YEARBOOK 2015

CONSTITUTIONAL COURT
OF THE CZECH REPUBLIC

YEARBOOK 2015

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“Fundamental rights and freedoms are inherent, inalienable, non-prescriptible, and irrepealable.”

(Charter of Fundamental Rights and Freedoms. Article 1, second part)

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1. INTRODUCTION

2015

Dear readers,

you are holding the second yearbook of the Constitutional Court, which provides a summary of the events of year 2015 this time.

Last year was marked in particular by the completion of staffing changes: the tenures of Justice Vlasta Formánková and Justice Vladimír Kůrka ended. The vacant posts were filled by two civil law specialists: career judge Jaromír Jirsa, and university professor Josef Fiala. The periodical replacement of judges after ten years in office was thus completed, and the Constitutional Court entered its third decade in terms of its staff composition. You can view all the justices and their short biographies on pages 12–33.

Once again, year 2015 did not bring any drop in the volume of work, and the Constitutional Court registered nearly four thousand applications for the initiation of proceedings. However, there were no dramatic changes as far as the areas in which the court decided are concerned. Recurring cases are related to social security, the regulation of health care financing, and the provision of health care; as a new development, our case law reflects experience in the assessment of discrimination, whether in education, housing allocation or service provision. The whole Chapter 4 is dedicated to a comprehensive analysis of case law.

Nevertheless, this yearbook does not strive to outline all the events of 2015. Instead, it should serve as a key to the door behind which the protection of constitutionality in the Czech Republic takes place, and as an expression of openness towards both Czech and European public. The Constitutional Court communicates through a multitude of platforms, and prides itself on being a transparent, open and trustworthy institution. However, I am afraid that the tensions currently gripping Europe, as well as the massive movement of migrating people, will expose our country – and its Constitutional Court, by extension – to difficult trials. I would like to promise that in those trials, we will remain committed not only to transparency and trustworthiness, but first and foremost to the fundamental principles of a democratic rule of law.

Dear Readers,

having said that, I hope we will be exposed to such pitfalls as little as possible, and that I will be able to share happier news with you next year.

Jaroslav Fenyk
Vice-president of the Constitutional Court

2. ABOUT THE CONSTITUTIONAL COURT

2015

History of Constitutional Judiciary

The Czechoslovak First Republic

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

The Constitutional Judiciary during the Communist Regime (1948–1989)

The constitutions of 1948 and 1960, which reflected the legal situation of the totalitarian state of that time, no longer called for a constitutional court. An odd situation came about after the state was federalized in 1968, as the Act on the Czechoslovak Federation not only envisaged the creation of a constitutional court for the federation, but also of a constitutional court for each national republic. None of those courts was ever established, however, even though the unimplemented constitutional directive stayed in effect for more than two decades.

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

It was only after the collapse of the Communist regime that a genuinely operational Constitutional Court of the Czech and Slovak Federal Republic (ČSFR) was established pursuant to a federal constitutional act from February 1991. That federal court was a twelve-member body in which each of the Federation’s constituent republics was represented by six Justices, whose term of office was meant to be seven years. The Court’s seat was also in Brno. Ernest Valko was appointed the President of the Constitutional Court of the ČSFR, and Vlastimil Ševčík became its Vice-president. The members of Panel I were Justices Marián Posluch, Jiří Malenovský, Ivan Trimaj, Antonín Procházka, with Ján Voščček as a substitute member. Panel II comprised Justices Pavel Mates, Peter Kresák, Viera Strážnická, Vojen Güttler, and Zdeněk Kessler as a substitute member. Despite its short existence, the Federal Constitutional Court adjudicated more than one thousand matters, and the Constitutional Court of the Czech Republic has, in its work, followed the federal court‘s legal views in a number of its decisions.

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

Following the dissolution of the Czechoslovak federation, the existence of a constitutional court was also provided for in the Constitution of the independent Czech Republic, of 16 December 1992. The first Constitutional Court of the Czech Republic began working on 15 July 1993. On that day, Václav Havel, the then President of the Republic, appointed twelve of the fifteen Justices of this Court for a ten-year term of office, consent to their appointment having been given at that time by the Assembly of Deputies of the Parliament due to the fact that the Senate did not yet exist. This occurred a mere month after the Assembly of Deputies had approved Act No. 182/1993 Sb., on the Constitutional Court, which, with reference to Article 88 of the Constitution, governed in particular the organization of this Court and proceedings before it, and designated the city of Brno as the Court’s seat.

Thus, with the appointment of the first twelve Justices of the Constitutional Court, a new era for the constitutional judiciary commenced, moreover, in a newly formed state. It is therefore appropriate to recall the initial composition of the Constitutional Court of the Czech Republic.

Zdeněk Kessler was the President of the Constitutional Court until his resignation for health reasons in February, 2003, and Miloš Holeček was the Vice-president (following Zdeněk Kessler's resignation, the President of the Republic, Václav Klaus, appointed him President for the remainder of his term of office). The other Constitutional Court Justices appointed on 15 July 1993 were Iva Brožová, Vojtěch Cepl, Vladimír Čermák, Pavel Holländer, Vojen Güttler, Vladimír Jurka, Vladimír Klokočka, Vladimír Paul, Antonín Procházka and Vlastimil Ševčík. The Court's bench was filled further in November 1993 with the addition of Ivana Janů who also became the second Vice-president, and Eva Zarembová, and then completed at the end of March 1994, when the President of the Republic appointed the fifteenth and final Justice, Pavel Varvařovský.

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

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

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

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

Vladimír Kůrka's appointment brought to an end a turbulent period associated with the periodical rotation of Constitutional Court justices. The Constitutional Court was fully staffed and worked under the presidency of Pavel Rychetský up to 20 March 2012 when the mandate of Vice-president of the Constitutional Court, Eliška Wagnerová, expired. Her departure marked the beginning of a new cycle of rotation of Constitutional Court justices which culminated in particular in the second half of 2013: the terms of office of a further nine Constitutional Court justices expired, as follows: those of František Duchoň (6 June 2012), Jiří Mucha (28 January 2013), Miloslav Výborný (3 June 2013),

Pavel Holländer (6 August 2013), Vojen Güttler (6 August 2013), Pavel Rychetský (6 August 2013), Dagmar Lastovecká (29 August 2013), Jan Musil (27 November 2013), and Jiří Nykodým (17 December 2013). The departing Justices were gradually replaced by Milada Tomková (appointed Vice-president of the Constitutional Court on 3 May 2013), Jaroslav Fenyk (3 May 2013, appointed Vice-president of the Constitutional Court on 7 August 2013), Jan Filip (3 May 2013) and Vladimír Sládeček (4 June 2013).

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

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

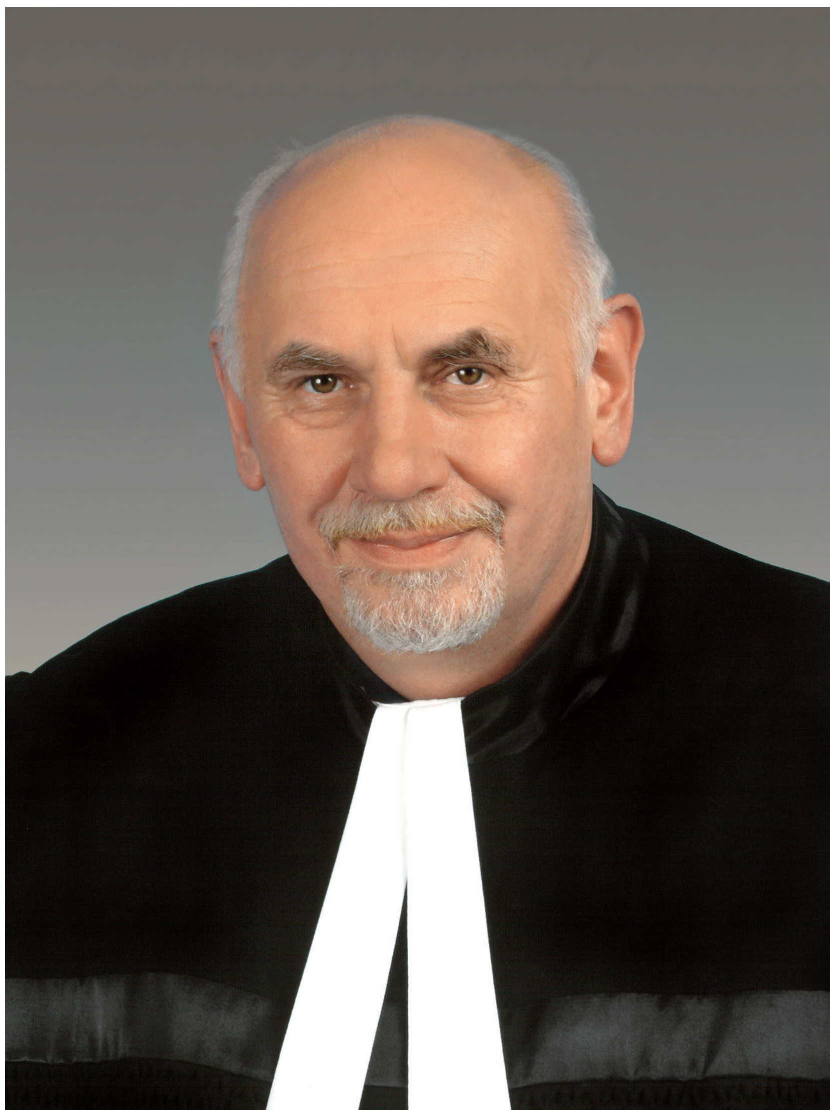
Justices and Structure of the Court

APPOINTMENT OF JUSTICES

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

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

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



CURRENT JUSTICES

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

JUDr. Pavel Rychetský (*1943) graduated from the Faculty of Law, Charles University, Prague ("Charles University Law Faculty") in 1966 and passed both his doctoral and judicial examinations in 1967. In 1966, he became a trainee judge at the Municipal Court in Prague; however, due to criminal prosecution for his protests against political trials, he was forced to leave the court. He became an assistant professor of Civil Law, Charles University Law Faculty, but was forced to leave after the 1968 Soviet occupation. He worked as an in-house lawyer until the end of 1989. In the "Normalization" era, Pavel Rychetský engaged in civic resistance against the totalitarian regime, was a co-founder and one of the first signatories of Charter 77, and published articles in foreign journals and Czech samizdat. He was a member of the Civic Forum and its Council of the Republic. On 8 January 1990, he was appointed Czech Prosecutor General. From June 1990 to July 1992, he served as Deputy Prime Minister of the Government of the Czech and Slovak Federal Republic (CSFR) and Chairman of the Government Legislative Council, ensuring both the coordination of the CSFR legislative work and the CSFR Government's cooperation with the Federal Assembly and the republics' governments. In his capacity as Deputy Prime Minister of the Federal Government, he submitted numerous bills to the Federal Assembly (e.g., on the Constitutional Court, Referenda, Return of Communist Party Property to the People, the restitution acts, etc.). From 1992, he worked as an attorney-at-law and lecturer in political science at the International Relations Faculty, Prague School of Economics. He published many scholarly and popular articles, both nationally and internationally. In 1996–2003, he was a Senator in the Senate, Parliament of the Czech Republic ("Senate"), where, until he become Deputy Prime Minister, he served as the Chairman of its Constitutional Law Committee and a member of its Mandate and Immunity and Organizational Committees. In 1998–2002, he was Deputy Prime Minister of the Czech Government and Chairman of the Government Legislative Council, Council

for National Minorities, Council for Romany Community Affairs, and Council for Research and Development. From 15 July 2002 to 5 August 2003, he once again served as Deputy Prime Minister, as well as Minister of Justice and Chairman of the Legislative Council. In 1990–92, he was President of the Union of Czech Lawyers, and in 1992–98, President of the Board of Trustees of the Foundation for Bohemia. In 1996, he founded the Fund for Citizens of Prácheňsko, focusing on social issues in the region. On 6 August 2003, after the Czech Senate had granted consent to his appointment, he was appointed a Justice and the President of the Constitutional Court of the Czech Republic ("Constitutional Court") by President Václav Klaus. On 12 July 2005, the President of the French Republic, M. Jacques Chirac, awarded Pavel Rychetský the Légion d´honneur, Officer Class. He is currently Chairman of the Czech Lawyers Union and a member of Science Boards of the Faculty of Law of Charles University in Prague, Faculty of Law of Masaryk University in Brno, and Faculty of Law of Palacký University in Olomouc.

MILADA TOMKOVÁ
Vice-President (since 3 May 2013)

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

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

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

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

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

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

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

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

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

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

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

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

JAN FILIP
Justice (since 3 May 2013)

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

Apart from his pedagogical activities, Professor Filip often helps solve practical problems arising in the process of drafting of legal regulations, or writes expert

opinions for government agencies. From 1992 onward, he worked at the Constitutional Court of the CFSR as assistant to Justice Vojen Güttler, and at the Constitutional Court of the CR as assistant to Justices Vojtěch Cepl and Jiří Mucha. He also worked in the Legislative Department of the Federal Assembly Chancellery (1973, 1987–1989), and subsequently in the Legislative Department of the Senate Chancellery (1997–2007). For a number of years, he was a member of the Government Legislative Council (1998–2006), following his membership in a government commission for public law in 1990–1992. In the same period, he served on the Czech National Council's commission for the drafting of the Constitution.

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

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

VLADIMÍR SLÁDEČEK
Justice (since 4 June 2013)

Born in 1954. Studied law in 1975–1979. Joined the Institute for Inventions and Discoveries in the year of his graduation and worked there until March 1983, mainly at the Legislative and Legal Department. Produced a thesis for his doctoral examination during the course of 1980 (on the review and complaints procedure in the area of inventions and discoveries), and defended it on 2 December 1980 (study field: administrative and state law).

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

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

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

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

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

LUDVÍK DAVID
Justice (since 7 August 2013)

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

KATEŘINA ŠIMÁČKOVÁ
Justice (since 7 August 2013)

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

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

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

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

She teaches courses in constitutional law, human rights and the judiciary, political science, governmental studies, media law and ecclesiastical law, and also runs a clinic in media law and medical law, a course in human rights as applied in practice, a school of human rights and a human rights moot court.

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

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

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

RADOVAN SUCHÁNEK
Justice (since 26 November 2013)

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

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

provisions of laws submitted to the Constitutional Court by groups of deputies or senators.

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

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

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

JIŘÍ ZEMÁNEK
Justice (since 20.1. 2014)

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

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

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

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

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

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

VOJTĚCH ŠIMÍČEK
Justice (since 12 June 2014)

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

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

TOMÁŠ LICHOVNÍK
Justice (since 19 June 2014)

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

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

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

DAVID UHLÍŘ
Justice (since 10 December 2014)

JUDr. David Uhlíř was born on 18 July 1954 in Boskovice, Blansko. He attended grammar school in Prague 6 from 1969 to 1973, was enrolled in the Charles University Law Faculty in 1975. Following his graduation in 1979, he practised as a trainee attorney in Prague. In 1980, David Uhlíř completed his military service and passed his rigorosum examination a year later. After 1983, he worked as an attorney-at-law, focusing on criminal matters. Despite having been a member of the Czechoslovak Communist Party until 1989, David Uhlíř represented clients persecuted on political grounds. In 1990 and 1991, he served as a councilor of the City of Prague for the Civic Forum (Občanské forum). In 1992, he became the founding partner of Uhlíř, Homola and Partners and stayed there until 2014. As a senior lawyer, David Uhlíř specialised in civil and business law, and also worked as an interim receiver.

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

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

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

JAROMÍR JIRSA
Justice (since 7 October 2015)

JUDr. Jaromír Jirsa (*5. 5. 1966) finished law school at Charles University in 1989. He started working in the judiciary as a law clerk at the Prague 8 District Court in 1990. After passing the judicial exam in 1992, he was appointed as a judge of this court. As a civil law judge, he dealt with, inter alia, restitutions, family, housing and health law cases. In May 1999, he became a civil law judge and the vice-president of Prague 1 District Court. Since August 2007, judge Jirsa served as the vice-president of Prague Municipal Court where he worked on insolvency and securities cases, as well as appellate cases.

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

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

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

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

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

Judge Jirsa is married and he has two children.

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

JOSEF FIALA
Justice (since 17 December 2015)

Josef Fiala (*1953) studied law at J. E. Purkyně University (today's Masaryk University) in 1971–1976. In the course of his studies, he started to work as an assistant on the basis of a part-time contract. After finishing his law school studies, he joined the department of civil law as a full-time assistant (1976–1996). In 1978, he obtained the "JUDr." degree (thesis entitled "Position of civil law in the system of law"). He became senior assistant in the same year. In 1984, he obtained the academic degree "Candidate of Sciences" in the field of civil law. In 1996, he was awarded the degree of assistant professor after defending his thesis entitled "Ownership of apartments in the Czech Republic" where he took into account previous outcomes of scientific approaches to the nature of apartment ownership. He was awarded the full professorship in 2006. In 1995–2001, he served as a vice-dean of the law school, and in 2004–2015, he led the department of civil law. He took part in various forms of pedagogical work in all study programs at the Masaryk University, School of Law. In addition, he was a member of several research projects (e. g. in 2004–2011, he was the deputy coordinator in the project entitled "European context of the evolution of Czech law after 2004"). He used the outcomes of this research in his publications.

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

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

STRUCTURE OF THE COURT

The Constitutional Court consists of a President, two Vice-presidents, and other Justices. The President of the Constitutional Court represents the Court vis-à-vis third parties, performs the Court's administrative work, convenes meetings of the Constitutional Court's Plenum, fixes the agenda for, and directs the business of, meetings, appoints Chairpersons of the Constitutional Court's panels, and performs other duties placed upon him by statute.

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

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

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

IVO POSPÍŠIL
Secretary General
(since 1 March 2013)

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

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

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

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

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

He is married and has two sons.

Powers and Competences

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

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

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

The Czech constitution further includes:

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

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

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

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

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

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

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

3. ON THE SEAT OF THE CONSTITUTIONAL COURT

2015

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

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

House of Estates just opened (1877)

And what building was chosen for the Constitutional Court?

Between 1875 and 1878, the monumental building of the House of Moravian Estates was built in Brno. The extensive transformation of the entire Joštova Street area was preceded by a competition for the development of former city walls no longer serving their military purpose in the second half of the 19th century. The author of the Viennese Ringstrasse – Ludwig von Förster – won the competition; his executed projects in Brno included Klein Palace in Liberty Square, and a restaurant in Lužánky. He inserted a ring-shaped avenue between the historical city center and its suburb, supplemented with added open spaces, a fancy promenade and park vegetation, and lined with public edifices and residential buildings.

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

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

In terms of style, the design of the House of Estates by Viennese architects draws on the experience and knowledge of North Italian Renaissance. The ground plan reflects the purpose of the palace – to tailor the building to the needs of a parliamentary institution as much as possible – and consists of

The foyer undergoing the reconstruction © Ústavní soud/Jan Symon

The foyer freshly reconstructed © Ústavní soud/Jan Symon

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

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

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

a cultural monument, and enjoys general protection thanks to its architectural design. For that reason, a structural and historical survey of the building was commissioned in order to ensure the preservation, and restoration, if necessary, of the original architectural elements. The survey revealed a time capsule placed under the cope stone on the occasion of the ceremonial unveiling of the building on 22 December 1878 by provincial hetman Adalbert Widmann. The capsule and its content are currently deposited at the Moravian Provincial Archives. When work on the building was initiated in 2014, the first step was the renovation of sculptural décor on the parapet of the south and northern bays of the Constitutional Court's building: the sculptural allegories of the six virtues placed in groups of six.

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

4. DECISION-MAKING BY THE CONSTITUTIONAL COURT

2015

Naturally, the Court's decisions vary every year depending on the matters presented to it by the applicants. The decisions described in the following text may therefore be linked to case-law from the previous years, but may as well reflect recent trends and bring new topics and perspectives. The following overview of court cases presents the most important aspects dealt with by the Constitutional Court in 2015. However, a complete picture of the Court's case-law can only be made by seeking the individual decisions on the Constitutional Court's website or in the Collection of Judgements and Resolutions.

Basic constitutional principles

Rule of law

The Czech Republic is defined in Art. 1 (1) of the Czech Constitution (hereinafter the "Constitution") as a democratic State governed by the rule of law. The mentioned article lays down a general and primary principle that forms the basis for a number of sub-principles, some of which are laid down explicitly at the constitutional level, while others have been inferred in the Constitutional Court's case-law.

The first paragraph of Article 1 of the Constitution combines two principles – democracy and the rule of law. In the conditions of the Czech Republic, the democratic principles are thus finely intertwined with the principles of constitutionalism, which draws its main source from the liberal political concepts of modern times. It therefore also holds that no regime other than democratic can be legitimate (judgement file No. Pl. ÚS 19/93 of 21 December 1993) and that a citizen has priority over the State and that the same priority must therefore be attached to fundamental civil and human rights and freedoms (judgement File No. Pl. 43/93 of 12 April 1994). Consequently, our democracy must be construed in a material way.

The foundations of the constitutional order and the entire structure of fundamental rights in constitutional democracy lie in "supra-positive" values such as dignity, freedom and equality. Human **dignity** as a general guideline for interpretation was mentioned in judgement File No. Pl. ÚS 55/13 of 12 May 2015, where the Constitutional Court assessed conformity with the Constitution of the decisive period for evaluating claims for unemployment benefits (the duration of this period was reduced by law from three to two years). With reference to the case-law of the German Federal Constitutional Court, the Czech Constitutional Court stated that human dignity had fundamental interpretative significance in terms of setting the minimum standard of individual fundamental rights. The Constitutional Court noted that the Federal Constitutional Court had inferred from human dignity a constitutional claim to a certain performance that would guarantee a certain subsistence minimum ensuring human dignity, comprising both physical human subsistence, i.e. nutrition, clothing, household equipment, shelter, heating, hygiene and health, and the possibility of developing personal relations and a minimum degree of participation in social, cultural and political life. The Czech Constitutional Court concurs that human dignity has its importance in the field of social rights, where the dominant role is played by a commissive duty on the part of public authority, as an imperative minimum in the legislature's considerations concerning the formulation of the contents and scope of individual social rights. The legislature's discretion is thus subject to certain limits following from human dignity.

In its judgement File No. Pl. ÚS 55/13, the Constitutional Court also pointed out that equal dignity of human beings was an argument for **equality** of constitutionally guaranteed rights. It implied the existence of a fundamental right to a share of freedom that was identical with the respective shares of other human beings. The Constitutional Court dealt with violation of the principle of equal rights in its judgement File No. Pl. ÚS 13/14 of 15 September 2015, which was concerned with an application for annulment of Section 16 of Decree No. 37/1967 Sb., implementing the Experts and Interpreters Act, as amended. Based on its case-law, the Constitutional Court pointed out that equality could only be considered within the boundaries of a mutual relationship of two entities being in an equal or comparable position. It was therefore crucial to determine whether two situations that were dealt with differently by law were indeed comparable, i.e. whether they were relevantly similar. This

required an analysis based on the criterion of relevance. In this case, the experts were neither the parties or intervening parties to the given proceedings or their representatives, but rather "only" persons involved in the proceedings. The entities in question were thus clearly mutually incomparable. Requirements applicable to the activities of judges and experts in terms professionality, impartiality and lack of bias also had a different nature and contents.

Judgement File No. Pl. ÚS 55/13: Decisive period for assessing claims for unemployment benefits, reduced by the legislature from three to two years (this part deals only with the test for indirect discrimination).

Since the scheme of the contested legal norm was based on a neutral criterion, the Constitutional Court had to review it from the viewpoint of indirect discrimination. Such discrimination exists if a certain general provision which formally comprises no prohibited discriminatory classification causes discrimination in its application. It therefore consists in an unfavourable (unequal) impact of general rules which are generally legitimate in formal terms and apply "equally". The cause usually lies in wrong scheme of the given legal norm, where a certain group of persons is treated unfavourably compared to others on prohibited grounds (such as race, ethnic origin, sex, sexual orientation, age, disability, religion or belief, etc.) based on an ostensibly neutral criterion, where the criterion is not substantively justified by a legitimate purpose and where the means of attaining the purpose are not proportionate and necessary. A prima facie neutral differentiating criterion disproportionately affects a certain protected group of persons.

However, in this case, the Constitutional Court established neither direct nor indirect discrimination. The provision in question comprised a neutral rule which was the same for all groups of employees, even though it was true that it might have different effects in certain specific, but unpredictable, situations; indeed, the complexity of human lives can hardly be fitted into the given conditions stipulated by law.

An argument related to indirect discrimination was also voiced in judgement File No. I. ÚS 1891/13 of 11 August 2015, where the Constitutional Court came to the conclusion that common courts had violated the right to a fair trial when they had neglected evidence adduced by the complainants attesting to the existence of indirect discrimination. Indeed, the Regional Court had followed an inconsistent line of reasoning when it stated, on the one hand, that the complainants had been subjected to discriminatory conduct and segregation when attempting to satisfy their housing needs and, on the other hand, had come to the legal conclusion that there had been no form of discrimination. In doing so, in the opinion of the Constitutional Court, the aforesaid court had failed to adhere to the requirement for proper reasoning of its decision and had failed to deal with the complainant's pleas concerning the existence of indirect discrimination.

Indirect discrimination also played a vital role in judgement File No. III. ÚS 1136/13 of 12 August 2015, dealing with access of ethnic minorities to standard elementary schools (in respect of this topic, see also the subchapter dealing with the right to education).

Judgement File No. III. ÚS 1136/13: On proving indirect discrimination of Roma children in their placement in schools for children with special needs (this part deals only with the test for indirect discrimination)

By virtue of an action for protection of personal rights, the complainant claimed that the State provide an apology and compensation for intangible damage on the grounds that in 1985, the complainant was placed in a school for children with mental disability, allegedly due to his Roma ethnicity. The complainant was allegedly thereby deprived of access to education under the same conditions as for children from the majority society. The common courts did not accept the action and the Constitutional Court did not find any violation of the complainant's fundamental rights either.

The Constitutional Court first dealt with the allocation of the burden of proof in cases of indirect discrimination. It followed in this respect from the test for indirect discrimination devised by the European Court of Human Rights (hereinafter also the "ECtHR"). According to this test, the burden of proof lies first with the claimant, who must prove that 1. a prima facie neutral criterion has a significantly greater impact on a certain protected group; and that 2. (s)he is a member of the protected group. Once these two conditions have been established, the existence of indirect discrimination can be assumed for all members of the protected group. This is when the burden of allegation and the burden of proof are shifted to the adversary, who must then either 3. deny any of the two aforesaid assertions, or 4. prove that there exists an objective and reasonable justification for the disproportionate disadvantage for the protected group, i.e. that the measure in question pursued a legitimate objective and was suitable, necessary and proportionate for attaining the objective. In any case, indirect discrimination can only be considered a factual consequence of a certain relevant practice, meaning an aggregate of individual instances where a certain neutral criterion was (or should be) applied in the same or comparable manner. A conclusion that a certain practice resulted in indirect discrimination does not, in itself, mean that it necessarily entailed a disadvantage for each and every member of the protected group to whom the relevant neutral criterion was applied. However, it attests to the fact that such a disadvantage indeed existed to a material extent. The Constitutional Court also assessed, on the basis of statistical facts, whether the State had rebutted such an assumption. It followed from evidence taken that the complainant's mental abilities, and thus the grounds for his placement in a school for children with special needs, had been assessed from time to time during his entire studies, both by means of psychological tests carried out with the use of several methods and by several professional workplaces, and by monitoring the course of his studies and grades. His placement and presence in a school for children with special needs was not based on one-time examination and was clearly also not a result of a mere routine approach by the competent authorities. If the court concluded, within the appellate review procedure, that the assumption of possible existence of indirect discrimination had been rebutted in the complainant's case, it did so because the guarantees applied in relation to the decision-making on his placement in such a school were capable of rebutting this assumption in terms of the entire relevant practice. If the same procedure was also used as a standard in other cases of placement of Roma children in a school for children with special needs, the complainant's case would reflect material elements of the prevailing practice. The possible assumption of indirect discrimination could thus be convincingly rebutted. In any case, the assumption of indirect discrimination had been rebutted and the Constitutional Court therefore dismissed the constitutional complaint.

In this respect, the Constitutional Court also dealt with the shift of the burden of proof in disputes on discrimination pursuant to Section 133a of the Code of Civil Procedure. It did so, *inter alia,* in judgement File No. III. ÚS 880/15 of 8 October 2015 (alleged discrimination in the field of labour-law relations) and in judgement File No. III. ÚS 1213/13 of 22 September 2015 (alleged discrimination in access to services); more details on these judgements are given in the subchapter dealing with a fair trial.

The material aspect of the **rule of law** (i.e. ultimately, the notion of justice) is expressed primarily by the concept of an individual as a dignified human being that has equal rights with all other beings. The concept of material rule of law, as developed by the Constitutional Court's case-law in a number of areas, goes beyond the original idea of formal rule of law, as a concept based on legalism and positivism. Even nowadays, nevertheless, the principle of the rule of law is bound to the formal characteristics that must be manifested by the legal rules so that individuals can take them into account when determining their future conduct. The Constitutional Court followed from the concept of formal rule of law in its judgement File No. I. ÚS 1713/13 of 23 February 2015 in respect of the procedural framework for exercising a claim for compensation for property left in the Zakarpattia Oblast (Carpathian Ruthenia). In the judgement, the Constitutional

Court pointed out that the legislative inconsistency and unpredictability of the procedure of various governmental authorities and persons acting for the State could not be interpreted to the detriment of the entitled parties, but rather in relation to the valid constitutive values and principles of the democratic rule of law. Interpretation of the "restitution" laws must not be overly restrictive and formalistic, but must rather be highly sensitive and always reflect the circumstances of the given case. Within its review, the Constitutional Court stated that if the common courts had established, by their decisions, a certain legal status based on which decisions of administrative authorities could not be subjected to review, and had simultaneously prevented the complainant from obtaining compensation, they had violated the right to a fair trial.

The Constitutional Court also criticised formalistic reasoning of court decisions in judgement File No. III. ÚS 2887/14 of 8 October 2015. When assessing their participation in judicial rehabilitation, the Constitutional Court reproached common courts with the line of interpretation they used, as it was in extreme disproportion with the principles of justice. Similar to "restitution" legislation, the Court again emphasised in respect of judicial rehabilitation that it was necessary to bear in mind the sense and purpose of judicial rehabilitation laws and the motive that had led the legislature to enact them. It was therefore necessary to interpret the regulations on judicial rehabilitation extensively, for the benefit of the affected persons.

The values of a democratic State governed by the rule of law also formed the basis of judgement File No. Pl. ÚS 12/14 of 16 June 2015, where the Court dealt with conformity with the Constitution of an exemption from court review in respect of suspended payment of a part of a subsidy co-financed from the EU budget. For the Constitutional Court, a democratic State governed by the rule of law is characterised by the principle of legal certainty, consisting, *inter alia,* in the fact that legal rules must be clear and precise and must ensure that legal relationships and their consequences remain predictable for their addressees. The principle of legal certainty must be connected with a prohibition of arbitrariness so that the margin for discretion on the part of governmental authorities is limited by procedures preventing abuse of such discretion; at the same time, the best prevention of and subsequent protection against arbitrary conduct is ensured by access to justice, i.e. to a court that will subject the administrative discretion to judicial review.

The basic principles of a democratic State governed by the rule of law also came into play in judgement File No. Pl. ÚS 19/14 of 27 January 2015 in the matter of compulsory vaccination, where the Constitutional Court recalled – when dealing with a plea that the scope and manner of implementation of compulsory vaccination were laid down solely by Decree No. 537/2006 Sb., on vaccination against infectious diseases, as amended (hereinafter the "implementing Decree"), rather than by a law (statute) – that in terms of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter also the "Convention"), a notion that was translated to Czech as "zákon" (law, statute), did not mean solely "law" in the formal legal sense, but rather – extensively – law in material sense (i.e. not only written, but also unwritten law and case-law). In the given case, the Constitutional Court then came to the conclusion that the scope of the vaccination duty was regulated by law to the necessary detail. It was decisive in this respect that the relevant provision of Act No. 258/2000 Sb., on protection of public health and amendment to certain related laws, as amended (hereinafter the "Protection of Public Health Act"), unambiguously required certain groups of natural persons to undergo regular vaccination or special vaccination. Specification of the types and dates of regular vaccination was then left to the implementing Decree. In view of the requirement for operativeness, it was logical if individual types of vaccination were provided for only in Section 2 of the implementing Decree. The given specific aspects became part of an implementing regulation as individual types of vaccination could not be dealt with in isolation from contemporary facts (including the state of the art in science).

The question of statutory authorisation was evaluated – *inter alia* – in judgement File No. Pl. ÚS 21/14 of 30 June 2015, concerning review of Act No. 234/2014 Sb., on public service. The President of the Republic submitted an application for annulment of that piece of legislation primarily on the grounds of alleged non-conformity of the procedure in adoption of the Act with the Constitution.

Judgement File No. Pl. ÚS 21/14: On variance of the Public Service Act with the Constitution (selected parts)

The Constitutional Court first noted that evaluation of conformity of the relevant statutory authorisation would turn on assessment of whether or not it was clear from the wording of the statutory authorisation that the legislature was giving the Government the authority to adopt legal rules that the Government was actually not empowered to adopt under the Constitution. Typically – the Constitutional Court opined – this would be true of authorisation for the Government to provide for matters reserved by the Constitution to the legislature. Furthermore, this might occur in a situation where the actual wording of the statutory authorisation clearly indicates that the legislature orders the Government to provide, in its regulation, for aspects that fall outside the scope of the law (statute) being implemented (i.e. outside the limits defined by the contents and purpose of the law (statute) being implemented). Finally, the Government cannot be authorised to issue a regulation in areas where competences have been delegated to a supranational organisation or institution within the meaning of Art. 10a of the Constitution, i.e. where a national authority cannot exercise its competence within the scope in which the competence has been delegated under Art. 10a of the Constitution. However, if the statutory authorisation is not vitiated by any of the aforesaid defects, compliance with the conditions of Art. 78 of the Constitution will need to be assessed in relation to the subsequent specific Government regulation, as only for such specific act can it be determined whether it falls within the limits of the law or exceeds them. However, the Constitutional Court found no variance with exclusivity of laws in the case at hand.

The basic principles of a democratic State governed by the rule of law are also relevant for the question of **retroactivity**, which was dealt with by the Constitutional Court in judgement File No. Pl. ÚS 1/14 of 31 March 2015. Specifically, the Court reviewed retroactive changes to the scope of property belonging to the spouse of an obliged person that could be affected by a distraint (enforcement) procedure. The contested transitory provision has "genuinely" retroactive effects, as it also applies to distraint procedures initiated on or before 31 December 2012. This retroactive change in the applicable methods of distraint and the scope of property of the obliged person's spouse that could be affected by distraint could have prevented application of the statutory exclusion from the community property and affect the fundamental right of the obliged person's spouse to own property and enjoy it without interference. The Constitutional Court therefore reached the conclusion that the contested provision was at variance with the principle of non-retroactivity and annulled it.

The Constitutional Court also dealt with "quasi-" retroactivity in its judgement File No. Pl. ÚS 18/14 of 15 September 2015 related to Act No. 280/2009 Sb., the Tax Rules. As a preliminary remark, it stated that it was decisive for assessing quasi-retroactivity whether the relevant interference with legal certainty that would be caused by the new legislation could be considered tolerable in view of the affected entities' confidence in the former laws (or the legitimate expectations generated by them).

The basic constitutional principles also include the **separation of powers in the State.** Relevant decisions rendered in this area include, for example, resolution file No. Pl. ÚS 17/14 of 13 January 2015, which was concerned with the possibility of subjecting disciplinary decisions of one of the Parliament's chambers to court review. In view of the principle of separation of powers, autonomy of the legislative branch and the principle of judicial restraint, the Court came to the conclusion that decisions made by parliamentary bodies in disciplinary proceedings on infractions committed by Deputies and Senators belonged among decisions that were an expression of autonomy of the Parliament as a legislative body and were not subject to review by the Constitutional Court. Furthermore, the Constitutional Court dealt with the question of whether or not rejection of court review would infringe on the complainant's fundamental right to judicial protection of fundamental rights and freedoms. It concluded that the complainant's right to judicial protection had not been infringed, as the given Senator had voluntarily opted for disciplinary proceedings before a parliamentary body instead of regular infraction proceedings. It can be logically inferred that by opting for such disciplinary proceedings, he acknowledged that no subsequent court review would be possible. Parliamentary disciplinary proceedings

on an infraction committed by a Senator or Deputy are of a different nature than “regular” infraction proceedings before administrative authorities, which have already been dealt with in the Constitutional Court’s case law, and there is therefore no reason to subject them to Art. 6 (1) of the Convention.

The Constitutional Court was yet again called upon to assess the course of the **legislative process** in 2015. In aforementioned judgement File No. Pl. ÚS 1/14 of 31 March 2015, the Court dealt with a retroactive change in the scope of property belonging to the obliged person’s spouse that could be affected by distraint (enforcement). The Court was asked, inter alia, whether or not the contested transitory provision was enacted in the form of a legislative rider. As regards the “test of close relationship” of the relevant motion to amend the Government’s bill, the Court opined that while the motion could indeed be considered a “deviation” from the limited scope reserved for such motions, as it did not correspond to the objective of the transitory provision pursued by the Government, the given transitory provision could nonetheless not be considered an unconstitutional “rider” that would be contrary to the requirement for a close relationship to the law being amended, as the bill – and also the motion for its amendment – was concerned with the same law, i.e. the Distraint Rules, and the requirement for a “close relationship” between the legislative bill and the motion to amend it was clearly met in the case under scrutiny. There existed a substantive link between the motion and the bill. For the reasons described above, the Constitutional Court did not share the applicant’s view that the relevant transitory provision was a constitutionally inadmissible “rider” that would have to be annulled for this reason.

Judgement File No. Pl. ÚS 21/14: On variance of the Public Service Act with the Constitution (selected parts)

As to the question of variance of the legislative process with the Constitution, the Constitutional Court noted that it was common ground that, in substantive terms, both the original bill and the comprehensive motion for its amendment were generally concerned with the same matter, i.e. regulation of the legal relationships of the State’s employees.Unlike the question of a comprehensive motion for amendment, which had already been dealt with several times, the Court was called upon for the first time to express its opinion on replacement of an amending bill by a completely new draft law.

The link between a comprehensive motion for amendment and the bill being amended cannot be evaluated only in terms of assessing the subject of regulation, but also in view of the purpose pursued by the comprehensive motion, i.e. whether it still aims to amend (modify) the bill, or to replace it. It is crucial whether the motion for amendment still formally modifies the bill or whether it replaces it by an entirely new draft law that was not comprised in the original legislative initiative. The requirement for an accessory nature of a motion for amendment in relation to the draft law, i.e. the requirement for mere modification of the bill by means of the motion for amendment, was not met in the case under scrutiny, because the motion did not supplement the bill (having itself the form of an amendment to the original Public Service Act) by new items, nor did it modify the existing items, but rather took the form of a new law.

As regards the rights of the individual participants in the legislative process, the Constitutional Court noted that there was no doubt that the parties that had presented the bill amending the Public Service Act had remained the “masters of the bill” and could have withdrawn it at any time before the end of the second reading. The Constitutional Court recalled that to date, it had not had any reason to question the practice of presenting comprehensive motions for amendment even in cases where the initiative had actually been taken by the Government, which had thus intended to eliminate unfavourable impacts of MPs’ amendments. As to the applicant’s plea that the Government would thus be deprived of its right to present its opinion on a draft law, the Constitutional Court noted that it was clear from the Government’s statement that it not only did not feel prejudiced by the fact that it had not been enabled to exercise this

constitutional competence, but rather had actually admitted that it had been the originator of the comprehensive motion for amendment. While the Government had provided no opinion, in actual fact, none of its rights had been affected in any way. The comprehensive motion for amendment had also been the subject of a debate in the Parliament, as well as in general public, and the process of its adoption had respected the constitutional principle of protection of minority. The Constitutional Court concluded that the constitutional purpose consisting in the protection of other entities involved in the legislative process had not been impaired in the case at hand.

This is why the Constitutional Court reached the conclusion that although the manner of adoption of the contested law had been at variance with the Rules of Procedure of the Chamber of Deputies, and had therefore been contrary to the Constitution based on the Constitutional Court's case-law, the protection of values of material rule of law, legal certainty and effective protection of constitutionality in the case at hand would prevail over the interest in annulment of the contested law.

Obligations under EU law and international law

The duty to meet the obligations following for the Czech Republic from international law and its membership in international organisations is laid down in Art. 1 (2) of the Constitution. The priority of application of international treaties follows from Art. 10 of the Constitution. Article 10a of the Czech Constitution then allows for delegation of certain powers of the Czech Republic's authorities to an international organisation or institution, i.e. primarily to the European Union and its bodies. As stated by the Constitutional Court in judgement File No. Pl. ÚS 50/04 of 8 March 2006, this Article has effects in two opposite directions: it constitutes the normative base for the delegation of powers and, at the same time, opens the national legislation to the operation of EU law including the rules governing its effects inside the Czech legal environment.

The Constitutional Court touched on the common courts' duty to **submit a request for a preliminary ruling** in its judgement File No. III. ÚS 3808/14 of 26 February 2015, when it dealt with the passengers' rights to compensation for a delayed flight caused by a technical defect and collision of aircraft with a bird. The Constitutional Court reiterated its doctrine that with respect to application of the EU law, the right to a statutory judge is infringed if the Czech court (whose decision is not subject to other remedies) fails to refer the matter for a preliminary ruling arbitrarily, i.e. in violation of the principle of the rule of law. A procedure taken by the last-instance court applying EU law can also be considered arbitrary if the court fails to examine whether it should refer a matter for a preliminary ruling and fails to properly justify its non-referral, including assessment of the exemptions developed by the Court of Justice of the European Union in its case-law. The decision in that case turned on the question of whether the complainant was liable for the delay, *inter alia,* as a result of the collision of the aircraft with a bird. The Court of Justice of the European Union has yet to provide a comprehensive interpretation of the relevant regulation as to the nature and liability ensuing from a collision of aircraft with a bird in combination with another event of some other (technical) nature.

The Constitutional Court emphasised the duty of common courts to construe law in a manner conforming to the EU laws in its judgement File No. III. ÚS 1996/13 of 16 July 2015, which related to the duty of an insurance company to pay full indemnity to a consumer in case of insolvency of a travel agency. The Constitutional Court took into consideration the constitutional overlap of the question at hand in terms of the obligations assumed by the Czech Republic when it acceded to the European Union, which had been reflected in the constitutional order by means of a "Euro-amendment". The Constitutional Court reached the conclusion that the arrangement made between the insurance company and the travel agency, which limited consumer rights guaranteed by EU law and, consequently, also by Sections 6 to 8 of Act No. 159/1999 Sb., was ineffective vis-à-vis the consumer, and was not actually binding on the consumer – as an entity not falling within the scope of their mutual agreement – and could thus not be reflected in the consumer's legal position; failure to provide full indemnity was therefore at variance with the obligations of the Czech Republic ensuing from its membership in the European Union.

The most important decisions in relation to the European Union included assessment of the Supreme Administrative Court's application for annulment of the 5% threshold for elections to the European Parliament. In judgement File No. Pl. ÚS 14/14 of 19 May 2015 (see also the subchapter on electoral right), the Plenum of the Constitutional Court reached the conclusion that in view of the importance attached to stability of the election results and creation of a reliable majority will, as prerequisites of smooth legislative procedures and good functioning of the executive branch, the limitations of free competition of political parties and equal access to elected offices ensuing from the election threshold were compatible with the principles of a democratic constitutional State and complied with the requirement for minimisation of interferences with fundamental rights and relevant constitutional principles.

Similar to previous years, in 2015 the Constitutional Court again ruled on renewal of proceedings following final judgements of the ECtHR. By its resolution File No. Pl. ÚS 5/14 of 3 February 2015, the Plenum renewed the relevant proceedings following the ECtHR judgement in Vaculík v. the Czech Republic of 19 December 2013, No. 40280/12, where the European Court had found violation of the right to access to courts in civil proceedings. The Constitutional Court faced a new question in this respect, specifically how it should deal with an application for renewal of proceedings in a situation where the ECtHR had made a decision *in rem,* but had postponed its assessment of just satisfaction in view of a possible agreement between the Government and the applicants.

Along with the Convention, the Constitutional Court applied a number of international treaties in its decision-making, including e.g. the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the European Social Charter and the Aarhus Convention (in respect of this Convention, see also the subchapter on the right to favourable environment). The impacts of EU law and international law on the Czech national law are well illustrated by judgement File No. II. ÚS 3742/14 of 8 September 2015, where the Constitutional Court examined the question of removal of a minor child from the United Kingdom to the Czech Republic at variance with a decision rendered by the High Court in London.

Judgement File No. II. ÚS 3742/14: Consequences of removing a minor child at variance with the Hague Convention

The basic rules for the procedure to be taken in case of wrongful removal or retention of a child in order to ensure its expeditious return to the country of its habitual residence are stipulated by the Convention on the Civil Aspects of International Child Abduction (hereinafter the "Hague Convention"), which is part of the legislation of the Czech Republic under Art. 10 of the Constitution, and Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000. Although neither the Hague Convention nor the Regulation explicitly defines "child's habitual residence", this term has been interpreted by the Court of Justice of the European Union. In the case at hand, the Constitutional Court arrived at the conclusion that the complainant had the right of custody pursuant to Art. 5 of the cited Convention, as the minor had obtained a residence permit in the United Kingdom and had never lost it. The conclusions made by the High Court in London in its decision of 19 March 2014 therefore represented conclusions of the court of an EU Member State having jurisdiction in matters of parental responsibility pursuant to Art. 8 (1) of the Regulation and, at the same time, of the court with jurisdiction in the case of child abduction pursuant to Art. 10 of the Regulation, and were therefore an obstacle to substantive review of this question by the courts of the Czech Republic.

The Constitutional Court pointed out the principle of mutual trust that applies for regulations in the European area of justice and that means that the competent authorities in the Member State of enforcement can no longer examine the conditions of enforceability of a decision and must grant the decision the same legal effects as for domestic decisions. The Constitutional Court added that the decision of the High Court in London requiring expeditious return of the child to the United Kingdom could

have been influenced by the mother before it was certified; however, no later remedy was available.

Judicial independence

The independence of courts and of the judicial branch belongs among substantial constitutional principles inferred both from the notion of rule of law and from the principle of separation of powers. Real judicial independence is a specific and irreplaceable attribute of the judicial branch, which is justified and also required by Art. 4, as well as by Art. 81 and 82 of the Czech Constitution.

Independence of courts is also closely linked with independence of individual judges, guaranteed by Art. 82 of the Constitution. While Art. 81 of the Constitution guarantees the independence of judges, i.e. the judiciary as a whole, as it provides for the organisational and institutional basis of the judiciary and its role in the constitutional system, Art. 82 ensures that the identity of each specific judge effectively guarantees independence of the specific manifestations of the judicial branch. Independence of judges is then closely linked with their impartiality, which was dealt with by the Constitutional Court in judgement File No. ÚS 1811/14 of 27 May 2015.

Judgement File No. I. ÚS 1811/14: Remedies in case of judge's bias in fact-finding proceedings and in enforcement proceedings.

The Constitutional Court recalled that impartiality and lack of bias of a judge form one of the main prerequisites of fair decision-making. When performing the duty of impartial decision-making, the judges must examine their impartiality both in subjective and in objective terms. Impartiality of a judge shall then be evaluated in two steps, by means of a subjective and an objective test of impartiality.

The aim of the subjective test is to determine the personal conviction or interest of the given judge in the case at hand. The question stands whether the judge is or is not internally biased against a party to the proceedings, regardless of the reasons for such bias. Impartiality is primarily a subjective mental category expressing the internal mental attitude of the judge towards the given case (including the attitude towards the subject of the proceedings, the parties and their legal representatives). There applies a rebuttable assumption of a judge's impartiality: a judge is deemed (subjectively) impartial unless and until the opposite is proven. The assumption can only be rebutted in objective terms; a subjective opinion of a judge or parties is not sufficient.

The objective test examines whether the judge provides sufficient guarantees excluding any legitimate doubt as to his or her impartiality. It must be determined whether there exist any facts that could give rise to a legitimate doubt as to the judge's impartiality. It is not sufficient if the judge does not feel subjectively biased towards the parties or the case; justified doubts as to his or her impartiality must also be excluded in objective terms. This is thus a question of an objective consideration of whether or not – given the circumstances of the case – the judge could be deemed biased. In this regard, even a mere impression could have certain significance, as the value at stake is public confidence in courts in a democratic society.

Fundamental rights and freedoms

Right to life

Protection of one of the most important human rights, the right to life, was long outside the spotlight of the Constitutional Court. Although complainants did plead violation of Art. 6 of the Charter in some rare cases, the Constitutional Court never granted any such complaint until last year. The situation changed when the Court issued its judgement File No. I. ÚS 1565/14 of 2 March 2015, where it focused on the procedural aspect of this right, specifically the duty to hold effective investigation in case of a possible threat to the right to life. The case thus fits into the most recent case-law that places requirements on effective (efficient) investigation with a varying degree of intensity in cases of infringement of the right to the protection of ownership pursuant to Art. 11 of the Charter (resolution File No. I. ÚS 3888/13 of 26 February 2014); the right to inviolability of the person and of his/her privacy pursuant to Art. 7 (1) of the Charter (resolution File No. I. ÚS 4019/13 of 26 March 2014); the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment pursuant to Art. 7 (2) of the Charter (judgement File No. I. ÚS 860/15 of 27 October 2015; see the subchapter on prohibition of torture); the right to personal liberty pursuant to Art. 8 (1) of the Charter; and the right not to be subjected to forced labour or service pursuant to Art. 9 of the Charter (judgement File No. II. ÚS 3626/13 of 16 December 2015; see the subchapter on the right not to be subjected to forced labour or service).

Judgement File No. I. ÚS 1565/14: Violation of the right to effective investigation in case of a possible threat to the right to life

After childbirth, during which the complainant was subjected to unrequested procedures and which was accompanied by massive bleeding, the complainant first filed a complaint and later a criminal complaint aimed against the procedure of the medical personnel and doctors. The police advised her that they had found no facts indicating the commission of any crimes and the public prosecutor's office also found no defects in the procedure taken by the police. The police did not allow the complainant to inspect the file, because only an inquiry had been made in the case pursuant to Section 158 (1) of the Code of Criminal Procedure, and no acts within actual criminal proceedings had been initiated.

Within its review in rem, the Constitutional Court first defined a positive obligation of the State to protect fundamental rights and the related right to effective investigation. Any “arguable claim” attesting to violation of the right to life, even if caused by negligence in health care, must be the subject of effective investigation. Consequently, the Constitutional Court reviewed the given case to this extent. According to the ECtHR case-law, effective investigation must comply with the requirements of independence and impartiality, thoroughness and adequacy, speed and public control.

In the opinion of the Constitutional Court, the procedure of the police in the case under scrutiny failed to meet, in particular, the requirement of thoroughness, as the police even failed to clarify variances between individual pieces of evidence and examine different hypotheses. Another shortcoming lay in insufficient public control. While public control can differ in view of the circumstances of each case, it always entails the possibility of securing justified interests of the victim or survivor, and this requirement also comprises the possibility of accessing the file. The scope of access to the file may be limited; however, access must be enabled at least to an extent allowing the given persons to evaluate whether the inquiry met all the criteria of effective investigation. The Constitutional Court concluded that the procedure of the police and the public prosecutor's office had violated the complainant's right to effective investigation following from her right to life.

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

Similar to the right to life, there has so far been little case-law of the Constitutional Court on the prohibition of torture. The Constitutional Court granted pleas of violation of Art. 7 (2) of the Charter only in five cases, where the complainants were threatened with extradition to countries where they would in danger of being treated contrary to the protection guaranteed by this article of the Charter. During the past year, the Constitutional Court concluded for the first time that the prohibition of degrading treatment pursuant to Art. 7 (2) also occurred in the territory of the Czech Republic as a result of a police intervention. Along with the substantive violation of the right, the Constitutional Court also noted a breach of the duty to pursue effective investigation, which was also for the first time in the Court's history.

Judgement File No. I. ÚS 860/15: Degrading treatment within the process of administrative expulsion of a foreign national and the related requirement for effective investigation

The complainant was to be expelled from the Czech Republic, but was advised of this fact in a facility for detention of foreign nationals where he was detained with a view to his expulsion less than 24 hours in advance. He refused to co-operate with the police in the process of his expulsion and the police therefore used tear gas, cuffed him and used a restraining belt during the escort. At the airport, the complainant was moved by the police using a baggage trolley. The captain of the aircraft ultimately refused to take him on board as, in his opinion, the complainant presented a risk for the flight. The complainant challenged the procedure taken by the police officers by a complaint filed with the police and also a criminal complaint.

The Constitutional Court followed from the case-law of the European Court of Human Rights according to which degrading treatment need not necessarily be caused by one of the objected circumstances alone, but may also follow from a combination of such circumstances. The minimum threshold for gravity would not be exceeded, in itself, by the use of tear gas, use of handcuffs and restraining belt or failure to inform the complainant of the imminent expulsion at least 24 hours in advance. However, altogether, all these steps and means must have caused feelings of anxiety and inferiority on his part to such an extent that the gravity of the conduct corresponded to degrading treatment in violation of Art. 7 (2) of the Charter and Art. 3 of the Convention.

The complainant's rights were thus violated both by the police intervention within the process of administrative expulsion and by the contested decisions of the prosecuting bodies on the grounds of failure to pursue effective investigation. The Constitutional Court therefore quashed the decision of the public prosecutor's offices.

Right not to be subjected to forced labour or service

The prohibition of forced labour or service stipulated by Art. 9 of the Charter has so far been elaborated in the Constitutional Court's case-law only in proceedings on annulment of legal regulations. Not until the last year did the Constitutional Court render its first judgement granting a constitutional complaint, where it established violation of this and other related rights. This occurred in a closely followed case of foreign nationals forced to hard work in a forest without actually being paid the agreed salary. Similar to the two previous fundamental rights, the Constitutional Court again focused on the procedural duty to pursue effective investigation. In judgement File No. II. ÚS 3626/13 of 16 December 2015, the second panel admitted that although it did exercise self-restraint in relation to prosecuting bodies, this would not be appropriate in the case at hand given the extraordinary importance of the protected interests, the high number of persons who should have been granted protection by governmental authorities and the possible conflict with the international commitments of the Czech Republic. The Constitutional Court recalled that in case of

human trafficking and other forms of criminal exploitation of workers, it was also necessary to reflect on the fact that – in view of their economic and social position – the aggrieved persons are usually unable to claim effective protection in civil proceedings; it might be excessively difficult, or even factually impossible, for the victims to exercise their rights before a civil court without previous criminal proceedings.

Protection and guarantees of personal liberty

Personal liberty is often considered the basis for all other fundamental rights and freedoms and has a prominent position in the catalogue of fundamental human rights. Any kind of detention interferes with the constitutionally guaranteed personal liberty of each human. In 2015, the Constitutional Court dealt with the question of legitimacy and conformity with the law and constitutional order especially of detention in the form of remand in custody or placement in medical facilities.

In case of remand, the case-law of the Constitutional Court followed on from its decisions rendered in the previous year in terms of interpretation of the **statutory three-month deadline** for making a decision on further continuation of remand. E.g., in its judgement File No. I. ÚS 3287/14 of 27 February 2015, the Constitutional Court reiterated that this deadline was not, in its nature, a procedural deadline and was bound directly to Art. 8 (2) and (5) of the Charter. It must therefore be counted from the time when the decision on remand was announced during a public court hearing to which the accused person was present, rather than from the time of service of the written counterpart.

Another significant interference with personal liberty of an individual lies in “**medical detention**”. In judgement File No. III. ÚS 916/13 of 17 February 2015, the Constitutional Court noted violation of personal liberty (together with protection of private and family life) of a minor when the common courts had ordered a preliminary injunction without consent of the minor’s legal representatives with a view to hospitalising the minor in a psychiatric ward for the purpose of monitoring and establishing his mental condition. The reason for the hospitalisation lay in the minor’s conduct consisting in a brutal physical attack against his teacher (stabbing).

As regards court review of detention in a psychiatric hospital, the Constitutional Court recalled in judgement File No. I. ÚS 1974/14 of 23 March 2015 that legal rules concerning persons with mental disability had to be construed with special diligence and in conformity with their fundamental rights, as these persons, too, were holders of all human rights, which guaranteed them protection and respect for their natural human dignity. Persons with mental disability could no longer be excluded from society and their human rights belittled.

Judgement File No. I. ÚS 1974/14: Requirements on court review of detention in a psychiatric hospital

In relation to detention of the complainant in a psychiatric hospital and proceedings thereon, the Constitutional Court defined several sets of questions relevant in terms of constitutional law, specifically: proper reasoning of the court decision; hearing of the complainant; her effective legal representation; and access to the appellate court.

Proceedings on permissibility of further detention in an institution entail a decision on deprivation of the detained person of personal liberty, which is a substantial interference with his or her fundamental rights. This must be reflected in a high degree of protection of procedural rights. The court’s decision must comprise a proper and exhaustive statement of reasons as to why the court came to the conclusion that the substantive preconditions for legality of deprivation of personal liberty were met. The judge should meet personally with the detained person and allow him/her to provide a statement on the matter, usually within a separate court hearing held directly in the medical institution. The judgement must also be served directly on the detained person and further suitable measures must be taken to ensure that the detainee can become acquainted with the contents of the decision in a suitable manner.

The last of the selected judgements in the area of protection and guarantees of personal liberty – file No. III. ÚS 2569/14 of 16 April 2015 – represents a further modification of interpretation of Section 116 (2) of the Code of Criminal Procedure, which allows for mandatory monitoring in a medical institution. It highlights especially the duty to carefully examine whether the preconditions for restriction of personal liberty have been met and a need for strict interpretation of the possible application of these conditions. The above requirement is not met if an accused person is held in a psychiatric ward for monitoring for a period of one month, although (s)he was not previously heard to this end and was not advised, either, of the consequences of failure to co-operate in the preparation of the expert report by means of out-patient examination. The Constitutional Court noted that in these cases, consideration also had to be taken of the nature and gravity of the crime under investigation.

Protection of personal life and inviolability of the person, dwelling and other premises

The Constitutional Court followed up on the Plenum's judgement of 2014 (judgement File No. Pl. ÚS 47/13 of 7 May 2014), where the Court elaborated on the requirements on justification of ordering a house search prior to accusation, and by virtue of its judgement File No. I. ÚS 2024/15 of 15 December 2015, granted an application pleading absence of an individualised warrant for the search of premises. In the judge's opinion, the warrant lacked any link whatsoever between the described crime which was being investigated and the complainant and her dwelling. The Constitutional Court stated that an act classified as urgent had to be supported by the specific grounds on which the judge had come to the conclusion on its necessity.

The Constitutional Court dealt with the conflict between protection of privacy and a public interest in investigation of crime in its judgement File No. II. ÚS 2050/14 of 10 March 2015. A hospital was fined by the police for refusing to disclose confidential information for the needs of criminal proceedings in a situation where it had not been released by the court from its non-disclosure duty. The Constitutional Court inferred that the public interest in investigation of crime had to be weighed in each specific case within court's decision-making on waiver of the non-disclosure duty. According to the Constitutional Court, the police first correctly requested prior consent of the court and it was actually the district court which erred when it rejected the request. However, if the police then fined the hospital, this procedure interfered with the hospital's right to property, as the financial penalty was based on a situation that lacked support in interpretation of the relevant legal rules conforming to the Constitution.

The Constitutional Court repeated the emphasis on compliance with the principle of proportionality in **waiver of confidentiality** in its judgement File No. II. ÚS 2499/14 of 10 March 2015. The public prosecutor's office substantiated its request to the court for consent to the provision of information subject to a non-disclosure duty solely by the need to examine the authenticity of a single document; the court nonetheless granted consent to the provision of all medical documents. The preconditions for disclosure of the entire documentation were not met in this case, because the reason for the intervention did not legitimise its scope, and the Constitutional Court therefore quashed the decision of the district court.

The Constitutional Court also dealt with an interference with the non-disclosure duty in respect of notaries. In its judgement File No. IV. ÚS 799/15 of 9 July 2015, it ruled in favour of a notary who had been fined for refusing, in spite of the court's consent, to submit a testament she had in her custody to the police for the purposes of criminal proceedings. In the opinion of the Constitutional Court, protection of privacy may only be breached, including a permitted interference with the non-disclosure duty, on an exceptional basis, if this is necessary and the purpose pursued by the public interest cannot be achieved otherwise. However, the Constitutional Court concluded that the consent granted by the court in the case under scrutiny did not meet those requirements. The complainant, who thus provided for protection of privacy instead of a public authority, was therefore fined in a situation that was contrary to the Constitution, which violated the complainant's right to protection of property.

Protection of proprietary rights

While the number of **restitution cases** within the case-law of the Constitutional Court decreased during the previous year, the year 2015 was again rich in these cases. In its decisions, the Constitutional Court again emphasised especially that the purpose and objective of restitutions could only be achieved if the common courts construed the "restitution" laws as favourably as possible in relation to the entitled parties, doing so with a view to mitigating certain property injustices resulting in removal of property (expropriation). Interpretation of the "restitution" laws must not be overly restrictive and formalistic, but must rather be highly sensitive and always reflect the circumstances of the given case. However, in its judgement File No. III. ÚS 1255/13 of 2 April 2015, the Constitutional Court ruled in relation to interpretation of the Act on Mitigation of Certain Property Injustices Caused by the Holocaust that although the common courts were indeed bound by the aforesaid principle of *favoris restitutionis,* they could not go arbitrarily beyond the legislature's defined by the scope and purpose of the given restitution law.

The Constitutional Court also dealt with restitutions in its judgement File No. III. ÚS 130/14 of 13 August 2015, where it applied the case-law of the European Court of Human Rights in a matter of financial compensation for real estate that could not be submitted within restitution. Even though the relevant provision of Act No. 87/1991 Sb., on out-of-court rehabilitation, as amended, requires the provision of financial compensation based on price regulations applicable to valuation of real estate as of the effective date of that Act, the Constitutional Court did not find it contrary to the Constitution if appropriate compensation was provided in a reasonable proportion to the market value of the removed property.

Another group of restitution cases which the Constitutional Court was repeatedly called on to resolve concerned the issue of **compensation for property left in the Zakarpattia Oblast (Carpathian Ruthenia).** In its evaluation of the case specified below, the Constitutional Court followed from the general principles comprised in its previous case-law. Judgement File No. II. ÚS 2610/14 of 20 January 2015 is an example of such a ruling. In the said judgement, the Constitutional Court reached the conclusion that if the appellate court had quashed the first-instance decision, discontinued the proceedings and referred the case concerning compensation for property left in the Zakarpattia Oblast to the Ministry of Interior, without there being a statutory ground for such a procedure, it had gone beyond the limits of permissible interpretation of legal regulations at variance with Art. 36 (1) of the Charter of Fundamental Rights and Freedoms and Art. 6 (1) of the Convention.

During the past year, the Constitutional Court was also required to specify the legal effects of the abolished legislation governing the **regulatory fee for hospitalisation.** In judgement File No. I. ÚS 491/15 of 22 September 2015, the Court stated that if a health care provider had become entitled to a regulatory fee of CZK 60 per day of provision of care, the claim for payment and possible enforcement of the regulatory fee had not expired when judgement File No. Pl. ÚS 36/11 of 20 June 2013 was rendered or at the time when the later wording of Section 16a (1)(f) of the Public Health Insurance Act was itself abolished as contrary to the Constitution as a consequence of deferred effectiveness of the judgement.

The Constitutional Court made a fundamental decision in the area of protection of proprietary rights in respect of the issue of setting the amount of damages for unauthorised withdrawal of electricity. In its decision (judgement File No. I. ÚS 668/15 of 11 August 2015), the Court noted that if the perpetrator proved that the damage caused by unauthorised withdrawal of electricity as determined under the implementing regulation was several times higher than the perpetrator's payments for electricity in comparable periods before the unauthorised withdrawal, the thus-determined amount of damage could not be automatically accepted, since this would violate the right of the party to protection of property embodied in Art. 11 (1) of the Charter of Fundamental Rights and Freedoms.

Judgement File No. II. ÚS 1135/14: Just and appropriate compensation for property expropriated in public interest

For almost ten years, the complainants pursued a dispute with an intervening party (Road and Motorway Directorate) on the amount of compensation for expropriation of land for a transport infrastructure project. Administrative authorities granted the complainants an officially determined price of CZK 1,482,000. The Regional Court came to the conclusion that the aforesaid price was not in conformity with the constitutional and statutory requirements for appropriate and just compensation for expropriation, where the corresponding price would rather be the usual (market) price for which the expropriated asset could be sold at the given time and place, i.e. in the specific case, the price of CZK 11,139,700. The complainants pleaded that the amount paid to them was not appropriate in view of the market price of the properties as of the date of the decision made by the appellate administrative authority.

In the case at hand, the Constitutional Court noted primarily that the legislation applied was based on the concept that the amount of compensation would be determined according to the “official” price; only after the amendment of 1 July 2006 was it possible to grant the usual (market) price for expropriated real estate. The Constitutional Court stated that the Regional Court was right when it concluded that payment of the officially determined price for the property was not in compliance with the constitutional and statutory condition of providing an appropriate and just compensation for expropriation, and inferred that only the usual (market) price corresponded to these requirements.

In 2015, the Constitutional Court again had to deal with the question of acquisition of the ownership title to real estate recorded in the Land Registry from a non-owner and protection of the acquiror’s good faith, since the common courts had failed to respect its settled case-law on this issue at variance with Art. 89 (2) of the Constitution.

Judgement File No. IV. ÚS 402/15: Acquisition of the ownership title to real estate recorded in the Land Registry from a non-owner and protection of the acquiror’s good faith

The complainant pleaded in her constitutional complaint that the Supreme Court had failed to respect the legal opinions of the Constitutional Court regarding the acquisition of the ownership title to real estate by the acquiror from a non-owner in good faith, as expressed in its previous judgements.

The Constitutional Court stated that, in its opinion, it was crucial that both the appellate (municipal) and appellate review courts had assessed the case at variance with its own case-law.

The Constitutional Court thus referred to the conclusions set out in its previous judgements and recalled that if the common courts completely failed to evaluate the good faith of the real estate’s acquiror, they would violate the right to a fair trial vested in an acquiror who could be in good faith.

The Constitutional Court also expressed its opinion on the arguments put forth by the Supreme Court regarding the binding effect of the Constitutional Court’s case-law and noted that pursuant to Art. 89 (2) of the Constitution, judgements of the Constitutional Court had the same binding effect regardless of whether they were adopted by the Plenum or individual panels, i.e. both these categories of judgements of the Constitutional Court were at the same level and it was not true that judgements of the Plenum might perhaps be superior to panel judgements. The idea that an opinion expressed in a judgement rendered by a Grand Panel of the Supreme Court might perhaps be superior to an opinion expressed in a panel judgement of the Constitutional Court, or that a decision of the Superior Court’s Grand Panel might perhaps not respect an opinion expressed previously in a panel judgement of the Constitutional Court,

and that such a conflict could only be resolved by presenting the case to the Plenum of the Constitutional Court, or that (three-member) panels of the Supreme Court cannot (themselves without a decision of a Grand Panel of the same Court) change their case-law by simply adopting an opinion following from a judgement of the Constitutional Court which was also rendered by a (three-member) panel, is similarly entirely erroneous and lacking constitutional or statutory basis.

Political rights

Freedom of expression

The following three decisions of the Constitutional Court are worth mentioning from among judgements rendered in 2015 in respect of the constitutionally guaranteed freedom of expression. In its judgement File No. I. ÚS 3018/14 of 16 June 2015, the Constitutional Court assessed the scope of the parliamentary privilege (material immunity) within the meaning of Art. 27 (2) of the Constitution, where it focused – in relation to the issue of freedom of expression – especially on answering the questions of what was meant by a protected "expression", what forums were protected and whether protection applied only to an expression made in relation to the discharge of an office. In further judgements (judgement File No. II. ÚS 2051/14 of 3 February 2015 and judgement File No. II. ÚS 577/13 of 23 June 2015), the Constitutional Court dealt with a classical conflict of freedom of expression with the right to protection of personal rights. The first of the judgements was concerned with criticism against a politically active person and the second with setting the limits to the freedom of the press with regard to the principle of presumption of innocence.

In its judgement File No. I. ÚS 3018/14, the Constitutional Court dealt with a constitutional complaint filed by a former member of the Chamber of Deputies of the Parliament who was being criminally prosecuted for the misdemeanour of inciting to hatred against a group of persons or to restriction of their rights and freedoms, which he had allegedly committed by publishing several texts on his Facebook profile during a meeting of the Chamber of Deputies. Based on his subsequent motion for a decision on exclusion from the competence of the prosecuting bodies pursuant to Section 10 (2) of the Code of Criminal Procedure, the Supreme Court ruled that such exclusion would not be granted.

Judgement File No. I. ÚS 3018/14: Scope of the parliamentary privilege in relation to statements made by a member of the Chamber of Deputies on Facebook

The Constitutional Court dealt with the question of whether the privilege protected only an expression made in relation to the discharge of the office of Deputy or Senator of the Parliament, and came to the conclusion that if such an expression was directed exclusively outside the Parliament, it was not protected by the parliamentary privilege pursuant to Art. 27 (2) of the Constitution, not even if it was made during a meeting of the Chamber of Deputies or the Senate. Indeed, protection afforded to an expression made by a Deputy or Senator was also conditional on the fact that the given person contributed thereby to the creation of political will in the Parliament and that the expression was part of the autonomous system of parliamentary debate.

The Constitutional Court concluded that the parliamentary privilege within the meaning of Art. 27 (2) of the Constitution protected an expression regardless of its contents, provided that it had an admissible form, was made in one of the "protected forums" and was directed at least towards one participant in the parliamentary debate. In the case at hand, the complainant's expression met only the first condition and the privilege under Art. 27 (2) of the Constitution therefore did not apply to it. The Supreme Court had not erred when it decided through the contested resolution that the exclusion from the competence of prosecuting bodies did not apply to the complainant, and the constitutional complaint was therefore dismissed.

In proceedings held under File No. II. ÚS 2051/14, the complainant claimed that the Court cancel the duty to apologise to a member of the Parliament's Chamber of Deputies for his statement made on the public-service television that the Deputy's unlawful conduct had caused the city in question a debt of 8 million crowns. The complainant pleaded that he had merely legitimately stated his opinion on a public affair based on available information.

Judgement File No. II. ÚS 2051/14: Assessment of the conflict between the freedom of expression and the right to protection of personal rights

The Constitutional Court considers the following factors decisive in terms of resolving the conflict between the fundamental right to the freedom of expression and the fundamental right to the protection of dignity and honour of an individual: 1. the nature of the statement (statement of fact vs. a value judgement); 2. the contents of the statement (e.g. "political" vs. "commercial" statement); 3. the form of the statement (especially to what degree the statement is expressive or even vulgar); 4. the position of the criticised person (e.g. publicly or politically active person or a person who is publicly known – typically "celebrities"); 5. whether the statement (criticism) touches on the private or public sphere of the criticised person; 6. the behaviour of the criticised person (e.g. whether (s)he him/herself "provoked" the criticism and his/her subsequent response; 7. by whom the statement is made (e.g. journalist, normal citizen, politician, etc.); and finally, 8. the time when the statement is made (i.e., e.g., what specific information the author of the statement had or could have available at the time when (s)he made the statement and in what situation (s)he did so). Each of these factors plays a certain role in seeking a fair balance between the conflicting fundamental rights; their list is not exhaustive and consideration must always be taken of the overall context of the matter and, under specific circumstances, importance may also be attached to aspects that cannot be subsumed under any of the said categories.

The Constitutional Court analysed the case at hand in terms of the aforesaid factors relevant for assessing the conflict of the fundamental rights, and summarised its analysis in that the relevant statement (or its certain part) was a statement of fact which turned out not to fully correspond to reality.

Further relevant factors that the Constitutional Court took into account when seeking a fair balance between the conflicting fundamental rights also spoke for preferring the complainant's freedom of expression. The relevant statement was a political expression criticising a politically active person for her public conduct. While the statement was expressive, it did not go beyond generally recognised principles of decency.

A specific feature of judgement File No. II. ÚS 577/13 laid in the fact that the Court assessed the question of whether or not personal rights of an intervening party had been interfered with by not respecting the presumption of innocence within the meaning of Art. 40 (2) of the Charter, since the complainant had described him (i.e. the intervening party) in the press as a criminal offender, although at the time when the relevant article was published, he had not been convicted.

Judgement File No. II. ÚS 577/13: Limitation of the freedom of the press following from the principle of presumption of innocence

The Constitutional Court first stated that as regards the conflict between the freedom of expression and right to protection of personal rights, preference for one of these rights depends on the overall context of each individual case. At the same time, certain starting points can be inferred from the relevant case-law of the Constitutional Court and of the European Court of Human Rights and the common courts must base their decisions in these cases on such background.

In the case at hand, the Constitutional Court summarised that the article under consideration was aimed at providing information on the

course of criminal proceedings and on delays occurring in those proceedings, and to the contrary, it did not purport to evaluate the guilt of the intervening party. When assessing the question of whether the designation of the intervening party in the article as a "pimp" or "member of a gang of pimps", i.e. a person who had committed the crime of procuring prostitution, the complainant did or did not attempt to foresee the decision on guilt, the Constitutional Court followed from the nature of the usual periodic press intended for informing the general public. It therefore agreed that the press had to use certain simplifications. On the other hand, it came to the conclusion that the article clearly indicated that the intervening party was a "pimp" (i.e. procurer) and the reader could thus make a conclusion on his guilt based on the article and the principle of presumption of innocence was therefore violated.

In view of the above-described viewpoints of constitutional law, the Constitutional Court agreed with the legal conclusions of the common courts that the constitutionally guaranteed freedom of the complainant's expression was not violated by imposing the duty to apologise to the intervening party for publishing the article.

Right of assembly

In the past period, the Constitutional Court dealt *in rem* only with a single case concerned with the exercise of the right to assembly. In its judgement File No. II. ÚS 164/15 of 5 May 2015, it evaluated the justification of a prohibition to hold an anti-abortion meeting notified by the Stop Genocide association. In the context of the case at hand, the Constitutional Court noted that when considering any restriction of the right of assembly on the grounds of the right to special protection of the children's interest, both administrative authorities and common courts had to carefully assess the proportionality of any potential interference, which means in the given case that they had to consider a number of circumstances, including assessment of the moral and mental maturity of children in terms of understanding the presented facts (concerning, e.g., abortion and the right to life).

Judgement File No. II. ÚS 164/15: Prohibition of holding a meeting on the grounds of special protection of children's interest

The Constitutional Court stated that the right to peacefully assemble can also be understood as a collective exercise of the freedom of expression, where it is the collective aspect that is important for the public debate. Freedom of expression and the right to gather information belong to the cornerstones of a democratic State and also contribute to the personal development of an individual. At the same time, the aforesaid rights are not absolute and are subject to some exemptions, which however must be construed strictly. Any interference with the right of assembly must also correspond to the requirements for necessity and proportionality.

In the case at hand, the Constitutional Court stated that the meeting notified by the complainant was to be held in a small square (65 x 80 metres), where an elementary school was located in one of the corners of the square and pupils from 6 years of age were regularly present in the square. Given that the children had to cross this area to get from the school building to its other premises and back, it could not be guaranteed that the children would not encounter the shocking materials presented on the posters. The Constitutional Court added that meetings called by the same organiser to the same place had previously been dismissed on several occasions on the grounds of infringement on children's rights, where the previous court decisions concerning the complainant's meetings indicated that the manner of presenting information to the children chosen by the complainant was not protected by the right of assembly. The Court therefore came to the conclusion that the prohibition of the complainant's meeting was justified.

Electoral right

In 2015, the Constitutional Court completed proceedings initiated in the previous "electoral" year, when elections were held to the European Parliament, to the Senate and to municipal assemblies. Tensely expected was especially a decision on an application of the Supreme Administrative Court for annulment of the 5% election threshold for elections to the European Parliament (judgement file No. Pl. ÚS 14/14 of 19 May 2015) and on a constitutional complaint concerning invalidity of election to the Municipal Assembly of the Brno-North City Ward (judgement File No. III. ÚS 3673/14 of 10 February 2015).

In its judgement File No. Pl. ÚS 14/14, the Constitutional Court focused, within review of the election threshold, especially on the question of whether the legislature used the discretion afforded to this effect by the EU law in a manner conforming to the Constitution. In this respect, it stated that the democratic and human-right "boundaries" for measures restricting the exercise of the electoral right (including introduction of an election threshold) applied, in principle, in the same way to laws on elections to national assemblies and to Act No. 62/2003 Sb., on elections to the European Parliament and amending certain laws, as amended (hereinafter the "European Parliament Elections Act").

Judgement File No. Pl. ÚS 14/14: Constitutionality of the five-percent election threshold for elections to the European Parliament

In respect of the principle of equality, the Constitutional Court stated that this principle was directly linked with the principle of generality, which specifically means that 1. each voter has the same number of votes, and 2. each voter's vote shall have the same weight. Nonetheless, the Constitutional Court noted in this respect that it would not be appropriate to strictly insist on maintaining a precisely identical entitlement to electoral success corresponding in each case to the exact number of votes, which was documented, e.g., by the existence of a plurality voting system in national elections in some countries, which in its purest form, is based on the "winner-takes-all" principle, i.e. that the votes for other candidates are forfeited and do not have the same weight as the votes for the winner.

The Constitutional Court recalled that the primary legal basis for the election threshold in the European Parliament Elections Act, which makes the entrance by political entities into the vote counting process aimed at distributing the mandates conditional on obtaining at least 5 % of the total number of valid votes cast, is not the Czech Constitution, but rather the EU law. The latter permits limitation of the electoral right by national regulations provided that the proportional-representation nature of the electoral system is not affected overall. The limit of equal electoral rights lies in the ability of the European Parliament to reach consensual solutions that fulfil the voters' expectations, while fragmentation of their political representation as a result of the presence of small fractions with narrow programme goals and marginal influence – a consequence of elimination of the election threshold – would weaken the integration stimuli that are a prerequisite of such solutions in conditions of a plurality of opinions.

While given the number of mandates assigned in the European Parliament to voters from the Czech Republic, a certain integration element is already comprised in the "natural threshold", which reflects factual (and especially quantitative) parameters of elections, its effect is eliminated by the fact that the level of the natural threshold is not known in advance and a common voter is actually not familiar with its existence at all. In contrast, the statutory election threshold is known in advance and has its psychological effect, as on the one hand, the threshold may dissuade voters from choosing a party whose results in polls have long been under the given threshold, while on the other hand, it increases the pressure on voters to actually follow the polls.

The significance of stability of the election results for the public's confidence in the system of representative democracy is fundamental at both

national and supranational levels. The Constitutional Court therefore found the limitations of equality of contributions to the election results, free competition of political parties and equal access to elected offices ensuing from the election threshold embodied in the European Parliament Elections Act compatible with the principles of a democratic State governed by the rule of law. It concluded that this was a proportionate measure that was not at variance with the principle of proportional representation, was capable of effectively contributing to the objective pursued by those principles, i.e. effective representation of the citizens' will in the European Parliament, and was necessary for the proper exercise of competences entrusted to it based on Art. 10a of the Czech Constitution, while respecting the requirement for minimisation of interferences with the fundamental rights and affected constitutional principles.

In its judgement File No. III. ÚS 3673/14, the Constitutional Court dealt with a decision whereby the Regional Court in Brno rendered invalid the election to the Municipal Assembly of the Brno-North City Ward held on 10 and 11 October 2014. It followed in this respect from the rebuttable presumption that the electoral result corresponded to the voters' will and the principle that the duty to adduce conclusive evidence to rebut the assumption is borne by anyone who claims that the election was not held properly.

Judgement File No. III. ÚS 3673/14: Election to the Municipal Assembly of the Brno-North City Ward; extremely defective interpretation of the conditions for declaring election invalid as set out in Section 60 (3) of Act No. 491/2001 Sb., on elections to municipal assemblies and amendment to certain laws

The Constitutional Court recalled its case-law on Art. 21 and 22 of the Charter and reached the conclusion that, by erroneous application of the principles following especially from earlier judgements of the Constitutional Court, the Regional Court had inadmissibly and substantially reduced the threshold for permitted interference by a court with the election results as specified by the Constitutional Court in the above-cited judgements.

The Constitutional Court is of the opinion that the case at hand involved neither a "business and market manner" of pursuing an election campaign nor any indications of inadmissible campaigning "in the form of terror, where a free decision by voters is affected by physical and mental duress to such a degree that even the secret nature of election is not capable of ensuring the voters' free decision-making". Mere campaigning in favour of a certain candidate in the form of "promising free admission and refreshments at a post-election rally", with a recommendation who should be voted for, without any duress, cannot automatically be considered unlawful conduct (in the light of the right to freedom of expression) or an exceptional event that would deform the voters' will to such a degree that it would justify the cancellation of the entire election.

The court's decision to cancel the given election was arbitrary and not proportionate to the pursued legitimate objective. The facts on the basis of which the Regional Court made its decision on invalidity of the election were not determined reliably enough for it to be possible to reach a reliable conclusion on defects of the election and a possible causal link between the defects and the resulting composition of the municipal assembly. The Constitutional Court therefore concluded that the election court had interpreted Section 60 (3) of Act No. 491/2001 Sb., on elections to municipal assemblies and amending certain laws, which sets out the conditions for declaring elections invalid, in an extremely defective way, thus violating the fundamental right to a fair trial.

Economic and social rights

Right to protection of the results of creative intellectual activity

This right was already stipulated by the Universal Declaration of Human Rights of 1948. It can also be understood as further specification of protection of property and ownership rights. The State has a general duty to protect rights to creations; however, this protection must have its limits.

Last year, the Constitutional Court followed on in similar cases from judgement File No. II. ÚS 3076/13 of 15 April 2014. All relevant cases were concerned with a successful lawsuit filed by a collecting society for works of performing artists and producers of sound and audiovisual recordings by which the society claimed that the respective defendant surrender unjust enrichment allegedly obtained due to the fact that the individual entrepreneur (defendant; complainant before the Constitutional Court) had made accessible on his premises (e.g. a restaurant, shoe repair shop or DVD rental place) works protected by the Copyright Act to the public without a valid licence agreement, i.e. without a licence. The claimant, i.e. the collecting society, had usually reached this conclusion based on an inspection made on the premises.

The first of the series of judgements was rendered under File No. II. ÚS 2186/14 of 13 January 2015. In the mentioned judgement, the Constitutional Court noted that the Regional Court had failed to take evidence and establish the facts of the case sufficiently so to be able to make an unambiguous conclusion that the complainant had obtained unjust enrichment by making copyrighted works accessible without the necessary licence.

Judgement File No. II. ÚS 2186/14: Use of TV sets to present works protected by the Copyright Act

In performing inspections and executing licence agreements, a collecting society must proceed with due managerial care and in a professional manner. However, collective management of rights cannot be considered performed "with due managerial care" if it is inconsiderate or overly harsh towards the users of the protected works and if it is not based on the principles of justification and reasonability.

The following criteria must be examined, in particular, in evaluation of whether there has been an infringement on proprietary copyrights or proprietary rights related to copyright: a) whether protected works have been made accessible to the public and copyrights thus interfered with; b) whether the work in question belongs to the category of intangible assets managed collectively by the given collecting society; and c) whether the user of the protected works makes them accessible in conformity with the legal regulations.

While it is true that the operator may install a TV set in a restaurant with a view to increasing his profit, it must however be proven that the appliance on which a TV programme can be watched is indeed operational and that its use could actually involve infringement on copyright (presumed infringement of copyright). A mere existence of an operational TV set in a restaurant is insufficient to infer ipso facto that an agreement must be concluded with a collecting society or that unjust enrichment is being obtained.

The Constitutional Court then followed on from this judgement in its judgements File No. IV. ÚS 2445/14 and File No. IV. ÚS 2496/14 of 6 May 2015 and, finally, also judgement File No. III. ÚS 2429/14 of 14 May 2015, where the Court also criticised regional courts for their excessively formalistic interpretation of the Copyright Act, accompanied by insufficiently established facts of the case and subsequent erroneous legal conclusions.

Right to protection of health and health care

Exercise of this social right of second generation lies especially in the positive duty of the State "to act" (instead of "refraining from interference" as in case of fundamental right of first generation). The right to protection of health can, in fact, collide with individual rights and freedoms and, in extreme cases, human health can even be protected against the individual's will.

This was a dilemma dealt with by the Constitutional Court last year, when it evaluated, in cases concerned with **compulsory vaccination** (e.g. in judgement of the Plenum File No. Pl. ÚS 19/14 of 27 January 2015), justifiability of compulsory vaccination as an interference with the physical integrity of an individual and his/her right to protection of private and family life.

Judgement File No. Pl. ÚS 19/14: Compulsory vaccination

Where the interest in protection of public health is weighed against fundamental rights and freedoms that could be interfered with by compulsory vaccination against communicable diseases, the fundamental rights in question comprise human, civil and social rights. The Constitutional Court also expressed general conclusions on the conformity of Section 46 of the Protection of Public Health Act, which the complainant wanted annulled, with the principles of the Constitution and Charter, without interfering with expert or political spheres. Public interest can be evaluated in respect of fundamental rights at the constitutional level of review of the legislation on compulsory vaccination in terms of necessity. The review is concerned with the general statutory guarantees of the procedure in compulsory vaccination, while the setting of detailed rules for compulsory vaccination following from expert knowledge must be left to the executive branch and to conceptual considerations of legislative policy, also in respect of their impact on individuals.

Obiter dictum: If the State provides for a penalty applicable in case of refusal to undergo compulsory vaccination, it must also consider that the enforcement of law might cause harm to health of the vaccinated person. Certain space for indemnification of such a person was already opened by the Convention on Human Rights and Biomedicine, which is part of the constitutional order and which mentions in its Art. 24 "fair compensation" for "undue damage" to health resulting from an intervention required by the law. Considerations on such compensation may also reflect on the provisions of the Civil Code on compensation for tangible and intangible damage. However, it cannot be overlooked that compulsory vaccination is a medical intervention of preventive nature which is made in the interest of protection of public health, which is approved by the law and which has an extraordinarily broad personal scope and impact. These circumstances aggravate the legal position of an individual whose health might be harmed as a result of the vaccination and it is therefore appropriate if the legislature responsibly considers the possibility of supplementing the provisions on compulsory vaccination against infectious diseases by provisions on responsibility of the State for the consequences indicated above.

Furthermore, in judgement File No. Pl. ÚS 16/14 of 27 January 2015, the Court evaluated the legitimacy of the vaccination duty as a precondition for accepting a child to a kindergarten, in view of the child's right to education.

Judgement File No. Pl. ÚS 16/14: Compulsory vaccination as a precondition for acceptance to a kindergarten

Vaccination, as a means of immunisation against selected infections, represents a social benefit requiring shared responsibility of members of society, i.e. a certain act of social solidarity from those who undergo the ensuing minimum risk with a view to protecting the health of the entire society. Indeed, vaccination of a sufficient majority of the population prevents the spreading of certain infectious diseases and thus creates a "collective immunity", where increasing vaccination rate in the population

also increases the effectiveness of vaccination, i.e. protection is also provided to those who were not, in fact, vaccinated.

The fact that a child undergoes vaccination before being accepted to a kindergarten can be considered an act of social solidarity, whose significance grows with the increasing number of vaccinated children in these pre-school facilities. In contrast, social injustice could be seen in cases where a certain group of children accepted to a pre-school facility refuses vaccination without serious reasons and thus takes advantage of the benefits following from the success of vaccination and the willingness of other children visiting that facility to bear that minimum risk ensuing from vaccination.

In both cases, the Constitutional Court thus arrived at the conclusion that the interest in protection of public health was a legitimate objective that was pursued by sufficiently suitable legislative means to such an extent that it outweighed the interference with the above-described fundamental rights. Judge Kateřina Šimáčková submitted a dissenting opinion in respect of both said judgements.

However, almost a year later, in its judgement File No. I. ÚS 1253/14 of 22 December 2015, the Court gave preference to free expression of belief (in this case, secularism, i.e. secular statement of conscience) over the interest in protection of public health, where it followed, *inter alia,* from an opinion presented by the Committee for Human Rights and Biomedicine of the Czech Government Council for Human Rights and found in that specific case certain extraordinary circumstances which exceptionally justified non-enforcement of the vaccination duty in view of the high vaccination rate. Consequently, by virtue of this judgement, it quashed decisions of administrative courts which had confirmed previous decisions of administrative authorities whereby the parents of a minor child were fined for an infraction in the field of health care.

Judgement File No. I. ÚS 1253/14: Compulsory vaccination in terms of the right to secular statement of conscience

Freedom of conscience, belief and religion is absolutely autonomous only in one's private or, in fact, intimate area. When expressed outwards, in a public space, it must be limited to a certain extent. On the same note, refusal of compulsory vaccination on the grounds of religion and belief, which cannot be entirely excluded in view of the specific circumstances, must remain a restrictively construed exemption, rather than perhaps a derogation granted without further ado to a certain religion or group of persons with a certain belief. That all also applies if a certain person is to undergo compulsory vaccination and makes a secular statement of conscience (or such a statement is made on his or her behalf). An exemption from the given statutory duty may only come into consideration under extraordinary circumstances which are closely linked with the person to whom the vaccination duty applies or with close persons (a highly adverse effect of previous vaccination on this person, his or her child, etc.). The opposite conclusion would deny the fact that the institute of compulsory vaccination serves for the protection of public health.

The Constitutional Court recalls that although it had notified the legislative authorities in its judgement File No. Pl. ÚS 19/14 of the non-existence of a legal regulation stipulating the State's liability for potential harm to health caused by compulsory vaccination, there has been no remedy so far. However, this is a task that must be taken care of in view of human-rights documents and standards.

The Constitutional Court also followed up in the past year on its earlier judgements where it admitted the possibility of extensive interpretation of the notion of compensation of costs expended in relation to the treatment of an aggrieved person under the "former" Civil Code, and noted in judgement File No. I. ÚS 870/14 of 24 August 2015, while referring to the principle of fairness, that this notion also covered the costs of care for an aggrieved party who was unable to take care of him/herself.

Judgement File No. I. ÚS 870/14: Interpretation of a claim for compensation of purposefully expended costs associated with treatment pursuant to Section 449 (1) and (3) of the "former" Civil Code conforming to the Constitution

In terms of legitimate interpretation of the right and entitlement to compensation of costs related to treatment of an aggrieved party under Section 449 (1) and (3) of the "former" Civil Code, the notion of treatment means not only restoration or improvement of the aggrieved party's medical condition, but also the stability of his or her health. The purpose of care for the aggrieved party also includes maintenance of a constant condition of the aggrieved party, which does not deteriorate in view of the provision of the care. Without care for the aggrieved party, his/her state of health might deteriorate or (s)he might even die. Maintenance of the aggrieved party's medical condition is therefore also an indicator that must be borne in mind in decision-making on purposefully expended costs associated with treatment.

The Constitutional Court stated that it was not desirable to transfer the burden resulting from the consequences of a harm to health of the aggrieved party to his/her close persons to a disproportionate extent, as the perpetrator would thus be entirely released from the duty to compensate the costs of care for the aggrieved party if they were expended – to a greater, but necessary degree – by the family of the aggrieved party. The aggrieved party is often in such a condition that (s)he is unable to choose the manner of care. It is therefore up to the legal representatives (parents or guardians) to choose the manner of care for the aggrieved party, i.e. personal care, or expenditure of financial means for professional nurses, etc. If the close persons took personal care for the aggrieved party without entitlement to compensation, this would often represent a disproportionate burden.

Right to family life

Last year, the Constitutional Court rendered several important decisions concerning the right to family life. It recalled that this right was not absolute, but was rather subject to limitations ensuing directly from the constitutional order, while emphasising that the right to respect for family life implied not only negative duties of the State (not to interfere), but also certain positive obligations, such as the duty to strive to ensure the fastest possible family reunification. Judgement File No. Pl. ÚS 10/15 of 19 November 2015, where the Constitutional Court dealt with legislation not enabling adoption of a child by an unmarried partner of the child's parent and where the Court also took into account the stability of the family relationships in the Czech Republic, can be considered a fundamental decision rendered in 2015.

Judgement File No. Pl. ÚS 10/15: On constitutionality of the prohibition of adoption by an unmarried partner of the child's parent

The Constitutional Court was seised by a complainant who had filed an application for adoption of the son of his common-law partner. The complainant had been living with his partner in a stable relationship for more than ten years. The biological father had no interest in the minor and failed to provide maintenance and support. The minor confirmed that adoption was his explicit wish, because he had considered the complainant his father since he had been a small boy and wanted to have the same surname as his younger brother. However, the common courts dismissed the complainant's application for revocable adoption of the minor son of his common-law partner on the grounds that the law did not permit such an adoption. The first panel of the Constitutional Court reached the conclusion that the court decisions appeared to breach the complainant's right to protection of family life and also contrary to Art. 3 (1) of the Convention on the Rights of the Child, according to which the best interests of the child shall be a primary consideration in any actions concerning children. The panel therefore stayed the proceedings and submitted a motion

to the Plenum to declare the relevant provision contrary to the constitutional order.

The Plenum of the Constitutional Court concluded that while the contested provision did lay down a limitation for unmarried couples, the limitation was sufficiently justified by an assumption of greater degree of stability of marriage and especially better provision for the child's needs in case of termination of cohabitation of its parents. In the opinion of the Constitutional Court, the legislation followed the best interests of the child, as marriage provides a child with greater certainty. The judges emphasised that any change in this legislation and possible permission of adoption by an unmarried partner were in full competence of the legislature. The Plenum therefore did not find the contested provision at variance with the Charter or the Convention on the Rights of the Child and dismissed the motion filed by the first panel.

In judgement File No. I. ÚS 2903/14 of 12 May 2015, the Constitutional Court recalled in relation to the right to family life that if a child was removed from the parent's care, it was the duty of the State to reunify the family as soon as possible. This duty would become increasingly urgent over time. The Constitutional Court stated that the common courts could not satisfy themselves with ordering a preliminary injunction as a long-term solution.

At the end of the year, the Constitutional Court stated that teaching children to be independent and responsible was both a right and duty of parents. The parents best ensured the children's protection by raising their children to be independent. The Constitutional Court expressed its opinion on this issue in judgement File No. I. ÚS 1587/15 of 15 December 2015. The case was concerned with compensation for damage caused by an injury of two children, aged 5 and 8, who had been hit by a car on a pedestrian crossing. The common courts found the driver guilty of misdemeanour of grievous bodily injury caused by negligence and, at the same time, decided that the complainants (the injured children and their parents) would have, against the driver, the right only to one half of compensation for harm to health, as the father who had been accompanying the daughters did not have them under control when crossing the street. The Constitutional Court examined how the common courts had assessed the question of possible joint liability of the person having the children under supervision and reached the conclusion that the common courts had failed to sufficiently justify the father's liability for the children's injury.

In the past year, the Constitutional Court also dealt with the question of whether or not it was in the best interest of the child to set an upper limit for the amount of maintenance and support. It assessed this question in judgement File No. IV. ÚS 650/15 of 16 December 2015, where it stated that it considered it absolutely appropriate if a high amount of maintenance was set for parents with high income; however, the amount should be subject to certain limits. It followed in its considerations from basic human experience that excessive wealth and certainty on the part of children might have adverse effects, specifically deformation of basic human values. Financial reserves or savings should be such that the child does not lose its natural life motivation forcing any individual to strive for success and a place in life.

Right to education

Decision-making by the Constitutional Court in the area of the right to education involved several important decisions last year which concerned the question of limitation of the right to education in relation to compulsory vaccination required for acceptance to a kindergarten. Furthermore, the Constitutional Court expressed its opinion on the manner of proving indirect discrimination in education in case of placement of Roma children in schools for children with special needs.

In judgement File No. Pl. ÚS 16/14 of 27 January 2015, the Constitutional Court evaluated a constitutional complaint filed by a minor complainant who objected against **non-acceptance to a kindergarten on the grounds of non-compliance with the precondition of undergoing compulsory vaccination** (for more details, see the subchapter on the right to protection of health).

Judgement File No. Pl. ÚS 16/14: Compulsory vaccination as a precondition for acceptance to a kindergarten

The Constitutional Court assumed that there was no reason to exclude pre-school education from the scope of the right to education pursuant to Art. 33 of the Charter, as this is a process leading to mastering the set skills, attitudes and knowledge, rather than only a care for children or babysitting. Given that this right belongs among social rights, the Constitutional Court applied the test of reasonability (rationality) to the contested legal regulation and, in the second step of the test, reached the conclusion that there had been no unconstitutional interference in the case at hand consisting in violation of the substance and sense of the right to education.

While the contested provision introducing vaccination as a precondition for accepting the child to a pre-school facility clearly represents a certain limitation of the right to education, the interference in question is not such (also in view of the exemptions stipulated by the Protection of Public Health Act) to prevent all non-vaccinated children without exception from being accepted to a pre-school facility. In the opinion of the Constitutional Court, the contested provision clearly pursues a legitimate objective consisting in protection of public health. The statutory precondition of undergoing the set vaccination for acceptance to a pre-school facility thus does not constitute a limitation of the right to education guaranteed by Art. 33 of the Charter that would be contrary to the Constitution.

Right to a favourable environment

The right to a favourable environment is mentioned in the preambles to the Constitution and to the Charter of Fundamental Rights and Freedoms, and also in Art. 7 of the Constitution and especially in Art. 35 of the Charter. The Constitutional Court dealt with this right in 2015 in procedural terms. Judgement File No. IV. ÚS 3572/14 of 13 October 2015 was concerned with the *locus standi* on the part of associations for nature conservation and landscape protection to file an application for annulment of a measure of general nature (in the given case, principles of spatial development of a region).

Judgement File No. IV. ÚS 3572/14: On the locus standi on the part of associations for nature conservation and landscape protection in proceedings on annulment of a measure of general nature

The complainant (local beautification association) claimed annulment of certain parts of the principles of spatial development of the South Bohemian Region, which had been issued as a measure of general nature. However, the common courts did not acknowledge its *locus standi*.

The Constitutional Court found the opinion of the Supreme Administrative Court, according to which associations founded with a view to nature conservation and protection of the landscape and environment lack *locus standi* to file an application for annulment of a measure of general nature, an inadmissible denial of access to court review. *Locus standi* can be established subject to certain preconditions. An association claiming annulment of a measure of general nature must primarily assert that the measure affected its rights. Such an assertion must specifically define the interference that was allegedly caused by the regional or local government. It is not sufficient if the association claims that the given measure of general nature or the procedure leading to its issue was unlawful – without simultaneously asserting that the unlawfulness affects its legal

sphere. A substantial criterion must again lie in the local (geographical) relationship of the applicant to the given locality and, furthermore, the professional focus of the association on an activity that has local sense. Substantive (material) grounds of legitimacy that are based on the association's objects of activities are then inferred from the local relationship to the contested measure of general nature. In some cases, the local and substantive reasons may act in mutual synergy and the association need not in fact be "ecological". If citizens living in a certain city or town found an association to protect their interests and a certain measure of general nature is to interfere with the recreational area where they are accustomed to spend their free time, it might be possible to acknowledge the association's *locus standi,* regardless of the details of specification of its objects.

In conclusion, the Constitutional Court noted that it was entirely clear that, based on its statutes, the complainant was not merely an association with a general environmental focus. The Constitutional Court subsequently accepted the complainant's assertion that limitation of the association's *locus standi* to mere procedural questions in proceedings before public authorities was unsustainable both in terms of the international obligations of the Czech Republic (Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention)), and also in view of the wording of Act No. 114/1992 Sb., on nature conservation and landscape protection, as amended.

Right to judicial and other legal protection

Right to a fair trial

A requirement raised most frequently in respect of court proceedings is the requirement for a fair trial. This usually means a general requirement for constitutionality and fairness of the proceedings as a whole. A survey of the database of rulings of the Constitutional Court indicates that this is by far the most frequently pleaded and applied right. It is therefore difficult to choose several representative decisions from such a great number. The following overview both describes entirely new trends and elaborates on previously established principles.

A traditionally significant set of decisions regarding fair trial comprises cases concerning **appellate review.** The Constitutional Court disagrees especially with the overly formalistic approach taken by the Supreme Court. In judgement File No. II. ÚS 1257/15 of 1 October 2015, the Constitutional Court admitted that the Code of Civil Procedure required only a brief description of reasons for rejecting a decision; however, even such brief reasoning had to indicate the circumstances (legal and factual) that had served as a basis for the conclusions made by the appellate review court. In decision-making on an application for appellate review, the Supreme Court also had to answer questions specified by the applicant which, in the latter's opinion, had yet to be dealt with separately in the case-law of the appellate review court.

In judgement File No. I. ÚS 354/15 of 19 November 2015, the Constitutional Court pointed out that the Supreme Court had rejected the complainant's application for appellate review on the grounds of defects consisting in the fact that the applicant had allegedly failed to specify why he believed that the prerequisites for an admissible application had been met. Although the application for appellate review did not comprise an explicit formulation to this effect, the pleading factually indicated that the above prerequisites had been met. In case of such doubts as to compliance with the requisites of an application for appellate review, the Supreme Court should have acted more favourably in respect of the complainant's right to judicial protection and thus make a decision favouring access to justice.

The Constitutional Court unexpectedly dealt with a number of **discrimination disputes** in 2015. This had previously been a relatively rare agenda, as documented by the case-law of common courts and of the Constitutional Court to that date. For example, there were only six rulings recorded in the NALUS database of decisions of the Constitutional Court at the end of 2015 concerning the issue of reversal of burden of proof in disputes on discrimination, of which four were actually adopted last year. In the mentioned decisions, the Constitutional Court criticised the common courts for failing to properly deal with the question of reversal of the burden of proof under the Code of Civil Procedure.

In its judgement File No. III. ÚS 880/15 of 8 October 2015, the third panel noted that it was crucial in disputes on discrimination to determine whether the claimant's assertion had caused the burden of proof to be transferred to the defendant, which had to follow from the facts of the given case. In employee-employer relationships, the employee's position is usually substantially weakened in terms of access to facts demonstrating discriminatory conduct. It is therefore not appropriate to require the employee to adduce evidence to which the employee cannot have access or which is not under his/her control. The claimant is usually unable to present a direct proof of discrimination. If the condition of different treatment has been met, the burden of proof will have to be shifted provided that the evidence presented by the claimant indicates at least reasonable likelihood of the existence of discrimination. In the case under scrutiny, the Constitutional Court reached the conclusion that the common courts had erred when they evaluated the presented documents in a formalistic manner. While doing so, they neglected a conclusion following from findings made by the Public Defender of Rights, specifically that no attempts had de facto been made to determine the existence of unequal treatment at the workplace.

In judgement File No. III. ÚS 1213/13 of 22 September 2015, the Constitutional Court dealt with pleas of discrimination in services, specifically denial of accommodation at a hotel based on ethnic (race) origin.

Judgement File No. III. ÚS 1213/13: On taking and evaluating evidence in proceedings pursuant to Section 133a of the Code of Civil Procedure in case of alleged discrimination; denial of accommodation at a hotel

The hotel refused to accommodate the complainants, who had previously booked a room by telephone, with an explanation that no rooms were free. The complainants filed a lawsuit with a claim for a written apology and financial compensation against the company operating the hotel on the grounds of discrimination based on race or ethnic origin. However, the common courts concluded that the company had borne the burden of proof as it had managed to demonstrate that its treatment of guests had not been discriminatory. In their constitutional complaint, the complainants pleaded violation of the right to a fair trial.

The Constitutional Court stated that along with demonstrating the existence of a booking preventing accommodation of the complainants based on a number of documentary evidence and witness testimonies, it was also necessary to answer the question of whether this conduct was not merely formal, aimed to conceal discrimination by the hotel's employees. Indeed, only such a finding could exclude discrimination.

Decisions of the Constitutional Court related to the right to a fair trial also comprise judgement File No. II. ÚS 2766/14 of 1 December 2015, concerning home birth, albeit this case concerned especially the right to a statutory judge.

Judgement File No. II. ÚS 2766/14: Removal of a case from the statutory judge – home birth

By virtue of an action for protection of personal rights, the complainants claimed an apology and financial compensation from a medical emergency (paramedic) service for an intervention made after the complainant had given birth to a child at home. The mother and the father called

an ambulance and asked the doctor to treat the new-born child; however, the doctor insisted on immediate transport to the hospital, with which the parents disagreed. The doctor called the Police of the Czech Republic and forced the mother to take the child to the hospital. The case was assigned to a judge of the Regional Court, who heard the case, granted the action and properly reasoned the decision. After the appellate court quashed the judgement and referred the case back, the judge complied with its requirements for taking further evidence, but nonetheless reached the same legal conclusion, i.e. that forced transport of a healthy child cannot be justified by "mere diagnostic purposes concerning a hypothetic fear, which moreover was later not confirmed". The appellate court once again quashed the judgement and, at the same time, ordered that the case would be further heard and decided by a different judge, as the first-instance judge had failed to comply with a binding legal opinion of the appellate court.

Following a thorough review, the Constitutional Court found nothing that would attest to a failure to comply with a binding legal opinion of the appellate court by the first-instance judge to a degree that would require a change of the judge. It emphasised that an order to have a judge replaced, as an extraordinary measure, should only be made in exceptional cases.

Specific features of criminal proceedings

The substance of criminal law lies in law enforcement against citizens on the grounds of protection of and support for the basic values of society. The basic objective of criminal proceedings is to detect the person who has committed an act that corresponds to the elements of a criminal offense under substantive criminal law, to investigate the act and to bring the offender before the courts which, in turn, will decide on his/her guilt or innocence. The criminal procedure provides means to ensure that the prosecuting bodies will proceed equally and impartially vis-à-vis the accused persons; this is achieved by compliance with the principles of criminal proceedings applicable to all entities (such as presumption of innocence, right to a fair trial, right to defence). Remedies under constitutional law are also capable of preventing illegitimate and unlawful infringement of fundamental rights and freedoms in criminal proceedings. The Constitutional Court plays an important role in this regard as it evaluates the individual aspects of criminal proceedings in terms of constitutionality. In 2015, for example, it rendered judgements concerning the relationship between urgent and unrepeatable acts, on the one hand, and evidence taking, on the other hand, as well as seizure of money.

Judgement File No. I. ÚS 2852/14 of 23 February 2015: Admissibility of identification (parade) carried out as urgent and unrepeatable acts as a decisive proof of guilt

The complainant was convicted by common courts of illegal manufacture and other handling of narcotic and psychotropic substances and poisons. This verdict was based on witness testimonies made after the initiation of criminal prosecution and records of an identification parade carried out before the initiation of the prosecution, which were all read out during the trial. The complainant objected that he had been found guilty of crime exclusively on the basis of an identification parade carried out before the actual prosecution was initiated, without this evidence being repeated and he being able to examine the witnesses. At the same time, the said identification parade was carried out by Austrian judicial authorities within cross-border legal assistance under the Czech legislation without presence of the judge, which is contrary to the Code of Criminal Procedure.

The Constitutional Court referred to its existing case-law which indicates that if the common court reads out a record of witness examination during the trial, without the defence being able to examine the witness itself, this may only be done if there is a serious ground for this procedure, and

at the same time, the testimony of the absent witness may not be considered an exclusive or decisive proof of guilt. However, if the common court admits such a testimony as an exclusive or decisive proof of guilt, this procedure can stand only if the proceedings as a whole can be considered fair, if the disadvantages ensuing from the admission of such evidence are sufficiently compensated and if credibility of the piece of evidence under scrutiny can be properly and fairly evaluated.

In the opinion of the Constitutional Court, the said conditions were not met in the case at hand. The prosecuting bodies should have made an active effort to repeat the given act and, only if this effort had gone in vain or if the act could not be repeated in view of its nature, would it be possible to convict the indicted person based to a decisive degree on evidence that was taken without presence of the defence, but only subject to further strict conditions. That conclusion is no way affected by the fact that the witnesses who took part in the identification parade were Austrian citizens and could not be forced to take part in the trial held in the Czech Republic.

Furthermore, the Constitutional Court repeatedly dealt in 2015 with the conditions that had to be met in **seizure of money.** It, in fact, stated in its earlier case-law that conformity of the act of seizure of property values with the Constitution could only be achieved if there was a legal basis, the given decision was made by the competent authority and the procedure was not arbitrary; however, at the same time, it was necessary to meet the test of proportionality consisting in the existence of a reasonable (justified) relationship of proportionality between the means used and the objectives pursued. This relationship also has its temporal dimension, as seizure of property cannot be unlimited in time. Consequently, as time runs, the temporary nature of such seizure becomes increasingly relative and the case must be assessed with the use of a stricter test.

This is why the Constitutional Court found in its judgement File No. II. ÚS 3662/14 of 20 October 2015 that almost nine years of existence of such seizure was a considerable period of time and that further circumstances also cast doubt on its proportionality. Although the given criminal case was complex, it could not be considered extremely difficult. To the contrary, an erroneous procedure by the court actually contributed to the duration of the proceedings.

In judgement File No. III. ÚS 3647/14 of 13 August 2015, in a situation where seizure of money lasted for almost ten years and where it was unclear when a first-instance decision would be made in the given criminal case, it was not in conformity with the Constitution if the common courts postponed their decision on the possible return of the money until the judgement in rem was made. On the contrary, the courts should have convincingly and thoroughly justified why they considered long-term seizure of the complainant’s property legitimate.

Compensation for damage caused by an unlawful decision and maladministration

The case-law concerning **compensation for non-pecuniar damage arising during the Communist regime** followed up on Plenum opinion File No. Pl. ÚS-st. 39/14 of 25 November 2014, according to which an entitlement to compensation for non-pecuniar damage under Art. 5 (5) of the Convention arises under the precondition that the State’s interference with personal liberty of the given person occurred after the Convention became binding for the Czech Republic, i.e. as from 18 March 1992. Consequently, the time of participation in judicial rehabilitation is no longer considered decisive. Nonetheless, this legal opinion will not apply in cases where the action for compensation for non-pecuniar damage was filed before the said opinion was adopted.

The Constitutional Court modified certain decisions of the common courts concerning claims for compensation for non-pecuniar damage caused by **delays in proceedings.** In judgement File No. I. ÚS 1599/13 of 7 April 2015, the Court reviewed the manner of calculation of compensation for proceedings lasting more than 20 years. The first panel of the Constitutional Court referred to the fact that the decisions of the common courts were incomplete, formalistic and showing features of arbitrariness. It criticised them, for example, for the

manner of evaluating the complainant's conduct during the proceedings, absence of reasons for setting the basic amount of compensation at the lower level of the given range and neglect of the complainant's motion to take account of the duration of the compensation proceedings in setting the compensation.

The Constitutional Court also quashed decisions of common courts in its judgement File No. I. ÚS 1822/14 of 9 April 2015, where it disagreed with the conclusion that acts taken in seven-year divorce proceedings had been taken within reasonable deadlines. Furthermore, in the Court's opinion, the common courts took inadequate consideration of special facts of the case and also of the fact that the complainant herself in no way contributed to the duration of the proceedings. This violated her right to have her case heard within a reasonable deadline and failure to grant compensation for the intangible damage incurred also violated her right to compensation for damage caused by maladministration.

Asylum, extradition, expulsion

Issues related to the migration or asylum "crisis" caused the right to asylum to be one of the most frequent and also one of the most controversial topics of Czech and European politics last year. In spite of the increased political and media attention, however, the number of asylum cases dealt with by the Constitutional Court did not substantially increase last year (cf., e.g., 6 cases in 2015, compared to 4 cases in 2010).

The national legislation and practice in the area of asylum, extradition and expulsion can be in conflict with the obligations following for the Czech Republic from international law, especially international treaties on human rights. The legal regulation of the above instruments and their practical application is intertwined with the State's obligation to respect and protect the rights of an individual to life and prohibition of torture and inhuman or degrading treatment or punishment, supplemented by the principle of non-refoulement (prohibition of extradition and return) embodied in Art. 33 of the Convention relating to the Status of Refugees.

In the past years, the Constitutional Court repeatedly dealt with difficulties in interpretation arising in cases of **concurrence of asylum and extradition proceedings** and this was again true in 2015. In its judgement File No. II. ÚS 1017/14 of 26 May 2015, the Constitutional Court dealt with a constitutional complaint by which the complainant, a citizen of the Russian Federation, claimed that she be released from detention preceding extradition. The complainant was detained based on request made by Ukraine for her extradition for criminal prosecution. Subsequently, a request for her extradition was also made by the Russian Federation. In parallel asylum proceedings, the Ministry of the Interior granted subsidiary protection to the complainant. In her constitutional complaint, the complainant primarily argued that her prosecution was politically motivated and fabricated, and since she had been granted subsidiary protection, should could not be extradited.

Judgement File No. II. ÚS 1017/14: Extradition of a person to another country for criminal prosecution in case where subsidiary protection has granted pursuant to Section 14a of the Asylum Act

In the reasoning of its judgement, the Constitutional Court first dismissed the complainant's plea that her criminal prosecution in Ukraine and Russia was politically motivated and fabricated. As to the complainant's assertion that in view of the granted subsidiary protection, she could not be extradited to Ukraine for criminal prosecution, the Constitutional Court stated that based on its existing case-law, extradition was possible, but only after individual evaluation of the relevant questions. Based on specific assessment of the complainant's arguments, the Constitutional Court then concluded that her references to the existence of various problems in Ukrainian justice and prison system were merely of general nature and thus did not exclude her extradition to Ukraine. Furthermore, the Constitutional Court noted that not even granted subsidiary protection would prevent the complainant's extradition to Ukraine. Indeed, the complainant was granted subsidiary protection on the grounds of legitimate

concerns that she would be realistically threatened by serious harm if she was returned to her home country (i.e. to Russia). Consequently, the Constitutional Court concluded that the subsidiary protection granted on the aforesaid ground did not a priori prevent the complainant's extradition for criminal prosecution to a country other than her home country. It therefore holds that even after the subsidiary protection was granted, the Minister of Justice was still able to make a decision on the complainant's extradition to Ukraine and, thus, it continued to be admissible to hold her in detention.

The Constitutional Court also dealt with a very interesting, and previously unresolved, question in its resolution File No. IV. ÚS 3608/14 of 20 April 2015, where it rejected as clearly unfounded a constitutional complaint filed by an unsuccessful applicant for international protection (a Ukrainian national), who had been diagnosed with AIDS in terminal stage after arriving in the Czech Republic. The complainant primarily asserted that if he was returned to the country of origin, he would be exposed to inhuman and degrading treatment, as he would not have access to appropriate health care in Ukraine. The Constitutional Court stated that a mere lower level of health care in the country of origin, in the absence of further circumstances, cannot form grounds for granting asylum. The complainant did not find out about his disease until he arrived in the Czech Republic and, in the opinion of the Constitutional Court, his conclusions as to insufficiency of appropriate medicines or his social marginalisation were mere speculations, not supported by any evidence. In conclusion, the Constitutional Court also rejected the complainant's allegation that he should be granted humanitarian asylum, primarily because there existed no legal entitlement to it. Review of administrative discretion in these cases goes clearly beyond the scope of the review powers of the Constitutional Court, which may only examine whether or not the common courts or administrative authorities used arbitrary interpretation of the relevant provisions, which however was not established in the case at hand.

The Constitutional Court also dealt with the subject of expulsion in judgement File No. III. ÚS 2288/15 of 15 September 2015. The complainant – a Vietnamese citizen – was sentenced, inter alia, to five-year expulsion for illegal manufacture of narcotic and psychotropic substances. The complainant filed an application for appellate review against this decision as, in his opinion, the court had failed to sufficiently deal with the fact that he would be threatened with capital punishment if he was expelled to his country of origin. However, the Supreme Court considered the complainant's plea of threatening capital punishment clearly unfounded and the same opinion was later adopted by the Constitutional Court, which subsequently rejected the first constitutional complaint filed by the complainant. After he failed to comply with a request to leave the Czech Republic, the complainant was arrested and subsequently in detention prior to expulsion. Within the detention hearing, the complainant's defence counsel argued that the complainant was in fact a certain N. V. T., who had been involved in an organised group dealing in drugs, where five other members of the group had already been executed in Vietnam, which the counsel documented by the judgement rendered by the Vietnamese court. Based on these facts, the complainant filed an application for renewal of proceedings, which however was dismissed by the common courts due to insufficient grounds. The complainant filed his second constitutional complaint against these decisions.

Judgement File No. III. ÚS 2288/15: On properly dealing with the question of real identity of a convict by common courts in proceedings on permitting renewal

Both national and international laws (as well as the case-law of the European Court of Human Rights) provide for the courts' duty to determine, when making a decision on the punishment of expulsion, whether or not there exist certain facts at the time of decision-making on this sentence that would give rise to a justified concern about a realistic possibility of capital punishment imposed or enforced in the country to which the given person is to be expelled. If such facts are found only after the judgement enters into legal force, these can serve as grounds for renewal of the proceedings, or grounds for waiving the sentence of expulsion.

In the case at hand, such new facts could consist both in the decision of the Vietnamese court and in the different identity of the convict (complainant). The Constitutional Court stated that the common courts failed to deal with the question of verifying the true identity of the convict in a manner conforming to the Constitution, as they satisfied themselves only with information available from files loaned by the Ministry of the Interior and Directorate of the Foreigner Police Service. Based on these findings of fact, they noted that the convict's real identity was different. The Constitutional Court pointed out that the doubts related to the plea of different identity of the complainant were so serious that the common courts would have to deal with them. Indeed, the courts clearly failed to take all means of evidence to determine the true identity of the convicted person. The Constitutional Court also noted that incorrect identification of the convict within the final decision was, in itself, a reason for renewal of the proceedings. It therefore quashed the contested decisions of the common courts as arbitrary.

5. STATISTICAL DATA ON DECISION-MAKING

2015

Statistical data on Constitutional Court's decision-making in 2015

Total number of decisions in 2015		
3858		
Judgements	Resolutions	Opinions of the Plenum
222	3633	3

Decisions of the Plenum in 2015[iii]	
32	
Judgements	Resolutions
15	17

Judgements in 2015[i]		
222		
Complaint/application granted (at least partially)	Complaint/application dismissed (at least partially)	Complaint/application both granted and dismissed
194	32	4

Panel decisions in 2015	
3806	
Judgements	Resolutions (including procedural)
207	3616

Resolutions in 2015 (including procedural)[ii]						
3613						
Complaint/application clearly unfounded	Complaint/application defective	Belated	Lack of *locus standi*	Lack of jurisdiction	Inadmissibility	Discontinued
2782	286	114	69	30	403	65
76,7 %	7,9 %	3,1 %	1,9 %	0,8 %	11,1 %	1,8 %

Explanatory notes:

i) Some of the judgements comprise several operative parts and, therefore, the aggregate number of judgements where the complaint or application was at least partially granted and of judgements where the application was dismissed is not equal to the total number of judgements. There were a total of 4 "combined" judgements (both granting and dismissing the complaint/application), which fact is recorded in the table.

ii) A considerable number of resolutions comprise several operative parts. The table shows the number of individual operative parts, where the aggregate total is not equal to the total number of resolutions adopted (the same applies to the percentages, where the sum is not 100% and the number of individual types of operative parts is linked with the total number of resolutions, including procedural).

iii) Apart from opinions of the Plenum (a total of three in 2015).

Proceedings on annulment of laws (statutes) and other regulations – number of decisions			
18			
Application granted (at least partially)		Application dismissed	
5		13	
Applications for annulment of a law (statute)	Applications for annulment of some other legal regulation	Applications for annulment of a generally binding edict	Applications for annulment of a regulation issued by a municipality/region
13 (8 judgements)	3 (2 judgements)	1 (1 judgement)	1 (1 judgement)
Application granted at least partially	Application granted at least partially	Application granted at least partially	Application granted at least partially
3	0	1	1

Proceedings on constitutional complaints[iv] – number of decisions											
3835											
Application granted (at least partially)				Complaint dismissed (decisions *in rem* and quasi-decisions *in rem;* procedural decisions and instances where the proceedings were discontinued are not included)							
189				3534 (66 judgements, of which 21 dismissing the complaint and 2 simultaneously dismissing and granting the complaint)							
Constitutional complaint directed against:[v]											
Court decision	Administrative decision	Other decision	Other interference	Law (statute)	Other legal regulation	Generally binding edict	Regulation of a municipality/ region	Decision of the Constitutional Court	Measure of general nature	Internal regulation	Others
3655	76	206	108	99	55	0	0	0	2	0	22

Proceedings on measures required to enforce an international court ruling – application for renewal of proceedings – number of decisions	
2	
Granted	Not granted
0	2

The Constitutional Court did not make a decision in any other types of proceedings in 2015.

iv) Also includes proceedings on municipal complaints pursuant to Art. 87 (1)(c) and proceedings on an application of a political party or movement pursuant to Art. 87 (1)(j) of the Constitution.

v) Certain pleadings are directed against several types of acts; therefore, the aggregate number of decisions made in proceedings on constitutional complaints does not correspond to the number of pleadings given in this part of the table.

Average duration of proceedings in cases completed in 2006–2015

		in days	in months and days
Average duration of proceedings in all cases		165	5 months 15 days
	in matters dealt with by the Plenum	371	12 months 11 days
	in matters dealt with by panels	163	5 months 13 days
	in matters resolved by a judgement	393	13 months 3 days
	in matters where the complaint/application was dismissed on the grounds of being clearly unfounded	173	5 months 23 days
	in all other manners of discontinuation of the proceedings	96	3 months 6 days

Average duration of proceedings in cases completed in 2015

		in days	in months and days
Average duration of proceedings in all cases		159	5 months 9 days
	in matters dealt with by the Plenum	267	8 months 27 days
	in matters dealt with by panels	159	5 months 9 days
	in matters resolved by a judgement	350	11 months 20 days
	in matters where the complaint/application was dismissed on the grounds of being clearly unfounded	163	5 months 13 days
	in all other manners of discontinuation of the proceedings	92	3 months 2 days

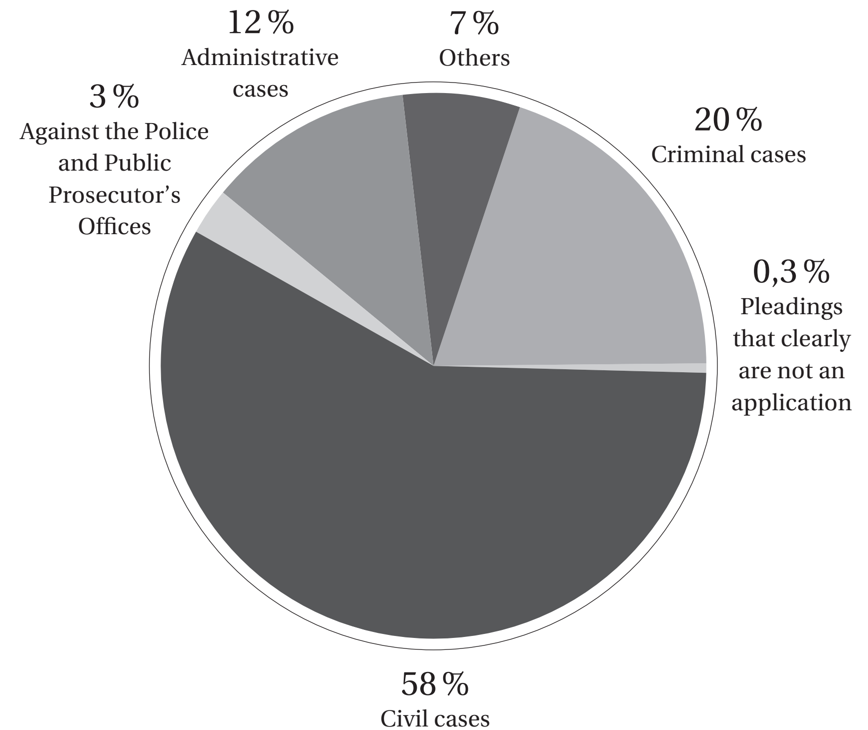
Public oral hearings

Numbers of public oral hearings in 2010–2015

year	matters dealt with by the Plenum	matters dealt with by panels
2010	7	18
2011	8	20
2012	2	17
2013*	1	1
2014*	0	0
2015*	0	0

* the number of public oral hearings was reduced based on a legislative amendment

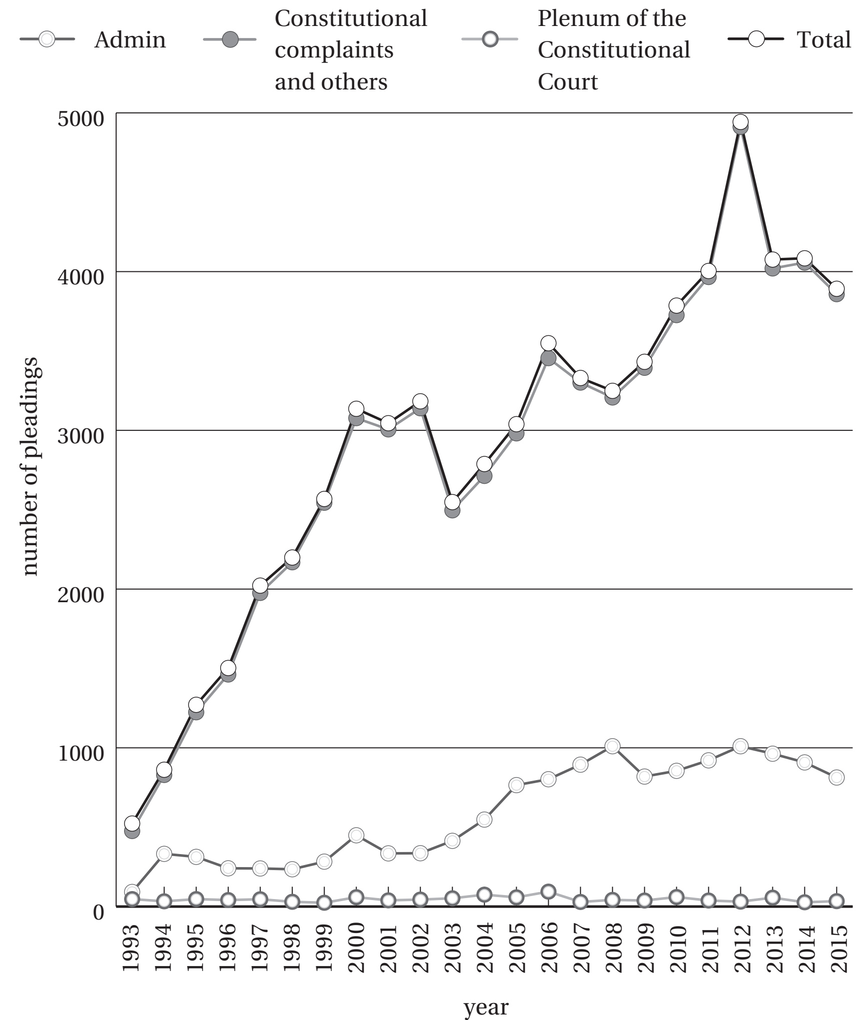
Structure of applications to initiate proceedings in 2015



Statistical data on applications to initiate proceedings and other pleadings

	Number of pleadings			
YEAR	**Total**	Plenum of the Constitutional Court	Constitutional complaints and others	Admin.
1993	**523**	47	476	92
1994	**862**	33	829	332
1995	**1 271**	47	1 224	313
1996	**1 503**	41	1 462	241
1997	**2 022**	46	1 976	240
1998	**2 199**	30	2 169	235
1999	**2 568**	24	2 544	283
2000	**3 136**	59	3 077	449
2001	**3 045**	39	3 006	335
2002	**3 183**	44	3 139	336
2003	**2 548**	52	2 496	414
2004	**2 788**	75	2 713	548
2005	**3 039**	58	2 981	765
2006	**3 549**	94	3 455	802
2007	**3 330**	29	3 301	894
2008	**3 249**	42	3 207	1 010
2009	**3 432**	38	3 394	819
2010	**3 786**	60	3 726	855
2011	**4 004**	38	3 966	921
2012	**4 943**	31	4 912	1 010
2013	**4 076**	56	4 020	963
2014	**4 084**	27	4 057	908
2015	**3 892**	34	3 858	813
Total	**67 032**	**1 044**	**65 988**	**13 578**

Trends in the numbers of pleadings in 1993–2015



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Contact person: Vlastimil Göttinger
vlastimil.gottinger@usoud.cz

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