2017 2017 2017 2017 2017 2017 2017 2017 2017

Yearbook of the Constitutional Court of the Czech Republic

YEARBOOK
2017

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„Everyone has the capacity to possess rights.“

(Charter of Fundamental Rights and Freedoms, Article 5)

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Introduction

Dear readers,

Last year, in my introduction to the English version of the Constitutional Court's yearbook I expressed hope that 2017 would bring better news about the state of independence of Constitutional Courts in Europe.

That hope was fulfilled only partially.

European constitutional judiciary continues to maintain its high standard, the courts cooperate and strive to increase and streamline the standard of human rights protection. Despite that, we saw pressures exerted on some Constitutional Courts, and attempts to influence or weaken them in the last year. The Constitutional Court of the Czech Republic, together with other members of the family of European Constitutional Courts, believes that these isolated but serious attempts to weaken the valuesof the constitutional judiciary cannot be ignored.

The sense of co-responsibility for maintaining the fundamental principles of post-war constitutional judiciary led us run for the presidency of the Conference of European Constitutional Courts in 2017–2020. It is a great honour and a commitment for us that our colleagues from the four dozen European Constitutional Courts at the 17th CECC Congress in Batumi, Georgia, unanimously elected us to lead the organization. Thanks to their trust, we will be able to host the XVIII Congress in 2020 in Prague.

However, the Constitutional Court of the Czech Republic did not live only with the Conference of European Constitutional Courts in 2017. Less ceremonial but the more demanding was the fulfilment of its main mission, which is the protection of constitutionality, human rights and fundamental freedoms. Last year, the Court received a larger number of petitions to initiate proceedings to review legal rules than was usual in the previous years. Yet the Constitutional Court managed to increase its efficiency in 2017 and decided on more cases than were submitted in that year. That reduced not only the number of pending cases, but—which may be surprising at first glance—also the average length of proceedings, which dropped to 147 days (from the submission of the petition to the decision). Statistics are merciless: to achieve these results, each of the judges of the Constitutional Court had to decide, on average, on 290 cases in 2017.

But I do not want to end my lines pessimistically. The judges of the Constitutional Court could also be effective because they are supported by a team of other co-workers—assistants, analysts, clerks and technicians. I have a good feeling that our institution works as a team and pulls together. The burden of judicial accountability is then easier to bear, and I owe thanks to all my colleagues.

The Constitutional Court of the Czech Republic simply worked hard in 2017, and this will not be different in 2018. In the next yearbook, you will see how we did.

I wish you a pleasant and interesting reading!

Jaroslav Fenyk
Vice President of the Constitutional Court
(responsible for foreign relations)

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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.

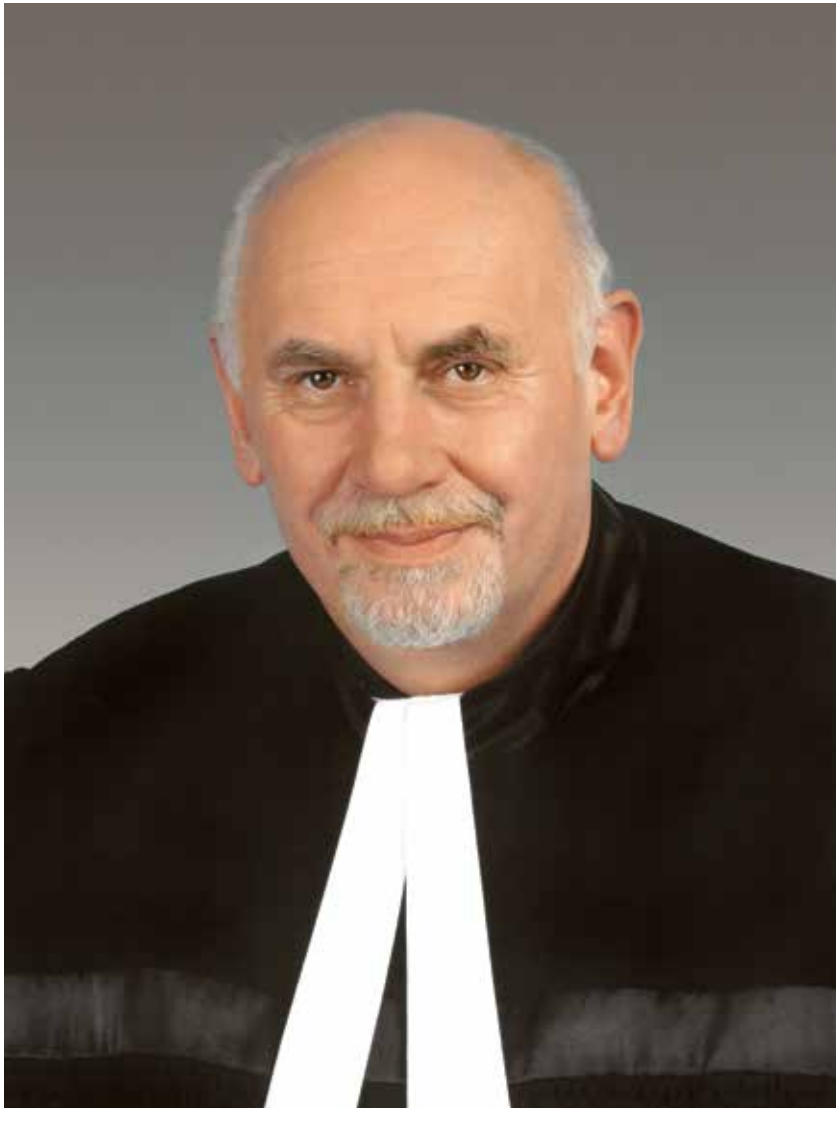
Justices and Structure of the Court

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)

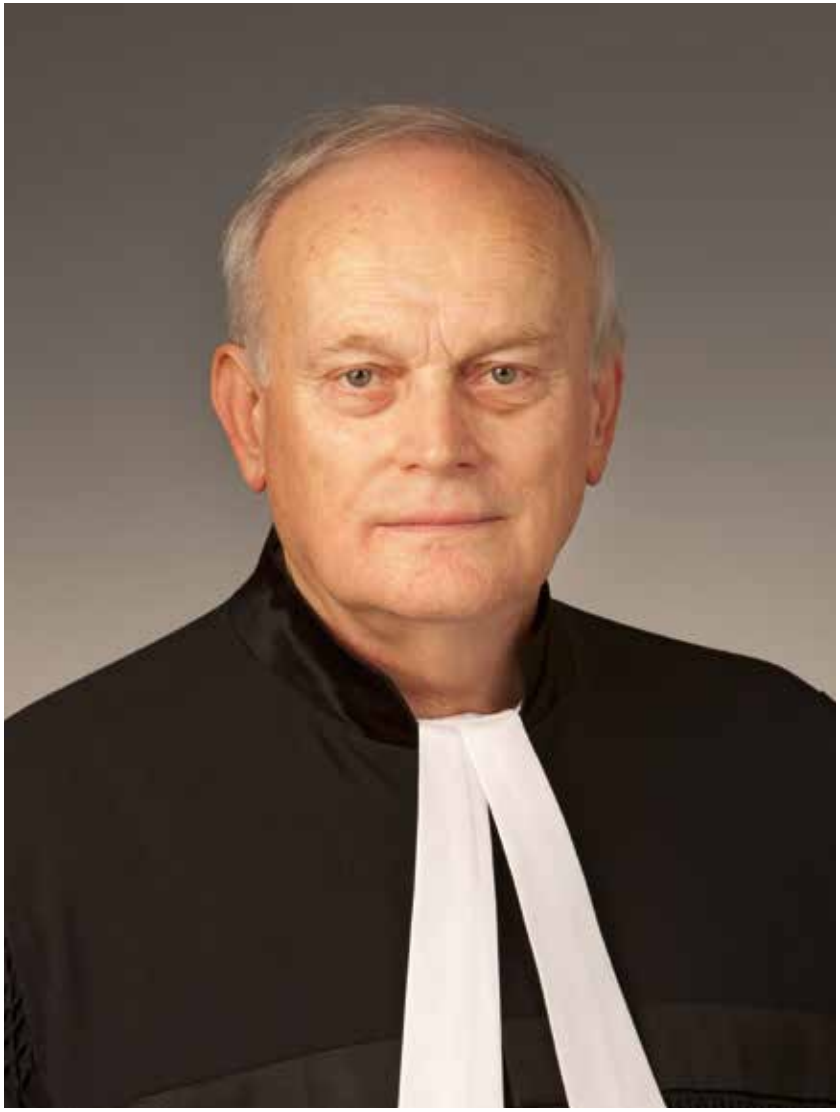
Graduated in law from the Charles University Law Faculty in Prague in 1986, where he obtained the title Doctor of Law in the field of criminal law – theory of the state and law – in 1987. In 2001, he obtained the title Ph.D. in the field of substantive and procedural criminal law at the Faculty of Law 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 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.

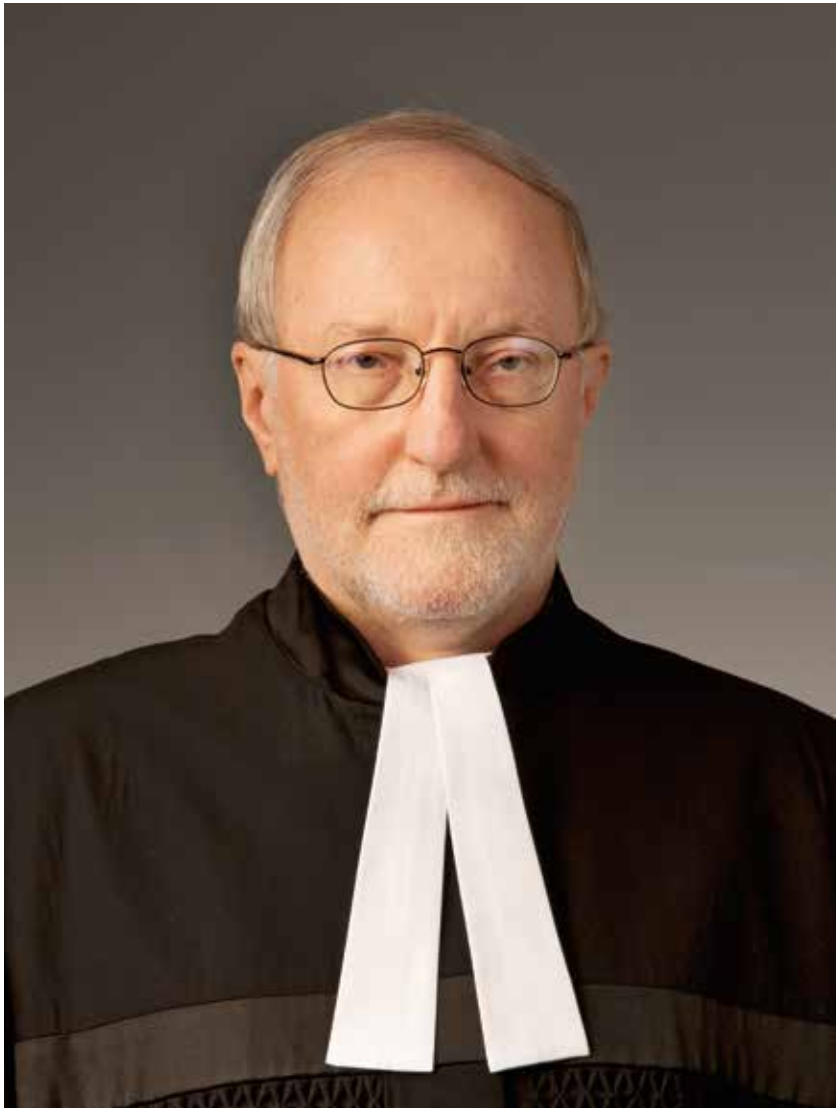
In addition to his teaching activities, he also contributed for many years to the drafting of legal regulations and expert reports for state bodies and local government bodies. In the years 1998 to 2004, he worked as assistant to Members of the Chamber of Deputies of the Czech Parliament (in particular 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.

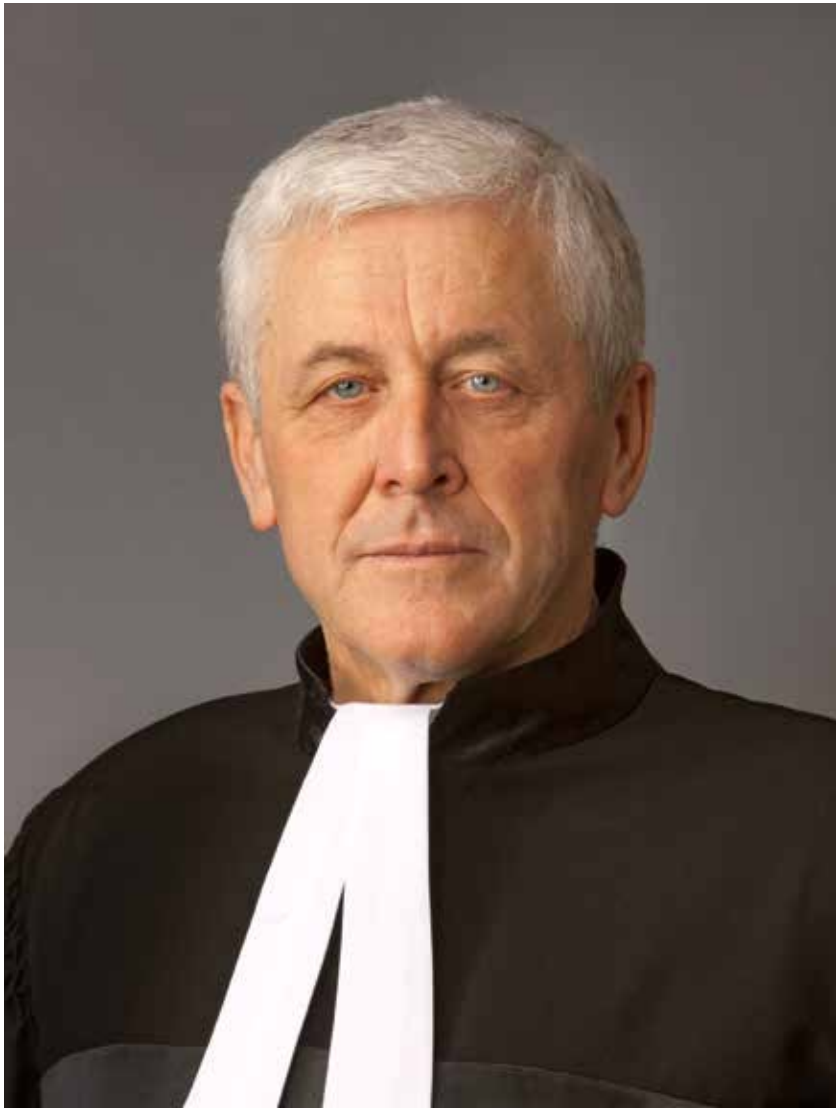
Judge Jirsa has been lecturing and publishing specialized texts. He has lectured for Judicial Academy, Czech Bar Association, Chamber of Law Enforcement Officials, Union of Judges etc. In 2010, he was awarded the bronze medal of Antonin Randa by the Union of Czech Lawyers for his lecturing and publication

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.

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 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 task is to prepare the matter for deliberation, unless she 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.

IVO POSPÍŠIL
Secretary General
(since 1 March 2013)

JUDr. Ivo Pospíšil, Ph.D. was born in Brno in 1978 and he is a graduate of the Faculty of Law (2001) and Faculty of Social Studies, study field political science (2005), at Masaryk University.

In his work to date, he has tried to combine legal practice with academic and educational activities. He has worked in the academic sphere at, for example, the International Institute of Political Science of Masaryk University (1999–2001), and has taught human rights and international law at the Faculty of Law at Masaryk University (2004–2005) and at a number of private universities. He has worked as a member of the academic staff of the Institute for Comparative Political Research (2005–2006), and has been working part-time from 2005 to date as an assistant professor at the Department of International Relations and European Studies at the Faculty of Social Studies, Masaryk University.

As far as his legal practice is concerned, he joined the newly formed Office of the Public Defender of Rights (2001–2002) after completing his studies. Soon afterwards, he has moved to Constitutional Court where he gradually occupied several positions. He started as an assistant to then Vice President of the Court Eliška Wagnerová, in 2009 he was appointed head of the Analytical Department and he was appointed to his current position of Secretary General by the President of the Constitutional Court in 2013.

Beside his position at the court he stands as a member of Examination Commission of the Czech Bar Association and a member of Governmental Legislative Council.

Ivo Pospíšil has also written a number of monographs, such as The Rights of Ethnic Minorities: Between the Universalism of Human Rights and the Particularism of Group Difference (2006) and Formation of the Political System in Estonia (2005). He has also co-authored the monographs The Baltic States in Transformation. Political Development in Estonia, Lithuania and Latvia (2000), Armed Conflicts after the End of the Cold War (2012), Judicialization of Politics (2013), Human Rights in International Relations (2014) and Helsinki Process, Velvet Revolution of 1989 and the Czech Transformation (2015). He also co-authored commentaries to the Law on the Constitutional Court (2007), to the Charter of Fundamental Rights and Freedoms (2012), and the Constitution (2015) and acted as joint editor of a number of anthologies, such as In dubio pro libertate – Thoughts on Constitutional Values and Law and Vladimír Klokočka – liber amicorum (both 2009). He also publishes his critical opinions on current affairs in the daily press.

He is married and has two sons.

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.

Constitutional Court in session

© Constitutional Court/Jan Symon

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.

House of Estates just opened (1877)

And what building was chosen for the Constitutional Court?

Between 1875 and 1878, the monumental building of the House of Moravian Estates was built in Brno. The extensive transformation of the entire Joštova 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 House of Estates became a important part of the Brno ring road and one of the key dominant features of Joštova Avenue. It was built for the purposes of the Moravian Provincial Assembly. The building was constructed according to a winning design from an architectural competition held in 1872 and 1873. Two Viennese architects, Anton Höfft 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 House of Estates 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

Interior reconstructions © Constitutional Court/Aleš Ležatka

Basement Drain © Constitutional Court/Aleš Ležatka

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

New facade is shining

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a cultural monument, and enjoys general protection thanks to its architectural design. For that reason, a structural and historical survey of the building was commissioned in order to ensure the preservation, and restoration, if necessary, of the original architectural elements.

The building is currently undergoing an extensive restorations with aim to resume its previous fame and glory. There is a strive to complete all the renewal (both interior and exterior) by the October 2018 and celebrate thereby the 100th Anniversary of Czechoslovak Republic and the 25th Anniversary of the Constitutional Court of the Czech Republic.

The Seat of Justice

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4

Decision-making in 2017

The decision-making activity naturally differs every year according to matters the Constitutional Court is addressed with by the petitioners. The decisions described below may thus follow up on case-law from the previous years but also reflect current trends and bring new topics and perspectives. The present overview of case-law represents the most interesting matters the Constitutional Court dealt with in 2017. However, you can get a full picture only by looking up the decisions on the website of the Constitutional Court or in the Collection of Judgements and Resolutions.

Fundamental constitutional principles

Democratic state respecting the rule of law

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

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

Suprapositive values such as dignity, freedom or equality are the basis of the constitutional order as well as the entire order of fundamental rights in constitutional democracy. Human **dignity** was called upon by several judgements in 2017; it was related to (1) life sentence, (2) prohibition of inhuman and degrading treatment, (3) information on the income of persons and salaries in the public sector as an aspect of privacy, and finally to (4) social rights. Some judgements linked (5) dignity and freedom.

In its judgement file No. III. ÚS 1698/14 of 10 January 2017, the Constitutional Court provided its opinion on a life sentence accompanied by the possibility to request conditional release subject to certain conditions (e.g., after 20 years). At that point, the Constitutional Court recalled that the well known common law principle "life means life" (or "whole life tariff"), which would contradict the requirement to respect human dignity by excluding a possibility of redress, does not apply in the Czech Republic. The actual question of conditional release is at the level of subconstitutional law, and the constitutional aspect only stands out if conditional release was completely out of the question, which would contradict the requirements for reflecting respect for human dignity into various functions of the punishment.

In its judgement file No. II. ÚS 1398/17 of 17 October 2017 regarding police intervention in the Milada villa, the Constitutional Court pointed out that treatment can be considered degrading when, inter alia, it does not pay sufficient respect for human dignity or compromises such dignity. Degrading treatment is closely linked to the requirement of respect for the dignity of a person, which does not allow public authorities to treat a person as an object. The Constitutional Court also recalled the legal opinion of the European Court of Human Rights (hereinafter also referred to as "ECtHR") according to which any use of physical force that was not strictly invoked by the behaviour of the detained person, degrades human dignity.

Human dignity was largely referred to also in judgement file No. IV. ÚS 1378/16 of 17 October 2017 in the matter of provision of information about salaries. It reminded the 'theory of object', which the Constitutional Court elaborated on already in its previous judgements and under which it is impermissible to treat a person like an object. It should be the individual who decides, in relation to their person, what is to remain private and what is to become public.

A broad-brush evaluation of what information can or cannot affect an individual is inappropriate and disrespectful of human dignity.

In its judgement file No. Pl. ÚS 2/15 of 3 May 2017 in the matter of public health insurance of foreigners and their free health care, the Constitutional Court established a link between human dignity and the right to health protection under Art. 31 of the Charter of Fundamental Rights and Freedoms (hereinafter also referred to as the "Charter"). The Court also reminded that social rights do not derive only from the postulate of human dignity, but their basis is also solidarity across the population. Man is naturally a part of the society as a group of persons, and solidarity within these groups is an essential value for the functioning of the society. A certain degree of social cohesion is the basis of a safe feeling of public space for everybody, and thus has a direct link to the degree of freedom of all citizens.

In addition to human dignity, another suprapositive value of the Czech constitutional order is **freedom**. In its judgement file No. Pl. ÚS 9/15 of 8 August 2017 in the matter of imposition of fees for the collection of municipal waste on minors, the Constitutional Court worked with human dignity as well as with freedom. The justification of the existence of a non-taxable basic subsistence minimum is based, according to the Constitutional Court, on the fundamental right in the form of human dignity, which obliges the state to leave basic necessities for human and dignified existence to every citizen or, where applicable, to provide them, and on the requirement to respect the autonomous sphere of an individual. It is an individual's right to the public authority respecting autonomous manifestations of the individual's personality, including manifestations of will that are reflected in the individual's particular actions, unless such actions are explicitly prohibited by law. The protection of autonomous space of an individual also includes respect for the arrangement of the individual's living conditions, in which an individual can freely act as a social and economic being who obtains the means for life through work and other activities with economic aspects. Free development and personal development is, however, substantially restricted in this area in cases where the activities of an individual must mainly or entirely focus on the payment of debts. In principle, such a state of affairs can be accepted when it is a result of voluntarily accepted or due to one's fault arisen obligations (because contracts are to be fulfilled, debts are to be repaid and damage is to be compensated). However, in the case of minors, the protection of autonomous space is joined by a requirement of their special protection. Its essence is to guarantee free arrangement of their own life conditions upon reaching the age of majority. Public authority may not impose duties on minors that, due to their degree or manner, hinder the possibility to adapt their lives as they need beyond an acceptable limit. That does not happen when minors enter the adult life with serious debts. It is therefore a constitutionally protected interest of the child not to enter adulthood with obligations that may have a suffocating effect (judgement file No. I. ÚS 1775/14 of 15 February 2017). This is even truer in cases of debts determined by authorities when the public authority at the same time restricts such debtors' possibilities of gainful activities. A payment obligation could be imposed on someone who did not have any property and could not obtain it through its activities.

In its judgement file No. I. ÚS 615/17 of 10 August 2017 in the matter of a duty of the court to mind the standards of fair trial in relation to the weaker party to the dispute, the Constitutional Court emphasized that Art. 2(3) of the Charter, under which everyone may do that which is not prohibited by law and nobody may be compelled to do that which is not imposed upon them by law (cf. similarly Art. 2(4) of the Constitution), expresses one of the fundamental structural principles of the rule of law (Art. 1(1) of the Constitution). The Constitutional Court has been consistently inferring, from the combination of these two articles, the right of an individual to act freely within statutory limits. A condition of functioning of the rule of law is respect for an individual's autonomous sphere, which also enjoys protection from the part of the state in the way that on one side the state ensures protection against interventions by third parties and on the other side the state itself exerts only activities that do not intervene in such a sphere or intervenes only in cases justified by a certain public interest and where such an intervention is proportional with regard to the objectives that are to be achieved. However, such a freedom to contract may not be unlimited due to respect for the principle of protection of the weaker party, which is a principle with constitutional significance.

In its judgement file No. IV. ÚS 3168/16 of 11 July 2017 concerning a formalistic approach of general courts in assessing the validity of an obligation according to the certainty of the expression of will, the Constitutional Court inferred that legal formalism of public authorities and exorbitant requirements raised by them

for the formulation of a contract cannot be accepted from the constitutional point of view because they obviously interfere with the citizen's right to contract, which follows from the principle of priority of a citizen over the state and from the principle of freedom to contract. A public authority violates constitutionally guaranteed fundamental rights even when it deprives, through it formalistic interpretation of sub-constitutional rules, an autonomous manifestation of will of contracting parties its the consequences the contracting parties intended to bring about in their legal sphere by such manifestation.

Probably the most controversial suprapositive value is **equality**. Judgement file No. Pl. ÚS 32/16 of 8 August 2017 in the matter of the right of the injured person or their representative for the recurrence of a time limit under section 61(1) of the Code of Criminal Procedure concerning procedural equality will be discussed below. We can also point out the aforementioned judgement file No. Pl. ÚS 9/15 in the matter of imposition of fees for the collection of municipal waste on minors, in which the Constitutional Court recalled its case-law on the application of the principle of equality in tax matters. Finally, another important judgement with respect to the principle of equality was judgement file No. I. ÚS 3308/16 of 19 January 2017 in the matter of usurious contracts. The Constitutional Court pointed out that in private law, application of the principle of autonomy is compensated by the principle of equality. That can be conceived at two levels: as formal equality and substantive equality. In creating the legal order, it is the task of the legislature to ensure formal equality of all addressees of legal rules. However, since there is also substantive inequality in the real world of nature as well as of the society, it is the legislature's obligation to consider, in justified cases, enshrining of inequality. That aims to eliminate substantive inequality or another handicap. Even when the legislature does not use such a possibility, the authority applying law has room to resolve the tension between the incompleteness of written law and the nature of a particular case through application of constitutional principles. The principle of equality is also projected in private law. In private law, everyone is guaranteed the widest possible freedom of action; however, since it is guaranteed for everyone, it has to be limited for someone in order to be guaranteed for everyone. Protection of the weaker contracting party follows from the conflict of autonomy of will and the idea of equality, with the aim to achieve a balanced position, i.e., justice, equity or balance of interests. In relations involving parties whose starting positions are considerably unequal (for example, a business and a consumer), one cannot settle for the fact that both parties have available the same legal means (formal equality), because the inequality of the initial means also causes inequality in the outcome itself. The solution consists in unequal treatment of rights and obligations of the parties to a private-law relationship by factually granting more rights to the weaker party and imposing more obligations on the stronger one. The purpose of such regulation is to strike a real balance by offsetting the original economic, informational, professional and other differences between the parties. Inequality of the starting positions must be compensated by unequal regulation of rights and obligations. Therefore, replacement of formal equality of contracting parties with substantive equality has become the aim especially in the area of consumer contracts and relations arising from labour law, law of bills and notes or law of lease.

The substantive aspect of the **rule of law** (i.e., ultimately the idea of justice) expresses, in the first place, concepts of an individual as a dignified human being, equal in their rights with all other beings. The construction of a substantive rule of law, developed in the case-law of the Constitutional Court in a number of areas, goes beyond the original idea of the formal rule of law, the concept of which is based on legalism and positivism. Even today, however, the principle of rule of law is linked to formal characteristics legal rules in a legal system have to show so that individuals can take them into account in determining their future actions. The idea of a **formal** rule of law is associated mainly with the principle of legal certainty and a similar principle of predictability of law (according to which the addressee of legal regulation must have the possibility to reasonably foresee the criminality of their conduct and the possibility to regulate their behaviour or foresee the legal consequences of their acts and adjust their behaviour accordingly—cf., for example, judgement file No. Pl. ÚS 34/15 of 13 June 2017).

The principle of the rule of law presupposes, among other things, the necessary stability of the applicable law. Any procedure seeking to amend a law in force (e.g., by filing petitions seeking annulment of laws and other legal regulations with the Constitutional Court) must be regulated by law and subject to strict procedural rules. This is also related to the principle of **enumerativeness of public-law requirements**, which stems from Art. 2(3) of the Constitution and Art. 2(2)

of the Charter. According to that principle, state authority may only be exercised in cases, within the limits and in the manner provided for by law. In its resolution file No. Pl. ÚS 29/16 of 13 June 2017 in the matter of active standing of the disciplinary panel of the Constitutional Court to submit a matter to the Constitutional Court under Art. 95(2) of the Constitution, the Constitutional Court stated that legal support for submitting a petition seeking annulment of a law or its individual provisions by the disciplinary panel of the Constitutional Court may not be found in the law on the Constitutional Court. That authorization cannot be inferred using the *per analogiam legis* interpretation method either because the jurisdiction of the disciplinary panel is diametrically different from the jurisdiction of the "common" panel, let alone the Plenum of the Constitutional Court. The Plenum of the Constitutional Court further disagreed with the petitioner's opinion that active standing of the disciplinary panel of the Constitutional Court for submitting a petition seeking annulment of contested provisions of the law on the Constitutional Court may be inferred from Art. 95(2) of the Constitution as it only applies to general courts, not to the Constitutional Court, let alone its internal bodies or organs. Finally, neither did the Constitutional Court find support for that opinion in the case-law.

As regards judgements related to the **substantive** rule of law, we can mention, for example, judgement file No. IV. ÚS 203/17 of 13 September 2017 in the matter of an immoral objection of limitation of actions claimed by the state in proceedings concerning liability of the state for damage caused by unlawful prosecution, where the Constitutional Court mentioned that if the state is really to be considered a substantive rule of law, it must bear strict liability for the actions of its authorities or for actions by which state authorities or public authorities directly interfere with the fundamental rights of an individual. The state may not exempt itself from liability for unlawful prosecution violating constitutionally protected rights. If an individual is obliged to endure acts performed by the investigative, prosecuting and adjudicating bodies, there must be a guarantee in the conditions of a rule of law that the individual will receive compensation for the costs of defence they have had to pay as a result of the criminal proceedings if it is not proven that they committed the crime. In terms of building citizens' trust in the substantive rule of law, it is important that any property harm caused by incorrect or unlawful intervention by the state against an individual be compensated.

Resolution file No. Pl. ÚS 34/16: Lower age limit of the passive electoral right

The resolution specifically concerned the age limit of the passive electoral right in the Senate elections. A municipal authority's decision rejected an application for the registration of the Czech Pirate Party for Senate elections because its candidate listed in that application did not reach the age of at least 40 years on the date of the elections, and thus failed to meet the condition of eligibility stipulated in Art. 19(2) of the Constitution and in section 57 of the Elections Act. The Regional Court dismissed the subsequent action of the Czech Pirate Party. Since the party to the proceedings before the court of appeal was not the party's candidate, the Constitutional Court had to reject that party's petition as one filed by someone manifestly unauthorized. The Constitutional Court also had to reject, but due to different reasons, a constitutional complaint of the Czech Pirate Party. Its arguments expressed disagreement with the constitutional regulation of the passive electoral right in the Senate. Therefore, the constitutional complaint included a petition to annul section 57 of the Elections Act and parts of Art. 19(2) of the Constitution. The Constitutional Court pointed out that already the Regional Court appropriately responded to the complainant's objections to the age limit of the passive electoral right. It referred to the decision-making of the ECtHR, according to which stipulation of an age limit for the exercise of the electoral right may be tolerated if it pursues legitimate objectives of maturity of the persons taking part in the electoral process and if it does not interfere with the substance and efficiency of the electoral right. In the case of a bicameral parliament, the age limit of 40 years for entering the Senate only applies to a part of the parliament and does not prevent younger citizens from running for the lower chamber, which has the same powers as the Senate and exercises them together with the Senate; in a bicameral parliament, it is not a manifestation of arbitrariness if one of the chambers is composed of those who have achieved greater political experience due to their age. The Regional Court recalled that the institution of bicamerality is traditional in the Czech constitutional

history, and the age limit of 40 years is not enormously high to effectively eliminate a substantial group of the population from participation in passive electoral right to the Senate. Therefore, the Court concluded that the requirement for a minimum age of 40 years for the candidacy to the Senate pursues a legitimate objective to ensure greater personal and political experience of the candidates and such an age-based distinction is not inadequate with regard to the bicamerality of the parliament (and the associated possibility for younger citizens to run for the lower chamber) and with regard to a weakened role of the Senate in the legislative process and emphasis of its role of "safeguard" as well as with regard to the average life expectancy of the citizens. According to the Constitutional Court, the Regional Court had justified its decision sufficiently, and therefore the Constitutional Court dismissed the complainant's petition as manifestly unfounded, whereby it also dismissed the petition seeking annulment of the respective provisions of the Elections Act and of the Constitution.

Obligations arising from EU and international law

The duty to fulfil obligations arising for the Czech Republic from international law and membership in international organisations is stipulated in Art. 1(2) of the Constitution. The application precedence of international treaties follows from Art. 10 of the Constitution. Art. 10a of the Constitution enables transfer of some powers of bodies of the CR to an international organisation or institution, that is, especially to the European Union ("EU") and its bodies. As the Constitutional Court stated in its judgement file No. Pl. ÚS 50/04 of 8 March 2006, that article applies two-way: it forms the normative basis for the transfer of powers and at the same time it is the provision of the Constitution that opens the national legal order to the effects of the Community law including rules for its effects inside the legal order of the CR.

The relationship between the EU law and the Czech law was addressed by judgement file No. III. ÚS 3289/14 of 10 May 2017 in the context of the 'migration crisis', which is dealt with in more detail in the following subchapters. The obligation of general courts to submit a preliminary question was addressed by the Constitutional Court in its judgement file No. II. ÚS 4255/16 of 26 September 2017, in which it referred to previous case-law, especially the judgement of the Constitutional Court file No. II. ÚS 1658/11 of 29 November 2011.

Judgement file No. II. ÚS 4255/16: Obligation of the court to submit a preliminary question to the Court of Justice of the European Union

In proceedings before the District Court, the complainant sought payment of the amount sued with a late payment penalty as a due lease and advances on payment related to the use of the flat. During the proceedings, the Court did not manage to find the defendant's residence, therefore a guardian was appointed for the defendant. However, neither the defendant nor her guardian appeared before the court for the hearing. The reason was that the defendant had previously recognized the claim in writing. Therefore, after the discovery, the Court disposed affirmatively of the complainant's action (in 2009). In 2016, the complainant requested the Court to send her a judgement with an order for reinforcement together with a confirmation that it was a European Enforcement Order under section 353(1) of the Code of Civil Procedure and Regulation No 805/2004. In its letter of 3 November 2016, the Court informed the complainant that conditions were not met for confirming the aforementioned judgement as a European Enforcement Order. A judgement issued after discovery is not, in the court's view, an uncontested claim within the meaning of the Regulation. The complainant saw an interference with her right in the fact, among other things, that the District Court did not submit a preliminary question to the Court of Justice of the European Union ("CJEU").

In its judgement file No. II. ÚS 1658/11 the Constitutional Court stated that the accession of the Czech Republic to the EU gave an authorization, and under certain circumstances also a duty, to Czech courts to turn to the

CJEU with preliminary questions. Failure to submit a preliminary question may constitute a violation of the right to a lawful judge. The Constitutional Court therefore considered whether in that case the District Court was obliged to submit a preliminary question to the CJEU, recalling judgement No C-511/14 Pebros Servizi, according to which confirmation of a court decision as a European Enforcement Order is an act of a judicial nature and in the course of its adoption, a national court may submit a preliminary question to the CJEU. Further, the Constitutional Court assessed whether the Court's procedure in not confirming the judgement as a European Enforcement Order depended on the interpretation of EU law, and concluded that it did. Regulation No 805/2004 regulates the prerequisites and conditions of the aforementioned confirmation, and the Court itself refers to the Regulation in its letter. The Constitutional Court did not agree with the opinion of the District Court that the interpretation of EU law was clear. The question of uncontested nature of the claim was not completely unambiguous; the District Court was therefore obliged to more carefully justify its opinion whether the claim was contested or uncontested, and if the Court had doubts about the uncontested nature of the claim, it was the Court's obligation to submit a preliminary question to the CJEU regarding the interpretation of Regulation No 805/2004. Since the District Court failed to proceed so, it violated the complainant's right to a fair trial and the right to a lawful judge.

Preliminary question was also dealt with in judgement file No. III. ÚS 2857/15 of 24 May 2017 in the matter of compensation of damage for a delayed flight duo to a collision of the aircraft with a bird. The Constitutional Court followed up on its previous case-law on the subject; in response to the first of these judgements, the District Court subsequently turned to the Court of Justice of the EU. The Court then, among other things, found that a collision of an aircraft with a bird has to be classified under the concept of extraordinary circumstances pursuant to Art. 5(3) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights. In the case under consideration, however, the District Court, in the Constitutional Court's view, concluded without detailed justification that the circumstances that caused the delay of the flight could not be assessed as extraordinary circumstances and that the complainant failed to prove she had done everything to prevent the flight delay. According to the Constitutional Court, the District Court failed to explain the deviation from its previous decision.

The last judgement we can mention in this context is judgement file No. II. ÚS 1260/17 of 15 August 2017 on the extradition of a person who had been granted asylum in an EU Member State.

Judgement file No. II. ÚS 1260/17: On remanding in custody and on extradition of a person who had been granted asylum in an EU Member State.

The complainant was a citizen of the Russian Federation (hereinafter also referred to as "RF"), since November 2004 a holder of international protection in the form of an asylum in Austria. In Russia, he was sentenced in absentia to an unconditional sentence of imprisonment. In 2008, an international search for him and proceedings for his extradition from Austria were launched. The proceedings were suspended by a decision of an Austrian court in 2009 and impermissibility of the complainant's extradition was pronounced due to a contradiction with Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter also referred to as "Convention") and the principle of non-refoulement. The complainant was detained in January 2017 in the territory of the CR during a check because it was found that an international arrest warrant was issued against him. The complainant was taken to a pre-trial extradition custody by the contested resolution. The Court concluded that international protection acquired by asylum in Austria did not apply to the complainant in the territory of the CR and that there was a fear of his possible escape to avoid extradition proceedings.

The complainant's complaint against that decision was dismissed as unfounded. The complainant's custody lasted until March 2017 (more than two months), when the Court decided that extradition of the complainant to the RF was not admissible, and released the complainant from the pre-trial custody.

The Constitutional Court pointed out that the investigative, prosecuting and adjudicating bodies had, already at the time of detention of the complainant, information that he had been granted international protection in the form asylum in Austria and that he had been granted residence in Austria. The public prosecutor considered it necessary to verify such information; however, the preliminary investigation should have been conducted with maximum care and speed.

Courts deciding whether there were grounds for pre-trial custody should have taken into account the course of the entire extradition proceedings, which terminated with a decision on the declaration of inadmissibility of the complainant's extradition to the RF. They should have more carefully weighed the justification of the custody or used other, more lenient options through which due course of the extradition proceedings could have been achieved. That was not the case; on the contrary, the first-instance court ruled, in its decision, that international protection obtained by means of asylum in Austria did not apply to the complainant in the territory of the CR, and the court considering the complaint agreed.

It follows from obligations arising for the Czech Republic from international treaties that holders of international protection granted in another EU Member State must be regarded as holders of international protection also in the Member State where extradition proceedings take place, and such a person may, therefore, not be extradited to the state from which they came before being granted asylum (in accordance with the principle of non-refoulement enshrined in the Convention Relating to the Status of Refugees).

There were other errors in deciding on a petition of the public prosecutor to rule on the inadmissibility of the complainant's extradition to the RF. The court had concluded that his extradition was inadmissible and released him from the pre-trial custody, but that happened more than two months after the complainant's detention in the pre-trial custody, although it was clear from the relevant documents already at the time of decision-making on the custody that extradition would not be possible.

The Constitutional Court concluded that general courts violated the complainant's right to a fair trial as the courts' decisions can be regarded as arbitrary. The resulting restriction on the complainant's personal freedom, which did not have real purpose and lasted for more than two months, then constitutes violation of Art. 8(2) of the Charter as well as of Art. 5(1) (f) of the Convention.

The Constitutional Court dealt with international obligations also in the already mentioned judgement file No. III. ÚS 1698/14, in which it stressed that life sentence imprisonment recognized by the judiciary of the Czech Republic is enforced in accordance with the legal order of the Czech Republic, which is also decisive for establishing the conditions for conditional release. The Court recalled that deciding on the recognition or alteration of a punishment pronounced by a foreign court and deciding on the conditions of enforcement of such a punishment are different things. A constitutional complaint against failure to dispose affirmatively of an application for conditional release thus cannot be a means of challenging the previous decision on guilt and punishment, or a decision on recognition of a judgement of conviction of another state. Recognition of a foreign decision does not mean taking over the rules of the foreign state for the submission and consideration of an application for conditional release but both the recognition and the enforcement are manifestation of sovereignty of state authority, unless this issue is regulated differently by an international treaty meeting the requirements of Art. 10 of the Constitution. In the case under consideration, the Constitutional Court emphasized that, pursuant to Art. 9(3) of the Convention on the Transfer of Sentenced Persons, the state in which the punishment is enforced is responsible

for proper service of the sentence imposed. Therefore, in the case of their transfer, persons convicted cannot expect that the same conditions for conditional release will be maintained throughout the sentence. Some conditions for service of a sentence in the country to which the convicted person is transferred may be less favourable for the person; the actual strictness of the applicable legal rules does not make the procedure of a democratic legislature illegitimate.

Independence of courts

Independence of courts and of the judiciary is one of the essential constitutional principles derived both from the concept of the rule of law and from the principle of separation of powers. Already in its judgement file No. Pl. ÚS 13/99 of 15 September 1999, the Constitutional Court stated that with the principle of separation of state powers, the Constitution follows up on the intellectual tradition expressed already by Charles Montesquieu, and institutionally on the French and American revolutions, which emphasized and also institutionalised the need for independent judiciary.

In its judgement file No. Pl. ÚS 7/02 of 18 June 2002, the Constitutional Court stated that a democratic state was completely distant from the notion of the "judge-made state"—the body of state authority is the legislative as well as the executive branch of the government. Therefore, in a democratic system, state authority may be functionally implemented only if the condition of functioning of all its bodies is met. On the other hand, a democratic state respecting the rule of law is obliged to create institutional prerequisites for the creation and establishment of real independence of courts as—for the stabilisation of not only their position of the entire democratic system in relation to the legislative and executive branches—an important constituent, albeit a polemic, element. Real independence of courts is a specific and indispensable attribute of the judicial authority, justified and also required by Art. 4 and Art. 81 and 82 of the Constitution of the Czech Republic.

The Constitutional Court extensively dealt with independence of courts in its judgement file No. Pl. ÚS 23/14 of 11 July 2017. It referred to its judgement file No. Pl. ÚS 60/04 of 28 April 2005, according to which independence of courts (Art. 81 of the Constitution) and independence of judges' decision-making (Art. 82(1) of the Constitution) were related although not identical. Independence of courts means their institutional independence on the legislative and executive branches of the government, whereas independence of judges' decision-making applies to the actual decision-making of the court. Independence of courts is one of the basic structural principles of the Czech Constitution, because it is an expression of separation of state powers, and it is one of the cornerstones of the rule of law, or specifically represents the required standard of its acts. The Constitution then expressly guarantees also independence of the judge in the performance of their office. The judiciary has, however, its institutional and personnel components that are inextricably linked from the functional point of view, and its forming and functioning is subject to certain principles, which are related, according to the nature of the matter, to either both components or one of them.

In the matter described below, the Constitutional Court dealt in more detail with the distinction between political, social and procedural independence. The provisions of the Constitution do not apply only to acts of the state authority but also to those of "non-state" authority or individuals, suggesting that the Constitution aims at all components of judicial independence, and the addressees are thus also private-law persons. In the case under consideration, the issue of procedural independence and its manifestation, which is a requirement of neutrality of the judge with respect to the parties, was of essence for the Constitutional Court. The Constitutional Court further dealt with factual and personnel independence of the judge. It reminded that the rules of the constitutional law use, in addition to the term "independence" also the term "impartiality", which means "internal independence" of a judge, i.e., their subjective position as an uninvolved (neutral) "third party", standing above the parties. There is a functional link between the separately understood "independence" and "impartiality", where independence of a judge is a prerequisite for their impartiality. Further, the Constitutional Court dealt with two levels of impartiality, personnel and functional. An impartial exercise of the judicial function is guaranteed by the constitutional order, and at the legal level ensured through the institution of exclusion of a judge, which occurs based on an objection of bias or at the initiative of the judge themselves (*iudex suspectus*). In addition, the law defines specific situations when the judge is excluded "directly" from considering and deciding on a matter, because,

in that case, their bias is assumed (*iudex inhabilis*) or, conversely, it stipulates when a judge cannot be considered excluded. The Constitutional Court recalled that a reason for *ex lege* exclusion is usually the fact that the judge had previously been active in some form in the case under consideration; conversely, the actual procedural procedure per se in the given matter or the judge's decision-making in other matters cannot constitute a reason for the exclusion of the judge. Subsequently, the Constitutional Court also pointed out the ECtHR's practice related to deciding on the issue of (im)partiality of the judge.

Judgement file No. Pl. ÚS 23/14: Insolvency court exercising the powers of a committee of creditors

In the insolvency matter in question, the first meeting of creditors was held in order to establish a committee of creditors; however, none of the creditors who had submitted their claims attended that meeting without apology. It was thus necessary to apply the respective provision of the Insolvency Act under which the powers of the committee of creditors will be, after the end of the creditors' meeting in which that body has not been established, carried out by the insolvency court, i.e., the petitioner in the proceedings before the Constitutional Court. The insolvency court concluded that the contested provisions were in conflict with the constitutional order; therefore, it suspended the proceedings and turned to the Constitutional Court with a petition for their annulment because the contested provisions were inconsistent with the principle of independence and impartiality of the judge. The reason is that there is a reasonable doubt about the judge's impartiality as the judge provides protection to the interests of one of the parties to the proceedings regardless of the other party, and the judge is bound by an obligation of loyalty to the former; that constitutes a violation of the right of the latter to a fair trial.

The Constitutional Court concluded that the petition was unfounded. It stated that where an insolvency court exercises the powers of a committee of creditors under the relevant provisions of the Insolvency Act, that does not constitute a case of political or social dependence or procedural dependence on any of the parties to the insolvency proceedings; in exercising their office, an insolvency judge is obliged to abide only by the law and to acts as stipulated by law and within legal its limits, not in accordance with instructions of any of the parties to the proceedings or procedural entities, including creditors, including in the exercise of the powers of a committee of creditors. The insolvency court can thus defend the common interest of creditors as long as it is consistent with the purpose of the insolvency proceedings, does not collide with the interests of other parties to the proceedings (including protection of debtor's interests protected by law) and with the task of the state to ensure protection of all such interests in insolvency proceedings.

The Constitutional Court also stated that pursuant to Art. 2(3) of the Charter, nobody (including the creditor) may be compelled to do that which is not imposed upon them by law. Resignation of creditors cannot lead to the fact that the state gives up, as they did, on its function to ensure the functioning of the market economy and freedom to conduct a business, with which the statutory regulation of insolvency proceedings is also associated. The chosen solution is, therefore, a response to the situation that exists in that area. That solution chosen by the state—based on a century of experience—need not seem as ideal, but the petitioner failed to prove its unconstitutionality because this solution is not violation of constitutional cautels or of the constitutional task of the state to ensure the functioning of the market economy. In this context, the Constitutional Court also mentioned one of the most frequently quoted statements of astronaut and president of Eastern Air Lines F.Borman on this topic for the Time magazine: "I've long said that capitalism without bankruptcy is like Christianity without Hell. But it's hard to see any good news in this." That is ensured by the state also by entrusting supervision of insolvency proceedings to state authorities, in this case to the respective insolvency court, which is thus not a representative of any of the "private" parties to the insolvency proceedings but the protector of the public interest (and of the state's obligation) in the protection of fundamental rights.

Independence of courts was also dealt with in judgement file No. IV. ÚS 2609/16 of 11 April 2017 concerning the limits of literary activity of a judge and of their freedom of expression. The Constitutional Court noted that a judge cannot be entirely excluded from the possibility of exercising their constitutional right to freedom of expression; on the other hand, the exercise of that right is not unlimited in any person, let alone a judge.

Judgement file No. IV. ÚS 2609/16: Limits of literary activity of a judge and of their freedom of expression

The contested decision found the complainant, a judge of a Regional Court, guilty of a disciplinary wrong he had committed by publishing on the internet his articles containing stories that depict, in a grossly biased and disparaging manner, migrants, non-profit organisation workers and civil activists using vulgarisms and sexual and violent insinuations. He was reprimanded for that breach of discipline. The complainant felt that the contested decision restricted his constitutionally guaranteed freedom of expression as the law on courts and judges, in his view, expressly allows literary activity to judges, without excluding any genres (e.g., satire).

The Constitutional Court, with reference to its previous case-law (judgements file No. II. ÚS 2490/15 and I. ÚS 2617/15) as well as to findings of the ECtHR, noted that a judge may certainly not be excluded from the possibility to exercise their constitutional right to freedom of expression. In exercising that right, however, the judge is not in a position comparable to any other citizen. The exercise of that right by members of the judiciary must be, as required by the Convention and the ECtHR prudent, must not unacceptably jeopardize the authority or impartiality of the judiciary or interfere with the right of particular parties to the proceedings to a fair trial.

It is necessary to strive to come as close as possible to the ideal state of affairs when the judge is an authority for the public, and the judge must, therefore, carefully weigh what impacts expressing their attitudes and the form of their presentation will have. On the one hand, the judge is equipped with privileges that enable them to function independently, impartially and fairly; this, however, is consequently associated with increased demands on their personal integrity and their role in preserving the credibility of the whole of the judiciary, which, among other things, manifest themselves in certain restrictions in personal life and in the exercise of political rights. A judge is a judge continuously, and more stringent demands on their behaviour also apply to their ordinary life, which also includes publishing and literary activities. However, these restrictive requirements are legitimate in the light of the need for an independent and impartial judiciary, and by accepting their office, judges subjects themselves to such requirements voluntarily.

The Constitutional Court agreed with the conclusions and reasoning of the disciplinary panel, which had worked extensively with case-law of the Constitutional Court and of the ECtHR. The complainant's articles in question (that, is a conscious public literary presentation of the judge) contained, even if one accepts a certain degree of exaggeration, a significant amount of vulgar expressions, sexual, violent, and racist insinuations and were communicated through a web portal. They were not private speech which, although it can be found identically undesirable, does not, as a rule, directly affect the dignity of the judge's office in relation to the public.

The Constitutional Court found that the disciplinary panel had assessed the complainant's case on an individual basis and taken account of all the material facts and that its reasoning had aptly dealt with all relevant objections and suggestions of the complainant. Therefore, in the Constitutional Court's view, stating that the right to freedom of expression has been violated would not have been appropriate.

Fundamental rights and freedoms

Prohibition of torture and subjection to cruel, inhuman or degrading treatment or punishment

In the past year, the Constitutional Court ruled on the conditions of detention of two minor complainants in the Bělá-Jezová detention facility between 16 March 2014 and 5 May 2014. In their complaint, they recalled that the Charter as well as international treaties guarantee the right not to be subjected to torture or inhuman or degrading treatment or punishment ('ill-treatment'), which implies an obligation on governments to take appropriate measures for effective protection, especially in relation to children, which was not respected in their case. Although the Constitutional Court noted in its judgement file No. III. ÚS 3289/14 of 10 May 2017 that the duration of detention of the complainants aged three and six years in the alien detention facility is not an optimum solution, it did not dispose affirmatively of the objections. The information on the conditions in the facility show efforts to reflect the needs of children (an indoor children's centre, an outdoor playground, an off-site trip) and a visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) did not evaluate the conditions in the facility as violating the Convention.

As in several previous years, the Constitutional Court also in 2017 dealt with the procedural obligation to carry out effective investigation where an arguable claim about ill-treatment by the police is raised. In its judgement file No. II. ÚS 1398/17 of 17 October 2017, which included a dissenting opinion, the Court evaluated police intervention in clearing the Milada building. The Court recognized that the complainants—injured attendees of an event organised on the occasion of the third anniversary of clearing of the Milada squat—met the minimum necessary degree of probability of their claims that they were subjected to ill-treatment by the police to consider such claims as arguable. Although the Constitutional Court did not agree with the assessment by the Supreme Administrative Court, it eventually dismissed the complaint with a justification that the police had provided sufficient and convincing explanation of how the complainants' injuries were caused. It also reminded that in the case under consideration the persons who had unlawfully entered the Milada villa, consciously prepared themselves for a collision with the police and refused to leave the villa peacefully when requested to do so by the police. That situation was, therefore, very different from cases where an individual is subjected to police power, for example, after their detention or other restriction of their liberty because in those cases they do not have a possibility of free choice to avoid any interference with their rights.

In its resolution file No. IV. ÚS 4150/16 of 21 November 2017, the Constitutional Court dealt for the first time with the **use of the coercive means** taser. The complainant argued that in their intervention against the complainant's mentally ill brother, placed in a psychiatric ward, policemen and a nurse used the "deadly force". However, the Constitutional Court rejected the complaint, recognizing that the use of force did not exceed the limits defined by the ECtHR case-law and it was a response to problems and an effort to protect, in particular, the injured party against himself. It was primarily an attack of his mental illness that gave him a different perception of reality, which he thought was necessary to defend from, but the policemen in the same place had to respond adequately to the real situation, regardless of the circumstances that lead the injured person to his threatening behaviour, which is also confirmed by the fact that the force of the intervention increased from appeals through holds and grasps, and only ultimately to the use of the taser. A subsequent investigation into the matter also met the set standards.

Protection and guarantees of liberty

As regards the admissibility of limitation of personal liberty, the 2017 case-law of the Constitutional Court mentions three cases of aliens detained in the territory of the Czech Republic. The first two judgements concern pre-trial extradition custody, the last one concerns migrants travelling from Hungary to Germany at the time of the migration crisis.

In the case of a Turkish citizen, the Constitutional Court, in its judgement file No. II. ÚS 1301/17 of 5 September 2017, reminded general courts that the grounds for fear of escape of a person **in pre-trial custody** must be substantiated

by particular facts. Ordinary courts do not satisfy this requirement if they base their decision that the complainant is to remain in the pre-trial custody (in this case for a period of more than three-year extradition proceedings) solely on the fact that the complainant is sentenced to many years of imprisonment (for property crimes) in Turkey and his extradition to Turkey to serve the sentence is seems thus probable. The Constitutional Court pointed out that such a long pre-trial custody cannot be seen as acceptable without further justification. Although the delays in the extradition proceedings were undoubtedly due to the carelesness of the Turkish authorities, the situation in Turkey's judicial bodies (especially after the attempted coup d'etat in the summer of 2016) cannot be counted to the detriment of the complainant.

In another case, a citizen of the Russian Federation spent "mere" two months in the pre-trial custody, but also in his case, the Constitutional Court had to conclude, in its judgement file No. III. ÚS 1260/17 of 15 August 2017, that the detention had been inadmissible. The general courts had not taken into account facts excluding extradition of the complainant, which were asylum granted in Austria and a decision of the Austrian court on the inadmissibility of the complainant's extradition. The complainant was only released from the pre-trial custody after Czech courts themselves (that is, in violation of EU law) concluded that the complainant's extradition was inadmissible. Thereby, they violated the complainant's right to personal freedom guaranteed by Art. 8(1) and (2) of the Charter. In the Constitutional Court's view, the general courts should have more carefully weighed the justification of the custody or used other, more lenient options through which due course of the extradition proceedings could have been achieved.

The last case was that of a Kosovan father detained together with minor children on their illegal way from Hungary, where they had left, without authorization, a local asylum facility for Germany. Before being sent back to Hungary, i.e., for 50 days, the complainants were placed in the Bělá-Jezová alien detention facility. In its judgement file No. III. ÚS 3289/14 of 10 May 2017, the Constitutional Court reprehended the decision-making authorities mainly for absence of legal grounds for depriving the complainants of liberty as they applied an uncertain and unpredictable legal rule. The complainants were detained on the basis of the "serious risk of escape" criterion contained in the Dublin III Regulation. However, the Regulation requires a more precise definition of the criterion by a law, which was absent in Czech law at the relevant time. If, therefore, the administration authorities ignored the issue of absence proper legal grounds for the **detention** of the complainants, they violated, in the Constitutional Court's view, the petitioners' right to personal liberty in an unacceptable manner. Restriction on the personal liberty of aliens in the immigration context is admissible only if certain conditions are met, including, in the first place, proper legal grounds, i.e., a sufficiently precise and predictable piece of legislation allowing deprivation of liberty, a duly justified decision on the detention of an alien not having the character of arbitrariness, and, finally, the adequacy of the deprivation of liberty not exceeding the limit of necessity. The Constitutional Court also reminded that the requirements for detention of children in the immigration context are even stricter.

As regards justification of detention in the case persons committing criminal offences, the Code of Criminal Procedure stipulated, in addition to custody, other means of ensuring the proper conduct of criminal proceedings. In the past year, the Constitutional Court also reprehended the general courts, among other things, for insufficient justification of prioritization of custody over more lenient options.

That was the case of judgement file No. I. ÚS 3533/16 of 17 January 2017, in which the Constitutional Court recalled that in cases of **preventative custody** (e.g., when there is a fear of continuation of criminal activity) for property crimes, it cannot be usually concluded without further justification that the use of a *bail* is not admissible merely by referring to the previous criminal activity of the accused person. The argument of criminal past is, in the Constitutional Court' view, to be supplemented with an explanation of more specific suspicion of continuation in the criminal activity, as follows from the requirement of restraint and maximum respect for the rights of the accused. If, therefore, the general courts failed to deal with the complainant's claims (on his own source of income, possibility of housing or reference to a high bail stipulated by the District Court) and failed to justify the (in)admissibility of the bail in the light of the specific facts that gave rise to the fear that the complainant would repeat the criminal

activity, the general courts interfered with the complainant's right to personal liberty in an adequate manner.

Another alternative to taking the accused person into custody is to impose a **travel ban**. If the general court finds that there is no reason to accept this more lenient measure, it is not possible to accept the decision issued two days later by which the complainant is detained in custody without justifying how the circumstances of the case have changed so much in the past two days to justify the indicated procedure. The Constitutional Court pointed out that fact in its judgement file No. III. ÚS 1811/17 of 29 August 2017, where it stated that it was inadmissible to make, only two days after dismissing a clearly more lenient intervention in the complainant's personal freedom, a much more striking intervention, pursuing the same purpose, all without proper justification.

Last but not least, in the context of personal freedom, it is also worth mentioning the issue of imposition of **institutional protective treatment** on persons with mental disorders, which the Constitutional Court addressed in the last year for example in its judgement file No. III. ÚS 3675/16 of 11 April 2017. Also in that case did the Constitutional Court touch upon the question for what reasons it would not be sufficient to impose a more lenient measure in the case under consideration, which was not, in the Court's view, dealt with by the general courts satisfactorily. In imposing institutional treatment, the general courts relied solely on the conclusions of expert investigation without assessing themselves the specific evidence for the source of the alleged threat of aggravating social dangerousness of the complainant, which was prosecuted for a misdemeanour of false accusation (threats in the form of possible relapse into crime or aggravation of her behaviour into violent attacks). In the Constitutional Court's view, in similar cases, the general courts must, with regard to the principle of proportionality of the intervention, verify and justify in a reviewable manner why imposition of a more lenient measure, in this case of, e.g., outpatient protective care, is not sufficient.

Protection of private life and inviolability of dwelling

Also in the last year, the Constitutional Court was repeatedly faced with the issue of the protection of private life guaranteed by Article 10 of the Charter and the protection of the inviolability of dwelling guaranteed by Article 12 of the Charter. One of the crucial decisions in the area of **inviolability of dwelling** is undoubtedly plenary judgement file No. Pl. ÚS 2/17 of 18 July 2017 concerning a review of constitutionality of the law on air protection. The law stipulates a possibility for municipality with extended powers that an authorized employee of the municipality may enter the dwelling of the operator of a boiler to check the combustion stationary source (i.e., a solid fuel boiler). However, if the person carrying out the control is denied access, the operator may be fined up to 50,000 CZK. The Constitutional Court concluded that the contested law restricts inviolability of the dwelling only moderately, while significantly satisfying the interest on the protection of health of others and their right to a favourable environment within the meaning of Art. 30 and Art. 35(1) of the Charter. Protection of inviolability of dwelling of operators of combustion stationary sources guaranteed by Art. 12 of the Charter does not prevail over that interest.

Judgement file No. Pl. ÚS 2/17: Air protection versus inviolability of dwelling of operators of combustion stationary sources (solid fuel boilers)

The Constitutional Court stated that the contested provisions undoubtedly represent a restriction on the right to the inviolability of dwelling; however Art. 12(3) permits statutory restriction on that right if it is necessary in a democratic society for—among other things—the protection of the life or health of individuals. Art. 8(2) of the Convention also includes a similar provision. Art. 35 of the Charter protects the right to favourable environment, which must not be damaged or endangered by anyone, including in exercising their rights. The Constitutional Court stated that the state had set up new legislation on air protection in such a way that it may, in order to protect the health and the right to a favourable environment (Art. 30 and

Art. 35(1) of the Charter), decrease the overall level of air pollution and at the same time improve its quality if it is able to effectively punish operators violating their obligations in the use of combustion stationary sources in households. In combination with the existence of sufficient procedural guarantees of protection of inviolability of the home—the main one is an intervention action under section 82 of the Code of Administrative Court Procedure; similarly, one can defend themselves by an administrative action against a penalty imposed for the violation of obligations of an operator of a stationary source—this restriction on the inviolability of the home does not appear as inadequate.

In conclusion, the Constitutional Court added that operators of solid fuel boilers must be solidary with other persons. The consequences of air pollution are reflected in the costs burdening the public health insurance system resulting from other people's damage to health. Entering one's dwelling to secure evidence of illegal heating procedure is restricted to making accessible the boiler and the fuel used. Moreover, any entry in one's dwelling has to be preceded by repeated justified suspicion of an administrative authority that the operator of the solid fuel boiler violates the law, and also by a written warning, after which the operator can prevent the inspection by refraining from the unlawful activity (e.g., use of waste as fuel). These provisions thus constitute an adequate statutory restriction on a fundamental right, approved in Art. 12(3) of the Charter, and they were adopted within the permissible framework of a positive obligation of the state with a legitimate purpose of protection of health and favourable environment.

Another important decision in the area of protection of **private life and the right to informational self-determination** was judgement file No. Pl. ÚS 26/16 of 12 December 2017 concerning fiscalisation of cash payments ("EET"). Although the constitutional-law review of the law on fiscalisation of cash payments concerned in particular the right to protection of property and the right to engage in enterprise, the Constitutional Court had to review some provisions of that law from the perspective of the right to informational self-determination. Notwithstanding the fact that the majority of the Plenum of the Constitutional Court concluded that the contested law as a whole is not unconstitutional, they proceeded to the annulment of some of its provisions. These included, for example, a provision stipulating an obligation to indicate the taxpayer's tax identification number on the receipts, which, in the case of a natural person, contains the person's personal identification number. Such a solution, in the constitutional judges' view, does not guarantee a sufficient level of protection to the right to protection against unauthorized gathering, public revelation or other misuse of personal data, guaranteed by Art. 10(3) of the Charter, and it cannot stand up to the test of proportionality. That conclusion is, moreover, in line with the trend expressed in the EU rules for personal data protection, in particular the General Data Protection Regulation, which is to enter into effect on 25 May 2018.

Protection of property rights

Not even in 2017 did the Constitutional Court avoid the issue of **restitution cases**, which seem to be a never-ending judicial topic. In its judgement file No. IV. ÚS 2690/15 of 5 September 2017, the Constitutional Court reiterated that an over-formalistic, i.e., inadequately restrictive interpretation of legal rules is not admissible in a democratic state respecting the rule of law. That rule applies especially in the case of restitution regulations, the meaning and purpose of which is at least partial correction and mitigation of historical injustice. The general courts, therefore, must not, in considering cases that often complex and sensitive from the factual point of view, lose sight of their meaning and purpose, even with the passing of time. In its judgement file No. II. ÚS 4139/16 of 18 July 2017, the Constitutional Court dealt with the issue of an **adequate financial compensation** in a case when the claim of the beneficiary cannot be satisfied by rendition of the relevant item (i.e., land) or rendition of a substitute land. The Court stated that financial compensation need not be an equivalent of the current market price of the real estate in question; however, it should enable, by its provision, removal or mitigation of injustice caused by the communist regime in a comparable manner as if the item itself was rendered. Therefore, if a financial compensation for a land that could not have been rendered to the beneficiary is not adequate as a result of literal interpretation of the relevant

provisions of the Land Act by the general courts, then the general courts violate the beneficiary's right to own property guaranteed by Art. 11(1) of the Charter, which also includes protection of legitimate expectation of acquisition of property, and the beneficiary's right to court protection guaranteed by Art. 36(1) of the Charter.

The Constitutional Court dealt with specific restitution cases also in its judgements file No. III. ÚS 1862/16 of 21 June 2017 and file No. I. ÚS 349/17 of 22 June 2017. It concluded that if the state renders lands that had been blocked in favour of historical owners (church legal entities) regardless of the statutory prohibition pursuant to section 29 of the Land Act to other claimants as substitute lands, it deepens the continuing interference with the rights of these historical owners, which commenced in the communist era, lasted due to inactivity of the democratic legislature, and was topped off by the transfer of the land to a third party. Although the complainants were also claimants and, in their opinion, it was appropriate to break the blocking effects of section 29 of the Land Act and to prioritize the protection of their good faith and legal certainty over the interests of the church, the Constitutional Court did not agree with them. The Court stated that in their case, the lands in question constituted only a substitute value without any historical link, and allocation of other lands can have the same meaning for them, which, however, cannot be said in the case of the intervening party (a church legal entity). The only just solution to such a situation is, therefore, restoration of the original state before the property was transferred in violation of the 'blocking section', which enables to meet legitimate expectations for the settlement of historical church property.

In deciding on the compensation for the restriction on the property rights outside the restitution context, the Constitutional Court provided its opinion at the end of the year in its judgement file No. III. ÚS 950/17 of 19 December 2017 in the sense that even a measure of a general nature defining a territorial reserve may constitute a restriction on the property rights for which compensation is due pursuant to Art. 11(4) of the Charter. In assessing whether such a compensation is to be provided, it is always necessary to assess the circumstances of the particular case and to deal with the extent of the restriction as well as with its duration.

A crucial decision not only in the area of protection of property rights was made by the Constitutional Court in connection with **imposition of fees for the collection of municipal waste** on minors. The Court stated that the Local Fees Act, which burdened minors with an obligation to pay a fee regardless of whether they have means to comply with it and burdened them regardless of their ability to influence in the imposition of the payment obligation or at least to exempt themselves from it, is in violation of Art. 32(1) second sentence in combination with Art. 4(4) of the Charter (absence of special protection of children and minors), with Art. 3(1) of the Charter (inadmissible discrimination on the grounds of social origin), and with Art. 11(1) in combination with Art. 4(4) of the Charter (suffocating effect of the fee).

Judgement file No. Pl. ÚS 9/15: Imposition of fees for the collection of municipal waste to minors is unconstitutional

The Constitutional Court stated that public authority may not impose duties on minors that, due to their degree or manner, hinder their ability to adjust their lives according to their needs beyond an acceptable limit. Such a possibility is not preserved if minors are admitted into adulthood with serious debts. It is therefore a constitutionally protected interest of the child not to enter adulthood with obligations that may have a suffocating effect. The objection that protection if a minor is sufficiently ensured through the institution of parental responsibility, in other words, if a minor fails to pay a fee, the fee is to be paid by their parent and if the parent fails to do so, the minor may seek damages from their parents, will not stand because such a conclusion does not have sufficient legal support. Moreover, it follows from the decision-making of the Supreme Administrative Court that the legislation burdens mainly minors that do not have any property of their own or come from a socially disadvantaged environment (e.g., children growing up in institutional care).

The Constitutional Court stated that the contested legislation does not take into account the principle of economic performance of minor payers, and without any acceptable reason burdens minors without property as

a social group. Simply put, this group can be described as children from socially dysfunctional families. The obligation to protect this group arises from the guarantee of personal autonomy, which, in the case of minors, is manifested as a requirement for debt-free entry into the age of majority, and from the commitments adopted at the statutory level: to strengthen social inclusion, including integration of families, to protect the right of the child to its favourable development and proper education, and to aim to restore impaired functions of the family.

The Constitutional Court further stated that it was not possible to agree with concerns sometimes expressed in the literature that a declaration of unconstitutionality of the contested provision would mean that minors would not be obliged to pay any taxes and fees, which would create way to circumvention of tax obligations. The legislator has undoubtedly authority to decide that payers of a certain tax or fee will be minors too. However, if it decides to do so irrespective of whether the minor has any taxable property or income at all, or whether the minor has the possibility to avoid the acts being charged (if they do not have appropriate means for those), then the legislature must take into account, already at the level of discovery proceedings, that cases of excessive harshness may occur and must adopt appropriate solutions. The legislature should also consider whether the fee is imposed for consideration by the state or municipality that is actually provided to the minor. However, in the case of the fee for the operation of a municipal waste disposal system, the exclusive producer of waste (especially in the case of small children) is the parent who takes care of the child's nourishment by means of actual performance, through which the waste is generated. The parents' duty to support and maintain a child includes all the necessary care for the child, in this case not only ensuring the supply of the necessary items for the household in which the child lives, but also the disposal of the resulting waste. It would be rational to consider whether the obligation to pay a fee should rather be imposed directly on the parent who benefits from the municipal waste disposal system instead on the child.

Judgement file No. I. ÚS 3308/16 of 19 January 2017, concerning **usury**, or specifically a **usurious contract** and unlawful practices of usurers, is also worth noting. Usury is a legal act contrary to good morals; its essential objective characteristic is a gross disparity of the mutual considerations because such a disparity is in violation of the constitutional principle of adequacy. Such a disparity may be relevantly assessed only based on the difference between the objective values of the consideration provided by the injured party and the consideration provided by the usurer, which has to be determined in each particular case based on an extensive evaluation of the matter. A subjective characteristic of usury is also distress. According to the Constitutional Court, it is not the task of the general courts to assess, in deciding whether a certain contract was entered into under distress, how the debtor got into the adverse financial situation and what their payment morale was, but to examine how the debtor perceived the conclusion of the contract in question and whether the creditor abused the debtor's difficulties to impose conditions in violation of the principles of fairness. In assessing whether an inadmissible usury had occurred in the particular case, the civil courts must reflect the constitutional principles of justice, adequacy and protection of the weaker contracting party in their decision-making. The opposite interpretation violates the fundamental right of the injured party to judicial protection guaranteed by Art. 36(1) of the Charter, and consequently violates of their property rights guaranteed by Art. 11(1) of the Charter.

Judgements dealing with the issues of **liability for damage and damages** are definitely among other interesting decisions in the area of protection of property rights. Also in this year, the Constitutional Court had to repeatedly provide its opinion on the issue of **claims of clients of a bankrupt travel agent** for a refund of the full price of the trip. In its judgement file No. IV. ÚS 3092/16 of 18 July 2017, the Constitutional Court followed up on its previous case-law (e.g., judgement file No. IV. ÚS 2370/15 of 14 June 2016), in which it concluded that where the court decides on the claims of clients of a travel agent with respect to the insurance company with which the travel agent had entered into an insurance contract in case of bankruptcy within the meaning of Act No. 159/1999 Sb., the respective provisions of the law must be interpreted in a manner consistent with the constitutional order as well as obligations of the Czech Republic arising from its membership in the European Union; and such an interpretation was,

in the case under consideration, an interpretation directed to full refund of the price of the trip paid by the customer. An opposite interpretation by the general courts would ultimately lead to a violation of the consumer's right to a fair trial within the meaning of Art. 36(1) of the Charter as well as of the consumer's right to the protection of property within the meaning of Art. 11(1) of the Charter.

In its decision file No. II. ÚS 795/16 of 27 April 2017, the Constitutional Court dealt with the issue of **actual damage to a crashed vehicle**, and stated that in addition to the costs of repair of a damaged vehicle, it is possible to also seek compensation of damage corresponding to the difference between the market value of the vehicle before damage and after repair.

Judgement file No. II. ÚS 795/16: On the concept of actual damage to the vehicle

In proceedings before the general courts, the complainant sought compensation of damage caused by damage to a vehicle during a traffic accident; the claimed damage was the difference between the market value of the vehicle before the accident and its market value after repair, and the costs of expert reports. The complainant had the vehicle repaired after the accident, but even after the repair, the vehicle did not reach the usual market price before its damage, which the complainant also evidenced by expert reports. The insurance company reimbursed the complainant for the costs of the repair only, less the amortization of spare parts. The complainant believes that the difference between the market values of the vehicle also represents damage. However, the general courts based their decisions on an opposite legal opinion and eventually, after a cassation judgement of the Supreme Court, did not dispose affirmatively of the complainant's claim for damages.

The Constitutional Court concluded that the legal opinion of the general courts under which damages corresponding to the difference in the vehicle's market value before damage and after repair cannot be claimed in addition to the costs of repair of the damaged vehicle does not respect previously formulated principles of the right to damages. The Constitutional Court further noted that the law, its interpretation and use should respect the economic reality. If only the cost of repair of a thing is paid and not the difference in the market value of the thing, such a thing does not provide the same benefit to its owner, and the damage caused by the unlawful conduct is thus not fully compensated for. The Constitutional Court concluded that if the general courts are of the view that damages corresponding to the difference in the vehicle's market value before damage and after repair cannot be claimed in addition to the costs of repair of the damaged vehicle, they violate the right of the party to the proceedings to own property pursuant to Art. 11(1) of the Charter and their right to a fair trial guaranteed by Art. 36(1) of the Charter.

In its judgement file No. II. ÚS 155/16 of 6 June 2017, the Constitutional Court returned to the **principle of full compensation for 'total damage' to a vehicle**. In the case under consideration, the second panel of the Constitutional Court had to overturn a decision of the Supreme Court which did not respect the binding case-law of the Constitutional Court on the issue, enshrining the principle of full compensation for damage. It reminded that actual damage is understood as a reduction in the existing property of the injured party as compared to the state before the damage, and the scope of damage must correspond to the amount of money the injured person had to pay to restore the original state of property. These conclusions also have to be applied to the case of 'total damage'.

Another group of cases in the area of compensation of damage is cases of **extraordinary compensation for pain and diminished social function**. In its judgement file No. I. ÚS 1346/16 of 29 June 2017, the Constitutional Court stated that the general courts have room for an extraordinary increase in the damages pursuant to section 7(3) of Decree No. 440/2001 Sb. of the Ministry of Health on compensation for pain and diminished social function always when justified by a higher degree of severity of the impact on health and capabilities of the injured party in their life and in society, taking into account all conceivable aspects of human life. The adjudicated amount of compensation for diminished social function

must be based on objective and reasonable grounds and on maintaining proportionality between the damage caused and the adjudicated amount of money. In its judgement file No. III. ÚS 1796/16 of 8 August 2017, the Constitutional Court added that the general court, in the procedure under section 7(3) of the cited Decree, need not be necessarily bound by the draft relief, and may exceed the total amount claimed by the plaintiff in order to adjudicate a fair amount of compensation.

A decision concerning **liability for damage caused to the accused person by submitting a criminal complaint**.

Judgement file No. III. ÚS 1017/15: Criminal complaint and liability of the reporting person for the harm caused to the accused person

The complainant as a mayor of Třinec sought before the general courts compensation of her property loss which was caused by the defendant and which consisted of the costs of legal services paid in connection with the investigation of a criminal complaint submitted by the defendant as a member of the council for an opposition party. The complainant was investigated for a suspicion of misdemeanour of abuse of power by a public official and the misdemeanour of violation of obligations in the management of property of another. However, the police did not proceed with the case. The investigation was resumed following a complaint of the intervening party, and the police authority concluded again, after additional investigation, that the above misdemeanours had not been committed by the complainant and that she had proceeded with due managerial care from the very beginning. In the complainant's view, the liability of the intervening party was established by the fact that he abused the right to submit a criminal complaint since his main objective was to harm the complainant as his direct political competitor. However, the courts dismissed the complainant's action, basing their decisions on the fact that a punishment in the form of compensation of damage is inadmissible for the submission of a criminal complaint, because such a submission cannot violate any legal obligation.

However, the Constitutional Court could not agree with such an opinion of the general courts. It stated that it cannot be ruled out that not only a right but even a statutory obligation to report can be misused for an illegitimate purpose and exercised in civil relations, for example, contrary to good morals or in a vexatious manner, that is, in violation of a legal obligation. Liability of a person acting in such a manner for harm caused must thus be inferred. The situation in the case under consideration was even more complicated because it was not an immediate civil relation but the state entered the chain of acts between the parties.

The Constitutional Court also stated that it follows from the case-law of the Supreme Court that in cases of false criminal complaints where the reporting person was not convicted for false accusation, civil liability for the harm caused is considered, even when the harm was caused by the subsequent procedure of state authorities, for example due to unjustified formal accusation. The more it is necessary, according to the Constitutional Court, that such a possibility exist also in cases of persons who have not been formally accused. As regards the condition of existence of sufficiently intensive harm, the Constitutional Court stated that expenditure of funds for legal assistance certainly constitutes harm to property rights. In a state respecting the rule of law, a situation when an individual is forced to tolerate the consequences of unlawful conduct of a private person and of public authorities without having at the same time the right for compensation of such damage is inadmissible. If the acts of various legal persons caused constitutionally relevant violation of rights due to a criminal complaints, the court must determine the share of such persons on the occurrence of the damage. Otherwise, liability of the state must be applied pursuant to Art. 36(3) of the Charter.

Another significant circumstance was the fact that the complainant and the intervening party had long been competitors in elections and in the Třinec self-government authorities. It would be an unacceptable trend if the police was to factually become a free detective agency to obtain

information about the acts of political opponents based on vague or even objectively false complaints. In this context, the Constitutional Court also declared unacceptable the opinion of the general courts that the complainant should have tolerated the violation of her rights due to her public political office. In conclusion, the Constitutional Court emphasized that none of its aforementioned conclusions can be interpreted as a disproportionate restriction on the right to submit a criminal complaint. However, everybody has to be aware that they may be held accountable for their acts that do not take reasonable account of the rights of other members of the society. The Constitutional Court concluded that the general courts had violated not only the complainant's right to the protection of ownership right pursuant to Art. 11(1) of the Charter, but also her right to judicial protection pursuant to Art. 36(1) of the Charter.

In several of its decisions (judgement file No. II. ÚS 2357/16 of 18 April 2017 or judgement file No. I. ÚS 2456/16 of 20 June 2017), the Constitutional Court dealt with **a blind person's journey without a ticket in the public transport**, specifically with suspension of enforcement proceedings against the blind complainant. In these completely identical cases, the Constitutional Court followed up on its previous case-law and concluded that if the general courts do not take into account the disability of the party to the proceedings and other documents they have available and do not suspend the enforcement proceedings due to "another reason", they incorrectly apply section 268(1)(h) of the Code of Civil Procedure, whereby violating that party's right to a fair trial guaranteed by Art. 36(1) of the Charter and Art. 6(1) of the Convention and also that party's right to own property pursuant to Art. 11(1) of the Charter.

No less significant was a decision concerning **enforcement of an amount of disability pension not liable to garnishment from a person serving a sentence of imprisonment**. In its judgement file No. IV. ÚS 1351/16 of 6 April 2017, the Constitutional Court dealt with a complaint of a convicted person about the procedure of the Prison Service of the Czech Republic, which unlawfully made deductions from his account, maintained by the prison, based on an enforcement order, beyond the extent stipulated in section 25(4) of the law in imprisonment. Since the Prison Service of the CR as a state authority obliged to proceed in accordance with the law and within its limits in investigating the principles stipulated in Art. 2(2) in combination with Art. 4(4) of the Charter did not enable the convicted person to utilize half of his funds deposited on the account, it violated his right for the protection of property guaranteed by Art. 11(1) of the Charter, specifically his right to peaceful enjoyment of property under Art. 1 of the Optional Protocol to the Convention.

Political rights

Freedom of expression

In 2017, the Constitutional Court followed up on its case-law from the previous year concerning the extent of acceptable expression of a judge (judgements file No. I. ÚS 2617/15 of 5 September 2016 and II. ÚS 2490/15 of 8 November 2016). The Court noted that a judge may certainly not be excluded from the possibility to exercise their constitutional right to freedom of expression. However, in the exercise of that right the judge is not in a position comparable to any other citizen, and as required by the Convention, the judge must be prudent, must not unacceptably jeopardize the authority or impartiality of the judiciary or interfere with the right of particular parties to the proceedings to a fair trial. A judge is a judge continuously, and more stringent demands on their behaviour also apply to their ordinary life, which also includes publishing and literary activities. The complainant's articles contained, even if one accepts a certain degree of exaggeration, a significant amount of vulgar expressions, sexual, violent, and racist insinuations and were communicated to the public through a web portal. They were not private speech which, although it can be found identically undesirable, does not, as a rule, directly affect the dignity of the judge's office in relation to the public. In its judgement file No. IV. ÚS 2609/16 of 11 April 2017, therefore, the Constitutional Court dismissed the judge's complaint against the decision of the disciplinary panel of the Supreme Administrative Court (see the previous subchapters for a more detailed summary).

The case decided by judgement file No. III. ÚS 3393/15 of 13 September 2017 was on the border of freedom of expression and freedom of scientific research. The constitutional complaint was filed by a researcher opposing the conclusions of the general courts implying that she had interfered, in her publications, with the personal rights of the deceased Hugo Salm-Reifferscheidt by false statements. Specifically, that concerned statements whereby she compared him to Adolf Hitler, and she compared his application for citizenship to an act close to treason. The Constitutional Court, among other things, concluded that although the complainant based her published scholarly works, according to her claims, on an extensive analysis of study materials and applied methods customary in scholarly research, she presented her findings in a manner that was a value judgement capable of violating the rights of other persons. The freedom of scientific research has (as other human rights) its limits and it ends where it conflicts with other constitutional rights. In the case under consideration, the Constitutional Court concluded that the researcher had exceeded the limits of the freedom of scientific research, and dismissed her constitutional complaint.

The tension between freedom of expression and personal rights is also illustrated by the case of a dispute between David Černý and Milan Knížák, extensively covered by the media.

Resolution file No. I. ÚS 1041/17: Assessment of a conflict of freedom of expression with personal rights

The general courts decided that the complainant David Černý was obliged to pay to the intervening party Milan Knížák an amount of 100,000 CZK as a compensation for non-pecuniary damage for Černý's statement made in a broadcast television documentary in which Černý compared the intervening party to a crippled male sexual organ.

The Constitutional Court agreed with the conclusions of the general courts under which the complainant's statements had the character of a value judgement, which cannot be tested in terms of its truthfulness or factual basis. The complainant's apparently indecent and vulgar expressions disparaging the intervening party's personality could not be considered adequate, not even in the context of the broadcast documentary, previous behaviour of the intervening party and mutual disputes between them. The complainant was not confronted with the intervening party in that documentary and was not asked about him, and the complainant himself returned to events several years old. The statements could, therefore, not be excused as an "counter-attack" or as the complainant's immediate response to a verbal attack. Even that would not, however, outweigh the fact that it was a statement insulting and disparaging the personality of the intervening party. The objectives

pursued by the intervening party could have been achieved even without the expressions and insults used. Although the Constitutional Court took into account the personality of the complainant as a nonconformist artist, the complainant had to foresee his statements coming into television broadcast and the public space. The Constitutional Court concluded that the complainant's statements differed from standard and acceptable value judgements by the degree of vulgarity, and the Court thus had no reason to intervene in the decisions of the general courts that had attributed less importance to the right to freedom of expression. Their conclusions could not be described as unsustainable, excessive or otherwise unconstitutional. When assessing the amount of compensation for the non-pecuniary damage, the Supreme Court had taken into account the necessary criteria. Although, in the Constitutional Court's view, even a lower amount could have fulfilled the satisfactory and punitive function, the value determined by Supreme Court was not excessive.

Right to assembly

A group of senators sought annulment of section 24 of Act No. 13/1997 Sb., on roadways, with a reference to the fact that the Police of the Czech Republic did not let, based on that provision, participants of duly notified gatherings to the premises of the Hradčanské Square in connection with the visit of the President of the People's Republic of China and other Chinese politicians to the Czech Republic in 2016.

The Constitutional Court stated that the contested provision enables administrative authorities (and in exceptional cases the owner of the road) to temporarily restrict, at the request of a person in whose interest the road is to be closed, the general use of roadways. The administrative authority thus has the discretion to decide, in administrative procedure, whether it will close the road or not, and to what extent. That does not mean, however, that the administrative authority could proceed arbitrarily. The administrative authority may close a road partially or fully only when the interest of the entity requesting the closure on the closure of the road outweighs other possible interests, only to the extent absolutely necessary to achieve such a purpose, and for as short a period as possible. If fundamental rights are to be violated by the decision to close the road, the administrative authority must examine their essence and significance. If the petitioners object that the administrative authority does not follow these principles and makes the closures "automatically", any violation of the law cannot be resolved through annulment of the contested provision but by means of administrative remedies or administrative actions. The Constitutional Court thus concluded that the contested provision does not allow arbitrariness of administrative authorities in the decision-making about closure of a roadway, and therefore is not in violation of Art. 2(3) of the Constitution or Art. 2(2) of the Charter. The Constitutional Court added that the Charter and international treaties stipulate conditions under which it is possible to restrict the right to assembly. The administrative authority may close of a roadway on which a notified gathering is to take place only when the closure is for the purpose of achieving one of the legitimate objectives stipulated in Art. 19(2) of the Charter, such a measure will be necessary to achieve that objective, and the condition that restriction on the right to assembly will be proportionate to the pursued objective will be met. In its judgement file No. Pl. ÚS 21/16 of 27 June 2017, the Constitutional Court, therefore, did not grant the petition of the group of senators.

Right to information

The Constitutional Court's decision-making on the issues of the right to information also attracted media attention in the last year. In its judgement file No. IV. ÚS 3208/16 of 21 March 2017, the Constitutional Court granted the complaint by a complainant to whom the Ministry of Health and administrative courts failed to make available the requested legal analysis concerning home births. The Constitutional Court emphasized that it was necessary to guarantee a broad access to information on the exercise of the authority of obliged entities, but also to respond to cases of disproportionate requirements or even abuse of the law in order to obtain an unjustified advantage, in the extreme case an unlawful interference with the rights of others. Public authorities must approach requests for information of that kind individually and consider carefully whether in the case of a conflict, the right to information guaranteed by Art. 17(1) of the Charter or the right to the fruits of one's creative activity guaranteed by Art. 34(1) of the Charter should prevail.

In its judgement file No. IV. ÚS 1146/16 of 20 June 2017, the Constitutional Court was faced with the question whether the complainant, company ČEZ, a. s., is a public institution under Act No. 106/1999 Sb., on Free Access to Information, because private entities, unlike public ones, are not subject to the obligation to provide information directly pursuant to Art. 17(1) and (5) of the Charter. Although the administrative courts had taken into account the method of establishment of the complainant, they had attributed inappropriate importance to it because since its establishment, the company was a private entity in the regime of the Commercial Code, later the Business Corporations Act, different from the state. Creation of its bodies or exercise of rights of its shareholders also took place exclusively under private law. The public purpose of the activities of the complainant could also be seen in a number of other private entities without having to regard them as public institutions. The essence of the complainant's existence and functioning is mainly business, the purpose of which is to make a profit. The private nature of the complainant's existence is not affected even by the majority share of the state.

The Constitutional Court therefore granted the complaint by inferring that the obligation to provide information under the law on free access to information does not apply to the complainant. It also added that its conclusions do not preclude stipulation of an obligation for the complainant or any other business corporation to provide information about their activities if there is public interest on that. However, such an obligation must be stipulated by law.

Recurrent issues also include the extent of provision of information on the salaries of employees paid from public funds. The Constitutional Court provided a new view of this issue in the last year in its judgement file No. IV. ÚS 1378/16 of 17 October 2017.

Judgement file No. IV. ÚS 1378/16: *On the provision of information about the salaries of employees of an obliged entity (a constitutional interpretation of section 8b of the law on free access to information)*

The complainants, the then senior staff of the town of Zlín, sought that the Constitutional Court ruled that the provision of information about the amount of their salaries and bonuses together with their names by the town violated their right to protection of privacy and other rights. The Constitutional Court noted that the right to information in public interest is not absolute and if the exercise of that right intervenes in the right to protection of private life, it is necessary to compare these rights in every individual case and to ensure fair balance between them. The Court formulated criteria that must be cumulatively met before an obliged entity may provide information about the salaries and bonuses of employees requested under section 8b of the law on Free Access to Information. These include a requirement that (a) the purpose of requesting information is to contribute to the discussion of public interest matters; (b) the information itself was of public interest; (c) the applicant for information was fulfilling the tasks or mission of supervision by the public or the role of a "social watchdog"; and finally (d) the information existed and was available. In the event of a conflict of fundamental rights, an entity providing information in the public interest is required to compare the rights concerned and to assess whether a fair balance has been reached between them. The Constitutional Court disagreed with the case-law of the Supreme Court stating that the proportionality test need not to be carried out because it was already done by the legislature in formulating the provisions of section 8b of the law on Free Access to Information. No law may abstractly exclude the protection of fundamental rights and freedoms guaranteed by the constitutional order. In each individual case of a conflict of constitutionally guaranteed rights, the courts and other public authorities must consider the significance and intensity of the rights concerned. In the case under consideration, the town of Zlín was wrong in not making the necessary proportionality test when deciding on the applicant's request. The Constitutional Court thus granted the complaint and prohibited the town of Zlín from continuing in the violation of their fundamental rights.

Economic and social rights

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

The right to the free choice of one´s profession and the training for that profession

In its judgement file No. II. ÚS 3350/15 of 10 February 2017 in the matter concerning notice of termination of an employment relationship for failure to fulfil the prerequisites for the work of pedagogical staff, the Constitutional Court questioned the interpretation by the general courts, which had decided that supplementary pedagogical study should follow up on university non-pedagogical education. Such a requirement does not follow from the relevant decree; the only important fact is whether it is sufficient education ensuring the necessary prerequisites for the professional and pedagogic activities of the teacher. As a result of the above interpretation, the complainant could not be able to work as a primary school teacher with the original employer, which she, moreover, had been doing for 10 years, or in other primary schools.

The right to engage in enterprise and pursue other economic activity

The rights stipulated in Art. 26 of the Charter also include the right to engage in enterprise and other economic activity, which is defined as a separate fundamental right. The Constitutional Court dealt with the question whether that right was violated in two important judgements. The first one is a dismissing judgement file No. Pl. ÚS 28/16 of 14 February 2017 concerning a review of constitutionality of the law on games of chance. That law enshrined a duty of internet service providers in the territory of the Czech Republic to block access to internet websites on the blacklist of prohibited internet games maintained by the Ministry of Finance. If the providers fail to do so in the set deadline, they may be fined.

Judgement file No. Pl. ÚS 28/16: Blocking of illegal gambling on internet

The Plenum of the Constitutional Court concluded that the petition was unfounded due to the fact that unlike in the case of brick and mortar establishments, operation of games of chance on the internet is generally much more difficult to control, it is more dangerous and these games often avoid any taxes. A similar procedure of blocking illegal games is usual also in other countries of the European Union.

Such a procedure may not, in the Constitutional Court's view, be considered a limitation of the right to engage in enterprise within the meaning of Art. 26 of the Charter, of freedom of expression and the right to information pursuant to Art. 17(4) of the Charter, or the protection of ownership right within the meaning of Art. 11(3) of the Charter. Operators of illegal games of chance cannot enjoy the protection of the aforementioned constitutionally guaranteed rights because of their activities are illegal and threaten a number of important interests of the society; moreover, it is often associated with serious criminal activities. Although this does not fall directly in the scope of this chapter, it has to be pointed out that the aforementioned blocking cannot be compared to internet censorship; it is a technical measure to prevent illegal activities, and it must be used in a way that does not interfere with the legal contents of the internet. Also, the Constitutional Court did not find any inconsistency with the constitutional order in the fact that the power to decide on the inclusion of a particular website on the blacklist is entrusted by the law to administrative bodies; therefore, it happens in administrative proceedings and the resulting decision is subject to standard judicial review.

The second judgement concerning a possible violation of the law to conduct a business is judgement file No. Pl. ÚS 26/16 of 15 December 2017 concerning the introduction of fiscalisation of cash payments, which was widely acclaimed by the general public as well. That case did not concern only a review of the right

to engage in enterprise but also the right to informational self-determination enshrined in Art. 10(3) of the Charter; therefore, attention is paid to that judgement also in the respective part of the yearbook.

Judgement file No. Pl. ÚS 26/16: Fiscalisation of cash payments (EET)

The petitioners sought the annulment of the entire law on fiscalisation of cash payments or some of its provisions. The Plenum admitted that there had been a procedural flaw in the adoption of the law, but it did not reach the intensity of unconstitutionality and the Plenum did not proceed to the annulment of the law. The contested law is not unconstitutional as a whole but some of its provisions were annulled. However, not for their conflict with the right to engage in enterprise; at that point, the Constitutional Court recalled that in accordance with Art. 26 of the Charter, it is necessary to distinguish access to the right to engage in enterprise (freedom of enterprise – par. 1) and exercise profession or other economic activity and conditions associated with such exercise (par. 2). The constitutionally enshrined economic, social and cultural rights listed in Art. 41(1) of the Charter are not directly applicable to the same extent as fundamental human rights or political rights, and they may be claimed only within the limits of laws, which expresses the belief of the constitutional legislator that their regulation is primarily in the hands of the legislator, and only in the second place and to a limited extend can the constitutional guarantee of economic, social and cultural rights be considered a judicial matter.

The judges emphasized that the right to engage in enterprise is not only of a purely economic significance but it also constitutes a means of self-realization of an individual, used to fulfil the individual's natural freedom. However, the judges also noted that to a certain extent, it is public authority who stipulates the conditions for the exercise of economic activity. Although the fundamental rights under Art. 26 of the Charter may be claimed only within the limits of implementing regulations, the obligation to examine the essence and significance of fundamental rights (Art. 4(4) of the Charter). The Constitutional Court concluded that the introduction of fiscalisation of cash payments did not violate the essence and significance of the right to engage in enterprise, and that the introduction of the new form of reporting obligations had to be subordinated to Art. 26(2) of the Charter.

The right to acquire the means of one's livelihood by work, and the right to material security

In this area, we should mention mainly judgement file No. Pl. ÚS 10/12 of 23 May 2017 concerning, among other things, a review of an amendment to the Labour Code and the Employment Act based on which the employer may dismiss an employee for a particularly gross violation of the regime of temporarily incapacitated employee, whereby the employee is not entitled to unemployment allowance.

Judgement file No. Pl. ÚS 10/12: Termination of employment for particularly gross violation of the regime of temporarily incapacitated employee

The Constitutional Court recalled a fundamental change in the system of sickness insurance, where since 1 January 2009, the employer is obliged to provide, for a certain period since the beginning of incapacity to work, remuneration instead of state-paid sick pay. The employers were thus allowed to check compliance with the regime of temporarily incapacitated insured person; if the regime has been violated, the employer has the right to reduce or refuse the remuneration. The remuneration is paid out of the employer's resources not the state's ones, and that fact was evaluated by the Constitutional Court as decisive for assessing the constitutionality of the contested provisions.

If an employee violates their obligations at the time of temporary incapacity to work, the employee harms their employer. The employee is not working, the employee is not undergoing medical treatment but yet the employee requires remuneration from their employer. In fact, they "cheat" on their employer. In the Constitutional Court's opinion, the employer cannot be reasonably required to continue to employ a person who has "cheated" on the employee, tried to deprive the employer of its money or otherwise caused serious harm to the employer, and therefore the Court considers termination of employment in such a case as reasonable. As regards the absence of unemployment allowance in such cases, the Constitutional Court only adds that a particularly gross violation of an obligation requires intentional fault. If an employee becomes unemployed for that reason, such a solution is proportionate and it is a consequence directly foreseen by the European Code Social Security. Similarly, Art. 26(3) of the Charter expressly provides that the state shall provide an adequate level of material security to those citizens who are unable, through no fault of their own, to exercise their right to acquire the means of one's livelihood by work. The wording 'through no fault of their own' is decisive.

The Right to health protection

Health protection guaranteed by Art. 31 of the Charter was addressed by the Constitutional Court in 2017 in two significant decisions, although they do not apply directly to the right to health protection but to the other right following from Article 31, i.e., the right to free medical care and to medical aids under public insurance. In connection with public health insurance of foreigners, the Constitutional Court, in its judgement file No. Pl. ÚS 2/15 of 3 May 2017, dismissed a petition seeking annulment of contested provisions of the Act on Public Health Insurance. In the first case, which gave rise to the petition to the Constitutional Court, a medical facility required a foreign women giving birth to bear the costs associated with the childbirth as she, at the time of giving birth, no longer had a work permit, thus her employment had terminated and she was in the territory of the CR based on a long-term residence permit. In the second case a foreigner was employed at the time of giving birth, therefore she was participating in the public health insurance, but the case concerned the costs of hospitalization and medical care for her newborn son.

Judgement file No. Pl. ÚS 2/15: Public health insurance of foreigners and their free medical care

In the case under consideration, the Plenum recalled that participation in the public health insurance system follows directly from the law, which defines persons who participate in the system, and the conditions of establishment and termination of participation. During their participation in the system, a person has the right to receive free medical care. Where they do not meet the statutory conditions, they may either take out contractual insurance with some of the commercial health insurance companies or pay for the care received directly with their funds.

The content of the contested provisions is the limitation of the personal scope of health insurance to individuals who have permanent residence in the territory of the Czech Republic and to persons who do not have permanent residence but they are employees of an employer having their registered office or permanent residence in the territory of the Czech Republic. Although Article 31 of the Charter differentiates access to free medical care according to the citizen criterion, the implementing legislation is considerable friendlier to foreigners. A decisive condition for access to the public health insurance is not the existence of citizenship but of permanent residence in the territory of the Czech Republic or the registered office or permanent residence of the employer employing such persons. It is thus obvious that the basic dividing criterion is in fact not the question of existence of citizenship but a factual link between the individual and the state in the form of residence or work in its territory.

In its judgement file No. Pl. ÚS 3/15 of 30 May 2017, the Plenum of the Constitutional Court disposed affirmatively of a petition by a group of senators and annulled contested provisions of the Act on Public Health Insurance that stipulate the price to which providers of medical aids become entitled with respect to a health insurance company after having provided a medical aid to the health insurance company's insured person. The price then specifies the right of the insured person to the medical aid, because it determines whether the medical aid will be provided to the person free of charge or the insured person will be obliged to pay an additional charge.

Judgement file No. Pl. ÚS 3/15: The mechanism of determination of the amount of payment for medical aids from the public health insurance

The Constitutional Court dealt with the question whether the contested provisions sufficiently clearly and predictably define the content of the fundamental right of citizens to free medical care and to medical aids under the public health insurance, whether it defines its limits in accordance with the reservation of the law, and whether the fundamental right is not restricted in an inadmissible manner by those provisions.

The conclusion of the judgement is that the contested provisions are not specific enough to allow to infer for the provision of what medical aids an insured person is entitled to; that only depends on the particular procedure of health insurance companies. However, that is the base of inconsistency of the contested provisions with Article 31 second sentence of the Charter, which stipulates the fundamental right of citizens to free medical care and to medical aids under the public health insurance, and with Art. 4(2) of the Charter, from which the reservation of law follows for the determination of limits of that right. The aforementioned conclusions on the uncertainty of the contested provisions also apply in relation to the assessment of their compliance with the right of suppliers of medical aids to engage in enterprise and pursue other economic activity under Art. 26(1) of the Charter. Since the right to engage in enterprise in that case is actually established only through the procedure of health insurance companies, the conclusion about the conflict of the contested provisions with that right and with the reservation of law, which must be observed in determining its limitations, is justified.

Protection of parenthood, family and children

Protection of parenthood and children is enshrined across universal and regional human rights mechanisms. Recently, the Constitutional Court has very often been dealing with related rights, and it was the case also in the previous year. The Charter puts parenthood, family and children among the fundamental institutions or constitutionally protected values. Their protection is reflected in a number of the Constitution's provisions. The judgement case-law of the Constitutional Court in that area was enriched in 2017 by several important decisions, which touched upon various topics.

Significant decisions in this area include, in particular, judgement file No. Pl. ÚS 9/15 of 8 August 2017, in which the Constitutional Court dealt with the question of constitutionality of regulation imposing fees for the collection of municipal waste on minors. It was discussed in detail in the previous subchapters.

Another significant decision is undoubtedly an interesting judgement file No. II. ÚS 3122/16 of 16 May 2017, in which the Constitutional Court dealt with the question of legitimacy of the alleged biological father to seek, in court proceedings, denial of paternity of the registered father established by the first presumption of determination of paternity.

Judgement file No. II. ÚS 3122/16: Biological father vs. registered father

According to the current ECtHR case-law, the state does not have a positive obligation to ensure a possibility for the alleged biological father to seek denial of paternity of the registered father established by the first presumption and subsequent determination of paternity. The protection of existing legal and social family as an interest outweighing biological factuality also follows from the legal orders of Germany and Austria. The Constitutional Court also emphasized that according to the ECtHR case-law, the alleged biological father must have a possibility to achieve at least contact with the child. The biological father must thus not be completely excluded from the life of his child, unless there are important reasons for that stemming from the best interest of the child.

If the general courts dismissed the action submitted by the alleged biological father for determination of paternity in the case where the mother's husband is listed as a father in the birth certificate based on the first presumption of determination of paternity, they did not violate the complainant's right to respect for family and private life guaranteed by Art. 10(2) of the Charter and Article 8 of the Convention. According to the current law, the complainant was not authorized to submit an action for determination of paternity. Only parents listed in the birth certificate were authorized to deny paternity; however, they did not do so within the time limit for denial.

Attention should undoubtedly also be paid to judgement file No. I. ÚS 3226/16 of 29 June 2017, whereby the Constitutional Court concluded that failure to recognize a foreign decision determining paternity of a child of two same-sex persons in a situation where family life had been factually and legally constituted between them in the form of surrogate motherhood on the grounds that the Czech law does not allow paternity of two same-sex persons, is inconsistent with the best interest of the child protected by Art. 3(1) of the Convention on the Rights of the Child.

Judgement file No. I. ÚS 3226/16: Failure to recognize foreign legal and factual paternity of one of men in a same-sex couple

In 2015, the Supreme Court recognized a judgement of the Californian Court, determining the paternity of the first and second complainants, i.e., two men, to the third complainant, a child born using the institution of surrogate motherhood. However, paternity was only recognized with respect to the first complainant, a Czech citizen. A repeated action of both men for the recognition of the foreign judgement also with respect to the second complainant was dismissed by the Supreme Court in its decision contested by the constitutional complaint for inconsistency with the public order because granting of that petition would ultimately create a situation corresponding to joint adoption of a child by two same-sex persons, which is a situation not accepted by the Czech law.

The Constitutional Court agreed with the conclusion of the Supreme Court that recognition of a family lawfully established abroad using surrogate motherhood is clearly not inconsistent with the public order. There was no doubt that all three complainants lead family life together. It is not about, like in the case of adoption, life created in the future, but it is a legal and factual reality that only requires recognition by the Czech state.

The case-law of the Constitutional Court and of the ECtHR emphasizes that if there is already family life between persons established on a legal basis, all public authorities are obliged to act in such a way so that the relationship can develop, and legal guarantees must be respected that protect the relationships between the child and its parents. In the Constitutional Court's view, the Supreme Court erred when it failed to recognize an already existing parental relationship between the second complainant and the child, which violated their right to family life within the meaning of Art. 10(2) of the Charter. The contested decision is not in the best interest of the child as it undermines the factual and in place of residence also formally legal family relationships of the child, and it is also inconsistent with

the child's right to recognition of its identity by refusing to recognize a legal relation to one of its parents. It is in the best interest of the child that its factual and in its country of residence also legal relation to the other complainant as a parent be recognized in the territory of the Czech Republic as well. However, the Supreme Court did not consider the question of the best interest of the child at all. Nor did the Court justify why it recognized the parenthood of the first complainant and not of the second one when they have the same legal and factual relationship and identical parental rights in relation to the child. The Supreme Court failed to explain in what it saw the clear inconsistency with the public order if parenthood of the second complainant to the child was recognized. It cannot be inferred from the fact that the Czech legal order does not foresee parenthood of two same-sex persons that the situation in the case of the facts of the complainants' case is so fundamentally inconsistent with the public order so that the contradiction is apparent. The Czech law already permits the possibility of a child having two same-sex parents.

Although the Constitutional Court respects the legitimate interest on the protection of a traditional family, such an interest would not be endangered by the complainants' petition in any significant way as it would not constitute creation of any new family tie but only recognition of an already existing one. The interest on the protection of a traditional family cannot always prevail. Due to the contested judgement, any legal relationship between the second complainant and the child ceased to exist solely because of the sexual orientation of the first and second complainant, which is their personality characteristics that cannot be changed. In the Constitutional Court's view, it is, however, unacceptable to stigmatize the complainants under the pretext of preserving the values of a traditional family.

In the matter file No. IV. ÚS 3526/16 of 21 March 2017, the fourth panel provided its opinion on the **right of the parents (complainants) of a minor to inspect the criminal file** containing details on the investigation of the child's death within the meaning of section 65 of the Code of Criminal Procedure. With regard to the position of the complainants in the criminal proceedings conducted against them as suspects and the subsequent discontinuance of their criminal case, the Constitutional Court concluded, in accordance with its previous case-law that the position of the complainants in the criminal proceedings is that of 'other persons'. The Constitutional Court, however, noted that access of such persons to the file is not unlimited. It is subject to claiming the affected interests the 'other person' is seeking, and to approval by the public prosecutor, who, however, does not have unlimited powers to deny such access. It is thus necessary to carefully consider the rights and legitimate interest of the 'other person' with respect to the legitimate reasons for denying access in the public interest or to protect the rights of third parties. However, in the Constitutional Court's view, the parents of a deceased child in the position of 'other persons' need not claim or evidence the particular affected interests as these follow from the very nature of the legal protection of parenthood of minor children. Therefore, if the investigative, prosecuting and adjudicating bodies did not enable the complainants to inspect the file, they violated the complainants' right to the protection of parenthood and to a fair trial within the meaning of Art. 32(1) and Art. 36(1) of the Charter.

In its judgement file No. II. ÚS 378/17 of 9 May 2017, the Constitutional Court dealt with the procedure of the general courts in proceedings for the return of a child **in the case of an international child abduction**. It stated in the judgement that in the case of an international child abduction, it is a duty of the general courts to secure all materials to be able to properly assess whether in the case that conditions have been met for the return of the child to the place of its habitual residence under the Convention on the Civil Aspects of International Child Abduction (the "Hague Convention") conditions stipulated in Article 13 of the Hague Convention, which exclude the child's return, are also met. That applies especially when a party to the proceedings states specific circumstances leading to such a conclusion, and substantiates them with evidence or suggests that their evidence is produced. In the Constitutional Court's view, the general courts did not meet those requirements in that matter because they did not draw the relevant conclusions from the evidence submitted, they did not adequately rebut the complainant's claim that the minor would be in serious danger upon return, would be subjected to physical or mental harm or would find themselves in an

otherwise unbearable situation. The procedure of the general courts, therefore, due to inadequately established facts of the case and due to lack of proper justification, violated the complainant's (and ultimately the minor's) right to a fair trial.

In the last year, the Constitutional Court, as traditionally, dealt with decision-making of general judges in matters of **award of custody of children after divorce** (separation) of the parents. In its judgement file No. IV. 1921/17 of 11 November 2017, the Court provided its opinion on the scope of care and 'broad contact' of the other parent in the case of award of exclusive custody of a child to the other parent.

Judgement file No. IV. 1921/17: An equal share of both parents in the care and education of a child

The Constitutional Court emphasized that the primary basis for deciding on child care is the premise that the best interest of the child is to be "primarily in the care of both parents". However, this concept cannot be regarded as a flat-rate use (preference) of alternate care as the basis in deciding on child care. On the contrary, it is necessary for the courts to always take into account all the circumstances of the case under consideration and to decide on the form of care in the best interest of the child so that the share of both parents in care and education is fundamentally equivalent. This can also be achieved by entrusting the child to the exclusive custody of one of the parents, but with the corresponding specification of the child's relationship with the other parent through 'broad contact'.

The general courts were primarily criticized by the Constitutional Court for not having consistently dealt with the fact that there was an agreement on the care and contact with the father between the parents of the minor, which was also factually implemented. The state of affairs stabilized by the agreement should be, in principle, respected by the court and reflected in the decision on the custody of the minor if other conditions are met. If the complainant's broad contact with the child was to be, according to the courts, beneficial for the child's development, it was not possible to conclude on the suitability the scope (form) established by the courts. If the relationship of a non-resident parent is to be specified adequately, it is necessary, in the Constitutional Court's view, for the parent to have the opportunity to be with the child on Christmas Eve, similar to the child's mother. In the absence of an agreement between parents, it is advisable to include other holidays as well as (not only) summer holidays in the "odd and even year" mode in the verdict on the specification of contact.

In its judgement file No. II. ÚS 1931/17 of 19 December 2017, the Constitutional Court urged the general courts to properly determine, before the issue of a preliminary measure in the cases of regulation of the relationship with minors, if possible and necessary, the minor's own opinion if able, with respect to his or her age, to express such an opinion.

The Constitutional Court was also faced with decisions of the general courts that had significantly reduced or completely eliminated the contact of a parent in a specific life situation with a minor child. That was the case of judgement file No. I. ÚS 1079/17 of 26 July 2017 in the case of a prosecuted parent, in judgement file No. I. ÚS 3296/17 of 20 December 2017 in the case of a parent in detention custody, and judgement file No. II ÚS 22/17 of 8 August 2017 in the case of a parent serving a sentence of imprisonment.

Judgement file No. I. ÚS 1079/17: State authorities have a duty to seek solutions preventing both the risk of physical violence against children and their manipulation by one parent to condemn the other parent

Two things lead the court of appeal to restrict the complainant's contact with his children, namely a statement of minors before the body of social and legal protection of children expressing fear and dread of the complainant, and the mother's criminal complaint against the complainant due to

inadequate punishments. The subsequent preliminary measure ordered the complainant to refrain from contact with the minors until the end of the criminal prosecution.

The Constitutional Court recalled that if a court decision awards custody of a child to one of the parents, the child should be allowed contact with the other parent to the extent that the postulate of equal parenting care is met as much as possible. Such an arrangement is, according to the Constitutional Court, usually always in the "best interest of the child", and any deviations from this principle must be duly justified by protection of another, sufficiently strong legitimate interest; the specific facts upon which this interest is based must be proven in the proceeding in question.

The state has a responsibility, through its bodies, to lead parents to constructively resolve their family crisis and to respect the parenthood of the other parent. However, the Regional Court failed to meet that obligation because it actually based its decision to restrict the parental rights of one parent on the version of the other parent without critically assessing the existing doubts that emerged during the discovery. Nor did the court sufficiently explain why it considered the restriction on contact to one half to be in accordance with the best interest of the children.

According to the Constitutional Court, the indications of the complainant's wrongdoing were not so serious as to justify a complete prohibition of the complainant's contact with the minors, which is an *ultima ratio* solution reserved for emergencies. In the case of an improvable risk of violence, the best interest of the child should have lead the court to allow at least assisted contact with to the complainant until the end of the criminal prosecution. The threat of physical violence on the part of the parent is comparable to that resulting from the loss of ties to one parent as a result of manipulation by the other parent. Therefore, the aforementioned procedure of the District Court violated the complainant's right to protection of his family life and child care pursuant to Art. 10(2) and Art. 32(4) of the Charter.

In its judgement file No. I. ÚS 3296/17 of 20 December 2017, the first panel granted a constitutional complaint of the complainant who had been denied, by a decision of the Regional Court, all personal and phone contact with his minor daughter. Due to violation of his right to family life and child care and his right to a fair trial, the Constitutional Court annulled the concerned statement in the judgement that had restricted the complainant's contact with his daughter to correspondence only.

Judgement file No. I. ÚS 3296/17: Contact of a parent in custody with minor children

The Constitutional Court emphasized that parents in prison or in custody have the right to contact with their minor children, and the state has a positive obligation to help maintain their contact, including creating the most favourable conditions possible for children to visit. Thus, as a rule, when the relationship between both parents is conflictful, it is necessary that a court decision specify contact of the child with the imprisoned parent. In the case of separation of the child from the parent, it is the responsibility of the decision-making authority to ensure that the child maintains relations with that parent, unless this is contrary to the child's best interest. In the event that a parent is in custody during their prosecution and has not yet been finally convicted, it is necessary, in view of the presumption of innocence, that any interference with the parent's rights be even more moderate. In proceedings for regulation of the relationship with a minor child, it is necessary for the court to justify, in particular, why the chosen solution is in the best interests of the child.

These requirements were not met by the Regional Court in the case under consideration. The court failed to deal with the question of what arrangements would be in the best interest of the minor and how to ensure the maintenance of the relationship between the minor and her father. It failed to not find out whether and how visits of minors take place in the custodial establishment where the complainant is placed. The court's mere

statement of the impossibility of regulation of contact with the minor was found by the Constitutional Court to be contrary to the principle that the best interest was the primary consideration in decision-making, but also the requirement for proper justification of the decision.

The Regional Court also violated the complainant's right to family life and child care because it did not address the conditions under which the complainant and his daughter could be in contact. Maintaining personal contact between imprisoned parents and their children must be a rule and its exclusion must be an exception that has to be based on convincing and serious reasons. Moreover, the Regional Court did not consider any other possibilities for indirect contact between the daughter and the complainant, especially their telephone contact; the minor cannot read or write and communicates with the complainant in Spanish, which is a language her mother does not speak.

In the matter file No. II. ÚS 22/17 of 8 August 2017, the complainant contested an court of appeal decision that failed to regulate the contact with the complainant's children in any way.

Judgement file No. II ÚS 22/17: Contact of an imprisoned parent with minor children

The Constitutional Court emphasized that the task of the general courts is to decide, taking into account all the relevant circumstances of the case and the resulting interest of the child, which must always be the primary consideration in all actions concerning children, on the particular form of the most appropriate arrangement of the relationship between parents and children.

If one of the parents is imprisoned, the court must take into account the restrictions resulting from that fact. The mere fact of imprisonment should not, however, be a priori considered a reason to prevent an imprisoned parent from direct contact with a minor child. There are even fewer reasons for preventing an imprisoned parent, without any further justification, from indirect contact with their child (e.g., in the form of letters or phone calls). In the first place, however, it is necessary that the general courts always deal with the possibilities of direct and indirect contact while taking into account the specific circumstances of each case and that they duly justify their conclusions in that regard, with reference to relevant reasons and not merely by generally stating that a visit in prison could be a trauma for a minor child.

In the last year, the Constitutional Court also dealt with the protection of procedural rights of minor parties to civil proceedings. That concerned cases of minor passengers caught in a public urban transport vehicle without a valid ticket who were subsequently obliged, while still in the age of minority, to pay the unpaid fare including a surcharge and the costs of the proceedings. In these factually and legally similar cases, the minors-complainants were represented by their statutory representatives, who, however, did not provide due child care, which resulted in an order of the minors' institutional care. The parents, therefore, did not defend the interests of their children in proceedings against their children.

In the judgements in these matters (e.g., file No. I. ÚS 3655/16 of 6 March 2017 or file No. IV. ÚS 1669/14 of 7 March 2017), the Constitutional Court reminded the general courts of their obligation to always take into account whether conditions for appointment of a guardian are met in situations where representation of a child by its statutory representative is only formal. In its judgements file No. I ÚS 3038/16 of 5 June 2017 and also in judgement file No. I. ÚS 3976/14 of 30 May 2017, however, the Constitutional Court emphasized that even representation of a child by its statutory representative or its appointed guardian does not release the court from the duty to inform the child as a party to civil proceedings for the payment of a debt resulting from riding without a valid ticket of such proceedings and to involve the child in the proceedings, unless it is contrary to the child's best interest. Therefore, the court must allow the minor party

to the proceedings to attend the hearing and to provide their statement on the matter. Any restriction on these rights of the child must always be duly justified with regard to the best interest of the child.

In its judgement file No. I. ÚS 1775/14 of 15 February 2017, the Constitutional Court stressed the obligation of the general courts to assess in each particular case whether a minor is competent to enter into a contract of carriage, including its arrangements and consequences resulting from its violation. Therefore, it is the task of the courts to take into account whether the child is bound by the individual arrangements of the contract of carriage, and the degree of the child's fault in violation of this contract. This may also lead to the conclusion that the child's primary interest will be best protected by applying (joint) liability of its parents for debts arising out of rides without valid tickets. In their decision-making, the general courts must also protect the interest of the child not to enter adulthood with obligations that he or she cannot meet and that can have a "suffocating effect". The Constitutional Court decided similarly in its judgement file No. II. ÚS 1864/16 of 28 November 2017, when it focused on the examination of the rational and volitional maturity of a minor in terms of attributability of consequences of entering into a contract of carriage and the degree of her fault in the violation of that contract.

The right to judicial and other legal protection

The right to a fair trial

The right to a fair trial is one of the fundamental rights characterizing the rule of law, and it includes a whole range of partial rights and principles that must be fulfilled in the proceedings. These include, for example, the right of access to a court, the right to equality of arms, the principle of contradiction in proceedings, the right to hearing of the case without undue delay, the right to a public hearing or the court's duty to deal with the objections raised. In view of this, the cases in which the Constitutional Court decides in connection with the right to a fair trial are characterized by considerable diversity. That was the case also in the last year. On the following lines, therefore, only a few of the most crucial decisions were selected from a large number of decisions, illustrating new trends as well as elaboration on already previously established principles.

At the beginning of the last year, the Constitutional Court issued an interesting judgement file No. III. ÚS 1293/16 of 24 January 2017 in the area of law of drafts and notes, in which it dealt with the question of raising of 'causal objections' by the avalist. The Constitutional Court recalled that obligations regarding securities are characterized by strict formality and abstraction, which restrict the application of these objections. At the same time, however, it stressed that in cases where the causal objections of the avalist justifiably suggest a possible misuse of the right by the bill holder, it is the duty of the ordinary court to deal with them. Therefore, if the general court did not provide the avalist with judicial protection in the case under consideration and did not examine the causal objections raised by the avalist, it proceeded in violation of the complainant's right to judicial protection within the meaning of Art. 36(1) of the Charter and the requirement of a constitutionally consistent interpretation of the rigorous provisions of the law of drafts and notes.

As in previous years, the Constitutional Court also dealt with the institution of the **judgement for recognition** in the last year. In its affirmative judgement file No. I. ÚS 2693/16 of 14 February 2017, the first panel stressed the obligation of the general courts to proceed, in assessing the fulfilment of obligation for the issue of a judgement for recognition, in a prudent and restrictive manner. It emphasized that in a situation when the defendant is not indifferent to the action or obstructively passive, does not want to feint and their actions do not cause delays of proceedings, the fiction of recognition may not usually even occur, and therefore the judgement for recognition may not be issued.

Attention should also be paid to judgement file No. I. ÚS 615/17 of 10 August 2017. In that judgement, the judges recognized a violation of the complainant's right to a fair trial and called on the ordinary courts to take into account, when dealing with the matter again, especially the fact that the complainant was in the position of the weaker party in relation to the intervening party, which they did not in the original proceedings from which the contested decisions resulted.

Judgement file No. I. ÚS 615/17: On the court's obligation to ensure compliance with the standards of fair trial standards in relation to the weaker party to the dispute

Based on an offer of the Employment Office, the complainant applied for a job of welder-locksmith with the intervening party. After he appeared in the workplace of the intervening party, one of the employees assigned a work task to him without providing him with instructions in advance and without having concluded any type of employment contract or agreement with him. On the same day, the complainant suffered a severe injury on his right hand. In the proceedings before the ordinary court, he subsequently sought damages from the intervening party and compensation for loss of earnings. The District Court ruled that there had been no employment relationship between the parties, and therefore dismissed the action. The Regional Court confirmed the decision. The Supreme Court rejected the complainant's appeal on a point of law.

There was a disagreement among the parties as to whether or not there was an employment relationship between them. The Constitutional Court pointed out that in the current situation of "claim against claim" it was

necessary to always put higher demands on the courts in connection with the evidentiary procedure and subsequent justification. However, the general courts did not proceed as required in the case under consideration because they inclined to the claims of the intervening party without any reflection of the complainant's opposing claims and objections or other relevant evidence. In this way, the determined factual situation was totally inadequate. The general courts also erred in the fact that after they concluded that the complainant was not an employee of the intervening party, they did not instruct the parties to the proceedings and did not request that they supplement their claims based on whether the regime of labour or civil law was applicable in the given context. Thereby, they also burdened their decisions with the defect of surprise and unpredictability.

Regardless of whether the general courts had to assess the relationship between the parties as a labour-law relationship or not, they should have, in the Constitutional Court's view, taken into account above all the fact that the complainant was the weaker party to the dispute. The more should they have made sure in the proceedings to comply with all the standards of a fair trial arising from Article 36 of the Charter.

In its judgement file No. III. ÚS 3425/16 of 23 August 2017, the Constitutional Court decided that the complainant's rights within the meaning of Art. 36(1) in combination with Art. 38(2) of the Charter were violated by the Supreme Court, which did not decide on the complainant's **petition for postponement of enforceability** without undue delays. The panel rejected the practice of the Supreme Court whereby in a situation when no reason for postponement of enforceability is found, the Supreme Court is not obliged to issue a "negative" decision, because a requirement for the issue of such a decision would be, in the Supreme Court's view, too formalistic. However, the Constitutional Court is convinced that it is always necessary, on the contrary, to decide on such a petition in the manner stipulated by law, i.e., by a duly justified resolution containing the stipulated elements and served to the parties, because "inactivity" with a fiction of negative decision is an institution exceptional in the legal order that would have to be expressly stipulated in the law.

In the matter file No. III. ÚS 593/17 (judgement of 29 August 2017), the Constitutional Court found that the ordinary courts erred when they failed to address the complainant's objection concerning the contradiction of her true will with the expression of will, and thus burdened their decisions with the defect of unreviewability, which resulted in a violation of the complainant's right to judicial protection.

Judgement file No. III. ÚS 593/17: On the duty of the court to address objections raised (an objection of contradiction of a party's will with the expression of will)

The intervening party in the position of the plaintiff demanded that the complainant pay 400,000 CZK with accessories under a loan agreement. As emerged from evidence taken, the complainant, who is of advanced age and practically blind, allegedly came to the law office of the legal representative of the intervening party together with the intervening party, her granddaughter and the granddaughter's boyfriend, where she allegedly signed several documents, including the loan agreement in question. The complainant all the time objected that it had never been her will to enter into the contractual relationship with the intervening party, and she also denied takeover of any money. The District Court dismissed the action because it concluded that the intervening party did not meet the burden of proof concerning the claim that the financial amount was actually handed over. The intervening party filed an appeal, and the Municipal Court annulled the first-instance judgement. In the new proceedings, the District Court disposed affirmatively of the intervening party's action in full. The Municipal Court subsequently confirmed the second judgement of the District Court. The complainant´s appeal on a point of law was rejected by the Supreme Court.

First and foremost, the Constitutional Court acknowledged the complainant's objection that the ordinary courts had failed to address the objected contradiction of the complainant's will with its expression captured in the loan agreement in question. Although the complainant objected the above

already in its first statement with respect to the action and she reiterated that in further course of the proceedings, the courts completely ignored that objection. With regard to the specific circumstances of the case, however, it could not be ruled out, according to the Constitutional Court, that there indeed was a contradiction of the complainant's will and its expression.

The ordinary courts concluded that the loan agreement was not invalid for formal reasons. The fact that the absence of a form of a legal act cannot be successfully objected does not in itself mean that the lack of will to conclude the act in the form it was made cannot be objected. Therefore, the contested decisions, which did not address this objection in their reasoning, should be, according to the Constitutional Court, regarded unreviewable.

Other interesting decisions in the area of the right to a fair trial include judgement file No. Pl. ÚS 12/17 of 7 November 2017. The Plenum of the Constitutional Court dealt with the question whether the President decided negatively or whether remained inactive in the matter of non-appointment of one of the complainants Professor. The Plenum ruled that an action for inactivity, by which the complainants defended themselves, is only possible if protection of rights cannot be sought in proceedings concerning an action against a decision of an administrative authority, and the term "decision of an administrative authority" must be assessed substantially and not formally. In the case under consideration, a letter to the Minister of Education in which the President confirmed his decision not to appoint the first complainant Professor was to be considered such a decision; administrative courts had correctly designated the letter as a decision. Therefore, the complainants did not contest the decision of the President not to appoint the first of the complainants Professor with the correct type of action, thereby not allowing the administrative courts to review it on merits. Therefore, the constitutional complaint was unfounded.

A significant number of cases before the Constitutional have long been cases concerning **appellate reviews**. One of them is judgement file No. IV. ÚS 216/16 of 9 February 2017. In the judgement, the Constitutional Court found a violation of the principle of contradiction in proceedings guaranteed by Art. 38(2) of the Charter by the Supreme Court, which changed the contested decision based on a legal assessment different from the opinion of lower courts, however, without allowing the parties to the dispute to provide their opinions on the new assessment.

In its judgement file No. II. ÚS 1966/16 of 15 March 2017, the Constitutional Court intervened against an erroneous interpretation of the content of an appeal on a point of law. The Supreme Court wrongly rejected the complainant's appeal on a point of law for failing to comply with the content requirements, i.e., for defects for which it was not possible to continue the proceedings, and thus no longer considered fulfilment of prerequisites of its admissibility, whereby it deprived the applicant from the right of access to the court of appellate review and violated her fundamental right to judicial protection.

Judgement file No. II. ÚS 1966/16: Reasons for admissibility of an appellate review

A decision of the District Court dismissed the complainant's action seeking compensation for damage caused by an industrial accident because the deterioration in her health, termination of employment and award of category I disability pension were not, in the Court's opinion, in a causal link with the complainant's industrial accident. The court of appeal confirmed the decision. The complainant's appeal on a point of law was rejected due to its defects for which it was not possible to continue the appellate review proceedings because the complainant failed to state in the petition in which she saw fulfilment of prerequisites of admissibility of the appellate review; she also indicated a different reason for appellate review than the one stipulated in section 241a(1) of the Code of Civil Procedure. The question raised by the complainant was, according to the court of appeal on a point of law, not a question of law but a question of facts, which cannot be resolved generally but only in the specific context as part of assessment of evidence.

The law does not stipulate specifically how it should be indicated in an appeal on a point of law in which the appellant sees fulfilment of the requirements of admissibility of the appeal. It was clear from the content of the appeal on a point of law that according to the complainant, the question of law in the addressing of which the Supreme Court had allegedly deviated from its settled decision-making practice consisted in the fact whether the ordinary courts are bound, in assessing a claim for compensation for loss of earnings, by the findings contained in the medical report that was the basis for termination of the complainant's employment. Although the question could have been formulated more precisely in the appeal on a point of law, it undoubtedly was a question of procedural law relating to the assessment of evidence, in particular whether the ordinary court is bound by that medical report in its factual findings. Therefore, according to the Constitutional Court, the complainant's appeal stated in what the complainant saw the fulfilment of prerequisites of its admissibility. The appeal also clearly indicated the reason for appeal on a point of law, which was apparently based on the alleged error in law in the case, namely an incorrect assessment of a question of procedural law.

The court of appeal on a point of law rejected the complainant's appeal due to failure to remove defects, not for inadmissibility. This distinction is important because the Constitutional Court may review the decision of the court of appeal on a point of law pursuant to section 75(1) of the law on the Constitutional Court only in the latter case. Even though the complainant, in the opinion of the court of appeal on a point of law, wrongly assessed whether the aforementioned grounds for an appeal on a point of law related to the legal assessment of the case, that error, with regard to the ambiguity of the delimitation of questions of law and questions of fact, could not have consequences with respect to her that she would no longer be able to defend herself against the decision of the court of appeal on a point of law by a constitutional complaint. The court of appeal on a point of law was obliged to carry out that assessment in the context of assessing the fulfilment of prerequisites of admissibility of the appeal, not when assessing its content requirements.

The delimitation of conditions of admissibility of an appeal on a point of law is also addressed in judgement file No. I. ÚS 2135/16 of 3 May 2017. The first panel dealt with the question whether proper definition of the conditions of admissibility of an appeal on a point of law includes cases when the appellant works with the case-law of the Constitutional Court instead of the case-law of the Supreme Court. It emphasized that although section 237 of the Code of Civil Procedure only mentions the case-law of the court of appeal on a point of law, one should keep in mind that judgements of the Constitutional Court are binding for all bodies and persons; moreover, appellants on a point of law often additionally specify also the case-law of the Supreme court through the case-law of the Constitutional Court. In the case under consideration, the key was a question of conflict of good faith and ownership right in the case of acquisition from a non-owner; the opinions of the Constitutional Court and the Supreme Court had long differed and the disagreement was widely known. Therefore, if the complainants stated, pointing out to the case-law of the Constitutional Court, that the court of appeal deviated from the settled decision-making practice, it was necessary to consider such a definition of conditions of admissibility of an appeal on a point of law as proper, especially in the case where specification of the case-law of the Supreme Court also followed from the Constitutional Court's case-law being referred to. Rejection of such an appeal on a point of law as defective constituted a violation of the complainant's right to access to court.

Finally, let us mention opinion of the Plenum file No. Pl. ÚS-st. 45/16 of 28 November 2017, in which the Plenum dealt with the question of inadmissibility of a constitutional complaint in relation to assessment of admissibility of an appeal on a point of law in civil matters. In its opinion, the Plenum of the Constitutional Court set itself against part of its case-law, which was contradictory with the currently accepted legal opinion. The opinion overrode the legal opinion contained in several decisions of the Constitutional Court under which the Supreme Court had violated the rights of the appellant on a point of law to access to court when it rejected the appeal on a point of law for lack of definition of prerequisites of its admissibility. With regard to the fact that the requirement to define the prerequisites of admissibility of an appeal on a point of law, contained in section 241a(2) of the Code of Civil Procedure

was found consistent with the Constitution in the opinion in question, the Constitutional Court rejected the above practice and stated that rejection of such an appeal on a point of law for defects by the Supreme Court is not a violation of Art. 36(1) of the Charter (1st verdict). The Constitutional Court also considered it important to emphasize, at least in the context of reasoning of the opinion, the difference between assessing whether the submitted appeal on a point of law contains elements required by the law and assessing whether one of the prerequisites of admissibility of the appeal on a point of law has been actually fulfilled in a particular case. Although the latter case concerned a review (quasi) on merits, made by the panel of the court of appeal on a point of law, in the former case, such a petition may be decided upon by the president of the panel or an authorized member of the panel because the petition is assessed from a purely formal point of view at that point. Thereby, the Constitutional Court responded to some of its previous decisions under which the panel of the court of appeal on a point of law should decide also in the case of rejection of an court of appeal on a point of law due to defects. In the second verdict in its opinion, the Plenum recalled its position concerning the interpretation of section 75(1) of the law on the Constitutional Court and the related principle of subsidiarity of a constitutional complaint. If the appellant on a point of law fails to specify in what they see fulfilment of the prerequisites of admissibility of the appeal on a point of law, a constitutional complaint against the previous decisions, i.e., typically against the decisions of the first-instance and appellate courts, is inadmissible. The same applies even when the Constitutional Court disagrees with the conclusion of the court of appeal on a point of law concerning the failure to fulfil the content requirements. In such a situation, the Constitutional Court will only annul the decision of the court of appeal on a point of law and with regard to the principle of subsidiarity of a constitutional complaint with respect to decisions of the lower courts, it will reject the complaint as inadmissible. The Constitutional Court may annul also those decisions only exceptionally. In the final, third, verdict in the opinion, the Plenum provided its opinion on the question of admissibility of an appeal on a point of law that refers to the case-law of the Constitutional Court instead of the case-law of the Supreme Court (in this respect, see the above judgement file No. I. ÚS 2135/16).

Specifics of criminal proceedings

The specifics of criminal proceedings are a set of principles going beyond the fundamental right to a fair trial, providing criminally prosecuted persons with a superior standard of protection. One of these principles states that **there is no crime without a law**, which in other words means that acts not described by the Criminal Code cannot be prosecuted as crimes. The Constitutional Court recalled that principles at the beginning of last year in its judgement file No. I. ÚS 2078/16 of 2 January 2017, whereby it annulled the complainant's conviction for a crime of failure to provide help; the complainant was sentenced to conditional imprisonment. The complainant (a doctor himself) allegedly committed the crime by not securing professional medical help for his mother in a long-term untreated serious medical condition, as a result of which she died. However, his mother refused any help.

Judgement file No. I. ÚS 2078/16: Failure to provide medical care to an adult legally competent person with regard to their disagreement is not a crime

The Constitutional Court noted that unlawfulness of an act is a prerequisite for classification as a crime. If the offender acted as required from him in the given situation by the legal order, it cannot be a crime. The ordinary courts decided in that situation that the complainant should have acted despite the disagreement of his mother. This is a conflict between the complainant's duty to provide help to a person whose life or health is seriously threatened, and the right of that person to refuse the help. That right is generally based on the right to the inviolability of the person and of the person's privacy protected by Art. 7(1) of the Charter and Article 8 of the Convention.

It clearly follows from the case-law of the Constitutional Court and the European Court of Human Rights that interventions made without free and informed consent are an interference with the right to the inviolability of

the person under Art. 7(1) of the Charter and of the right to physical integrity protected by Article 8 of the Convention, and thus must be justified in the context of the rules enshrined in the Convention on Human Rights and Biomedicine. It follows from that, in the Constitutional Court's view, that in the area of provision of health care it is necessary to fully respect the principle of freedom and autonomy of will and the patient's right to refuse provision of care even if deemed necessary to preserve the patient's life. Therefore, if any person acts in accordance with these rules and does not provide the necessary care with regard to the disagreement of a legally competent adult patient, they may not commit a crime of failure to provide help because one of the essential elements of a crime has not been fulfilled—unlawfulness of the conduct.

The aforementioned *nulla poena sine lege* principle was violated also in the matter decided upon by judgement file No. I. ÚS 1202/17 of 15 August 2017, moreover in combination with a violation of the *presumption of innocence* principle, enshrined in Art. 40(2) of the Charter. The complainant, with a conditional sentence, was ordered to additionally serve his sentence but based on facts arisen only after the expiry of the probationary period and in connection with his new criminal prosecution in which he was taken into custody. The Constitutional Court assumed the following position to such a procedure of the ordinary courts.

Judgement file No. I. ÚS 1202/17: On the order of service of a suspended sentence of imprisonment

The Constitutional Court stated in that judgement that it was not possible to set the limit of attestation in the probationary period so that it is unrealistic to comply with for a significant part of recidivists; therefore, it was not possible to require the convicted persons to be perfect all of a sudden and fully comply with the set program. The courts must assess the reasons for failure to comply with the set program and the development of the offender. That requirement is based on the principle of individualisation, which expresses the basic set-up of the rule of law—that a person has to be treated as a unique subject and not as a generic object.

Motivation for conduct is key for the decision of the court whether to order service of imprisonment or not, or to assess which solution will make the convicted person lead good life and will ensure protection of the society in the long-term perspective.

The above principles are also closely related to the principle of **lawfulness of the imposed punishment**, contained in Article 39 of the Charter. In its judgement file No. I. ÚS 2201/16 of 3 January 2017, the Constitutional Court agreed with the argumentation of the complainant serving a sentence of imprisonment and annulled the resolution of the Regional Court dismissing the complainant's application for conditional release with a mere reference to his criminal past and the associated risk of relapse into crime. The complainant argued that the statutory condition for conditional release, consisting in a prognosis of leading a good life at liberty is related to the future; failure to comply with the condition thus cannot be inferred solely from the past behaviour of the convicted person. The Constitutional Court labelled the procedure whereby the ordinary courts rule out the possibility of conditional release for a certain convicted person generally and only based on their criminal past as inadmissible. The ordinary courts also violated the prohibition of double charging within the meaning of the *ne bis in idem* principle pursuant to Art. 40(5) of the Charter.

The Constitutional Court found unlawfulness of the imposed sentence also in its judgement file No. II. ÚS 3672/16 of 7 November 2017 in the case of the complainant convicted for robbery. The complainant was, as a citizen of the Slovak Republic, among other things, sentenced to expulsion for an indefinite period of time. The ordinary courts proceeded in accordance with section 80(1) and (2) of the Criminal Code without reflecting on par. 3(e) of that provision, which prohibited imposition of the sentence in the case of the complainant as an EU citizen.

Ultima ratio is a principle closely related to the principle of subsidiarity of criminal repression, expressing the extreme character of use of means of criminal proceedings both in the matter of determination of guilt and subsequently in the question of punishment. Determining the kind and amount of sentence also has its rules, reflecting, among other things, the social harmfulness of the offender's acts as well as any possibility of redress and the educational effect of the punishment. Therefore, in its judgement file No. II. ÚS 2027/17 of 7 August 2017, the Constitutional Court found the sentence imposed to a man who caused a car accident, in which his wife and older son died, with residual alcohol in blood as disproportionate. The complainant and his younger son escaped with minor injuries. The Regional Court did not consider sufficient the sentence adjudicated by the District Court, which, with regard to the extraordinary circumstances of the case as well as significant attenuating circumstances and documented post-traumatic fixation of the surviving younger son to the complainant, ruled that a proportionate punishment was prohibition of driving and two years of house arrest, and sentenced the complainant to four years of unconditional imprisonment. The Constitutional Court fully agreed with the view of the District Court.

Another specific character of criminal proceedings is **the right of the prosecuted person for defence**. In its judgement file No. III. ÚS 2847/14 of 3 January 2017, the Constitutional Court had to recall that this right is primarily to the benefit of the prosecuted person, not their defence counsel, as suggested by a lawyer prosecuted based on interceptions made during his talks with an already convicted client. The Constitutional Court interpreted that an essential part of the right to defence within the meaning of Art. 40(3) of the Charter is everybody's right to consult their defence counsel under conditions in which information is not provided to the investigative, prosecuting and adjudicating bodies. Communication between the defence counsel and the client is then subject to the maximum possible protection in the interest of the client. However, the purpose of the provision is not to protect such a communication to the benefit of the lawyer, pursuing interests contrary to the client's interests or not related to the client's interests. In certain cases, for example, when a lawyer is suspected of serious criminal activity, that protection may be breached in connection with the deployment of operational search means, in the limits of the principle of proportionality. The holder of the right to defence and to legal assistance is the person against whom the criminal proceedings are brought. The lawyer only acts as the holder of the right to privacy and the right to free exercise of profession.

Right to a lawful judge

The previous year brought a number of interesting decisions also in the area of the right to a lawful judge. As an introduction, let us recall the dismissive judgement file No. I. ÚS 564/17 of 13 April 2017, whereby the first panel reviewed fulfilment of conditions for application of section 262 of the Code of Criminal Procedure (transfer of the case to another single judge) by the court of appeal. First, the Constitutional Court recalled that the procedure of the court of appeal in **transferring the case** to another single judge can be considered constitutional and in line with the right to a lawful judge only if such a step is justified by a high probability that in the event the case is left to the original judge, the judge will not be able to complete the proceedings in a manner that could be approved by the court of appeal, for example, due to repeated failure to comply with mandatory instructions of the court of appeal. The annulling decision of the court of appeal must always contain specific objections to the decisions of the first-instance court or, where applicable, instructions for the first-instance court to have more evidence produced, to clarify the uncertainties of its factual findings, etc. If the subsequent decision of the first-instance court fails to comply with those requirements, the court of appeal may not annul the decision only to assert its evaluation of the evidence produced and the resulting conclusions concerning the factual findings. However, such an error did not occur in the case under consideration. Since the Constitutional Court did not find any other errors in the decision-making of the court of appeal, it dismissed the constitutional complaint as unfounded.

In its judgement file No. I. ÚS 3523/16 of 20 June 2017, the Constitutional Court dealt with the issue of **subject-matter jurisdiction** of the court to decide on the rendition of funds secured in criminal proceedings in the case of ongoing insolvency proceedings. The Court found that if it had not been finally and conclusively decided in the insolvency proceedings on whom the funds belonged

to and if there was an incidental dispute about that question, it was not possible to render such funds in the criminal proceedings because the court having subject-matter jurisdiction for such a decision was solely the insolvency court. However, since the criminal courts ignored the existence of the ongoing insolvency proceedings in the matter, they violated the complainant's right to a fair trial and his right to a lawful judge.

In its judgement file No. Pl. ÚS 22/16 of 27 June 2017, the Plenum of the Constitutional Court decided on a petition of the Supreme Administrative Court to annul section 160(2) of the Insolvency Act for its alleged contradiction with the right to a lawful judge, the right to an independent and impartial court, and the principle of the independence of the judiciary and the judges. The Supreme Administrative Court was of the opinion that the provision in question relating to **transfer of an incidence dispute** to another judge was inappropriately designed without specifying any criteria restricting deliberation of the president of the court and without specifying clear conditions under which a lawful judge may be replaced. However, the Plenum did not agree with the petition because the provision could be interpreted in a constitutionally conforming manner. The contested provision serves as an exception to the principle of unity of insolvency proceedings before a single judge, and the use of that provision is in parallel governed by the Law on Courts and Judges, which contains a general provision for the allocation of cases and their possible redistribution. Therefore, section 160(2) of the Insolvency Act thus may be applied only according to the rules stipulated in the work timetable and subject to the fulfilment of other requirements arising from the respective provisions of the law on courts and judges. Since general rules and limits for the manner cases are to be allocated and redistributed as well as general provisions on the conditions for application of the contested provision can be inferred from the provisions in these two laws, the Constitutional Court did not ding any reason to intervene.

Decision-making of the Constitutional Court in the area of the right to a lawful judge also includes judgement file No. IV. ÚS 2672/17 of 17 October 2017. The Constitutional Court granted of the complainants' objections and annulled the contested resolution of the Supreme Court, because the Constitutional Court found the resolution's reasoning for **delegation** pursuant to section 12(2) of the Code of Civil Procedure totally insufficient. The panel ruling in the matter emphasized that delegation appropriate under the mentioned provision can only be used after a thorough assessment of all the relevant circumstances of the case, the state and the stage of the proceedings as well as the impact of any delegation on future costs and length of the proceedings. A simple general reference to the expectation of a more economic and faster consideration of the case, contained in the contested resolution, but without addressing the relevant objections and taking into account the circumstances of the case could not be regarded as proper justification of the decision on the delegation, and thus it was necessary to annul that resolution and state that there had been a violation of the right to a lawful judge.

Specifics of insolvency proceedings

As in the previous years, the Constitutional Court also dealt with insolvency proceedings in 2017. Part of this issue was already described in the subchapter on the right to a lawful judge. The remaining part will be presented below.

The Constitutional Court followed up, in particular, on its judgement file No. IV. ÚS 378/16 of 6 September 2016, in which it dealt with the concurrence of enforcement and insolvency proceedings. Section 46(7) of the Enforcement Code explicitly states that the enforcement official may retain the costs of enforcement from the amount enforced in the enforcement procedure and put only the net proceedings of the enforcement procedure to the insolvency proceedings. In this way, a special position of the court enforcement official is taken into account, which is, in the Constitutional Court's view, clearly excluded from amongst other creditors. After a systematic interpretation using general interpretative rules, the application precedence of the provisions of the Enforcement Code, adopted in response to the new Insolvency Act, seems to be quite obvious. The opposite interpretation of the Supreme Court is arbitrary and cannot be used. It is unjustified for the insolvency administrator to have a guarantee of remuneration for their activities, while a court enforcement officer performing a similar activity would be in a state of unpredictability and insecurity whether they will receive their remuneration at all and what the amount would be. It

cannot be accepted that the ordinary courts do not respect the law binding on them under the Constitution and do not interpret the conflicting legal rules in the appropriate manner. Based on these considerations, the Constitutional Court granted the constitutional complaints of court enforcement officers in a number of cases during 2017, e.g., in its judgement file No. IV. ÚS 2264/16 of 17 January 2017, judgement file No. ÚS 2898/16 of 21 February 2017, judgement file No. III. ÚS 1731/16 of 18 July 2017 or judgement file No. II. ÚS 3604/15 of 13 September 2017.

In its judgement file No. III. ÚS 2849/17 of 28 November 2017, the third panel concluded that there is no debtor's "right to reorganisation". It based its conclusion on the fact that a decision on the resolution of bankruptcy by reorganisation may have serious economic consequences for insolvency creditors. Moreover, there is a high risk of misuse of the institution by the debtor and some creditors, who may pretend or purposefully induce fulfilment of the conditions stipulated in the cited provision. The insolvency court, therefore, always examines not only the fulfilment of the requirements of the insolvency petition but also whether the conditions of good faith of the debtor and the honesty of the intention are met. However, in a situation where the debtor acts unfairly and in a coalition with some creditors to the detriment of other creditors, such creditors may be harmed even before the insolvency court issues the decision. If, therefore, such a possibility appeared to be real due to the circumstances of the case, the Constitutional Court could not assess the procedure of the Municipal Court, which refused to combine its decision on bankruptcy with a decision on the reorganisation and stated it would only decide on the reorganisation on the basis of finding other facts, as an arbitrary intervention or manifestation of arbitrariness.

In the previous year, the Plenum also dealt with a petition to annul several provisions of the Insolvency Act. In its judgement file No. Pl. ÚS 23/14 of 11 July 2017, the Plenum dismissed a petition to annul provisions under which the powers of the committee of creditors are exercised, under certain circumstances, by the insolvency court (described in more detail in the previous chapters). The complainant argued that the contested provisions were inconsistent with the principle of independence and impartiality of the judge, since the judge is, according to those provisions, obliged to provide protection to the interests of one of the party to the proceedings regardless of the other party, and is bound by the duty of loyalty to the former. However, the Constitutional Court concluded that in these situations, it is not a case of political or social or procedural dependence on any of the parties to the insolvency proceedings. In exercising their office, an insolvency judge is obliged to abide only by the law and to act as stipulated by law and within legal its limits (Art. 2(2) of the Charter), not in accordance with instructions of any of the parties to the proceedings or procedural entities, including creditors. The insolvency court can thus defend the common interest of creditors as long as it is consistent with the purpose of the insolvency proceedings under section 1(a) of the Insolvency Act, does not collide with the interests of other parties to the proceedings (including protection of debtor's interests protected by law) and with the task of the state to ensure protection of all such interests in insolvency proceedings under section 5(a) of the Insolvency Act.

In its judgement file No. Pl. ÚS 33/15 of 7 November 2017, the Plenum dismissed a petition seeking annulment of provisions of the Insolvency Act that do not confer active standing to a single creditor to submit an action to set a transaction aside. That solution can, taking into account the purpose and character of the insolvency proceedings, be considered as one of the possible ways of collective claiming of creditors' receivables in the interest of their proportional satisfaction because this is also a way of ensuring fulfilment of the positive obligation of the state to provide protection to the ownership right under Art. 11(1) of the Charter within the framework of resolution of bankruptcy of a debtor based on the joint interest of creditors, which is superior to their individual interests.

Compensation for unlawful decision and incorrect official procedure

Objections to the manner of application of Act No. 82/1998 Sb., on Liability for Damage Caused in the Exercise of Public Authority by a Decision or an Incorrect Official Procedure, brought about abundant case-law activity in the previous year.

Also in 2017 was the Constitutional Court faced with the questions of **compensation for non-pecuniary damage caused during the communist regime**, i.e., with complainants requiring damages for unjustified deprivation of personal liberty before 1989. The constitutional Court followed up on the opinion of the Plenum file No. Pl. ÚS-st. 39/14 of 25 November 2017 stating that the right to compensation for non-pecuniary damage under Art. 5(5) of the Convention arises provided that the state's interference with the personal freedom of the injured person occurred only after that international convention became binding on the Czech Republic, i.e., since 18 March 1992. Therefore, the moment of participation in rehabilitation is no longer considered decisive. However, this legal opinion does not apply to cases when the action for the payment of satisfaction for incurred other than proprietary harm was filed before the adoption of the opinion. The Constitutional Court, following that case-law line, satisfied the complainants in judgement file No. II. ÚS 2533/16 of 5 September 2017, and judgement file No. II. ÚS 859/15 of 10 October 2017.

In its judgement file No. IV. ÚS 3638/15 of 28 February 2017, the Constitutional Court concluded that **disciplinary proceedings** conducted by the Czech Bar Association constituted exercise of decentralised public administration (professional self-government), and that liability under the aforementioned law cannot be applied as a result of those proceedings. In its judgements file No. III. ÚS 1263/17 of 20 June 2017 and file No. III. ÚS 899/17 of 8 August 2017, the third panel emphasized that satisfaction in the form of recognition of violation of rights only has a supporting function and in the cases under consideration it was not supported by the assessment of particular facts.

The **amount of compensation** was the subject of decision-making in judgement file No. I. ÚS 1737/16 of 12 July 2017. A minor was, based on a preliminary ruling, taken from her mother and put in the care of a children's centre. The duration of that preliminary ruling was repeatedly extended until the issue of a second preliminary ruling. In its judgements of 2010 and 2011, the Constitutional Court annulled both preliminary rulings. However, the minor had spent almost two and a half years in the children's centre based on those preliminary rulings. The ordinary courts therefore awarded the sum of 610,000 CZK in respect of non-pecuniary damage to the minor and her mother, which the Constitutional Court, however, considered insufficient. It recalled that instead of individualised care and education in the family, the minor received collective care from the centre's employees. Even after her return to her mother's care, she suffered from negative consequences of the previous state. The best interest of the child was not the primary consideration in the decision-making of the ordinary courts. The Constitutional Court therefore concluded that the ordinary courts failed to carefully assess all the relevant facts and circumstances of occurrence of the harm, failed to reflect these in the amount of the adjudicated satisfaction, and failed to provide sufficient reasoning for their decisions.

An equally sensitive interference in the rights of an individual may be also caused by **criminal prosecution**, especially when it later turns out as unfounded. In its judgement file No. I. ÚS 741/17 of 26 September 2017, the Constitutional Court stated that in the event that criminal prosecution of the accused person was discontinued due to its unreasonable length, without concluding whether the accused person had committed the act or not, and if the accused person had not requested the suspension of the prosecution and had no opportunity to insist on the hearing of the matter, the suspension of the prosecution cannot be considered a compensation for the disproportionate length of the proceedings. In its judgement file No. II. ÚS 1930/17 of 14 November 2017, the Constitutional Court concluded, with reference to the ECtHR, that where the criminal prosecution of the accused person terminates by a decision to transfer the case to disciplinary proceedings, the disciplinary proceedings may not be viewed, from the point of view of constitutional law, as continuation of the criminal proceedings. A resolution to transfer the case establishes unlawfulness of the resolution by which the criminal prosecution was initiated. If the accused person has suffered damage in connection with this criminal prosecution, they are entitled to compensation under Art. 36(3) of the Charter, even if they were later found guilty of a disciplinary transgression in the disciplinary proceedings. In connection with objection of limitation of actions raised by the state, the Constitutional Court drew attention, in its judgements file No. IV. ÚS 203/17 of 13 September 2017 and file No. I. ÚS 3391/15 of 14 November 2017, to the important role of the corrective character of the principle of the exercise of the law with good morals, which allows, in justified cases, to mitigate the harshness of the law, and gives the judge room to apply the rules of decency.

Right to self-government

In the last year, the Plenum of the Constitutional Court twice granted of petitions to annul generally binding municipal decrees or their parts. In its judgement file No. Pl. ÚS 3/17 of 11 April 2017, the Court annulled decree of the chartered city of Brno No. 11/2016 on the control of navigation of vessels with combustion engines in a part of the Brno dam, because the subject and purpose of the regulation in the decree coincided with the subject and purpose of the regulation in the Water Act and in implementing regulations issued based on the Act. Brno thus proceeded outside the substantive scope of its powers defined in the Act on Municipalities.

In its judgement file No. Pl. ÚS 34/15 of 13 June 2017, the Plenum of the Constitutional Court annulled provisions of generally binding decrees of Litvínov No. 3/2013 and Varnsdorf No. 2/2012 concerning securing of the local public order issues ('sitting decrees'). The decrees prohibited sitting on construction parts, objects and facilities located in public areas that are not designed to sitting by their nature (palisades, brick and concrete low walls, litter bins, etc.) and on which the owner of the public area did not allow sitting, and sitting on facilities that are designed for sitting by their nature but were placed in the public area without the consent of the owner of the area. The Constitutional Court concluded that the contested provisions of both decrees were adopted by the municipal councils outside the substantive scope of their powers defined by the law. First and foremost, the purpose cannot be inferred from the prohibition of sitting, which should have been securing of the local public order issues. It is not possible to claim, without any further justification, that the public order may be disturbed by prohibited sitting, for example, on a publicly accessible stairs, which cannot in itself disturb the public order in any of the manners through which both towns justified the prohibition of sitting (damage to property, harm to health or threat to road safety and traffic flow). Furthermore, the Constitutional Court stated that the requirement of predictability of law ceases to be met, which implies a necessity that the addressee of the legal regulation had the possibility, in such not petty cases (fines of up to 30,000 CZK could be imposed for the breach of the obligations, since 1 July of up to 100,000 CZK), to reasonably foresee the criminality of their conduct and the possibility to regulate their behaviour or foresee the legal consequences of their acts, not only in the case of persons living permanently in that municipality but also of everybody who finds themselves in the territory subject to that regulation.

5

Statistics of decision-making in 2017

Statistics of decision-making of the Constitutional Court in 2017

Decisions in 2017 in total		
4,355		
judgements	resolutions	opinions of the Plenum
238	4,116	1

Judgements in 2017[i)]		
238		
Granted (at least partially)	Dismissed (at least partially)	Granted and dismissed
204	38	4

Average length of proceedings in cases completed in 2006–2017

		days	months and days	
Average length of proceedings:	**in all matters**	184	6 months	4 days
	in matters for the Plenum	390	13 months	0 day
	in matters for a panel	181	6 months	1 day
	in matters decided upon by a judgement	393	13 months	3 days
	in matters decided upon by a rejection for being manifestly unfounded	173	5 months	23 days
	other methods of termination of the proceedings	168	5 months	18 days

Average length of proceedings in cases completed in 2017

		days	months and days	
Average length of proceedings:	**in all matters**	147	4 months	27 days
	in matters for the Plenum	280	9 months	10 days
	in matters for a panel	145	4 months	25 days
	in matters decided upon by a judgement	354	11 months	24 days
	in matters decided upon by a rejection for being manifestly unfounded	151	5 months	1 days
	other methods of termination of the proceedings	126	4 months	6 days

Explanatory notes:

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

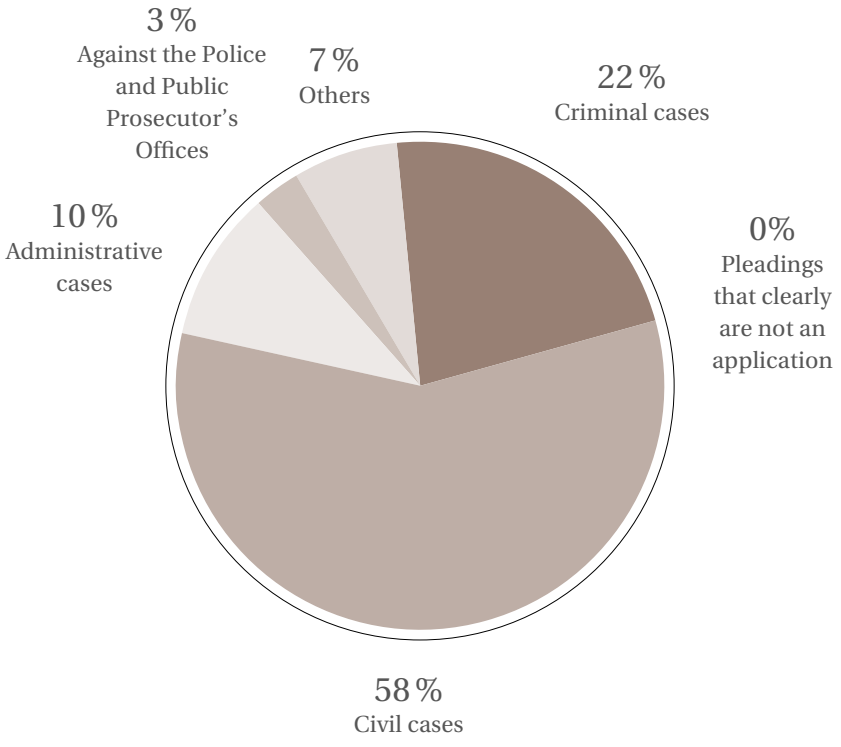
Public oral hearings

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

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

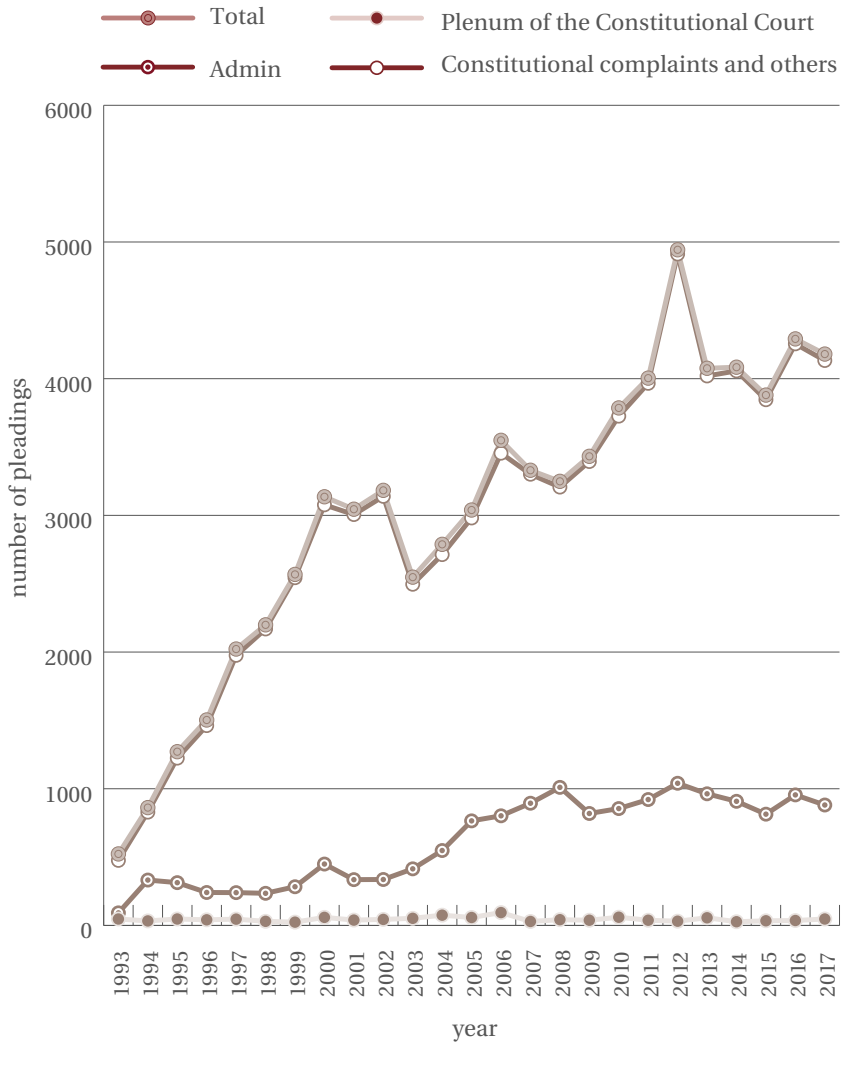
Substantial structure of petitions to initiate proceedings in 2017



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
Total	**75,491**	**1,127**	**74,364**	**15,445**

Developments of the numbers of submissions 1993–2017



The Constitutional Court of the Czech Republic heading the Conference of European Constitutional Courts

The XVII Congress of the Conference of European Constitutional Courts took place on 29 and 30 June 2017 in Batumi, Georgia. In accordance with the Statute of this international organisation, a new presiding country was elected that will head the Conference in the coming three years and that will organise the XVIII Congress in 2020. **The Czech Republic and its Constitutional Court received an extraordinary appreciation when it was, in Batumi, unanimously elected to head this prestigious organisation.**

The Constitutional Court of the Czech Republic became a member of the Conference of European Constitutional Courts almost twenty years ago in Warsaw. Therefore, for two decades, it had the opportunity to draw from the experience and ideas of its European partners, thereby enriching its own case-law and the system of protection of constitutionality. Now, the time has come to reciprocate the helpfulness we received in the past to this important organisation and its members.

The Conference of European Constitutional Courts was established in Dubrovnik in 1972 and gathers representative of 40 European Constitutional Courts or similar courts conducting constitutional review.

The Conferences organizes congresses in regular intervals, encouraging exchange of information among its members on issues related to methods and procedures of constitutional review, thus creating a forum for the participants in which they can share their views on institutional, structural and practical issues in the areas of public law and constitutional jurisdictions. In addition, it also adopts measures to strengthen the independence of Constitutional Courts as an essential element of guaranteeing and implementing democratic rule of law, playing special attention to human rights protection. This way, it strongly supports the improvement of lasting relations among European Constitutional Courts and similar institutions.

Only a court that is a full member of the Conference may preside over the Conference of European Constitutional Courts. The President is replaced every three years. The President of the Conference (and of the "Circle of Presidents") is the president of the court that is to organise the following congress; that court also ensures the Secretariat of the Conference.

The first conference was held in 1972 on initiative of Presidents of Constitutional Courts from Germany, Austria, Italy and the former Federal Republic of Yugoslavia. The aim was to provide a platform for the exchange of experience in constitutional practice and case-law in the general and European context, with regard to the principle of judicial independence.

Although those meetings did not have any formal status, they continued under the title "Conference of European Constitutional Courts"; the Conference was organised by various Constitutional Courts after their accession: first in 1978 by the Swiss Federal Court, followed by Constitutional Courts in Spain in 1981 and in Portugal in 1984. At the Lausanne conference in 1981, the European Court of Human Rights and the Court of Justice of the European Communities were invited as observers, and in 1996 the European Commission for Democracy through Law (the "Council of Europe Venice Commission") was also invited.

The number of members increased with the accession of the French Constitutional Council and the Turkish Constitutional Court (in 1987). However, the largest membership expansion took place in the 1990s when many Constitutional Courts in Central and Eastern Europe were founded, and also because of a growing interest of some other national courts from traditional, long-standing democratic systems. Consequently, Constitutional Courts and similar judicial bodies from Belgium and Poland (1990), Hungary (1992), Croatia, Cyprus, Romania, Slovenia (1994), Andorra, Russian Federation (1996), Czech Republic, Bulgaria, Slovakia, Malta, Liechtenstein (1997), Republic of Macedonia (1999), Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Latvia, Republic of Moldova, Ukraine (2000), Luxembourg (2002), Estonia, Ireland, Norway (2003), Denmark, Montenegro, Serbia (2006) and Monaco (2008) became members, and the Conference now has a pan-European dimension.

In addition to full members, the Conference also includes associate members (Belarus) and a number of observers and guests (tribunals from non-European countries such as Israel, Uzbekistan, Kazakhstan, Mongolia and others).

Given the many organizational as well as technical issues that need to be addressed in the context of the large membership base, it was more than necessary to introduce

a formal framework and normative rules for the work of the Conference: the operation of the Conference is currently based on the Statute (adopted at the eleventh Conference in Warsaw in 1999) and the Regulations (adopted in 2002 in Brussels).

According to the Statute of the Conference, the status of a full member may be granted only to European Constitutional Courts and similar European institutions which exercise constitutional jurisdiction, in particular reviewing the conformity of legislation and which conduct their judicial activities in accordance with the principle of judicial independence, being bound by the fundamental principles of democracy and the rule of law and the duty to respect human rights.

The aims pursued by the Conference of European Constitutional Courts focus on the exchange of information on the working methods and constitutional case-law of member courts together with the exchange of opinions on institutional, structural and operational issues as regards public-law and constitutional jurisdiction. In addition, the Conference takes steps to enhance the independence of Constitutional Courts as an essential factor in guaranteeing and implementing democracy and the rule of law, in particular with a view to securing the protection of human rights. It also supports efforts to maintain regular contacts between the European Constitutional Courts and similar institutions.

The Conference has two main organs:

1. the "Circle of Presidents" as the central decision-making organ composed of the Presidents of courts and institutions with full member status; and

2. the Congress, held every three years and attended by full members, associate members and observers, such as transnational European courts, commissions and institutions of the Council of Europe and the European Union concerned with the issue of constitutional jurisdiction, non-European Constitutional Courts, and invited guests.

The year 2020, i.e., the year the XVIII Congress of the Conference of European Constitutional Courts takes place, will mark 100 years of the establishment of the first two European Constitutional Courts—the Czechoslovak and Austrian ones. It will therefore be a great privilege for the Czech Constitutional Court to commemorate the centenary of the European constitutional judiciary at a Congress held in Prague.

The Vice President of the Constitutional Court of the Czech Republic, Jaroslav Fenyk, as the representative of the presiding country, informed, on 11 September 2017 in Vilnius (at the 4th Congress of the World Congress on Constitutional Justice—WCCJ),the present members of the Conference of European Constitutional Courts about the priorities of the Czech presidency, current organisational issues but also about the new website (www.cecc2017-2020.org), created to provide further information about the Czech presidency, and also about preparations of the Prague meeting of the Circle of Presidents.

This Circle of Presidents, which will, inter alia, decide on the dates and topic of the XVIII CECC Congress, will take place on 13 June 2018 in Prague. And since we commemorate the 25th anniversary of the Constitutional Court of the Czech Republic and also 45 years from the death of the father of the idea of specialised constitutional judiciary, Hans Kelsen, an international conference titled "How we Started: Heirs of Hans Kelsen" will follow after that meeting. On 14 June 2018, representatives of the member states should jointly reflect on the roots of the European protection of constitutionality, and they should remind of the milestones in the establishment and development of European Constitutional Courts.

New Logo for the Czech Chairmanship: 2017–2020

History of presidency of the Conference of European Constitutional Courts

Congress	Date	Country
I	1972	Constitutional Court of Yugoslavia
II	1972–1974	Constitutional Court of the Federal Republic of Germany
III	1974–1976	Constitutional Court of Italy
IV	1976–1978	Constitutional Court of Austria
V	1978–1981	Swiss Federal Supreme Court
VI	1981–1984	Constitutional Tribunal of Spain
VII	1984–1987	Constitutional Court of Portugal
VIII	1987–1990	Constitutional Court of Turkey
IX	1990–1993	Constitutional Council of France
X	1993–1996	Constitutional Court of Hungary
XI	1996–1999	Constitutional Tribunal of Poland
XII	1999–2002	Constitutional Court of Belgium
XIII	2002–2005	Supreme Court of Cyprus
XIV	2005–2008	Constitutional Court of Lithuania
XV	2008–2011	Constitutional Court of Romania
XVI	2011–2014	Constitutional Court of Austria
XVII	2014–2017	Constitutional Court of Georgia
XVIII	2017–2020	Constitutional Court of the Czech Republic

Circle of Presidents, Batumi, June 2017

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