consisting in the failure to respond adequately to situations where the custodial parents move further from the original place of residence, and the absent parents (as well as the children) find themselves in a weaker position and have no choice other than to accept the factual situation caused by the custodial parent. The Constitutional Court believes that the courts must take this into account when deciding on the contact rights and child maintenance. In order to strike a balance between the burden related to the contact of the child over a distance, the Constitutional Court considers it appropriate that the burden be also partially borne by the custodial parent.

Judgment File No. IV. ÚS 3749/17 of 9 January 2018 granted the constitutional complaint filed by a minor petitioner and quashed a preliminary injunction issued by the appellate court to replace the father's consent with postponing the school attendance, which was contrary to the best interest of the child in addition to being issued in a frivolous procedural manner. As a result, the minor child was disqualified from attending primary school after having attended it for nearly five months. The child faced a threat that she may lose her classmates, form teacher and self-confidence if ordered to return to the kindergarten despite having no difficulties with school attendance.

A noteworthy decision is judgment File No. III. ÚS 2324/17 of 18 April 2018 where the Constitutional Court addressed the application of the potential income criterion to determine the child maintenance. In this respect, the Constitutional Court stressed that the courts are obliged to make the decision on the basis of the justified needs of the child and the existing financial situation of the parent ordered to pay the maintenance. The potential income, which the respective parent does not earn, should only be used as subsidiary criterion when the financial situation of the parent is insufficient to determine the maintenance to be paid.

Last year was no exception in that the Constitutional Court dealt with cases where the procedural rights, including without limitation the participation, of minor parties to civil proceedings were not protected sufficiently by courts. The Constitutional Court stressed that even a minor party is a party with full procedural standing in proceedings that directly affect him or her; therefore, the child has a right to be an important stakeholder in the proceedings, and not only a protected object or passive observer of decisions being made that relate to him or her. Therefore, children have a right to have their cases heard in their presence under Article 38(2) of the Charter, and a related right to be heard in such proceedings under Article 12 of the Convention on the Rights of the Child. The child's opinion is considered the best guideline for defining the child's best interest.

Judgment File No. II. ÚS 2866/17 of 28 February 2018 stressed that the child's right to express his or her views freely in all matters affecting the child under Article 12(1) of the Convention on the Rights of the Child, is merely a right, and not a duty. The child must be advised thereof.

In the case under consideration, the interest in mental wellbeing of the petitioner could not constitute a ground, even though justified, for the court not hearing the child. However, the age of the petitioner and the change in the circumstances in conjunction with the time that had elapsed from the last time the petitioner was heard undoubtedly constituted such a ground; therefore, if the petitioner herself requested to be heard, such a request should have been granted. Similarly, in the case considered in judgment File No. III. ÚS 1265/16 of 19 June 2018 to decide on the extension of a preliminary injunction placing the fifteen-year-old petitioner in institutional care, without the petitioner being heard by the competent court even though she strived for being heard. The Constitutional Court concluded that given her age and the circumstances, it was not possible to replace her hearing before court by establishing her view indirectly.

Similarly to the case dealt with in the above judgment File No. IV. ÚS 3749/17, judgment File No. IV. ÚS 827/18 also ruled the challenged decision to be unconstitutional as being contrary to the best interest of the petitioner, a minor child, where the court changed her school, even though she had no difficulties at school and was socially integrated, and thus intervened in her life without hearing her only because the parents could not reach an agreement on her custody.

Judgment File No. IV. ÚS 827/18: Obtaining the child's opinion in a parents' dispute over the choice of a primary school for a child starting compulsory school attendance

The Constitutional Court stressed that the child's opinion should be established directly as far as practicable. Without an individual assessment of the case and without using the most suitable method for the interview of the respective child, obtaining the opinion through the Social and Legal Protection of Children Office cannot be considered a violation of the

child's right to be heard. In the absence of circumstances preventing direct interview of the child, this should be the preferred form.

The regional court made no attempt to establish the view of the minor child of the change in primary school even when departing from the recommendation of the Office for the Social and Legal Protection of Children, and ignoring any other ways of establishing the child's view even outside the courtroom. The seven-year old was, essentially, capable of expressing her opinion as to whether she liked the school, whether she had some friends at the other school or whether she would mind the change or look forward to it. Despite the young age of the minor child, the court had no information to reasonably conclude that the child would not be able to express her view in the proceedings.

The existing school arrangements of the child worked in practice and it had no major negative impact on her personal development or her knowledge. On the contrary, the established facts of the case show a deep conflict between the parents, who were not able to overcome their past disputes, and used the minor child as a means to deal with their own conflict. The Constitutional Court concluded that stable education and upbringing environment of the minor child was a value that needed to be protected, especially in a situation where expert examination of the minor child revealed her predisposition to anxiety and feelings of distress in emotionally demanding situations and her need of clear and foreseeable situation.

Right to judicial and other legal protection

Right to fair trial

The right to fair trial is one of the fundamental rights typical of rule of law, involving a number of more specific rights and principles that must be adhered to in the proceedings. These include, without limitation, the right of access to court, the principle of equality of arms, the adversarial principle, the right to have the case heard expeditiously and publicly, or the duty of the court to address all objections and defenses raised. That is why the cases where the decisions of the Constitutional Court address the right to fair trial are extremely diverse. Last year was no exception in this respect. What follows, therefore, is a selection of the most important cases out of a high number of cases; the selection aims to show new tendencies as well as further development of the traditional principles.

In judgment File No. II. ÚS 1162/17 of 18 January 2018, the Constitutional Court ruled that the petitioners' right to fair trial was violated by the steps taken by the ordinary court which approved reorganization of the petitioners' debtor. In its decision, the ordinary court applied Section 169(2) of the Code of Civil Procedure that stipulates that not all decision need to be **reasoned** for the sake of expeditiousness of proceedings. In this respect, the Constitutional Court noted that the respective provision was an exception to the rule allowing for a certain type of judgments to lack reasoning, but in principle any decision lacking reasoning is unreviewable, and therefore the exemption cannot apply whenever the participants raise objections that must be dealt with. As the petitioners made repeated statements during the course of the case and showed their disagreement with the insolvency arrangements, and the trial court failed to address their objections as witnessed by the absence of reasoning, the decision of the trial court is not reviewable, and thus in violation of the petitioner's right to fair trial.

Judgment File No. II. ÚS 2299/17 of 27 February 2018 dealt with the possibility to use an audio recording of a monitored phone call as evidence in civil proceedings. The Constitutional Court had to balance the right to judicial protection on the one hand, and the right to the protection of privacy, or confidentiality of letters, on the other hand, and noted that phone calls made by individuals as

part of their job, business or public activity, usually do not constitute personal communication. The audio recording of such a phone made after having been advised of the fact that the phone call is being monitored, may be used by court as evidence in civil proceedings as long as there is no other option that shows more respect to the privacy of the person. If the party has no other evidence and the court refuses the evidence by the recording as unlawful, the party's right to judicial protection is violated.

Evidentiary issues were also considered by the Constitutional Court in judgment File No. IV. ÚS 14/17 of 9 May 2018, namely the duty of courts to consider reversing the burden of proof in certain cases.

Judgment File No. IV. ÚS 14/17: Reversing the burden of proof in medical cases

The petitioner (a minor child) was born following a complicated birth; after the first signs of an urgent birth appeared, the mother was transported to the hospital in Boskovice and later to the Brno University Hospital, where the petitioner was born, suffering severe brain damage with lifelong consequences. The petitioner claimed pain and suffering damages from the Boskovice Hospital and South-Moravia Rescue Services as the damage to health was allegedly caused by the wrong steps taken by these healthcare providers. The first-instance court dismissed the claim. The regional court granted, in considerable part, the appeal lodged by the petitioner; however, the appellate judgment was reversed by the Supreme Court and, being bound by the legal qualification of the Supreme Court, the regional court eventually dismissed the claim on grounds that the causal link between the unlawful act of the Boskovice Hospital and the damage to health had not been established. Subsequently, the application for appellate review was rejected.

The Constitutional Court concluded that it was not to be the petitioner who bears the burden of proof due to the circumstances of the case and the unlawful conduct of the Boskovice Hospital that had breached its duty to keep proper medical records. Despite the general principle warrants that the injured party shall state and prove the unlawful conduct of the wrongdoer, the occurrence of damage and the causal link, such a principle may be in conflict with the right to fair trial in some cases. Such cases include medical lawsuits between patients and healthcare providers as the right of the injured patient may be considerably weakened because the patient does not have and cannot have (objectively and unlike the healthcare provider) information relevant for a decision to be made. The Constitutional Court believes that in such cases it is justified to consider reversing the burden of proof as regards establishing the (non-)existence of any of the elements in liability for damage. The failure of the courts to do so constituted the petitioner's right to judicial protection and the right to equality of arms.

Judgment File No. II. ÚS 644/18 of 17 August 2018 dealt with the liability of a lawyer who required that his client willfully submit false and misleading evidence. The justices noted that the decision of an individual not to submit willfully false or misleading information before court (in this case the petitioner did not follow the lawyer‘s instruction to sign backdated contracts) is an exercise of the constitutional right to act freely under Article 2(3) of the Charter. The conduct of the lawyer, which is also contrary to the Code of Conduct of the Czech Bar Association as well as the European Code of Conduct of the Council of Bars and Law Societies of Europe, cannot be to the detriment of the client. By dismissing the petitioner's claim for damages caused by her former lawyer on grounds that the petitioner was at fault with respect to the dispute due to her failure to cooperate with the lawyer and to sign the backdated contracts, the courts violated the petitioner's right to act freely as well as her right to fair trial.

Another judgment worth mentioning is judgment File No. III. ÚS 4072/17 of 5 November 2018, which reviewed the order made by the High Court in Olomouc dismissing **an application for a preliminary injunction** ordering Uber B. V. to refrain from operating and brokering taxi services in the city of Brno.

Judgment File No. III. ÚS 4072/17: Incorrect evaluation of criteria for issuing a preliminary injunction (Uber B. V.)

The regional court granted an application filed by the petitioner for issuing a preliminary injunction ordering Uber B. V. (an intervening party) to refrain from operating and brokering taxi services in the city of Brno on grounds that taxi services require a license and if an entity doing business in the field fails to fulfill the statutory criteria, which has been established, such conduct most likely amounts to unfair competition. Nevertheless, the intervening party appealed and the high court reversed the order of the regional court and dismissed the application for a preliminary injunction. The high court argued that the petitioner stated in the application that the intervening party failed to meet the criteria for operating and brokering taxi services, which was contrary to the prayer for relief which required the intervening party to refrain from operating or brokering taxi services.

The Constitutional Court considers that the high court based its decision on the fact that the activities of the intervening party do not constitute taxi services as they do not meet the criteria of the Road Transportation Act. However, what needs to be distinguished is whether the activity concerned is regulated by the Act and the requirements for operating such an activity; the answer to the second question is dependent on the answer to the first question. In jurisprudence, this is a distinction made between an antecedent which defines the conditions and a consequent which includes the actual rule of conduct. The issue was, then, whether the activities of the intervening party constitute taxi services under Section 2(9) of the Road Transportation Act, and consequently whether such services were subject to Section 21 et seq. of the Act, rather than whether an activity which fails to meet the statutory criteria for taxi services could be considered as the provision of taxi service. The reasoning of the high court that the intervening party failed to meet the statutory conditions for taxi services and thus the services could not amount to competition to taxi services, is apparently wrong, and thus the conclusions based on such reasoning – there is a conflict between the facts in the application for the preliminary injunction and the prayer for relief and that the preliminary injunction, if issued, would subject the intervening party to a duty that could not be performed – could not hold either. Due to the arbitrariness on part of the high court, its decision had to be reversed as violating Article 36(1) as well as Article 36(4), Article 2(2) and Article 26(1) and (2) of the Charter.

Fair trial in criminal proceedings

The specific rights under Article 37, 39 and 40 of the Charter constitute a set of principles going beyond the right to fair trial and relate to the rights specific to criminal proceedings. Additional protection exceeding the right to fair trial is thus afforded to prosecuted individuals and legal entities, persons serving a custodial sentence or remanded in pre-trial custody, as well as other persons participating in criminal proceedings, such as witnesses. In 2018, the full court also dealt with the amnesty granted by the President of the Czech Republic and the related issues such as whether an amnesty could be made conditional, and whether the President who granted the amnesty or the court that decides on guilt and punishment would be competent to make a decision on the failure to meet such a condition. Judgment File No. Pl. ÚS 36/17 of 19 June 2018 stated that an amnesty could be made conditional and stated that the court, not the President, was competent to decide on the failure to meet such a condition, which was contrary to the previous court decisions as well as legal commentaries. The hearing on the failure to meet a condition must be public as it is not permissible that anyone be imprisoned without proper hearing.

Another judgment (File No. Pl. ÚS 15/16 of 16 May 2018) made by the full court dealt with the liability of a vehicle operator for a breach of driver's duty; the Constitutional Court concluded that such strict liability is not only feasible, but also constitutional. If the vehicle operator lets another person drive a car and the driver commits an administrative infraction, it may be presumed that

the operator knows the identity of the driver and will be interested in enforcing the reimbursement for the payment of a fine. The doctrine of strict liability of vehicle operators was introduced to remedy a situation where the drivers could not be punished for committing an administrative infraction, as their identity remained unknown. The Constitutional Court argued that the driver's liability for committing an administrative infraction is a fault liability as it is based on the driver's unlawful conduct, and the vehicle operator's liability is a strict one, as it is based on broader liability of the owner, or vehicle operator. Anyone buying a motor vehicle must realize that being an owner of a motor vehicle may involve statutory duties that are necessary for the road traffic involving an increasing number of vehicles to work. Therefore, the Constitutional Court dismissed the motion made by the Regional Court in Ostrava to repeal Section 10(3) of Act No. 361/2000 Sb, the Road Traffic Act, using not only the above arguments.

A number of judgments adopted by panels of justices are also worth mentioning. One of the most important judgments by the Constitutional Court stated that even a friend, not only a family member, could qualify as a close person.

Judgment File No. II. ÚS 955/18 of 9 July 2018: The right to refuse to testify and the close person doctrine

The petitioner has been summoned to testify in a rape criminal case of her friend, in the capacity of the victim, based on an information laid by the victim, who was divorcing her husband. The petitioner refused to testify arguing that the testimony could incriminate a close person, with both the friend and the friend's husband being considered close persons by the petitioner. The police imposed a procedural fine of CZK10,000 on the defendant on grounds that the justification was insufficient. The court did not hold in favour of the petitioner either arguing that the relation of the persons to the petitioner as well as the justification of the perceived harm needed to be based on objective facts, which failed to be proved by the petitioner.

The Constitutional Court believes that if the people concerned are not relatives, they can be considered close persons only if there is such an emotional relation between them that a harm to the other person would be felt as one's own. Therefore, it must be evaluated on a case-by-case basis whether such a relation exists. At the same time, "the relationship must be stronger than a mere interpersonal bond" and objective facts showing the strength of the relationship must exist. On the other hand, it is a truism that a friendship can in some cases be as strong a bond as a family bond, and maybe even stronger. The strength of friendship may derive from a number of aspects.

The strength of a friendship need not be dependent on how often the people meet. There are known cases of very strong friendships where the friends have not seen each other for a number of years or even decades. The concept of a close person must be considered a category where one weak feature in the definition may be compensated for by a different strong feature. In this case, the petitioner stated such facts that implied her strong relationship with the victim and the suspect; they had known each other since the kindergarten age, had spent holidays and celebrations together, had seen each other frequently. The statements were so strong that the police and the court would need to rebut them by presenting their own theory; however, neither of them did so and they only stated that the petitioner had not seen the suspect for a number of months. In the end, the Constitutional Court agreed with the petitioner and admitted that if she had given more specific reasons for refusing to testify, this could incriminate either of the persons concerned. Crimes include, in addition to the rape investigated in this case, blackmail, defamation or false accusation.

Judgment File No. IV. ÚS 2/18 of 9 May 2018 also addressed an overlap between criminal law and interpersonal relations. The Constitutional Court was considering how to balance a public interest in prosecuting crimes and the exercise of parental rights of a mother of a newborn, who was hold in custody. The petitioner was remanded in custody in a later stage of her pregnancy; soon after

giving birth she was transferred to custody and the child was placed in an institutional care center. After nearly two months after the birth, the petitioner applied for release from custody on grounds of the interests of her children. The district court argued that the petitioner should have considered their interests much earlier and that she was at fault of the situation by committing serious crime. The Constitutional Court argued that in each case the interest in prosecuting crime must be balanced with the interest in preserving parental rights, and the best interest of the children must prevail under any circumstances. A solution that affords the highest degree of protection possible to all fundamental rights involved, and does not interfere with them more than necessary, should be sought. Therefore, the Constitutional Court reversed the decision to dismiss the application for release from custody.

In its decisions, the Constitutional Court also addressed the principles that make a difference between an entrapment transaction contemplated by the Code of Criminal Procedure, and unlawful police provocation. This case involved an attempted felony of a foreign military equipment transaction without a licence or authorization, and an attempted breach of international sanctions. The petitioner planned to make a transaction involving US weapons while failing to observe an existing embargo, and was fully aware of the fact that hazardous material cannot be exported legally into an armed conflict area even from the Czech Republic. Neither of the crimes was completed as they had been detected thanks to the entrapment.

Judgment File No. I. ÚS 4185/16 of 19 March 2018: The borderline between unlawful police provocation and a lawful means to detect crime

Entrapment contemplated by Section 158c of the Code of Criminal Procedure is a lawful means to detect crime, and thus does not amount to unlawful police provocation provided that the following criteria are met: before making an entrapment offer, there should exist reasonable suspicion that the offeree would, unlike an ordinary citizen, accept the offer. The agent must not incite an innocent person to commit a crime. The entrapment transaction must not involve unusual conditions, especially such that are more advantageous for the offeree (e.g. selling drugs at a lower price than the usual price). The agent must not force the offeree to enter into the transaction for the entrapment to be successful. The agent must not persuade the offeree that the transaction is legal and that there is no danger of its detection.

Judgment File No. II. ÚS 482/18 of 28 November 2018 reversed a decision of the lower courts whereby they dismissed an application filed by the petitioner for release on parole on grounds that they based their decision exclusively on the previous conduct of the petitioner and did not take into account facts indicating that the petitioner's conduct may have improved. In addition, the Constitutional Court addressed the issues involved in the statutory regulation of release on parole, which makes use of a number of indefinite concepts which have not been defined by case law, and this raises concerns as regards the foreseeability of law, legal certainty, and equal footing of the parties.

One judgment that received attention was a judgment in which the Constitutional Court stated that an audio recording of a deliberation of a panel of judges held in camera does not qualify automatically as inadmissible evidence in proceedings to rule on a judge's bias. The audio recording captured, inter alia, a derogatory statement made by the presiding judge about the defendant and the defense lawyer as well as the presiding judge demanding that the case be dealt with quickly. The regional court, however, ruled that the bias challenge was not justified on grounds that the statements made by the presiding judge during a deliberation of judges held in camera had no close relation to the petitioner, and resulted from the mental stress caused by public insults and deterioration in the attitude of the parties who did not obey the instructions of the court, and considered the audio recording unlawful.

Judgment File No. III. ÚS 4071/17 of 31 July 2018: Admissibility of evidence by a secretly made recording of a deliberation of a panel of judges

Even though it could be inferred from the recording that a part of the statements made by the presiding judge were related to the deliberation over the decision, the relevant part challenged by the petitioner does not fall under Section 127(1) of the Code of Criminal Procedure (duty of confidentiality in relation to the deliberation and voting). The Constitutional Court did understand the concerns about the possible abuse of the recorded deliberation, but did not agree that the evidence was unlawful and thus inadmissible.

The Constitutional Court carried out a test of proportionality to evaluate the admissibility of evidence by the recording. It based its decision on an assumption that the limitation of the right to privacy of the presiding judge was justified by ensuring the petitioner's right to judicial protection. As regards the appropriateness, it was further noted that the recording made it possible to evaluate the bias of the presiding judge. The Constitutional Court believed that another criterion of the test, i.e. the necessity of the means, was also fulfilled. The Constitutional Court agreed with the petitioner that in the given context there was no other evidence that could establish the facts of the case without either interfering with the privacy of the presiding judge, or interfering with her privacy to a lesser degree. As regards the last step involved in the test of proportionality, i.e. balancing two conflicting rights, the Constitutional Court reiterated that the recording captured the presiding judge making derogatory and insulting statements about the defendant and his defense lawyer, and made one-sided demands to deal with the case quickly. Having considered all the circumstances, the Constitutional Court concluded that the recording was admissible as evidence as its use as evidence would not exceed the limits of interference with the fundamental right to the protection of privacy.

The Constitutional Court noted that the presiding judge could not be considered impartial as regards the objective test of impartiality. As the courts afforded unreasonable protection to the privacy of the presiding judge as compared to the petitioner's right to judicial protection, the Constitutional Court concluded that the petitioner's constitutional rights had been violated.

The Constitutional Court also dealt with the specific aspects of corporate criminal liability, namely the right to choose a defense lawyer through its statutory body, under Act No. 418/2011 Sb., on corporate criminal liability (hereinafter the "Corporate Criminal Liability Act").

Judgment File No. II. ÚS 131/18 of 15 August 2018: The violation of the right of a legal entity to choose a defense lawyer

Under Section 34(4) of the Corporate Criminal Liability Act, a person who acts as a witness in the same case as the accused legal entity cannot act on its behalf in the respective criminal proceedings. This also includes choosing a defense lawyer. The only way for an accused legal entity to show its will and exercise its constitutional right to choose a defense lawyer is to act through its authorised representative. However, a person acting as a witness in the case cannot, under Section 34(4) of the Corporate Criminal Liability Act, act on behalf of the accused legal entity, and not even choose its defense lawyer. In other words, Section 34(4) of the Corporate Criminal Liability Act limits the right of the accused legal entity to choose a defense lawyer freely. Such a limitation must pass the test of proportionality. The Constitutional Court believes that only such an interpretation of the respective provision is constitutional to the effect that the person authorized to act on behalf of the legal entity may choose the defense lawyer for the legal entity even though it also acts as a witness in the proceedings. The Constitutional Court added that the guardian cannot choose a defense

lawyer for the legal entity as long as the guardian has been appointed on the sole ground that the legal entity has no person competent to act in the proceedings on its behalf because such a person acts as a witness in the case of the accused legal entity. An interpretation to the contrary would deny the accused's right to freely choose a defense lawyer as the guardian would thereby replace the will of the accused legal person. As the petitioner's right to defense under Article 40(3) of the Charter was denied in the case, the Constitutional Court granted the constitutional complaint and prohibited the parties concerned from violating the petitioner's fundamental right to defense.

Compensation for an unlawful decision and maladministration

A vast amount of the last year's case law dealt with the challenges involved in the application of Act No. 82/1998 Sb., on liability for damage caused as part of public administration by a decision or maladministration; this act is an implementation of the right to compensation for damage caused by an unlawful decision of a court, other State bodies, or public administrative authorities, or as the result of an incorrect official procedure (maladministration) under Article 36(3) of the Charter.

Compensation for mistakes **in criminal proceedings** constitutes a distinct area. Judgment File No. II. ÚS 2175/16 of 13 March 2018 reiterated that prosecution that lasted for a number of years and ended with eventual acquittal is a serious interference with an individual's legal situation and must involve adequate compensation. The Constitutional Court understands that it is difficult to determine such compensation and translate personal injury to financial compensation. In the case under consideration, the courts failed to sufficiently take into account all the interferences with the petitioner's situation, and failed to provide sufficient reasoning to explain how the compensation was determined. Even though the courts drew on analogical cases, which is permissible, they failed to provide sufficient explanation as to which facts of the cases are similar and which are different; moreover, they also drew on decisions considered unconstitutional by the Constitutional Court.

Judgment File No. III. ÚS 2062/18 of 22 October 2018 dealt with the issue of whether a person is entitled to compensation for false imprisonment. The petitioner was detained as a suspect under Section 76(1) of the Code of Criminal Procedure for 47 hours. Subsequently she was released, without being prosecuted. Later the petitioner made a claim before Czech courts for compensation for personal injury caused by maladministration. The claim was dismissed as she was detained in compliance with the Code of Criminal Procedure and was released within 48 hours as required by the Code of Criminal Procedure. It was argued that the steps taken by the law enforcement bodies were lawful and did not constitute an unlawful decision or maladministration. The Constitutional Court agreed with such reasoning and dismissed the complaint. As there is no specific legal regulation of compensation for false imprisonment, the Charter can only be interpreted to mean that there is no entitlement to compensation for lawful imprisonment (detention under Article 8(3) of the Charter); no such entitlement is foreseen by Article 5 of the Convention either.

Year 2018 no exception in that the Constitutional Court dealt with **compensation for injury caused under the communist regime**. Judgment File No. II. ÚS 1242/18 of 16 October 2018 did not deal with the amount of compensation as was the case before, but rather with the procedure to award compensation. The case involved a petitioner's request that a certificate of anti-communist resistance be issued. In 2012 he filed his request with the Ministry of Defense and argued that his participation in the resistance movement involved his active membership in SODAN Scout Resistance Group between September 1951 and October 1953; the group tried to fight against forced collectivization of farmers. As a result, he was convicted of treason, sabotage and unlawful appropriation and causing damage to property of people's cooperatives in 1954 and sentenced to a term of imprisonment of four years and half, property forfeiture and a fine. He served the sentence in the Forced Labour Camps in the Jáchymov Area. He was released in 1957 and vindicated in 1989. The Ministry that was supposed to issue a decision without undue delay or within 30 days of the initiation of the proceedings took more than three years and half to issue the certificate. The petitioner's

constitutional complaint challenged insufficient compensation for the length of the proceedings. The Constitutional Court argued that the legitimate expectation of the petitioner that the certificate would be issued within reasonable time turned into a few-year forced waiting which could be considered undignified considering the petitioner's age. The higher moral or temporal urgency, the higher the demands on the legal protection of individuals. The Constitutional Court concluded that the courts had violated the petitioner's right to fair trial under Article 36(1) of the Charter and the right to compensation under Article 36(3) of the Charter.

Statistics of decision-making in 2018

Statistics of decision-making of the Constitutional Court in 2018

Decisions in 2018 in total		
4,395		
judgments	resolutions	opinions of the Plenum
206	4,187	2

Judgments in 2018[i)]		
206		
Granted (at least partially)	Dismissed (at least partially)	Granted and dismissed
172	41	7

Average length of proceedings in cases completed in 2006–2018

		days	months and days	
Average length of proceedings:	**in all matters**	166	5 months	16 days
	in matters for the Plenum	356	11 months	26 days
	in matters for a panel	163	5 months	13 days
	in matters decided upon by a judgment	383	12 months	23 days
	in matters decided upon by a rejection for being manifestly unfounded	169	5 months	19 days
	other methods of termination of the proceedings	115	3 months	25 days

Average length of proceedings in cases completed in 2018

		days	months and days	
Average length of proceedings:	**in all matters**	141	4 months	21 days
	in matters for the Plenum	282	9 months	12 days
	in matters for a panel	139	4 months	19 days
	in matters decided upon by a judgment	351	11 months	21 days
	in matters decided upon by a rejection for being manifestly unfounded	155	5 months	5 days
	other methods of termination of the proceedings	113	3 months	23 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.

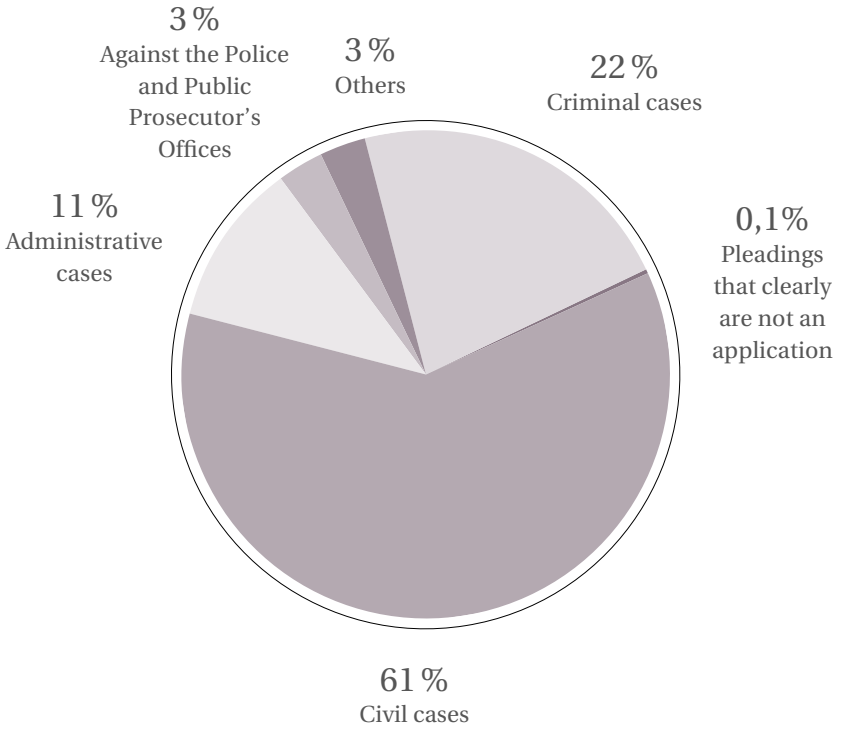
Public oral hearings

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

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

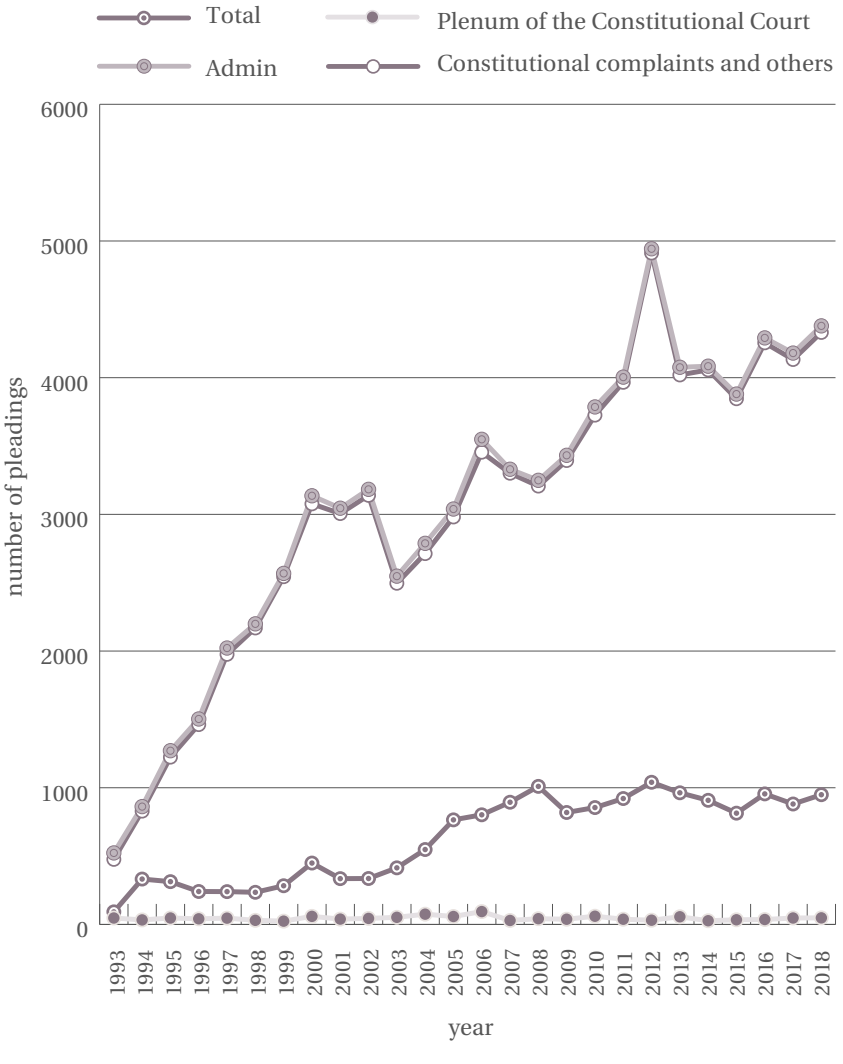
Substantial structure of petitions to initiate proceedings in 2018



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
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
Total	**79,870**	**1,175**	**78,695**	**16,394**

Developments of the numbers of submissions 1993–2018



Conference of European
Constitutional Courts

In 2017, in Batumi, Georgia, the Constitutional Court of the Czech Republic was unanimously voted to preside over the Conference of European Constitutional Courts (hereafter "CECC") for the following three years. This international forum brings together 41 European constitutional or similar courts which are responsible for constitutional review. Its activities include creating a space for the exchange of information and opinions between and among its members as regards methods and procedures of constitutional review, or institutional, structural, and practical problems in the area of public law and constitutional powers and responsibilities.

Founded in 1972, the Conference is set to be headed, for the first time, by the Constitutional Court of the Czech Republic in the years 2017-2020. Its central decision-making body is the Circle of Presidents, which is convened by the head of the CECC, in this case the President of the Constitutional Court of the Czech Republic, Pavel Rychetský. The meeting of the Circle of Presidents took place on the 13th of June 2018, at the Corinthia Hotel in Prague. Representatives of over thirty European constitutional courts debated, among other things, what the upcoming Congress of this organization should be like and they decided on its focus. The XVIII CECC Congress will take place from the 26th to the 29th of May, 2020, in Prague, and its theme will be "Human Rights and Fundamental Freedoms: The Relationship of International, Multinational, and National Catalogues in the 21st Century." The theme is intentionally broad in order to accommodate a wide variety of specific issues chosen on the basis of questionnaires submitted by individual countries. With the exception of countries outside the system of continental law, European countries, at various points of their legal development, have adopted a list of certain rights and freedoms which they consider so important as to put them ahead of other rights, responsibilities, and values. The priority of these rights over other values and interests of the state is reflected in their formal expression, that is, such rights and liberties are listed in a document which has the highest legal force. Such a document is usually the Constitution. In states with a poly-legal constitution – like the Czech Republic – It is a particular catalogue of an autonomous, normative nature, but from the perspective of its legal and systemic hierarchy, it is comparable with the Constitution. Similarly to how national constitutional documents emphasize the position of fundamental rights and liberties, international treaties contain provisions on human rights, their protection, application, or application priority. The national catalogues of human rights are similar to international catalogues in that that they contain a similar list of rights, that is, at least a similar number of fundamental rights, and also in that that the rights and liberties protected by them are the most emphasized.

For decades, international documents about human rights, most of them in the form of treaties, have been effecting, conditioning, and determining the decision-making activities of constitutional courts in the area of human rights. However, their approach to international human-rights documents is not uniform, as it is subject to domestic forms of reception of international sources of law. The main objective of the questionnaire is therefore to find out how constitutional courts and other courts of the same standing proceed when a certain value (a right or a liberty) is protected by more than one source (usually the national constitution, European Convention on Human Right of the Council of Europe, Charter of the Fundamental Rights of the European Union or other international, multilateral human-rights treaties). The application of various catalogues of human rights in proceedings before constitutional courts is therefore a question that the XVIII CECC should analyze more closely.

The first, more general, part of the questionnaire should focus on the reasoning behind the application of individual catalogues of human rights, namely the manner of their normative anchoring in the national laws, their plurality, interconnections, use in case law, and the significance attached to this or that human-rights catalogue by a particular constitutional court. The second part of the questionnaire should cover fundamental rights, which are present in most human-rights catalogues. Using the example of six fundamental human rights, it should be possible to make a deep, comparative analysis of the approach of European constitutional courts and the extent of use of individual catalogues in the protection of these particular rights.

The Vice-President of the Constitutional Court of the Czech Republic, Jaroslav Fenyk, has been given the role of the rapporteur-general, whose task is to assemble a final report from these questionnaires.

The XVIII Congress should begin with an official opening session and end with a special meeting of the Circle of Presidents. The usual guests will be invited to the Congress, among them the President of the European Court for Human Rights, the President of the Court of Justice of the European Union, the President of the International Criminal Court, representatives of the Venice Commission or the World Conference on Constitutional Justice as well as representatives of regional organizations.

In keeping with the the statute of the CECC, the closing of the Congress will see the handing-over of the Czech presidency of the organization to the Constitutional Court of Moldova which will (based on the unanimous decision of the Circle of Presidents held in Batumi, Georgia, from the 29th to the 30th of June, 2017) head the CECC in the following three years and which should, in 2023 in Kishinev, organize its XIX Congress.

In 2018, the Constitutional Court of the Czech Republic celebrated not only its 25th anniversary but also 45 years since the death of the founding father of European constitutionality protection, Hans Kelsen, and that is why an international conference titled “How We Started: The Heirs of Hans Kelsen” took place immediately following the Circle of Presidents. Thus, on the 14th of June 2018, representatives of the member states debated about the roots from which European constitutionality protection has grown and recalled the milestones in the development of European constitutional courts.

The year 2020 will mark 100 years since the founding of the first two European constitutional courts - the Czechoslovak one and the Austrian one. Thus, we will also commemorate this important anniversary of European constitutional justice during the XVIII CECC Congress in Prague.

Logo for the Czech Chairmanship: 2017–2020

Joint photography of Presidents of European Constitutional Courts, Prague, June 2018

Mr. Pavel Rychetský, the President of the Czech Constitutional Court, chairing the Circle of Presidents of the Conference of European Constitutional Courts, Prague, June 2018

Circle of Presidents, Prague, June 2018

Circle of Presidents, Prague, June 2018

Gala dinner in Rudolfinum Concert Hall, Prague, June 2018

Just minutes before the beginning, Prague, June 2018

Mr Jaroslav Fenyk, the Vice-president of the Czech Constitutional Court, chairing the conference “Our Beginnings: Hans Kelsen´s Heirs”, Prague, June 2018

International Conference “Our Beginnings: Hans Kelsen´s Heirs”, Prague, June 2018

Welcoming speech of the President of the Czech Constitutional Court during the cultural programme, Prague, June 2018

Boat trip, Prague, June 2018

Boat trip, Prague, June 2018

2018
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