# YEARBOOK
# 2019

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*"… we desire to take our place in the Family of Nations as a member at once cultured, peace-loving, democratic and progressive."*

(The second sentence of the Preamble of the Law of 29 February 1920,
whereby the Constitutional Charter of the Czechoslovak Republic is introduced)

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# INTRODUCTION

Dear readers:

It has become a well-established tradition to publish an English version of our yearbook which sums up last year's events. We will observe that tradition – after all, that is what traditions are for – and that is why you are holding the Constitutional Court's yearbook for 2019.

Last year was a real test for us. Our colleague Jan Musil decided to leave in January 2019, and at the end of the year, his successor was yet to be appointed. That meant we, the remaining 14 justices, had to increase our efforts. The complainant does not care what objective problems the court may be coping with. The complainant seeks justice and does not want to wait for our decisions. I am pleased to note that we have not betrayed our duties and despite the absence of one of us, the average length of proceedings did not increase, and nor did the number of pending cases.

This yearbook naturally presents an overview of all important decisions – over four thousand in total in 2019 – and statistical information on our decision-making activities and their structure.

In addition to court decisions, we also dedicated our time to the Conference of European Constitutional Courts /CECC/. Foreign activities of the Czech Constitutional Court are therefore granted much space in the yearbook because we proudly represented CECC at a number of foreign forums. The Czech presidency will culminate in 2021 when we organize the XVIIIth Congress of CECC in Prague. In 2019, questionnaires on „Human rights and fundamental freedoms: the relationship of international, supranational and national catalogues in the 21st century" were circulated to all CECC member courts, and the responses received will serve as a basis for the general report for the XVIIIth Congress.

In short, last year was full of demanding tasks, and I believe that we have proven ourselves. After all, it would be wonderful if constitutional courts had as little work as possible in the future. Not so that we would have less work but because it would mean minimal violation of the constitution and human rights. It would be wonderful but I am afraid that the upcoming years will not bring us less work.

I would like to wish all the readers of the Constitutional Court's yearbook a lot of strength, and hopefully an inspiring reading.

Jaroslav Fenyk
Vice President of the Constitutional Court
and Rapporteur General of the XVIIIth Congress of CECC

# 2

# ABOUT THE CONSTITUTIONAL COURT

## History of the Constitutional Judiciary

### The First Czechoslovak Republic

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

### The Constitutional Judiciary in the Period of 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 federalised in 1968, as the Act on the Czechoslovak Federation not only envisaged the creation of a Constitutional Court for the Federation, but also particular Constitutional Court for each of the two Republics. None of these courts was ever established, however, even though the unimplemented constitutional provision stayed in effect for more than two decades.

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

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

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

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

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

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

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

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

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

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

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





### The Current Composition of the Constitutional Court

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

On 31 January 2019 Justice Jan Musil, serving his second term in office, resigned from his position. Since then, the seat of the fifteenth Justice has been vacant.

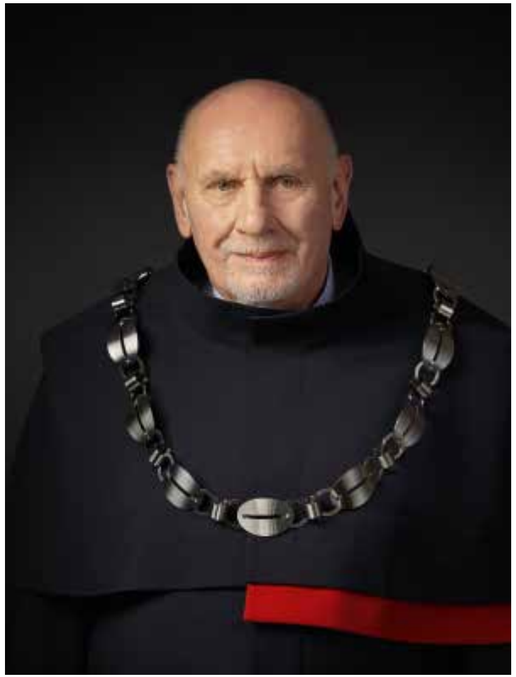
## Justices and Structure of the Court

### APPOINTMENT OF JUSTICES

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

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

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



## CURRENT JUSTICES

### PAVEL RYCHETSKÝ

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

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

He was a member of the Civic Forum and its Council of the Republic. On 8 January 1990, he was appointed Czech Prosecutor General. From June 1990 to July 1992, he served as Deputy Prime Minister of the Government of the Czech and Slovak Federal Republic (ČSFR) and Chair of the Government Legislative Council, ensuring both the coordination of the ČSFR's legislative work and the ČSFR Government's co-operation with the Federal Assembly and the Republics' governments. In his capacity as Deputy Prime Minister of the Federal Government, he submitted numerous bills to the Federal Assembly (e.g., on the Constitutional Court, Referenda, Return of Communist Party Property to the People, the restitution acts, etc.). From 1992, he worked as an attorney-at-law and lecturer in political science at the Faculty of International Relations of University of Economics, Prague. He published many scholarly and popular articles, both nationally and internationally. In 1996–2003, he was a senator in the Senate of the Parliament of the Czech Republic, where, until he become Deputy Prime Minister, he served as Chair of its Constitutional Law Committee and a member of its Mandate and Immunity and Organisational Committees. In 1998–2002, he was Deputy Prime Minister of the Czech Government and Chair of the Government Legislative Council, Council for National Minorities, Council for Romany Community Affairs, and Council for Research and Development. From 15 July 2002 to 5 August 2003, he once again served as Deputy Prime Minister, as well as Minister of Justice and Chair of the Government Legislative Council. In 1990–92, he was President of the Union of Czech Lawyers, and in 1992–98, President of the Board of Trustees of the Foundation for Bohemia. In 1996, he founded the Fund for Citizens of Prácheňsko, focusing on social issues in the region. On 6 August 2003, after the Senate had granted consent to his appointment, he was appointed Justice and President of the 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 Chair of the Czech Lawyers Union and a member of the Science Boards of the Charles University Law Faculty in Prague, Faculty of Law of Masaryk University in Brno ("Masaryk University Law Faculty"), and Faculty of Law of Palacký University in Olomouc. In 2003, the Union of Czech Lawyers awarded him the Silver Antonín Randa Medal, and ten years later, he received the highest award – the Gold Antonín Randa Medal for extraordinary credit in the development of democracy, jurisprudence and the rule of law. In 2015, he was introduced as a new member of the Legal Hall of Fame for his exceptional life-long contribution to law. In 2016, he received the František Palacký Award from Palacký University in Olomouc, which primarily appreciated his participation in lecturing for Master's and Ph. D. students at the Faculty of Law of Palacký University, regular participation in conferences and overall contribution to the prestige of the university and the Czech Republic. In the same year, Pavol Jozef Šafárik University in Košice, Slovakia, bestowed the honorary degree doctor honoris causa in the area of law on him for his influence and for his being an outstanding personality who has contributed to the development of democracy and humanity.

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

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

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

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





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

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

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

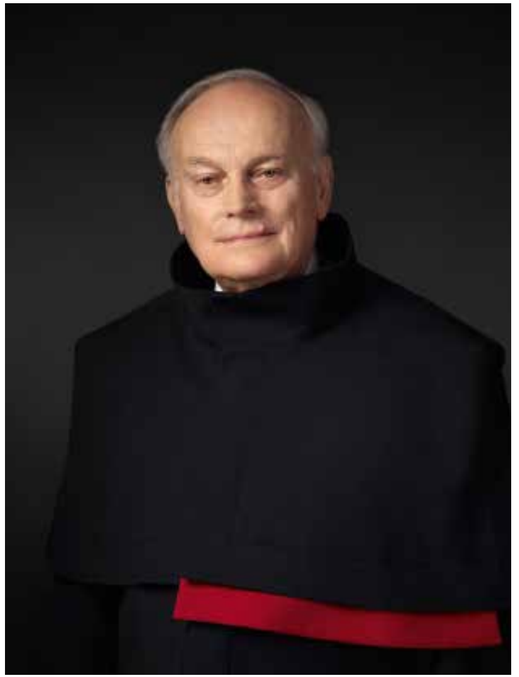
international research projects focusing on criminal law, the position of public prosecution and international judicial co-operation in criminal matters, and the harmonisation of criminal law and associated legislation in connection with the accession of the Czech Republic to the EU. He published a number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

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

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



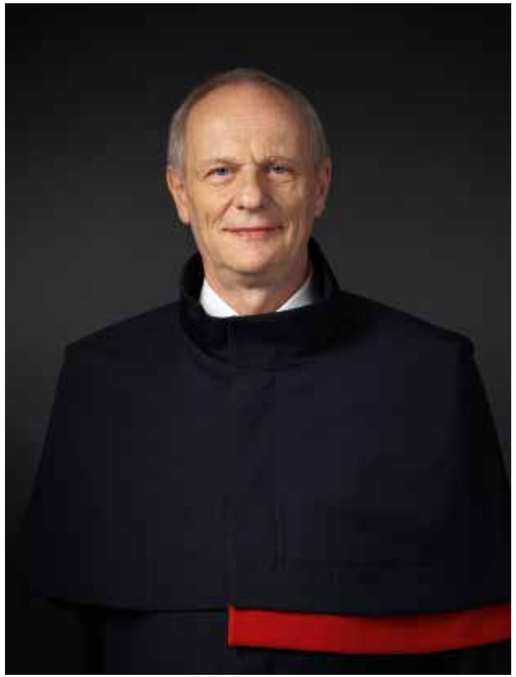




**JAN MUSIL**
Justice (27 November 2003 – 27 November 2013)
Justice (20 January 2014 – 31 January 2019)

Prof. JUDr. Jan Musil, CSc. (born in 1941) graduated from the Charles University Law Faculty in Prague 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 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 Faculty of Law at the University of West Bohemia in Pilsen. 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, Masaryk University Law Faculty, and the Police Academy. He sits on the Advisory Board of the 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 a Justice of the Constitutional Court. On 20 January 2014, President Miloš Zeman appointed him for his second term of office. Justice Jan Musil resigned from his position at the Constitutional Court due to health reasons on 31 January 2019.



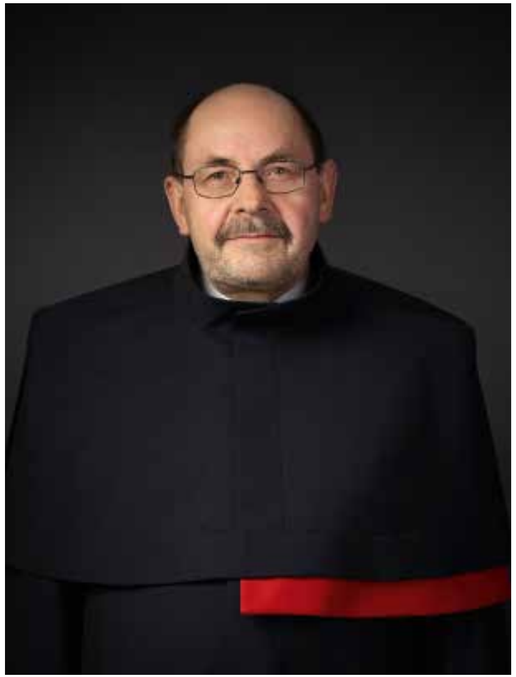
**JAN FILIP**
Justice (since 3 May 2013)

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

Apart from his pedagogical activities, Professor Filip often helps solve practical problems arising in the process of drafting legal regulations, or writes expert opinions for government agencies. From 1992 onwards, he worked at the Constitutional Court of the ČSFR as assistant to Justice Vojen Güttler, and at the Constitutional Court of the Czech Republic as assistant to Justices Vojtěch Cepl and Jiří Mucha. He also worked in the Legislative Department of the Federal Assembly Chancellery (1973, 1987-1989), and subsequently in the Legislative Department of the Senate Chancellery (1997-2007). For a number of years, he was a member of the Government Legislative Council (1998-2006), following his membership of a government commission for public law in 1990-1992. In the same period, he served on the Czech National Council's commission for the drafting of the Constitution.

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

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



**VLADIMÍR SLÁDEČEK**
Justice (since 4 June 2013)

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

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

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

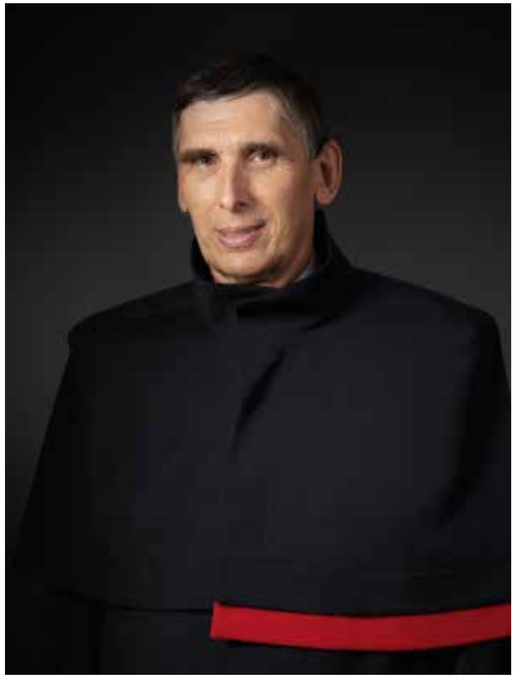
In 1991, he was taken on as a part-time member of staff at the Charles University Law Faculty on the basis of an open competition (Department of Administrative Law), where he has worked full-time from August 1992 to the present day. He worked first as a lecturer, and successfully defended his higher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





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

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



**LUDVÍK DAVID**
Justice (since 7 August 2013)

JUDr. Ludvík David, CSc. (born in 1951) studied at the Faculty of Law at Jan Evangelista Purkyně University (today Masaryk University) in Brno. After completing his studies in 1974, until 1982, he worked in academia (as a lecturer at the same faculty until 1979, and then as a research assistant in the Institute of State and Law at the Czechoslovak Academy of Sciences in Prague). From 1982, he worked as a corporate lawyer. In mid-1985, he became a barrister and worked in this position until 1993. In June of the same year, he was appointed as a judge. He was as a judge and Presiding Judge at the Municipal Court in Brno until 2000, and then at the Regional Court in Brno until 2002. In the same year, he was assigned to the Supreme Court in Brno where, after a one-year research fellowship, he became a judge in 2003 and Presiding Judge at the Civil Law and Commercial Division. He was also a member of the Records and Grand Panel of the same court. He lectures externally at the faculties of law at Masaryk University in Brno and Palacký University in Olomouc and abroad (the USA). He is the author or co-author of a number of books (commentaries on legal codes, overviews of jurisdiction) and almost a hundred papers in specialist periodicals on topics concerning substantive and procedural civil law, labour law, restitution and legal philosophy. As a member of the Union of Czech Lawyers, he received the Antonín Randa Bronze Medal. He has never been a member of any political party. He was appointed as a Justice of the Constitutional Court by President Miloš Zeman on 7 August 2013.





**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 with research fellowships at universities in France and Germany, at the European Court for Human Rights in Strasbourg, and at the Collège Universitaire d'Études Fédéralistes in Aosta in Italy.

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

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

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

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

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

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

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





**RADOVAN SUCHÁNEK**
Justice (since 26 November 2013)

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

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

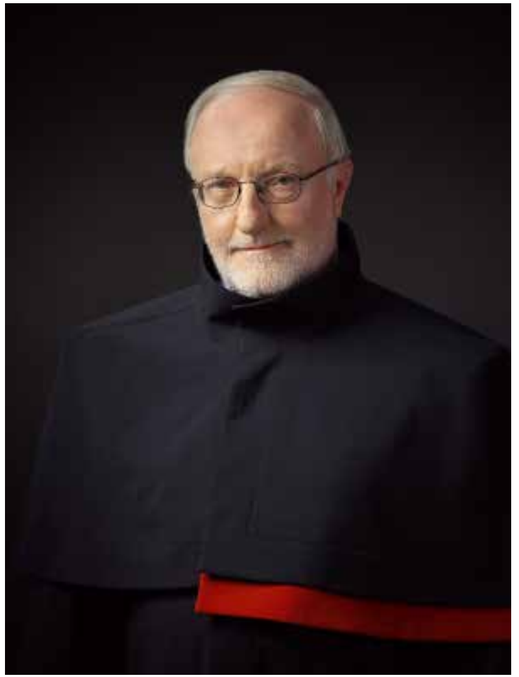
He has written several dozen specialist articles published in legal periodicals in the Czech Republic and abroad, co-written university textbooks and co-edited anthologies in the fields of constitutional law and governmental studies. In this field he has devoted attention primarily to issues of parliamentarianism,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

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

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







**JIŘÍ ZEMÁNEK**
Justice (since 20 January 2014)

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

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

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

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

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

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





**VOJTĚCH ŠIMÍČEK**
Justice (since 12 June 2014)

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

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

**TOMÁŠ LICHOVNÍK**
Justice (since 19 June 2014)

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

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

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





**DAVID UHLÍŘ**
Justice (since 10 December 2014)

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

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

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

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

**JAROMÍR JIRSA**
Justice (since 7 October 2015)

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

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

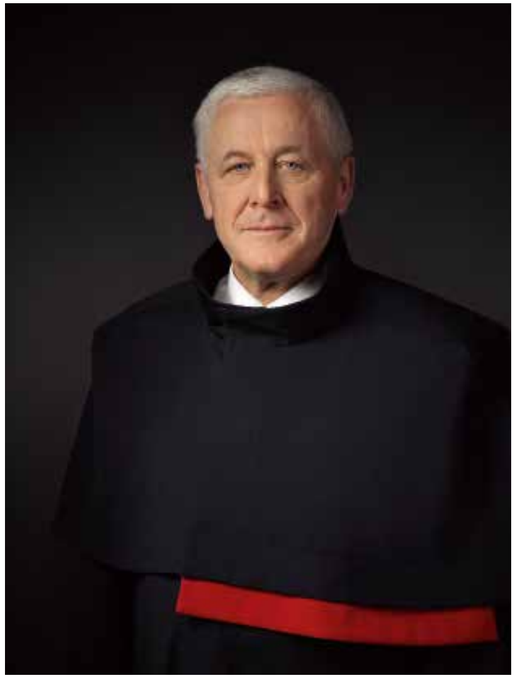
In 2002 to 2008, he served as the President of the Union of Judges. He participated in many projects, for example the adoption of the code of ethics for judges, adoption of principles of career structure for judges, so-called "mini-teams", educational projects for judges and support of mediation in non-criminal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

Judge Jirsa has lectured and published specialised texts. He has lectured for the Judicial Academy, Czech Bar Association, Chamber of Law Enforcement Officials, Union of Judges etc. In 2010, he was awarded the Bronze Antonín Randa Medal by the Union of Czech Lawyers for his lecturing and publication activities in the area of civil procedural law. In 2007 to 2012, he was a member of the accreditation working group for the areas of law and security with the School of Law at the Charles University.

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

Judge Jirsa is married and has two children.

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



**JOSEF FIALA**
Justice (since 17 December 2015)

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

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

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





## NEW GOWNS AND INSIGNIA OF THE JUSTICES OF THE CONSTITUTIONAL COURT

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

The gown and the headwear

The Plenum of the Constitutional Court wearing new gowns





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

## STRUCTURE OF THE 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 meetings and directs the business of meetings, appoints Chairs of the Constitutional Court's panels, and performs other duties placed upon him by statute.

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

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

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

### Powers and Competences

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

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

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

**The Czech constitution further includes:**

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





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

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

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

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

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

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

# ON THE SEAT OF THE CONSTITUTIONAL COURT

The Constitutional Court as an institution only moved to its current seat, 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 the Second World War, the constitutional judiciary was not reinstated; hence, the debates concerning the new seat were only initiated after 1990. As the modern constitutional judiciary respects a consistent separation of the judicial power from the executive and legislative 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.

The Moravian Diet Building just opened (1877)

## History of the Seat of the Constitutional Court”

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

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

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

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

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

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

The survey revealed a time capsule placed under the coping stone on the occasion of the ceremonial unveiling of the building on 22 December 1878 by provincial hetman Adalbert Widmann. The capsule and its contents are currently deposited at the Moravian Provincial Archives. When work on the building was initiated in 2014, the first step was the renovation of sculptural décor on the parapet of the south and northern bays of the Constitutional Court's building: the sculptural allegories of the six virtues placed in groups of six.





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

## Recent Renovation of the Seat of the Constitutional Court

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

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

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

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

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

An entrance to the Vestibule of the Assembly Hall before restoration





An entrance to the Vestibule of the Assembly Hall after restoration

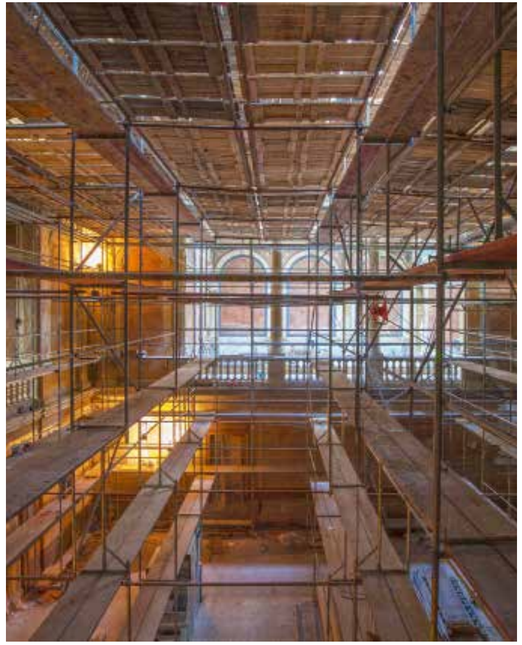
The Vestibul of the Assembly Hall in the course of reconstruction works





The Vestibule of the Assembly Hall after restoration

The Assembly Hall before restoration



The Assembly Hall in the course of reconstruction works



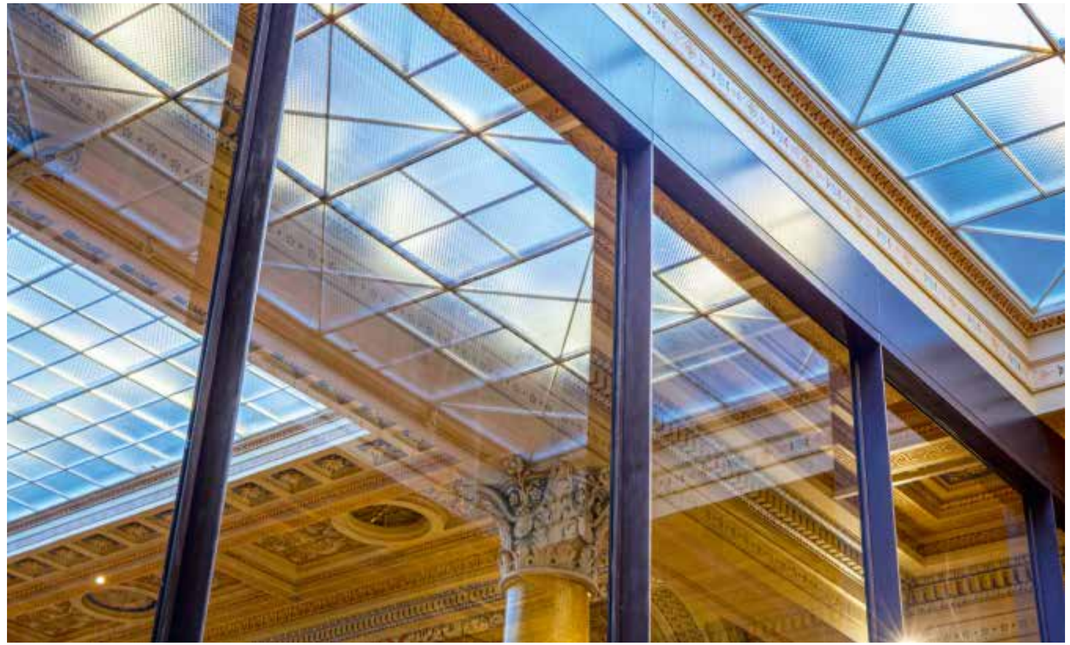


The Assembly Hall after restoration

Renovation of the roof light´s metal structure







The restored roof light of the Assembly Hall

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





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

Restoration of embossed parts





The Court Room restored

# 4

# DECISION-MAKING IN 2019

It is logical that the decision making is different every year depending on the type of cases submitted to the Constitutional Court for consideration. Therefore, the decisions described below may follow up on the case law from previous years, but may also reflect current trends, and foreground new topics and perspectives. This case-law overview presents the most interesting judgments adopted by the Constitutional Court in 2019. To get a detailed picture, however, it is necessary to look up the respective decision on the website of the Constitutional Court or in the Collection of Judgments and Resolutions.

## Fundamental constitutional principles

### Democratic rule of law

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

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

Undoubtedly, one of the most important judgments adopted last year is Judgment File No. Pl. ÚS 5/19 of 1 October 2019 dealing with the **taxation of the financial compensation for churches** and religious communities. The Constitutional Court annulled the contested provision of the Income Tax Act (for more details see the section on the protection of property rights). An *ex post facto* reduction of the financial compensation for injustice caused by the communist regime is contrary to the fundamental principles of a democratic state. The lawmaker thereby violated the principle of legal certainty, foreseeability of law, reliance on law and protection of acquired rights, which constitute the core principles of a democratic society (Article 1(1) of the Constitution) as well as the right of the parties involved to own property in the context of the protection of legitimate expectations from its acquisition. The Constitutional Court in its Judgment File No. III. ÚS 3397/17 of 29 January 2019 stressed the principle of legitimate expectation. The right to **legitimate expectation** to receive the historically-owned church property as part of the restitution procedure (Article 1(1) of the Constitution) is not violated if such an expectation is based on the need for a new legislation, rather than reliance on an existing law defining its scope and the parties. A distinction must be made between two situations: a situation where a person may act in reliance on the fact that the effects of his or her legal acts, and any expenses the person may have accrued, will not be frustrated by subsequent acts of the state, on the one hand, and a situation where such an expectation could amount to the fact that a transitory situation will be terminated by issuing a law that will define the scope of the restitution and the parties involved.

The constitutional system and the system of fundamental rights in a constitutional democratic state are based on values such as dignity, freedom and equality, which go beyond positive law. **Equality** was addressed in many of the decisions adopted by the Constitutional Court in 2019, including Judgment File No. Pl. ÚS 37/16 of 26 February 2019 dealing with the opening hours in retail and wholesale stores on public holidays, where the respective complaint was dismissed. The judgment stressed that the preamble of the Constitution implies that the society is faithful to all good traditions of the long-existing statehood, it is conscious of its responsibility towards the community, and it is resolved to guard and develop the cultural and spiritual wealth handed down from generation to generation. The public holidays listed in Section 1 of the Retail and Wholesale Opening Hours Act have been celebrated in the Czech Republic for a long time, sometimes even for centuries. Therefore, it is a legitimate objective of the law to make it possible for employees to enjoy and celebrate these holidays. At the same time, it is

legitimate to remind the rest of the population that it may be propitious to refrain from shopping on some days, and rather spend more time on spiritual activities either with their family or with people who share the same values. It must also be noted that up to now, business owners (employers) have had the choice to decide whether they would spend the holidays with their family, whereas employees have been limited by the preferences and needs of the business, i.e. their employer. Thereby, the contested law also promotes equality and membership in a society.

In Judgment File No. Pl. ÚS 44/18 of 17 July 2019 dealing with the environmental impact assessment (EIA) of priority construction works, the Court dismissed the complaint and stressed the importance of the **division of powers**. Section 23a of the Environmental Impact Assessment Act is in compliance with the requirement for legislation to be general as it does not violate the principle of division of powers and does not interfere with the powers of the executive and the judiciary. The lawmaker defined three general requirements, with the fourth requirement, listing the priority transport infrastructure project in a government regulation, being assigned to the supreme executive body. Therefore, it is the task of executive bodies to make an independent assessment of the four requirements for each transport infrastructure project. The contested provision did not define *pro futuro* for the executive bodies that a specific construction work amounts to priority transport infrastructure; therefore, the contested law cannot be compared to an administrative decision replacing, *de facto,* the decision making of administrative authorities, but rather having the force of a law with general applicability.

## Obligations arising from European Union Law and International Law

The duty of the Czech Republic to observe its obligations resulting from international law and from its membership in international organizations is laid down in Article 1(2) of the Constitution. Article 10 of the Constitution stipulates that international treaties have application priority. Article 10a of the Constitution makes it possible to delegate certain powers of the authorities of the Czech Republic to international organization or institution, mainly to the European Union (hereinafter the "EU") and its bodies. In Judgment File No. Pl. ÚS 50/04 of 8 March 2006, the Constitutional Court noted that this Article applies in both directions: it forms the normative basis for delegation of powers and at the same time it is the provision of the Constitution which opens the national legal order to the EU law, including the rules concerning its effects within the Czech legal order.

In relation to EU law, a note must be made of Judgment File No. II. ÚS 1608/19 of 5 September 2019, where the Constitutional Court once again dealt with the **duty to make a reference for preliminary ruling to the Court of Justice of the European Union** in situations where there is a conflicting interpretation of EU law by courts of different instances. The respective complaint was filed by a winery that bought and resold 70 000 liters of wine from Moldova. However the Czech Agricultural and Food Inspection Authority found out that several batches of the wine failed to comply with the permitted oenological procedures, and therefore the winery was fined. The first-instance court coincided with the petitioner who stated that the quality of the imported wine was certified by the V I 1 certificate. That document is issued by authorized authorities of the country of export and certifies that the relevant wine shipment complies with the requirements defined by EU law. The Supreme Administrative Court, disagreed with the petitioner (the winery) and ruled that that the document was a mere administrative authorization for the wine to enter EU territory and thus could not be considered a certificate of the wine's quality. The Constitutional Court concluded that if a court of last resort (i.e. the Supreme Administrative Court) diverges from the interpretation of EU law by the lower-instance court without due justification and without making a preliminary question to the Court of Justice of the European Union, it violates the fundamental rights of the party to the proceedings under Article 36(1) and Article 38(1) of the Charter. This conclusion was also reflected in Judgment File No. I. ÚS 2224/19 of 19 November 2019.

Last year the Constitutional Court returned to the regularly addressed issue of **parallel extradition and asylum proceedings.** Judgment File No. II. ÚS 3505/18 of 3 June 2019 reiterates that administrative proceedings for granting international protection and judicial extradition proceedings may be conducted in parallel, and that the outcome of either of the proceedings may be relevant for





the decision of the Minister of Justice on extradition permit. One of the facts that would unambiguously questioned the admissibility of extradition is additional granting of international protection; the Minister of Justice may not permit the extradition of an applicant for international protection until the first proceedings for granting international protection is rendered, including any judicial review (see Opinion File No. Pl. ÚS-st. 37/13). However, the facts of the case did not suggest that the Minister of Justice could not permit the extradition of the petitioner to be prosecuted in the Russian Federation. The petitioner had not been granted international protection in any EU country and no first proceedings for granting international protection were pending in any EU country at the time the contested decision was issued. The petitioner did submit an application for international protection on 28 December 2017, but it was not his first one. He had already applied twice for international protection in Croatia, with both applications being dismissed, even upon the judicial review. With reference to the previous proceedings, the proceedings were discontinued**.** The Minister of Justice had been informed in this regard before issuing the contested decision. Therefore, the Minister of Justice acted in compliance with the case law of the Constitutional Court, provided that he had made sure before issuing the decision that there was no proceedings related to the petitioner´s first application for international protection that would in effect bar his extradition.

A more critical opinion of the Constitutional Court in the same area can be found in Judgment File No. III. ÚS 1924/18 of 2 April 2019. The Court reiterated that the Minister of Justice cannot permit the extradition of a person to a foreign country under Section 97(1) of the International Judicial Cooperation in Criminal Matters Act if proceedings for international protection are pending, including the subsequent judicial review, unless it is a repeated application. This also applies in situations where the extradition is requested by a state other than the country of the person's origin, and that an impediment to extradition on grounds of international protection may only exist in relation to such country. The Constitutional Court concluded that the Minister's decision to extradite the petitioner to the United States of America before the proceedings for international protection have concluded amounts to a violation of the petitioner's right to effective judicial protection under Article 36(1) and (2) of the Charter.

The issue of deprivation of personal liberty is also closely related to parallel extradition proceedings and proceedings for international protection as ruled by the Constitutional Court in Judgment File No. II. ÚS 3219/19 of 26 November 2019. The petitioners who claimed to be Taiwanese citizens were subject to extradition proceedings to the People's Republic of China. The ordinary courts determined that the extradition for prosecution was admissible. The petitioners were remanded in custody throughout the proceedings. Eventually, the Ministry of the Interior granted subsidiary protection to the petitioners. Consequently, the petitioners applied for release from temporary custody. However, the Municipal Court dismissed their application and stated that the extradition is subject to the decision of the Minister of Justice. The Constitutional Court invoked the principles referred to above and concluded that the petitioners could not be extradited on grounds of subsidiary protection, and their extradition thus could not be authorized even by the Minister of Justice. The fact that the petitioners were further remanded in custody amounted to the violation of their rights deriving from Article 8(1) and (5) of the Charter as it no longer fulfilled the aim of making their extradition possible.

The Constitutional Court in Judgment File No. II. ÚS 2020/18 of 28 March 2019 referred also to the Convention on the Rights of Persons with Disabilities, that the court proceedings must be adjusted to the needs of persons with disabilities. Under no circumstances can ordinary courts ignore information challenging the ability of the petitioner to act independently before the court and take effective part in the proceedings. Since the District Court acted in such a way, the Constitutional Court considered that such procedure amounted to a violation of Article 13(1) of the Convention on the Rights of Persons with Disabilities (for more details see the section on fair trial).

By far the most frequently applied human rights treaty is the **Convention on the Rights of the Child**, which is, according to the Constitutional Court, often violated e.g. in family disputes. It is also invoked in judgments discussed below, e.g. in issues dealing with the issuing of payment order imposed on minors, joint custody, international child abductions etc.

In addition to the judgments referring to international and EU law, the case law of the Constitutional Court invoking also **the case law of the European Court of**

**Human Rights** (hereinafter the "ECHR") may also be pointed out in this respect. The ECHR case law is reflected in many judgements and resolutions including, without limitation, Judgment File No. I. ÚS 2845/17 of 8 January 2019 dealing with reopening a paternity dispute after more than 50 years. The judgment refers to a recent decision of the ECHR in the case of Novotný v. Czech Republic stressing the need to make the legal position consistent with the biological reality. Even though the Special Judicial Proceedings Act was amended to reflect the outcome of the ECHR case against the Czech Republic, the petitioner could not avail of the amendment due to the passage of time. In spite of this, the Constitutional Court upheld her complaint and concluded that the right to fair trial under Article 36(1) of the Charter and the right to respect family and private life under Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter the "Convention") had been violated.

## Fundamental rights and freedoms

### Right to life

The protection of one of the most important rights, i.e. the right to life, is not addressed by the Constitutional Court very often. Over the past few years, the right has been discussed especially in relation to the requirement of effective investigation where the right to life may be under a threat. The right to access the file constitutes a specific aspect involved in the right to effective investigation, as concluded by Judgment File No. I. ÚS 1496/19 of 2 July 2019, which upheld the respective complaint. This conclusion was arrived at by the Constitutional Court in a case where the police denied the petitioner access to file in a case of her missing son, who had been missing for more than 20 years. When denying the access to the file to the petitioner, who had a personal, undeniable and immediate interest in finding out the outcome of the investigation, the police failed to provide any extraordinary circumstances that might jeopardize third parties or the investigation. That is why the Constitutional Court concluded that the denial amounted to the violation of the petitioner's right to protection and parenthood and as well as the right to effective investigation subsumed under the right to life.

### Prohibition of torture and cruel, inhumane or degrading treatment or punishment

The right to effective investigation has a corresponding duty under the prohibition of torture and other unlawful treatment (Article 7(2) of the Charter). The Constitutional Court readdressed this prohibition last year in relation to the protests against tree felling in the Šumava National Park back in 2011.

***Judgment File No. II. ÚS 2077/17: The right to effective investigation: the steps of the police against persons preventing tree felling in the Šumava National Park.***

The case law of the Constitutional Court and the ECHR implies that in cases involving the protection of persons deprived of their liberty against inhumane or degrading treatment, the burden of proof is reversed to enhance their actual protection. Therefore, if a person in a good health condition is imprisoned and shows signs of injuries upon release, it is the duty of the state to provide a sufficient and convincing explanation of the cause of such injuries. In such cases, the burden of proof is shifted to the state that must establish before the court that the petitioner has not been subject to unlawful treatment. In situations when an individual is controlled by the police, it would be extremely difficult for him or her to collect evidence of unlawful treatment.

This was the case in this dispute as most of the petitioners were tied to a tree or were sitting on the ground showing only passive resistance, being surrounded at all times by a number of police officers, who, in fact, controlled them. The protesters maintained that they had been subjected to various kinds of inhumane and degrading treatment by the police. Immediately following the police intervention, the protesters filed a criminal complaint, which was, however, discontinued by the General Inspection of Security Forces (hereinafter the "Inspection"), whose decision was later confirmed by the Regional Prosecutor's Office stating that no facts indicative of a commission of crime had been established. Another, later criminal complaint also failed as reflected in Judgment File No. I. ÚS 1042/15. The Inspection commenced criminal proceedings, but discontinued the case soon after the commencement; the petitioners' appeal filed with the Regional Prosecutor's Office as well as request for supervision of the case filed with the High Prosecutor's Office also failed.

As for the substantive evaluation of the effectivity of the investigation, the Constitutional Court noted that the petitioners posed no risk for the police officers on site and that the blockage of the tree felling was not violent and only consisted in occupying the trees to be cut. Given that the investigation conducted after the previous judgment of the Constitutional Court failed to remedy the shortcomings, the Constitutional Court had no possibility than to conclude that there had been no effective investigation.

Anyone claiming to be subject to unlawful treatment while being deprived of his/her liberty must make at least a defensible statement, i.e. a statement that cannot be totally incredible or unlikely, must be feasible in temporal terms, as well as specific and not variable in time. The Constitutional Court addressed defensible statements in Judgment File No. II. ÚS 1376/18 of 10 December 2019 in a case involving alleged unlawful treatment of a homeless man by a police patrol.

***Judgment File No. II. ÚS 1376/18 of 10 December 2019: Right to effective investigation and establishing defensible statements***

The petitioner reported the conduct of the police patrol; the case was, however, discontinued as being motivated by an attempt to take revenge on the police officers. The same applies to the subsequent appeal and request for supervision. In a situation where there was one man's word against another's and where many aspects had been investigated superficially or not at all, the Constitutional Court could not determine beyond reasonable doubt whether the petitioner had been subject to torture or unlawful treatment. What was necessary, however, was to consider the constitutional complaint in light of the right to effective investigation. The Constitutional Court concluded that the petitioner's statements were quite consistent and not variable in time as well as feasible in terms of time and space. The medical reports also attested that the statements did not lack credibility or feasibility.

In terms of the effective investigation requirements, impartiality was the major issue. The Constitutional Court agreed with the defence by the petitioner who stated that the authorities responsible for criminal proceedings only verified the credibility of his statements, but the credibility of the statements of the police officers was in fact presumed. Therefore, the steps of the respective authorities could not be impartial. Another issue was how thorough and sufficient the investigation was. The Constitutional Court was surprised at the fact that the respective authorities were satisfied with their own lay evaluation of the medical reports as well as other facts related to the affair, and did not require any specialist opinions or expert opinions to verify the information obtained. Therefore, the requirement for the investigation to be thorough and sufficient had not been met. Therefore, the Constitutional Court concluded that the police and the prosecutor offices failed to make a genuine and due effort to explain the case, and thus violated the petitioner's right to effective investigation under Article 7(2) of the Charter and Article 3 of the Convention.

Unlike in the previous case, in Judgment File No. III. ÚS 2012/18 of 3 September 2019, the Constitutional Court concluded that the petitioner's right to effective investigation had not been violated. The conclusion was made on grounds that the attack on the petitioner by a loose dog qualified as an administrative offence did not amount to an intentional act, but rather to a prototypical misadventure. It was not a case of a systemic failure on part of the public authorities or even a borderline case between wilful negligence and indirect intent.

## Protection and guarantees of liberty

With respect to Article 8 of the Charter, the cases dealt with by the Constitutional Court in 2019 included both issues that had been dealt in the case law before (i.e. personal hearing, review of custody decisions after the termination of custody) as well as new issues (multiple sentences, delivery for persons lacking a command of Czech and advice given to such persons).

The Judgment File No. I. ÚS 1692/19 of 26 September 2019 reiterated that the court cannot dismiss a complaint against a custody decision only on the grounds that the custody has ended and the petitioner is serving a sentence. Such a dismissal of the complaint without dealing with the merits amounts to a violation of Article 36(1) of the Charter in conjunction with Article 8(1), (2) and (5) of the Charter.

The Constitutional Court also dealt with the issue of consecutive prison sentences, which was widely discussed in the media. These cases involve situations when the convicted person serves several consecutive prison sentences imposed in independent proceedings for crimes committed after the previous first--instance judgment of conviction has been pronounced. When a new sentence of imprisonment is imposed, the previous one is not considered, which results in multiple sentences. As a result, the sentence to be served may be more severe than necessary or sufficient, or too long sentence may prevent the convicted person from rehabilitation and a moral "wake-up call". Under Section 86(1) of the Criminal Code, if a person serving a suspended sentence does not abide by law during the operational period or fails to comply with the imposed conditions, the unsuspended sentence is to be served. In exceptional cases, the court may consider the circumstances of the case and keep the suspended sentence in place, impose supervision over the convicted person, extend the operational period or impose other reasonable restrictions or duties. The Constitutional Court in Judgment File No. ÚS 4022/18 of 30 July 2019 states that such exceptional cases under the cited provision may involve multiple sentences of imprisonment, when the total time to be served is unreasonably long and thus not in proportion to the crimes committed or the situation of the perpetrator. In some cases, it may prove to be more effective to impose reasonable restrictions or duties to guide the person to abide by the law. Such an approach fulfils the purpose of sentencing and reflects the crimes committed by the perpetrator without the sentences imposed being unreasonable given the seriousness of the crime.

Judgment File No. I. ÚS 343/19 of 21 May 2019 readdressed the personal attendance of custody extension hearings. The Constitutional Court noted that while it may not be necessary to **schedule a hearing** in all custody release proceedings, it was unavoidable in the case in question. There may be a maximum of a few-week-interval between the interviews of the accused person. In the case in question, more than 17 weeks had elapsed since the last hearing to decide on the custody, which also involved an interview of the accused person. The case law of the ECHR provided that an interval of eight and half weeks is too long. Thus, the court violated the petitioner's right to personal hearing under Article 38(2) of the Charter as well as the petitioner's right under Article 8(2) of the Charter, which prohibits imprisonment under other than statutory grounds.

Early in 2019, the Constitutional Court issued its only last year's opinion, which dealt with the service of a summary sentence and advice of rights to a person lacking a command of Czech.

***Constitutional Court Opinion File No. Pl. ÚS-st. 49/18 of 29 January 2019: Translation of a summary sentence into a foreign language and its service***

The petitioner, who was a foreign national, was detained by the police. Subsequently, a summary sentence was issued, and the petitioner waived her right of appeal against the summary sentence during the custody hearing, which was recorded in the hearing report. After the petitioner had retained a defence lawyer, she, in the end, did file the appeal against the summary sentence within the eight-day time limit. The custody hearing where the petitioner waived her right of appeal was interpreted, including the advice of the consequences of the waiver. The petitioner claimed, however, that the interpretation was not of sufficient extent and quality, and therefore, the waiver should be considered as not having been made, and the subsequent appeal should be considered duly filed. The case law of the Constitutional Court on the issue was not uniform, and two approaches could be identified. The first line of thinking suggests that even an appeal filed late or by an unauthorized person is effective and sets aside the summary sentence. If the ordinary courts took the summary sentence as final and enforceable, this was deemed unconstitutional by the Constitutional Court. The second, though minority, line of thinking considers a final and enforceable summary sentence unconstitutional if the sentence became final even though it was affected by a defect consisting in the violation of a fundamental right or freedom defined in the Constitution. Under this approach, the appeal filed against an unconstitutional summary sentence is not effective at all.

The Constitutional Court stated in its opinion that a summary sentence that has not been interpreted or translated cannot be considered duly served, and thus cannot become final. Under Section 28(3) of the Criminal Procedure Code, a decision that must be translated for the accused person is not served before its translation is served. The translated summary sentence was never served on the petitioner, and thus could not be appealed; therefore, the waiver of the appeal was not effective in light of such circumstances, and the summary sentence could not and did not become final and legally effective. By considering the summary sentence final and enforceable, the courts violated the petitioner's right under Article 36(1) in conjunction with Article 38(2) and Article 8(2) of the Charter.





## Protection of personal and family life

One of the most widely discussed judgments is Judgment File No. Pl. ÚS 45/17 of 15 May 2019 that dealt with **data retention.** The judgment is a follow-up to the previous repealing judgments of the Constitutional Court (Judgment File No. Pl. ÚS 24/10 of 22 March 2011 and Judgment File No. Pl. ÚS 24/11 of 20 December 2011) dealing with the legal regulation on preventive retention of traffic and location data on electronic communications by telecommunications service providers and the possibilities of providing such data subsequently to public authorities. The first two judgments repealed the respective statutory provisions on grounds of inaccuracy and vagueness. However, the last judgment did not uphold the complaint applying for repeal of the respective provision as the Constitutional Court concluded that the legislation is a proportionate interference with the right to privacy that can, in light of today's social and technological development, be interpreted in compliance with the Constitution. The Constitutional Court concluded that the legislation includes a reasonably clear, proportionate and unambiguous definition of the situations where the data may be provided as well as the bodies to which the data may be provided, the period, for which the data may be retained, together with the conditions under which the data may be retained and provided as well as effective remedies against abuse. Justice Kateřina Šimáčková submitted a dissenting opinion disagreeing both with the holding and the reasoning.

***Judgment File No. II. ÚS 45/17 of 14 May 2019: Data retention III – Collection and use of traffic and location data on electronic communications***

The Constitutional Court concluded that within the conditions of today's information society, in which an average individual uses electronic communication services on a daily basis and voluntarily accepts that a huge quantity of data is stored about them, it would be unwise to tolerate a situation in which service providers have users' data available, while the state apparatus (in justified cases) not. The blanket retention of traffic and

location data represents the effort of the state "not to lose momentum in the information society era" and to possess effective tools to carry out its tasks, especially in the field of security of the state and its inhabitants.

Data retention is based on a blanket and non-selective collection of substantial amount of data about all electronic traffic, which constitutes a severe interference with the privacy of an individual, which is guaranteed, on the constitutional level, under Article 10(2) of the Charter, as well as Article 10(3) of the Charter in conjunction with Article 13 of the Charter. Such interference must serve a strong public interest and must be kept to its minimum in order to strike a fair balance between the interference and the objectives pursued. To keep the interference to its minimum, the use of the traffic data must be reduced to the most acute cases, strict conditions of data retention and access must be defined and guarantees for all individuals must be created so that they have effective remedies against any abuse. Traffic and location data must be viewed as a valuable source of information about the life of the person concerned, and the abuse of such data may have a severe impact on the privacy of such an individual. The traffic data may often provide more information than the content of the communication itself, and therefore the parallel drawn with wiretapping is appropriate; therefore, the traffic and location data deserve the same degree of protection in terms of the fundamental rights.

In relation to the right to privacy, the Constitutional Court also dealt with the **court-ordered protective outpatient treatment**. Judgment File No. II. ÚS 2843/18 of 30 April 2019 discussed a case involving a man who disagreed with the interpretation of the applicable legislation by the ordinary courts. The courts inferred that the amendment of the applicable provision operated as an extension of the original psychiatric outpatient protective treatment period, without a new decision being required. The Constitutional Court noted that the Regional Court confirmed that the court-ordered protective outpatient treatment was in place despite an absence of an express transitory provision; such a decision involved an extensive interpretation having a retrospective effect, which was detrimental to the petitioner's fundamental rights and freedoms guaranteed by the Constitution. The interpretation of the Regional Court inferred a duty of the petitioner which was not expressly foreseen by the applicable legislation. There is no place for such a procedure in a material rule of law. The court-ordered protective outpatient treatment amounts to interference with the right to inviolability of the person under Article 7(1) of the Charter, and thus the applicable legislation must be interpreted restrictively. Since the interpretation of the applicable provision by the ordinary courts omitted the essence of the petitioner's fundamental right, the Constitutional Court concluded that it amounted to its violation.

Another judgment worth mentioning is Judgment File No. 1496/19 of 2 July 2019 upholding the complaint filed by a mother, whose son had been missing for more than 20 years, and the Police of the Czech Republic denied her access to the file, which she saw as interference with her constitutional rights. The Constitutional Court emphasized that the mother of a missing person has a personal, undeniable and immediate interest in finding out the outcomes of the police investigation into the whereabouts of her son, and she produced reviewable and legally sound evidence to establish her repeated requests. The Constitutional Court referred to the case law of the ECHR and pointed out that the **right to access the file** is not automatic, and the access may be denied in exceptional and well-founded situations including, without limitation, the initial phases of the investigation, or cases where the file contains sensitive information that may be detrimental to third parties or may jeopardize the investigation. However, the documents must be accessible in later phases of proceedings. The Constitutional Court concluded that the police did not find any such circumstances, and its conduct thus amounted to a violation of the petitioner's right to protection and parenthood as well as her right to effective investigation subsumed under the right to life.

Judgment File No. Pl. ÚS 37/16 of 26 February 2019 used the protection of private life foreseen by the contested legislation dealing with the **opening hours in retail and wholesale** as an argument to dismiss an application of a group of deputies to repeal the legislation. The Constitutional Court concluded that the contested legislation pursued a legitimate objective, namely striking a balance between work and family life and preventing the working life from having a negative





impact on the family and personal life of employees, and found the means to do so appropriate. In the end, the Constitutional Court noted that while there may be better, more appropriate and more effective means to achieve the goal, the contested legislation is not exceptionally unreasonable and passes the rational basis test that must be carried out in this case. For more details, see the section on the right to free choice of profession.

## Protection of property rights

Last year was no exception in that the Constitutional Court dealt with **restitution cases**, which seem to be a never-ending political, social and judicial issue. Judgment File No. Pl. ÚS 5/19 of 1 October 2019 dealing with the taxation of financial compensations of churches and religious communities was a key decision in relation to church restitutions. The Constitutional Court repealed the contested provision of the Income Tax Act arguing that the lawmaker made an unacceptable retroactive decision not on the taxation, but rather on an actual reduction of the financial compensation for churches and religious communities; the churches and religious communities were entitled to such compensation under an agreement on property settlement with churches and religious communities, and thus had legitimate expectations. Since the contested provision was found unconstitutional on grounds of being in conflict with basic principles of a democratic society under Article 1(1) of the Constitution and not only on grounds of violating the right of the parties to own property (Article 11(1) of the Charter and Article 1 of the Protocol to the Convention), the respective judgment is discussed in more details in the introductory sections hereof.

Yet another important decision is Judgment File No. Pl. ÚS 7/19 of 30 October 2019 by virtue of which the Plenum of the Constitutional Court repealed Section 259 of the Public Procurement Act. The contested provision introduced an obligatory fee of CZK 10,000 for each motion to commence administrative proceedings *ex officio* filed with the Office for the Protection of Competition (hereinafter the "Office") for each public contract whose defect is identified in the motion. If the fee is not paid, the motion is not dealt with, the fee is not refunded and exemption from the fee or extension of the time limit to pay the fee is not admissible.

***Judgment File No. Pl. ÚS 7/19: Fee for filing a motion with the Office for the Protection of Competition***

The Constitutional Court argued that the rule of law principle (Article 1(1), Article 2(3) of the Constitution and Article 2(2) of the Charter) directly implies that law must be foreseeable and consistent as well as free of arbitrariness; at the same time an individual takes precedence over a state since a state is to serve its citizens, rather than the other way round. When a law introduces an obligatory fee, its wording must be even more un--ambiguous and consistent (Article 11(5) of the Charter). Such an obligatory fee must have an unambiguous, intelligible, consistent and foreseeable statutory basis.

The issue lies in the consequence ensuing, under section 259 of the Public Procurement Act, from failure to pay the fee in terms of the duty of the Office to commence proceedings *ex officio* to review the steps taken by a contracting authority under Section 249 of the Act. While the law assumes that the Office will deal with all relevant aspects that may give rise to the commencement of *ex-officio* proceedings to review the steps of a contracting authority, it also prevents the Office from dealing with motions where the fee has not been paid. Both of the duties of the Office are in a clear conflict, and the contested provision thus makes the law unforeseeable and inconsistent, with foreseeability and consistency of law being the fundamental principles of the rule of law; in addition, it is contrary to the principle of good administration which is based on the fact that public bodies are responsive and communicate with the citizens. The payment of the fee is set as a precondition even in situations where the Office is to commence proceedings *ex officio*. It is a general principle that a fee should not be required in situations where the state is required to act by operation of law. The failure to exempt public bodies, regions and municipalities etc. from the fee makes it even more absurd. It is hard to imagine that such entities would wish to burden the Office or contracting authorities without a good reason to do so.

The Constitutional Court noted that the law foresaw an obligatory fee also in situations where the state is required to perform its statutory duty. What a person gets in consideration for the fee is only a certainty that the Office will act in compliance with its constitutional and statutory duties, which must be automatic in a rule of law. The compliance by the Office with the Constitution and legislation must not be subject to a fee. Such a fee cannot be enforced, and therefore, the Constitutional Court did not proceed to consider the amount of the fee. By way of conclusion, the Constitutional Court stated that the conclusion holds irrespective of an objective intended by the government to prevent unfounded and frivolous submissions and thus to reduce the caseload of the Office. Even though the introduction of the obligatory fee was followed by a decrease in the number of motions (by more than 93%), the Constitutional Court believes that the motions are a source of information that cannot be replaced. However good the auditing activities of the Office are, they cannot replace an interest of entities outside the Office. The legislation fails to create conditions for the Office to deal with founded motions more effectively and has no reasonable potential to protect the rights and freedoms of the contracting authorities, and thus fails to fulfil the regulatory purpose.

For the sake of completeness, the Constitutional Court not only repealed the contested provision of the Public Procurement Act, but also upheld the constitutional complaint of the petitioner (Transparency International – Česká republika, o. p. s.) and reversed the contested decisions of administrative courts as being contrary to Article 11(5) of the Charter (see Judgment File No. II. ÚS 1270/19 of 19 November 2019).

Another group of interesting judgments related to property rights undoubtedly includes those dealing with **judgment and debt enforcement**. Like in previous years, the Constitutional Court repeatedly dealt with discontinuance of enforcement proceedings on "other grounds" under Section 268(1)(h) of the Civil Procedure Code. The cases involved situations where a person with vision or other disabilities had used public transport without a ticket. The Constitutional Court in its Judgment File No. III. ÚS 1367/17 of 19 February 2019 states that if the ordinary courts fail to take into account the disability and other documents necessary for the proceedings when dealing with an application filed by a judgment debtor to discontinue enforcement proceedings, and fail to discontinue the proceedings "on other grounds", this amounts to a violation of the right of the judgment debtor to fair trial under Article 36(1) of the Charter and the right to own property under Article 11(1) of the Charter. The Constitutional Court issued a similar decision in relation to minors travelling without a valid ticket, who were not duly represented by a legal guardian in the original proceedings, and only found that they were subject to enforcement proceedings after a number of years (see Judgment File No. II. ÚS 3814/17 of 17 April 2019).

We should not leave out the case law dealing with the protective measures of **seizure of a thing or other property value**. Judgments File No. IV. ÚS 3204/18 of 22 January 2019 and File No. II. ÚS 2046/19 of 13 August 2019 reiterated that the seizure of crime-related property under Section 101(1)(c) of the Criminal Code does not aim to punish the owner, but rather pursues a public interest by preventing property which had being used or intended for committing a crime, from posing further threat to people and property or from being used for committing a crime in situations where such a threat exists. The seizure of crime-related thing or other property must be proportionate and the interference with the right of ownership under Article 11(1) of the Charter must be justified by the circumstances of the case; the circumstances of the case must imply such a degree of probability of the consequence that reasonably justifies the need for such interference under normal situations.





## Political rights

### Freedom of expression

Last April, the Constitutional Court issued Judgment File No. II. ÚS 3212/18 of 17 April 2019, that raised a lot of discussion. The judgment afforded protection to a businessman who conditioned his accommodation services for Russian citizens by them signing a declaration condemning the **annexation of Crimea by the Russian Federation** in spring 2014.

***Judgment File No. II. ÚS 3212/18 of 17 April 2019: Freedom of expression in business (Crimea annexation)***

The Constitutional Court disagreed with the opinion of the Supreme Administrative Court that found the petitioner's conduct to amount to a violation of non-discrimination on grounds of nationality. The Constitutional Court, on the contrary, stressed that the right to engage in enterprise cannot be seen merely as a way of obtaining means for one's livelihood, but rather as a space for one's autonomy and self-fulfilment. Thus, the freedom of expression and the right to engage in enterprise may, in fact, merge. The justices believed that the petitioner's conduct did not amount to prohibited discrimination and added that the motive for his conduct was neither despicable nor lacked a rational basis. The petitioner did not apply differential treatment to Russian and Czech citizens, or citizens of any other country for that matter, by denying them accommodation services a priori. He only denied the services to those Russian citizens who refused to sign the declaration condemning the Crimea annexation. The petitioner wished to show his opinion about the unlawful act and, as far as possible, have some impact on those who contribute to the political life in the country that committed, in his opinion, the act of aggression. It was also important that the conduct of the petitioner was foreseeable (the text was published both on the front door of the hotel as well as on the website), the service provided by the petitioner was substitutable in the relevant area, and the nature of the service was not that of serving basic needs or having a monopoly. In addition, the condition for accommodation services was not manifestly arbitrary or irrational from an objective point of view. The Constitutional Court noted that the Crimea annexation was in clear conflict with international law, and was disapproved by both official Czech and EU foreign policy. The justices also drew a historical parallel applicable to the Czech Republic between the Crimea annexation and the 1968 occupation of Czechoslovakia by the legal predecessor of today's Russian Federation. The clear time relation between the Crimea annexation and the declaration only assured the Constitutional Court in that it was not an arbitrary and unacceptable calculated conduct, but an immediate response to the event, and the petitioner wanted to express his political opinion. Therefore, the judgment of the Supreme Administrative Court that violated the petitioner's freedom of expression and right to engage in enterprise cannot hold in light of the above arguments.

The freedom of expression, in relation to the **right to protect journalistic sources**, was also addressed in Judgment File No. I. ÚS 4037/18 of 21 May 2019. Even though the Constitutional Court eventually dismissed the constitutional complaint, it, at the same time, criticized, on a number of grounds, the decision of the Office for Foreign Relations and Information, which imposed a procedural fine on the petitioner, who was an investigative journalist and a writer, for failure to appear for providing an explanation, as well as the contested decision of the High Court that found the imposition of the fine to be justified. Those authorities did not take sufficiently into account the fact that the journalist was interviewed in relation to his activities involving high-level politics in a situation where the authorities responsible for criminal proceedings should refrain from any acts that could imply that journalists are subject to different and stricter treatment than other individuals. The imposed procedural fine in the amount of nearly 50% of the statutory limit for the first and rather not serious violation of the duty to appear for providing an explanation, could, in the opinion of the justices, appear to constitute an attempt to influence the petitioner even before the first question is asked where the journalist could consider refusing to testify in order to protect journalistic sources. It

was only due to the considerable reduction of the fine by the High Court that the Constitutional Court eventually dismissed the complaint.

Judgment File No. III. ÚS 3564/18 of 28 May 2019 partially upheld a constitutional complaint filed by a demonstrator to challenge the steps taken by the Police of the Czech Republic to prevent her from protesting against the Prague Pride parade.

***Judgment File No. III. ÚS 3564/18: Violation of the freedom of expression of a woman, who wanted to show verbal disagreement with the Prague Pride parade, by the Police of the Czech Republic***

The petitioner brought a court action to seek non-pecuniary damage caused by maladministration on part of the police officers who prevented her from entering the area where the Prague Pride parade was held, and thus frustrated her chance to protest against the parade. The District Court dismissed the action stating that the police officers who ordered the petitioner as well as other persons to refrain from entering the route of the parade had knowledge of an intention of right-wing extremists to disturb the parade. The Municipal Court confirmed the District Court decision.

The Constitutional Court concluded that the order of the police officers amounted to maladministration, and thus to a violation of the petitioner's freedom of expression, on the grounds presented below. First, it was established that the petitioner wanted to show her disagreement only verbally, and verbal disagreement with a rally, its purposes or opinions of its participants, is subsumed under the freedom of expression under Article 17(1) of the Charter. What is exempt from such constitutional protection, though, is violent action against the rally as well as acts preventing others from exercising their right of peaceful assembly, or verbal threats of violence aimed at the participants of the assembly, or any other expression going beyond the freedom of expression. To consider the order of the police to be compatible with the Constitution, it would need to be established that the police had reasonable grounds and sufficient evidence to believe that the petitioner intended to commit violence against the Prague Pride parade, to make threats of violence against the participants or prevent them from exercising their right to peaceful assembly. The ordinary courts, however, did not reach any such findings, and, therefore their decision cannot hold in light of the above.

## Right to information

Early last year, the Plenum of the Constitutional Court issued Judgment File No. Pl. ÚS 32/17 of 22 January 2019 dismissing a petition of a group of senators of the Senate of the Czech Republic to repeal Act No. 340/2015 Sb., on special conditions for the effectiveness of certain contracts, the disclosure of these contracts and the register of contracts ("Register of Contracts Act") arguing that neither the act nor its provisions fail to comply with the Constitution.

***Judgment File No. Pl. ÚS 32/17: Register of Contracts Act***

The core argument of the petition lied in that the Register of Contracts Act is an unconstitutional interference with the right to engage in enterprise of some entities (national enterprises, regions and municipalities or legal entities) in which the government, regions or municipalities have an ownership interest, and who are required by the Register of Contracts Act to disclose details which constitute competitive advantage for them or their business partners, and whose confidentiality is necessary for them to exercise their right to engage in enterprise.

To assess the lawmaker's interference with the right to engage in enterprise, the Constitutional Court carried out a rational basis test, and concluded that the Register of Contracts Act and the contested provision passed the test. The Constitutional Court rebutted the objection against the disclosure of details constituting competitive advantage and said that the Register of Contracts Act foresees their protection by introducing a number of exceptions from the duty to disclose. Even though the Constitutional Court agreed, in part, with the petitioners´ claim that Section 5(6) of the Register of Contracts Act only protects the commercial secret of persons defined in Section 2 of the Register of Contracts Act, and not that of their business partners, it also stressed that such partners, whose right to engage in enterprise is interfered with by the Register of Contracts Act to some extent, use, in part, public funds, which constitutes legitimate grounds to monitor their economic conduct. Such interference was not found to be grave enough to justify the repeal by the Constitutional Court. Finally the Plenum of the Constitutional Court could not agree with the petitioners´ claim that the principle of equal treatment with respect to the other party, whose right to conduct business is interfered with to some extent, was violated. An entity using public funds is not on equal footing with other private entities, who exercise their right to engage in enterprise to earn money for their needs, and thus such entity cannot use funds irrationally or uneconomically only because their business is involved. Since the Constitutional Court did not find that the Register of Contracts Act or its provisions constitute an act of interference with the core of the right to engage in enterprise, it dismissed unanimously the petition on the above grounds as being unfounded.

Judgment File No. II. ÚS 618/18 of 2 April 2019 readdressed the definition of "public institution" under Act No. 106/1999 Sb., on free access to information, and thus followed up to previous case law of the Constitutional Court that had dealt with the issue a number of times before.

***Judgment File No. II. ÚS 618/18: Definition of "public institution" under the Free Access to Information Act***

Under the Free Access to Information Act, the petitioner requested in writing that OTE, a. s., a company in the capacity of the defendant, provide all contracts entered into by the defendant and Czech Moravian Commodity Exchange Kladno. The defendant denied the requests stating that it was not under the duty to provide the information under the Free Access to Information Act, and added that the requested information constituted commercial secret. The challenge made by the petitioner was dismissed by the Board of Directors and so was an appeal filed with the Municipal Court. The Municipal Court based its reasoning on Judgment of the Constitutional Court File No. ÚS 1146/16 of 20 June 2017 (hereinafter the "ČEZ Judgment"), which stated that private entities that cannot act as public institutions cannot be subject to the duty to provide information. Even though the government was the only shareholder of the defendant, it only exercised its shareholding rights under the applicable private law legislation, irrespective of its share. Therefore, the defendant was not subject to the duty under Section 2(1) of the Free Access to Information Act. An appeal on points of law filed against the court decision was also dismissed by the Supreme Administrative Court, which noted that the defendant qualified as a public institution under Judgment File No. I. ÚS 260/06 of 24 January 2007 (hereinafter the "Prague Airport Judgment"), but not under the ČEZ Judgment as far as the nature of the defendant's activities is concerned. In the proceedings before the Constitutional Court, the petitioner used the conflicting judgments of the Constitutional Court as the basis for its arguments.

The justices of the second senate of the Constitutional Court maintained that only one of the following opinions could be correct in light of the case law of the Constitutional Court: a) a company whose 100% share is held by the government does not qualify as a public institution under the Free Access to Information Act; b) only companies whose sole shareholder is the government, region or a municipality qualify as a public institution under the Free Access to Information Act; c) companies where characteristics typical of public institutions prevail, also qualify as public institutions. Such circumstances thus implied a conclusion that a company whose 100% share is held by the government, region or a municipality qualifies as a public institution under the Free Access to Information Act. The justices argued

that if the Senate of the Constitutional Court issuing the ČEZ Judgment wanted to derogate from the Prague Airport Judgment, the procedure for unifying conflicting case law would have to be triggered. Since this was not the case, the justices of Senate presumably believed that a company where characteristics typical of public institutions prevail also qualify as public institutions. The government held 100% share in OTE, a. s., i.e. the defendant, and the company thus qualified as a public institution under both previous judgments. In addition, the company also participated in public administration as it controlled the electricity market, and accordingly was the only holder of a license under Act No. 458/2000 Sb., on business conditions and public administration in the energy sector (the Energy Market Act). In light of the above, the Constitutional Court concluded that the decision of the ordinary courts that stated that the defendant did not qualify as a public institution under the Free Access to Information Act violated the petitioner's right to information under Article 17(1) and (5) of the Charter. Therefore, the Constitutional Court granted the constitutional complaint and reversal the respective decisions.

In relation to the right to information, Judgment File No. I. ÚS 1083/16 of 21 May 2019 is also relevant; the Constitutional Court dismissed a complaint filed by the town of Vsetín, which brought an action to seek damages incurred as a result of **extensive information gathering** expenses required by claimed frivolous requests filed by an intervening party. The Constitutional Court argued that the national or local government authorities have no constitutional right to have the costs incurred in relation to providing information about their activities reimbursed, and have no claim under civil law to seek damages suffered when the respective body gathers the information, and only then determines the reimbursement, which the applicant fails to pay. At the same time, the Constitutional Court stressed that it is permissible under Article 4(4) and Article 17(5) of the Charter for the national or local government authority to refuse to provide or mine information about its activities if the right to information is exercised frivolously, or if it makes a well-reasoned estimate of the costs; in such a case, the applicant must be notified of the costs before the time limit for the provision of the information has elapsed.

## Economic and social rights

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

### Right to a free choice of profession and to appropriate training for that profession

Article 26 of the Charter affords constitutional protection to a number of inter-related fundamental rights, namely the right to free choice of profession and to appropriate training, the right to engage in enterprise or other economic activity and the right to acquire the means of her livelihood by work. Since these rights are classified as economic, social and cultural rights, the Constitutional Court usually carries out the rational basis test to evaluate any interference with such rights. The rational basis test includes the following steps: 1. defining the meaning and essence of the respective fundamental right; 2. assessment as to whether the legislation affects the existence or actual realization of the essence of the fundamental right (if it does, the Constitutional Court applies the test of proportionality; if it does not, the Constitutional Court carries out steps 3 and 4); 3. assessment as to whether the legislation pursues a legitimate interest of the state, i.e. if it does not involve an arbitrary limitation of the fundamental right; 4. consideration whether the legislation has a rational basis to achieve the goal, even though it might not be the best, most effective and wisest one.

The right to engage in enterprise and the right to acquire the means of her livelihood by work have been addressed by the Constitutional Court in details in Judgment File No. Pl. ÚS 37/16 of 26 February 2019 (**Opening hours in retail and wholesale on public holidays**). The case dealt with an act regulating opening hours in retail and wholesale where shops were split according to the sales-area size to two categories: the shops in the first category were allowed to be open on public holidays in the extent of 7 days and a half, and the shops in the second category were not allowed to be open at all. A group of senators filed a petition for the repeal of the act with the Constitutional Court as they believed that the act was in conflict with the right to engage in enterprise, the right to acquire the means of her livelihood by work, the right to privacy as well as the principle of equality and autonomy of will (see the relevant section above). The Constitutional Court, however, disagreed with their reasoning and did not repeal the act. By way of introduction, the Constitutional Court noted that the content of the petitioners' reasoning makes the rational basis test sufficient and does not require the proportionality test to be carried out. According to the Constitutional Court, the essence of the economic rights lies in a sufficient extent of freedom in decision making about one's own property and time for an individual to be able to meet his or her business or employment ambitions and achieve income necessary to meet the economic needs. Since the prohibition only applied to a few days within a year, the Constitutional Court concluded that the contested legislation did not undermine the right to engage in enterprise nor did it interfere with its essence. Therefore, the third and fourth steps of the rationality test were carried out.

***Judgment File No. Pl. ÚS 32/17: Opening hours in retail and wholesale on public holidays***

The legitimate objective pursued by the lawmaker (third step of the rationality test) may be inferred from the explanatory memorandum as well as publicly available facts. The legislation pursued to enhance social and family cohesion by defining a certain strictly defined timeframe for people to spend together. In this respect, the Constitutional Court notes that it is a legitimate objective for legislation to make it possible for employees to celebrate holidays that form part of Czech cultural and spiritual tradition. At the same time, it is legitimate to remind the rest of the population that it may be convenient to refrain from shopping on some days, and rather spend more time on spiritual or social activities. In addition, it is not possible to agree with the petitioners that it involves an unreasonable interference with the right to acquire the means of her livelihood by work. While the restriction of opening hours during seven and half days in a year does prevent the employees from working on these days, it must be also borne in mind that they would not be able to work for the same employer during the remainder of 357 and half days anyway since they are limited by their physical possibilities as well as statutory working hours and work available from the employer.

The Constitutional Court further examined whether the legislation was appropriate to achieve the objective. For millennia, our civilization has followed the principle that it is necessary that people be not required to work without rest every day. In a democratic society, one may observe a lasting rivalry between legislature wishing to regulate a citizen's right to fixed days of rest, and business and consumers wishing to do business and enjoy material benefits even on holidays. In recent decades, however, a regular rotation of working and holiday days within a week has been loosened, both to the detriment of family life and to the detriment of personal satisfaction. The introduction of certain days of the year which will generally be perceived as non-working days makes the situation less detrimental. In this respect, the act is appropriate to achieve the objective pursued.

The last step of the rational basis test consists in assessing whether the legal means to achieve the objective is reasonable, though not necessarily the best, most appropriate, most effective or wisest. The Constitutional Court noted that while there may be better, more appropriate and more effective means to achieve the objective, the contested legislation does not show a striking lack of rational basis. Therefore, the Constitutional Court concluded that the act passes the rational basis test. Unless the regulation of opening hours is in conflict with the constitutional values or exceeds the national and state traditions, there is no need for interference by the Constitutional Court with the lawmaker's decision.

The following judgment also impinges on the right to engage in enterprise. Judgment File No. 21/17 of 12 February 2019 dealing with the **billboard ban applicable to motorways and first class roads** issued by the full court dismissed the complaint and concluded that the ban was constitutional. The Constitutional

Court reviewed the contested legislation in terms of the right to own property (see the section above) and the possibility of expropriation only in public interest, on statutory grounds and for compensation; therefore, the proportionality test was carried out. The final paragraphs of the judgment also considered whether the legislation may have a choking effect on some businesses and whether it passes the rational basis test.

## Protection of parents' rights, family and children

Over the past few years, the Constitutional Court has addressed the protection of parents' rights, family and children extensively, and issued a number of important judgments dealing, without limitation, with the child custody and post--divorce situation of the child. In comparison with the previous years, however, the number of such judgments decreased last year. While the judgments issued in the previous years had often dealt with general principles of decision-making related to children, the most important judgments issued in 2019 addressed rather specific issues.

A new judgment (File No. III. ÚS 2396/19 of 29 October 2019) was issued on **joint custody** summing up the criteria relevant to assess whether shared custody is an appropriate child custody arrangement. The Constitutional Court drew a line between a subjective criterion, i.e. a genuine and honest interest of the parents in having the child in their custody, and the following objective criteria: 1) an existence of a blood bond between the child and the person wishing to have the child in their custody; 2) the extent in which the identity and family relations of the child are maintained if placed in someone's custody; 3) the ability to secure the development of the child as well as the physical, educational, emotional, material and other needs, and 4) the preference of the child. For the first time, the Constitutional Court noted that a bad relationship with the partner of one of the parents may be a serious obstacle preventing in itself joint care, provided that it is a permanent and intensive feeling of the child and joint custody would imply that the child would meet the partner regularly. The execution of and compliance with a mediation agreement is an important point to assess how well the parents can communicate with each other.

Judgments File No. II. ÚS 4247/18 of 17 May 2019 and File No. II. ÚS 4189/18 of 2 December 2019 dealt with the **visitation rights** of non-custodial parent. The Constitutional Court emphasized that both parents should contribute to the same degree to the care and education of the child, and that visitation by the non--custodial parent during a week is essentially in the best interest of the child. If parents and the children face day-to-day troubles and joys together, this deepens their relationship and bond. Therefore, the Constitutional Court upheld two complaints of non-custodial parents who demanded that the visitation take place not only at weekends, but also on weekdays, including sleepovers.

Last year was no exception in that the Constitutional Court criticized insufficient protection of **child participation rights** by ordinary courts as well as failure to take their opinion into account. Judgment File No. IV. ÚS 1002/19 of 9 October 2019 dealt with a change of surname of a seven-year-old boy. The minor child insisted repeatedly before Authority providing social and legal protection for children that he did not want to change his surname. The second-instance court refused to take the child's preference into account without even trying to talk to the child. The Constitutional Court saw it unacceptable for a second-instance court to arrive at a conclusion that a minor child is unable to appreciate what a change of surname might involve, without even talking to the child, and thus having a chance to form an opinion of his intellectual and mental development. This amounted to a violation of the right to judicial protection of a minor child under Article 36 of the Charter as well as the rights under Article 9(2) and Article 12(2) of the Convention on the Rights of the Child.

Judgment File No. I. ÚS 2845/17 of 8 January 2019 stressed the case law of the ECHR, which says that persons that try to establish who their relatives are, enjoy a protected interest in finding information necessary to establish key aspects of their **personal identity**. In opposition to this right, there is a general interest in legal relations under the principle of *res judicata*, as well as the rights of third parties involved; however, a balance must be struck between these opposing rights. Both parties enjoy a right to maintain legal certainty, but also enjoy a right to be certain about their personal identity, which involves the knowledge of their parents' and children's identity. In the case in question, the Constitutional Court concluded that an interest of an adult daughter, who did not intend to have any material benefit derived from the paternity claim, takes precedence over an interest of a presumed father who did not want to undergo a DNA test and know whether he was the petitioner's father.

Judgment File No. II. ÚS 3134/19 of 12 November 2019 readdressed another aspect of **procedural rights** of children and emphasized the duty to ensure due representation of children in civil proceedings related to a debt owed by the child. The fact that a parent is involved in the proceedings as a legal guardian does not eliminate situations where such representations may not be considered as due representation in terms of the interests of the minor child. Such situations include, without limitations, cases where the representation by the legal guardian is only formal, and the guardian does not communicate with the court or does not receive documents served to the designated address. In such situations, the ordinary court should, as a rule, consider whether it may be appropriate to appoint a guardian-ad-litem. The Constitutional Court concluded in the case in question that what was unconstitutional was the fact that there was no participant in the proceedings who would attempt to defend the rights of the minor petitioner, and the court ignored such a state of affairs.

A noteworthy decision is Judgment File No. III. ÚS 428/19 of 30 July 2010 where the Constitutional Court looked into the interpretation of "habitual residence" under the **Hague Convention** in relation to international abductions. The ordinary courts dealing with the case failed to take sufficiently into account all circumstances relevant for assessing the intention of the parents to reside in the Czech Republic.

***Judgment File No. III. ÚS 428/19 of 30 July 2019: The interpretation of "habitual residence" under the Hague Convention is cases dealing with the returns of abducted children***

The Constitutional Court noted that the Hague Convention provides no definition of child's habitual residence, which is a connecting factor to determine whether the abduction of a child was lawful, or nor, and it is the task of the national court to define the child's habitual residence taking into account all circumstances of the case. It was stressed that the age is of special important in cases involving small children. Small children live in their family environment, which includes the persons, who share the household with them, who take care of them and on whom the children are dependent. In this light, the impact of such persons (the parents) on their social and family environment, including their plans for their future and the future of the family, must be considered.

The Regional Court failed to address in sufficient detail whether the behaviour of the parents, their actual acts and express wishes about the future family arrangements suggested a gradual lawful transfer of the family household to the Czech Republic, or an intention to establish a habitual, if not permanent, centre of vital interests in the Czech Republic. Therefore, the findings of facts and conclusions of law did not take sufficiently into account all circumstances of the case that could considerably affect the court's assessment as to whether the parents intended to transfer the habitual residence of the minor child to the Czech Republic.

## Right to judicial and other legal protection

### Right to fair trial

The right to fair trial constitutes a set of fundamental rights and principles that should be respected in any proceedings; it involves safeguards reflecting the fundamental principles of the rule of law and compliance with procedural legislation. These include, without limitation, the right to effective judicial protection, right to the jurisdiction of the lawful judge, the right to have the case heard expeditiously and publicly, or the duty of the court to address all objections and defences raised. A number of last year's judgments dealt with the fair trial safeguards; therefore, the yearbook will only discuss the most important ones.

Judgment File No. II. ÚS 2020/18 of 28 March 2019 dealt with the right to access to court and referred to the Convention on the Rights of Persons with Disabilities which imposes a duty on the government to make adjustments in court proceedings for **persons with disabilities**.

***Judgment File No. II. ÚS 2020/18: Right of persons with mental (health) disability to the effective judicial protection***

The petitioner suffered from a mental disability. During his stay in a psychiatric hospital, which coincided with the incapacitation proceedings, he was approached by a woman, who was renting a garage to his mother. The petitioner's mother had died and the lessor demanded that the garage be vacated and handed over. The petitioner replied that he accepted the claims, but that he was not able to deal with them due to his long-term hospital stay. The lessor brought a court action; the court issued a payment order and rejected the subsequent challenge made by the petitioner on grounds of being late. The Court of Appeal dismissed the appeal and the petitioner filed a constitutional complaint.

The Constitutional Court noted that courts must deal with the party's ability to take effective part in the proceedings as soon as the court finds out that the party has a mental (health) disability. When an adult with a disability (especially a mental disability) is a party to the proceedings and the disability may make his or her participation in the proceedings more difficult, and the person is not represented by counsel or guardian ad litem, the court must, as a rule, assess whether the person is able to take effective part in the proceedings, make acts and exercise his or her rights. If this is not the case, the court shall adopt appropriate procedural measures including, without limitation, arranging for the person's representation. The Constitutional Court saw it unacceptable that the District Court ignored information challenging the petitioner's actual ability to make acts before the court autonomously and take effective part in the proceedings, i.e. the real possibility to file an appeal, make statements in the case and have the case heard in his presence. Therefore, the Constitutional Court concluded that by issuing the payment order, the District Court violated the petitioner's constitutional right to effective judicial protection as well as his right to be present to the hearing in the case and make statements, as well as his right to effective access to justice under the Convention on the Rights of Persons with Disabilities. The Constitutional Court thus granted the complaint and set aside the payment order.

Judgment File No. ÚS 3626/18 of 5 November 2019 addressed the **decision not to deal with a request for information** under Act No. 106/1999 Sb., on free access to information, on ground of non-payment of the costs. The Constitutional Court found that the time limit set in the Free Access to Information Act is to provide the applicant with enough time to pay the requested amount. If an administrative body has decided not to deal with the request before the expiry of the time limit, after the second-instance authority has dealt with the appeal against the requested amount, the applicant may not be denied review by administrative courts. The administrative courts violated the petitioner's constitutional right to access justice since he was prevented from having his case heard duly by an impartial and independent court that would review the lawfulness of the decision of an administrative body that was said to violate the petitioner's rights.





Another topic touched upon by the Constitutional Court included the requirements for **pronouncing a judgment in public**. Judgment File No. II. ÚS 38/18 of 18 June 2019 the Constitutional Court reiterated that any court decision designated by the lawmaker as a judgment qualifies as a judgment. For a judgment to be deemed to be pronounced in public, it may be published on the (electronic) official notice board of the courts; both the holding and major tenets of the reasoning must be published. The precondition for a judgment to be pronounced in public is the fact the parties as well as the public will be notified about oral pronouncement in advance. Such a notification is not necessary where the judgment is published on the official notice board of the court since these boards are accessible permanently and the decision may be published for a prolonged period. Since the judgment of the Supreme Administrative Court was served on the petitioner, published on the official notice board and later, together with the reasoning, even on the court's website, the Constitutional Court concluded that pronouncing of the judgment without its reasoning did not amount to the violation of the applicant's constitutional rights.

In Judgment File No. Pl. ÚS 39/17 of 2 July 2019 the Constitutional Court dismissed a constitutional complaint when reviewing whether the **absence of court review of decisions when Czech citizenship is not granted to foreign nationals** on grounds of national security is constitutional. The Supreme Administrative Court applied for the repeal of some provisions of Act No. 186/2013 Sb., on Czech Citizenship, that make it possible not to review decisions when Czech citizenship is not granted on grounds of a threat to national security as shown by classified information. The Plenum of the Constitutional Court dismissed the complaint and argued that the provision did not prevent the review of all decisions granting Czech citizenship, but only those that dismissed the application on the grounds related to national security. Such decisions are based on an opinion of the Police and Intelligence services that include classified information to the effect that the applicant poses a threat to the national security, sovereignty and territorial integrity, democracy, life, health or property. The Constitutional Court believed that the legislative provisions pursued a legitimate objective, i.e. to reduce as much as possible a risk of leakage of classified information related to national security. It is not an arbitrary decision of the lawmaker and the provision cannot be held contrary to the constitution or democratic rule of law under Article 1(1) of the Constitution.

### Specificities of criminal proceedings

Judgment File No. III. ÚS 3439/17 of April 2019 addressed decision as to whether **injured parties and victims may join** criminal proceedings. The Constitutional Court reiterated that a person claiming to have suffered damage or injury and complying with the requirements set by the Code of Criminal Procedure is exercising his or her right to effective judicial protection, namely to be able to join commenced criminal proceedings. If such requirements are complied with and the court fails to allow the injured party or the victim to join the proceedings without providing sufficient reasons for failing to do so, it amount to the violation of the right to effective judicial protection since it is at the discretion of the injured party or the victim to decide whether to claim compensation in civil, or criminal proceedings.

***Judgment File No. III. ÚS 3439/17: Requirements for an injured party/a victim to join commenced criminal proceedings***

The defendant was convicted of crime of supporting and promoting movements suppressing human rights and freedoms committed by posting a hateful comment on the petitioner's Facebook profile in response to the petitioner leaving the 2015 Czech Nightingale Music Awards ceremony where the Ortel music group and Tomáš Hnídek, the singer, received the award. The petitioner joined the criminal proceedings in June 2017 and claimed compensation for non-pecuniary damage suffered as result of interference with his personality rights. The District Court, however, did not allow the petitioner to join the trial.

The Constitutional Court noted that under Section 206(3) of the Code of Criminal Procedure, the principle of presumed status of the injured party applies only to the trial portion of the proceedings. A decision issued under Section 206(3) must be based on indisputable (and thus usually undisputed) impediments of legal or factual nature that prevent the injured party from joining the trial (e.g. a co-defendant is claiming the status of the

injured party). Where in doubt, the person claiming the rights of an injured person must be allowed to join the trial. A person may not be prevented from joining the trial as an injured person solely on grounds of the legal qualification of the respective conduct; the more so where the legal qualification is disputed. Therefore, the objective of the alleged perpetrator and the form of fault-based conduct is not relevant; the only relevant criterion is whether the defendant's conduct could cause, in legal terms, damage to the injured party. The law requires the authorities responsible for criminal proceedings and courts to focus solely on the causal link between the perpetrator's conduct and the injury or damage suffered.

The Code of Criminal Procedure defines several rights of the injured party; the rights need not be exercised only to be awarded pecuniary claim. An injured party that is also a victim of the crime has a right to make a statement about the impact of the crime on his or her life and provide the court with his or her view of the case (in a capacity other than a witness). The participation rights of the injured party may also provide arguments for legal qualification of reasonableness of the crime especially in situations where an attack affecting the presumed injured person must be established by evidence.

The special nature of hate crime requires courts to assess each such crime from the perspective of the potential victims. The task of the courts is, however, rather uneasy due to the political and social dimension of the crimes, the "ingeniousness" of the perpetrators and the development of the communication means, whose pace is almost impossible to follow. The bitter historical experience with stigmatizing social minorities must be reflected not only in the "general" protection afforded by criminal legislation, but also in a deeper assessment of the injury suffered by the specific addressees of such attacks. Therefore, the courts must consider whether such attacks have an impact on a specific individual, or rather constitute unacceptable political campaign not directed at specific individuals. Under no circumstances may the courts, by way of precaution, avoid such a duty, and uneasy situation, by not allowing the potential injured parties or victims to be heard. The District Court failed to comply with the above requirements, and thus violated the petitioner's constitutional rights.

# 5

# INTERNATIONAL COOPERATION AND EXTERNAL RELATIONS

The decision by the President of the Constitutional Court of the Czech Republic, confirmed by the Plenum, has entrusted the agenda of international relations to Jaroslav Fenyk, Vice-President of the Constitutional Court. Professor Fenyk currently holds the position of General Rapporteur of the Conference of European Constitutional Courts, of which the Constitutional Court of the Czech Republic holds the presidency during the period 2017–2021.

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

The international activities of the Constitutional Court are of both a multilateral and a bilateral character. Formalized or, rather, systemic multilateral collaboration takes place most often through the Conference of European Constitutional Courts. In a time when the Constitutional Court of the Czech Republic chairs the aforementioned organization, it goes without saying that its international scope is more prominent. International conferences, be they academic, that is, focused on theoretical legal questions, or focused on practical issues in the application of the law, are a time-tested and undoubtedly useful format for multilateral cooperation.

Bilateral negotiations bring the most concrete results, especially for the practical sphere. Direct discussions among justices, or expert personnel, about factual issues connected with the execution of the functions of constitutional courts provide unique inspiration for making the protection of human rights and constitutionality, in the broadest sense, more effective, for which reason bilateral collaboration continues to form one of the pillars of the international activities of the Czech Constitutional Court.

## Trips Abroad by Representatives of the Czech Constitutional Court

In early February 2019, the Bureau of the World Conference on Constitutional Justice (WCCJ) met for the fourteenth time. The main theme of the meeting, which took place in the Dominican Republic, was the preparation of the 5th Congress of the WCCJ. Individual Bureau members alongside representatives of constitutional courts that head regional organizations of constitutional justice have taken part in it. It was for this reason that the Czech Constitutional Court, represented by its Vice-President Jaroslav Fenyk, was also invited to this event held in Santo Domingo.

On 8 March, the Hungarian Constitutional Court organized an international conference entitled "Constitutional EUdentity 2019 unity in diversity – common and particular values". The goal of the conference was to deepen the discussion around national identity as a notion of European Law and its perception across European constitutional courts and EU authorities. The conference opened with a speech by Hungarian president János Áder. Representing the Court of Justice of the European Union, the keynote speech was given by its President Koen Lenaerts, while representatives of eight EU constitutional courts also offered their positions and perspectives. Pavel Rychetský, President of the Constitutional Court of the Czech Republic, was among the key guest speakers, presenting a speech entitled "Some Remarks on Constitutional Judiciary, the European Union and Their Points of Contact". Although the individual presentations differed in their perspective and in the significance individual constitutional courts place on national identity, the Budapest conference was an important reflection on current developments and a valuable contribution to further discussions about the relationship between national constitutional courts and EU institutions.

On 18 March, the international conference of the Women's Safety Forum took place in Shanghai, organized by the General Consul of the Czech Republic. One of the contributions was delivered by Kateřina Šimáčková, Justice of the Constitutional Court, who gave a presentation entitled "Action against violence against women and domestic violence in Europe". Justice Šimáčková discussed, among other things, how victims of crime are viewed in criminal proceedings,

both from the point of view of the case law of the Czech Constitutional Court and the European Court of Human Rights, as well as in the context of amendments to Czech legislation.

On 11 and 12 April, Bucharest hosted an international conference under the title "The national constitutional identity in the context of European law". It was organized by the Romanian Constitutional Court, which invited representatives of a number of European constitutional courts (German, Austrian, Slovakian, Slovenian and Croatian, to name a few). The Czech Constitutional Court was represented by Ľubomír Majerčík, head of the Analytics Department, who focused in his presentation on the perception of constitutional identity through the lens of the Czech Constitutional Court case law. He also touched on the challenges we may face in the future in connection with the relationship between national constitutional identity and EU law.

In the last week of April, Justice Kateřina Šimáčková visited Madrid in Spain to take part in the international congress "Justice with Gender Perspective". This expert meeting had a remarkably wide international outreach. Around 400 people from 35 countries took part. The Congress was divided into several thematic sessions. Justice Kateřina Šimáčková participated in a panel discussion dedicated to the work of a judge in the field of social issues, and her contribution focused on the pay gap between men and women in the Czech Republic, which research shows to be lagging behind most EU countries in this respect.

At the end of April and beginning of May, Justice of the Constitutional Court Jiří Zemánek left for Heidelberg, Germany, to participate in the Heidelberg Discussion Group (Heidelberger Gesprächskreis) organized by the Max Planck Institute for Comparative Public Law and International Law. The aforementioned colloquium, a leading European forum for the meeting of judges of high courts with academia, differs from regular international conferences in that it is structured primarily around discussions, or round tables, with the goal of deepening real and rich dialog within the European judicial and legal community.

On 6 and 7 May, a delegation from the Czech Constitutional Court, consisting of its President Pavel Rychetský, Vice-President Jaroslav Fenyk and Justice Tomáš Lichovník, took part in a bilateral meeting with Justices of the Austrian Constitutional Court, headed by its President Brigitte Bierlein. The Czech (formerly Czechoslovak) Constitutional Court and the Austrian Verfassungsgerichtshof are, in the global context, the two oldest judicial bodies specifically created to protect constitutionality. The countries of the above-mentioned courts have a shared historical heritage and the cities where their seats are located are geographically very close. The Czech and Austrian Constitutional Courts have, for this and other reasons, established truly strong and cooperative mutual relations. The program of the visit included two meetings that focused primarily on two topics – the role of constitutional courts in ensuring the rule of law and democracy and the relationship between constitutional courts and other top-level national and international judicial institutions. The discussion, however, also touched on several other important questions, including the still-relevant interaction between legal positivism and natural law perspectives.

On 9 and 10 May, an expert conference took place in the Slovak city of Trnava dedicated to the topic "Public Administration, the Right to Fair Trial, and e-Government". The event, organized under the auspices of the Faculty of Law at the University of Trnava, brought together a number of institutions involved in administrative law and public administration. Justice of the Constitutional Court Vladimír Sládeček attended the conference.

On 11 and 12 June, a meeting was held in Brussels between the constitutional courts of Belgium, the Czech Republic and Latvia. The Czech Constitutional Court was represented by its President Pavel Rychetský and Vice-President Jaroslav Fenyk. Meetings between the three aforementioned institutions began in 2016 with a seminar in Brno, Czech Republic. This first meeting was dedicated to preliminary questions to the European Court of Justice (i.e. to prejudicial proceedings). The second seminar of the three courts took place in December 2017 in Riga, Latvia to discuss the principles and criteria of legality used by constitutional courts. In this sense, this year's meeting in Brussels completed this fruitful platform for exchanging perspectives and experiences, while the participants focused on two issues. The first was the legal and time effects of decisions by constitutional courts, while the second was the question of bioethics in the case law of constitutional courts.





In mid-June, Justice of the Czech Constitutional Court Vojtěch Šimíček left for Latvia, having been invited to participate in a congress hosted by Societas Iuris Publici Europaei (SIPE), founded in 2003 in Frankfurt am Main. SIPE brings together academics and practitioners from the sphere of public law. This 14th Congress of the SIPE was co-hosted by the Latvian Constitutional Court and the Graduate School of Law in Riga. The expert meeting was opened by Egils Levits, the President of Latvia, and President of the Latvian Constitutional Court Ineta Ziemele. Justice Vojtěch Šimíček delivered a presentation entitled "Recent Developments in the Acceptance of the Primacy of EU Law by National Supreme Courts – Is Convergence Possible?".

President of the Constitutional Court of the Czech Republic Pavel Rychetský was invited to attend a meeting of presidents of supreme judicial bodies of the member states of the Council of Europe on 12 and 13 September. The conference was organized by three of the highest institutions of the judiciary in France, namely the Constitutional Council, the Council of State and the Court of Cassation, in the context of France's chairmanship of the Committee of Ministers of the Council of Europe. The significance of the event was enhanced by the fact that the Council of Europe is celebrating its 70th anniversary this year. The conference began with a general meeting which took place at the seat of the Court of Cassation. Three parallel workshops followed the plenary, taking place at the Court of Cassation as well as the Constitutional Council and the Council of State. Each workshop had its own theme: the right to an effective remedy before an independent and impartial judge, the relationship between national courts and the European Court of Human Rights, and freedom of speech in relation to the protection of privacy and family life. The busy conference program culminated in a reception hosted for heads of top-level courts of the member states of the Council of Europe by French President Emmanuel Macron.

On 19 and 20 September, Justices of the Constitutional Court Vojtěch Šimíček and Jaromír Jirsa lectured at a seminar entitled "Possibilities and Ways of Working with Case Law, an Analysis of Select Decisions of the Czech Constitutional Court". The Judicial Academy of the Slovak Republic, the organizer of the seminar, hosted the event at its educational facility in Trenčianské Teplice (Omšenie). The seminar participants (around 50 in number) were judges of ordinary courts in Slovakia, their assistants, and higher judicial staff.

On 25 September, President of the Constitutional Court Pavel Rychetský attended a colloquium organized to mark the 30th anniversary of the European Union's General Court. The colloquium took place at the headquarters of the European Court of Justice in Luxembourg. The theme of this meeting of top representatives of the highest courts of EU member states bore the name "The General Court of the European Union in the Digital Era". Almost twenty experts gave presentations during the all-day program which not only addressed the abovementioned topic, but also recalled the General Court's activities. The General Court, which used to be known as the Court of First Instance, was founded in 1989 in an effort to lighten the workload of the European Court of Justice and perfect the legal protection of the rights of EU citizens. The General Court, along with the Court of Justice, forms the Court of Justice of the European Union.

Administrative law was the main topic of the international conference organized by the Faculty of Law of Comenius University in Bratislava in September 2019. Czech Constitutional Court Justice Vladimír Sládeček took part in these "Bratislava Conversations about Administrative Law" and his talk focused on an analysis of the case law of the Constitutional Court in respect of petitions for annulment of generally binding regulations.

At the invitation of the Conference of the Presidents of the Appeal Courts of the European Union, Justice Kateřina Šimáčková traveled to Rome at the end of September to give a presentation at the conference entitled "Judiciary at the Stake in Europe: How to Trust It". In her lecture entitled "The Independence of the Judiciary and the Venice Commission" she summarized the Venice Commission's understanding of the concept of the rule of law and the independence of the judiciary. She discussed in detail the opinions of the Venice Commission concerning the situation in Hungary and Poland. Other interesting contributions presented at the conference covered such issues as selecting and motivating judges, the effectiveness of the judiciary, and the education and evaluation of judges.

From 3 to 6 October, the XXII International Congress on European and Comparative Constitutional Law, hosted by the Lithuanian Constitutional Court along with Professor Rainer Arnold of the University of Regensburg, was held in Vilnius, Latvia. The theme was "The Concept of Democracy as Developed by

Constitutional Justice". This conference was another occasion for expert discussions between academics and judges. Justice Jiří Zemánek focused on the reasons behind the decline of national democracies and possible ways of countering the fragmentation and marginalization of parliaments, and discussed the limits of the Members of Parliament mandate using examples from the case law of the Czech Constitutional Court. He also paid close attention to the supranational European dimension of democracy as part of the multi-level system.

The Constitutional Court of the Republic of Kosovo celebrated its 10th anniversary at the end of October. It organized an international conference on the topic "Ensuring Rule of Law and Protection of Human Rights through Constitutional Justice Mechanisms: 21st Century Challenges" on this occasion. The Constitutional Court of the Czech Republic was also invited to be represented. Justice David Uhlíř offered a presentation on the right to effective investigation.

At the beginning of November, the Constitutional Court of the Republic of Indonesia hosted an international symposium on the constitutional protection of social and economic rights. The symposium, which took place in Bali, also included a meeting between members of the Association of Asian Constitutional Courts. The Constitutional Court of the Czech Republic, the court currently chairing the Conference of European Constitutional Courts, was also invited. Its Vice-President Jaroslav Fenyk therefore represented not merely the Czech Constitutional Court, but also the Conference of European Constitutional Courts for which he is currently a General Rapporteur. As part of his participation in the symposium, Professor Fenyk presented a speech analyzing the approach of the Czech Constitutional Court to the issue of protection of social rights, both on the theoretical level and using concrete examples from the case law. Among approximately twenty speeches, that of Professor Fenyk was received extremely positively, as evidenced by the long series of questions posed at the end indicating the active interest of those present in the Czech Constitutional Court's approach to this issue.

Since 2010, Justice of the Czech Constitutional Court Kateřina Šimáčková has been acting as a substitute member of the Venice Commission (the European Commission for Democracy through Law). As part of her function, she attended two meetings of this advisory body in Venice in October and December. The October meeting of the Venice Commission focused on several topics, including the issue of the criminal liability of constitutional court justices with a special emphasis on the Constitutional Court of the Republic of Moldova. It was Justice Kateřina Šimáčková herself who was designated to be the rapporteur on this issue. During their meeting, members of the Commission also discussed their opinion on the Armenian Judicial Code and the constitutionality of the Istanbul Convention. The October session also included a meeting of representatives of constitutional courts with the goal of debating the relationship between parliaments and constitutional courts. The December session of the Venice Commission confirmed growing interest in the Commission's advisory services. This was reflected in the rich program of the meeting and the adoption of nine opinions. These concerned, among other things, language laws, freedom of assembly, the premature termination of the mandate of Members of Parliaments, reforms to the office of prosecution and the return of Russia to the Parliamentary Assembly of the Council of Europe.

### Visits from Abroad to the Constitutional Court in Brno

In addition to journeys beyond the borders of the Czech Republic, the Czech Constitutional Court's international collaboration also takes place through visits from abroad, which usually happen on home soil, i.e. the City of Brno.

At the very beginning of 2019, a three-member delegation from the Latvian Constitutional Court arrived at the seat of the Czech Constitutional Court with the goal of familiarizing itself with the practical (i.e. administrative and technical) workings of the Czech Constitutional Court, which has a particularly good reputation abroad. During their four-day stay, our Latvian colleagues met with Vice-President of the Constitutional Court Jaroslav Fenyk, with the Secretary General Vlastimil Göttinger and with representatives of various departments of the Court.

On 29 April, the Constitutional Court of the Czech Republic welcomed a twenty-two-member delegation from the Constitutional Court of the Kingdom of Thailand, headed by Justices Worawit Kangsasitiam and Punya Udchachon. This working visit ran on two parallel tracks. On one hand, there was a meeting between the Thai delegates and Pavel Rychetský and Jaroslav Fenyk, President and Vice-President of the Constitutional Court of the Czech Republic, while on the other a lecture was delivered for the staff of the Constitutional Court of the Kingdom of Thailand dedicated to Czech constitutional judiciary in the past and present.

On 14 to 16 May, the Czech Constitutional Court welcomed a delegation from the Hungarian Constitutional Court led by its President Tamás Sulyok. The two institutions are connected by geographical closeness as well as a host of similar competencies, for which reason sharing our knowledge and perspectives is an important part of bilateral collaboration. The most important point on the program was an expert meeting on the topic "Legal Gaps and Constitutional Review of Laws: Practice of Constitutional Courts". Representatives of both sides gave presentations of their own experiences, and there was naturally also time for a discussion.

In mid-July, a delegation from the Supreme Court of the United Kingdom visited the Czech Constitutional Court, led by its President Lady Hale and consisting of Deputy President Lord Reed and Justice Lord Kitchin. These three top-ranking judges had been invited by the Supreme Court of the Czech Republic, whose President Professor Pavel Šámal accompanied the guests to the Constitutional Court. There were two parts to their visit to the Constitutional Court. The first was dedicated to a tour of the building, which is one of the most noteworthy structures in Brno, while the second was a meeting between the judges themselves, at which the Constitutional Court was represented by its President Pavel Rychetský and both its Vice-Presidents Milada Tomková and Jaroslav Fenyk. President Pavel Rychetský familiarized the guests with matters such as the history of constitutional judiciary in the Czech Republic and spoke about the current role of the Czech Constitutional Court.

At the beginning of October, the Constitutional Court of the Czech Republic hosted a delegation from the Constitutional Court of the Republic of Indonesia, let by its President Emeritus, Justice Arief Hidayat, who was accompanied by Ambassador of Indonesia in the Czech Republic H. E. Ms. Kenssy Dwi Ekaningsih. The Constitutional Court of the Czech Republic was represented at this bilateral meeting by its President Pavel Rychetský, Vice-President Jaroslav Fenyk and Justice David Uhlíř. Several subjects were discussed by the two parties, such as constitutional judiciary, the issues related to individual constitutional complaints (which are an important part of the work of the Czech Constitutional Court, but which the Indonesian Constitutional Court does not recognize) and the international activities of the two courts. On the subject of multilateral relationships among institutions with the power of constitutional review, the two courts were able to exchange a number of valuable experiences as the Constitutional Court of the Republic of Indonesia headed the Association of Asian Constitutional Courts in the years 2014–2017, while the Constitutional Court of the Czech Republic currently (in the period 2017 to 2021) presides over the Conference of European Constitutional Courts.

The traditional meeting of the Czech and Slovak constitutional courts took place in October. Their common history, geographical proximity and extremely similar system of protection of constitutionality are just some of the things that make the relationship between the constitutional courts of the Czech and Slovak Republics exceptionally positive and strong. After all, both institutions are derived from the former Federal Constitutional Court that existed in the years 1991 and 1992 and the case law of which remains part of the body of law of both countries. At the beginning of the three-day visit, the esteemed guests were given an introduction to the City of Brno and its elegant architecture and rich culture, and its role as the seat of the highest authorities of law. Expert meetings then took place, forming the core of the visit and divided into two parts dedicated to select judgements rendered in the last 12 months. While the system of protection of constitutionality in both countries shows many similarities, the system of administrative law is different for a number of reasons. With this in mind, there was a short visit to the Supreme Administrative Court of the Czech Republic, whose President and several of its judges familiarized the Slovak guests with the Czech model of administrative law.

At the end of 2019, Vladimir Țurcan, President of the Constitutional Court of the Republic of Moldova, headed to the Czech Constitutional Court for a working visit. He was received by President of the Czech Constitutional Court Pavel

Rychetský, Vice-President Jaroslav Fenyk, Justice David Uhlíř and Secretary General Vlastimil Göttinger. The main topic of the meeting was the chairmanship of the Conference of European Constitutional Courts, or more precisely the procedure for passing on the position. It is the Constitutional Court of the Republic of Moldova that is to take over the aforementioned organization from the Czech Constitutional Court for three years at the end of February 2021.

### Conference of European Constitutional Courts

A considerable proportion of the international activities of the Czech Constitutional Court takes place within the framework of its membership in the Conference of European Constitutional Courts. As the Constitutional Court of the Czech Republic currently holds the presidency of the Conference, its international agenda has naturally been expanded. In this respect, the year 2019 was dedicated to preparations of and for the XVIIIth Congress of this organization to be held in Prague in February 2021. Leading representatives of European constitutional judiciary and many guests from the international legal community are expected to gather in our capital.

The Conference of European Constitutional Courts (CECC) was founded in 1972, and 41 European constitutional courts or analogous supreme judiciary bodies responsible for constitutional review are now members. Its role is to serve as a platform for the exchange of information, views and perspectives among its members, in particular regarding methods and procedures of constitutional review and institutional, structural and practical challenges in the area of public law and constitutional powers. Furthermore, the CECC also seeks to strengthen the independence of constitutional courts as bodies guaranteeing democracy and the rule of law with a particular view to the protection of human rights. The Constitutional Court of the Czech Republic became a member of the CECC in 1997 at the Congress in Warsaw. It was unanimously elected to hold the chairmanship in Batumi, Georgia in June 2017.

The central decision-making body of the CECC is the Circle of Presidents convened by the sitting head of the CECC, currently President of the Constitutional Court of the Czech Republic Pavel Rychetský. The last meeting of the Circle of Presidents took place on 13 June 2018 in Prague at the Corinthia Hotel. Representatives of more than thirty European constitutional courts discussed issues including the thematic focus of the forthcoming CECC Congress.

The CECC Congress is usually held once every three years and is the culmination of the three-year presidency. The XVIIIth Congress of the CECC (including two meetings of the Circle of Presidents) will take place in February 2021 in Prague and is to be dedicated to "Human Rights and Fundamental Freedoms: the Relationship of International, Supranational and National Catalogues in the 21st Century". This topic is intentionally broad in order to accommodate a number of specific issues to be addressed on the basis of questionnaires submitted by individual member courts. With the exception of countries outside the system of continental law, European countries have, at various points in the development of their legal systems, adopted a list of certain rights and freedoms which they consider so important as to place them above other rights, obligations and values. The primacy of these rights over other values and interests of the state is reflected in their formal expression, i.e. such rights and liberties are listed in a document of the highest legal force. This document is usually the constitution of the given country. In states with a poly-legal constitution – such as the Czech Republic – this list has taken the form of a special catalogue of an autonomous normative nature, though comparable with the constitution in terms of its legal force and place in the system hierarchy. Similarly to how national constitutional documents emphasize the position of fundamental rights and liberties, international treaties also contain provisions on human rights, their protection, application or application priority. National catalogues of human rights are similar to international catalogues in that they contain a similar list of rights, or at least a similar number of fundamental rights, and in that the rights and liberties protected by them are the ones most strongly emphasized.

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

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

Vice-President of the Constitutional Court of the Czech Republic Jaroslav Fenyk has been given the role of the General Rapporteur whose task is to prepare a final report from these questionnaires.

The XVIII Congress will begin with a formal opening session and end with a special meeting of the Circle of Presidents. In addition to CECC members, the usual guests will be invited to the Congress, including the President of the European Court of Human Rights, the President of the Court of Justice of the European Union, the President of the International Criminal Court, and representatives of the Venice Commission, the World Conference on Constitutional Justice and regional organizations.

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

### Other External Activities of the Constitutional Court and Relations with Other Constitutional Bodies

In addition to standard participation in professional conferences, the Constitutional Court was also co-organizer of two conference events in 2019.

On 27 February, the Faculty of Law of Masaryk University and the Constitutional Court held an international conference entitled "The Independence of the Judiciary in the Visegrad Countries at the Crossroads?". This highly topical issue for Central Europe gave rise to understandable interest among members of the academic community, as well as experts and legal practitioners. One of the main goals of the conference was to create a forum at which invited speakers could share their views on issues related to the independence of the judiciary and highlight various aspects of the relationship between judicial and political (legislative and executive) powers from a broad comparative perspective. The theme of the conference naturally compelled the organizers to invite speakers from all countries of the Visegrad Four and, at the same time, from various spheres connected in one way or another with the area of justice or law. Their efforts were successful, as invitations to speak were accepted by Andrzej Rzepliński, President Emeritus of the Constitutional Tribunal of the Republic of Poland, András Bragyova, Justice Emeritus of the Constitutional Court of Hungary, Alexander Bröstl, Emeritus Justice of the Constitutional Court of the Slovak Republic, and renowned Czech and international experts and scholars including Tímea Drinóczi, Mirosław Wyrzykowski, Simon Drugda, Dimitry Kochenov and David Kosař. The Constitutional Court of the Czech Republic was represented at the conference by its President Pavel Rychetský who opened the event with Dean of the Faculty of Law at Masaryk University Markéta Selucká and gave a speech focusing on the independence of the judiciary. The Constitutional Court was further represented by Justice Kateřina Šimáčková, whose speech focused on the role of the Venice Commission (Council of Europe) in the context of judicial independence. The conference was closed by a round table devoted to a discussion on how the Czech Republic and the Czech judiciary should reflect developments in other Central European countries and what steps should be taken in this regard. Round table participants, namely Marek Benda (Chairman of the Committee on Legal and Constitutional Affairs of the Chamber of Deputies of the Parliament of the Czech

Republic), Erik Tabery (Editor-in-Chief of the weekly Respekt) and Eliška Wagnerová (Vice-President Emeritus of the Constitutional Court of the Czech Republic, President Emeritus of the Supreme Court of the Czech Republic and former Senator), expressed their gratitude for their diverse personal and professional backgrounds, a perspective different from a purely judicial or academic one.

The second conference, co-hosted by the Constitutional Court (together with the Office of the Public Defender of Rights and the Prosecutor General's Office), was devoted to the issue of hate speech on the internet. The conference was intended for judges, prosecutors, police officers and investigators and was held in the Assembly Hall of the Constitutional Court. Opening remarks were delivered by Pavel Rychetský, Anna Šabatová and Pavel Zeman and were followed by contributions from ten experts who shared their experience with and expertise in the aforementioned issue in three conference sessions. The conference speakers included Jan Lata (the Prosecutor General's Office), Kateřina Šimáčková (the Czech Constitutional Court), Monika Hanych (the Office of the Government Commissioner for Representation of the Czech Republic before the European Court of Human Rights), Daniel Braun (the European Commission, Cabinet of Commissioner Věra Jourová), Jan Potměšil (the Ministry of the Interior, Security Policy Department), Vojtěch Motyka (the Regional Directorate of the Police of the City of Prague, Department of Extremism and Terrorism), Klára Kalibová (In IUSTITIA, o.p.s.), Ján Hrubala (the Special Criminal Court of the Slovak Republic), and Marína Urbániková and Pavol Žilinčík (the Office of the Public Defender of Rights).

As in previous years, the President of the Constitutional Court honored requests to meet with ambassadors of countries represented in the Czech Republic. To this end, H. E. Mr. Angel Lossada, Ambassador of the Kingdom of Spain, H. E. Mr. Christoph Israng, Ambassador of the Federal Republic of Germany and H. E. Mr. Nicholas Stewart Archer, Ambassador of the United Kingdom of Great Britain and Northern Ireland, visited the Constitutional Court in Brno in 2019.

In accordance with its mission, which is to protect constitutionality, the Constitutional Court maintains a degree of restraint and reserve in relation to other constitutional bodies of the Czech Republic. According to the Constitution, the Constitutional Court has the right to revoke the decision of any public authority in the Czech Republic if the Court concludes that this decision is in conflict with the constitutional order. In order to preserve absolute independence of the constitutional judiciary, it would not be appropriate for the Constitutional Court to maintain contact with them beyond judicial, expert or ceremonial cooperation, since public authorities may appear as parties before the Constitutional Court. On the other hand, it cannot realistically be expected for the supreme judicial authority to isolate itself completely from the outside world and to refrain from any form of communication outside of judicial proceedings, as this would go against the nature of the system. Being a part of the system of constitutional bodies of the Czech Republic, the Constitutional Court must establish formal and social relations in order to hold discussions with other parts of the system on general issues of constitutional, European and international law and protection of constitutionality and human rights.

On 21 April, we welcomed Jaroslav Kubera, President of the Senate of the Parliament of the Czech Republic. In our constitutional system, the upper house of the Parliament and the Constitutional Court are part of the mechanism of checks and balances and their activities are therefore partly complementary and partly interdependent. During his visit to the Constitutional Court, Jaroslav Kubera met both President of the Constitutional Court Pavel Rychetský and the Court's Justices. After a brief introduction in which Pavel Rychetský presented the Constitutional Court's agenda and mentioned the significant number of constitutional complaints, discussions were held on individual functional aspects of the relationship between the two constitutional bodies as well as the coherence of legislative and judicial functions. The meeting concluded with a tour of the recently reconstructed Assembly Hall of the Constitutional Court.

Another meeting took place at the very end of April with representatives of the upper house of the Parliament of the Czech Republic, specifically with members of its Committee on Legal and Constitutional Affairs. The delegation of senators of the Committee led by Miroslav Antl was received by the plenum of the Constitutional Court, on whose behalf President of the Constitutional Court Pavel Rychetský welcomed the guests. In his opening remarks, he introduced the members of the Committee to the history of constitutional justice globally and in the Czech Republic and gave a brief description of the scope of the competencies of the Czech Constitutional Court and current statistics on its decision-making activity. This was followed by a discussion that touched, among other things, on the balance of powers and the relations between its individual components. At the end of the meeting, the chairman of the Committee on Legal and Constitutional Affairs of the Senate Miroslav Antl expressed his hope that the Constitutional Court, which is, along with the Senate, one of the guarantors of the rule of law, will continue to play its important role successfully.

# Statistics of decision-making in 2019

## Statistics of decision-making of the Constitutional Court in 2019

| Decisions in 2019 in total | | |
|---|---|---|
| 4,691 | | |
| judgments | resolutions | opinions of the Plenum |
| 217 | 4,472 | 2 |

| Judgments in 2019[i] | | |
|---|---|---|
| 217 | | |
| Granted (at least partially) | Dismissed (at least partially) | Granted and dismissed |
| 187 | 33 | 3 |

## Average length of proceedings in cases completed in 2006–2019

| | | days | months and days | |
|---|---|---|---|---|
| **Average length of proceedings:** | **in all matters** | 162 | 5 months | 12 days |
| | in matters for the Plenum | 352 | 11 months | 22 days |
| | in matters for a panel | 160 | 5 months | 10 days |
| | in matters decided upon by a judgment | 381 | 12 months | 21 days |
| | in matters decided upon by a rejection for being manifestly unfounded | 168 | 5 months | 18 days |
| | other methods of termination of the proceedings | 105 | 3 months | 15 days |

## Average length of proceedings in cases completed in 2019

| | | days | months and days | |
|---|---|---|---|---|
| **Average length of proceedings:** | **in all matters** | 144 | 4 months | 24 days |
| | in matters for the Plenum | 317 | 10 months | 17 days |
| | in matters for a panel | 142 | 4 months | 22 days |
| | in matters decided upon by a judgment | 339 | 11 months | 9 days |
| | in matters decided upon by a rejection for being manifestly unfounded | 154 | 5 months | 4 days |
| | other methods of termination of the proceedings | 88 | 2 months | 28 days |

Explanatory notes:

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

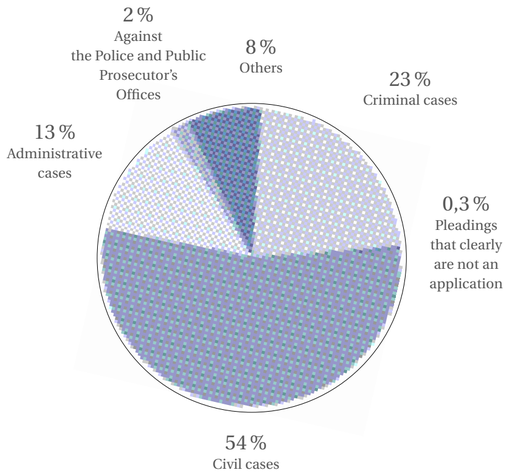
## Public oral hearings

### Numbers of public oral hearings

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

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

## Substantial structure of petitions to initiate proceedings in 2019



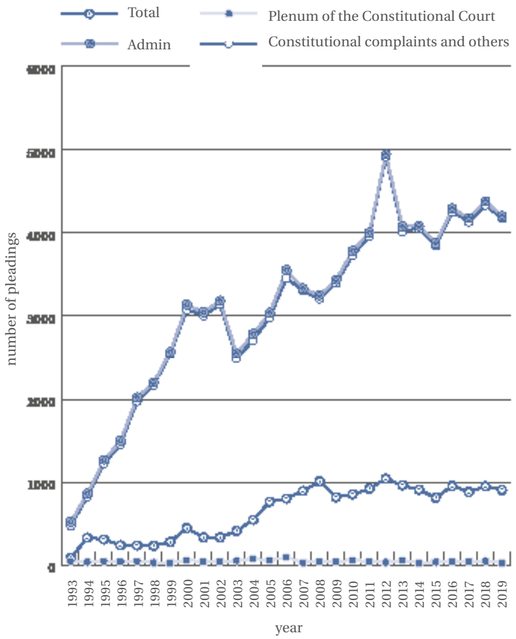





## Statistics in terms of petitions to initiate proceedings and other submissions

| Number of submissions | | | | |
|---|---|---|---|---|
| YEAR | Total | Pl. CC | Constitutional complaints and other | SPR (admin.) |
| 1993 | **523** | 47 | 476 | 92 |
| 1994 | **862** | 33 | 829 | 332 |
| 1995 | **1,271** | 47 | 1,224 | 313 |
| 1996 | **1,503** | 41 | 1,462 | 241 |
| 1997 | **2,023** | 47 | 1,976 | 240 |
| 1998 | **2,198** | 29 | 2,169 | 235 |
| 1999 | **2,568** | 24 | 2,544 | 283 |
| 2000 | **3,137** | 60 | 3,077 | 449 |
| 2001 | **3,044** | 38 | 3,006 | 335 |
| 2002 | **3,183** | 44 | 3,139 | 336 |
| 2003 | **2,548** | 52 | 2,496 | 414 |
| 2004 | **2,788** | 75 | 2,713 | 548 |
| 2005 | **3,039** | 58 | 2,981 | 765 |
| 2006 | **3,549** | 94 | 3,455 | 802 |
| 2007 | **3,330** | 29 | 3,301 | 894 |
| 2008 | **3,249** | 42 | 3,207 | 1,010 |
| 2009 | **3,432** | 38 | 3,394 | 819 |
| 2010 | **3,786** | 60 | 3,726 | 855 |
| 2011 | **4,004** | 38 | 3,966 | 921 |
| 2012 | **4,943** | 31 | 4,912 | 1,040 |
| 2013 | **4,076** | 56 | 4,020 | 963 |
| 2014 | **4,084** | 27 | 4,057 | 908 |
| 2015 | **3,880** | 34 | 3,846 | 814 |
| 2016 | **4,291** | 36 | 4,255 | 955 |
| 2017 | **4,180** | 47 | 4,133 | 881 |
| 2018 | **4,379** | 48 | 4,331 | 949 |
| 2019 | **4,200** | 28 | 4,172 | 906 |
| **Total** | **84,070** | **1,203** | **82,867** | **17,300** |

## Developments of the numbers of submissions 1993–2019



# ATTACHMENT

## PHOTOS FROM EVENTS IN 2019

H. E. Mr. Angel Lossada, Ambassador of the Kingdom of Spain paid the courtesy visit to Mr. Pavel Rychetský,
President of the Constitutional Court of the Czech Republic, Brno, January 2019

Presentation of a new tapestry in the Meeting Room of the Plenum (the designer Prof. Kokolia on the left), Brno, February 2019





Mr Jaroslav Fenyk, Vice-President of the Constitutional Court of the Czech Republic and General Rapporteur of CECC attended the XIV meeting of the World Conference on Constitutional Justice, Santo Domingo, February 2019

Participants of the International Conference “Constitutional EUdentity 2019 unity in diversity – common and particular values” hosted by the Constitutional Court of Hungary, Budapest, March 2019





Public hearing of the Plenum of the Constitutional Court, Brno, March 2019

President and Vice-President of the Constitutional Court of the Czech Republic during a bilateral meeting with the delegation of the Constitutional Court of the Kingdom of Thailand, Brno, April 2019





President of the Constitutional Court Mr. Pavel Rychetský, Vice-President of the Constitutional Court Mr. Jaroslav Fenyk and Justice of the Constitutional Court Mr. Tomáš Lichovník represented the Constitutional Court of the Czech Republic on a visit to the Federal Constitutional Court of Austria, Vienna, May 2019


Delegation of the Constitutional Court of the Czech Republic with Justices of the Federal Constitutional Court of Austria during a bilateral visit, Vienna, May 2019





Delegation of the Constitutional Court of Hungary with Justices of the Constitutional Court of the Czech Republic during a bilateral visit, Brno, May 2019

Mr. Jarosalav Kubera, President of the Senate of the Parliament of the Czech Republic during a meeting with the Plenum of the Constitutional Court, Brno, May 2019





Justices of the Constitutional Court with members of the Committee on Legal and Constitutional Affairs of the Senate of the Parliament of the Czech Republic, Brno, May 2019

Trilateral meeting between the constitutional courts of Belgium, the Czech Republic and Latvia, Brussels, June 2019





Visit of the President of the Supreme Court of the United Kingdom Lady Hale to the Constitutional Court of the Czech Republic, Brno, July 2019

Mr. Ivan Fiačan, President of the Constitutional Court of the Slovak Republic
during his first official visit to the Constitutional Court of the Czech Republic, Brno, October 2019





Photograph taken on the occasion of the traditional meeting
of the Plena of the Constitutional Court of the Czech and Slovak Republic, Brno, October 2019

Justices of the Constitutional Court of the Czech and Slovak Republic during the tour of the Constitutional Court Building, Brno, October 2019






Discussion during the conference devoted to the issue of hate speech on the internet,
the Assembly Hall in the Constitutional Court Building, Brno, October 2019

Mr. Pavel Zeman, Mrs. Anna Šabatová and Mr. Pavel Rychetský – heads of institutions that together organized the conference "Hatred on the Internet", Brno, October 2019






Mr. Jaroslav Fenyk, Vice-President of the Constitutional Court of the Czech Republic delivering a speech at the international symposium on the constitutional protection of social and economic rights, Bali, November 2019

YEARBOOK OF THE CONSTITUTIONAL COURT
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