2014

Yearbook of the Constitutional Court of the Czech Republic

ÚSTAVNÍ
SOUD

ÚSTAVNÍ
SOUD

ISBN 978-80-87687-06-2

CONTENTS

INTRODUCTION

Dear readers,

for the first time, you are holding the English version of the yearbook of the Constitutional Court of the Czech Republic which aims to introduce the mission and activities of the Constitutional Court. Although the Constitutional Court of the Czech Republic has ample contacts with its foreign partners, until now, it lacked a vehicle for a regular presentation of its activities and its groundbreaking decisions. We have bridged that gap now.

We are proud that the Constitutional Court of the Czech Republic, in its capacity as guarantor of constitutionality and protector of fundamental human rights in the Czech Republic, is at the same time a full-fledged member of the family of European constitutional courts. Therefore, I would like to assure all the readers of this yearbook that the Constitutional Court remains open to anyone claiming their fundamental rights. We will be happy if our yearbook helps attain that objective.

Jaroslav Fenyk

Vice-president of the Constitutional Court
in charge of foreign relations

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 (since 2013)

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 will be completed in 2015 when the mandates of Justices Vlasta Formánková and Vladimír Kůrka expire.

Structure of the Court and Justices

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.

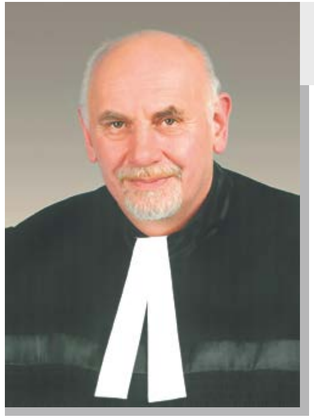
Appointment of Justices

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.

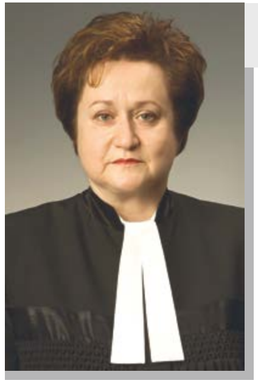
Current Justices



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.



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 se 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

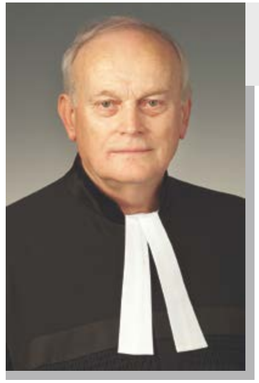
Vice-President (since 7 August 2013);
Justice (since 3 May 2013)

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)

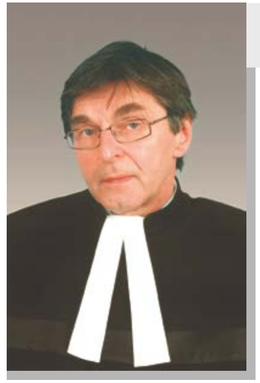
Prof. JUDr. Jan Musil, CSc. (*1941) graduated from the Charles University Law Faculty in 1963. He then worked as an articled clerk and prosecutor at the Prosecutor‘s Office in Šumperk, focusing on juvenile crime. From 1967, he taught at the Charles University Law Faculty, where he was appointed associate 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.

VLASTA FORMÁNKOVÁ

Justice (since 5 August 2005)

JUDr. Vlasta Formánková (*1953) graduated from the Charles University Law Faculty in 1977 and started working as a legal clerk at the Western Bohemian Diary Works in Klatovy in the same year. In 1978, she passed her doctoral examination. From 1 September 1978, she was a trainee judge at the Regional Court in Pilsen, and, after passing judicial examinations, was appointed as judge of the District Court in Pilsen–City on 15 June 1979. She first worked in the Civil Law Division, then briefly in the Criminal Law Division, before returning to the Civil Law Division. In January, 1990 she was appointed Chairwoman of the District Court in Pilsen, and, at the same time, served as Chairwoman of the Civil Law Panel. After leaving that office in the spring of 1999, she continued working as a judge in the Civil Law Division, and in 2000 she transferred to the Regional Court in Pilsen, where she dealt with both first instance and appellate matters in the Civil Law Division, such as the Privacy Protection Act, press actions, and suits in the field of copyright law. On 5 August 2005, President Václav Klaus appointed her as Justice of the Constitutional Court.



VLADIMÍR KŮRKA

Justice (since 15 December 2005)

JUDr. Vladimír Kůrka (*1948) completed his studies at the Charles University Law Faculty in 1973. He has worked in the judiciary since 1974, first as a trainee judge at the Regional Court in Pilsen, then as a judge of the District Court in Pilsen. He then became a judge of the District Court in Most, and its President in 1990. In 1994, he was seconded to the High Court in Prague and a year later became a judge in its Civil Law Collegium. In 1996, he was appointed to the Supreme Court, the Civil Law Collegium (Chairman of a panel from 1997), and subsequently a member of the Evidence Panel and the Grand Panel. His case agenda focused on procedural issues, housing law, restitution of church and Sokol property, and enforcement of decisions. He is a member of the Board of Editors of Court Jurisprudence journal, and a lecturer at the Czech Judicial Academy. He is a member of the Bar Examination Board and of the Judicial Trainee Examination Board. On 15 December 2005, President Václav Klaus appointed him 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).

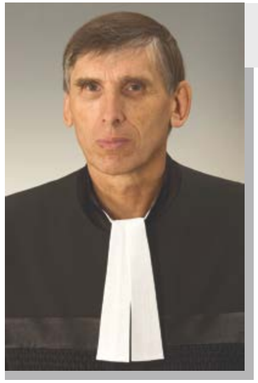
In 1983, he took part in the selection proceedings for residencies offered by the then Institute of State Administration, where he was accepted as a residency participant (for two years). In April 1985, he was taken on as a full-time member of staff as a specialist focusing, first and foremost, on the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

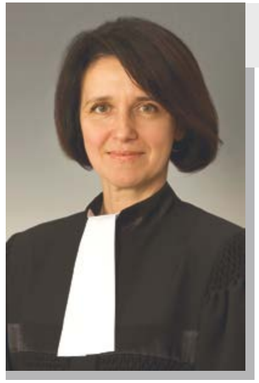
He was appointed as Justice of the Constitutional Court by the President of the Republic on 4 June 2013.



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)

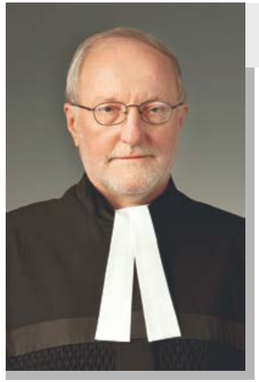
JUDr. Radovan Suchánek, Ph.D. (born in 1972) graduated in 1996 from the Charles University Law Faculty in Prague, where he has been teaching since 1998 (as a lecturer since the year 2000). He was a doctoral student at the same faculty, focusing on constitutional law, criminal law, criminology and criminal 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.

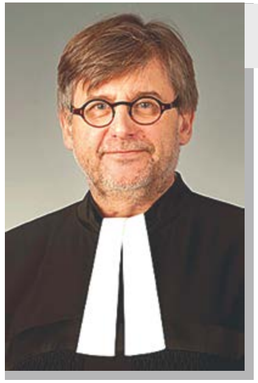
TOMÁŠ LICHOVNÍK

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.

Powers and Competences

While the first constitutional court in Europe had a mere two powers (both related to the review of legal regulations), modern constitutional courts possess a much broader array of powers. The Constitutional Court of the Czech Republic has a total of 15 different powers,

although most of them are used rather infrequently, and are de facto "sleeping competences".

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

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

The Czech constitution further includes:

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

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

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

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

• to abrogate statutes or individual provisions thereof if they are in conflict with the constitutional order;

• to abrogate other legal enactments or individual provisions thereof if they are in conflict with the constitutional order or a statute;

• over constitutional complaints made by the representative body of a self-governing region against unlawful encroachment by the state;

• to decide jurisdictional disputes between state bodies, state bodies and bodies of self-governing regions, and between bodies of self-governing regions, unless that power is vested by statute in another body;

• over constitutional complaints of natural or legal persons against final decisions or other encroachments by public authorities infringing constitutionally guaranteed fundamental rights and basic freedoms;

• over remedial actions against decisions concerning the certification of the election of a Deputy or Senator;

• to resolve doubts concerning a Deputy or Senator's loss of eligibility for office or incompatibility under Article 25 of some other position or activity with holding the office of Deputy or Senator;

• over a constitutional charge brought by the Senate against the President of the Republic pursuant to Article 65 (2);

• to decide on a petition by the President of the Republic seeking the revocation of a joint resolution of the Assembly of Deputies and the Senate pursuant to Article 66;

• to decide on the measures necessary to implement a decision of an international tribunal which is binding on the Czech Republic, in the event that it cannot be otherwise implemented;

• to determine whether a decision to dissolve a political party or other decisions relating to the activities of a political party is in conformity with constitutional acts or other laws; and

• to decide on the conformity with the constitutional order of a treaty under Article 10a or Article 49, prior to the ratification of such treaty.

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

• to make decisions on remedial actions against a decision of the President of the Republic declining to call a referendum on the Czech Republic's accession to the European Union; and

• to determine whether the manner in which the referendum on the Czech Republic's accession to the European Union was held is in harmony with Constitutional Act No. 515/2002 Sb., and with the statute issued in implementation thereof.

ON THE SEAT OF THE CONSTITUTIONAL COURT

Assembly Hall (the greatest court-room).

The constitutional court as an institution only moved to its current seat, i.e.. a Neo-renaissance palace in Joštova Street in Brno, in 1991. The Constitutional Court of the Czechoslovak Republic, established in 1921, had its formal seat in Prague. However, it was never given its own building, its justices met *ad hoc* and their offices were in the building of the then unification ministry.

After WW2, constitutional judiciary was not reinstated, and debates concerning the new seat were only initiated after 1990. As the modern constitutional judiciary respects a consistent separation of the judicial power from the executive and legislative powers, the city of Brno was chosen to be the seat of the Constitutional Court (and subsequently as the seat of other supreme judicial institutions), as a logical counterweight to Prague where government and parliamentary institutions have their seats.

And what building was chosen for the Constitutional Court?

Between 1875 and 1878, the monumental building of the House of Moravian 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.

House of Estates (19th Century Depiction).

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 four inner courtyards. The four wings of the palace intersect to create the large assembly hall, accessible by a staircase from the portico. Today, the assembly hall is used for public oral hearings held before the Plenum of the Constitutional Court comprising all fifteen Justices of the Constitutional Court. The hall is the most valuable room in the entire building. It is flanked by a vestibule and smaller lounges on the sides: originally, they were used as a restaurant and a club room, while today, they serve as conference rooms for the three-member senates of the Constitutional Court.

Interior decoration is concentrated in particular in the assembly hall and the adjoining rooms. The walls are faced with reddish artificial marble and end in a painted freeze with a bracket cornice which supports a flat barrel vault adorned with a mural boasting the provincial emblem. A box with a balustrade faces the hall on the first floor.

The last remodeling of the building took place in the 1980s and 1990s. In 2010, the library of the Constitutional Court was modernized; other than that, only necessary repairs and maintenance is performed. As the building needs to be maintained in a condition fit for its operation, yet a modern working environment needs to be procured, a medium-term plan of reconstructions and capital expenditure for 2014-2017 was drawn up in 2014. The plan envisages a gradual revitalization of the Constitutional Court building. The building is listed as a cultural monument, and enjoys general protection thanks to its architectural design. For that reason, a structural and historical survey of the building was commissioned in order to ensure the preservation, and restoration, if necessary, of the original architectural elements. The survey revealed a time capsule placed under the cope stone on the occasion of the ceremonial unveiling of the building on 22 December 1878 by provincial hetman Adalbert Widmann. The capsule and its content are currently deposited at the Moravian Provincial Archives. When work on the building was initiated in 2014, the first step was the renovation of sculptural décor on the parapet of the south and northern bays of the Constitutional Court's building: the sculptural allegories of the six virtues placed in groups of six.

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

Allegory of Justice.

DECISION MAKING OF THE CONSTITUTIONAL COURT OF THE CZECH REPUBLIC

Decision Making of the Constitutional Court of the Czech Republic

This yearbook cannot summarize case-law spanning the entire existence of the Constitutional Court of the Czech Republic, as the number of decision has exceeded 60,000. We will therefore only present key decisions rendered in 2014.

The decision making naturally varies year from year depending on the matters presented by complainants to the Constitutional Court. Decisions outlined below may thus follow up on case law from previous years, but may also reflect current trends and introduce new topics and points of view. However, presented here still is a mere selection of case law, rather than a list thereof. Key decisions are further translated into English and published on the Constitutional Court's webpages.

Fundamental Constitutional Principles

DEMOCRATIC RULE OF LAW

The Czech Republic as a democratic rule of law state is defined in Article 1 (1) of the Constitution. Said article represents a certain general and introductory principle to which a number of sub-principles is linked, with some of them set out expressly at constitutional level, and some inferred by the case law of the Constitutional Court.

Article 1 (1) of the Constitution brings two principles together: the democratic principle, and the rule of law principle. In the conditions of the Czech Republic, democratic principles thus subtly merge with the requirements of constitutionalism, the latter largely stemming from the liberal political thinking of the modern era. Therefore, at the same time, no regime other than a democratic regime can be legitimate [Judgment file No. Pl. ÚS 19/93 dated 21 December 1993], and the citizen has to be given priority over the state, whereby fundamental civil and human rights and freedoms also have priority as a result [Judgment file No. Pl. ÚS 43/93 dated 12 April 1994]. Therefore, as indicated in Judgment file No. Pl. ÚS 29/11 dated 21 February 2012, our democracy needs to be interpreted in a material way.

In a constitutional democracy, the constitutional order and the entire catalogue of fundamental rights is based on ultra positive values, such as dignity, freedom and equality. Of these values, **equality** is certainly the most controversial one, and it was precisely equality, or the related concept of discrimination, which was addressed by the Constitutional Court in 2014 in an extremely interesting way, in particular in Judgment file No. Pl. ÚS 49/10 dated 28 January 2014, Ruling file No. I. ÚS 3271/13 dated 6 February 2014, and Judgment file No. Pl. ÚS 31/13 dated 10 July 2014.

In its Judgment file No. Pl. ÚS 39/13 dated 7 October 2014, the Constitutional Court addressed the issue of inequality in the evidencing of costs of represented and unrepresented parties to civil proceedings, where a party to the proceeding represented by an attorney does not have to record and evidence a part its of out of pocket expenses, while parties without legal representation cannot avail themselves of the option of a flat-rate reimbursement for out of pocket expenses. With reference to the above-

mentioned Judgment file No. Pl. ÚS 49/10, the Constitutional Court applied the equal treatment test. See the part concerning reimbursement for costs of proceedings for more detail on Judgment file No. Pl. ÚS 39/13.

By its Resolution file No. I. ÚS 3271/13 dated 6 February 2014, followed up by Ruling file No. I. ÚS 4664/12 dated 3 April 2014 and Judgment file No. I. ÚS 173/13 dated 20 August 2014 (for more detail on this judgment, see the part dedicated to the equality of parties to proceedings), the Constitutional Court contributed to the dogmatic definition of Article 3 (1) of the Charter and Article 1 of the Charter. According to the Constitutional Court, Article 3 (1) of the Charter shall only apply if the different treatment is based on gender, race, skin color, language, faith and religion, political or other beliefs, national or social origin, a national or ethnic minority membership, property, ancestry or other status, which other status must be similar to the categories listed by way of example. Therefore, it must concern a certain personal characteristic which is generally beyond one's control (e.g., gender, race), or must be based on reasons stemming from personal choices reflecting the personality traits of every one of us, such as religion or political views. The Constitutional Court noted that the European Court of Human Rights interprets Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which contains a similar non-exhaustive list of grounds for discrimination, in a similar fashion. However, according to the Constitutional Court, that in itself does not mean that the lawmakers can make arbitrary distinctions in these situations. Equality protected by Article 1 of the Charter is not subject to any such restrictions, and applies to all the grounds for differentiation equally. Pursuant to Article 1 of the Charter, equality can thus be infringed on only in case of an extreme inequality, or inequality lacking any purpose and meaning, and thus tantamount to arbitrariness. Therefore, even the intensity of review is low in this case.

Judgment file No. Pl. ÚS 31/13 dated 10 July 2014 concerned tax liability, specifically, income tax of natural persons drawing old age pension as of 1 January of the taxation period. The Constitutional Court relied on its standard review of tax liabilities that must be withstandable not only in terms of the elimination of extreme disproportionality, but also in terms of the constitutional principle of equality, both non-accessory, stemming from the necessity to eliminate arbitrariness in the differentiation of entities and rights pursuant to Article 1 of the Charter, and accessory within the scope defined in Article 3 (1) of the Charter. The Constitutional Court referred to its established case law, pursuant to which equality needs to be understood as a relative, rather than absolute, category. Inequality established by law is accepted on a general level, but only to the extent that it can be justified by constitutionally accepted considerations. That is not the case where inequality is based on arbitrariness (non-accessory inequality), or results from the violation of any of the fundamental rights and freedoms (accessory inequality). With a view to the basis so defined, the Constitutional Court assessed the criterion on which the basic tax rebate is based from the perspective of non-accessory inequality and accessory inequality, and concluded that it was in conflict with the Constitution. The Constitutional Court thus repealed the contested provision of law as of the date of promulgation of its judgment in the Collection of Laws. As a result, all working retirees can claim a tax rebate for the taxation period of year 2014 regardless of the fact whether they collected an old age pension as of 1 January 2014. Further details on this judgment can also be found in the part entitled protection of property rights.

The question of equality was also addressed in Judgment file No. Pl. ÚS 35/13 dated 5 August 2014, wherein the Constitutional Court reviewed a decree issued by the city of Cheb.

Material aspect of the rule of law (i.e., ultimately the idea of justice) is therefore first and foremost expressed by the concept of the individual as a dignified human being possessing rights equal to those of all other beings. The construction of a material rule of law, developed in the case law of the Constitutional Court in a number of areas, surpasses the original idea of a formal rule of law, the concept of which is based on legalism and positivism. However, even today, the principle of rule of law is linked to formal characteristics that must be exhibited by legal rules in the relevant legal system, so that individuals could take them into account when deciding on their future actions.

Judgments pertaining to the good faith of the individual in the correctness of acts of public power greatly contributed to the elaboration of the concept of rule of law in the Constitutional Court's case law in 2014. In its Judgment file No. II. ÚS 1667/12 dated 11 March 2014, dealing with procedural activities of an injured party as a prerequisite for compensation for damages for an unlawful decision, the Constitutional Court relied on the presumption that the exercise of public power under a democratic rule of law is based on the principle of good faith of the individual in the correctness of acts of public power, and the protection of good faith in acquired rights constituted by acts of public power, whether they arise directly from a normative legal act, or from the act of application of the law in the particular case. In its Judgment file No. I. ÚS 2219/12 dated 17 April 2014, the Constitutional Court consistently defended Judgment file No. II. ÚS 165/11 dated 11 May 2011 against objections of the Supreme Court (or rather its senate 30 Cdo).

Another important judgment pertaining to the **democratic rule of law** that needs to be mentioned dealt with the abolition of a "spa decree". In its Judgment file No. Pl. ÚS 43/13 dated 25 March 2014, the Constitutional Court addressed, *inter alia*, a proviso in the law pursuant to Article 31 in conjunction with Article 4 (2) of the Charter, and the prohibition of retroactivity (retroactive effect) of legal regulations. As regards the proviso in the law, the Constitutional Court relied on the presumption that the proviso in the law pursuant to Article 4 (2) of the Charter does not rule out a further regulation, by a by-law pursuant to Article 78 of the constitution or by statutory authority pursuant to Article 79 (3) of the Constitution, of a social right implemented by the law and exercisable by the individual under the law. However, its content arising from its statutory regulation must not be restricted or extended in this manner. The Constitutional Court reached the conclusion that the contested decree stipulates the extent to which the fundamental right to free medical care under public insurance can be exercised above and beyond the framework set forth by the law, and as such, the decree is in conflict with the proviso in the law pursuant to Article 31 of the Charter, as well as the authority pursuant to Article 79 (3) of the Constitution. The Constitutional Court further addressed the issue of genuine and false retroactivity of the relevant transitory provision (Section 2 (2)) of the spa decree. See also the part dedicated to the protection of health.

Judgment file No. I. ÚS 2486/13 dated 1 October 2014, in which the Constitutional Court analyzed the notion of **citizenship**, was also related to the basic principles of the democratic rule of law. Within the meaning of Article 12 (2) of the Constitution, said notion encompasses not only actual citizenship (i.e., where citizenship is vested in a person on any of the grounds for citizenship), but also functional citizenship. That represents a factual situation when the Czech Republic treats somebody as its citizen although the person in question does not necessarily have to be its citizen. This may be established either expressly by law, or by facticity, i.e., by long-term treatment of that person as a citizen enjoying protection within the meaning of Article 12 (2) of the Constitution in conjunction with Article 1 (1) of the Constitution. Given the status nature and extraordinary importance of citizenship under the Constitution, the Constitutional Court decided that where an infringement of a right protected by Article 12 (2) of the Constitution threatens, administrative courts are obliged to examine even new legal objections of the claimant not asserted in the previous proceeding, provided that such objections are supported by the facts established during the previous proceeding. In this particular case, the Constitutional Court found that the complainant's objection that the Supreme Administrative Court did not address his contention that his grandmother had right of domicile was substantiated. The Supreme Administrative Court argued that the complainant only presented his right of domicile objection in his cassation complaint, and that the objection was thus inadmissible. The Constitutional Court stressed that the extraordinary nature of state citizenship, coupled with the far-reaching consequences of expatriation, historical experience of the Czech Republic and the specifics of proceedings on state citizenship, requires the review of objections supported by facts established in the proceeding before the court of first instance and only raised before the Supreme Administrative Court, where Article 12 (2) of the Constitution may be infringed. By failing to do so, the Supreme Administrative Court violated the complainant's right to fair trial pursuant to Article 36 (1) of the Charter.

OBLIGATIONS UNDER EUROPEAN AND INTERNATIONAL LAW

The duty to comply with obligations arising to the Czech Republic under international law and membership in international organizations is provided for in Article 1 (2) of the Constitution. The priority of application of an international treaty stems from Article 10 of the Constitution. The provision of Article 10a of the Constitution makes it possible to delegate certain powers of bodies of the Czech Republic to an international organization or institution, i.e., in particular the European Union and its bodies. As the Constitutional Court noted in its Judgment file No. Pl. ÚS 50/04 dated 8 March 2006, this article operates in both directions: it sets the standard for the delegation of powers, and at the same time, it is the provision of the Constitution that opens the national legal order to the operation of EU law, including rules pertaining to its effects within the legal order of the Czech Republic.

The Constitutional Court touched upon EU law in its Judgment file No. III. ÚS 3725/13 dated 10 April 2014, concerning bank fees. The Constitutional Court reiterated that consumer protection was one of the principles on which the functioning of the European Union was based, and which must be followed or taken into consideration by the member states or their bodies when implementing the content of EU law into their national legal orders, or when refraining from a certain provision of law ("positive and negative implementation"). For general courts, this means the duty to interpret and apply national law in a manner compliant with EU law, i.e., where multiple interpretations are possible, to select an interpretation that is in harmony with EU law; in the case in hand, in particular with the rules set out in Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. However, consumer protection does not represent one of the separate constitutional fundamental rights and freedoms, as even in constitutions, the status of the consumer as the weaker party requiring protection is generally provided for not as a subjective right, but rather a state policy objective identified by the constitution and associated with specific regulation of consumer protection at the level of sub-constitutional law; therefore, the implementation of such constitutionally desirable policy (protection of the weaker party) has a largely reflexive effect on the consumer's status in the area of fundamental rights (consumer as an addressee of the pursuit of pro-union and constitutionally compliant activities of the state). For more information on this judgment, see the part on consumer protection and petty disputes.

In Judgment file No. III. ÚS 2782/14 dated 20 November 2014, concerning passengers' right to compensation for a delayed flight caused by a technical defect and a bird strike, as well as the duty to submit a preliminary query to the Court of Justice of the EU, the Constitutional Court noted that that the complainant's right to fair trial pursuant to Article 36 (1) of the Charter, or the complainant's right to lawful judge within the meaning of Article 38 (1) of the Charter, was infringed with a view to the breach of duty to submit a preliminary query (queries) to the Court of Justice. The Constitutional Court further reiterated that the direct application 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, and repealing Regulation (EEC) No 295/91, constitutes "implementation" of EU law within the meaning of Article 51 (1) of the Charter of Fundamental Rights of the EU which applies to the case in hand; therefore, together with a breach of the above-referenced provisions of the constitutional order of the Czech Republic, the right to effective remedy and fair trial within the meaning of Article 47 of the Charter of Fundamental Rights of the EU is violated because of the duty of direct application of the regulation. According to the Constitutional Court, the interpretation of the regulation proposed by the general court was arbitrary and failed to respect the criteria for the submission of a preliminary query.

Decisions on extraditions and deportations described in the final chapter also related to obligations under international law. Last but not least, renewed proceedings took place before the Constitutional Court in 2014 after the European Court of Human Rights rendered its judgments: Judgment file No. Pl. ÚS 3/12 dated 4 February 2014 (renewed proceeding after the ECHR ruled in Janýr et al. v. the Czech Republic), Judgment file No. Pl. ÚS 46/13 dated 11 March 2014 (renewed proceeding after the ECHR ruled in Čepek v. the Czech Republic), and Judgment file No. Pl. ÚS 32/13 dated 20 May 2014 (on court protection of the rights of minority shareholders - renewed proceeding after the ECHR ruled in Chadzitaskos and Franta v. the Czech Republic). Importantly, for the very first time, a proceeding was renewed in a civil matter – in the above-referenced Čepek case, for more details, see the chapter "Right to Judicial and Other Legal Protection". Novel were also decisions issued at the end of the year, on the renewal of two civil matters, in which the European Court of Human Rights merely accepted a unilateral recognition of infringement of the Convention by the government, together with an offer of financial compensation – file No. Pl. ÚS 6/14 dated 9 December 2014 (renewed proceeding after decision in Jahoda v. the Czech Republic), and file No. Pl. ÚS 10/14 dated 9 December 2014 (renewed proceeding after decision in Sejk v. the Czech Republic). Follow-up decisions in renewed proceedings in these matters can be expected to be issued in 2015.

INDEPENDENCE OF COURTS

The independence of courts and judicial power is one of the fundamental constitutional principles, derived from both the notion of the rule of law, and the principle of division of power. Already in its Judgment file No. Pl. ÚS 13/99 dated 15 September 1999, the Constitutional Court stated that through the principle of division of state power, our constitution followed up on the ideological tradition transparently expressed already by Charles Montesquieu, and institutionally in particular by the French and American revolutions which stressed and also institutionalized the need for independent judiciary.

In its Judgment file No. Pl. ÚS 7/02 dated 18 June 2002, the Constitutional Court stated that a democratic state was very far from the idea of a "judicial state" – both legislative and executive powers are a body of public power. In a democratic system, public power can be functionally executed only if all its bodies are working. On the other hand, the democratic rule of law is obliged to create institutional prerequisites for what is specific and unconditional, as far as the justice system is concerned, that is, the constitution and establishment of genuine independence of courts as an important state-building, as well as polemic, element – not only for the stabilization of their position, but also for the stabilization of the democratic system as a whole in relation to legislative and executive powers. The actual independence of courts is a specific and indispensable attribute of judicial power, substantiated and required by Article 4, as well as Articles 81 and 82 of the Constitution.

It can be inferred from the follow-up case law of the Constitutional Court that the requirement of independent judiciary stems from two sources: (1) the neutrality of judges as a guarantee of fair, impartial and objective judicial proceeding, and (2) the procurement of rights and freedoms of individuals by a judge separated from the political power. Independence of judges is guaranteed by guarantees of a special legal status (which must include irremovability, irrevocability, inviolability), as well as guarantees of organizational and functional independence on bodies representing the legislative, and in particular the executive, power, and the separation of the judiciary from the legislative and executive powers (in particular by applying the incompatibility principle). In terms of content, the independence of judges is guaranteed by the fact that the judges are only bound by the law, i.e., any elements of subordination are eliminated from their decision making.

Arbitrary interference by the legislator with material resources for judges, including salary restrictions, must be, within the meaning of established case law of the Constitutional Court, included in the framework protected by the principle of judicial independence for two reasons. Independence of judges is conditioned first and foremost on their moral integrity and expertise, but is at the same time associated with their adequate material resources. The second reason why the principle of judicial independence encompasses the prohibition of arbitrary interference with material resources of judges (salary restrictions) is the elimination of the possibility of the legislative or executive power putting pressure on the decision making of judges. In other words, to eliminate arbitrary interference with material resources of judges as a possible form of their "penalization" by the legislative and executive powers, as a form of pressure on their decision making.

This was the basis on which the Constitutional Court drew in 2014 in its Judgment file No. Pl. ÚS 28/13 dated 10 July 2014, by which it granted the motion of the Municipal Court in Brno for the abrogation of the word "2.75 times" in the provision of Section 3 (3) of Act No. 236/1995 Sb., on Salary and Other Formal Aspects of Exercise of Office by Representatives of Public Power and Certain Public Authorities and Judges and Members of the European Parliament (the "Salary Act"), as amended by Act No. 11/2013 Sb., as regards judges of district, regional and superior courts, the Supreme Court and the Supreme Administrative Court.

Right to Territorial Self-government

As regards the area of territorial self-government and its protection, the Constitutional Court most frequently reviews the regulatory activities of self-governing regions, mostly associated with matters of local order. Traditionally, in its proceedings on the review of regulations, the Constitutional Court also examines proposals of the Ministry of Interior, through which the latter exercises its supervisory power over the legality and constitutionality of acts made by self-governing regions within the scope of their independent powers. This was the case in 2014 as well. Worth mentioning is in particular Judgment file No. Pl. ÚS 35/13 dated 5 August 2014, by which the Constitutional Court granted the motion of the Ministry of Interior for the abrogation of a part of a decree issued by the city of Cheb prohibiting pyrotechnic works and fireworks within a designated part of the city, as such activity could disrupt public order or be *contra bona mores*, the protection of safety, health and property. There were two exemptions from the prohibition: firstly, events organized by the city, and secondly, an exemption granted by the municipal council *ad hoc* to other entities upon their written request.

In its Judgment file No. Pl. ÚS 57/13 dated 20 May 2014, the Constitutional Court's Plenum dismissed a motion for the abrogation issued by the city of Františkovy Lázně, prohibiting travelling and door to door sales within the entire territory of the city. For more details, see the part entitled "Economic and Social Rights".

Fundamental Rights and Freedoms

PROTECTION AND GUARANTEES OF PERSONAL LIBERTY

Deprivation of personal liberty is one of the major encroachments on fundamental rights, and courts must thus approach custody decisions with due care. In 2014, the Constitutional Court frequently stressed that custody decisions had to be duly reasoned, and were subject to the condition of a personal hearing in such decision making. This was the case in particular in Judgment file No. I. ÚS 980/14 dated 18 June 2014, in which the Constitutional Court criticized the Supreme Court for failing to give consideration to the changing conditions of a prosecuted person held in custody due to the passage of time in the assessment of custody imposed due to risk of flight. The complainant was in custody for nearly two years, and the maximum sentence he faced was two years and three months. In this situation, the fact that the Supreme Court merely reproduced the custodial grounds contained in the previous custody decisions, issued at a time when the complainant theoretically still may have been faced with a higher sentence, was unacceptable. The Supreme Court further erred when it decided on custody in a non-public session, whereby the complainant was not personally heard and did not have the opportunity to respond to the custodial grounds. The Constitutional Court also pointed out the inadequate *ratio decidendi* in its Judgment file No. I. ÚS 1123/14 dated 30 September 2014, in which it reviewed a decision of the Supreme Court which justified the complainant's placement in custody by the threat of a high sentence and the absence of strong ties to the Czech Republic. The Constitutional Court called such approach generalized, as in the matter in hand, a re-classification of the matter from a consummated criminal act to a criminal act in the preparatory stage could have been expected to occur, with a resultant sentence reduction. At the same time, when contemplating the complainant's custody, the Supreme Court failed to give consideration to the fact that the complainant had a permanent residence permit in the Czech Republic up to 2021, was formerly employed here and his mother and brother live here and offered to involve him in their gainful activities after his release.

V Judgment file No. I. ÚS 2883/13 dated 21 January 2014, the Constitutional Court pointed out the fact that the placement in custody was justified only by the examination of the accused person's mental health and by obstructions on his part. The Constitutional Court stressed that the existence of certain, albeit repetitive, obstructions did not in itself constitute a legitimate concern that the accused would go in hiding or abscond. Penal authorities must face obstructions pro-actively, however, in doing so, they can only employ those institutes of the criminal justice code that are duly justified, and such justification must be clear from the *ratio decidendi*.

In its Judgment file No. I. ÚS 3326/13 dated 15 January 2014, the Constitutional Court was able to assess the impact of a natural catastrophe - floods - on custody hearings. The district court extended the complainant's custody outside a custody hearing, with reference to the situation brought about by the floods. The Constitutional Court concluded that while the extraordinary event did make it more difficult, it did not make holding a custody hearing impossible, and the court was obliged to hold it as soon as the obstacle ceased. The absence of the proceeding could not be remedied by the holding of the custody proceeding before the appellate court, more than a month after the defective decision of the district court was issued. It did not occur on the order of days, which the Constitutional Court could view as a time period still capable of remedying the absence of a personal heating under extraordinary circumstances. The presence of objectively insurmountable obstacles needs to be interpreted restrictively.

PROTECTION OF PRIVACY AND INVIOLABILITY OF PERSON, DWELLING AND OTHER SPACE

The protection of privacy and dignity guaranteed by Articles 7 and 10 of the Charter of Fundamental Rights and Freedoms and inviolability of dwelling

guaranteed by Article 12 of the Charter of Fundamental Rights and Freedoms encompasses a broad range of issues, most of them related to the most intimate and innermost sphere of human life. In 2014, the Constitutional Court was confronted with these issues fairly often. Technological development obviously brings ever growing challenges to privacy and its protection, as provided by the Constitutional Court and bodies involved in the protection of fundamental rights in general. It is certainly no longer true that these rights are threatened only by the state: *a contrario*, the danger often comes from private persons, whether natural persons or legal entities. The guarantee of the right to privacy in a broader sense is thus gaining in importance.

Last year, the Constitutional Court addressed a number of issues related to various aspects of the right to protection of privacy, previously not dealt with in its case law: for instance, new forms of communication, in particular the internet and social media (Judgment file No. III. ÚS 3844/13 dated 30 October 2014), the question whether a secretly made recording of a conversation can serve as admissible evidence in a civil proceeding (Judgment file No. II. ÚS 1774/14 dated 9 December 2014), or the duty to provide genetic material for the purposes of determination, or denial, of paternity (Judgment file No. II. ÚS 2964/12 dated 9 December 2014).

In Judgment file No. II. ÚS 1774/14 dated 9 December 2014, the Constitutional Court granted the constitutional complaint of a complainant who failed to have a termination of work contract for redundancy overturned in proceedings before general courts, purporting that the real reason for his dismissal was his criticism of the trading company whose employee he had been. He evidenced his contentions by a secretly made recording of his conversation with a member of the company's foreign management. However, general courts - in accordance with prevailing practice - ruled that the recording was inadmissible in evidence because it had been made without the knowledge, or consent, of the person being recorded, and dismissed the claim. The Constitutional Court concluded that in a proceeding pertaining to a motion for declaratory judgment on nullity of termination, evidence proposed by the employee in his capacity as claimant cannot be rejected solely because it is constituted by manifestations of the persons speaking of a personal nature.

Case law concerning inviolability of person opined on the amount of compensation for damage and injury. In Judgments file No. I. ÚS 3367/13 dated 22 May 2014 and file No. I. ÚS 501/13 dated 1 October 2014, the Constitutional Court confirmed that the compensation for social handicap must be based on objective and reasonable reasons, and that proportionality between the injury to health and the amount of compensation awarded must be maintained. The complainant in the latter judgment sustained serious injuries in a traffic accident, and given the extent of necessary payments to care providers and for other services, the complainant would be highly likely - also in light of her age - to spend a substantial part of the funds awarded to her as compensation within a limited period of time. Neither social security payments nor other possibly awarded components of compensation for the damage to the complainant's health could adequately cover her expenses outlayed for the above-mentioned purposes. In the case in hand, proportionality between the injury to health and the awarded amount was not respected. In Judgment I. ÚS 2930/13 dated 11 November 2014, the Constitutional Court specified that the right to inviolability of person also included the right to full compensation for damage to health, in the form of compensation for both immaterial and material injury, which includes, as a separate entitlement, compensation for costs related to care for the injured person who is not self-reliant and his/her household after completion of treatment. Where an affiliated person is providing such care, the calculation of costs must be based on an amount the injured person would otherwise pay for professional care.

In addition to the dimension protecting the autonomy, mental or physical integrity of persons, their social ties (in the context of family ties, we talk about the right to protection of family life), and privacy of communication, the right to privacy in a broader sense also has a spatial dimension entrenched in Article 12 of the Charter of Fundamental Rights and Freedoms (inviolability of dwelling). As in previous years, the Constitutional Court decided on a number of matters in 2014 where a violation of domicile was contended to have occurred in connection with house searches and searches of other premises and land. Of the case law dealing with this topic, Judgment file No. Pl. ÚS 47/13 dated 7 May 2014 in particular is worth mentioning: in this judgment, the Constitutional Court opined in more detail on the conditions of use of house searches and tapping.

PROTECTION OF PROPERTY RIGHTS, RESTITUTION

Unlike in 2013 when the Constitutional Court was confronted with the issue of church restitutions, restitution cases took a back seat, and especially tax rebates for working retirees drew the limelight in the area of property rights (Judgment file No. Pl. ÚS 31/13: Tax rebates for working retirees), in which the Constitutional Court repealed a part of the Income tax Act. The relevant provision of law did not enable retirees drawing old age pension to claim a tax rebate of CZK 24,840. The Constitutional Court found the provision contrary to the principles of non-accessory equality within the meaning of Article 1 of the Charter, as well as accessory equality pursuant to Article 3 of the Charter.

The Constitutional Court's plenum further repealed a part of the Employment Act due to its conflict with the right to protection of property. By its Judgment file No. Pl. ÚS 52/13 dated 9 September 2014, the Plenum granted the motion of the municipal court for abrogation of the minimum threshold of CZK 250,000 for the imposition of a fine for an administrative offense. The Constitutional Court found that the contested provision prevented a due individualization of a specific case as the minimum threshold for the fine was set at a level restricting the decision-making administrative bodies, which were then unable to give consideration to the specific circumstances of different cases, and to the offenders and their financial situation. The interference with the financial situation may be considerable in some cases, tantamount to liquidation, and the minimum threshold of the fine is thus obviously disproportionate.

The issue of freeze of funds can serve as an example of an individual constitutional complaint granted by the Constitutional Court in 2014 in the area of infringement on property rights. In its Judgment file No. I. ÚS 3502/13 dated 17 April 2014, the Constitutional Court reiterated that decisions of public authorities on the limitation of freeze of funds must be duly reasoned, with a view to the extent and duration of the freeze, specific features of the pending criminal matter, and potential damage to property that might result from it. In the matter in hand, the complainant repeatedly moved for a limitation of the freeze of her funds, but the public prosecutor supervising the case did not enable the complainant to dispose with the seized funds to the extent that she would be able to pay specific contractual obligations and operating costs, and failed to provide a due justification. According to the Constitutional Court, with passage of time, the body deciding on the freeze must, in addition to pursuing a public interest in the exposure of crime and the punishment of its perpetrator, increasingly take care to protect the constitutional and legitimate interests of the private person affected by the property freeze in unfettered enjoyment of ownership and conduct of business. When searching for a proportion between public and private interests, the body deciding on the freeze must carefully consider the specific payments and specific amounts, for which consent is sought, and duly justify its decision granting or denying consent, also with a view to the duration of the freeze and the scope of the property frozen. The Constitutional Court relied on similar conclusions in its Judgment file No. IV. ÚS 3501/13 dated 5 August 2014, where the complainant argued that she was unable to honor her obligations because all of her funds had been frozen for over 23 months, in conflict with the short-term nature of this institute. The Constitutional Court pointed out that the public prosecutor did not grant the complainant's request for release of funds for tax payment, without providing any justification, and although he previously used to grant such consent. Therefore, the decision of the public prosecutor could not be upheld in a constitutional review of the matter.

The most important **restitution decisions** of 2014 undoubtedly included the issue of renewal of proceedings in the Opočno Chateau matter, although it hinges more on the fair trial principles. In its Judgment file No. I. ÚS 2430/13 dated 5 March 2014, the Constitutional Court concluded that general court assessed evidence presented in support of the motion for renewal of proceedings pursuant to Section 228 of the Rules of Civil Procedure in

conflict with the requirement of due consideration of evidence. They rejected evidence submitted by the complainant together with her motion for renewal of proceedings, underestimated its importance and assessed it in a manner contrary to the requirements of due assessment of evidence. As the motion for renewal of proceedings could have been granted had the evidence been assessed duly, such approach is tantamount to denial of justice. As a result, the courts further encroached on the complainant's right to own property because they prevented her from obtaining the surrender of property unlawfully confiscated from her family.

Political Rights

FREEDOM OF EXPRESSION

Case law concerning freedom of expression guaranteed by the constitution was rather scarce in 2014, and only contains Judgment file No. IV. ÚS 1511/13 dated 20 May 2014, dealing with the conflict between freedom of expression and the right to privacy in the criticism of representatives of political life. Nevertheless, there was no shortage of interesting decisions in this area because during the past period, the Constitutional Court decided for instance on cartoons of the wife of the then prime minister in Zelený Raoul comic strip (Ruling file No. I. ÚS 2246/12 dated 17 April 2014), or on a dispute spanning nearly a quarter of a century and involving former students of Brno Technical University and the chairman of a local Communist Party Cell, and a period text on the abuse of his political status (Ruling file No. I. ÚS 1572/14 dated 16 September 2014).

In the above-mentioned ruling, the Constitutional Court specifically addressed the constitutional complaint of a complainant who published an article directed against certain statements made by a mayor in a local newsletter, who then filed a privacy suit with general courts and demanded an apology and adequate compensation (Judgment file No. IV. ÚS 1511/13: Boundaries of freedom of expression in the criticism of political representatives)

FRANCHISE

Although 2014 was an "election year" (elections to the European Parliament, Senate and local councils were held), the Constitutional Court did not adopt any exactly groundbreaking decision in this area. Most proceedings concerning elections initiated last year, with the public impatiently waiting for the outcome, were still pending at the end of 2014. These include in particular a motion of the Supreme Administrative Court for the abolition of a 5% election threshold for elections to the European Parliament (file No. Pl. ÚS 14/14), and a constitutional complaint concerning the invalidity of elections to the local council in Brno-sever, held on 10 and 11 October 2014 (file No. III. ÚS 3673/14).

However, worth mentioning is at least Ruling file No. Pl. ÚS 2/14 dated 19 August 2014 pertaining to the invalidity of elections to the House of Deputies of the Parliament of the Czech Republic. The Czech Pirate Party filed a constitutional complaint, seeking to have quashed a ruling of the Supreme Administrative Court dismissing its claim for declaratory judgment on the invalidity of election of all candidates elected to the House of Deputies in the elections held on 25 and 26 October 2013. At the same time, it moved for the repeal of certain provisions of Act No. 247/1995 Sb., on Elections to the Parliament of the Czech Republic. Objections of the complainant addressed by the Constitutional Court in its decision concerned in particular objections against the current election threshold for entry into the House of Deputies, i.e., 5%, and the current arrangement of election regions. However, the Constitutional Court reached the conclusion that only the relevant minority will always participate in the activities of the relevant representative body, and its protection cannot be confused with the right to a mandate. The size of such relevant minority varies, and its current composition depends on political favor of voters. The Constitutional Court therefore concluded that the very existence of election regions does not mean that it is directed against specific entities taking part in the political fight, as the actual election results are not known in advance.

Economic and Social Rights

RIGHT TO CONDUCT BUSINESS AND TO PURSUE OTHER ECONOMIC ACTIVITY

The right to free choice of profession and training therefor, as well as the right to conduct business and to pursue other economic activity, guaranteed by Article 26 of the Charter, falls under the regime of Article 41 of the Charter, and as such can only be invoked within the confines of implementing regulations. Article 41 of the Charter provides ample room for legislator's discretion in the regulation of socioeconomic rights. The basis of this construction lies in the very substance of socioeconomic rights, the regulation of which is frequently the subject of comprehensive provisions of law, and the guaranteeing of which by the state brings substantial budgetary expenditure. Law in this area turns into politics, which leads the Constitutional Court to a greater degree of self-restriction for the benefit of the executive and legislative branches. Case law concerning socioeconomic rights thus draws special attention from both professional and general public.

As regards Article 26 of the Charter, let us mention in particular Judgment file No. Pl. ÚS 44/13 dated 13 May 2014, by which the Constitutional Court's Plenum granted the motion of a group of senators of the Parliament of the Czech Republic for the abrogation of a part of the provision of Section 6i (1) and Section 6i (2) of Act No. 311/2006 Sb., on Fuel and Fuel Stations, which introduced nation-wide bonds for fuel distributors in the amount of CZK 20,000,000. As the challenged provision of law may operate to "choke" smaller fuel distributors, due to the very difficulty in obtaining the bond amount required, the Constitutional Court concluded it was the least considerate of the alternatives with regard to the right guaranteed by Article 26 of the Charter, and thus abrogated the above-mentioned provisions.

In Judgment file No. Pl. ÚS 57/13 dated 20 May 2014, the Constitutional Court's Plenum dismissed a motion for abrogation of Decree No. 1/2013 issued by the city of Františkovy Lázně and prohibited traveling and door to

door sales in the entire territory of the city. The applicant in particular argued that the decree applied universally and ruled out any sales outside an outlet within city limits.

In conclusion, let us mention, at least briefly, two rulings in which the Constitutional Court addressed the issue of university education as a condition for entry into the list of trainee solicitors maintained by the Czech Bar Association. By its Ruling file No. I. ÚS 110/14 dated 7 March 2014, the Constitutional Court dismissed as manifestly unfounded a constitutional complaint in which the complainant, a graduate of Bratislavská vysoká škola práva, argued that when the bar association refused to enter him into the list of articled clerks on account of insufficient education, it violated his right pursuant to Article 26 of the Charter. The Constitutional Court concurred with the arguments proposed by general courts, i.e., that the Czech Bar Association is both entitled and obliged to oversee the professional standards of its members, and as such, it was in particular authorized to verify in each individual case whether the education attained meets the statutory standard in terms of content and scope (general education obtainable in a Master's programme in law at a university in the Czech Republic). The Constitutional Court examined a similar matter in its Ruling file No. I. ÚS 3921/12 dated 6 February 2014, by which it dismissed a constitutional complaint filed by a graduate of the Police Academy of the Czech Republic in police management and criminalistics, that although he completed a number of subjects focusing on current law, the content and scope of his educational attainment did not compare to the standard required by law.

HEALTH PROTECTION

The principle of full compensation for damage to health is one of the guarantees of the right to human health protection. Health is one of the most important factors influencing the quality of human life, and is thus one of the absolute fundamental rights and freedoms. In the area of health and life protection, the state has a positive duty consisting in the establishment of a statutory and administrative framework that would effectively deter third parties - private persons - from jeopardizing the right to life. Judgment file No. III. ÚS 2253/13 dated 9 January 2014 deals with this topic: it addresses the encroachment on physical integrity of the individual in medicine, and generally with the *constitutional aspects of damage to health as a result of a non lege artis procedure*. In said judgment, the Constitutional Court opined that unlawful conduct in the sphere of the right to health and its protection may be manifested not only in a worsened health, but also in that the injure party's health does not improve, although it could be expected with a view to the presumed legally compliance course of action taken by the offender. A constitutionally compliant interpretation (from the perspective of the right to full compensation for any and all damage to health) of Section 444 (1) of the Civil Code requires that the notion of "damage to health" encompass not only the worsening of the injured party's health, but also a loss of expected improvement caused by defective course on action on the part of the health care provider.

Judgment file No. Pl. ÚS 43/13 dated 25 March 2014 (abrogation of the "spa decree") was one of the most closely watched decisions of the Constitutional Court in 2014. Upon a motion filed by a group of senators, the Plenum repealed a decree of the Ministry of Health setting out a List of Indications for Spa Physical Therapy for Adults, Children and youth. The reason for sit abrogation was its conflict with the principle of proviso in the law and the right to free health care. The provision of spa physical therapy falls under the right to free health care under public health insurance within the meaning of Article 31 of the Charter. Pursuant to said provision, the definition of the scope of reimbursement of such care out of public health insurance must be set out by way of an act of law adopted in a parliamentary democratic debate, and cannot be the subject of a mere by-law.

PROTECTION OF PARENTHOOD, FAMILY AND CHILDREN

The decision making of the Constitutional Court in the area of protection of parenthood, family and children brought several important decisions last year. The Constitutional Court examined in particular the issue of protection of procedural rights of minor parties in civil proceedings. The Constitutional Court reiterated that children and juveniles enjoy the right to special protection guaranteed by the Charter of Fundamental Rights and Freedoms and the Convention on the Rights of the Child, and general courts are thus obliged to interpret the relevant procedural provisions in light of this constitutional principle as well.

In its Judgment file No. I. ÚS 3304/13 dated 19 February 2014, as well as in Judgment file No. IV. ÚS 3305/13 dated 15 October 2014, the Constitutional Court noted that compliance with Article 12 of the Convention on the Rights of the Child and Articles 36 (1) and 38 (2) of the Charter of Fundamental Rights and Freedoms requires that the court enable the child to attend the hearing and be heard in the matter, whereby not even the appointment of a guardian (ad litem) absolves the court of the obligation to involve the child in the proceeding, unless such involvement would be in conflict with the best interests of the child. A potential restriction of the above-described rights of the child thus must always be duly justified. According to the Constitutional Court, the court should appoint an attorney as the guardian of a minor party in order to ensure effective protection of the rights of the minor, rather than OSPOD, i.e., a body specialized in the protection of the rights and interests of children, since the combination of the responsibilities of a guardian (objectively) defending the best interests of the child and the responsibilities of its legal counsel is not an ideal solution. In the cases concerned, the inactivity of the guardian so appointed resulted in the absence of the adversarial principle (*audi alteram partem*), and by extension to encroachment on the right of the minor parties to the proceeding to access to the court.

In its Judgment file No. I. ÚS 1041/14 dated 4 December 2014, the Constitutional Court opined on the issue of involvement of minors in a judicial proceeding. Two payment orders for payment of debt for using public transport without a valid ticket were issued with regard to the sixteen year old complainant. One of the payment orders was demonstrably delivered to the complainant's father and the complainant herself, the other only to the complainant's father. Delivery to the mother was disputable in both cases. The complainant had the same residence as her seriously ill mother who had custody, and was not in contact with her father. She lacked funds for her personal needs and fare. The complainant's mother died shortly after the delivery of the payment orders. In 2012, when the complainant came of age, she filed appeals against the payment orders which were rejected by general courts as belated. The Constitutional Court stated that in light of the special protection guaranteed to children and juveniles by the Convention on the Rights of the Child and Article 32 (1) of the Charter of Fundamental Rights and Freedoms, where minor children are concerned, the conclusion reached as a rule ought to be that minors do not possess full procedural capacity within the meaning of the Rules of Civil Procedure, and a conclusion to the contrary can only be adopted in specific, completely exceptional situations, and must always be duly justified. Consideration need to be given in particular to the individual mental and volitional maturity of the particular child. The Constitutional Court thus quashed the contested decisions.

The Constitutional Court was further confronted with parental disputes over custodial arrangements, i.e., decisions of general courts granting custody to one of the parents, or granting joint custody, from the perspective of Article 32 (4) of the Charter of Fundamental Rights and Freedoms which guarantees the child's right to parental upbringing and care, and the corresponding right of the parent to take care of and bring up his/her child.

In its Judgment file No. I. ÚS 1506/13 dated 30 May 2014, the Constitutional Court stated that when a general court decides on a custodial arrangement between the child and its parents, adequate emphasis needs to be placed on the interest of the child at all times: the interest of the child must have priority, while consideration needs to be given to the right of both parents to bring up their child at the same time. From a constitutional perspective, the complainant's argument that the place of residence of the parents were far apart could not be upheld, as the Constitutional Court is of the opinion that that in itself is not a reason that would *a priori* rule out the suitability of joint custody of a minor child. *A contrario*, when this aspect is considered, further circumstances of the case need to be taken into account as well, in particular whether the transfer to and sojourn in a completely different environment does not place an excessive physical or psychological burden on the child, and whether the parents are capable to travel the distance at the stipulated

intervals. However, these aspects had been taken into consideration in the case in hand. For the above reasons, the Constitutional Court dismissed the constitutional complaint against the joint custody decision issued by the general court.

In its Judgment file No. I. ÚS 2482/13 dated 26 May 2014, the Constitutional Court stressed in particular that it is in the best interest of the child to be taken care of by both of its parents, and if all the statutory requirements are met, joint custody of children is a rule, rather than an exception. Although the complainant met all the criteria relevant for the decision on custody to the same extent as the mother of the minor children, general courts did not rely on the presumption that it is in the primary interest of the child to be taken care of by both parents. The general courts ruled out joint custody due to disagreement between the parents, without conducting a more thorough examination of the reasons for the disagreement. The general courts thus did not decide in the best interest of the child, and thus violated both the rights of the child and the rights of the complainant. The Constitutional Court thus quashed the contested decisions of the general courts.

In its Judgment file No. I. ÚS 3216/13 dated 25 September 2014, the Constitutional Court noted that in principle, both parents were entitled to take care of their children, and such right is only given full effect when each parent is able to take care of the child for the same period of time as the other parent. Joint custody would preserve the stability of the children's environment since the complainant found a place to live in the same municipal borough where the children lived, and the children could thus continue attending the same schools and pursuing the same after school activities. The complainant maintained regular contacts with the children who have the same emotional ties to him as to their mother, and it was established that he is able to take care of the children in all respects. The Constitutional Court therefore inferred, unlike the general courts, that joint custody was in the best interest of the children.

In its Judgment file No. I. ÚS 1708/14 dated 18 December 2014, the Constitutional Court reiterated that when the general court decides on custodial arrangements for the child, the child's wish always needs to be viewed as the principal guideline in the search for the best interest of the child. At the same time, general courts cannot automatically assume the position of the minor child and base their decisions solely on the child's wish, rather than a careful and comprehensive assessment of its interests. In the case on hand, the general courts played down the wishes expressed by the minor children, i.e., joint custody, although nothing prevented them from verifying their doubts as to the spontaneity of the wish of the minor children so expressed, or its relevance, by examining both children either directly in court or through an expert examination. As a result, the court violated the right of the minor children's father to fair trial, and his right to childcare and family life.

In its Judgment file No. I. ÚS 1554/14 dated 30 December 2014, the Constitutional Court again opined on joint custody when it stated that in exceptional cases, joint custody may be ruled out on the grounds of inappropriate or nonexistent communication between the parents; however, this must not occur without the courts attempting to establish the cause of the state of communication, and to rectify and improve the situation through suitable measures. The child ought to be placed into the custody of the parent who is more amenable to communication with the other parent and who will not prevent the child's contact with the other parent.

ENVIRONMENTAL PROTECTION (RIGHT TO GOOD ENVIRONMENT)

The right to good environment is stressed in the preambles of both the Constitution and the Charter of Fundamental Rights and Freedoms, and further, in Article 7 of the Constitution and in particular in Article 35 of the Charter. In 2014, the Constitutional Court touched upon this right in its decision making from a procedural perspective. Judgment file No. I. ÚS 59/14 dated 30 May 2014 addresses the standing of civic associations (established for the purpose of protection of nature, landscape and the environment) to move for the abolition of measures of a general nature (a zoning plan). In its judgment, the Constitutional Court defines the principal criteria for the assessment of the statutory standing of such organizations which is not completely unlimited in its opinion.

PROTECTION OF DISABLED PERSONS

The rights of disabled persons are included in the overview of the Constitutional Court's decision making as a separate category for the very first time. This decision is based on two reasons. Firstly, the number of cases pertaining to such persons and addressed by the Constitutional Court increased last year. Although the rights of disabled people are expressly mentioned only in Article 29 of the Charter, on special protection in labor relations, other provisions, in particular the ban on discrimination, are also relevant. They can further be seen as closely related to human dignity and protection of privacy as well.

Another reason may be the recognition of the importance of issues related to the protection of disabled people. In its Ruling file No. II. ÚS 365/14 dated 18 March 2014, the Constitutional Court adopted the idea of the European Court of Human Rights concerning groups of particularly vulnerable persons, from which a specific approach arises to the restriction of rights of persons seriously discriminated against in the past. Such groups include the disabled in this country. For that reason, due attention was paid to the complaint although it was found to be unsubstantiated in the end. The court based its decision on the fact that the right to education as a social right falls under the scope of Article 41 of the Charter. Therefore, its exercise requires the combined operation of other factors, and legislators are primarily entrusted with imbuing it with specific content.

Specifics concerning the disabled can be recognized in the contracting process as well. In the following judgments, the Constitutional Court addressed the invalidity of legal acts. In Judgment file No. I. ÚS 2134/13 dated 2 April 2014, it dealt with a lack of manifestation of will caused by the disability. Specifically, visual impairment was involved, and the court used an overly formalistic approach in assessing the acceptance of a proposal by persons with such handicap.

Another defective legal act examined in a proceeding before the Constitutional Court concerned a person's lack of legal capacity due to a mental disorder. In its Judgment file No. I. ÚS 173/13 dated 20 August 2014, the Constitutional Court challenged the evidentiary standard defined by the Supreme Court and required to prove the mental disorder so that the legal act could be invalidated. Nullity due to a mental disorder pursuant to the second sentence of Section 581 of the new Civil Code is only found retroactively, in the subsequent court proceeding, which represents a substantial encroachment on the legal certainty of all the parties concerned; the interest in legal certainty must be protected especially with respect to third parties who may have acquired rights as a result of acts of persons possessing full capacity, in good faith in the validity of such legal act.

Right to Judicial and Other Protections

RIGHT TO FAIR TRIAL

The right to fair trial as a right to be promoted by an independent and impartial judicial power is a key right within the legal order of every democratic state. In the most general sense of the word, it represents the right of the individual to a fair hearing of and decision on his matter before a court or other public authority. In the Czech Republic, this right is entrenched in a legal regulation of the supreme legal force, i.e., the Charter. A fair judicial process must be guaranteed in proceedings of all kinds.

Protection of the right to fair trial founds an expression in the case law of the Constitutional Court in numerous decisions, their common denominator being a balanced assessment of the matter with a view to values protected by the Constitution. The database of the Constitutional Court indicates that in 2014, the Constitutional Court examined a total of 2,530 from the perspective of the right to fair process (of the total number of 4,358), or that 192 judgments (out of 228) were indexed for "fair process". It is therefore by far the most frequently applied article of the constitutional order. It is thus difficult to choose several representative decisions out of such a high number. The overview provided below captures both completely new trends, and elaborates on previously entrenched principles.

As regards the group of people seeking to have their rights recognized by courts, in Judgment file No. I. ÚS 59/14 dated 30 May 2014, the Constitutional Court concluded that associations established for the purpose of protection of nature and landscape have standing to file a motion for the abolition of a zoning plan. They must content that they possess certain subjective rights affected by a measure of a general nature, and such contention must clearly define the encroachment purportedly committed by the self-governed unit. The applicant's local ties to the location regulated by the zoning plan, as well as the association's focus on a locally justified activity, is a material criterion. According to the Constitutional Court, developments in the Czech Republic's international obligations, EU law and provision of law brought about a change in the heretofore practice in relation to the narrow standing of associations in the representation of their members' interests in the area of the right to environmental protection.

In 2014, the Constitutional Court addressed constitutional complaints in which the parties to the proceeding made procedural acts through the public data network. In a number of cases, it intervened against a formalist assessment of such filings on the part of general courts, and gave preference to the complainants' right to fair trial. As early as in Judgment file No. II. ÚS 1911/11 dated 29 March 2011, the Constitutional Court voiced the conclusion that if the law enables the party to make procedural acts through a public data network, it is not materially conceivable that the party would be held responsible for potential errors within the delivery system. In Judgment file No. II. ÚS 2560/13 dated 20 May 2014, it applied this principle in the case of a complainant who sent off an email message before midnight, but according to the verification of electronic submission, it was only delivered on the following day, and the general court rejected the submission as a result. The Constitutional Court quashed the ruling as conflicting with the complainant's right to fair trial. An analogous decision was made in Judgment file No. I. ÚS 892/2014 dated 20 August 2014. The Constitutional Court inferred that where there are facts suggesting that an appeal against a criminal order was sent within the statutory term, the general court must interpret the question of timeliness of the submission in favor of the exercise of the right to public hearing of the matter, and personal appearance in court. The Constitutional Court believed excessive formalism had occurred also in the case addressed in Judgment file No. IV. ÚS 1829/13 dated 12 February 2014, where neither a distrainer nor the municipal court gave consideration to a submission attached as an attachment to an email message, as it was not digitally signed, although the message as a whole had been signed digitally.

Traditionally, a significant thematic category of case law pertaining to the right to fair trial is represented by cases on extraordinary appeal. Actions taken by the Constitutional Court in this area are mainly directed against the excessively formalist approach of the Supreme Court. In Judgment file No. III. ÚS 3749/13 dated 29 April 2014, the Constitutional Court quashed the decision of the Supreme Court which rejected an extraordinary appeal because it was only lodged against the decision of the court of first instance. With reference to the case law of the European Court of Human Rights as well, the Constitutional Court gave preference to the assessment of the extraordinary appeal as a whole, provided that it can be inferred from its content that it is directed against the decision of the appellate court as well. If in doubt, the Supreme Court should have proceeded in the appellant's favor. In Judgment file No. II. ÚS 3758/13 dated 25 March 2014, the Constitutional Court did not concur with the Supreme Court in that the hearing of the extraordinary appeal could not have materially impacted the complainant's status, and quashed the decision of the Supreme Court. In Judgment file No. II. ÚS 3876/13 dated 3 June 2014, the Constitutional Court concurred with the complainant that his extraordinary appeal did not suffer from defects purported by the Supreme Court in its rejection, and contained a definition of what the complainant saw as the admissibility of his extraordinary appeal. By Judgment file No. I. ÚS 2723/13 dated 1 October 2014, the Constitutional Court quashed the decision of the Supreme Court, as it did not opine sufficiently on the issue of the purported lack of fundamental legal importance of the issues outlined in the extraordinary appeal, in Judgment file No. I. ÚS 4793/12 dated 3 September 2014, the Constitutional Court pointed out contradictions in the Supreme Court's case law and the necessity to deal with them. And finally, in Judgment file No. IV. ÚS 2026/14 dated 1 October 2014, the Constitutional Court noted that the Supreme Court incorrectly assessed the fulfillment of the term for the filing of an extraordinary appeal.

Although the Constitutional Court stays away from reviewing the admissibility of evidence, in Judgment file No. II. ÚS 1774/14 dated 9 December 2014, it ruled that under exceptional circumstances, a recording of a conversation made without the participants' knowledge could be used in evidence in a labor dispute. It admitted than under regular circumstances, such willful recording was deemed to constitute a gross violation of privacy, however, in civil disputes it could be justified by an interest in the protection of the weaker party threatened with significant damage, such as a loss of a job. This measure is analogical to actions taken in a state of extreme emergency or permitted self-help (for more detail, see the chapter "Protection of Privacy").

REIMBURSEMENT FOR COSTS OF PROCEEDINGS

In 2014, the Constitutional Court in many cases also dealt with a traditional issue falling into the area of the right to fair trial - reimbursement for costs of proceeding. In this year, the Constitutional Court opined *inter alia* on the conditions for the application of the right of moderation pursuant to Section 150 of the Rules of Civil Procedure (e.g., Judgment file No. Pl. ÚS 46/13 dated 11 March 2014), on the effects of derogation of the "flat-rate consideration decree" (e.g., Judgment file No. I. ÚS 2531/13 dated 16 September 2014), or on the equality of parties to the proceeding in connection with flat-rate reimbursement for out of pocket expenses (Judgment file No. Pl. ÚS 39/13 dated 7 October 2014).

In the first renewed proceeding after the ECHR rendered a judgment in civil matters (Judgment file No. Pl. ÚS 46/13 dated 11 March 2014 concerning the decision in Čepek versus the Czech Republic), the Constitutional Court repeatedly examined the conflict between the appellate court's statement of decision on cost reimbursement and the complainant's right to fair trial, caused by the inability to respond beforehand to the non-award of costs of proceeding contemplated by the court. This "right of moderation" is vested in the court pursuant to Section 150 of the Rules of Civil Procedure, which stipulates that if there are reasons meriting special consideration, the court does not have to award costs of proceedings, whether in full or in part, in exceptional cases.

The Constitutional Court examined the constitutional principles in the area of the right of moderation in the civil procedure in other judgments as well (for instance, Judgment file No. IV. ÚS 2259/13 dated 5 February 2014, Judgment file No. II. ÚS 3627/13 dated 29 April 2014 or Judgment file No. II. ÚS 2337/13 dated 7 May 2014).

In its Judgment file No. I. ÚS 2531/13 dated 16 September 2014, the Constitutional Court clarified the effects of derogation of the "flat-rate consideration decree" (Decree No. 484/2000 Sb. of the Ministry of Justice) concerning flat-rate consideration for the representation of the party to the proceeding by an attorney or a notary public, and repealed it by Judgment file No. Pl. ÚS 25/12 dated 17 April 2013, effective as of the date of promulgation of the judgment in the Collection of Laws (i.e., as of 7 May 2013). The circumstances of the application of the legal certainty principle in relation to the derogation of the of the "flat-rate consideration decree" were also addressed by the Constitutional Court in its Judgment file No. IV. ÚS 2327/13 dated 13 May 2014.

By Judgment file No. Pl. ÚS 39/13 dated 7 October 2014, the Constitutional Court's Plenum dismissed a motion file by the District Court in Pilsen for the abrogation of Section 137 (1) of the Rules of Procedure, concerning *inter alia* out of pocket expenses of parties to the proceeding and their representatives, as it found that the contested provisions could be interpreted in a manner complaint with the Constitution in accordance with Article 36 (1) and Article 37 (3) of the Charter. The Constitutional Court further stated the principal grounds for its decision into a ruling on interpretation.

As in previous years, the Constitutional Court was also confronted with the issue of useful expenditure of costs of proceeding in a case where the state or an entity managing state property is represented by an attorney in a proceeding (e.g., Judgment file No. I. ÚS 1011/12 dated 20 February 2014, Judgment file No. I. ÚS 1838/13 dated 13 May 2014 or Judgment file No. III. ÚS 1920/14 dated 6 November 2014).

COMPENSATION FOR DAMAGES FOR UNLAWFUL DECISION AND INCORRECT OFFICIAL PROCEDURE

Case law concerning the right to compensation for damages for an unlawful decision or incorrect official procedure continues to grow, and to deal with new areas. However, it is also beginning to push against its limits, as the decisions for 2014 show. The Constitutional Court followed up on its earlier case law concerning compensation for non-material injury dating back to the Communist regime. Heretofore, decisive for it was the fact when the specific complainant took part in the rehabilitation process. What applied was that when a claim was made for compensation for a non-material injury, Article 5 (5) of the Convention and Act No. 82/1998 had to be applied, notwithstanding the fact that the actual unlawful decision on custody and punishment was issued and the non-material injury occurred before the act entered into force and before the Convention started to apply to the Czech Republic. The Constitutional Court upheld these conclusions in a number of its decisions – in Judgments file No. IV. ÚS 2265/13 dated 24 April 2014 or file No. IV. ÚS 644/13 dated 24 April 2014. However, the Plenum's opinion file No. Pl. ÚS-st. 39/14 dated 25 November 2014 ventures into a different direction: according to that opinion, the entitlement to compensation for non-material injury pursuant to Article 5 (5) of the Convention arises provided that the state's encroachment on the personal liberty of the person concerned only occurred after the international convention became binding on the Czech Republic, i.e., starting from 18 March 1992. Therefore, the time of involvement in the rehabilitation process is not relevant. However, this legal opinion shall not apply in cases where the claim for payment of compensation for the non-material injury sustained was filed before the adoption of the opinion.

EQUALITY OF PARTIES TO THE PROCEEDING

The category of equality of entities, as a fundamental principle in all modern democratic legal systems, serves as a basis for the decisions of the Constitutional Court as well. Equality is not viewed as an abstract category, but is instead implemented for instance through the principle of "equality of arms" of the parties to a judicial proceeding, or through the principle of equal opportunities (i.e., the principle of equality of all the parties to the proceeding), which is an essential part of the right to fair process, as noted by the Constitutional Court for instance in its Judgment Pl. ÚS 15/01 dated 31 October 2001.

The issue of equality was also reflected in the assessment of what evidentiary standard can be applied to prove the person's lack of legal capacity with a view to that person's mental disorder. In Judgment file No. I. ÚS 173/13 dated 20 August 2014, the Constitutional Court challenged the overly strict evidentiary standard defined by the Supreme Court, see also the part "Protection of Disabled Persons".

CONSUMER PROTECTION, PETTY DISPUTES

In its case law, the Constitutional Court has been addressing the issue of petty disputes with an increasing frequency, and not only in connection with consumer protection. While in previous years, the case law of the Constitutional Court dealt in particular with the issue of reimbursement for costs of the proceeding in the case of "form claims", year 2014 was very varied in this regard – the array of petty disputes ranged from the validity of agreements on the promotion of advertising space, i.e., assessment of the balance of rights and obligations of parties to a consumer contract, through bank fees, royalties for the playing of music in a shop, to payment of mandatory third party liability insurance for an idle vehicle entered in the central register. The reason for constitutional review of such petty matters was in particular the lack of uniformity in the case law of courts of first instance, because, with a view to the wording of Section 202 (2) of the Rules of Civil Procedure, appellate courts are frequently unable to duly respond to such decision making (and by extension, nor is the Supreme Court). Therefore, it is impossible to overlook the fact that as a direct result of this situation, parties to the proceeding who do not agree with the judgment of the court of first instance rendered in such dispute are compelled to turn to the Constitutional Court for the protection of their rights; the Constitutional Court is thus de facto put in the review role of the appellate court, as it cannot avoid assessing the facts of the case, where an extreme contradiction between factual findings and the legal conclusions inferred therefrom is contended to exist, and it thus substitutes for the activities of a general court to a certain extent.

Of key importance was in particular Judgment file No. IV. ÚS 2221/13: payment of mandatory third party liability insurance for an idle vehicle entered in the central register, in which the Constitutional Court ruled that while it is possible to infer from the very fact that a vehicle is on the register that the vehicle is being operated (and this will generally be the case), that only applies unless its owner (operator) proves otherwise.

A number of other decisions dealing with the issue of payment of mandatory third party liability insurance for an idle vehicle entered in the central register followed up on this judgment (e.g., Judgment file No. II. ÚS 1413/13 dated 7 May 2014, file No. III. ÚS 2503/14 dated 6 November 2014 or file No. III. ÚS 2503/14 dated 18 November 2014).

As regards the issue of consumer protection, or the validity of agreements on the promotion of advertising space, the Constitutional Court followed up in 2014 by its judgments (e.g., Judgments file No. II. ÚS 1810/13 dated 13 May 2014, file No. IV. ÚS 2782/13 dated 21 May 2014, file No. IV. ÚS 2369/13 dated 28 May 2014, file No. IV. ÚS 548/14 dated 12 June 2014 or file No. III. ÚS 1804/13 dated 19 June2014) on its Judgment file No. II. ÚS 4167/12 from late November 2013, in which it had addressed this issue in depth, again with a view to undesirable non-uniform decisions of general courts in disputes of this kind, featuring similar facts and legal aspects. The Constitutional Court noted in its judgment that a decision of a general court concerned with the assessment of validity of a consumer contract and based on a formalist and selective assessment of its provisions, with a view to the balance of the rights and duties of the parties, without due consideration for objections asserted by the party to the proceeding, leads to a violation of right to fair trial, guaranteed by Article 36 (1) of the Charter, as it involves an extreme contradiction between factual findings and the legal conclusions inferred therefrom. A unifying opinion of the Civil and Commercial Division of the Supreme Court of 11 December 2013, file No. Cpjn 200/2013, was only adopted later on; therein, the Supreme Court opined in detail on the invalidity of the individual provisions of the relevant agreement on the promotion of advertising space.

In 2014, the Constitutional Court also dealt with a high number of constitutional complaints concerning bank fees. In its pilot decision (Judgment file No. III. ÚS 3725/13 dated 10 April 2014), the Constitutional

Court stressed that in the case in hand, decision was made on the constitutionality of the contended encroachment on the fundamental rights of the complainant in the proceeding before the general court, rather than the bank fee "policy". In any case, the constitutional complaint was not associated with a motion for the review of constitutionality of any of the provisions of the relevant laws regulating this area of consumer law. The Constitutional Court thus assessed the issue of pettiness of the subject matter of the dispute, the requirement for unification of case law of general courts by the Constitutional Court where a court of higher instance cannot do so within the system of general courts, the issue of constitutional protection of the consumer as the "weaker party" in the contractual relationship, and the issue of reimbursement for the costs of proceedings. A number of negative decisions (e.g., Ruling file No. I. ÚS 3731/13 dated 12 August 2014) followed up on this partly negative and partly dismissive ruling.

Other interesting decisions in the area of petty disputes included Judgment file No. II. ÚS 3076/13 dated 15 April 2014, on the payment of royalties for reproduction of music in a bicycle shop. In this particular case, the Constitutional Court rejected the approach chosen by general courts, according to which it was sufficient to prove that a technically fit appliance was located in the complainant's shop, and that it broadcasted during opening hours.

SPECIFIC ASPECTS OF THE CRIMINAL PROCEEDING

In 2014, the case law of the Constitutional Court relating to constitutional aspects of the criminal proceeding dealt with several themes; specifically, the basic principles of criminal law and fundamentals of criminal liability, evidencing and requirements applicable thereon, and the right to defense. In its Judgment file No. II. ÚS 2258/14 dated 16 December 2014, the Constitutional Court dealt with the *nullum crimen sine lege* principle, i.e., no crime without law, as expressed in Article 39 Charter of Fundamental Rights and Freedoms, and found it was violated due to an incorrect substantive classification of the deed concerned. The Constitutional Court opined on criminal liability and the principle of subsidiarity of criminal repression in Judgment file No. I. ÚS 3113/13 dated 29 April 2014, in which it addressed the resolution of family conflicts through various legal means, as well as the moral aspects of such problems. The Constitutional Court further addressed the issue of subsidiarity of criminal repression and social harmfulness of certain conduct in a judgment with much media exposure, Judgment file No. III. ÚS 934/13 dated 20 February 2014, concerning grow shops, in which it place a particular stress on the necessity of using primarily means outside criminal justice to rectify the consequences of unlawful conduct and to protect the society.

The Constitutional Court's decision making in the area of evidencing in criminal proceedings and the assessment of evidence was fairly ample, in particular with regard to the principle of presumption of innocence. In Judgment file No. IV. ÚS 787/13 dated 9 June 2014, the Constitutional Court reiterated, with reference to its case law pertaining to the single piece of inculpatory evidence, that in such case, penal authorities are obliged to make best effort to supplement such evidence with other, at least circumstantial but convincing evidence. The Constitutional Court opined on general requirements on the quality of evidencing in criminal proceedings in Judgments file No. II. ÚS 2564/12 dated 8 July 2014 and file No. III. ÚS 587/14 dated 7 May 2014, in which it also mentioned its earlier case law dealing with this topic. The Constitutional Court elaborated on its conclusions on the assessment of evidence in the light of the *in dubio pro reo* principle, which is a reflection of the presumption of innocence principle entrenched in Article 40 (2) of the Charter of Fundamental Rights and Freedoms, in Judgments file No. II. ÚS 658/14 dated 14 October 2014 and file No. III. ÚS 888/14 dated 10 July 2014.

The Constitutional Court dealt with the use of specific evidence, a secret witness, in its Judgment file No. II. ÚS 3780/13 dated 11 November 2014, in which it also examined the constitutionality of the process pursuant to Section 226 of the Rules of Criminal Procedure (where the appellate court, when referring the matter back to the court of first instance, orders that a tribunal of a different composition hear and decide the matter) in terms of the right to a lawful judge pursuant to Article 38 (1) of the Charter of Fundamental Rights and Freedoms. Judgment file No. I. ÚS 1677/13 dated 23 October 2014 can be viewed as a key decision of 2014 in the field of constitutionality of evidencing in criminal proceedings: in said judgment, the Constitutional Court opined on the applicability of evidence obtained, and in particular on the doctrine of "fruits of a poisoned tree".

In 2014, the Constitutional Court touched upon the right to defense in several of its judgments; most of all in Judgment file No. III. ÚS 366/14 dated 10 July 2014, in which it examined the issue of putting handcuffs on the accused, and leaving them on, during the main hearing, not only in terms of right to defense, but also in terms of the right not to be subjected to degrading treatment, guaranteed by Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and Article 7 (2) of the Charter of Fundamental Rights and Freedoms.

DISTRAINT PROCESS

In several of its judgments (e.g., Judgment file No. IV. ÚS 2327/13 dated 13 May 2014, file No. I. ÚS 2531/13 dated 16 September 2014), the Constitutional Court addressed the issue of award of costs of distraint pursuant to the "flat-rate consideration decree" - Decree No. 484/2000 Sb., which had been repealed by the time when the decision on the costs of the relevant distraint process was made (or rather when the proceeding on objections against the order for payment of the costs of distraint was pending). The Constitutional Court noted that in a situation where the Constitutional Court decided to abolish the flat-rate consideration decree *en bloc* by its Judgment file No. Pl. ÚS 25/12 dated 17 April 2013, effective as of its promulgation in the Collection of Laws, i.e., as of 7 May 2013, if a general court awarded costs of distraint pursuant to the repealed decree on 11 July 2013, it acted in conflict with Article 36 (1) of the Charter and Article 89 (2) of the Constitution. The Constitutional Court further opined on the authority of the bailiff to demand information from an attorney of the obligor within the meaning of Section 33 (4) of the Distraint Code in Judgment file No. I. ÚS 3859/13 dated 10 September 2014. In this particular case, the Constitutional Court noted that a mere procedural representation, consisting e.g. from the payment of court fees out of the legal counsel's account, and the filing of motions for the initiation of proceedings, cannot be viewed as property management within the meaning of the Distraint Code, and the attorney cannot be asked to provide comprehensive information on all the property disputes of the client, in his capacity as obligor in the distraint process.

In 2014, the Constitutional Court also followed up on its case law concerning the costs of distraint and the remuneration due to the bailiff in the event that the obligor pays up voluntarily (e.g., Judgments file No. III. ÚS 3507/13 dated 10 April 2014, file No. IV. ÚS 3523/13 dated 7 May 2014 or file No. I. ÚS 1398/12 dated 1 July 2014). The Constitution Court repeatedly noted in those judgments that if the distraint courts, when determining the remuneration to the bailiff, fail to give consideration to the fact that the obligor, although only after distraint is ordered, but before it is carried out, voluntarily pays the full amount to the oblige without direct involvement of a bailiff, they act in breach of the (obligor's) fundamental right to the protection of ownership pursuant to Article 11 (1) of the Charter, and the right to fair trial pursuant to Article 36 (1) of the Charter; moreover, when the distraint courts fail to respect the binding case law of the Constitutional Court, they also violate Article 89 (2) of the Constitution.

The Constitutional Court reiterated (e.g., in Judgment file No. I. ÚS 3571/12 dated 28 July 2014) that even though no legal regulation expressly orders a bailiff to join matters related in all regards, such approach is highly desirable with a view to both the economy of proceedings (Section 112 of the Rules of Civil Procedure), and the minimization of encroachment on the obligor's fundamental right to ownership.

Asylum, Extradition, Expulsion

The state's relationship to foreigners in its territory is very complex, and differs also in terms of its purpose. While the purpose of the asylum procedure is to "suffer" the presence of a foreign national in the territory, in case of extradition and expulsion, the purpose is to transfer the person to another state in connection with unlawful conduct. The punishment of expulsion may also be imposed for an indefinite term pursuant to the Criminal Justice Code. In the case conducted under file No. I. ÚS 4503/12, the Constitutional Court examined the criteria to be taken into consideration by the court when imposing this punishment in light of Articles 36 and 39 of the Charter. If the judicial consideration is not carried out and justified duly, Article 39 of the Charter prohibiting the imposition of punishment in other than lawful manner is violated.

Extradition of persons to another state for criminal prosecution or punishment is based on the Czech Republic's international obligations. The same applies to the provision of international protection. Considerable problems arose precisely from the application of these two contradictory institutes, mainly due to the fact that the Czech legal order permits a concurrent conduct of asylum and extradition proceedings. International extradition treaties and human rights documents, in conjunction with the non-refoulement principle, thus come into conflict.

In 2014, the Constitutional Court followed up on Judgment file No. III. ÚS 665/11 dated 10 September 2013, which reflected legal conclusions voiced in Opinion of the Plenum file No. Pl. ÚS-st. 37/13 dated 13 August 2013, in which the Constitutional Court opined on the issue of the relationship between the proceedings. According to the opinion, the grant of asylum, as well as the asylum proceeding, including a review thereof, bars the permission to extradite an alien. Both judgments issued this year drew on the above decisions, and the Constitutional Court quashed the minister's decisions permitting the extradition of the alien in both cases.

In the case of Judgment file No. I. ÚS 2211/13 dated 18 June 2014, a decision which had unfortunately already been enforced was quashed. The Constitutional Court noted that the fact that the complainant had already been extradited to the Russian Federation for criminal prosecution cannot impact the affirmative verdict of the Constitutional Court, which found that the complainant's fundamental rights had been violated. The Constitution Court was compelled to state that the violation had occurred, because even a largely academic verdict serves a purpose in the area of protection of constitutional rights, and serves a potential reparatory role vis-à-vis the alien. According to the court, the decision permitting extradition, issued by the minister before the asylum procedure was completed, made its continuation virtually dependent on a random fact, i.e., whether the extradition would be carried out while the asylum procedure was still pending, or only afterwards. By extending the asylum procedure, the Ministry of Interior itself could achieve a situation where it would be compelled to terminate the proceeding because of the asylum seeker's extradition. That would result in unequal status of asylum seekers and to arbitrariness, and would mean a violation of the right to fair process, as well as Article 43 of the Charter of Fundamental Rights and Freedoms.

Judgment file No. II. ÚS 1221/13 dated 29 January 2014 concerned a national of the Republic of Georgia who had unsuccessfully sought asylum as early as 1996. A further proceeding on asylum was still pending on the date of issuance of the judgment. The complainants sought to have quashed rulings of general courts on the admissibility of extradition and the minister's decision repeatedly permitting his extradition, as the previous rulings had been quashed. In the case in hand, the Constitutional Court addressed a change of circumstances in the country to which the alien is to be extradited, which formerly justified the inadmissibility of his extradition. In such case, it cannot be ruled automatically that there is no real danger that the person would be exposed to torture, inhuman or degrading treatment or punishment, or a danger of flagrant denial of justice, and it is necessary to examine, *per analogiam* to Section 17 (2) and Section 17a (2) of the Asylum Act, whether the change of circumstances in the foreign country is relevant to the alien to be extradited in the relevant situation, and whether the change is of a permanent nature. In Judgment file No. I. ÚS 1801/14 dated 9 December 2014, the Constitutional Court further pointed out the risks of drawn-out proceedings on international protection and its impact on the extradition procedure, but also in particular on the complainant's sojourn in provisional custody.

Decisions of the Ministry of Interior in asylum proceedings may be contested by actions lodged with administrative courts. Although the action does not have a suspensory effect, it may be given suspensory effect on the claimant's request. In Judgment file No. III. ÚS 2331/14 dated 18 September 2014, the Constitutional Court examined the particulars of the *ratio decidendi* provided by a court in a decision which did not grant suspensory effect.

STATISTICAL DATA

Statistical Data - Decisions of the Constitutional Court in 2014

DECISIONS IN 2014 IN TOTAL

4394

Judgments	Rulings	Opinions of the Plenum
236	4156	2

RULINGS IN 2014 (INCLUDING PROCEDURAL)[II]

4156

Manifestly unfounded	Defective filing	Belated	Complainant lacked standing	Lack of jurisdiction	Inadmissibility	Terminated
2864	566	134	72	29	560	51
68,9 %	13,6 %	3,2 %	1,7 %	0,7 %	13,5 %	1,2 %

JUDGMENTS IN 2014[I]

236

Granted (at least in part)	Dismissed (at least in part)	Granted and dismissed
208	36	8

PLENARY DECISIONS IN 2014[III]

41

Judgments	Rulings
14	27

SENATE DECISIONS IN 2014

4351

Judgments	Rulings (including procedural)
222	4129

[I] Certain judgments contain multiple verdicts, and that is why the sum of judgments were the motion was granted at least in part, and the number of judgments where the motion was dismissed, does not correspond to the total number of judgments. There was a total of "dual" judgments (granted and dismissed at the same time), as captured in the table.
[II] A not negligible number of rulings contains multiple verdicts. The table shows the number of rulings, the absolute sum of which does not correspond to the sum of rulings adopted (this applies similarly to the percentages where the sum does not equal 100%, and the number of the individual types of verdicts relates to the total number of rulings, including procedural rulings).
[III] Apart from opinions of the Plenum (two in 2014).

PROCEEDINGS ON THE ABROGATION OF LAWS AND OTHER LEGAL REGULATIONS – NUMBER OF DECISIONS

17

Granted (at least in part)	Not granted
7	10

Motions for the abrogation of a law	Motions for the abrogation of other legal regulation	Motions for the abrogation of a by-law of general application	Motions for the abrogation of municipal/ regional decrees
14 (8 judgments)	1 (1 judgment)	1 (1 judgment)	1 (1 judgment)
Grantedat least in part	Grantedat least in part	Grantedat least in part	Grantedat least in part
5	1	1	0

PROCEEDINGS ON CONSTITUTIONAL COMPLAINTS[v] – NUMBER OF DECISIONS

4369

Granted (at least in part)	Not granted (meritory and quasi-meritory decisions; excl. procedural decisions and termination of proceedings)
201	4057 (82 judgments, of that, 31 dismissals and 7 both dismissals and affirmations)

Constitutional complaint was directed against:[vi]

Court decision	Administrative decision	Other decision	Other encroachment	Law	Other legal regulation	OZV	Municipal/regional decree	Decision of the CC	OP	Internal regulation	Other
4142	128	158	126	136	11	0	0	0	0	0	38

PROCEEDINGS ON MEASURES REQUIRED TO ENFORCE THE DECISION OF AN INTERNATIONAL COURT - MOTION FOR RENEWAL OF PROCEEDINGS – NUMBER OF DECISIONS

6

Granted	Not granted
6	0

[v] This also includes proceedings on communal complaints pursuant to Article 87 (1)(c), and proceedings on motions filed by a political party or movement pursuant to Article 87 (1)(j) of the Constitution.
[vi] Some filings are directed against multiple types of acts; therefore, the sum of decisions on constitutional complaints does not correspond to the number of motions in this part of the table.

Average length of proceedings in matters completed in 2006–2013

	In days	In months and days
Average length of proceedings in all matters	**166**	**5 months 16 days**
in plenary matters	377	12 months 17 days
in senate matters	163	5 months 13 days
in matters ending in a judgment	404	13 months 14 days
in matters dismissed as manifestly unfounded	174	5 months 24 days

Average length of proceedings in matters completed in 2014

	In days	In months and days
Average length of proceedings in all matters	**163**	**5 months 13 days**
in plenary matters	396	13 months 6 days
in senate matters	161	5 months 11 days
in matters ending in a judgment	350	11 months 20 days
in matters dismissed as manifestly unfounded	178	5 months 28 days

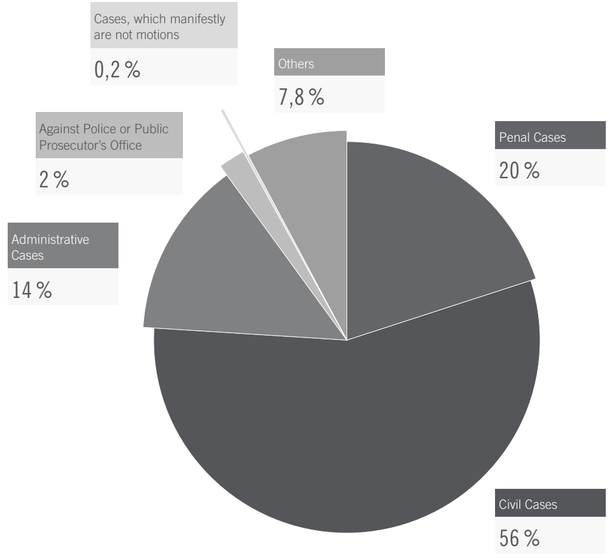
Public oral hearings

NUMBER OF PUBLIC ORAL HEARINGS IN 2010–2014

Year	Plenary matters	Senate matters
2010	7	18
2011	8	20
2012	2	17
2013*	1	1
2014	0	0

* reduction of the number of public oral hearings due to a change in the law

Substantive structure of motions



Statistical data based on number of motions

NUMBER OF SUBMISSIONS

Year	Total	CC Plenum	Constitutional complaints and other	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	2 022	46	1 976	240
1998	2 199	30	2 169	235
1999	2 568	24	2 544	283
2000	3 136	59	3 077	449
2001	3 045	39	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	1 010
2013	4 076	56	4 020	963
2014	4 084	27	4 057	908
Celkem	63 140	1 010	62 130	12 765

Developments in number of submissions in 1993–2014

PHOTO GALLERY

Visit at Federal Constitutional Court in Karlsruhe, May 2014.

Visit at Constitutional Court in of Slovenia, Lubljana, October 2014.

Congress of CECC, Vienna, May 2014.

World Conference on Constitutional Justice,
Seoul, September 2014.

Colloquium with Aharon Barak, Brno, June 2014.

Visit of H.E. Dean Spielmann to Constitutional Court, Brno, April 2014

© Ústavní soud / Jan Symon

Aharon Barak, June 2014.

Papers Delivered by Aharon Barak and Eliška Wagnerová at Constitutional Court's Colloquim

Human Dignity (Colloqium held by the Constitutional Court in June 2014, with Aharon Barak)

On 18 June, the Constitutional Court, in collaboration with the Embassy of the State of Israel, held a colloquium with Professor Aharon Barak, one of the most important legal philosophers of the modern era and President Emeritus of the Supreme Court of Israel, as the keynote speaker. The topic of the colloquium was "Human Rights and Dignity", and Vice-president Emeritus of the Constitutional Court, Eliška Wagnerová, seconded the renowned Israeli professor. Both papers are provided below for the benefit of the readers of the English version of our yearbook.

Aharon Barak

Human Dignity: The constitutional value and the constitutional right

Human dignity has a long intellectual history, both religious and philosophical. It has spawned conflicting understandings. What should judges do with this wealth of ideas when they are called upon to interpret the concept of 'human dignity', as part of a constitutional bill of rights? They certainly cannot ignore the rich history of human dignity. But neither can they be satisfied with the conclusion that it is a vague concept. Their judicial role obligates them to furnish vague concepts with content. This is what they have done in the past, giving meaning to vague concepts such as liberty and equality. They must now do so again when they encounter the concept of human dignity as part of their constitution. But how?

To answer this question, it is appropriate to distinguish, with respect to human dignity, between two fundamental constitutional situations. The first is where human dignity serves as a constitutional value but not as a constitutional right. This is the case in Spain, the US and Canada. The second is where human dignity serves not only as a constitutional value but also as a constitutional right. From my perspective, this seems to be the

situation in the Czech Charter of Fundamental Rights and Freedoms. Article 1 refers to human dignity as a value, while article 10 refers to human dignity as a constitutional right.

HUMAN DIGNITY AS A CONSTITUTIONAL VALUE

The role of human dignity as a constitutional value

I shall begin with a discussion of human dignity as a constitutional value. Human dignity as a constitutional value has several functions in the field of human rights. It provides the theoretical foundation for human rights; it assists in the interpretation of human rights at the sub-constitutional level; it is one of the values that every constitutional right is intended to realize; it plays a role in the limitation of constitutional rights and in determining the limits to such limitations; it plays a primary interpretative role in those cases where the constitution does recognize a constitutional right to human dignity.

The Meaning of Human Dignity as a Constitutional Value

What is human dignity as a constitutional value? The answer provided by most supreme and constitutional courts in modern constitutional democracies is that human dignity means humanity: Human dignity as a constitutional value is the humanity of each person as a human being; it is the freedom of choice of human beings and the autonomy of their will. It is their human identity. It is the freedom of each individual to write the story of his or her life. It is the freedom from humiliation and degradation. It is preventing anyone from be reduced to a mere means for the satisfaction of another's will. Human dignity functions within the context of society. It represents a holistic approach to the internal and emotional world of human beings, their social identity, and their relationships with others. This, in my opinion, is the modern version of Prof. Waldron's idea that every man has the status and rank of a king.

This concept of human dignity as a constitutional value, though based on dignity's long intellectual history, is characterized by its modern nature. We are concerned with the dignity of a person in today's society. In many respects, there is a Rawlsian 'overlapping consensus' between this understanding of humanity and the religious or the Kantian perspective on humanity.

In their judgements, judges will take into account the external and the internal contexts characterizing the specific legal system. The external context consists of the historical and social background that led to the recognition of human dignity as a constitutional value. The internal context reflects the constitutional architecture. It comprises the structure of the constitution and the bill of rights, generally, and the normative status awarded to the value of human dignity within these constitutional documents, specifically. Differences in these contexts among the various legal systems can lead to differences in the understanding of the value of human dignity and the implications of that understanding. Having considered the external and internal contexts, judges will express their understanding of how the society in which they are ruling views the concept of human dignity. They thereby express its history and its basic and fundamental values. That is what judges do when they express their society's conceptions of equality, liberty, freedom of expression, and the other values underlying constitutional rights. They are not expressing their own personal outlooks but rather the outlook of the society in which they operate. Judges will also use information drawn from other constitutional documents, such as the preamble to the constitution or the declaration of independence. They will be assisted by the case law dealing with the concept and other similar concepts. They will examine comparative constitutional law and international law. They will focus on the foundational values and concepts, rather than the passing spirit of the times. They will express the long-term beliefs of a society, not the temporary and fleeting. History – not hysteria. All of these elements together allow judges to give expression to a society's conceptions about the humanity of the person as a constitutional value.

This approach gives the constitutional value of human dignity a broad reach. Each constitutional right has a special purpose, reflecting its unique nature. Yet alongside these special purposes, constitutional rights also rest upon the general purpose of realizing the value of human dignity. The result is that the purposes of most constitutional rights partly overlap with each other, because what they share in common is the general purpose of realizing human dignity. The majority of this overlap is complementary in nature: the constitutional value of human dignity which is common to most constitutional rights serves to strengthen the unique constitutional value characterizing each specific right. However, to some extent this partial overlap is also contradictory. The humanity of one person may conflict with the humanity of another. My free speech – expressing my humanity – may conflict with your reputation – reflecting your humanity. Thus, when two constitutional rights clash, the value of human dignity may be found on both sides of the scale.

How can these cases of conflict be resolved? Must we balance among the conflicting purposes on the constitutional level? This interpretative balancing would have an impact on the scope of the various constitutional rights. In my opinion, this type of balancing is inappropriate. Conflicting overlaps are a natural phenomenon in the realm of constitutional values. They do not reflect a mistake in the constitutional text. They reflect the richness of the humanity of the human being with all of its inherent contradictions. Therefore, these conflicting partial overlaps should be left untouched, without a solution at the constitutional level. Let a thousand flowers of constitutional values (either complementary or contradictory) bloom at the constitutional level. Yet, simultaneously, a solution should be sought on the sub-constitutional (statutory) level, through the law of proportionality.

HUMAN DIGNITY AS A CONSTITUTIONAL RIGHT

Let me now proceed to an analysis of human dignity as a constitutional right. Human dignity is recognized as a constitutional right in many modern constitutions. It is a constitutional right in article 10 of your Charter. In most countries, as in yours, the right is not absolute. It is relative, and thus can be limited. The ordinary rules that are applicable to limitations on a constitutional right also apply to limitations on the right to human dignity. In most constitutions, the law of proportionality provides (expressly or impliedly) that not every limitation of the right to human dignity is unconstitutional. Only a disproportionate limitation of human dignity is unconstitutional. German constitutional law is different, in that the right to human dignity is absolute, and the law of proportionality is inapplicable to it.

In most cases, as in the Czech Republic, the constitutional right to human dignity is not an eternal right. Rather, it is subject to change through a constitutional amendment, pursuant to the accepted procedures for doing so. This is not the case, however, under German constitutional law, in which the constitutional right to human dignity is not subject to constitutional amendment. In a number of constitutions, and here I am not sure what the stuation is in your Charter, the right to human dignity is both a negative and positive right. The state's obligations are not satisfied solely by refraining from imposing limitations on the right to human dignity (the negative aspect of respecting the right). The state must also take action to protect human dignity and to facilitate its realization (the positive aspect of protecting the right). The constitutional right to dignity is intended to ensure human beings' political and civil liberties as well as their social and economic freedoms.

THE SCOPE OF THE RIGHT TO HUMAN DIGNITY

The scope of the constitutional right to human dignity will be determined by its underlying purposes. The central purpose of the right to human dignity is the fulfilment of the constitutional value of human dignity, that is, the humanity of the person as a human being. However, the constitutional architecture may prevent the complete fulfilment of the value, and may lead to the conclusion that the scope of the constitutional right to human dignity is narrower than the scope of the constitutional value of human dignity. This is the case of German constitutional law. First, we shall discuss the situations in which the purpose of the right to human dignity is to fulfil the value of human dignity. Thus, the scope of the right and the scope of the value are identical. Then we shall examine the exceptional case of the right to human dignity in German constitutional law.

As to the general case where the purpose of right to human dignity is to fulfill the value of human dignity:

The right's scope extends to all those activities in which human beings must be recognized as free agents, developing their body and mind according to their own free will. Human beings' free will is an expression of their humanity, and of their desire to shape and guide their own lives and realize themselves.

It is the right of all human beings to develop their own personality, character, lifestyle, identity, relationships with others, and world view. It is the right to decide with whom to share one's life, start a family, and raise children. It is the right to parenthood. It is the right to decide where to be and where to go. It is the right to enter into a contract, choose a name, grow a beard, have sexual relations, eat whatever one wants, and speak whichever language one chooses. It is the right to think and to want. It is the right to decide what to believe and what not to believe. It is the right to know who your father is, who your mother is, and where you came from. It is the right to raise, nurture, and educate our own children. It is the right to write the story of our own lives.

Free will is closely related to the autonomy of individual will. Its meaning is that human beings—each individual by himself, and not another; each individual, and not the state—control their own fate. Human beings are the masters of their own bodies and the way they are treated. Free will is also the right to be left alone.

The humanity of human beings mandates the recognition of their worth as individuals, irrespective of the benefit they provide to society. A human being is not merely a means of generating profits for another person. All human beings are equal, and no one controls another's freedom of choice. Each person is a world unto herself, an end unto himself. People should not be held responsible for actions they have undertaken which were not of their own free will. The responsibility imposed upon them for their actions should not be based on vengeance, nor should a person be used only as a means of deterring others.

The humanity of human beings is their humanity within the society in which they live. It is not humanity on a desolate island. This is humanity which is built on the mutual relationships between the individual and other individuals, and between them and the state. Thus the need arises to guarantee the minimum subsistence level and the conditions of education, health, food, and employment, which enable individuals to realize their free will and their autonomy. Thus the need arises to protect a person's reputation, and to ensure that people can participate in society by expressing themselves and influencing its direction. Discrimination against people infringes their identity. The humanity of human beings is realized when each is an equal among equals in the society in which they live. The humiliation and degradation of human beings limits their humanity.

Let me now refer to the special case of human dignity as a constitutional right in the German constitution

In German constitutional law – as in other constitutions – the value of human dignity means the humanity of the human being. It is the supreme value of the German constitution. It is viewed as the spirit and the essence of the entire Constitution; it is the epicenter of the constitutional structure; it is the primary principle governing all parts of the Constitution. This supreme status reflects the idea that Germany has renounced its Nazi past and the grave violations of human dignity which characterized it, and has placed the human dignity, which was desecrated by the Nazis, as its highest priority.

The constitutional right to human dignity in the Grundgesetz is an absolute right. It is not subject to the rules of proportionality and the balancing which is undertaken in its framework. It is an eternal right. It is not subject to constitutional amendment. As human dignity is an absolute right, any limitation imposed on it is unconstitutional. Thus, the scope of the constitutional right to human dignity must be very narrow. It cannot extend to all aspects of the humanity of human beings. Thus, under German constitutional law, the right to human dignity applies only to those extreme situations in which the taboos relating to human existence are violated. This framework includes the prohibition of torture, the prohibition of humiliation and the ensuring of minimum subsistence levels for every person in society. The criterion for understanding the right to human dignity is that it is violated whenever a person is considered as mere means to achieving someone else's goals. The right to human dignity in German constitutional law, is limited to always considering each person as an end unto itself and not as a means (an object). This is the 'object formula' influenced by Kantian philosophy.

This understanding of human dignity is narrower than the understanding of human dignity as the humanity of the human being. The external interpretive context, encompassing the historical and social background, might have led to the identification of human dignity in German constitutional theory with the humanity of the human being. However, the internal interpretive context, which is concerned with the constitutional architecture, leads instead to the detachment between the scope of the constitutional value of human dignity and the scope of the constitutional right to human dignity. Because the constitutional architecture endows the right to human dignity its absolute and eternal nature, only those specific aspects of the value of human dignity which are related primarily to the viewpoint that humanity is an end unto itself and not a means, set the scope of the constitutional right to human dignity.

I will move now to the area covered by the right to human dignity.

Owing to the extended scope of the constitutional value of human dignity, the constitutional right to human dignity also has an extended scope. This situation raises many questions. I will discuss three methodological questions: First, is there any area of human behaviour which is exclusively protected by the constitutional right to human dignity? Second, what is the role of the constitutional right to human dignity in areas where there is a complementary overlap between the right to human dignity and other constitutional rights? Third, what is the law when there is a conflicting overlap between the constitutional right to human dignity and other constitutional rights?

(1) The area exclusively covered by the right to human dignity

The answer to the question of whether human dignity has a domain (or 'normative territory') to which it is exclusively applicable is found within the structure of each state's constitutional bill of rights. To the extent that a bill of rights is more comprehensive and richer with respect to the constitutional rights that have human dignity as one of their underlying purposes, the domain which human dignity exclusively applies to as a constitutional right will be diminished. Consider the Bill of Rights in the Constitution of South Africa. It contains most of the (civil and social) constitutional rights recognized in comparative law. As a result, most situations falling within the scope of the right to human dignity also fall within the scope of other constitutional rights. For example, human dignity is one of the important components underlying the right to equality. To the extent that discrimination affects this component, it is prohibited by both the constitutional right to equality and the constitutional right to human dignity. Thus, in the area of discrimination the right to human dignity does not exclusively apply. To what, if anything, then, does the constitutional right to human dignity exclusively apply in South Africa? Is there a 'normative territory' which belongs exclusively to human dignity? The answer is that its exclusive coverage applies only to those areas that are included within the constitutional right to human dignity, but do not fall within the scope of any other constitutional right. For example, the protection of a person's reputation and the right to family life are not recognized in the Constitution of South Africa as independent constitutional rights. These are the exclusive aspects of the constitutional right to human dignity in the South African Constitution.

Theoretically, there may be a situation in which a constitutional charter of human rights is so extensive that it covers any and all behaviour that limits human dignity, even without a specific right to human dignity. This is likely to occur with a bill of rights that includes a 'catch-all clause', that is, a provision stating that any behaviour that limits the individual's freedom of choice and that is not covered by the other constitutional rights falls within the category of the catch-all right. In such a situation, in theory, the right to human dignity does not have any unique 'territory' of its own, because any behaviour limiting human dignity which is not included in any of the special rights falls within the bounds of the catch-all right.

This seems to be the case with the bill of rights in the Constitution of Germany, which recognizes the right to the development of one's personality. This right has been interpreted as a catch-all right (Auffanggrundrecht). Any state action limiting an individual's freedom of choice not covered by one of the specific constitutional rights recognized in the German Constitution falls within the bounds of the right to the development of one's personality. This, then, appears to leave a narrow field of operation unique to the right to human dignity in the German Constitution Essentially, it seems to me that the right to human dignity in the German Constitution is perceived as protecting

against the limitation of one of the other constitutional rights in a way that infringes upon the right to human dignity. Human dignity is thereby joined to one of the other rights recognized in the Constitution, and operates as a marker for the unconstitutional limitation of such a right. Such limitation is not subject to proportionality, as it reflects the absolute nature of the constitutional right to human dignity in German constitutional law. This is the case when the restriction of a constitutional right turns the person who is harmed into merely a means of realizing the public interest (the 'object formula'). In other constitutions, it may be the right to liberty or the right to life which fulfils this role of the catch-all right. However, even then, the existence of a separate constitutional right to human dignity is nevertheless important, for two reasons. First, the future is unknown. Developments may occur which will not fall within the bounds of the catch-all right, but which may find their place within the scope of the right to human dignity. Second, even if the constitutional right to human dignity does not have unique scope, the fact that a state action limits not only a specific constitutional right but also the right to human dignity carries legal significance. The existence of the constitutional right to human dignity gives human dignity special bearing, precisely because it is an independent constitutional right and not just a constitutional value.

(2) Complementary overlap between the constitutional right to human dignity and other constitutional rights

Different aspects of the value of human dignity are protected by many constitutional rights. Yet these aspects are also entitled to protection within the scope of the right to human dignity. Thus, there are strong dignitary considerations within most of the constitutional rights, such as: the right to equality, free speech, freedom of profession, and property. The result is a complementary overlap between the right to human dignity and other constitutional rights. What is the relationship between the right to human dignity and other constitutional rights within this complementary overlapping area? The fact that a complementary overlapping area exists should not result in any changes in the scope of the constitutional rights that overlap. There is no reason to withdraw the overlapping area from the scope of the right to human dignity, just as there is no reason to withdraw it from the scope of the other rights. The complementary overlap does not lead to any changes in the boundaries of any of the constitutional rights, because each right is independent with respect to the scope it requires for its underlying purpose. Each right is reinforced by the support given to it in the overlapping area.

But is it not the case that when there is a complementary overlap we in effect apply only the specific constitutional right, and not the constitutional right to human dignity? This kind of approach can be found in the case law of the Constitutional Court of South Africa.

In my opinion, in the case of a complementary overlap between the constitutional right to human dignity and other constitutional rights, each right must be considered separately. The constitutional right to human dignity must not be treated as a residual right, because this would be inconsistent with the centrality of the right to human dignity within the constitution, and it is inappropriate from a methodological perspective as well. The specific right does not detract from the general right to human dignity. Both are applicable to the limiting behaviour, each from its own perspective. The complementary overlap is not given normative expression on the constitutional level, but rather at the sub-constitutional level. A statute that limits a constitutional right in an area in which there is a complementary overlap will be constitutional only if it is proportionate. This proportionality must be examined separately for each of the constitutional rights, especially if the proportionality requirements for each right are different. However, even when a general limitation clause applies to all of the constitutional rights, any limitation must be analysed separately from the perspective of each of the constitutional rights. There are two resons for this: First, the weight given to a public interest that justifies limitation of the constitutional right to human dignity may differ from its weight as a justification for a limitation of the particular constitutional right. Second, the weight given to the protection of the particular constitutional right (where human dignity might be limited at the penumbra) may be different from the weight given to the protection of the constitutional right to human dignity (where the limitation might be close to the core).

(3) Conflicting Overlap (collision)_between the Constitutional Right to Human Dignity and Other Constitutional Rights

In some cases the constitutional right to human dignity conflicts with another independent constitutional right. How should this conflict be resolved? At the constitutional level, the conflict remains. The conflicting partial overlap does not modify the scope of either of the conflicting constitutional rights. Just as in the case of a complementary overlap, the scope of the rights remains unaffected. Accordingly, the result of the conflict is relevant only at the sub-constitutional level. This follows from the understanding that a conflicting overlap between rights is not the result of a mistake, nor does it reflect a constitutional pathology. We do not expect that the constitutional right that is overruled by another constitutional right be wholly or partially withdrawn from the array of constitutional rights. Nor do we proclaim that the special right prevails over the general right. The conflicting overlap demonstrates the richness of the constitutional arrangement and the ongoing conflicts among its components. The Israeli Supreme Court ruled in one case:

The hallmark of democracy is the wealth of rights, values and principles and the ongoing conflicts among them. More than once it has been said that constitutional rights, values and principles are in contradictory pairs. Resolution of these contradictions—which are natural in a democracy and give it its vitality—is not generally done by determining the scope of the rights, values and interests and withdrawing the aspects which do not prevail from the constitutional discourse and constitutional scrutiny. These conflicts are resolved by leaving them at the constitutional level, while determining the degree of protection given to the rights, values and interests that clash at the level of ordinary legislation.

According to this approach, when a statute limits one constitutional right (such as privacy) in order to protect another constitutional right (such as the right to freedom of expression) the constitutionality of the statute should be determined in the second stage of the constitutional analysis, where the proportionality of the limitation is decided. This determination takes place at the sub-constitutional level. A statute that restricts one right in order to protect another is constitutional if it is proportional. Thus, even if the limiting statute is determined to be proportional, this result does not restrict the scope of the right that is limited, nor does it expand the scope of the right that is protected.

Before I finish my lecture, I would like to refer to the specific Israeli case of Human Dignity, and how it was constructed by the Israeli Supreme court.

THE ISRAELI CASE

The Israeli Bill of Rights contains a limited number of independent constitutional rights. They are: the right to life, the right to the body, the right to human dignity, the right to property, the right to personal liberty, the right to freedom of movement into and out of Israel, the right to privacy, and the right to freedom of occupation. Many of the rights recognized in comparative law have not been recognized as independent constitutional rights In the Israeli Bill of Rights. The Supreme Court has interpreted their absence from the bill of rights as having been intended to signal non-recognition of them as independent constitutional rights. However, it has not interpreted this as entirely negating their existence. It has recognized certain of their aspects within the framework of the right to human dignity. Against this backdrop, the Supreme Court has ruled that human dignity is a 'framework-right' or a 'mother-right'. In one of its cases, the Supreme Court discussed the characteristics of human dignity as such a right:

A feature of this type of right is that its express language does not specify the particular situations to which it applies. Its reach is open-ended. The situations it covers may be deduced by interpreting the open-textured language of the Basic Law, in light of its purpose. For convenience, these situations can be grouped into categories, such as the right to a humane existence with dignity, the right to physical and mental integrity, the right of an adult to adopt , and so forth, as daughter-rights derived from the mother-right. Of course, determining the scope of the daughter-rights raises difficult questions of interpretation. So long as the Knesset has not distinguished these rights from the right to human dignity, as independent rights, there is no alternative to the interpretive process, centred on human dignity, which aims to determine the scope of this right, while trying to categorize the types

of situations it covers. Of course, this categorization can never encompass the full scope of the right to human dignity, nor is it intended to do so. It is intended as an aid in understanding the framework provision of human dignity.

According to this view, various daughter-rights are derived from human dignity (as a mother-right), and the daughter-rights together expresses the full scope of the mother-right. Indeed, in its extensive and comprehensive case law, the Supreme Court has derived a considerable number of daughter-rights from the mother-right of human dignity, including the right to protect one's personality; the right to protection of one's personal and social identity; the right to protection from humiliation and degradation; the right to family life and parenthood; the right to education; the right to social security; the right to food; the right to housing; the right to water; the right to health; the right to equality; the right to freedom of expression; the right to freedom of conscience and religion; the right to freedom of movement within Israel; the right to reputation; and the right to minimum subsistence in dignity. All of these daughter-rights—and this is not a closed list—reflect various aspects of the humanity of the human being. These rights have been recognized as both negative and positive rights. They cover both civil and social aspects, and they inherently include both the core of the right and its penumbra. Differences between the right's core and its penumbra are relevant in the second stage of the constitutional analysis, that is, in assessing the proportionality of the limitation. All of the daughter-rights have been recognized as an integral part of the right to human dignity. These are not implied rights. They are express rights which bear the same name as their 'mother'—human dignity.

The Supreme Court of Israel ruled that rights, which in a comprehensive bill of rights are recognized as independent rights but are not so recognized in its partial bill of rights, would be recognized as dignity daughter-rights only with respect to those aspects of the independent rights which have a close substantive relationship to human dignity. For example, not every form of discrimination that would limit an independent constitutional right to equality would also limit equality as a daughter-right of human dignity.

The right to live with dignity as a daughter-right of human dignity includes the right to a minimum subsistence level with dignity. This existence is closely related to human dignity. If the right to minimum subsistence with dignity were an independent right, then it would certainly extend over a broader area. This restriction of the scope of the right to human dignity is mandated by the method of purposive interpretation. Human dignity, as one of the constitutional rights in the bill of rights, cannot fill the entire space left uncovered by the partial bill of rights.

There is complementary overlap amongst all of the daughter rights. Thus, for example, the daughter-right to equality and the daughter-right to family life overlap when the limitation on family life is achieved in a discriminatory manner. Similarly, the daughter-right to equality and the daughter-right to education overlap when equality in education is limited. How is this overlap dealt with? It results in each daughter-right strengthening the other. Their integration does not result in new boundaries for the daughter-rights. It acts at the sub-constitutional level, in the framework of the law of proportionality.

What happens when two constitutional daughter-rights of the mother-right of human dignity conflict with each other? This may occur frequently under a partial constitutional bill of rights, which is the situation in Israel. For example, the daughter-right to reputation may conflict with the daughter-right to freedom of expression, when a statute protecting freedom of expression limits the protection of reputation. Similarly, the daughter-right to freedom of movement may conflict with the daughter-right to freedom of worship, when a statute imposes a limitation on freedom of movement in order to protect freedom of worship. Such a conflict, like clashes between independent constitutional rights, is not resolved at the constitutional level. At that level it remains. Human dignity will continue to reflect the various aspects that characterize it, whether complementary or conflicting. Resolution of the conflict takes place at the sub-constitutional level. Within the framework of proportionality, human dignity will be found on both sides of the scale. The main issue in the proportionality analysis will generally be the balance that the statute strikes between the marginal social importance of protecting or promoting each of the daughter-rights of human dignity. This is done in the second stage of constitutional analysis, within the framework of proportionality.

CONCLUSION

Many legal systems incorporate the constitutional value of human dignity, and a number of constitutions recognize the constitutional right to human dignity. In these situations, judges have no choice but to interpret these concepts. The vagueness of the concepts does not permit judges to ignore them or to deal with them as they wish. The judges' job is to understand and apply them, in accordance with the rules of interpretation in their own legal system.

The accepted approach in some supreme or constitutional courts is that dignity means humanity. The role of judges who interpret the constitutional value or the constitutional right to human dignity is to give meaning to the concept of the humanity. In doing so, they must reflect the fundamental social perceptions underlying their constitution's structure.

What is the role of comparative law in the understanding of the constitutional value of human dignity and the constitutional right to human dignity? I suggest that two conclusions may be drawn from my presentation. First, comparative law is of great importance for understanding the concept of human dignity and the ideas that are derived from it. Comparative law gives interpretative inspiration to those who are attempting to understand what human dignity is, especially those judges who must give meaning to human dignity on a daily basis. Comparative law expands the interpretative horizon and thus enables each legal system to know itself better. Needless to say, however, comparative law is not binding. The second conclusion regarding the role of comparative law is that extreme caution should be adopted when referring to it. Every legal system has its own external context, which reflects its own historical and social background; every legal system has its own internal context, which reflects its constitutional structure and the normative status of the constitutional right to human dignity. These contexts influence each legal system's approach to the normative characteristics of human dignity. As a result, each legal system has its own understanding of the humanity of the person, the scope of the bill of rights, and the architecture that characterizes it. Hence, human dignity in a constitution where it is an absolute and eternal constitutional right (such as Germany's) differs from human dignity in a constitution where it is a relative right and subject to constitutional amendment (such as that of South Africa or Israel).

During its long history, human dignity has been considered as a social, religious, and philosophical value. The consideration of human dignity as a constitutional value and constitutional right is relatively recent. There is still substantial lack of clarity regarding the concept of human dignity and the conceptions which may be derived from it. There are great apprehensions about handing over responsibility for the interpretation of this concept and its derivative concepts to judges. Ultimately, however, insofar as it concerns the lack of clarity of the concepts and the apprehensions about judges, there is no significant difference between the right to human dignity and the rights to equality or liberty. Constitutional democracy has apparently already become accustomed to the idea that the rights to liberty and equality, for all of their vagueness, are essential features of every constitutional bill of rights. A similar rule should apply regarding the right to human dignity.

In the coming years, the number of judgments interpreting the constitutional value and the constitutional right to human dignity will multiply exponentially. The current vagueness will be reduced, and limited primarily to peripheral cases or situations in which changes are taking place in society or science. The apprehensions will subside. Human dignity will eventually become a constitutional value and a constitutional right that is seen as self-evident.

Eliška Wagnerová, June 2014.

© Ústavní soud / Jan Symon

Eliška Wagnerová

Human Dignity

Today, human dignity is a permanent fixture in the vocabulary of the European discourse on constitutional law. Although it has been debated as a philosophical concept, or a religious or ethical principle, since antiquity (Stoicism), it found its way into the area of human rights within international law through the Universal Declaration of Human Rights (Article 1 reads: All human beings are born free and equal in dignity and rights), and it only penetrated constitutional contemplations of national constitutional courts in the second half of the 20th century, when new constitutions mainly found inspiration in the Universal Declaration. The specific Irish constitution, the basis of which dates to 1937, is an exception to this rule because it already mentions human dignity in its preamble[1].

It was difficult to follow up on domestic traditions

Although the concept of humanism was elaborated on a broad basis during the First Republic, with the first Czechoslovak president, Tomáš Garrigue Masaryk, or the writer K. Čapek, among its prominent advocates, we will not find a constitutional expression of human dignity in the Constitutional Charter of the Czechoslovak Republic of 1920. It placed emphasis in particular on the freedom of the new nation and state, and the notion of human dignity naturally does not feature in postwar Czechoslovak constitutions: those focused on the collective much more, and all the individual fundamental rights were instrumentalized for its benefit. In particular the first postwar constitution of 9 May "did away with the notion of free development of the individual through the exercise of his fundamental rights (constitution) in that a fundamental right was such only if it coincided with the interest of the society."[2]

Later on, the purportedly achieved unity of the interests of the individual, the society and the state as a whole formed the basis of the constitution, as presumed by Constitution of the Czechoslovak Socialist Republic of 1960, which used it to demonstrate the attainment of Socialism. By removing the distinctions between the interests of the individual, the society and the state, as commonly found in constitutional theory of democratic, liberal states, and considered to be a necessary prerequisite for a democratic liberal state, for instance, by E. W. Böckenförde, a free and autonomous individual became unable to pursue his idea of happiness by himself and where he could, rather than pursuing the idea of the state, so that the principle of subsidiarity based precisely on the recognition of individual dignity could be respected. It was formulated expressly for the first time as a principle in Pope Pius XI.'s encyclic, Quadragesimo anno, of 1931). In its Judgment IV. ÚS 98/97, the Constitutional Court characterized these totalitarian institutes as legal fiction, the purpose of which was "precisely to obscure the state of extreme lawlessness, where one the one hand, some had absolute power, while others completely lacked any legal protection".

Human dignity thus only expressly appears in a constitutional text in the Charter of Fundamental Rights and Freedoms, i.e., in 1991. The preamble

[1] Klokočka, V., Wagnerová E.: Ústavy států Evropské Unie, Linde 1997, p. 148, or Horstmann, R.F.:Menschenwürde. In: Ritter, J. (Hrsg.): Historisches Wörterbuch der Philosophie. Schwabe, Basel 1980, pp. 1124, 1126
[2] Wagnerová, E.: Základní práva, in Komunistické právo v Československu, Bobek, Molek, Šimíček eds., MPÚ MU, 2009, p. 362

expressly refers to the inviolability of the natural rights of man and the rights of citizens, as well as universally-shared values of humanity. In Article 1, the Charter paraphrases the Universal Declaration when it states that people are free and equal in their dignity and rights. And finally, Article 10 guarantees everyone's right to human dignity. The Charter thus undoubtedly guarantees human dignity as a subjective right. However, the Czech Constitution of 1993 supplements the normative picture by stipulating in its preamble that the values of human dignity and freedom were invaluable. In other words, the Constitution's preamble makes human dignity (and freedom) inviolable principles that compel the state to act in a certain way, and on which the entire legal order must be based, and subsequently interpreted in their spirit. If the German Grundgesetz (GG) contains human dignity merely as a principle embodied in an objective right, the Czech constitutional order comes with human dignity both as a principle and as a fundamental right.

However, how to interpret the inviolability of human dignity and freedom, as declared by the preamble to the constitution? Is it about unrestrictability of these principles, their priority over other fundamental rights, that are also applied as principles, at least in proceedings on legal review? What seems certain is that both these principles together form the content of the material core of the constitutional order. As such, they enjoy protection pursuant to Article 9 (2) of the Constitution which stipulates that substantive requisites of a democratic rule of law cannot be amended, and thus jointly represent the eternity clause, as repeatedly confirmed by the Constitutional Court in its case law (in principle, as summarized in Pl. ÚS 27/09). The Constitutional Court certainly has not said its last word on the interpretation of human dignity, whether as a principle or as a fundamental right, although certain conclusions have already been voiced in judgments of senates, as well as a single judgment of the Plenum.

However, these decisions clearly show that although the senate judgments worked with human dignity as a fundamental right, such right was not subjected to the same review as other fundamental rights. While the relevant content of the right to human dignity as applicable in the matter in hand was defined, potential restrictions on this right have not been examined, although the Constitutional Court assumes that every fundamental right may in principle be restricted. The Constitutional Court thus did not perform all the otherwise important three steps, where first of all, it is examined whether the disputed act or conduct can be classified as falling under any area protected by a particular fundamental right. Where the answer is affirmative, it is examined in the second step whether the fundamental right had indeed been encroached upon. In the third step, it is examined whether the encroachment on the fundamental right is reasonable, using the proportionality test. In the case of human dignity, the Constitutional Court ended with the second step, when it recognized the indispensability of the right to human dignity in its entirety, i.e., in its unrestrictability by other fundamental rights or public goods protected by the constitution.

A certain degree of absolutization of the relevant right, arising from this conclusion, must naturally lead to its cautious application. However, where the matter can be classified under a different, special fundamental right stemming from human dignity but special, we must work with such subsequently found right, restrictable in principle. It may be honor, reputation, etc. Let us look at decisions working with human dignity in more detail.

The first decision addressing the effect of the guarantee of human dignity in the constitutional order seems to be Judgment IV. ÚS 412/04. It is argued as follows therein: the individual and his rights guaranteed by the constitutional order of the Czech Republic is the focal point of the constitutional order of the Czech Republic. The individual is the basis of the state. The state and all of its bodies are bound by the constitution to protect and respect the rights of the individual. The notion of our constitutionality is not limited to the protection of fundamental rights of individuals (e.g., right to life, guarantee of legal personality). In accordance with the postwar shift in the understanding of human rights (as expressed for instance in the UN Charter or the Universal Declaration of Human Rights), human dignity became the basis for the interpretation of all fundamental rights; it inter alia rules out the treatment of a person as an object or a thing. Under this notion, the issues of human dignity are viewed as part of the human quality, of humanity. Humans can make the best of their personality when the inviolability of their human dignity is guaranteed. This line of thought is confirmed by the preamble of the Constitution which declares that human dignity is an inviolable value at the basis of the constitutional order of the Czech Republic. In the same way, the Charter guarantees the equality of people in their dignity (and rights) (Article 1), and guarantees the subjective right to maintenance of human dignity (Article 10 (1)). The judgment goes on to say that the notion of human dignity so defined must be reflected in the sphere of legal capacity, and has strong implications for the area of capacity for legal acts. This is due to the fact that through capacity for legal acts and procedural capacity, the constitutional guarantee of legal personality of the individual is brought to life (Article 5 of the Charter). Rights or entitlement lacking means for the protection of their preservation would be merely empty proclamations. The judgment further stresses that the constitutional notion of human dignity is much broader than the content of the right designated in the same manner and co-forming the complex of moral rights within the meaning of the Civil Code. And it goes on to say that the interpretation of all fundamental rights must be conducted within the boundaries defined by human dignity, and that, first and foremost, man cannot be handled as a thing. In other words, as the judgment states, no process of application, and no individual or normative act, may contain anything that would infringe fundamental rights interpreted within the boundaries of human dignity.

Judgment II. ÚS 2268/07 follows up on the above-referenced basic judgment; it clarifies the characteristics of out notion of material constitutional statehood. It thus interprets out concept of the rule of law, as guaranteed by Article 1 (1) of the Constitution. By affirming ultra positive values (within the meaning of Article 9 (2) of the Constitution of the Czech Republic), such as human dignity, freedom and justice, which represent material requisites of a democratic rule of law, it requires all public authorities, including lawmakers, to respect them. According to the judgment, the respect for and protection of human dignity and freedom is the supreme and most general purpose of law (para 41). The recognition of human dignity as the basis of the constitutional order gives rise to every person's entitlement to respect and recognition as a human being, and the prohibition on making man a mere object of the state's will, or a prohibition on exposing persons to actions challenging their qualities as subjects (para 43). It is further stated in the judgment that the dignity of a person as a person responsible for his own actions gives rise to the dictum "no punishment without culpability", with reference to similar argumentation contained in judgment BVerfG 57, 250 (para 45).

While Judgment I. ÚS 2477/08 noted the occurrence of a violation of the right to private and family life, the Constitutional Court nonetheless quotes an article by Hanne Sophie Greve, a former Norwegian judge of the ECHR, with whose views it clearly concurs and who extends human dignity also to deceased persons, and naturally also to their survivors. Quote: It is essential to human dignity that also the person's death is regarded with the minimum of respect linked to registration of the death; notification to the next in kind; a respectful treatment of the dead body; and a marked grave where that is in the tradition of the person or relatives concerned. (…) These rights originate in respect for the common human nature both of the deceased individual and the bereft persons left behind."[3]

In its Judgment I. ÚS 557/09, the Constitutional Court reiterated that it did not intent to tolerate lack of respect for principles of a material constitutional state on the part of public power in cases of fundamental rights of complainants relating to the very essence of their "humanity" (including the right to human dignity as a result of a sum of guarantees of a comprehensively conceived legal personality, etc.), i.e., questions related to court decisions stripping or limiting people's capacity for legal acts. Both human dignity and capacity for rights in a broad sense of the

[3] Greve, H. S.: "What's in a Name?" – The Human Right to a Recognized Individual Identity. In Human Rights, Democracy and the Rule of Law. Liber Amicorum Luzius Wildhaber. Dike Verlag, Nomos Verlagsgesellschaft, Zürich, Baden-Baden 2007, p. 310

word (under substantive law and procedural law, put using the language of civil law) legally characterize the individual whom the public power is obliged to respect. The Constitutional Court stressed once again that without recognizing this postulate, the other fundamental rights and freedoms guaranteed by the constitutional order of the Czech Republic would be merely empty phrases. It than elaborated further on its ideas concerning human dignity and formulated in previous judgments, and provided the opinion of an important German political scientist, Günter Dürig[4], author of the famous object theory, subsequently adopted by the case law of the German BVerfG relating to human dignity issues. According to this theory, the human dignity is affected when a concrete human being is reduced to an object, to a simple way, to an amount that you can dispense. It can be inferred that man thus becomes not only an object of social "circumstance", but also the object of a right if he is forced to completely subject himself to it in its interpretation and application, i.e., without consideration for his individual interests, or fundamental rights, the judgment goes on to say. Let us add - fundamental rights interpreted within the intentions of human dignity as already noted in Judgment IV. ÚS 412/04.

In Judgment I. ÚS 1586/09, the Constitutional Court addressed constitutional aspects of the determination of a pecuniary sanction for encroachment on moral rights, including the right to human dignity, through an abuse of the right to freedom of expression. It noted that the aspects of gravity and intensity ("closeness") of the encroachment on rights belonging into the intimate sphere of the individual's private life, affecting the very essence of humanity and human dignity, must be the fundamental and determining factor in the determination of standards. Such encroachment, given that it involves both the intimate sphere and humanity, must be viewed as the most sensitive and serious, regardless whether the individual is publicly active, well known or not. The court referred to judgment of the ECHR dated 25 November 2008 in Biriuk v. Lithuania (No. 23373/03). It reiterated that human dignity represents a supreme value at the basis of the entire Czech legal order and constitutional order, and can thus be viewed as the ultimate objective of the law. The Constitutional Court opined that human dignity was thus viewed as an objective constitutional category, and served as a value superior to the other otherwise non-hierarchical fundamental rights (traditional and political). Viewed through the prism of the above, any encroachment or reduction of human dignity must thus be viewed as a very serious encroachment, and as such, hard to rectify. Human dignity, it is stated, is a value horizontally incomparable to the other constitutional values or social standards, cannot be replaced with other goods, and is even less so quantifiable or capable of being expressed in terms of money. The accessory party (originally, the defendant) turned the complainant into a mere object when it used his renown as a writer, instrumentalized it in order to maximize its profits, and maliciously encroached on the intimate sphere of the complainant's private life by deliberately releasing false information on the complainant's sex life. In doing so, it ruthlessly attacked and damaged the complainant's human dignity. The Constitutional Court added that civil suits of this type and the relevant court decisions which reflect the permeation of constitutional values into private law help towards the evolution of "ordre public". That is especially true in a situation where other means and legal tools for the regulation or even punishment of such conduct either fail or are inefficient, or their application is not always desirable in terms of proportionality of prosecution. Although the judgment was accompanied by a divergent opinion which disputed the very possibility of existence of encroachment on a fundamental right through the assessment of an inadequate compensation, the dissenting justice seems to have changed his views over time, as shown by the content of a recent judgment, I. ÚS 2551/13, of 29 April 2014, although according to the verdict - which does not correspond much to the ratio decidendi - only a violation of the right to fair trial was found, which is rather far from the essence of humanity in the form of human dignity.

[4] Dürig, G.: Der Grundrechtssatz von der Menschenwürde, Archiv des öffentlichen Rechts 81 (1956), p. 127

And finally, in its Judgment Pl. ÚS 1/12, the Constitutional Court ruled on the duty of jobseekers to perform public services in order to qualify for social benefits. The Constitutional Court stated that the duty to accept a public service offer did not serve to prevent social exclusion, but instead deepened it, and the persons performing it, as their work externally (in the eyes of other people) manifests the same elements as the serving of a sentence, may be humiliated in their own dignity. The court then concluded that the obligation of jobseekers to accept a public service offer, on which their continued inclusion in the jobseekers registry is conditioned (in connection with the provision of social benefits), was in conflict with the prohibition of forced labor within the meaning of Article 9 (1) and Article 26 (1) of the Charter, Article 4 (2) of the Convention, and Article 8 (3) (a) of the International Pact on Civil and Political Rights, as well as the ban on arbitrariness pursuant to Article 1 (1) of the Constitution and the principle of equality in dignity pursuant to Article 1 of the Charter, or the right to preservation of human dignity pursuant to Article 10 (1) of the Charter.

It is obvious that the last decision is inspired by the decisions of the Federal Constitutional Court of Germany (BVerfG), in particular decision Hartz IV (2010), by which the court declared the social reform unconstitutional. In said decision, the court inter alia commented directly on the level of social support, and defined its minimum amount on a general level as having to be consistent with the principle of human dignity. It defined the level of dignified human existence in remarkable detail, as "both the physical existence of the human being, i.e., nutrition, clothing, household furnishings, shelter, heat, hygiene and health, and the ability to cultivate interpersonal relations and have a minimum level of involvement in social, cultural and political life, as human being as a person necessarily exists within social ties"[5]. The tension between freedom and social statehood is thus addressed in BVerfG's case law step by step, and finds balance between the poles of economic neo-liberalism and re-distribution of state taxes and other revenues, as well as other services provided by the state. Hopefully the German decisions will be a source of inspiration for our Constitutional Court in this regard as well.

Some may argue that the German Constitution expressly provides for social statehood, which is not the case of the Czech Republic. However, we must point out the extensive catalogue of social rights contained in our Charter, which indicates that the lawmakers attempted to set a peculiar standard of social statehood. And we must not overlook European trends wwhich interpret traditional human rights within a social dimension. Moreover, already in Judgment Pl. ÚS 3/2000 dated 21 June 2000, the Constitutional Court pointed out that "several times already, it applied conventions on the protection of social rights, in particular as regard the International Pact on Economic, Social and Cultural Rights No.. 120/1976 Sb., and when it defined international documents containing fundamental rights in the social area (cf. judgment of the Constitutional Court z 23 November 1994, file No. Pl. ÚS 13/94, promulgated under No. 3/1995 Sb.), it stated that these included (inter alia) the Universal Declaration of Human Rights and the European Social Charter.". These references would suggest that the Constitutional Court favors the idea of interpreting the constitutional order within the meaning of social statehood (although it has deviated from such case law in the last few years in several cases, problematically).

The above cases lead us to the banal realization that it the ultimately the Constitutional Court that lends content to the normatively fuzzy interpretation of human dignity (as is, to some extent, the case of interpretation of other fundamental rights and constitutional principles), and it sometimes does so with rather vigorous resistance from the general and professional public, split into defending and opposing camps. This situation seems to be due to the lack of homogeneous values among members of the society, which, however, is understandable to some extent in a pluralist society. As mentioned, proportionality is of essence … To put it simply, this strife can be characterized as strife between those advocating the greatest possible individual freedom, and the supporters of dignitarism as a belief system.

[5] 1 1 BvL 1, 3, 4/09 – Harz IV, para 135

However, the state (or the Constitutional Court in this case) must never bind itself to an exclusive ideology or religious belief (Article 2 (1) of the Charter). It would be useful to mention "Böckenförde-dictum"[6] in this context: The liberal secular state lives on premises that it cannot itself guarantee. Böckenförde himself is very skeptical as regards the internalization of constitutional values as such, and tends towards the opinion that they are felt as binding because of an inherited tradition, in particular religious. On the other hand, he defines, with great precision, the undeniable fact that the state must not force its citizens to adopt certain values, if it is to remain a state respecting human freedom and if is not to succumb to totalitarianizing tendencies. His warning remains topical and must not be taken lightly. And in a liberal secular state, it really is extremely difficult to find the essence of the glue of homogeneity of the community that would serve as a basis of the state. Therefore, we must not completely underestimate the danger of absolutization in a community of shared values, as it may lead both to positivism and to interpretative subjectivism. Values are ephemeral, or bound to change over time, at least in terms of proportions, and if they claim their legitimacy in isolation, they are more likely to shatter than strengthen freedom, the author believes. Therefore, the state can only remain liberal to the extent that the freedom it guarantees to its citizens and it regulates though restrictions on fundamental rights, stems from the society's authentic conviction, i.e., from its homogeneity. All of that only provided that it is based on the belief in moral substance of human beings, resulting in the recognition of their dignity. There should be general consensus precisely on human dignity.

The image of the human being certainly changes over time, nevertheless, human dignity survives as a self-preserving, constitutive element of humanity. What is its content, however? What should it serve to protect? When is it violated in a particular case? Complex questions, and answers changing over time. The answer given after WWII differs from the current one, nearly seventy years later. The case law quoted above shows that the Constitutional Court adopted Dürig's object theory. It makes it possible to find a violation of human dignity without establishing a specifically described encroachment on the rights of a concrete person, which was the case of the original German decisions of the BVerfG (e.g., "if a concrete human being is reduced to an object, to a simple way, to an amount that you can dispense"[7]); later on, from the 1970s, the BVerfG became more demanding. Encroachment on human dignity must represent a principal denial of the quality of the entity, or a malicious denial of human dignity.[8]

The author of the object theory, G. Dürig, responded to the calls for a concretization of the object theory: "the notion of value could be imbued with positive legal content in more ways than some claim even in our pluralistic society (…) However, there is a highly exact consensus as to what a state and social order should not look like. The use of such similarly negative interpretation method is perfectly legitimate even in constitutional law. (…) It is natural that one cannot dare to make a biding positive definition of the principle of human dignity, but it is possible to determine what is in violation of such principle."[9]

Dürig obviously relies on social consensus, but what to do in its absence? When concretizing the object theory, we must look for clues in the history of philosophy and in comparison. Even that obviously will not be easy. Every judge will eventually choose information that best resonates with his pre-consciousness. The above-mentioned E. W. Böckenförde formulated the complexity of the task as follows: "Is human dignity in essence the inseparable and unalienable element that characterizes the human being? Is it the metaphysical anchor of his personal being which gives rise to all human rights and whatever cannot be dispensed with? (author's comment - the understanding of European dignitarists.) Or does human dignity primarily mean the ability of autonomous self-determination? Is human dignity in essence the right to self-determination and self-presentation? (author's comment - this understanding tends toward the U.S. provenance.) Is it the supreme pinnacle of human rights, where freedom in disposal, including disposal with oneself, is at the same time associated with moral ties and obligations to which human beings subject themselves? (author's comment - an attempt at a reconciliation of the two through a holistic perspective.) Can human dignity, viewed in this or that way, be imminently and rationally justified through the vehicle of autonomous reason and human ability to use it? Or does its justification need to use something given and transcendental, something ultimately recognizable only through metaphysical or religious and theological means?[10]

These questions certainly primarily relate to the fundamental justification of the priority of human rights as such. There are both opponents[11] and supporters[12] of this. R. Alexy[13] attempted to justify the priority of human rights in detail when, through their universality, fundamentality, morality, leading to the fifth feature, i.e. priority, he formulated eight points of their justification (religious, biological, intuitive, consensual, instrumental, cultural, explicative and existential); he himself tends towards a combination of the last two.

An explicative justification of the priority of human rights means that whatever is contained in human practice by implication will be voiced. He follows up on Kant in the belief that what is inevitably contained in judgments and actions can be made explicit. This occurs in a discourse which is based on the presumption of freedom and equality of the debaters, as well as an earnest approach to the debate. He then associates an earnest involvement in the discourse with autonomy, as a person following principles and rule he considers correct after due consideration is autonomous. Whoever recognized the autonomy of another recognizes him as a person. And whoever recognizes him as a person attributes dignity to him. And whoever attributes dignity to him, recognizes his human rights.

The existential justification is related to the division of interests into individual maximization of profit, and an interest in correctness. The interest in correctness is the important one: it is an interest in enforcing the discursive reality in the sense described above. As is always the case with interests, its enforceability depends on how powerful the opposing interests are. When answering the fundamental question whether we accept discursive options, we are also answering the question whether we consider ourselves to be discursive beings. And as that decision hinges on what or who we are, it is referred to as an existential justification.

Alexy asks at the end whether the combination of the two outlined justifications of the priority of human rights is free of metaphysics, and replies in conclusion that human rights are impossible without recognizing rational and universal metaphysics, and explains their essence.

The contemplation of human dignity has not been completed, and never will. It will reflect the growing dynamics of changes in the lives of individual people, society, states and supranational companies. Those are great challenges for the constitutional judiciary, not easy to respond to. I wish you much luck on this journey.

[6] Böckenförde, E.W.:Staat, Gesselschaft, Freiheit, Frankfurt/M., Suhrkamp, 1976
[7] Dürig, G.: Der Grundrechtssatz von der Menschenwürde, in: Archiv des öffentlichen Rechts (AöR), 81 (1956), p. 117, p. 127
[8] BVerfGE 30, 1
[9] Dürig, G.:Zur Bedeutungund Tragweite des Art. 79 Abs. III des Grundgesetzes, in: Hans Spanner (Hrsg.), Festgabefür Theodor Maunz, München 1971, p. 41, p. 43

[10] Böckenförde, E.W.:Zur Eröffnung, in: ders./Robert Spaemann (Hrsg.), Menschen rechte und Menschenwürde. Historische Voraussetzungen – säkulare Gestalt – christliches Verständnis, Stuttgart 1987, p. 14f
[11] E.g., MacIntyre, A.: Ztráta ctnosti. K morální krizi současnosti. Praha 2004
[12] E.g., Dworkin, R.: Když se práva berou vážně. Praha 2001
[13] Alexy, R.: Menschenrechte ohne Metaphysik? Deutsche Zeitschrift für Philosophie, 52 (2004), pp. 1 - 24

2014

Yearbook of the Constitutional Court
of the Czech Republic

Design by Petr Wlazlo – OFFI

Published by The Constitutional Court of the Czech Republic, Joštova 8, 660 83 Brno

Tel.: +420 542 162 111
Fax: +420 542 161 309

Author of texts and editor: Vlastimil Göttinger,
vlastimil.gottinger@usoud.cz

Printed in the Czech Republic by Polygraf, s. r. o., Modřišice 156, 511 01 Turnov

First edition, Brno, 2015

ISBN 978-80-87687-06-2

ÚSTAVNÍ
SOUD